

Bridget Lindley Memorial Lecture 2022

Time for Climate Change in the Family Justice System

Introduction

This lecture is given in memory of Bridget Lindley and her work for families in the public law system. Her obituary in Family Law describes her steely determination to improve the family justice system and the principle of starting with the welfare of the child. It concludes 'It now falls to her colleagues to continue her vision to create a more humane system which supports and respects families who are at risk of losing their children.'

I have been invited to deliver this lecture in my role as Chair of the Family Solutions Group. This was set up by Mr Justice Cobb a couple of years ago and our remit was to consider the needs of parents and children between the point of family separation and any application to court; the pre-private law space.

It is an honour to be asked to deliver this lecture in Bridget's memory. While the FSG remit falls to private law, rather than public law, I hope this will contribute to her vision; a vision to create a more humane system overall, which starts with the welfare of the child, and which supports and respects all families.

The new DDS Act

Today is an exciting day for the Family Justice system. After decades, we finally have No Fault Divorce.

There are many who have campaigned along the way to arrive at this point. We owe our thanks to Lady Hale and the Law Commission, to Prof Liz Trinder, the determination and energy of Nigel Shepherd and all at Resolution. We should also express our gratitude to Mr and Mrs Owens, however much they and their adult children will have preferred not to have the dissolution of their marriage so publicly scrutinised.

We are finally there. It may be that some in society are muttering, but anyone who knows anything of the dynamics of family separation is welcoming this new law.

It's not only an end to the blame game, but we welcome the introduction for those who are married to apply jointly for a divorce. It offers the opportunity to treat each other civilly and with respect when a marriage is dissolved.

The end to fault-based divorce law does not of course mean an end to the emotions which accompany relationship breakdown. Personal feelings may still be driven by fault, judgement and blame. The importance of this new law is that it sets the tone for how we, as a society, approach family separation but it will not address the hurly burly of the separation itself. It will not change the experience for children whose parents are in dispute.

Many here will have heard of Gwyneth Paltrow and her husband's 'conscious uncoupling'. It's an ideal for those who can manage it, but for most people it's unrealistic, this is a time of emotional turmoil. The new law in itself will not enable people to detach from their emotions and operate as robots when untying the knot.

So while long-awaited and brilliant this new law is for setting the tone, more is needed if we are to create a humane system overall. We need to keep people safe and keep children's long-term health and wellbeing above all other considerations. We need an evidence-based approach to ensure a safe and sustainable system for all.

Climate Change

I have called this talk 'Time for Climate Change in the Family Justice System'. In one sense, this new law heralds a climate for change, a radical new approach which removes the blame-game. Add to that the pressures on the family court which are demanding change, plus encouraging noises from the Lord Chancellor, it all points to this being a climate for change.

I would like to go further and see how the climate change movement itself might be relevant to our world. It speaks to the tension between long-established systems and a growing body of evidence which challenges those systems. Please bear with me while we take a very brief journey down the history of climate change science and policy.

The start of climate change awareness began 60 years ago in 1962 with Rachel Carson's book, *Silent Spring*. Ten years later, came the first international gathering acknowledging environmental limits, then there's a 20 year gap until the 1992 Rio Earth Summit, and the UN Framework Convention on Climate Change was established.

But still, little happened. Some of us will be old enough to remember Swampy, an extremist, who lived in trees. Britain passed the Climate Change Act in 2008, and a further 7 years on, we have the Paris Agreement, widely seen as a breakthrough moment for international cooperation.

It's not until 2018 that climate change is reaching all our newsfeeds and really impacting our thinking at an individual level. The Intergovernmental Panel on Climate Change (IPCC) published a depressing report showing the impact of global warming above 1.5 degrees. Alongside that, a Swedish schoolgirl went on strike, harnessing millions of young around the world to take up this cause. Who knows what impact the young Greta will be shown to have had on global thinking? As a young person herself, she causes us all to reflect on the state of the world we are leaving for those who come after us.

