

ACTING FOR THE SELF- EMPLOYED

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THIS AFTERNOON

- Basically claims for those who don't pick up a regular pay cheque.
- Self-employed.
- Running a business.
- Sports & entertainment.

NEVER EVER BELIEVE WHAT YOUR CLIENT TELLS YOU

- Not being harsh here – but helpful
- You will meet some wonderfully honest people who will know their business to the last penny.
- You will meet people who are “confused”.
- You will meet people who see this accident as a “business opportunity”.

BUT I WANT TO LABOUR THE POINT

- Clients can blame you.
- This is an area rife with difficulties.
- The term “self-employed” covers a multiplicity of people.

SO THE FIRST THING YOU WANT TO SEE

- Tax returns.
- Not accounts.
- Not drafts
- The figures the Claimant sent to the Revenue and the tax paid (if any).

NEXT THING: DO A BANKRUPTCY SEARCH

- A bankrupt claimant has difficulties in bringing an action.
- Right of action vests in Trustee – C has only right to award for pain and suffering.
- Issuing and settling without Trustee's consent gives rise to major (if not intractable) problems.

MISTAKES OFTEN MADE

- “I paid out £25,000 in extra staff while I was off”.
- This does not represent the claimant’s net loss.
- The question is how the profitability of the business decreased, and the claimant’s net share declined.
- *Not* the expenditure.

MY MATE HELPED ME OUT AND I WANT TO
PAY HIM “SOMETHING”

- Not a recoverable head of damages

Hardwick –v- Hudson [1999] 3 All ER 426

- CA rejected a claim where the claimant's wife had worked additional hours, at a nominal rate, to avoid National Insurance.
- The increased hours had been incurred because of the claimant's inability to work in the business because of his injuries.

MY MATE HAD JUST OFFERED ME A JOB

The Claimant had filed a witness statement from Mr Adrian Davies which claimed that he was offered employment at the level of £40-45,000 p.a. which his conviction prevented him from taking up. Mr Davies did not attend trial to give evidence. He had made no reference to this alleged job offer when he gave character evidence for the Claimant at his third trial, nor is it clear why this offer was not available upon his release. There is nothing to support this offer beyond the Claimant's assertion. No relevant documents have been disclosed. There are issues concerning the existence of Mr Davies' company. I find as a fact that no job offer was made by Mr Davies.

(Torrance –v- Bradberry [2020] EWHC 3260 (QB))

KNOW ABOUT LOSS OF
CHANCE

IMPORTANT IN THIS CONTEXT

Issues relating to loss of chance can play a major part in claims for future loss of earnings of a self-employed person, particularly an entrepreneur, sportsman or woman and anyone involved in show business.

Appleton v Medhat Mohammed El Safty [2007] EWHC 631 (QB)

- The court considered the loss of chance of a professional footballer on the basis that he had a 75% chance of playing at championship level and a 25% chance of playing in division one.

XYZ v Portsmouth Hospitals NHS Trust – loss of chance of running a developing a lucrative business.

XYZ v Portsmouth Hospitals NHS Trust [2011] EWHC 243 (QB)

- Damages were awarded on the basis that the claimant would have set up and run a substantial business:
- there was a 50% chance that the business would reach £5 million and a 20% chance that his business would achieve a turnover of more than £10 million.
- (The total award in that case was £6,740.646, nearly £5 million of this was loss of earnings).

PROVING IT...

PROVING IT 2: COLLETT –v- SMITH

- C 18 year old playing for Manchester United reserved team.
- High “over the ball tackle”.
- Leg fracture.
- £35,000 for PSLA

ORAL EVIDENCE FROM

- Sir Alex Ferguson
- Gary Neville
- Paddy Crerard (Youth coach and assistant manager).

Numerous others.

COMPARISONS BETWEEN THE CLAIMANT AND HIS PEERS

“Sir Alex’s evidence was that the claimant had been of rather slight physical build at the ages of 14, 15 and 16 years. Over the season of 2002/2003, he had developed physically. His performance in the FA Youth Cup Final had been “absolutely outstanding” and there were signs that he was going to fulfil his potential. However, Sir Alex was clear that, at that stage, the claimant was not as strong as Kieran Richardson, who was, he said, far better equipped to play at the top level at that time. However, the claimant was, according to Sir Alex, “easily” on a level with other members of his group, such as Paul McShane, Phil Bardsley, Sylvan Ebanks-Blake and Chris Eagles.”

AWARD FOR LOSS OF EARNINGS

- Past loss of earnings £549,417

I calculate the claimant's loss of earnings as a professional footballer as follows:

At Championship level: £3,261,055

At Premiership level: £1,401, 930

Less Prospective earnings to age 35 £ 128,482

Total: £4,534,503

DISCOUNT: FOR CONTINGENCIES

Doing the best I can to balance the various relevant factors, I regard it as appropriate to apply a discount of 15% to the figure for future loss of earnings to take account of the risk of injury and of the various other contingencies. A discount of 15%, when applied to loss of earnings of £4,531,429 results in a figure of £3,854,328

Raitt –v- Lunn (2003) Lawtel

- Assistant professional golfer attacked by dog on golf course.
- Claimed would have been professional. £300,000 past earnings and £800,000 potential earnings.
- The judge held that there was no evidence that his game had been affected by the accident and awarded £3,000 loss of earnings.

MITIGATION OF LOSS

- The fact that a performer can no longer perform or a sportsperson be involved in sport does not render them unable to work totally.

- Bellingham –v- Dhillon [1973] QB 394

'...the court has to take into account any steps which the plaintiff, as a reasonable and prudent man of business, had taken to mitigate his loss'.

VULNERABLE WITNESSES

“amends the CPR’s Overriding Objective, following the recommendation in the report by the Civil Justice Council on Vulnerable Witnesses (published in February 2020) in civil proceedings. The amendment makes it clear that dealing with a case justly includes ensuring that the parties can participate fully, and that parties and witnesses can give their best evidence. It also deals with the costs (not Fixed Recoverable Costs) provision for additional work or expense incurred due to vulnerability of a party or witness.”

- 4. Factors which may cause vulnerability in a party or witness include (but are not limited to)—
 - i. Age, immaturity or lack of understanding;
 - ii. Communication or language difficulties (including literacy);
 - iii. Physical disability or impairment, or health condition;
 - iv. Mental health condition or significant impairment of any aspect of their intelligence or social functioning (including learning difficulties);
 - v. The impact on them of the subject matter of, or facts relevant to, the case (an example being having witnessed a traumatic event relating to the case);
 - vi. Their relationship with a party or witness (examples being sexual assault, domestic abuse or intimidation (actual or perceived));
 - vii. Social, domestic or cultural circumstances.

6. The Court, with the assistance of the parties, should try to identify vulnerability of parties or witnesses at the earliest possible stage of proceedings and to consider whether a party's participation in the proceedings, or the quality of evidence given by a party or witness, is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make directions as a result.

WEBINAR 6th APRIL 2021

VULNERABLE WITNESSES IN CIVIL PROCEEDINGS: THE
NEW RULES:

A SUMMARY

- Know what can be claimed.
- Check your client's position in relation to bankruptcy.
- Get tax returns.
- Don't rely on accountants.