

INTERVIEW, OCTOBER 2008: Jacqui Gilliatt - Barrister

"Jacqui Gilliatt is a family law barrister, currently working at [4 Brick Court Chambers](#) in London and specialises in cases involving children. Jacqui is also the general editor of the [Family Law Week](#) blog and has written several articles on family law. Jacqui's own blog, 'Bloody Relations' is an entertaining, [award winning](#) and informative resource for people seeking to know more about the Family Courts.

I had the privilege of having a very 'bloody' debate with Jacqui about Family Law and her perceptions of the system as someone who enters it from the advocate's angle on a daily basis. In the following interview, Jacqui addresses some of the issues that have been covered in the media most recently and puts to bed the myth that barristers don't have a sense of humour....."

What motivated you to become a barrister and what led you to Family Law?

My mother told me I should become a barrister because I like arguing so much! So, of course, that was the last thing I was going to do. I had not yet learned that, maturity is doing what your parents say you should do even though it is your parents who told you to do it. I didn't know any lawyers – all my family worked in the public sector so it didn't occur to me as a career option until I got a job working for the Lord Chancellor's Department.

I was working on civil and family law reform and in the end decided I'd rather join them than beat them. I also realized that I was a bit fed up being a back room girl working at the bottom of the civil service food chain. The bar offered the perfect opportunity for me to see a direct result from how I did my job and I loved the idea of being an advocate – probably from watching too much LA Law. The Children Act was just coming through Parliament and it seemed an exciting time to be doing family work. Family work also provides a fascinating study of human psychology and meant that I would get to be able to be paid to be a nosey parker!

Which Chambers do you work at and what are their fields of expertise/ distinguishing characteristics?

I work at 4 Brick Court in the Temple in London. There are 37 barristers in chambers and we mainly do family work.

Which area/s of Family law do you work in (and for how long) and what is the most fascinating aspect for you?

I specialize in children work and have done that almost exclusively for the last 8 / 9 years. I really enjoy the interface with other disciplines such as medicine, psychiatry and psychology. I also love the fact that I meet people from all walks of life in all sorts of different situations – no day is ever the same. I feel very privileged to be able to have the sorts of conversations

with clients I have on a daily basis.

On the negative side, it can be very demanding from an emotional point of view. Care cases, in particular, take a long time and by the end of them you will have got to know your client pretty well. If the outcome of the case is that children are removed into care, even when objectively that may be the only realistic and protective plan, it is almost always a huge and hugely distressing loss for the parents and not an outcome that gives rise to any sense of rejoicing for any of the lawyers involved, whomever they are representing (although there may be some consolation in a job well done or done to the best standard).

There are some cases which stay with you for a very long time- I worry about whether there was any stone I left unturned or how the client will cope with the outcome and there are some very distressing cases when it can be very difficult to dislodge from my brain some particularly awful mistreatment of a child. It is important to pace yourself so that this does not become overwhelming.

What changes have you noticed in the years that you have been practicing, both procedurally and culturally (i.e. court culture)?

Although probably light by comparison with other jobs, it does seem like there is a lot more form filling & drafting of documents than when I started in pupillage in 1991. There are far more solicitor advocates and I think probably more litigants in person – but that may just be my impression. I think courts are much less formal than they used to be and there is more of a tolerance to the varieties of lifestyles of those who come before the family courts.

The biggest cultural change has been the attitude of the courts to fathers, particularly unmarried fathers, who were often sidelined in the past. There is now an expectation that fathers will be and should be involved in care proceedings and generally in caring for their children. It is much easier to get decent contact and even shared residence. It's still a bit unpredictable but the principle that fathers should be included in the lives of their children is well embedded in the court culture.

Have you any criticisms of the way the courts function?

Generally speaking I think the courts function pretty efficiently although there are some courts where papers go missing with monotonous regularity. The main problem is that it takes far too long to get your hands on a court hearing and too often a case cannot go ahead even when it has been listed because the court runs out of time.

There are some new practices being adopted which might make a difference (not listing cases a long way in advance but leaving it to the final directions hearing) but it is too early to say and one problem with this approach is that we don't know until very last minute when a case is going to be heard. I have had one listing recently which just says sometime in May next year. I don't know when we will be given more precise dates and it makes it hard to commit to doing a case.

I also long for the day when technology hits the court service – it would be great to be able to access the internet at court – this is happening already in Crown Courts but not in family courts. It would also help litigants if they could have access to legal materials online. It would help if we could have access to printers so we could get orders and other documents produced

quickly. Sometimes you can get court staff to print stuff but you have to go through quite a rigmarole of sending emails etc. I have only ever had one brief on a CD – I have a fantasy about a paperless court room but I think it is a long way off.

What positive elements to the courts and practice do you notice?

Judges on the whole are pretty sensitive to the feelings of litigants in family cases and that can make a very big difference. Even if the client does not get what they want, it really helps if they feel they have been treated with respect and understanding. Most court staff are extremely helpful and go out of their way to troubleshoot problems and support litigants.