Last year we had COP 26 in Glasgow. Governments were criticised, but the conference itself raised further awareness of climate change. So here we are in 2022, and there's been a paradigm shift. We all have a sense of individual responsibility to live a greener existence, to do what we can to safeguard our planet for the generations to follow.

The science for climate change is complex but we don't need to understand the detail; the message is simple. If we carry on as we are, we leave the planet in a mess for the generations to follow.

Comparison with Family Justice System

I've taken a detour to talk about climate change because there are close similarities to an adversarial system for family breakdown. I mentioned the tension between long-established systems and a growing body of evidence which challenges those systems. An adversarial justice system is a bit like the carbon combustion engine: years ago, it evolved as useful vehicle to resolve what were back then marital disputes, but we now know it's harmful. Other methods are needed. As with climate change, the message is uncomfortable, requires a rethink. It's expensive, it might compromise

profits. We could ignore the evidence, or deny the evidence, for this is unwelcome; it's easier to carry on as we are. As with climate change, government is slow to catch on.

But the evidence for climate change is real and growing, we see it all around us, it becomes impossible to ignore. I say the same for an adversarial system for separating families being harmful. The evidence is real and growing. We see it all around us, it becomes impossible to ignore.

Change in the climate movement has been driven by evidence, and the same should be said for us. We must look at the evidence regarding an adversarial system for families who separate.

Evidence

First of all, what about families where there are perpetrators of abuse? The Risk of Harm Panel report stated that an adversarial process often worsened conflict between parents and could have a damaging impact on victims and their children. Their call for a more investigative rather than confrontational approach is now being followed up in the two pathfinder courts in Bournemouth and North Wales.

Separate but no doubt overlapping with domestic abuse is the severe toll that an adversarial system takes on parents, with family separation having a strong link to suicide ideation. Dads Unlimited spoke at a recent FSG event; they set themselves up as a Family Separation service and have become primarily a mental health service.

The NFJO have done research into the Adult Characteristics and Vulnerabilities¹ of those coming to court which show high levels of anxiety and depression amongst parents who turn to court. It's very good to have Dr Linda Cusworth and Jude Eyre here today and we'll be hearing about this later.

I want to commend to you a brilliant article published last week by two FSG members, the recently retired HH Martin Dancey and chartered consultant psychologist Dr Kate Hellin². 'The Human Condition' addresses the psychological responses by parents and professionals of working in a stressed and confrontational system. Dr Hellin refers to the concept of 'splitting' and 'projection'. Here are a handful of quotes from the article:

Much of our unconscious activity serves the purpose of protecting us from unpleasant or intolerable feelings or fears about ourselves and about the world around us. We suppress, repress or project unsavoury aspects of our own character and behaviour so that we can preserve the notion that we are pleasant, good people. In doing so, we polarise and simplify into good and bad (splitting). We identify with the 'good' and project the 'bad' into others in order to deny it in ourselves (projection). We perceive 'the other' as lesser so that we can feel better about ourselves.

Under conditions of extreme stress and anxiety, ordinarily psychologically robust people can become paranoid, splitting and projecting intense emotions to the extent that they feel the other person or group to be malicious, even dangerous.

It is these processes which create the polarisations found between warring parents... On both 'sides' there is a loss of realism and nuance.

¹ <https://www.nuffieldfjo.org.uk/resource/uncovering-private-family-law-adult-characteristics-and-vulnerabilities-wales>

² https://www.familylaw.co.uk/news_and_comment/family-justice-the-human-condition

Separating parents, lacking information about structured, cohesive and accessible out of court services, find themselves in the family court which remains an essentially adversarial process due to splitting and projection, cognitive distortion and other polarising processes. The inherent anxiety of proceedings inflames those distorting dynamics and a vicious cycle of polarisation and acrimony is established, perpetuated unwittingly by the very fact that the matter is in court.

In truth, many of the behaviours professionals perceive, and criticise, as unreasonable are perfectly normal responses, to be expected of families in crisis, required to engage with a stressed system the workings of which are likely to be a mystery to them.

Ideally, troubled families will not need to enter the court arena at all and would sidestep the likely exacerbation of destructive dynamics which arises from court proceedings.

