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### Calculating Pension Loss

By  
Frenkel Topping Limited

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Life expectancy increased  
since 70s.

M70 - Male - 68 } now  
          Female - 72 } much  
                                  } higher.

So cost of pensions is  
much higher.

### Why Consider Pension Loss?

- About half of the UK workforce is in an occupational pension scheme.  
(Source - Harvey on Industrial Relations and Employment Law, B-1171)
- Pension loss claims can be relatively large as they may span many years.
- Failure to consider - professional negligence - under-settlement of claim.

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### How does this affect my Client's Claim?

By looking at the Governments new pension legislation and applying this to a personal injury, clinical negligence or criminal injuries compensation scheme claim you can legitimately add value, quite often significantly, to the schedule of loss and the quantum figure for the claim.

Pension Loss is no longer restricted to those who are members of their employer's final salary pension schemes at the date of the accident/negligence.

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*Prof way if don't consider loss of pension + you have overlooked potentially subst - loss.*

### Current Types Of Pension Scheme

- State Pension and Pension Credit.
- Group Personal Pension , Stakeholder Pension
- Individual Personal Pension or Stakeholder.
- Final Salary Pension Scheme

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### Pension Schemes After New Legislation

- State Pension and Pension Credit.
- Qualifying Workbased Pension Scheme (QWPS) incorporating Group Personal and Group Stakeholder Schemes.
- Individual Personal Pension or Stakeholder.
- Final Salary Pension Schemes.
- National Employment Savings Trust (NEST)

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*If already in a pension scheme - if it <sup>occup</sup> means that will qualify as a NEST if it ~~meets~~ meets NEC req's*

### The New Legislation

- Government encouraging personal provision.
- Automatic Enrolment.
- Compulsory Employer Contribution.
- No exemption for Employers.
- NEST Corporation (which took over from the Personal Accounts Delivery Authority on 5<sup>th</sup> July 2010) has been set up to ensure that everything is in place for Personal Accounts.

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Eye can opt out of NEST p  
up to 3 yrs

If employing carers - the care  
regime needs to include the cost  
of the pension <sup>share</sup> for the carer

### The New Legislation

- Government introducing Personal Accounts from October 2012 - 2018.
- Employer contributions set at 3% (phased in until 2018) Important to remember that these are gross.
- Employee contributions of 4%.
- Topped up by a Government contribution of 1% (tax relief).
- Earnings more than £7,475 for auto enrolment, *gross*.
- But contributions based on £5,715 to £38,185 band earnings.
- Basic Provisions in Section 20 (1) Pension Act 2008
- Scheme details Pensions Bill 2011

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NEST must have total of  
8% of salary going in.

If got group personal pension scheme  
there are no upper earnings limits

↳ Pension loan claims ① tax relief  
② investment returns  
(if topping claim 5% projected  
M.V. rtn)  
③ eye contributions

### State Pension Age

On 29<sup>th</sup> November 2011 as part of the Chancellor's Autumn Statement it was announced that the planned increases to state pension age would be brought forward (66 between 2018 - 2020, 67 between 2034 - 2036 and 68 between 2044 - 2046)


The increase to age 67 would now commence in 2026 rather than 2034 and therefore for anyone born after 6<sup>th</sup> March 1961 will have a retirement age of 67. This is being phased in and therefore those born between 6<sup>th</sup> April 1960 and 5<sup>th</sup> March 1961 will have retirement ages of 66+.

Eg. Born 6<sup>th</sup> May 1960 - Retirement Age 66 and 2 months.

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### State Pension Age

- Increases to age 68 will remain as previously announced (for the time being) between 2044 and 2046.
- Therefore anyone born on or after 5<sup>th</sup> April 1977 will be affected.
- We believe that this will also be brought forward and that there will be a further extension of state pension age to at least 70.
- In our opinion for Claimants of a young age reports should assume a retirement age of at least 70 as shown in the example to follow.

