

# Language Matters

## A review of language for separating families

### Executive Summary

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

Language for separating families has evolved out of an adversarial legal system: it is accusatory and divisive. It is also potentially harmful, increasing conflict through battle metaphors while parents compete for justice and control of their children.

Appropriate language is needed through every part of a family's separation: at the school gate, with their wider family and friends, in the media, on government websites, with support services and throughout any legal process.

Following the Family Solutions Group recommendations in the "What about me?" report, the President of the Family Division commissioned this report, "Language Matters", which calls for a fresh look at the way family law is framed and delivered to those who need it.

The report has distilled feedback from a range of consultees and existing literature into five core principles for language change, to shift mindsets away from adversity and battles, towards safety, wellbeing and child welfare. The core principles or five 'P's are:

- **Plain English** - avoid legal jargon and use words which can easily be understood.
- **Personal** - use family names rather than legal labels.
- **Proportionate** - use language which is proportionate to the family issues being considered.
- **Problem-solving** - use constructive problem-solving language rather than battle language. The move from combative to cooperative language reflects a move from the language of parental rights to the language of parental responsibility, so issues can be approached in a child-focussed and problem-solving way
- **Positive futures** – the emphasis is not on past recriminations but on building positive futures in which children can thrive.

Change is needed throughout the Family Court: in court forms, case headings, the Family Procedure Rules, and in the language used by (and about) legal professionals at all levels. The Family Court needs to lead the charge, so that these principles begin to permeate into the rest of society, for example to schools, health professionals, charities and the media.

A language of wellbeing and cooperation, instead of law and justice, could also open up wider government responsibility for separating families. It could encourage a positive shift from the limited concept of "Family Justice" towards an integrated and coordinated response which has safety and child welfare at its core. Changed language will change mindsets and lay the foundations for improved systems of support for separating families.

# Language Matters

## A review of language for separating families

### Introduction

Language matters. The way we use language is critical to how a message is heard and understood. The difficulty which we face is that language for families who separate has evolved out of an adversarial legal system. Inevitably, therefore, it has produced adversarial language: accusatory and divisive. Although the Children Act 1989 introduced a radical new law focussing on child welfare over parental rights, language never changed to reflect the new law. Now in the context of No-Fault Divorce, and with a growing body of evidence of the risk to children from parental conflict, there is another opportunity to reassess the language of family separation. A fresh look is needed, not at the law, but at the way the law is framed and delivered to those who need it.

The Family Solutions Group made a number of recommendations for change, to improve the experience of children and parents following separation. One of the core recommendations of its 'What about me?' report was the need for [public education](#), to reframe outdated and harmful attitudes to family separation. The use of appropriate language is key to achieving that societal reframe.

Following the recommendations in the 'What about me?' report, the President asked for further recommendations on the issue of language and the changes needed. We consulted with a wide range of people involved with separating families in different contexts and invited their suggestions for how language should change. Our consultees included magistrates, barristers, solicitors, mediators, Cafcass Cymru, children's services, parenting specialists, child consultants, domestic abuse specialist, child contact centres, therapists and separated parents. We have also drawn from the excellent 'Mind your language' paper from the FJYPB, past reports from the Private Law Working Group and Family Solutions Group, and some recent judgements. From all these sources, there was widespread overlap in the calls for change. This paper is a summary of the consultees' key recommendations.

### Why is the language of family separation important?

The words we use shape our mindsets, which in turn affect how we think and behave. If the language of family separation is of battle metaphors, of fights between spouses and parents competing against each other for justice and the control of their children, it affects our mindsets.

It is not helpful to thrust parents into a metaphorical battleground at a time of fragility in family relationships. That said, where there has been abuse, financial misconduct or harmful behaviour, objective and precise language is important to provide a safe and robust boundary. Getting it right is important. It is vital that the language of collaboration and mutual respect is not used to downplay the protective nature of the family court in cases of ongoing risks of harm.

Appropriate language is needed through every part of a family's journey of separation: at the school gate, with their wider family and friends, in the media, on government websites, with support services and, for those who engage with the legal system, throughout any legal process. Appropriate language is also needed to influence the development of family policy and funding by government.

Simple changes in the words we use can change all our mindsets, and so our thinking and behaviour. The language of family separation has a far-reaching impact on children, parents and all of society.

## What mindsets do we want to promote from our language?

We should aim to promote the following mindsets from our language:

- away from adversity and battles, towards wellbeing
- away from fear, towards safety
- away from parental rights, towards thriving childhoods following separation
- away from retrospective blaming, towards future-focussed solutions

We should aim to promote mindsets which enable the children of separating parents:

- to enjoy close and nurturing relationships with both parents, wherever safe to do so
- to have a childhood which is not dominated by conflict between parents
- to be consulted (age-appropriate) when decisions are made which affect them
- to thrive in childhood, with parents who live apart

Overall, our language should promote mindsets that separation is not a war to be won but a transition which will affect the whole family. During this change, our language must shift from that which is harmful to that which is hopeful.

## Scope of this paper

The Family Solution Group's focus has been separating families within the private (rather than public) family law sphere. Whilst the scope of this paper is accordingly limited, we wholeheartedly acknowledge that the conversation about reforming the language used in the sphere of public family law is equally important, and just as much needed. Social workers will often try to work constructively with parents, so it is unhelpful if proceedings are automatically headed 'Local Authority vs parents'.

There have been similar calls to reflect on and improve the language used in public law, a good example of which is the [TACT Language that Cares](#) paper from 2019. There is a significant amount of crossover between the language used in public and private family law and, where relevant, we hope that the recommendations in this paper will be a useful guide for public law professionals.

One consultee commented *"In terms of public law, the tone is largely set by the language used by the local authority ... the principles of needing to move from an adversarial to a problem-solving approach are the same."*

# Principles for change – the five ‘P’s

It has been easy for us and all those whom we consulted to identify the many words which are no longer fit for purpose: “battle” language, “custody”, “contact” and many more. In considering alternatives, we came up with 5 core principles for language change, to shift mindsets away from adversity and battles, towards safety, wellbeing and child welfare.

These are:

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

## 1. Plain English

Family law exists to protect families as they navigate fear, loss, mistrust and many other emotions. We must use language which families can understand during these times of stress; it should be accessible to all. It should avoid technical jargon and acronyms and say clearly ‘what it is on the tin’.

*“The language legal professionals use with clients can often be unintentionally intimidating. Acronyms and legal speak are not easily understood by anyone who is not legally trained. Add this to clients who are emotionally charged or distressed and you end up with barriers that block rather than enable the divorce process. Clients who feel safe stay present.”<sup>1</sup>*

A further reason for using plain English is to avoid escalating family problems into legal issues unnecessarily by use of legal terminology and jargon.

*“People who cannot communicate about their children’s needs or about their divorce do not need justice: most of the time they don’t even have a legal dispute. What they want is help.”<sup>2</sup>*

Plain English must be used, easy for all to understand, including families who do not have English as a first language and others who do not have a high level of literacy.

## 2. Personal

Dignity, inclusivity and respect should be embedded into the language used with separating families. It should be humane, always focussed on the people in the family who are affected by the issues (whether safety, children or finances). Attributing formal labels to family members is dehumanising and depersonalises their part in any proceedings. This may be a legacy of an adversarial system: when we dehumanise language, we distance ourselves from the humans involved, so it makes it easier to say difficult things. However much this may be comfortable for legal professionals, the language of family law must be kept personal and focussed on family members. It is their lives that are affected.