Lessons may be learned from the Family Drug and Alcohol Court approach, seeking to provide some containment for parents so that they are in a better position to do the calm, rational thinking we expect of them rather being driven by the polarising dynamics that the court process engenders. It is clear that... listening, compassionate and respectful approaches are effective. These fundamental values and practices are often lost in an adversarial system under pressure.

The evidence is clear, an adversarial framework is unhelpful for parents. We need parents to be in a position for calm, rational thinking, to make wise choices for their families as they restructure following separation. An adversarial system is bad for their decision-making and their mental wellbeing.

Quite apart from the problems caused for victims and parents, there is mounting evidence on the harm caused to children. There's the growing brain-science evidence around ACEs based on stress responses in a child's developing brain. Put simply, positive stress is good, tolerable stress is manageable if buffered by a supportive adult, but toxic stress impacts a child's brain development with potential life-long consequences. A well-managed separation by parents who cooperate falls into the category of tolerable stress, the difficult life events are buffered by the supportive adults around the child. However, where there's a high conflict split, the source of buffering is also the source of conflict with the other parent, and this can become toxic stress for a child.

In 2016, Prof Gordon Harold and Dr Ruth Sellars published a major paper on the harm to children from Inter-parental conflict. I'm grateful to Prof Harold for helping us summarise this complex research³ into some easily understood messaging.

- *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,*

³ Feinberg, M.E., Jones, D.E., Kan, M.L., & 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., Sellars, R. (2018). Interparental Conflict and Youth Psychopathology: An Evidence Review and Practice Focused Update. *The Journal of Child Psychology and Psychiatry*, 59 (4).

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.*

Our local children's charity in Kent says that the primary reasons for children being referred to their counselling services is the effect of family separation. These effects can continue throughout a child's life.

When speaking on the environment as PM, Theresa May said:

"We look back in horror at some of the damage done to our environment in the past and wonder how anyone could have thought that, for example, dumping toxic chemicals untreated into rivers was ever the right thing to do."

David Curl of the Two Wishes Foundation⁴ suggests we could say:

"We look back in horror at some of the damage done to our families in the past and wonder how anyone could have thought that, for example, dumping vulnerable families in adversarial court systems was ever the right thing to do."

The evidence is clear. An adversarial system for families is harmful. It's bad for victims of abuse, it's unhelpful for parents, both for their own mental health and for their ability to resolve things, but worst of all, it is harming our children. Ultimately, it's harmful to the whole of society.

We can either deny the evidence and carry on as we are, or we accept the evidence and commit to change. We need a different, kinder, gentler, a more humane, approach to family separation.

What can be done?

Another parallel with the climate change movement is that the problem seems too huge, too difficult to overcome. One can end up in a state of depressed helplessness. We look to government to take a lead, but governments are slow and unreliable.

In the 3rd reading the DDS bill, the then Lord Chancellor stated⁵:

⁴ <https://twowishes.org/>

⁵ [https://hansard.parliament.uk/commons/2020-06-17/debates/45EE5F3F-8AE6-413D-AF68-EDA8484726CD/DivorceDissolutionAndSeparationBill\(Lords\)#contribution-23F80BCF-39A1-435E-8557-0A6B84D049C0](https://hansard.parliament.uk/commons/2020-06-17/debates/45EE5F3F-8AE6-413D-AF68-EDA8484726CD/DivorceDissolutionAndSeparationBill(Lords)#contribution-23F80BCF-39A1-435E-8557-0A6B84D049C0)

'My commitment is that, as a government, we will work harder to coordinate, to bring together the strands of policy that sit with various departments, and to ensure that we have a family policy that is fit for the 2020s'.

We're still waiting for that family policy.

So what can we possibly do that could make a difference?

The answer to climate change is twofold:

- we must reduce carbon emissions and
- we must promote cleaner alternatives in energy supply.

Translating that to the family breakdown world, the answer is twofold:

- we must reduce adversity in the existing system
- we must promote safe and child-centred alternatives.

I'm going to take those in reverse order.

