

## Episode 47

# Great Expectations: Managing client relationships in Family Law

### Intro

This is Risk on Air by Lawcover. Today's episode – Great Expectations: Managing client relationships in Family Law.

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- Julian:** Welcome to Risk on Air. I'm Julian Morrow and today we're joined by Jacqui Dawson, principal of Sexton Family Law and an Accredited Specialist in Family Law, as we discuss the subject of managing client expectations in Family Law. Although, Jacqui, I imagine expectation management is something that lawyers across the board have to do.
- Jacqui:** Absolutely. I think my perspective probably is more relevant to people working face-to-face with individual clients rather than corporate clients, for example, but certainly expectation management is universal.
- Julian:** Well, let's go to the very beginning of the client relationship. What are some of the basics that you would recommend to people in terms of setting expectations for a client first up?
- Jacqui:** So I think the first thing that it's really important to make clear is that this is a professional relationship and that's how we're going to work together. It's very easy for those boundaries to get blurred, so my suggestion is that people always start in a fairly straightforward way and don't let the boundaries get blurred from the outset. Obviously, there's the documentation we have to give clients. We have to provide them with all the usual costs agreements, and there's certain documents that any lawyer would have to provide a client at the outset. In Family Law, there's very specific documents, and I imagine that's true for lots of areas. So that's the first thing, setting those rules of engagement and being clear about them, what I'm going to do for you and what I need from you, and what will happen if those things don't happen.
- Julian:** In your experience, is setting the tone right in the first meeting something that pays off in the long term of a client relationship?
- Jacqui:** Absolutely, absolutely. Start, as you mean to go on. The way I always talk about it is that fine line between empathy and objectivity. I mean, we're not robots and people don't want to come to a robot, but by the same token, I'm not useful to someone if I dive too far into their world. So it's maintaining that boundary that I care about you. But I'm here as a lawyer, not as a psychologist and not as a friend.

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- Julian:** Another big difference between working in larger firms and with corporate clients and individuals whether it's in Family Law or not is the money question. What would you say about managing expectations and setting up the client-lawyer relationship in terms of the financials?
- Jacqui:** Yes, what I'd say is be, well, and we have to. There's certain things that we have to do at the beginning in terms of giving cost assessments and so on. I think it's important that clients know what to expect, so they've got some sense of what the costs are going to be and when they will arise, because these things can happen in a lumpy sort of a way. And regular bills, expectation those bills are paid regularly, money and trust, if that's what needs to happen, and clear rules around that so that it just doesn't balloon out. That's when you end up with a really distressed client who gets a large bill at the end and had no sense that that's what was happening.
- Julian:** Lawyers obviously understand the role of a solicitor, but in your experience, how much do clients coming in the door on the first day know, and how much do you, or should you, explain about the solicitor's role?
- Jacqui:** I think that we should explain it and I think we will keep explaining it all the way through. So if you're dealing with someone who's very distressed, they might need reminding sometimes that, for example, that's not a legal question. That might be something that you're better to talk about with a psychologist, for example, and again, I don't mean that to sound cold, but it's certainly not a good use of someone's legal fees. To be talking to me about things that are better discussed with someone who's qualified to discuss those things, like mental health or even distress sometimes is not necessarily something that will be helpful for them to spend time and money with me.
- Julian:** And I suppose in your area of law that's something that is more likely to be an issue more regularly, because people are dealing with relationships and stressful situations, and so they're vulnerable.
- Jacqui:** That's right and to some extent the boundaries can easily get blurred because, for example, if I'm working with a client who needs to tell the court about a distressing set of circumstances, I have to hear about that distressing set of circumstances to make that into a form of evidence that's useful to the court. So on the one hand I'm saying I can't necessarily help you with your emotional distress. On the other hand, I need to know about it because that might be something the court needs to know about and also because we are human. I don't sit there with a cold, stern face saying I can't discuss that with you. But it's just sometimes redirecting people about what I'm there for and what I'm not there for, because sometimes the most compelling argument is they don't want to get a big bill for having spent hours discussing something with me that I'm not even qualified to discuss with them.
- Julian:** Fair point. So what should a client expect from their solicitor?
- Jacqui:** I think a client should expect empathy, but not over-identification. I think they should expect clarity about what the role is and what it isn't, and I think they should expect a clear understanding of what the process is that they're embarking on and what will be needed from them at different times.
- Julian:** I imagine clients come in with a sense of what the story they want to tell is. How important is it for a solicitor to go into areas that the client might not have been expecting to talk about, and how do you sort of mediate that aspect of getting instructions?