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<sup>1</sup> Marcie Shaoul, The Co-Parent Way and Adele Ballantyne, Eleda Consultancy

<sup>2</sup> Stephen Anderson, mediator and former solicitor, Start Mediation

There was common agreement that ‘Applicant/Respondent’ are inappropriate (and potentially confusing<sup>3</sup>), and ‘Party/Parties’ are legal jargon. Family members should be given the opportunity to say how they want to be referred to.

*“We acknowledged that it is easier for the Court, Judges and lawyers to use such abbreviations or shorthand BUT the system is not there for them it is there for the people who need the system and the language has to cater to them in a way that makes them feel included and respected. Effort should be made to identify how [they] wish to be referred to and this should be kept consistent throughout all documents and proceedings.... Ensuring that a child or children’s names are used throughout the court documentation and process will help to make the process more personal and inclusive and keep EVERYONE’s focus on this particular child or children. ... It may be easier for the court, lawyers and staff to use ‘child’ or ‘children’ but the system needs to be focussed on the individuals and children who need it and not on what is easier for lawyers and the Court.”<sup>4</sup>*

The need for personal language should also extend to personal greetings at court (more below).

### **3. Proportionate**

The work of the Family Courts encompasses a very wide range, from cases with no safeguarding issues at all to those with the most serious allegations of abuse or financial misconduct. The language deployed must be proportionate to the issues in the case.

*“In serious cases, more formal language may be needed. It is vital those making allegations, and defending themselves against them, can robustly interrogate the case put against them. Their advocates must represent their interests fearlessly. In cases where grave allegations are made it would be inappropriate to water down a position statement as this may inaccurately represent the position ‘on the ground’ and impact their right to a fair trial.”<sup>5</sup>*

A distinction must be made between those cases with serious safeguarding issues and those in which family members have different perspectives on the right outcome. These latter cases need a framework and language which will dial-down hostility, accommodate differing narratives, make space for nuance, and point people forwards. Language in these cases should promote a future which is cooperative and centred on child welfare.

*“In these cases, court proceedings should not be allowed to make family relationships worse.... Disproportionately adversarial language should expect to be criticised outside of serious allegations of abuse or financial misconduct... A core task of the advocates is not to lose focus of the fact that a family will remain a family once proceedings have ended.”<sup>6</sup>*

We quote from Peel J in a recent case:

*“Parties, and their legal advisers, may be under the impression that to describe the other party in pejorative terms and to seek to paint an unfavourable picture will assist their case. It is high time that the parties and their lawyers disabuse themselves of this erroneous notion.”<sup>7</sup>*

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<sup>3</sup> This case highlights the pitfalls which can happen with the terminology ‘applicant’ and ‘respondent’. <https://www.1hc.com/resources/case-summaries/ic-v-rc-2020-ewhc-2997-fam/>

<sup>4</sup> Fletcher Day and the Family Law Language Project

<sup>5</sup> Samantha Woodham and Harry Gates, The Divorce Surgery, 4PB and Coram

<sup>6</sup> As above

<sup>7</sup> Peel J, WC v HC 2022

The language adopted in any legal matter must be proportionate to the issues faced by the family. Effective advocacy does not have to be pejorative or disrespectful.

#### **4. Problem-Solving**

Our language should promote problem-solving mindsets, rather than fuel adversity with the language of war. Battle language leads to aggression and defensiveness, a natural and instinctive form of protection. Battle lines are set, sides are taken, splitting and projecting into good and bad may follow, and so the focus on the child's needs is lost and opportunities for problem-solving diminish. Disarming our vocabulary may be uncomfortable but is long overdue if we are to promote problem-solving mindsets, leading to safety, wellbeing and child welfare.

Problem-solving language is solutions-focussed, respectful, considered and, where safe and appropriate, should be collaborative.

The move from combative to collaborative language reflects the move required from language of parental rights to language of parental responsibility. We must promote the continuing responsibility which both parents have, without hierarchy, to provide for their child's wellbeing for the childhood years ahead; to lead parents away from a tug-of-war mentality of a 'custody battle', and towards a shared responsibility for their child's wellbeing. Within this mindset, it becomes possible to reframe issues between parents to be from the child's perspective and to promote a child-centred problem-solving approach.

Where there are or have been safety issues within the family, this does not mean there needs to be a battle. The court can adopt an investigative and problem-solving approach where risk issues are assessed and managed without being the subject of a battle.

#### **5. Positive Futures**

Our language should promote future-focussed mindsets, pointing people forwards towards a positive future. At every stage following separation, language needs to be re-framed to move on from past recriminations between spouses and parents and focus instead on creating positive futures for them or, where there are children, for the childhood years ahead.

We should promote mindsets which draw energy and effort into the goal of a positive future for all family members.

## **How to bring about change?**

The changes needed in the language of family separation will take determination and discipline, over a sustained period of time.

### **The Political Backdrop**

Governance of the needs of separating families is given to the 'Family Justice System'. Not only is this term misleading, but it potentially obstructs the wider governance and provision which families need.

- **First**, there is no promise of ‘justice’ following separation. Although the Family Court provides a ‘just’ process for resolving issues in a robust and child-focussed way, that may be very different from anyone’s expectation of ‘justice’ following the end of a relationship. Most problems which families experience when their relationships break down do not require justice; they require communication help and practical solutions which leave them with a positive future. Those with more complex issues may need the help of the Family Court to obtain a decision. A recent MoJ statement<sup>8</sup> referred to their investment to provide ‘swifter access to justice in Family Courts’; perhaps more accurate would be ‘swifter access to the Family Court’, where outcomes are delivered based on principles of safety and welfare.
- **Second**, the reference to a ‘Family Justice System’ gives the impression of a system whereas there is no systemic approach to family separation: there are legal services which operate in the shadow of the Family Court, but no ‘system’ exists to address the many issues which follow separation, not least the needs of the children and young people whose lives are affected.

No-one designing a family separation system from scratch would start with a court. Far better would be a structure which took as its starting point the early provision of accessible information and support, well away from any court-based scheme. It would be written in language to promote mindsets of safety, fairness, cooperation and thriving childhoods following separation. The more formal language and processes of a Family Court would be reserved for those who need its protection.

As yet, the administration in England does not provide that accessible information and support. The language of law and justice has led family separation for at least a century, and family separation is governed by a department which administers justice. We suggest that a language of health and wellbeing, of positive and thriving childhoods following separation, should open up wider departmental responsibility for this large cohort of society. The aim would be to create a wider health and social care systemic response to the needs of separating families, and to place the Family Court within that wider system rather than being the first resource available.

*“Perhaps it might be possible yet to achieve what the Children Act 1989 and now the DDS Act envisaged: a family court as part of a coherent and integrated wider system of resources supporting separating families and their children.”<sup>9</sup>*

## Public Education

HHJ Wildblood recently directed these comments at anyone thinking of applying to court:

*“Do not bring your private law litigation to the family Court here unless it is genuinely necessary for you to do so. You should settle your differences (or those of your clients) away from Court, except where that is not possible. If you do bring unnecessary cases to this Court, you will be criticised, and sanctions may be imposed upon you. There are many other ways to settle disagreements, such as Mediation.”<sup>10</sup>*

Both the Private Law Working Group and the Family Solutions Group have called for a wide publicity campaign, to re-frame public understanding about family separation and what the law expects. We repeat this call.

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<sup>8</sup> BBC, Broadcasting House, 24 July 2022

<sup>9</sup> Neil Robinson

<sup>10</sup> *Re B (a child) (Unnecessary Private Law Applications) 2020*

The Family Solutions Group website has a page on [Public Education](#). We have also produced a short paper of [Key Messages](#) for parents to know following separation.

