

Episode 2: Form E - Budgets and Income Needs

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SPEAKERS

Hebe Thorne, Chris Salter, Abigail Pearse

H Hebe Thorne 00:01

So we're here to discuss the budget and the needs section of the for me at section 3.1. And I know I, for one have definitely found the budget and the income needs section a bit overwhelming at times. And what about you, Chris? and Abby?

C Chris Salter 00:17

Thanks, Hebe. I would agree. Budgets are one of those things, which you find towards the end of forming in section three. And it's a part which is often overlooked by clients and given less weight, they think they have to complete the entire form from the start of just putting in their personal details to putting in the properties and other assets they own. And then when it comes to the income needs at the end, is almost forgotten. But that's not the case in our portance is huge. And many needs cases, in particular can really hinge on them. And they're they're scrutinised by the court, line by line by judges, by the other side, by everyone involved is looking at a for me. And then if you take it to a final hearing, then there's cross examination them as well. So they can be very intense for our clients. And for us when completing these and getting our clients to complete them.

H Hebe Thorne 01:06

I agree. I think that actually the fact that they are something in the for me, they do tend to fall to you as a more junior lawyer. But actually, the pressure of knowing that there might be someone with a pencil or going through it at some stage in the proceedings, can feel a bit overwhelming if you've put down the wrong figure for your clients hairdressing. So I absolutely agree with that. And Abby, do you find the same? Do you find clients in particular, don't lie? Yeah,

A Abigail Pearse 01:31

I echo that in that, for me tends to feel like quite a chore for a client and they and by the time they get to the budget, it feels a lot less important to them. And then we end up having to be quite heavily involved in kind of coaching them through it and reminding them that it it can be brought up at the final hearing or in

kind of coaching them through it and reminding them that it, it can be brought up at the final hearing or in a questionnaire. And just coming back to that is really important.

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Hebe Thorne 01:54

I also think that tying in with the kind of the afterthought part is that clients find them just a bit overwhelming. They feel like they've, they've earned the crust as it were. And then they get to this huge budget. And we're asking them to plug in essentially everything they spend in a year. And I absolutely don't like looking at that in any kind of detail. And especially when you've got people going through divorce, you ask them to look at a future that already feels quite uncertain. So I think that that can compound things. And I find absolutely, that we've got two types of clients, ones that I've got spreadsheets, but everything that's come in gone out for the last 25 years, and some that don't know how much about requesters. So that's definitely an issue.

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Abigail Pearse 02:40

Yeah, kind of echoing that I think I think the clients that is really difficult is they used to have in one household to splitting it down into two households and actually working out what are going to be costs that are going to be with the moving forward or ones that will fall away. And particularly for clients who may still be living with their ex partner, or in the process of only just moving out of the following matrimonial home, it is really hard for them to certain what's going to kind of fall away or even increase in time, I think we find as well clients who are perhaps on the backfoot. So they're not heavily involved in the finances during the marriage, they find this really, really overwhelming if they've got absolutely no idea how much bills cost, let alone how much is being spent on food or whatnot, it can feel really daunting for them. And they might need a little bit of extra coaching, and guidance on that.

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Hebe Thorne 03:29

I completely agree at the end, I also think this is the first time for lots of clients, they've had to put pen to paper and really put a finger on their future. And I think that can just be ridiculously overwhelming for lots of people. And that also factors into the capital needs when you ask them to put a finger on what they're going to need to live in, to drive around, etc. I think it can just be one of those things that's a bit

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Chris Salter 03:54

daunting. And just the thing to add is how time consuming they then can be. For those clients who know how much they spend month by month, it shouldn't actually take them that long. But for those clients who are not financially savvy, it will take them such a long time to go back through their bank statements and actually to work out how much they have spent on certain items, and how much they're likely going to spend in the future.

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Hebe Thorne 04:15

I'm sure it's not just me that spent the last few days before forming needs to be exchanged chasing a client for the budget to pin that down for everything else to be finalised. It's definitely one of those things. So when you've got a format and you've got a budget in the back, how do you go about explaining it to a

client? So do you fix it in the wider law and how it talks to the court about the needs of the client? Or do you try and break it down at all? breath?