Promoting Safe and Child-Centred Alternatives

This was basically the remit of our work on the Family Solutions Group⁶. What are the needs of parents and children from the point of separation before any application is made to the family court?

Broad Summary of FSG Recommendations

First and foremost, we need political oversight of this massive cohort in society. MoJ currently lead on parental separation but they only become involved if and when an application is made. Until and unless that happens, there is no coordinated information or support, nothing to promote the wellbeing of children when parents separate. It seems extraordinary to me, given that hundreds of thousands of children go through this each year, with potentially life-long consequences, that the needs and rights of these children fall between the cracks of multiple Government departments.

At a recent FSG event, the Attorney General agreed that a cross-government approach is needed if there is to be meaningful reform. She wholeheartedly supported the objective of taking family problems out of an adversarial context saying: *'We don't want families to end up at war'*. She gave her commitment to look at better coordination between Govt departments.

That was our first and most important recommendation, political oversight and coordination.

Next we recommended a wide public education programme, to reframe family breakdown away from automatic 'justice' language, and towards an understanding of child welfare. Public education is needed to correct wrong language and wrong attitudes that date from years ago. I'll say more about language in a moment.

Alongside a wide public education campaign, we also called for an authoritative website for separating families, perhaps similar to the DVLA for drivers. A go-to place, with clear information for parents, and a separate section for children and young people.

⁶ https://www.judiciary.uk/wp-content/uploads/2020/11/FamilySolutionsGroupReport_WhatAboutMe_12November2020-2.pdf-final-2.pdf

And finally, in terms of reaching people, we recommended resourcing all schools, GPs, health visitors, CABs, Family Hubs. All these touchpoints need to provide clear information and signposting to parents at the earliest sign of separation. This shouldn't be difficult to achieve, it just needs some cross-departmental coordination.

Next, we called for direct support services for children and young people. The culture that children should have no voice while far-reaching decisions are made about their lives is changing. We now know that the right⁷ of the child to be heard is a key factor in improving outcomes and a core component of child welfare⁸, they tend to be more satisfied with the arrangements⁹, the arrangements are longer lasting, father-child relationships are better, and parenting is more cooperative¹⁰.

The problem is that giving a child a right to be consulted is no help if it can't be exercised. More than half of families who separate do not come into the family justice system, and there is nothing for these children. We have the brilliant FJYPB to represent children of families in the justice system, and I know some are here. I would commend to everyone as essential reading their book 'In Our Shoes'. But the majority of children who go through family breakdown do not have families in the family justice system. These children have no information, no authoritative website, no support, no nothing. Some families will choose mediation, and of these, some parents will both consent for their child to be consulted. Prof Anne Barlow and Dr Jan Ewing are leading research into the benefits of child-inclusive mediation. But the numbers at present are a small fraction of all families who separate.

The children's group on the FSG have worked hard to raise these issues, to encourage the Law Commission to include in their next programme of law reform a review of the law of children's rights. They've developed resources for schools to use in their PSHE curriculum and created #therightsidea¹¹ for young people to understand their rights.

Our next recommendation was for early triaging, for an early assessment meeting so that the needs and vulnerabilities of the family can be assessed and they can access the right support. This early assessment has to be done accurately, and I'm aware that criticisms have been raised in the past of mediators taking on cases which should never have come to mediation. It's one of the topics to be discussed this afternoon. A few comments:

- First, unlike the legal professions, anyone can set themselves up as a mediator without any training or experience. Perhaps more likely are those who come from a linked professional background, they complete an 8-day foundation course without follow-up supervision or training, and call themselves a mediator. Only 2 weeks ago, an unregulated mediator who used to be a barrister offered mediation to a couple where social services were already involved; there'd been intimidating, bullying and at times physically aggressive behaviour by mum. Social services had asked her to leave the family home and to attend a perpetrator programme; Dad is caring for their young child, who sees mum twice a week with supervision. Dad is emerging from 10 years of domestic abuse, just in the very early days of finding his voice and beginning to understand what he's been through. The most basic of