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### Personal Accounts (NEST)

- Legitimate claims for employer contributions throughout working life.
- Known contribution loss for claims where the claimant is a child and their occupational status is not known.
- Existing Employer Pension Schemes must meet minimum requirements.
- Otherwise automatic enrolment into NEST

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### Examples

- The following examples show the value a Pension Loss Calculation can add to the schedule of loss.
- Important to remember the members of employers pension scheme often have other Benefits in Kind which have been lost.
- Take account of a discount for adverse contingencies in line with 'Page -v- Sheerness Steel - 1999' Is this applicable for your client?

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eg - Health insurance } can allocate cost  
 - Life assurance } of replacing these insurance benefits

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*superseded Aziz v National Coal Board*

### Personal Accounts Example

- Claimant is 18 years of age at the time of the report.
- Suffered complications at birth resulting in visual impairment.
- Loss of Earnings Claim in the schedule suggests that Gross Earnings but for the injuries is £27,134.
- Assumption that Claimant would have been in full time employment until age 70.
- Salary increased to age 70 using NAE of 3.2% less inflation at 2.5%, therefore increase 0.7%.

ASHE 3.37 - 0.7%

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### Personal Accounts Example

- Under NEST C would have received a 3% employers contribution from 2016 onwards.
- Loss of Employer Contributions at 3% = £47,385.95
- Tax Relief = £12,636.25
- Investment at 5% = £179,515.80
- Total Loss = £239,538
- Discount rate Ogden table 27 (0.2838) = £67,980.88
- Less adverse contingencies at 14.41% in line with Page v Sheerness Steel.
- £58,184.83 loss added to schedule

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### Personal Accounts Example 2

- Pension Loss not just for larger claims and can sometimes have more of an impact on the overall value of a smaller value claim.

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*Smaller pension loss claim*

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## Personal Accounts Example 2

- Claimant was 44 years old at the time of the accident.
- Injuries resulted in him leaving his job although he has subsequently found alternative employment and therefore the loss of earning claim is relatively low.
- Earnings pre accident = £19,706.90 gross (£15,520.96 net).
- Earnings post accident = £10,055.54 gross (£8,861.52 net).
- Net Loss of Earnings = £6,659.44 net
- NRD = 66 in line with Government stated increases in state pension age.
- Claimant was not in a Pension Scheme at the time of the accident.

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*Even if not in pension  
consider pension loss claim  
due to compulsory pension  
coming in.*

## Personal Accounts Example 2

- NEST pension entitlement but for the accident.
- Loss of Employer Contributions phased in up to 3% = £11,570.92.
- Tax Relief = £3,467.27
- Investment at 5% = £9,664.55
- Total Loss = £24,702.74
- Discount Rate Ogden Table 27 (0.6103) = £15,076.08
- Less adverse contingencies at 5.88% in line with Page v- Sheerness Steel.
- Total Possible Pension Loss = £14,189.60

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*Loss of pension due to  
lower residual earnings.*

## Personal Accounts Example 2

- NEST pension entitlement with new employment.
- Employer Contributions phased in to 3% = £5,822.32.
- Tax Relief = £1,744.68
- Investment at 5% = £4,863.06
- Total = £12,430.06
- Discount Rate Ogden Table 27 (0.6103) = £7,586.06
- Less adverse contingencies at 5.88% = £7,139.99

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## Personal Accounts Example 2

- Total Pension Loss with no further employment = £14,189.60.
- Possible Entitlement (with Discounts) from new employment = £7,139.99.
- Loss for schedule = £7,049.61.



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## Final Salary Schemes

Calculation of pension loss for Claimants who are members of Final Salary Pension Scheme's have not changed following the Government's new pension legislation.

The following slides are a reminder of how this type of pension loss is calculated.



*Final salary pension loss calc.*

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## Final Salary Calculations

- Benefits are based on a multiple of final salary and the number of years membership in the pension scheme usually 1/60<sup>th</sup> of Salary for every year of service.