The [Private Law Working Group report](#) of March 2020 included at Annex 2 (page 98) [What the Family Court expects from Parents and Carers](#). This information needs to be widely understood.

The lack of any clear public education about family separation has led some parents, keen to introduce a child-focus, to start a campaign themselves. The [Parents Promise](#) was launched last year, led by an alliance coordinated by Only Mums and Only Dads.

*“We need to make a radical break and change culture significantly. The penny needs to drop that 'poor' separations are very damaging to children and I think it's analogous to bullying in the 1980s which was tolerated if not encouraged. As a society we need to stop normalising parental conflict in popular media and glamorising it.”<sup>11</sup>*

### **President's Guidance, Family Procedure Rules, Court Forms, Case Headings**

In the absence of political change and a dedicated public education campaign, the language at the school gate or in the media will continue as now. The known provision is a legal battle and so the Family Court needs to lead the charge for change. If the language of war in the Family Court were replaced, then the principles of safety, wellbeing and child welfare might begin to permeate into the rest of society.

Language change will not happen by good will. There are too many vested interests for keeping the language legal, impersonal and adversarial. It will only happen by rule change. [The Law Society Protocol](#) and the [Resolution Code of Practice](#) and [Good Practice Guide on Correspondence](#) have demonstrated that: even though they are widely admired they are not enforced and in practice they are ignored by many practitioners. Some practitioners are introducing their own charters, such as the East London Family Justice Board Respect Charter, and the [Mills & Reeve charter](#). Only Mums and Dads have also set out their [own charter](#) for best practice by their Family Law Panel which promotes a problem-solving approach. However, these are voluntary initiatives and not yet mainstream. There is also the [Family Law Language Project](#), launched by Emma Nash in 2021. The Family Solutions Initiative launched by Karen Barham last year also promoted a problem-solving approach, but as yet this has not been adopted.

*“Until the rules require a change, it's hard to drive change forward.... the legal changes in language brought about by the recent change to the divorce laws have prompted a change in language in a way that a non-rule cannot.”<sup>12</sup>*

We invite the President to issue guidance (ideally in the form of a Practice Direction) about the use of language in the Family Court and by legal professionals, including the focus away from adversity towards a problem-solving approach. We hope this paper may be helpful to him in that respect.

We recommend a review of the Family Procedure Rules to bring language into the 21<sup>st</sup> century. We suggest an audit against the 5 Ps is needed, not to change the law, but to change the way it is delivered to those who need it. Change is achievable; some changes could be done very simply with a 'find and replace'.

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<sup>11</sup> James Hayhurst, Parents Promise

<sup>12</sup> Claire Molyneux, Mills & Reeve



As court forms go online, we hope they can be drafted with language which reflects these principles (more below).

Linked to the court forms is the need to change case headings, which in turn will affect the way family cases are reported. Family cases require a different approach from other areas of law; referencing a case as 'Shah v Shah' is inappropriate and not in the interests of any children in the family.

### Training of Magistrates, DJs, Court staff

The [Magistrates' Association](#) provided an extremely helpful and considered paper about language.

Any change to language will require robust management if it is to have any effect. It will be important that magistrates, DJs and Court staff are on board.

One consultee commented *"If we could just have a few cases where lawyers are taken to task for using unnecessarily inflammatory or destructive language, they'd learn to adapt pretty fast."*

Mr Justice Peel has been outspoken about case conduct; he referred recently to 'nihilistic litigation':

*"Each party thinks the other is, to use their own words, 'out to destroy' them. These proceedings have been intensely acrimonious. They, and their lawyers, have adopted a bitterly fought adversarial approach. I asked myself on a number of occasions whether the aggressive approach adopted by each side has achieved anything; it seems to me that it has led to vast costs and reduced scope for settlement. The toll on each party is incalculable (W was visibly distressed during the hearing) and, from what I have heard, the impact on the children has been highly detrimental."*

*He concluded: "The only beneficiaries of this nihilistic litigation have been the specialist and high-quality lawyers. The main losers are probably the children who, quite apart from the emotional pain of seeing their parents involved in such bitter proceedings, will be deprived of monies which I am sure their parents would otherwise have wanted them to benefit from in due course."*<sup>13</sup>

### Changing the perception of what a good family lawyer looks like

It is impossible to ignore the public accolades and profile given to legal professionals for their 'victories' in court, and the lack of profile for those who skilfully succeed in a problem-solving approach. The legal directories' promotion of the language of aggression and war in family proceedings must be challenged.

*"A "firecracker of a barrister" she "is a robust advocate" who will fight her client's corner and gee them up if necessary. She is famed for her tenacious style and uncompromising approach." "You need shin pads and earmuffs to deal with her, but there's no denying she is effective." She is an extremely effective advocate who is climbing to the top of her profession. Peers view her as a dangerous opponent and clients admire her "tenacious and forceful" approach. One peer commented: "She always goes in hard for her client. If you're against her you know it's fists up and a fight."*<sup>14</sup>

*"When you need someone to fight your corner she is unparalleled." "A robust tactician and advocate" she is a "good fighter who clients quickly warm to".*<sup>15</sup>

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<sup>13</sup> *Crowther v Crowther & Ors (Financial Remedies)* [2021] EWFC 88.

<sup>14</sup> Chambers & Partners

<sup>15</sup> Legal 500

These are quotes from other legal professionals, seemingly of the view that battle terminology is appropriate in family cases and that aggression is something to be admired in a family practitioner. We have a long way to go to shift language to promote mindsets which are solutions-focussed and child-focussed.

Would it be possible for advocates and legal professionals to retain a record of their settled cases, and for these to be publicised? Those who never end up in contested final hearings may be the more skilled family professional. Would it be possible to report settled cases? Some creative thinking and practice change is required to highlight the skill of professionals whose caseloads demonstrate successful problem-solving rather than adversity. We invite Chambers and Partners, and Legal 500 to review their approach to the presentation of family law professionals in their directories.

### Schools, Health Professionals, Web material, NGOs, Charities

Once a lead is taken by the Family Court, others in the wider field of family separation outside legal services, will reflect the different emphasis. Language which draws mindsets away from legal battles between spouses and parents, and towards safety, wellbeing and child welfare will permeate into society and then we will start to see change in thinking and behaviour.

## Specific suggestions for language change

The excellent [FJYPB 'Mind your language'](#) paper has a number of important comments by young people about the use of language. Some relate to public law, but three specific points are:

- I am not a case or a number. I am a person, and this is my family.
- I would like to be referred to by my name. These proceedings are about my life.
- Please don't use acronyms or legal terms as I don't understand what they mean.

There was extensive overlap from many of the consultees about some words, which span all aspects of family separation. The following terms were universally highlighted as unhelpful and to be avoided:

- Battle language such as 'Shah v Shah'... 'The other side'...'My opponent'... 'Fighting for my rights'... 'Custody battle'... 'In my corner'... Any words which use battle (or boxing ring) terminology are condemned. Even in cases raising serious issues of abuse or financial misconduct, language must remain factual, avoiding controversial or emotive language.
- 'Custody' – While not used in legal circles, this is continually referred to by the public and in the media. It speaks of ownership and control over a child, and should be replaced by parental responsibility and child arrangements.
- 'Contact' – This is a sterile term to describe a child's time with a parent

Perhaps less obvious but still difficult are the following, used widely by legal professionals

- 'Position' can apply at any stage but most obviously in a 'Position Statement', a phrase which defines battle lines more than invites problem-solving. We suggest 'Approach' in place of 'Position' ('This paper sets out the approach taken by [name]'). We say more below about

'Position Statements', with suggestions for an 'Interests Statement' or a 'Statement of Common Agreement'.