⁷ Art.12 UNCRC

⁸ University of Exeter Healthy Relationships Transition (HeaRT) Project
https://mcusercontent.com/5a5165e370ad79b9ef66cbd5c/files/7c6f2e45-2e63-b6a8-9d79-b4f96e99f0bd/The_Healthy_Relationships_Project_Report_and_Key_Findings.pdf

⁹ Butler et al, 2002

¹⁰ Walker and Lake-Carroll, in Family Mediation Task Force Report 2014

¹¹ https://www.youtube.com/watch?v=NLI9k_fG9wI

screening techniques should have identified that this case was not suitable for mediation. Those who call themselves mediators but choose not to submit to the standards and regulation of the Family Mediation Council do a great dis-service, both to the reputation of the mediation profession and to the families with whom they work.

- FMC and FMSB are planning to highlight the existing standards for risk awareness and screening, reflecting the concerns both in society and in the family justice system by rising rates of domestic abuse.
- Thirdly the Mediation and Domestic Abuse Network has grown out of the FSG discussions. This was set up by two DA professionals and mediators following a discussion as to whether a blanket ban on mediation for all abuse cases and for all time removed a victim's autonomy. The MADA network is looking to develop a screening tool for mediators, and to encourage closer working relationships between local mediators and domestic abuse services.

These confidential assessment meetings need reliable screening, but for those where safeguarding isn't an issue, they have multiple other purposes. They give the client a chance to explain their situation and be listened to, plus also to hear some information: about what the law expects, about their child's needs and rights to be consulted, and about their options. It's an opportunity to reframe the situation away from their own perspective and see things through the lens of their child's future childhood experience. Even clients who do not go ahead with mediation speak of the value and benefit of the one-to-one meeting. The earlier they happen in the separation, the better.

Those families who don't present safety or other vulnerabilities need support along the pathway towards cooperative parenting. This isn't going to happen straight away, but with the right information and support, most parents will find a way through the mire.

- Information is needed, because there are hopeless misunderstandings about what the law expects from parents who live apart.
- Support is needed because we are not robots and cannot all 'consciously uncouple' as the Paltrows may have done. This is a vulnerable time for both parents and children.

One of the forms of support we recommended is attendance at a separated parenting programme. The SPIP is known by those in the court system, but there are masses of different parenting resources for separated parents. The FSG has called for a national body of separated parenting programmes which meets established standards, so any parent can self-refer, or be reliably referred to one by a school, health professional, solicitor, mediator, court.

The benefit of attending one of these workshops is well-established. RCJ Advice did a recent survey monkey and had 95 respondents from their SPIP course:

"Do you think attendance on this course will have a positive impact on your child?" 93% said yes.

"Would it have been helpful to have attended this course earlier in your separation?" 78% said yes

"Would you recommend attending this course to someone in a similar situation?" 100% yes.

Imagine what a difference it might make if these courses were universally known and available to all parents when they separate.

As for mediation, good news is that the government has once again extended the mediation voucher scheme. It's good news for the families involved and for the reduction in cases coming to court. The scheme is providing MoJ with accurate, contemporaneous data about mediation, from accredited

mediators. The latest stats from March are that 6,608 vouchers have been issued with 3,838 sets of data now in. These show that 77% of cases reached a whole or partial agreement. 18% went to court without having settled any issues in mediation, 9% went to court with narrowed issues, and 73% didn't proceed to court at all.

We massively welcome this scheme and would love to see it promoted to all parents following separation at an earlier stage.

I haven't mentioned finances, and of course there are many families who have legal issues to resolve. Lawyers have a vital role to play in the post-separation space although I would firmly say that family separation is not primarily a legal issue. A holistic approach is needed, which takes account of safety issues, the emotional state of the parents, the child's views, parenting issues, financial considerations and legal issues. We need to offer models which are supportive and safe and problem-solving.

Charlotte Bradley at Kingsley Napley sits on the FSG and has convened a group of legal professionals from the bench, bar and solicitors to look at a few legal recommendations.

First and foremost is judicial training. Family judges need additional training about family separation which goes beyond the administration of law. Given the number of parents who end up in the magistrates' court, this training is especially urgent for magistrates.