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**Jacqui:** Yeah, I think it's really important because a client won't necessarily know what is relevant and what's not. To think of an example, you could have a client in front of you who is a victim of family violence and themselves has not yet realised that that's what they are a victim of. So there might need to be some probing questions about patterns of behaviour and so on, and that could be really hard and uncomfortable for someone to describe. On the other hand, you could be sitting in front of someone who is a perpetrator of family violence, and they might need to be challenged about some of their behaviour.

**Julian:** We'll come back to some of those situations, because that's when you're really dealing with people in a very heightened state of emotion. But I suppose to recap a little, what should a client not expect from their solicitor?

**Jacqui:** So it's obviously the other side of the coin really, but what they shouldn't expect is counselling from us. That's not our role and I don't mean that we should be unkind, but we're not counsellors and we're not psychologists. I think what they should not expect is that we simply get on board and do everything that they want us to do. I think they should not expect us to accept every argument they might want to make and simply regurgitate that argument to the other side or to the court. We're specifically not there to be their mouthpiece. We are there to take their instructions and formulate that and do something useful with it.

They should not expect a lack of objectivity and too much sympathy, and the way I often talk to clients about that is that if I can't give you the hard advice and if I can't tell you the way a court might see this, then I've stopped being useful to you. So it might feel good in the moment that I jump on board and adopt your view of the world and adopt your view that the other side is awful or whatever. What that means is I'm no longer being useful to you and the last thing you want to do is hear the bad news for the first time from a judge. So that lack of objectivity is something they certainly shouldn't expect. Over-friendliness is something they shouldn't expect. They should not expect us to be overly aggressive towards our colleagues and again, the way to explain that to a client is I'm not useful to you if I'm just getting on board and swinging punches. I've actually stopped being helpful.

**Julian:** One of the interesting areas where that can become a bit pointy is what if the tone of the correspondence you're getting from the other side isn't what you would regard as the right balance? It is a little bit aggressive. I imagine, then, a client might want you to sort of punch back.

**Jacqui:** Absolutely. So the way that I work through that with a client is to say one day you might be sitting in the witness box answering for the letter that I've written, because in the end if I write a letter, the client is answerable for that. So you've got to think very carefully about whether it's a piece of correspondence that you'd be proud of. And secondly, there have been some cases not just in the Family Law space, but there's one in particular in the Family Law space where lawyers and their clients were really criticised for the tone and the content of their correspondence. But all of that requires a careful explanation about why, if I get an angry letter that tells me everything that's wrong with my client, I'm not going to write a letter back that says the same thing. That can be really tricky, because in that moment the client thinks the other side is scoring goals, and why are you being so moderate and reasonable? All one can do is explain to them that there is a very good reason for it. You're able to show a client that this could have real consequences.

It's not just that I'm trying to be a nice person and I want to be friendly to everyone. If you conduct your correspondence in a particular way, that may all sit on the client's head one day when a judge is hearing it. So that's a really useful thing to explain to them. And to take that even further if we are in a position where we are constantly receiving that kind of correspondence, there's no harm in naming it to your opponent and saying I am not going to correspond with you in this way and this is why. It is a matter for you if you want to keep doing it, but I'm not. And I think if clients see that in a letter often that's really helpful because they understand the method then in what you're doing.

