Episode 3: Form E - Pensions

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SPEAKERS

David Hickmott, Abigail Pearse, Carrie Stoneham

C Carrie Stoneham 00:00

Hello, my name is Carrie Stoneham and welcome to episode two of the junior family law podcast, a collaboration between Burges Salmon, Mills & Reeve and Newton Kearns. Over the run of eight episodes we will be discussing a range of topics likely to be encountered by junior family lawyers. The podcasts are designed to be a practical and helpful discussion through a series of topics you may encounter as you start out in your family or career. I'm an associate at Burges Salmon, having trained at Irwin Mitchell in Bristol and I qualified in 2016. So I'm four years PQE, and I moved to Burges Salmon in 2017. Today, I'm joined by David Hicknott, a four year PQE, solicitor at Mills & Reeve and Abigail Pearse, a newly qualified solicitor who's also at Mills & Reeve. In this episode, we're going to be discussing pensions and section 2.13 of the Form E. So first of all, how would we get to this stage? And why would we be looking at completing the section 2.13 of a for me, for the for me is a detailed form setting out the financial details of the party who's completing it, both parties in the divorce and financial remedy proceedings need to complete these and it sets out the needs of the party completing the form and their children if applicable. And of course, both parties have a duty to provide full and frank disclosure throughout family law proceedings before me as the usual method to provide disclosure, they can be exchanged voluntarily before proceedings have been issued, or as part of the court timetable. The for me is part of the information gathering process, which is necessary before settlement negotiations can begin. And they give a full overview of both parties financial positions, the court course has the power to make a pension sharing order, or a pension attachment order. So it's therefore key to understand the party's respective pension provisions before any consideration of an appropriate settlement can be undertaken.

A Abigail Pearse 02:02

Thanks, Kerry. I'm going to talk about the first three boxes of section 2.13. Looking at basically the information that you need to gain from the client in order to insert into for me about the pensions, pensions are typically extremely complicated, and clients might have very little understanding of the pension provision that they actually have. And so it's really important at the outset that you have a kind of information gathering exercise with the clients, where you gain as much information as you possibly can from them. This might be them telling you exactly what pensions they have, or if they're not completely sure it's gaining a detailed history of their employment. So for example, if they were employed 20 years ago, for a long period with a different employer, they might obviously have a scheme that they have forgotten about, it's really important that you begin to gather documents at an early stage. And a key documents again is Form P, which is used to basically gather information about a client's pension entitlements. Generally, a court can direct form pay up to the first appointment. But it's best practice to get this sorted up as early stage as possible in terms of completing form pay. If the client is unaware of the details to complete the form, they can, if it's an occupational pension, they might be able to get the information from their employer, or there is a website on the government page where it lists out various different pension schemes that has a lot of the contact details that you can access from there. It's also important to get the client to gain a benefit statement in relation to pension schemes because this will need to be attached to section two point 13 fees generally take a little bit of time to get together. So the best practices to ask the client to get them and if they can't be obtained in time for for me disclosure, you can attach to the for me, the letter to the pension provider, showing that the client has attempted to obtain it.

C Carrie Stoneham 03:51

So we will start to work our way through section 2.13 of the form. ie, if you want to follow through this, you should be able to download from a link near this podcast the page of the Form E which we're looking at. So Abby, do you want to start by looking at the first three boxes of Section 2.13? Great. So, David, I think perhaps one of the most important things to talk about the different types of pension scheme. And so perhaps you could talk us through the basics on that.

D David Hickmott 04:24

Yeah, of course, one of the first distinctions to make is between an occupational pension and a private pension. an occupational pension is a pension that is provided through your employer. important to be aware of those because they may have additional benefits, but they also may have restrictions on the type of transfer that can be made. A private pension is one that an individual sets up themselves. So a set is a good example of a private pension scheme in terms of the different types of pensions you can get once you've decided Whether it's occupational or private, you may have heard reference to defined contribution or defined benefits. So a defined benefit scheme is also known as a final salary scheme. And that's where you and or the pension provider or your employer puts in a certain amount every month, but then you are guaranteed a certain benefit at the end. So it may be a percentage of the final salary you had if it's through an employer. And these are sort of the most valuable and the most sought after types of schemes really, a lot of public sector pension schemes, a defined benefit. So look out for NHS schemes, army schemes, police pensions, be aware of these in particular, because a lot of public sector schemes run two different versions. So there might be an older version that you need to be aware of as well. a defined contribution scheme, also known as a cash purchase scheme, is the type of pension that most people will have with their employer. That's where you make regular contributions, maybe the employer makes regular contributions. And you build up what is effectively an investment port, which can be accessed further down the line at your retirement to purchase generally an annuity. So these tend to not have a great return on investment, but are the most common type of scheme that you'll probably come across. It's also worth mentioning, just the need to be aware of things that may not look like pensions, but actually fall within pension rules. And I think Carrie has had experience of that.