- 'Dispute' and 'Dispute Resolution' – There will be many professionals who do not see any issues with the word 'dispute'; it is a normal part of our legal vocabulary. For those outside legal circles, it is not widely used. Use of the word 'dispute' escalates a family issue into one that is more serious, placing it in a legal context. All parents will have disagreements at times, but that does not make them disputes. Family problems should not routinely be referred to as disputes.

*"People don't start by finding themselves in dispute. Disputes emanate from unresolved problems. The systemic change I want to see is the identification of problems as requiring help before they turn into disputes. Isn't a dispute largely an unsolved problem? Let's start by helping people solve their problems before they become disputes."*<sup>16</sup>

*"I do not feel easy with the use of the term 'dispute' – it is dry, feels legalistic and crucially does not touch on the emotional context.... Can I just say that I am quite comfortable if those using the word refer to it as a symptom rather than the real issue (unresolved emotions from parental separation being played out in family conflict). I am borrowing from the medical perspective where careful assessment of the symptoms presented – persistent headaches, for example – are not assumed to be the 'real problem' but rather the symptom that may indicate something of serious concern that needs assessment and precise diagnosis. I would hope that the patient with persistent headaches is not simply told by the medic to go home and take paracetamol every day!"*<sup>17</sup>

## Glossaries

We set out below a set of glossaries for language change.

We have applied the five principles to the language used in four separate categories which affect families who separate. We start with the language used by the Family Court. The majority of families will never turn to court but its language still has widespread influence on us all.

In each of the four categories, we have provided a glossary of words which we suggest need change, with a number of suggested alternatives (any future guidance/Practice Direction will perhaps need to be more prescriptive).

The categories are:

1. The language of Court in written form: on court forms, statements, orders
2. The language of Court which is spoken: by Judges, Counsel, and Court appointed experts (i.e. Cafcass / Cymru / Local Authority social workers / psychologists / ISWs)
3. The language used by solicitors
4. The language used by families, children and the wider public, including our media

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<sup>16</sup> Stephen Anderson, Start Mediation

<sup>17</sup> Brian Cantwell, family therapist

## The language of Court in written form: court forms, statements, orders

Language used in all family cases	
Current language	Suggested alternatives
Case titles and headings: Shah v Shah (including in case reports)	The family of Ali Shah and Keri Shah, with child/ren Casper Shah and Yasmin Shah etc  Document front pages to list family names with 'and' as the conjunctive no more 'between' or 'vs'
How people are named: Applicant Respondent  Husband/H Wife/W  Mother/M Father/F	Applicant to become Participant A Respondent to become Participant B to be included on all court forms  Include in all court forms an option for participants to choose how they wish to be referred to and in the absence of a selection, refer to participants using their first and second name, i.e. Mary Smith.  (See below for more comment on this)
Party/Parties	In children proceedings 'Parents' or in finance proceedings 'Participants' or 'Family members' for those who aren't parents, Or their chosen names, as above
Versus	And
Acronyms	Avoid wherever possible. If not, define clearly for all participants
Non-Court Dispute Resolution options (NCDR)	Non-Court Resolution
Dispute	Issue/problem to be resolved
Vacate	Cancel
Adjourn	Reschedule
Lodge	Send to
Seal	Court stamp or Court approval

Special arrangements/ reasonable adjustments	Practical arrangements to protect or support participants (accessibility in terms of safety/ disability / linguistic needs)
Bundle <sup>18</sup>	Hearing documents Hearing folder
Pleadings (in bundle indexes)	Court documents, or forms, or statements
Case summary and Chronology	Case summary and key dates
Position Statement	'Summary for judge' or 'Hearing summary'  'Approach' - The approach taken by [name]  (See below for more comment on this)
Orders	Orders (the same!)  This is a widely understood term and carries the necessary formality and authority.
<b>Language used – children</b>	
Contact	'A child's time with a parent' or 'Parent time' 'Family time' or 'Time with mum' and 'Time with dad'
Residence	A child's home with a parent
Non-resident parent (eg in Cafcass report)	[Child name] lives mostly with mum/dad/grandparent etc
'Live with' order	Day to day care and responsibilities
Section 7 report	'Social worker recommendation for court about child arrangements' or 'social worker recommendation'
First Hearing Dispute Resolution Appointment (FHDRA)	First Hearing
Dispute Resolution Appointment	Resolution Hearing
Final/Contested hearing	Decision Hearing
<b><u>Language used – finance</u></b>	

<sup>18</sup> The Magistrates Association commented that the opaqueness of the term 'bundle' can lead participants (particularly litigants in person) to believe that this is a dossier against them

Form E section 4 – ‘bad behaviour’	Just refer to ‘conduct relevant to financial matters’
Prayer	Orders requested
First Appointment	Administrative hearing
Financial Dispute Resolution Hearing (FDR)	Resolution Hearing (emphasis on settlement rather than dispute)
Final/Contested hearing	Decision Hearing
Section 25 statement	Final financial statement

## Court forms

Suggestions have been made for a radical re-write of a number of court forms, most particularly the C100.

One consultee commented: *“There is nothing in the forms to require or help people to stop and reflect on what is right for their child or how what they write will impact the other parent... It would be great if the C100 [could] focus on the child, not the adult positions – and digitalisation represents a good opportunity to reframe and explain to participants who have little understanding of the system what the family court can help them and their family achieve.”*

## Applicant/Respondent

The Magistrates’ Association commented that these are exclusionary terms which imply an active and a passive participant in the proceedings which can be emotive for parents.

*“Magistrates noted that the terms are and have always been used and acknowledge that due to the nature of applications that, at the first hearing, it is necessary to identify who made the application.*

*However, as cases progress different names should be used. Magistrates differed in preferences for alternative titles and noted that the particular title used may need to be case or context specific. For example, some magistrates tended to use ‘Mum’ and ‘Dad’ but others noted that they would either avoid these titles or only use them after asking permission from the parents to use ‘Mum’ and ‘Dad’. The use of ‘Mum’ and ‘Dad’ in general or without permission could be considered slightly belittling, parents are their own people as well as being a mother/father to their child.*

*Other magistrates tended to use Mr/s/Ms Last Name which, although formal is unlikely to offend. Others still noted that parents who were neurodiverse often found titles difficult to follow and so used the parent’s first names to avoid confusion and therefore to progress the hearing with the full participation of the parents. This again may be done by first asking permission to address parents in this way.”<sup>19</sup>*

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<sup>19</sup> Magistrates Association

## The Problem with 'Position' statements

First, these are easy vehicles for pejorative and adversarial language. There should be careful use of language to promote the family's wellbeing going forwards.

*"Position statements at FDAs and FHDRA's or other non-contested hearings should be anodyne rather than positional. Documents should remain factual so far as possible, avoiding tendentious/emotive language."*<sup>20</sup>

Second, cases in court should focus on problem-solving and building a positive future, and that does not happen with the language of positions, especially when defined in a statement.

An alternative might be the word 'approach'; 'Mary's approach in the case' rather than a position statement, which would start with an opening section to explain what has been agreed.

A further option is to file a joint 'Statement of Common Agreement' (or an 'Anchor Statement')

*"An agreed 'Anchor Statement' alongside an agreed case summary could be lodged at the outset of proceedings and reproduced in the bundle prior to each hearing reflecting issues upon which parties are agreed and their shared objectives. This would be helpful to clients and judges alike. We must avoid a situation where the parties leave each court hearing believing that they cannot agree on anything."*<sup>21</sup>

Another option might be to lodge an 'Interests statement', shifting mindsets from positions to interests.