**Julian:** It sounds like that might be a letter that you've written at some point. Did you find it effective?

**Jacqui:** Yes, yes. Well, that's interesting. 50% of the time it's effective, the other 50% of the time it falls on deaf ears. But at least the client and I know it's been said.

**Julian:** How good are clients at understanding that they're not the only client you have?

**Jacqui:** Most clients are really good at that, and then every now and then there'll be the client that isn't. So I often talk to clients about triaging that I have a good sense of everything that's happening in matters and I do understand that some things feel urgent to people. But the things that have to be dealt with first are the objectively urgent things and then we get to where people are feeling urgent. Now, sometimes even that requires some filtering, because if someone is really struggling and really suffering, even if I don't think something is objectively urgent, it probably becomes urgent because of their feelings about that.

So you've got to be responsive to that and I find most people are good about it, and if people can't understand that, then it might be they need to go somewhere else less busy for example, although I always say do you really want to be with a lawyer who's not busy?

**Julian:** Let's come to that question then of dealing with clients in a heightened emotional state, and I suppose one of the things I was wondering is should we put anger in a separate category here, or is any heightened emotional state a challenge that basically needs to be responded to in the same way?

**Jacqui:** I think the second proposition is right, that they've all got to be managed carefully. Anger has a particular effect on the solicitor who's acting for the angry person, and I mean even anger, when you say that, what do you mean by that? Do you mean a client who was angry with me because I didn't respond to the email they sent 30 seconds ago? Or do you mean they are so angry with their ex, for example, or the other side in a matter that that requires management because I might be concerned about what steps they might take that would be problematic.

**Julian:** And indeed sometimes, I suppose one of those things might be tipping into the causation of the other.

**Jacqui:** Exactly.

**Julian:** From your experience, how do you deal with the situation where a client gets angry because of the family law situation that they're in while you're dealing with them?

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**Jacqui:** So I think one of the things that is really important is to sometimes repeat advice, because when people are distressed, sometimes they won't have even heard what you've said about process or about what to expect.

The other thing that I think is hugely important is written advice, and I think written advice serves two purposes. One is so that you can direct the client back to that. You know I have explained this to you and, if I can just remind you, there's this letter that set that out for you. Happy to talk about it again, but you've got it there in writing to reflect on. The other thing is it can be very useful in terms of managing expectations that you've set from the outset. This is what to expect and this is where we're at, and sometimes that will be a need to be updated over time because circumstances change and so on, but it's that being repetitive and clear about processes is really all we can do to help someone manage their distress about a system which, in the end, is not of my creation nor of theirs. It's a system doing the best it can.

**Julian:** And you've said that there are some things that clearly a lawyer is not going to be the right person to talk to about. Would you go so far as to suggest who a client should approach to deal with things that are outside your bailiwick?

**Jacqui:** I'd be careful to suggest specific people, although I might say there is a panel of people that I can give you names of to go and see, and I'm careful about suggesting specifics lest that turn into a debate about you told me to go and see X or Y and they're hopeless and whatever. I mean there'd be a range of problems, I think, with being specific about your referral, but I think making suggestions about the kind of person you might want to see and referring to a bundle of people, is absolutely fine.

**Julian:** So high emotions are to be expected, particularly in Family Law, but probably in any litigation really. There can be situations though where it moves beyond that and into a different category. Are there particular expectations that have to be managed when you, as a lawyer, might be thinking about the issue of impairment?

**Jacqui:** Absolutely. I think the first thing to know is that if a red flag has gone up in your mind about whether or not your client is in some way impaired, you've already seen the flag, that means you need to be getting some outside help. It is not our role to assess whether someone has capacity to give instructions, and capacity to give instructions is obviously a very different thing to capacity to get out of bed in the morning, clean your teeth and so on. So we're not necessarily talking about someone who can't function through the day.

