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Pension Loss – Opportunity and Risk

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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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Pension Loss Consideration

Applicable to:

- Those unable to ever return to work as a result of the accident/negligence.
- Those who will be unable to work for an extended period as a result of the accident/negligence.
- Those who will have a reduced income as a result of the accident/negligence

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Pension Loss Consideration

Applicable to:

- Minor Cases where the child may never work or will have reduced earning capacity as a result of the accident/negligence, where life expectancy takes the claimant beyond 22 years.
- All fatal accident cases even if the deceased had a pension that has paid out a widows pension and/or a lump sum death benefit – provided there is a dependency.
- Catastrophic cases where a carer or carers will be employed by the claimant.

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Type of Pension Scheme

- State Pension and Pension Credit
- Defined Benefit Pension Scheme
- Defined Contribution Schemes:
 - Group Personal Pension, Stakeholder Scheme.
 - Individual Personal Pension, Stakeholder.
 - Work Based Pension Scheme.

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State Pension Age

Planned increases brought forward:

- 2018 – Age 66
- 2026 – Age 67
- 2046 – Age 68

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State Pension Age

- Linked to longevity
- Continual review of state pension age
- Five yearly intervals.
- 10 years notice of further increases?!?!
- 69, 70.....

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Defined Contribution Pension Schemes

- The vast majority of pension plans in future will be set up on a defined contribution basis.
- Certainty of the contributions going in.
- No certainty of the outcome as based on various factors:
 - Investment Returns
 - Annuity/GAD Rates
 - Mortality
 - Legislation
 - Competition

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Work Based Pensions

- Introduced between October 2012 and October 2018
- Employer contributions set at 3% minimum will be (phased in until 2018)
- Employee contributions of 4%
- Tax Relief of 1%
- Earnings more than £10,000 for auto enrolment.
- Minimum age 22
- Band earnings of £5,772 to £41,865.
- Basic Provisions in Section 20 (1) Pension Act 2008
- Scheme details updated in Pensions Bill 2011.

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Work Based Pensions

- Legitimate claims for employer contributions throughout working life.
- Known loss for claims where the claimant is a child (life expectancy beyond 22).
- Existing Employer Pension Schemes must meet minimum requirements.
- Size of Employer (Currently 61 employees)

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Case Example: Pension Loss

- Instruction from solicitor
- Counsel advised TBA!
- ‘It will all come out in the wash
- ‘No expert report needed’
- No cost allowed on instructions from counsel
- Quantum added – approx. £250k

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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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Personal Accounts Example 2

- NEST pension entitlement but for the accident.
- Loss of Employer Contribution phased in 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 (or Ogden A-D.)
- Total Possible Pension Loss = £14,189.60.

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Personal Accounts Example 2

- NEST pension entitlement with new employment.
- Employer Contributions phased in to 3% = £5,882.32.
- 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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Benefits in Kind

Important to remember the members of employers pension scheme often have other Benefits in Kind which have been lost:

- Death In Service
- Private Medical Insurance
- Critical Illness
- Discount cards

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Defined Benefit Pension Schemes

- A traditional pension plan that defines the benefit that an employee will receive.
- At retirement, the employee will receive a pension that is defined under the terms of their employment contract.
- Generally, these schemes are offered by the public sector and some very large private companies.
- Also known as: Final Salary, Superannuation and Career averaging schemes.

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Defined Benefit Pension Schemes

Benefits are based on the accrual rate, member's salary and number of years membership in the pension scheme. Therefore :

$$\text{Annual Pension Income} = \text{Salary} \times \frac{\text{Years of Service}}{\text{Accrual rate}}$$

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New State Pension

- Commencing April 2016
- Single tier - £151.25 per week
- Minimum Qualifying Period 7 -10 years
- Qualifying period for maximum pension – 35 years
- To include self employed for the first time (class 2 NICs)
- Not changing pension rules for Existing Pensioners

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Loss of Dependency Pension Claim

- Dependents of the deceased have a claim under the Fatal Accidents Act 1976 Section 4.
- Statutory Disregard of payments from a pension scheme which were made as a result of death:
 - Widows Pension
 - Lump Sum Benefit
- Unfair ?
- State Pension?

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Which Cases Should I Consider?

Applicable to those:

- Unable to ever return to work
- Who will be unable to work for an extended period
- 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

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Which Cases Should I Consider?

(Cont...)

- 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 / carers will be employed by the claimant

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Conclusion

- Not every case will have Pension Loss
- Significant increase in applicable cases
- **TBA??**
- Can add considerable value
- Viability assessment

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Current Issues

- Proportionality
- Cost Budgeting
- Instructing an Expert

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