*"The format to include, say: Additional background information in narrative form; The interests of the children; The interests of Mum; The interests of Dad; The interests of anyone else affected; Suggestions as to constructive ways forward."*<sup>22</sup>

In children cases, parents could be invited to reflect on 'Are there aspects of the family which are working well?' 'What would a good arrangement look like for the child(ren)?'

Subject to safeguarding concerns, 'How will both parents promote their child's close relationship with the other parent?'

This [paper](#) sets out examples of phrases which have been used in Position statements, and some suggested alternatives.

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<sup>20</sup> Samantha Woodham and Harry Gates, *The Divorce Surgery*, and barristers at 4PB and Coram

<sup>21</sup> Samantha Woodham and others, as above

<sup>22</sup> Neil Robinson

# The language of Court which is spoken: by Judges, Counsel, and Court appointed experts

Language used by all experts appointed by the Court (ie Cafcass/ Cymru/ social workers and psychologists), as well as advocates and judges in the court room and court building will set the tone for the hearing. Courts can be intimidating places and parents can become marginalised from the process, and detached from each other or entrenched against each other, by inappropriate language. Cafcass and legal professionals must show courtesy and respect to all participants and other professionals.

## Introductions

- Outside the court room - A criticism is made of a common practice whereby counsel greet each other (and possibly instructing solicitors) without any acknowledgement of the other participant who may be present. Advocates should always treat both participants with courtesy and, for instance, say good morning to both at the start of any court proceedings.
- Inside the court room - At the beginning of court hearings, introductions are important to identify each person in the room and establish how to address them accurately (including titles and pronouns). This should be managed by the advocates and the judge.

## How should individuals be addressed in the hearing

- Professionals (Advocates and Cafcass) - To be addressed by their preferred title and surname. This level of formality remains important for professionals in their workplace.
- Participants – form of address to be decided in advance and specified in court documents so that there is consistency throughout proceedings (e.g. application form, case summary, any ‘position’, ‘approach’ or ‘interests’ statement). The level of formality requested may depend on the seriousness of issues involved; the principle of proportionality applies.

Current language	Suggested alternative
Court jargon	Use plain English wherever possible (or explain jargon if has to be used – see note below)
Acronyms	Avoid wherever possible. If not, define clearly for all participants
The husband (H) / the wife (W) / the mother (M) / the father (F)	Participant’s preferred form of address (see above)
Applicant /Respondent	Participant’s preferred form of address, or participant A and participant B (see above)
The child(ren)	Use first names
Between or Vs	‘and’
Handover	Changeover



Opposing/frustrating contact	Concerns about [parent's name] limiting [child name]'s time with [other parent's name]
Co-Parenting	Cooperative parenting
Mum's weekend/Dad's weekend	Child's weekend with mum/dad
50/50	Joint care and responsibility for our child
Former matrimonial home / former family home / FMH	Family home / [child(ren) name]'s home with [parent]
My opponent	[Participant's preferred form of address]'s barrister
The other side	[Participant's preferred form of address]'s solicitor / legal team
Points in dispute	Issues to resolve / problems to solve
Alternative Dispute Resolution (ADR)	Non-court Resolution
Swear / affirm	Promise to be truthful [on a religious book or not]
Oral / written submissions	Oral / written points for the judge
Undertaking	Binding promise
Call (a witness)	Ask a witness to answer questions
Give evidence	Answer questions
Evidence in chief	Answer questions from your own barrister
Cross-examination	Answer questions from X's barrister
Intervention	Support
Investigation	Neutral evaluation
Privilege	Private

## Legal Jargon

Avoid any reference to a past case: eg Scott Schedule/Ungley order/Rose order/Xydhias agreement/Barder event/Hildebrande/Calderbank/Immerman.

These mean nothing to the participants and make the process alienating and confusing. Explain the principle established by that case.

# The language used by solicitors

This topic is covered by the [Law Society Family Law Protocol](#) which itself endorses the [Resolution Code of Practice](#) and the [Resolution Good Practice Guide on Correspondence](#). These should be considered as part of this section.

It is disappointing that these excellent guidelines are not routinely followed and remain purely at the discretion of the solicitor. We quote from the Family Solutions Group report on this point:

*'In practice:*

- *the Law Society Family Law Protocol is not enforced;*
- *it is rarely referred to by the overall legal profession, including the judiciary;*
- *enforcement by Resolution to sanction members for breaching its Code of Practice is limited.*

*The consequence of this is a profession with unenforced regulations, responding to unresolved emotions presented by their clients and owing no professional duty to any child/ren of the family.*

*We believe any practice, legal or other, which has the potential to harm children should be regulated, with practitioners held to account for their conduct. We invite both the Law Society and the President of the Family Division to introduce accountability to legal professionals to adhere to the Law Society's Family Law Protocol.'*

Solicitors (or direct access barristers) must keep a clear focus on the fact that their clients and their former partners are human beings and that, absent safeguarding concerns, where they have children, they will need an ongoing relationship with their former partner. Their aim should be to keep the family 'intact' even though separated.

## Communication with clients

- Remember the children are, mostly, the children of both parents. The focus of the work must be the children and how to support the family to support them;
- Explain to the client about their intention to work 'with' the lawyer representing their former partner to help achieve the best outcome for the children;
- Be mindful of the language used about the partner or the partner's lawyer. It should never be derogatory or dismissive;
- Stay empathetic and supportive but always objective. Take care not to cross the boundary of over-identification;
- Educate the client in a respectful but clear way about the effect of conflict on the child/children;
- Recommend Parenting programs and other resources including books and online courses etc.;
- Solicitors need to be mindful of their own triggers.

## Communication with the client's partner or their lawyer

- Always consider the impact on the other parent of the words used;
- Only write a letter if a phone call is not possible;
- Always take or return phone calls from the other partner or their lawyer
- Always consider the impact on the other client of the words used (worth repeating!)

What is a solicitor’s letter intended to do? Not to set out positions, but present constructive proposals for change and how this is to be achieved consensually.

Solicitors also need to be mindful of the dynamic that parents are represented and children, generally, are not. This is the case for all financial cases and many child arrangements cases. It is incumbent upon all involved that the children’s needs and welfare remain central and are not lost in issues between parents.

Our suggestions for written correspondence include all the suggestions made above for the Family Court in written and spoken form, plus the following as set out below.

Language to avoid	Suggested alternative
Using ‘v’ in letter headings	Mary Smith and John Smith, or The Smith family
My client/your client	Mary and John
Derogatory language which is accusatory	Respectful language, which might raise a concern to address
Describing situations as if the solicitor were there themselves - eg <i>“your client was rude and aggressive to my client”</i>	If there is a real need to correspond in writing about such incidents say <i>“I understand from John that....”</i>
Inflammatory language eg <i>“my client has been forced to...”</i> <i>“your client’s behaviour was nothing short of disgraceful/appalling/shocking...”</i>	Foster a constructive dialogue over areas of concern which invites the other client to engage. Eg <i>“there’s an issue which we need to raise... We’d welcome Mary’s thoughts so we can support John and her to agree good family plans going forwards”</i>
Language which berates/admonishes/criticises	Avoid – this is not about winning the war of the correspondence. No alternative needed.
Emotive, aggressive and non-constructive letters	Avoid – explain to client this will be counter-productive
Expressing the solicitor’s own opinion about the other parent or their lawyer eg <i>“I was astonished/shocked/appalled/dismayed to read your letter...”</i> <i>“I find it incredible that...”</i>	Keep a balanced tone, which invites constructive dialogue.

We include examples of a [first letter from a solicitor](#).