What is your perception of the effectiveness of mediation, which is essentially a collaborative process when working side by side with the court process which is effectively adversarial?

I'm the wrong person to ask in a way because the cases that come to me from the mediation / collaborative law route are the ones where the mediation approach has not been successful. It is also much less used in relation to children although there is interest within the collaborative law community to tackle issues about children as well.

There is court based mediation in many family courts where Cafcass officers mediate between parents and / or send suitable cases off for out-of-court mediation. This can work pretty well at least to narrow the issues down but some parents do report that they feel pressurized to reach agreements they are not happy with or feel that the Cafcass Officer is very quick to take sides.

Some Judges take a mediation approach, particularly if one party is not represented, and if they are good at it, it can be very productive. Research in the past has not shown that mediation is effective in terms of saving money – not that this should be the only way of valuing the approach – I suspect that parents come away much happier from a good mediation than where a solution has to be imposed by the court.

How has the changing legislation and the volume of it impacted on practice?

I'm not sure that it is changing legislation that has made a huge difference to practice in the family courts. There is more impact from other changes such as the fact that cases are reported online so quickly and it can be quite hard work to keep up with it all. Also cases are reported whether they are legally significant or not and you have to wade through a lot of cases to find the one that makes a difference.

The volume of work never seems to stop growing but unfortunately the number of Judges is limited so that it takes a long time to get a case in front of a court. Another change which has made a difference is that there is an expectation that local authorities disclose more and more documents. This in itself is a good thing but it means that even a relatively straightforward case generates volumes of papers.

Sir Mark Potter in his speech in Israel this Summer was candid about the Family Courts and called for more open courts to be encouraged; what is your view?

I am in favour of more open courts but I am not yet persuaded that there should be media

access to all family cases. I do see that there are powerful arguments in favour of access but I don't think that it needs to mean every case being susceptible to being reported in the papers (although it's not something I would go to the barricades over).

Many parents would say that it is quite bad enough that everything about their lives is pored over by a bunch of strangers – the lawyers, the Judge, the usher, trainees, social workers etc – without having to worry about tabloid headlines.

The press are doing a good job of suggesting that all they want to do is responsible reporting of serious issues and defend parents against the iniquities of state interference but I don't think that is what would happen in practice. For example, in one of my cases, the father was convicted of accessing child pornography and as a side issue, largely irrelevant to the child protection issues, he and his partner had engaged in swinging. The partner was subjected to a great deal of abuse in the community after his conviction which was reported in the press and she had to move home to get away from harassment.

The effect of more reporting of the care proceedings with salacious details about the sex life would have done nothing but cause her pain and possibly resulted in actual injury and later in life the children would know that these embarrassing details about their father and their early life had been splashed all over the papers. There was also evidence in the case about the horrendous way in which he had treated the children's mother which included many episodes of extreme sexual violence. She could not even face taking part in the case and press scrutiny would have only added insult to injury.

The other point to make is that this was not an unjustified interference in the family's life by the state. By most people's standards this father was not a fit person to look after children. It is difficult to see what public interest would be served by wide reporting of the details. I have been disappointed by the quality of reporting about matters which are in the public domain and by the assumptions made by some reporters that what they are being told by aggrieved parents is always accurate and the state is always in the wrong.

There are many ways short of absolute access in which the courts could be opened up. Access could be given if all parties agreed to it, including the Guardian representing the child. Access could be given so that journalists could get background information without leading to reporting of identifying information.

Access could be given for journalists to hear certain parts of the evidence, such as the medical evidence, if the concern is, as often currently expressed, that it is the experts who are getting things wrong. There could be much more by way of docu-dramas and fictionalized reporting.

There could be a lifting of the restrictions on documents which could be shown to the media so that they can get a better sense of the facts of a case and a lifting of the restrictions on parents and local authorities about giving interviews to the press. There could be some sort of independent observer scrutiny of courts or regular inspection such as by Ofsted or a similar body. All judgments could be made available in an anonymised form. And more blogs, of course!

If you could change one thing about the Family Courts, what would it be?

I've got a little list! It would have to start with more Judges, though. It is obviously always bad if a child is removed (from both parents or from one parent by the other) on an interim basis and it turns out at the final hearing that the evidence does not justify removal. It is even worse if it takes up to a year for the court to work this out.

Other ideas include: allowing unmarried fathers without parental responsibility and grandparents the automatic right to make section 8 applications (for contact and residence), Judges to have discretion to grant public funding to family members other than parents to be represented in care cases, an unfettered and automatic right for parents to see all documents held by the local authority about the family, better training for lawyers in relation to social work theory, child development etc, feedback from & possibly competence grading by Judges for experts who give evidence, separating the support & enforcement roles of social workers

It's probably about time there was a top level inquiry into the family justice system so that there can be a proper informed debate about reforms. Unfortunately all that seems likely at the moment is a squeeze on public funding at all levels ie payment for lawyers, the court service budget, the local authority budgets.