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Chris Salter 04:40

I would say that a proportion of our cases will depend on needs. This is where there's not enough assets of the marriage for the sharing principle to be fully engaged. So it is likely that maintenance may be payable from one party to the other if there's a high earner. So this is where needs and these budgets become so vital. You need to set out to your client what the purpose of the activities, we're not just wanting to understand how much they spend at Harvey Nichols or how much they spend at Waitrose, we're not doing it purely to be nosy. We're doing it to ensure that our client's future in the short or medium or long term is protected and that they have enough income to do that. So we're looking at their income needs. I do feel though, when we're doing for me, and as I was saying earlier, it's one of those things at the end where clients can be exhausted of the form when they get to this stage. So I found that there's no need need one word, there's no point going back to clients and explaining the law in depth as to why you're doing this, but explains that we need to understand how much you're spending months and months to put this into a formula to help frame any final award. So it's not a case of going back to the full search 25 facts and explaining the law to them. But just saying, look, we need to understand what you've spent. And we can help clients do this, we should at this stage have their bank statements which are provided in for me. So we already have a good indication of what they might spend, we have a feel for the overall relationship and how much they're spending. But we need them to put that down into words to actually pin them to figures.

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Hebe Thorne 06:12

I agree. And what I find some clients struggle with is the difference between the current and anticipated figures, especially different what you said earlier, Abby, if they have actually moved out, and they are almost living these two separate lives. Now they don't know whether they should change the figures for their anticipated. And as a general rule of thumb, I always think that the anticipated should be largely the same as the current unless there's an obvious reason as to why they've changed is that the tack that you do tend to take,

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Abigail Pearse 06:43

I think something else that's really important when explaining the budget to the client is having a discussion with them about their standard of living, that's a separate part before me, but talking to them about what their standard of living was during the marriage, obviously, on the understanding that in a needs base case, when you have one household splitting into two, it's very unlikely you might be able to accommodate the same standard of living. But the court will attempt to do that in so far as possible when making an order. So in looking at what you're putting on the budget, you want to try and keep that same if you go out for dinner and you have a certain routine, pop it down. And if the court can accommodate it in their order, they will,

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Chris Salter 07:20

I would agree and taking that point further. For example, storage costs if you do have a client who is in rented accommodation, and it looks likely that as part of a settlement that they may be able to purchase

or move into property, you don't want to then include storage costs as their anticipated expense going forward. It should be remembered that you're actually when you're saying your future, anticipate costs, these are needs, which you anticipate for a long time in the future. They shouldn't be things which may be short term, at least interesting discussions about whether counselling and therapy should be included as an anticipated need and how that works. Your client may at the time feel that as a result of their relationship breakdown, they need therapy or counselling or assistance. But in three to five years time, is that still a cost which should be included in the for me? It's a tactical point around budgets, which should be looked at further, I think, yeah,

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Abigail Pearse 08:10

definitely, in terms of the anticipated costs, kind of push that we often have to take as if a client is in rented accommodation, they will put the rented costs down that they're currently paying. Whereas if they are going to be looking to buy in the near future, the costs are obviously going to be different. And they need to cater in mortgage costs if there's going to be a mortgage. And I think it's just giving clients that really gentle nudge to consider that because again, it's quite stressful for many way for me. So they're going to be finding it quite emotional and overwhelming. So it's just giving those gentle nudges, definitely

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Hebe Thorne 08:45

to also think though, if you've got a client that's a bit overwhelmed, you can give them the sweetener, if they're moving out on their own, they may be eligible for a 25% reduction in council tax. So that's one to make it slightly more appealing when they're filling out that form.

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Chris Salter 08:59

So a further point to consider when looking at anticipated needs are those who run personal expenditure through businesses. For example, when you have a husband or wife who run their vehicle expenses, petrol, tax, insurance, etc, through a business, if this is a wife who's doing it, who has, for example, access to a fuel card, that may not be available in the future because of the divorce. So that's something which wouldn't be a current expense, but would be an anticipated one which needs to be looked at in the future. Same of the reverse as well, where if you have a client who is still running all of their expenditure through the business, if for example, upon a final settlement in divorce, that business can no longer afford to run those expenses. They would again have to be included as an anticipated cost.

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Abigail Pearse 09:50

Yeah, absolutely. And I see quite a lot of clients under estimating their income needs. Generally they find it some clients find it relatively easy to put together the household expenses on bills just looking for the bank statements. But when it comes to stuff, such as estimating their toiletries and my dentistry costs, it is always massively underestimated. We also find a lot of clients are reluctant to put costs down for holidays and theatre trips and kind of nice outings that they would potentially like to do in the future, but they just don't provide for it in the, in the budget. Often when we talk to clients about this, it seems to be the rhetoric that they say, well, we haven't been on holiday in a couple years, or we haven't been to the theatre in the last year. And often that's because they're going through a divorce, that's extremely expensive and stressful. And, you know, I think it's reminding clients that this is, as Chris said earlier, we're looking at the longer term and the foreseeable future, what they're going to be spending, and it's

reminding them that it's okay to put stuff in about holidays, and clothes, and also things in terms of presence and children costs, we find that they're massively underestimated. And clients often underestimate children's costs within the budget, on the basis that they intertwine them with their own costs. And that's not always the most productive way to do it.