C Carrie Stoneham 06:41

Yeah, I had a case recently where my client had a large NHS pension. And when she provided the the information from the scheme, which included the cash equivalent value, it transpired that her NHS pension was split between the 2008 NHS scheme and the 2015 NHS schemes. So she had two separate cash equivalent values, and they needed to be listed separately at section 2.13. And on reading the information from the provider, it was clearly stated that there would need to be two separate pension sharing orders if both of those schemes were going to be shared. So it's just a note to make sure that you always read all of the information a client provides from their pension provider, it's not just a case of flicking through to find the cash equivalent value, which we'll talk a little bit more about shortly. It's also just making sure you've read through all of the information the scheme has provided, because that may be crucial at a later stage. For example, when you're drafting a consent order or a pension sharing annex, moving on to the cash equivalent value, it's worth noting that you need to ensure that whatever information the client has provided, does clearly state what's known as the cash equivalent value. Sometimes they'll just provide you with an annual Statement of Benefits from their provider, which is not necessarily a cash equivalent value. So you need to make sure you've checked the documentation, you should also make sure that if they have provided a cash equivalent value that it's dated within the last 12 months. And if you don't have that, then you need to, as we explained earlier request request the cash equivalent value from directly from the pension scheme. And one of the easiest ways to do that is with a form P and generally with the form P you can provide a form of authority that signed by the clients, authorising the pension scheme to provide the information you need that also you can come across valuations that are marked as not suitable for divorce. David, have you I think you may have come across this before you were mentioning earlier.

D David Hickmott 08:58

It's just something to be aware of that when you have for example, an occupational pension, you'll generally get a annual statement, which includes evaluation, quite often clients will say, Here you go, here's the information you need. But that valuation will markers will be marked saying not suitable for divorce or not suitable for pension sharing, which indicates there might be some aspects of the valuation that hasn't been taken into account. It's just something to be aware of. And to reiterate the importance of doing those four P's nice and early.

C Carrie Stoneham 09:30

Exactly. I completely agree. So going back to what you were talking about, David in terms of the different types of schemes and in particular defined benefit and public sector schemes. I know we were all discussing earlier the importance of sort of flagging early on whether the advice of an actuary is going to be required. rb I know we were we were talking about this. Perhaps you want to just touch on this. Yeah, quite right, Gary, so we are not qualified to give clients formal financial advice. And therefore it is really important that they are aware that they can get a financial advisor to guide them. And if there is the prospect of there being a pension sharing order, and particularly if there are defined benefit schemes or any complicating factors, were there any of the pension schemes that the clients have, they might want to consider instructing a paid, which is a pension on divorce experts further down the line, it's quite important to flag to the client that it might be necessary to instruct the pOH to do a single joint expert reports reporting on both your client and their spouses pensions. So yeah, I agree. I think at the moment, I'm sure you'll both agree it's taking rather a long time to get experts to prepare reports takes a number of months to get a report Plus, you need to factor in the long timescales from the pension providers to get the cash equivalent values in the first place. And so I think the earlier you can flag up that an expert will likely be required, the better so you can get them instructed to get a report as soon as possible. But I think it's really important to bear in mind that many clients will need a financial advisor. In any event, for example, if you you have a case where your client has got very little by way of pension, but their spouse has has a large pension provision, it may be likely that a pension sharing order is going to be appropriate, depending on the circumstances of the case. And if your client is going to be in receipt of a pension sharing order, then they will need some financial advice in order to set up their own pension scheme to in order to receive that pension share. And if appropriate, I won't go into too much detail about that. But it's just it's just something to think about as early on as possible. So working through the form, the next box we come to is the date the cash equivalent value was calculated. And just a note to say that if you don't have the cash equivalent value, when you're completing the form, you should include a copy of your letter to the pension provider requesting the cash equivalent value so that the other side can see that that's been requested. Yeah, carrying on from that carry. Another important thing to point out to your clients is that pension providers do have a legal obligation to provide the policyholder with a free statement, and a year. So they're entitled to obtain one free one a year, which a lot of clients aren't aware of. Yeah, exactly. And yet another reason to make sure you do get on with things if it turns out you are going to need to report and you don't want to end up in a situation where you've got to request cash equivalent value again, because 12 months have passed. So definitely a good point to bear in mind. The next box on the form asks whether the pension is in payment, or drawdown. This, of course, means whether the client is actually receiving income from the pension. If they are they should have a statement from the pension provider, which gives details of the income they're receiving. So if they are receiving income from a pension, then that would need to be included at section 2.19 of the form II. And that's where you provide the documentation for that if a pensions in payment, it will still have a cash equivalent value, and it is still capable of being shared. So you do still need to obtain that information and complete section 2.13. On that point, you also need to bear in mind the parties or your clients state pension position. David, did you want to talk a bit about that for