A number of practitioners have already worked on Charters to govern conduct and language by solicitors. The East London Family Justice Board have agreed a Respect Charter, Mills & Reeve have come up with their own [voluntary charter](#), as have the Family Law Panel at [Only Mums & Only Dads](#).

## The language used by families, children and the wider public, including our media

We need to reframe language in the information and support which precedes the family court, to that of two parents who, where safe to do so, will continue the task of parenting from birth until adulthood, whether together, separating or separated.

It is important to distance private law children issues from the context of other legal proceedings, to rebut the understanding which many parents have that an argument about their child's arrangements following separation is predominantly a legal issue. All parents disagree on some parenting issues, and family disagreement can be a positive learning experience for children where it remains respectful. Our language should not escalate disagreements between separated parents into conflict and legal disputes but normalise and de-escalate these issues.

<u>Language used</u>	
<u>Current language</u>	<u>Suggested alternative</u>
The Family Justice System	The Family Court
Custody	Does not exist.  No exact equivalent - nearest is 'Responsibility'  The responsibility that both parents have for a child, including the arrangements for where the child will live  Providing care of a child in partnership with the other parent, where safe to do so
Contact, Access, residence	Family time, Parent time Child arrangements [Name of child]'s time with [Mum/Dad] Spending time together
Visiting rights	A child's right to be with a parent
'My rights', 'my parental rights', 'my entitlement'	[name of child]'s rights my/Mum/Dad responsibilities, child's rights or rights of [the child/name], child's right to a safe relationship with his/her parent
Justice (generally)	Fairness, solutions, wellbeing, family wellbeing, positive futures, 'least worst outcomes' (Norgrove FJR 2011)

Justice (in relation to abuse)	Safety, well-being, safeguarding, protection from emotional and other harm
Justice (in relation to finances)	Financial fairness, financial solutions, ensuring reasonable needs are met
Battle, fight, against, versus, my day in court, vindication, fighting my corner, custody battle etc.	The language of adversity and war is to be totally avoided. Should be removed completely from this space
Fighting for my rights	Working out our shared responsibility
Having 'sides' 'On my side' 'On his/her side'	There are no sides There may be different perspectives but language should not encourage sides
Primary carer, secondary carer, primary parent, secondary parent (any hierarchical terminology)	Shared responsibility, cooperative parenting
Taking me to Court, taking them to Court	Asking for assistance/help from the Court
Single parent/lone parent	Separated parent (unless widowed)
'my children', 'my child'	[child's name], our child, the child
50/50, 'equal care'	Shared care, joint parenting, co-operative parenting, 100% shared responsibility 'Giving our child an equal opportunity to develop a close and nurturing relationship with both of us'
'childcare' in respect to time with the other parent	Should be removed completely from this space
Broken family, broken home, family breakdown	Family in transition Family going through change Change in family structure/dynamic
Dispute	Issue to be resolved Or problem
Conflict	Disagreement
Warring parents	Family in crisis

We refer again to [Key messages for parents who separate](#), and [What the Family Courts expect from Parents and Carers](#).

It would be good to see a shift away from the regular narrative in the media of too many cases turning to court. A better narrative would be of the need to support families to manage separations safely for all, prioritising wellbeing and the welfare of children.

# Conclusion

In his famous 1946 essay “Politics and the English Language”, George Orwell pointed out that there is a relationship of cause and effect between what we say or write and what we think. “The slovenliness of our language”, he wrote, “makes it easier for us to have foolish thoughts”. He warned that unless you think carefully about the language you use, then familiar stock words and phrases “will think your thoughts for you”.

It is time for language which thinks the right thoughts for us. We need language which is collaborative rather than combative, which is constructive rather than destructive, which points families forwards to positive futures rather than points backwards to damaging recriminations. We need language which keeps child welfare central at all times. Change is long overdue.

Change is needed in the Family Court: in Court forms, Case headings, Family Procedure Rules, and in the language used by (and about) legal professionals at all levels.

The core recommendation contained in this review is that the language of the Family Court and by all legal professionals (whether verbal or written) should adhere to the five ‘P’ principles:

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

Outside of the Family Court, change is needed by Government, by the media, and through all levels of society to reach the families who go through separation. Changed language will lead to changed mindsets and so impact the lives of adults and children for the better.

We end with a thought from Brian Cantwell:

*“A final thought on the subject. Language is a key communication element. Handled well, with respect, empathy and goodwill, it can be such a powerful feature of change. I feel that not only should the subject be taken seriously but it should be built into training, ideally multi-disciplinary. It needs to be learned and practised, otherwise it will just be so many words!”*

## Written by the Family Solutions Group language group

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## Our thanks to all those who contributed:

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Brian Cantwell - Family Therapist

Elizabeth Coe – National Association of Child Contact Centres  
James Hayhurst – Parents Promise  
Claire Molyneux and others at Mills & Reeve  
Emma Nash with others at Fletcher Day, and Family Law Language Project  
Helen Richardson – Magistrates Association  
Neil Robinson and other mediators  
Marcie Shaoul – Parenting Coach, The Co-Parent Way  
Anna Sinclair – Cafcass Cymru  
Tracy Sortwell – Magistrates Association  
Janice Straker – Case Progressions Manager, Northamptonshire Children’s Trust  
Dr Liza Thompson - Independent Domestic Abuse Consultant  
Samantha Woodham and Harry Gates, The Divorce Surgery, and barristers at 4PB and Coram

## Key Messages for Parents who Separate

**If there are safety concerns**, the Family Court is there for your protection.

**If there are no safety concerns**, there are **five key things** to remember:

- Your child needs you both
- This is never about sides, who's 'right' or 'wrong'
- Your child should feel free to love both parents
- It is harmful to obstruct your child's relationship with their other parent
- Parents are expected to cooperate and support each other

The language we use is important.

This table offers some corrections to common misconceptions and unhelpful terms.

Instead of...	Think ...	Why this matters
"Custody"	Parental Responsibility and Child arrangements	"Custody" suggests ownership and control. It was removed by the Children Act 1989. The law gives parents 'Parental Responsibility' for their child and expects them to make arrangements centred around their child's needs.
"Access" "Contact"	Family time, or Child's time with a parent	Access or contact is too impersonal. We're talking about the time that a child has with a parent. Children need time with parents, whether they're together or apart.
"50:50"	A child's right to have an equally close relationships with both parents	This isn't about parents asserting their "right" to a percentage of the child's time. It's about arrangements which enable a child to develop an equally close and nurturing relationship with <u>both</u> parents
"Fighting for my rights"	Cooperating over shared responsibilities	Parents have responsibilities for their child (not 'rights' over the child); this includes an expectation that they cooperate with the other parent and promote their child's relationship with the other parent.
Having "sides"	Parents may have different perspectives but there are no sides	Children want to be free to love both parents. Criticising the other parent or being on opposing 'sides' is unhelpful and possibly harmful.
"Warring parents" or "Custody battle"	A family in crisis	Continued conflict puts a child at risk of harm. Any family in crisis needs tailored support to help them agree arrangements and parent more cooperatively.





# Magistrates Association

Date	<b>May 2022</b>
Magistrates' Association Committee	<b>Family Court Committee</b>
Response to	<b>Adversarial Language in the Family Court – Family Solutions Group</b>
Comments to	<b>Helen.richardson@magistrates-association.org.uk</b>
Link to consultation	<a href="https://www.familysolutionsgroup.co.uk/">https://www.familysolutionsgroup.co.uk/</a>

Magistrates identified both adversarial and exclusionary language which is used by various actors within the Family Court. Magistrates sought to identify in what contexts these words or phrases were used and who most frequently used them. Magistrates also identified language which they considered should be retained and provided reasons for doing so.