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Hebe Thorne 11:12

So what do you do? If you find a client's being a bit unrealistic with their budget, I'm sure we've all had experience where a client is just putting in some fairly ridiculous figures up or down for different items. And I wondered if you had any experience of what to do when that happens?

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Chris Salter 11:28

Yeah, thanks, baby. So there's been a few which I've come across in the past where, where you find people setting unrealistically high budgets. As we said, At the start, some people really have no idea how much they spend, or how much they're likely to spend as part of this future process they're about to enter into. So their budgets become completely unrealistic, and just do not mimic their standard of living, and then nothing like what's seen in their bank accounts. So I think a prime example I've come across is I mentioned storage area for storage is another good example, where it was expected that one party would move into a five bedroom house. And there was still a huge annual claim for storage, because she came from this much smaller house. And it's just unrealistic. And in fact, in this case, it was a massive distraction, because both parties became so hung up at the FDR on the cost of storage that it basically detracted away from many of the more pertinent arguments. But it comes back to more trivial points. And that we see people who are given a budget form which lists many a different item, which are there is a steer and is a guide to help prompt expenditure thoughts. But they'll see cleaners and gardeners and window cleaners saying, Oh, actually, I want all of these and then start putting in amounts for them. They've never had a cleaner or a gardener before. But now they're seeing the opportunity where they could assign a finger to it and put it in there. Again, it's just immediately going to cause issues because the other side will look at that and scrutinise it. So hang on a minute, you've never had it before. Why do you want it now? It's just unrealistic. It comes back down to other things as well, handbags, candles, flowers, what is a reasonable figure for it? Now, it could be that you look at it. And you say actually, do you need 15,000 pounds per year for candles in your new home? I don't know I find that absolutely outrageous. But then it goes back to the standard of living has that what's been afforded during the marriage? Have they spent that much on candles over the last however many years? And if that's the case, maybe it's not ridiculous, but chances are in that situation it would be?

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Hebe Thorne 13:32

I don't think you can ever spend too much on candles, quite frankly. And I absolutely agree. I think that sometimes you see clients that use the for me as a bit of a wish list. And it's quite hard to rein them back in once they have thought about the window cleaner. Abby, do you find the same? Do you have clients being realistic up or down?

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Abigail Pearse 13:53

In terms of whether to include a figure generally we'll look at whether the client has got property particulars they're interested in and whether they've obtained kind of information about their mortgage

raising capacity so that we can realistically include those figures in the capital needs section. But if they haven't, and they're not at that stage yet, which a lot of clients aren't, we tend to find that it's just best to state what they want in principle and not place a finger on it and tie them down to that figure. So for example, I need a three bedroom house and I need a car to take my kids to school. Without putting a finger on it tends to be

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Hebe Thorne 14:27

a sensible approach. In some cases, that can be quite hard to unpick and it's made even worse this year, isn't it because no one's been on holiday this year and trying to get clients to appreciate that they can still include a bigger despite the last year is definitely quite difficult. I think it all comes down to really is that actually a budget just needs to be robust. It needs to be reality tested. And what can be helpful is actually including some of the explanation within the budget and explaining how that figures come about and I know that some of my best experience with budgets are with clients that are all over the detail. And actually, they give you a finger, you query it because it seems a bit lower a bit high, and then they can rattle through exactly how they've calculated it. And you know that actually, if it did come to a point where they were cross examined on it, they'd be fine because may not be a finger up. I agree with that kind of expenditure may be much higher than you but spend what they produce me year proceeds showing that 15,000 pounds was a pretty bad year for them, but handles and actually it's normally 22.

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Chris Salter 15:29

Another perfect example of reality testing is something I did with a client a few months ago, where they provided me a figure for the amount of money they spend on petrol every month, I'm aware of their car, their car was included in there for me. So quick search of the miles per gallon, which their vehicle could do, working that through the price of petrol, it worked out this client drove around 18,000 miles a month. If you were to listen to how much he said he used on petrol. Now, obviously, that's clearly unrealistic. He doesn't do that much driving. In fact, he barely drives at all, especially at the moment. So that is a perfect time where you can just cross check your own clients budgets, but I actually this is unrealistic, you need to think what are you spending, rather than picking figures out of thin air as to how much you think you may spend on petrol in the future.