Part of the training should require judges to be aware of the multitude of resources and third sector services in their community, and not to operate in a silo. There is a lot more out there than a MIAM and a SPIP. But as already said, there's no coordination and it's a hotchpotch for families to know where to turn other than the family court.

The idea of a 'Support for Separating Families Alliance' was first proposed by the PrLWG and there are now several at various stages of development, all funded out of thin air. The Kent SSFA¹² has been meeting for a couple of years and has members from a wide spectrum of those who encounter the separating family: police, local authority, solicitors, judges, mediators, Cafcass, children charities, domestic abuse services, parenting services, school FLOs, mental health services and so on. Important in our alliance is Tim Woodhouse, from the Council's suicide prevention team. The 'recent ending of a relationship' has been a feature in 50 suicides in Kent in the last 3 years.

We also recommended that family courts should be taking their Part 3 responsibilities seriously. One senior judge commented that Part 3 is more notable by its breach than by its observance. We fully support the Family Solutions Initiative led by Karen Barham, also on the FSG, which gives bite, with potential costs consequences, for legal advisors who fail to seek opportunities to resolve issues away from court proceedings.

Thirdly, legal professionals need training to arrive at a broader understanding of family separation. Family cases are not legal disputes as with other types of law, they need a different approach, alongside other professionals. We need to work creatively and collaboratively alongside each other, and with curiosity. We do not have all the answers ourselves; we can be curious about what other agencies or professionals bring to the family dynamic and learn from each other. That has certainly happened in our work on the Family Solutions Group; we have all learned so much from each other.

There are already some great initiatives being developed to support families to arrive at solutions, some widely known but there will be many others. There's Amicable, The Certainty Project, The

¹² <https://www.ssfak.org.uk/>

Divorce Surgery, Uncouple, the One Lawyer model, there's Wells Group Divorce, MedArb, Hybrid Mediation, Mediation with a financial neutral, and the list could go on. There are multiple creative options out there. Ideally, family separation cases would operate in a transactional way, as with conveyancing, rather than under the banner of litigation.

Promoting Safe and Child-Centred Alternatives – Who takes responsibility?

These recommendations by the FSG are all well and good. But they're aspirational. Until there is political will to address them then it's la la land. We've worked hard and launched certain initiatives, but there's limited progress which we can make.

The mediation community can't fill that gap either. They do brilliantly in harnessing the energy and passion for our work to promote better outcomes for families, and this year's Family Mediation Week, organised and run by a group of volunteers under the auspices of the FMC, was a triumph. But with limited resources, they can't be relied on to shift societal thinking about separation. Also, quite apart from the resources point, mediation isn't be the right process for all.

There are also countless third sector organisations working tirelessly in this field, too many to mention, and doing brilliant work in the lives of individual families. But none are in a position to promote, at a national level, safe and child-centred outcomes when families separate.

This point about responsibility came starkly into light when the Pathfinder pilots were being developed last year. A system was being designed based on something sitting alongside, a court system to operate alongside community engagement and support. In practice, that parallel system of support did not exist. Meanwhile, MoJ were clear that their pilot would not include any element of 'upstream' work.

Into the breach stepped the now-retired but brilliant DFJ for Dorset, HH Martin Dancey, who with his tireless energy and support from Patrick Myers of the RPC programme, engaged the local authority. Thanks to their private initiative, two family hubs are now being developed by the local authority to run in the shadow of the Pathfinder pilot. They are due to open in the autumn and are developing both in-person and digital models to support separating families. This is a really exciting development, and we hope the National Centre for Family Hubs will take advantage of all the learning to come from them.

The point is that, in the absence of these FSG members stepping into the breach, there would be no community engagement or coordination of support alongside the Bournemouth Pathfinder. Nobody takes responsibility for the promotion of safe and child-centred solutions following separation.

With the climate change movement, there is a groundswell of consumer pressure which demands fuel efficient cars and carbon offsetting. The green agenda has moved from fringe to mainstream. Our innate selfishness to live as we like has been challenged and we're aware of the fragility of our planet for our children and grandchildren.