The question is can they make those big decisions that relate to giving their lawyer instructions in litigation? So, if we have a client where there's a question in our mind about that, we're going to have to have the direct conversation, which is deeply uncomfortable, and we'll need to be direct with the client and say I'm a little bit concerned about where you're up to. Are you seeing a psychologist or a psychiatrist, and do they have a view about whether you're able to conduct this matter? And if they do have a view, do you reckon they'd be able to give me a letter about that or could I write to them and just ask some questions? So it's a very delicate and difficult conversation, but it's really important that we reach outside if we've got any concerns. That's a highway disaster if we just press on.

**Julian:** That sounds like the very hardest category of expectation management. But, has your experience been that if you take that cautious but direct approach, that even in that situation you can manage the relationship effectively and end up with a happy client?

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- Jacqui:** Yes, the interesting thing is I've never had a client react badly to that. If you explain that difference to them, I'm not asking you whether or not you can function as a human being. I'm asking you whether, for example, your anxiety might be so great that decision-making is impaired. And also, if you're explaining to people, that might just be for a season. It might just be that right now things are so bad for you that your decision-making is a little bit tricky. So I just might need some help confirming that it's okay for you to make these decisions and that's good for you and it's good for me. So I think if you handle the conversation well, it doesn't have to be explosive, so long as people aren't hearing oh, they're saying that I'm hopeless and I can't think properly. It's a question of how you manage that conversation.
- Julian:** A client who's happy and feeling well-informed is much less likely to make a complaint. How do you magically turn clients into that state, Jacqui?
- Jacqui:** Oh well, in Family Law that's extremely easy. I think one of the big things I think in Family Law is not over-promising and being clear about how hard it's going to be and how long it will take, and then obviously showing them ways to get off the awful train of litigation, if there is a way to get off. But the first thing I'd say is not over-promising. Because if a client is told that X is going to happen and then Y happens, of course they're going to be upset. Now, obviously, unpredictable things happen. We don't have crystal balls. But I think being sort of conservative in your advice, setting those expectations about what's going to happen, is one thing, and then really clear and consistent communication.
- Certainly clients become very upset if they haven't had a response after a reasonable amount of time and different offices operate in different ways. So I'm hesitant to say that there is one rule that works for all offices. But I like to think that if a client hasn't had a return call, for example, on the same day, they've left a message that it would be useful if at least someone touched base with them to say, your solicitor hasn't come back to you and this is why, but they are aware you've called. Just even things like that can make people feel that at least they're being heard.
- Julian:** What about on the financial side of things? Obviously, financial settlements are a key part of some Family Law challenges. How do you manage expectations of a client in terms of what they're going to have to do for that, and what is the solicitor's responsibility in that regard?
- Jacqui:** Yes, well, I mean. One thing that I always say is that the preparation of documents for Family Law is a shared responsibility. I can't do it without the client, but nor should they do it without me. That's a recipe for disaster. So it's that gathering the information from them and then the input from the lawyer in terms of that doesn't sound right or that doesn't work, and often the client will realise that they've made a mistake in what they've done. So from the outset, it's been clear about these are the documents I'm going to need from you and in the family law space, which is a full disclosure jurisdiction, I will need them from you continuously. So that clients know from the get-go that this is going to be a pretty document heavy process and, yes, they will feel quite exposed in terms of having to provide every bank statement, every credit card statement. I recognise that's a really uncomfortable space, but it's really important people know that from the start so that they're not shocked about that.
- Julian:** Do you find that clients come in with realistic expectations of the likely timeframes for a resolution?

