



Kenworthy's
Chambers

LOSS OF EARNINGS & THE SELF-EMPLOYED

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SCOPE

- Who falls into this class
- Common themes across the class...but why the distinctions matter
- Investigating the claim
- Proof, pitfalls and ways around them
- Influencing the award through the multiplier



THE CLASS

- Sole traders – 2 types
- Partnerships – 2 types
- Limited company – family (overlap, not strictly sub-class)



COMMON THEMES & DISTINCTIONS

- Loss of profit
- What **must** be proved
- Accounts & accountants – vital cog in any claim
- Medical evidence & causation more generally
- Things in common with the employed
- Income beyond profit
- Types of accounts
- Taxation



SOLE TRADERS - UNINCORPORATED

- Typical small business – gardener, barrister
- Loss of profit – simple equation
- Measure of the loss
- P&L & Tax Returns, pre and post
- Compare them and compare Tax Returns to P&L to avoid nasty surprises



SOLE TRADERS – INCORPORATED

- Shop, garage etc
- C as independent contractor/director
- Beyond profit – questions people fail to ask, particularly of those with no accounts yet
- Remuneration, dividends, Co. profits
- Co. accounts – P&L, balance sheet, C's personal accounts/tax returns



SOLE TRADERS – INCORPORATED

- Remuneration
- Dividends
- Co. profit as shareholder
- The 'one man band' principle – **Lee v Sheard**
[1956] 1 QB 192



PARTNERSHIPS

- Partnership's accounts & C's individual accounts
- LLP – 'member', annual accounts, net profit, profit share
- Prevailing advice is treat LLP like traditional partnership for valuation
- Presumption of equality
- But look at the reality
- C's contribution, 'sleeping' partner
- Family and effort (the same with companies)



PROOF, PITFALLS, SOLUTIONS

- Proving loss was due to C's impaired efficiency
- Of general application, but put in context by pitfalls
- No accounts e.g. nascent venture, failure to produce them
- Incomplete accounts – **Ashcroft v Curtin** [1971]
1 WLR 1731



PROOF, PITFALLS, SOLUTIONS

- Establishing the reason for downturn from accounts
- Working outside of the tax system....
-and whether that should deter the claim
- Failure to mitigate
- Future loss



ACCOUNTS – NONE/INCOMPLETE

- Have interim accounts prepared
- Update/complete the accounts
- Evidence of the state of the business before and after accident
- Address at first consultation or as soon as practicable
- Preserve and copy
- Witnesses



ACCOUNTS – CAUSE OF LOSS

- Increased cost of sales
- Downturn in the industry
- Market forces
- Change in dynamics in the business
- Forensic accountant
- Employment consultant



OUTSIDE TAX SYSTEM & MITIGATION

- Not a bar to recovery; **Newman v Folkes** [2002]
EWCA Civ 591 – ‘collateral illegality’
- **Duller v South East Lincs Engineers** [1981]
CLY 585
- When it might deter bringing claim
- Ask questions early to pre-empt mitigation
- Running the business differently
- Residual earning capacity



FUTURE LOSS

- Nascent business/business closed – employment consultant, comparators
- Loss of earning capacity – **Ashcroft v Curtin**
- Includes where C closes business and goes into employment
- Loss of chance
- Loss of prospective business venture
- Residual earning capacity



USING THE MULTIPLIER

- Always important, but specific cases where it will be vital
- Familiar with discount for contingencies other than mortality
- Tables A-D
- Intention that factors determinative of setting multiplier



USING THE MULTIPLIER

- But still the case that the individual C's circumstances can influence it
- Highlight the factors
- History – work ethic & skills/qualifications
- Prospects, even if cannot prove for multiplicand
- Health – not just C's own
- Pressure to keep working