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Hebe Thorne 16:17

That's a really good point, actually, that almost cross examining your own client on some of the figures that come up can be helpful down the line. And I'm really conscious that we have done this podcast about just generally needs and we've only really spoke about income needs and the budget. And actually there is another section in there for the capital needs. And I wondered how you both approach that because often you'll have a client where they want to stay in the family home or they want to move. And there's the decision to be made as to whether you put a finger on that in the for me or you come to that down the line. And I wondered if either of you had any comments about how how you approach the capital needs,

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Chris Salter 17:00

I would agree and that leaving out a figure may well be sensible. It can be very tactical as to what you put in this box that you must be careful is what you say, because you don't want to sign your client up to something which is unrealistic. You could just your client could as a throwaway comment, say, Oh, well, I'm

happy to live in a two bedroom bungalow, I'm happy to buy it at 200,000. For example, if you take your clients instructions put that you could be doing them a huge disservice, as what the end result could be a much larger property. However, as for me is a sworn document. As we all know, it appears in every court bundle, it will be pulled over by every judge every barrister and comments which you may make at the very outset of proceedings. If you then a year down the line at a final hearing, you regret massively tying your clients hands to something and a particular value. So I'd agree putting loosely as to what you think you would need, but I wouldn't assign a value to it.

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Hebe Thorne 17:53

I agree I often imagine a judge with a red pen circling things. And I suppose this is the joy of being the JR Family Law podcast is that actually these are strike quite strategic decisions that we don't actually have to make on the whole. And that's part of the wider the wider strategy that we're helping with, I tend to find I suppose the best way for us to sort of round this podcast off is to talk about tips and tricks that you've picked up along the way that you'd like to share with our listeners. So I'll kick things off, I think that the table that's included in the for me, is all well and good. And it can be fit for purpose. But actually it can, like we said earlier act as a bit of a wish list for clients or it can just not really suit their lifestyle. So I find is one of the best things to do is actually to use our own spreadsheet on Excel and get them to. And then you can strip out what's not relevant and you can get them to plug in their own figures to that. You can also on that have a column that explains some of the figures like we spoke about earlier, you can justify some of the needs a bit more. And I just think it gives clients a bit more freedom also lets you pull off things if you know they've not got children, then you can pull off the whole children section that stops them getting distracted. And actually, it's not relevant to them. And it's just not it's not necessary. Same things if they've got extra houses, you can have sections for each house, or if you know they've not got houses, you just pull it back to one. So I think that that that's a really good way to kind of focus the clients minds and they can plug in figures and it all adds themselves up and they can see how it goes. So Abby, did you have any top tips?

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Abigail Pearse 19:35

Um, I think my top tip would be in terms of so for me says that you can include figures on a weekly basis monthly basis or annual assumes you're consistent. Generally I find it easiest to include monthly figures because those are obviously monthly. It's easier to quantify in that way. Generally just pick one and make sure that the client is using the monthly figures or the annual figures because sometimes you find that they get a little muddled and try and slip it Annual weekly figures and it just messes up the totals to just stick to one and be consistent with it.

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Hebe Thorne 20:06

I think we've all been slightly alarmed when an annual figures snuck into the monthly, you've got absolutely no idea where it's coming from. And Chris, did you have any top tips?

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Chris Salter 20:17

I do. And just following on from that some annual expenses could actually be quite small, your burglar alarm, for example, it may not be very much and though the sort of figures which could slip in which when exchange of four minutes sort of thing, the other side will pick up very quickly as we've been paying 10

pound a month for Bagram. Now, why have you put in it's 100. But it should just simple slip up where we as client? Well, our clients just just got it wrong, and we haven't picked up on it. So a very good cross check, as I alluded to earlier, is to go back through bank statements. Have a look, have a look, what they've been spending and see does actually match up what's their income, how much they've been receiving? And what are they saying that overall outgoings and needs? Are they broadly compatible? If there's a massive disparity, try and find out why is it that they've hugely overestimated, or underestimated? As we said, At the start, these things can be very daunting for our clients. And it might actually be one where as juniors, we can really get involved and do quite a lot of the legwork for our clients provided they're willing to pay for it and complete a lot of these ourselves for them to then cross check and add to because we have 12 months worth of bank statements. And we're just going to look through that and say what have they spent? So as Abby said, utilities easy, because every month it should be a similar figure. And then we can look at it so you actually well, where are they spending the rest of their money? Are they going out Plaza shopping? Are they going to restaurants and we can steer our clients for the first draft before they go in actually cross check out with their own lives to see if that is actually similar to what what they're doing on the ground?

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Hebe Thorne 21:50

I think we can all agree that actually the way to tackle a budget is to check everything your client has written thoroughly. And if in doubt, ask them because better for it to be asked than the other barrister in a courtroom. I think we have fairly neatly summarised budgets and made that slightly less overwhelming for junior lawyers. I hope so. Thanks, Abby. Thanks, Chris.