Magistrates also identified a general theme within the Family Court of professional or experienced users relying on words or phrases as shorthand rather than fully articulating. Examples of this are provided below.

### **Adversarial or otherwise unhelpful language**

<b>Language</b>	'The other side'
<b>Used by</b>	Legal representatives
<b>Issues identified</b>	This dehumanizes the parent of the child and casts the parents as opposing forces rather than as working collaboratively together for the best interests of their child(ren).
<b>Alternatives and comments</b>	Using the names of the parents/guardians and the names of their legal representatives.  Mum/dad/Mum's lawyer/Dad's lawyer  (see also discussion of applicant and respondent below)

<b>Language</b>	The court arena
<b>Used by</b>	Legal representatives (particularly barristers)
<b>Issues identified</b>	The ensures that it is seen as a battle or fight and therefore conflict.
<b>Alternatives and comments</b>	Just the word court. The fact that court is a different forum and perhaps a less collaborative forum than say mediation can and should be communicated in a way which does not paint court as a battle or fight.
<b>Language</b>	Bundle
<b>Used by</b>	All professional court users including magistrates, barristers, legal advisors and others
<b>Issues identified</b>	This language is not user friendly and is not clear about what the 'bundle' actually contains.  The opaqueness of the term has also led to believe (particularly litigants in person) that the bundle is a dossier built up against them rather than simply a collection of all the relevant documents/reports etc.
<b>Alternatives and comments</b>	User friendly language like papers, documents, letters and reports, case file.
<b>Language</b>	Section 7/Section 25/Section 37/Section 47 when referring to welfare and other reports
<b>Used by</b>	All professional court users including magistrates, barristers, legal advisors and others.
<b>Issues identified</b>	The opaque phrase can raise concerns about the reporting process and what the report means. Report can be seen as a negative rather than a neutral document.
<b>Alternatives and comments</b>	Information about the family.  Always explain first that: "the court needs some professionals from Cafcass to do some work with the family and to produce a document for the court which will be a report. These reports are sometimes referred to as section 7 reports."  This is only one of few opportunities that children may have to directly have their voice heard in proceedings. It is important therefore that the parents understand the language around these reports and are then able

to communicate what the report is and entails to their children, allowing the child to make the most of this participation opportunity.

Should also identify the Act of Parliament. Whilst many families will not go away and research the use of section 7 alone is opaque.

<b>Language</b>	Custody
<b>Used by</b>	Parents
<b>Issues identified</b>	Possessive and parent focused rather than child focused.
<b>Alternatives and comments</b>	This phrase has been phased out of professional language but is still sometimes used by parents who understand what the phrase might mean for them. Whilst having been professionally phased out since 1991 it is important to recognize that custody remains a frequently used term. Exploring how we might change this will require a cultural rather than legal professional change.

<b>Language</b>	Opposing contact
<b>Used by</b>	Legal representatives
<b>Issues identified</b>	Using opposition instantly places the parents at odds with one another.
<b>Alternatives and comments</b>	Usually used at first hearings when setting out positions of the parties.  Alternatives could be a more lengthy but nuanced description of concerns e.g. Dad has concerns about how much time Mum should be spending with the children...

<b>Language</b>	Applicant and respondent
<b>Used by</b>	Legal representatives
<b>Issues identified</b>	Exclusionary language and implies an active and a passive participant in the proceedings which can be emotive for parents.
<b>Alternatives and comments</b>	Magistrates noted that the terms are and have always been used and acknowledge that due to the nature of applications that, at the first hearing, it is necessary to identify who made the application.  However, as cases progress different names should be used. Magistrates differed in preferences for alternative titles and noted that the particular title used may need to be case or context specific. For example, some

magistrates tended to use 'Mum' and 'Dad' but others noted that they would either avoid these titles or only use them after asking permission from the parents to use 'Mum' and 'Dad'. The use of 'Mum' and 'Dad' in general or without permission could be considered slightly belittling, parents are their own people as well as being a mother/father to their child.

Other magistrates tended to use Mr/s/Ms LastName which, although formal is unlikely to offend. Others still noted that parents who were neurodiverse often found titles difficult to follow and so used the parent's first names to avoid confusion and therefore to progress the hearing with the full participation of the parents. This again may be done by first asking permission to address parents in this way.

<b>Language</b>	Non-resident parent
<b>Used by</b>	Cafcass, particularly in reports. Tends to be used most in cases where there is an older child and issues around contact.
<b>Issues identified</b>	Confusing and exclusionary language, some magistrates noted that on first encountering the phrase they thought it implied that the parent referred to did not reside in the UK.
<b>Alternatives and comments</b>	Lives mostly with Mum/Dad/Grandparent etc.
<b>Language</b>	Live with order
<b>Used by</b>	All professional court users including magistrates, barristers, legal advisors and others.
<b>Issues identified</b>	Doesn't actually describe the situation in some cases and is therefore opaque. Can be characterized as a goal/victory rather than what is best for the child. Can upset/anger the parent who is not the 'live with' parent.
<b>Alternatives and comments</b>	Comparative example from New Zealand was raised: 'day-to-day care/responsibilities' which is more descriptive and user friendly, better describing the realities of what is expected under the order.
<b>Language</b>	Alienation
<b>Used by</b>	Frequently used by all professional court users including magistrates, barristers, legal advisors and others.

**Issues identified** The term is unhelpfully used as a catch all umbrella term for behaviors of parents and can be jumped to too quickly when describing situations at home. For example, the phrase can be thrown around as an accusation either when a parent is not seeing a child, or in response to allegations of domestic abuse. Use of the word can quickly heighten or even create conflict.

**Alternatives and comments** Parental alienation is a serious term and should be treated as a term that is only used after thorough investigation of the behaviors believed to constitute the alienation. Magistrates likened the current use of this term to a lay person 'diagnosing' someone with a mental health disorder without having the qualifications and experience to do so.

**Language** Fillers, specifically the word 'nugatory' e.g. 'a nugatory action'

**Used by** Barristers

**Issues identified** The language is confusing opaque and exclusionary, particularly for litigants in person. It also characterizes one parent's actions as superfluous which can heighten conflict.

**Alternatives and comments** Simply taking a pause or using plain English.

**Language** Descriptive terms such as:

- frustrating contact,
- non-compliance (with orders);
- enforcement;
- cross-examination;
- allegation;
- contested (final) hearing
- Dispute resolution hearing

**Used by** Legal professionals

**Issues identified** These terms can be aggressive and lead to heightened conflict.

**Alternatives and comments** Magistrates recognized that these terms could be jarring for parents and lead to a heightened sense of conflict. However, they also acknowledged that many of these terms are long established and descriptive making them difficult to reframe.

Magistrates did however note that it would be preferable to avoid the use of Dispute and Contested in all description of hearings. Alternatives would be to have First Hearing, Resolution Hearing and then an Arrangements Hearing instead of FHDRA, DRA and Final/contested.

**Language**

Court jargon including:

- difference between a witness statement and a position statement;
- Scott schedule;
- evidence in chief;
- swear or affirm;
- closing statements/submissions;
- undertaking; Section 91(14) order;
- special measures;
- non-subject child;
- siblings;
- DRA;
- call (a witness);
- evidence;
- police protocol;
- CRIS report;
- welfare (coupled with safeguarding)

**Used by**

Legal professionals

**Issues identified**

These terms are opaque and not readily understood by court users. These terms are particularly problematic for litigants in person.