In the family separation world, we do not yet have that consumer pressure. There's little media interest for the mental wellbeing of families who separate. 'Othering' seems to be a common feature: 'Family breakdown, oh that happens to others, not to us'. Also 'Fatalism': 'It's all terrible but it's just the way it is'. We cannot accept these excuses for allowing the current system to continue to fail so many families and affect our children's futures.

I said earlier that there are 2 ways to tackle the problem. One is to reduce adversity in the existing system, and secondly to promote safe and child-centred alternatives. In the absence of any coordinated promotion of safe and child-centred alternatives, we must turn to the other way to tackle the problem: to reduce adversity in the system.

Reduce Adversity in the System – The need to re-frame

How does a family justice system, with 150 years of legal development behind it, reduce adversity? Is it even possible?

Let's think for a moment about Volkswagen and Ford. They have not gone out of business. I imagine there's been some pretty tense boardroom discussions over the last 30 years as the true horror of the carbon combustion engine emerged, but they've got to work, been creative and are introducing new technologies.

We must do the same. We must get to work, be creative and introduce new technologies. We need to re-frame family breakdown away from adversity because we cannot ignore the evidence, it is harmful to victims, parents, children and society. We must move instead towards a problem-solving approach, one that is investigative and prioritises safety, that comes alongside a family in difficulty and steers them through the mare.

The way family breakdown is framed is important because it influences how people think and act. If the only known provision is the family court, then that is going to lead public thinking. Everyone knows a court is a place where one person is set against another before a judge. Family breakdown is therefore adversarial.

This needs to be re-framed.

Language

Careful use of language is a critical part of any reframing. What messages do we want parents, children, government, society to receive from the language that we use?

I'm hesitant to say this in this setting, but I'm going to challenge the term 'justice'. The problem with 'justice' is that if that is what it says on the tin, then that is what people expect. Court becomes an open door to play out the perceived rights and wrongs in the relationship, to give expression to the anger, hatred, rejection, to win in some way over an ex, to exact retribution, and so on.

Sir David Norgrove in the Family Justice Review said the system is about finding 'least worst outcomes' for families. Just think for a moment, if the Family Justice System were publicly re-named 'the Least Worst Outcomes System', would so many people apply to court? I'm not suggesting that it is, but the language we use is important.

Government sees all family separations as being under the remit of the 'Family Justice System'. That's unhelpful. If the Attorney General doesn't want families to go to war, then don't offer them an adversarial justice system. It frames family separation as a legal issue and dumps the entire cohort, the millions in our society affected by ruptured family relationships under a department responsible for administering justice. It makes no sense.

There's a difference between access to the system and access to justice. There are many families who rightly need access to the family court, for safety, or to get an outcome in a problem they've

been unable to resolve themselves. We have a system which is fair and balanced, and we have good laws in place for how decisions are to be arrived at. But do we offer justice?

Family law is totally different from other forms of justice. In laws of contract or tort, the analysis is backwards looking, to correct past wrongs, to provide just outcomes. In family, it's not about correcting past wrongs. We are forwards looking. As of today, we have abandoned fault, we're not interested. We want the best outcome that can be achieved for the family, for the child and the parents. That's a higher, better outcome than either parent's concept of justice.

I'd like to suggest the family court is there to address family problems. Really, the private law system is a 'Family Problems system' and the flip-side of this is that it's then natural to apply a problem-solving approach.

So how could the system be framed as a Family Problems System?

Kate Stanley at the Frameworks Institute is an expert in reframing, why it matters and how to achieve it. She says that when there's a system with a power dynamic, everyone in the system echoes the language of the most powerful. However much time, effort and resources are spent reframing, it will all be for nothing unless it is embraced by those at the top.

In the system for families who separate, who are those at the top? It's not the parenting specialists or the mediators, the child consultants or the therapists or the domestic abuse workers or even the financial experts who provide their advice, it is without a doubt the legal professionals. Perhaps the most powerful are the judges and, for many families, that will be the magistrates. I come back to the importance of magistrates training.