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David Hickmott 13:30

us? Yeah, of course, obviously, most people will have some kind of state pension entitlement, you might want to include a forecast, you can get a indication online through the.gov website. If you need a more detailed and accurate forecast, what state pension is going to be, your client can download and fill in forms br nine br 20 just worth noting that state pension can't be shared, like a private or an occupational pension can be shared. But it might be relevant if you have older clients who are likely to be in receipt of it soon, because it will obviously impact their income. And of course,

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Carrie Stoneham 14:12

the details of the state pension can be filled in at section 2.18. If they're in receipt of state pension. That's where you'd include that information. And I think we were discussing David went with that, which probably wouldn't send off forms br one nine br 20 for younger clients, it's generally clients who are approaching the time and age that we would generally do that. I think you'd agree.

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David Hickmott 14:38

Yeah, I'd completely agree, as I say can't be shared. So there's no capital consideration there. It's really just about whether it's going to affect income. And obviously if your client is in their 30s, it's not going to affect their income for a very long time. So it's unlikely to be particularly relevant.

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Carrie Stoneham 14:57

Exactly. Okay. And following on Through the form will the next few boxes refer to the PPF, which is the pension Protection Fund. So the pension Protection Fund is a fund that protects people who have a defined benefit pension and but that employer has become insolvent. So in that case, the pension Protection Fund will step in to ensure that members are protected and will still receive a pension, the client is likely to be aware if their pension has entered the pension Protection Fund. And they will likely have documentation regarding that, which you'd need to include. It's not something that's encountered very often, the three of us will have were discussing this earlier. And I don't think any of us have had a case where this has been a major issue, but it is just something you need to be aware of. And when it asks if the PPF compensation is kept, which is the last box of that section that relates to the compensation a member can receive from the PPF. And that can vary depending on whether the member is at the normal retirement age for the scheme or not. It should all be covered in the documentation your client should have from the PPF, which obviously can be obtained from the PPF directly. So we've been through section 2.13, just to flag whether there are any other points to think about rb, or any resources you found particularly helpful when when looking at pensions. Yeah, absolutely. So I think it's no secret that pensions are complicated, especially for junior lawyers. And so the starting point should be looking at the park report, which was produced in July 2019, by the pension advisory group that basically has everything you could possibly need to know, on a first look. And it's broken down in a really helpful way. There's a really useful executive summary at the beginning, which I think is about 14 pages. And it gives you a good overview. There's also advice now have just produced a survival guide to pensions on divorce, which basically takes bits from the bank report and really simplifies it and makes it accessible for clients. So not only is it good to recommend to clients to read, it's really helpful for junior lawyers as well, because it really breaks down everything that you need to know in a really accessible way. You can access the advice now Survival Guide online for free, or you can pay 20 pound to get a hard copy sent to you, but really would recommend that. And then there's a whole host of case law, but particularly his honour judge has his judgement in W and H, which was in February 2020, which is a very helpful judgement and again, cover some really important points that you'll see covered in a lot of articles and commentary surrounding pensions. Yeah, that those are my go to resources that I'd recommend. Yeah, I completely agree, I use that report a lot. It's really accessible and easy to read and split out into sections. So I completely agree, I use that a lot, just a point that I came across a while ago in terms of tracing lost pensions. So you may have a client who they might know who that if they had a personal pension, they might know who the provider was, but they have no details in which case, that's pretty easy, you can just write to the pension provider with the form P and form of authority and you'll likely be able to get what you need. If you're tracing a workplace pension, then of course, you can contact the employer or former employer. And if that employer provided access to a personal scheme, then the employer should have the details of that pension provider. If you're still struggling, and the client still just they just don't know they don't have the contact details of their old employer or they just don't know who the provider was of an old personal pension they might have had long ago. And then you can contact the pension tracing service. This is a free service and it searches a database of tickets over 200,000 pensions, and it will try and find the contact details that you need. So you can either call them or they've got a form online. So that can help you if you're trying to track down the details to find a pension scheme. So not to not to make things too complicated. David, I think we were just briefly talking about lifetime allowance earlier as well, which is probably something to just be aware of,

D David Hickmott 19:13

yeah, it's just something to flag and discuss with your clients. If they have very large pensions, either a single very large pension or pensions, over a few different schemes. There is a limit on how much you can put into a pension and still take the tax benefits. So if you're seeing big numbers, kind of over a million pounds, then you should talk to your clients about whether they have protection from the possible tax consequences. It's something they should be aware of definitely worth discussing at an early stage. Great, thank

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Carrie Stoneham 19:46

you. So we've now reached the end of the podcast. So thank you very much, David and Abby, be your thoughts and thank you all for listening.