**Le. Pension income = Final Salary x  $\frac{\text{years of service}}{60}$**



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### Final Salary - Example

- Claimant aged 36.
- Member of Final Salary Scheme for 2 years at time of accident.
- Scheme Retirement Age is 60.
- Maximum years membership is 40.
- Gross Salary at date of Leaving £17,220.
- Pensionable Salary - £10,145.40.
- What would be the Pension Loss?



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### Final Salary Example

- Actual Pension Entitlement  
 $£10,145.40 \times 2/60 = £338.18$  per annum pension income



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### Final Salary - Example

- If he remains in the scheme to age 60 and his salary remains the same then his potential pension income could be:  
 $£10,145.40 \times 28/60 = £4,396.34$  per annum pension income
- Making the annual pension loss - £4,058.16



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### Final Salary - Example

- In reality had the claimant worked until 60 then he would have been entitled to pay rises and promotion.
- Therefore previous calculation does not take account of the full extent of the annual pension loss
- Assuming annual increases of 3.75% per annum (average confirmed by claimants employer) less 2.5% for inflation actual salary increase 1.25% his projected final pensionable salary would be £14,013.29
- Important to take the effects of inflation into account when assessing an salary increase.

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*increasing pensionable pay to allow for pay rises.*

### Final Salary - Example

- Based on the projected pensionable salary the annual pension could have been:

$£14,013.29 \times 26/60 = £6,072.42$   
 annual pension income

- This makes the annual pension loss £5,734.24

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### Final Salary - Example

Taking account of this annual figure the pension loss for your schedule would be:

$£5,734.24 \times 9.49 = £54,417.94$

Source: Ogden Tables 6<sup>th</sup> Edition, Table 19 (Pension Loss Multiplier)

NB We have not taken account of adverse contingencies in this example

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## Loss Of Dependency Example

- Deceased was aged 45 at the time of his death and was a high earner.
- The deceased was not a member of a pension scheme at the time of his death but had made previous pension provision
- His surviving spouse was a member of the NHS Final Salary Pension Scheme and had been in the scheme for almost 19 years.
- A calculation of the pension income was done for 65 to 67 then 67 onwards as the claimant would not have attained state pension age until Spouse was 67.

FAA - loss of dependency  
rate based on pension

## Loss of Dependency Example

	65	67 (spouse)
Deceased Net Pension Entitlement	12,599.70 pa	18,849.14 pa
Spouse Net Pension Entitlement	11,252.78 pa	15,975.81 pa
Total Combined Pension Income	23,852.48 pa	32,824.95 pa
2/3rds of this Combined Income	15,901.65 pa	21,883.30 pa
Less Spouse Pension Income	(11,252.78 pa)	(15,975.81 pa)
Loss of Financial Dependency	4,648.87 pa	5,907.49 pa

(NB) If CIS pensions - CIS  
salesmen used to sell  
C's a different/new pension  
each yr (as they get commission  
on new pensions, not full  
payments on existing pensions)  
So beware there may be  
more than 1 pension.

## Loss of Dependency Example

- We must then capitalise this loss using the Ogden Tables.
- From 65 to 67 - £4,648.87 x 1.44  
= £6,694.37
- From 67 onwards - £5,907.49 x 8.20  
= £48,441.42
- Therefore the Pension Loss to be added to the schedule is £6,694.37 + £48,441.42 = £55,135.79

(1) If want a provisional view  
as to whether there is a pension  
loss (usually for free) - F. Topping  
are willing to do this.

## Which Cases Should I Consider?

### Applicable to -

- Those unable to ever return to work
- Those who will be unable to work for an extended period.
- Those who will have a reduced earning capacity.
- Minor Cases where the child may never work or will have a reduced earning capacity, where life expectancy takes the child beyond age 22 years.
- Fatal accident cases even where the deceased had a pension that has paid out a widows pension and/or a lump sum death benefit.
- Catastrophic cases where a carer or carers will be employed by the claimant.

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## Conclusions

- Not every case will have Pension Loss
- Significant increase in applicable cases
- TBA is no longer necessary
- Can add considerable value
- Viability assessment available

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## Pension Loss Flow Chart




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and Finally...

- Any Questions?



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