Our legal processes, from the court papers at the start all the way to the manner in which judgments are written need to set a problem-solving tone, so that can be echoed by others.

There's so much we could do in this area. The FJYPB has already done some excellent work and I recommend everyone reads their paper 'Mind Your Language!' Emma Nash has also launched the Family Law Language Project¹³.

Here are a few headline suggestions.

The Court heading 'Applicant vs Respondent' is a shocker. Instead, couldn't we head all court papers 'In the matter of the X family' and then list each family member and their age? (It's important in finance cases so that nobody forgets the silent victims in the background whose lives are thrown into misery as their parents litigate over money.)

'Parties' – this isn't a party. Let's call people by their name.

'Disputes' – families have issues or problems to be resolved. Disagreements are normal between parents and our system shouldn't escalate them to conflict if they need help in resolving them.

Linked to that, DR or ADR or NCDR – dispute resolution may be fine for the commercial world, but when working with families, we support them to resolve issues or problems. The MoJ call for evidence on DR used this terminology used throughout, as if family separation was no different from other areas of law. (It's great that so many family practitioners responded and let's hope that influences reform.)

¹³ <https://www.thefamilylawlanguageproject.co.uk/>

‘The other side’ – we don’t have sides in a family breakdown.

‘Contact’ – what a terribly sterile term to refer to the close and nurturing relationship that a child has with a parent.

The list could go on. There is work to be done to pull together a comprehensive set of proposals for language change within the whole system and the President is keen that this be done.

Ultimately, we need a change in the way family separation is referenced through the whole of society. As with sexism and racism, we must not use words which cause harm or offence to others. The whole lexicon of warring couples, custody battles, fighting for my rights... must stop. These are the equivalent of old-fashioned diesel engines and are a stain on our planet.

The media interest leading up to today’s new law has confirmed what Kate Stanley has said. Society will always be led by those at the top of the power dynamic. There’s no point campaigning for more appropriate language at the school gate if the system continues to offer people a fight. We need to get our house in order before we can ask, or expect, others to find a more relational response to family breakdown.

As I finish, I’d like to comment on the language used in a headline from the Sunday Times last November. It encapsulates so much of what is wrong about the way family separation is referenced and made my blood boil when I read it.

‘Warring Couples face penalties for clogging up family courts’

- First, the battle metaphor of ‘warring couples’ is harmful
- Next, it’s parent-blaming, they are the problem for bringing their war to court. The overstressed, overburdened family court likes to split and project, it’s all the fault of the parents. Unhelpful.
- There’s a suggestion that somehow the parents should have dealt with this differently, that they shouldn’t be at war and they shouldn’t be in court. But where is the coordination of information and support for these parents when they separated? If all that’s on offer is an adversarial court system, don’t be surprised if parents turn up ready for the fight.
- It promotes a ‘stick’ approach via penalties, when we know these families already have high levels of mental health vulnerability. Clearly they need a ‘carrot’ not the ‘stick’.
- Perhaps most significantly, the headline presents this as a problem for the courts, being ‘clogged up’, rather than anything to do with child welfare. As ever, the problems facing the family justice system are reported as problems for the system, with little or no reference to the catastrophic impact on the lives of the children.

A better headline would have been *‘Early Support Needed for Families in Crisis’*

Conclusion

We have a long way to go to get things right. We do not yet have the paradigm shift that has been achieved in the climate change movement. I’m not sure where we are in their 60-year timeline. Perhaps our Children Act was the equivalent of the first 1972 UN Convention. It’s been 30 years since the Children Act and we still don’t have the concept of child welfare leading the design of our systems. I hope we’ll see that paradigm shift within our lifetimes.

Meanwhile, we might all reflect on whether we leave a green footprint in the lives of the families we work with? How is our contribution in this family impacting the children?

Whether it's for the climate or a problem-solving approach for families who separate, we share a collective responsibility to live a greener existence. We must do what we can to safeguard our planet for the generations to follow.

The family justice system needs to find a more humane system overall, which starts with the welfare of the child, and which supports and respects all families.