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- Jacqui:** I think it can depend who they've spoken to and it can depend what they've seen. So I think everybody these days seems to know someone who's been in litigation for five years, so they know these are the horror stories. But they also know the person down the road around the corner who settled it in five seconds flat. So it can depend on what they've seen anecdotally. So part of it is explaining every case is different and what we might need to do for yours is different. And of course, the big unknown in every family law matter is the personality factor. It doesn't matter how many documents I gather or how well they're prepared or how ready the court might be to hear something. It's often personalities that slow things down.
- Julian:** How often would a Family Law matter make it necessary for specialist advice in another field to be obtained as part of the process?
- Jacqui:** Pretty frequently. I would say. If parties agree, often that falls away. The need to get expert advice about anything, but sometimes even parties who are going to agree will need expert advice about something. So they might need advice about a tax-effective way to structure a settlement, for example. They might need accounting advice about what needs to be done to wind up an entity. In the parenting space, if people can't agree, they will often need input from an expert in terms of a report of some description. And if they're going to need that, if the dispute is such that it's obvious they're going to need that, often, then I would say often, the sooner the better.
- Julian:** Do you change your processes at all when these sort of mental red flags about a particular client might start forming in your head? As it appears that maybe the lawyer-client relationship is becoming more tense, do you need to change your practices?
- Jacqui:** Yes, and sometimes you only need to change them temporarily, because sometimes these things can be a blip.
- So there'd be a range of things that you might do with a client where you think, oh, I think there's a problem here, they're not understanding me or they're becoming upset about my advice. So the first thing might be to say look, I'm going to give you this advice in writing because there seems to be some misunderstanding between the two of us. It could be that you recommend they get a second opinion. I say to solicitors don't be afraid of sending someone off for a second opinion. Sometimes that's often the thing that will help them settle down, because if they are getting and unfortunately people get all sorts of people in their ears about what could be done better or so on and so forth there's always the barrackers on the sidelines and maybe they would benefit from hearing from another person that the matter's on track or maybe it's not, maybe they need a second opinion and they need to go somewhere that's going to do it differently, because certainly you might have a client who wants you to do things that you're simply not prepared to do.
- Julian:** We've been talking under the banner of managing expectations. Is that a heading that still applies if you get to the situation that you think you're going to terminate this client relationship?

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**Jacqui:** So I think the first thing is I think that it's useful if a retainer agreement actually has an explicit statement about when each of you is able to terminate.

Now, a client can terminate at any point in reality, but I think it's useful to say something about if you're not accepting my advice or something along those lines, then it may be that I will terminate, because what you don't want is a situation where a client wants to keep coming and seeing you ignoring your advice but not sort of freeing you from the retainer.

That's a really unproductive relationship and one might even say that that's got its own unhealthy aspects to it. If a client really doesn't want to accept advice and I suppose there's two buckets of that; there's the clients that don't want to accept advice for totally reasonable reasons, but they might say I've heard what you've said, but I want to do X, and you think, well, fair enough. Other times you'll have a client that won't accept advice and they are kind of on a path of destruction and they're going to take you with them. So that might be time to say look, I think you may have lost confidence in the advice you're receiving and it might be useful for you to go somewhere else to get a fresh perspective. I'm very much of the view that we shouldn't hang on to a client at all costs, sometimes for all different reasons, which doesn't necessarily reflect on the client. They would be better somewhere else.

**Julian:** It's an interesting phrasing that you chose there, though, because that's a situation where, in effect, it's the lawyer who's taking responsibility for terminating the relationship, but framing it from the client's perspective. Is that something you intentionally do and avoid expressing your own perspective on it.

**Jacqui:** Yes, it is.

**Julian:** How often does that happen?

**Jacqui:** Not that often. It's probably discussed more often than it actually happens, but it does happen and I actually think it's good for the client. There is no use being in a professional relationship where it's become unproductive and where either or both parties just feels like they're defending their own position the whole time. It's not a useful, it's just not a good use of legal fees.

**Julian:** Well, Jacqui, it's been a great pleasure discussing expectation management with you. My expectations of this podcast have been thoroughly met. Thanks very much for speaking with us on Risk on Air.

**Jacqui:** Thanks, Julian.

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## Outro

Thanks for listening to Risk on Air by Lawcover and to stay up to date, join us for the next episode on current risks in legal practice.