**Alternatives and comments**

difference between a witness statement and a position statement;

Evidence about the child instead of witness statement.

Parent's views on child arrangements instead of position statements

Scott schedule;

Description of the form and use of the schedule.

evidence in chief;

Evidence

swear or affirm;

Explain the need for truthful statements and the consequences of untruthful statements.

closing statements/submissions;

Putting your case/point across

undertaking;

Request/order to do [specified action]

non-subject child;

Children not involved in this case

siblings;

Difficult to find alternatives as siblings is a gender-neutral term

but where possible perhaps brothers/sisters or 'other related children /children who are related'.

DRA;

Avoid acronyms generally where possible. Implies finality.

call (a witness);

Ask witness to appear/give evidence

### **Phrases which remain useful/should be retained**

**Language**

Orders

**Used by**

All professional court users including magistrates, barristers, legal advisors and others.

**Value**

Once matters are being heard in the court rather than resolved elsewhere there is a level of seriousness and formality of the process which must be acknowledged. It is also essential that parents understand the implications for failing to follow an order of the court. Changing this language would risk failing to impress upon parents the seriousness of the court. It is also a widely understood term, particularly for litigants in person.

## Language used in ‘Position’ statements

Version 1 - Language to be avoided	Version 2 - Suggested alternatives
<p>1. This is the FDR in W’s application for financial relief dated 9 September 2021. The case involves a middle-aged couple who are divorcing after 15 years of marriage. H is 45, W is 44. There are two children of the marriage: a boy aged 10 and a girl aged 8.</p>	<p>1. This is the resolution hearing in financial proceedings commenced on 9 September 2021. The participants are Jane (age 44) and John (age 45) who were married for 15 years. They have two children together: Sam (age 10) and Flora (age 8).</p>
<p>2. This is a case with, sadly, very limited chances of settlement.</p>	<p>2. Jane and John have agreed:-</p> <ul style="list-style-type: none"> <li>a. Shared care arrangements for Sam and Flora;</li> <li>b. The sale of the family home; and</li> <li>c. That both of them need to live within 15 minutes’ drive of Sam and Flora’s school if possible.</li> </ul> <p>John hopes it will be possible to agree financial matters today to provide stability for Sam and Flora in both of their future homes.</p>
<p>3. W’s inflated demands are set out in her budget at [D91]. W’s position is that she has no meaningful earning capacity! W clearly accepts no responsibility for providing for herself financially ever again!</p>	<p>3. Jane’s income needs are set out in her budget at [D91]. Jane’s view is that she does not have any earning capacity of her own.</p>
<p>4. Her ill-conceived claims are not supported by any cogent evidence. They are but an attempt to “mud sling”.</p>	<p>4. Jane’s view is not supported by evidence.</p>



## Solicitor Correspondence – the First letter

NB Names have been changed

<p><b>EXTRACTS FROM AN ORIGINAL FIRST LETTER</b></p> <p>All names have been changed</p>	<p><b>RESOLUTION GOOD PRACTICE GUIDE TO CORRESPONDENCE</b></p> <p><b>Suggested Initial letter</b></p>
<p>Dear Madam</p> <p>We write to advise you that we have been consulted by your husband, Bill Bloggs, concerning family matters to include the future of the marriage and the proposed arrangements for Daisy. These are, understandably, our client’s chief concerns at this stage.</p> <p>Having given the matter very careful consideration our client has regrettably come to the conclusion that the marriage has ended, and it is his intention to apply for a divorce.</p> <p>We understand that you are presently living separate and apart, with Mr Bloggs and Daisy living in the family home and you with your parents.</p> <p>Our client fully recognises that you desire to remain involved in Daisy’s wellbeing and he of course has no wish to curtail this involvement.</p> <p>Having discussed the matter with our client, we have recommended that he makes an application under The Children Act 1989 for a Child Arrangements Order. Our client is seeking a ‘live with’ Order in respect of Daisy. It is hoped that this can be agreed with you and that this Order can be made by consent.</p> <p>Given the incredibly difficult situation which exists between you, our client stated that should you return to live at the property he would have no choice but to move out together with Daisy to stay with family or friends on a temporary basis.</p> <p>Our client sincerely hopes it will be possible to deal with the divorce, ancillary financial matters and the arrangements for Daisy in an amicable fashion, not least as this in Daisy’s best interests.</p>	<p>Dear Mrs Bloggs,</p> <p>I have been instructed by your husband and he tells me that sadly your marriage has broken down. Bill has asked for my help and advice in resolving the arrangements arising from your separation.</p> <p>Bill is keen that all the arrangements are dealt with as amicably as possible. I am a member of Resolution. Resolution is a national family law association and all members follow a code of conduct. I recommend that you visit the Resolution website at <a href="http://www.resolution.org.uk">www.resolution.org.uk</a> to obtain more information. I recommend that you speak to a solicitor yourself and all the local lawyers who are members are listed on the website.</p> <p>I look forward to working with you or your solicitor to resolve all the arrangements between you as quickly and as fairly as possible.</p> <p>Yours sincerely</p> <p>Anita Raksau Solicitor</p> <p><b>AN ALTERNATIVE STYLE FOR A FIRST LETTER</b></p> <p>Dear Brenda,</p> <p>You have probably heard my name from Bill. I understand that he has told you that he has had a chat with me about how to sort out the difficult position that both of you and Bill find yourselves in. Bill has told me all about the situation from his perspective. It sounds incredibly hard for you all. I am sure that you will want to be able to explain your situation too and you will have that chance soon.</p> <p>You may have hoped never to have had a letter from a lawyer like me but I hope I can reassure you that my primary concern is Daisy and the family as a</p>

At this stage, we would strongly recommend you seek independent legal advice.

We would advise you that the writer is a member of Resolution, a national body of family law professionals committed to dealing with matters in a constructive, sensitive and cost-effective manner. You also may wish to consult a solicitor who is a member of Resolution and we would refer you to the website [www.resolution.org.uk](http://www.resolution.org.uk) for further details.

We look forward to hearing from you or your instructed solicitors.

Yours faithfully

Lawyers

LLP

whole. Bill tells me that he has told you that he wants to get divorced. I understand from him that you were, understandably upset about this. I can assure you however that no legal steps will be taken until you, or your lawyer if you wish to instruct one, have had the opportunity to talk to me and tried to work out the best way forward. My commitment to all the people I work with is to keep issues out of the court if at all possible.

There are a number of things that will need to be sorted out, including, and most importantly, how to protect Daisy through this time of turmoil. I have been told by Bill that Daisy is the number 1 priority for both of you. With that in mind I can assure you that I will do what I can to support your and Bill's transition through this difficult time to a workable co-parenting relationship for Daisy.

I believe that tensions are running high at the moment. That is completely understandable. I hope that my involvement will help to reduce those tensions for all your sakes. That is certainly my intention.

If you wish to get advice from another lawyer, which I recommend you do, I would like to suggest the names of people who I have worked with very well in the past and who I know have the same aims as I do in trying to help the family as a whole. Do give me ring if you would like to and we can talk more about this, alternatively email me. If you would prefer to appoint a solicitor without contacting me first, then that is completely fine. Just ask them to give me a call when they are ready.

It can be quite daunting choosing a solicitor in these circumstances, so if you don't have anyone in mind you will find the names of suitable people on the Resolution website - [www.resolution.org.uk](http://www.resolution.org.uk) under the drop down menu option 'Find a law professional'. Resolution is a national group of family lawyers committed to working in the interests of children and their families.

Just to reiterate, although I am Bill's lawyer, I am here to help the family as best I can.

Kind regards

Anita  
Anita Raksau, Solicitor