



## **'Financial Losses'**

**Ian James MacKendrick FPFS NEWA LLAA CFP  
Founder & Director of Paladin Experts Limited**

**Financial Expert Witness**

**E: [ian@PaladinGroupLtd.com](mailto:ian@PaladinGroupLtd.com)**

**M: 07590 539433**

### **Introduction:**

With over 30 years' experience as a financial expert, I founded Paladin Experts, part of Paladin Group to help Claimant & Defendant solicitors have approachable, knowledgeable experts focused on reasonable and accurate outcomes.

Financial losses can be extremely complex and to assist the fee earners, I have been asked to note down some of the main questions to ask when pursuing or defending a claim, so that you can know when to complete yourselves and when to ask for help.

In particular, I have been asked to cover the following points:

### **'Mini Toolkit' Content:**

- Provide guidance on the approach to losses of earnings and pension.
- What information is required and what to consider.
- Understanding where there may be lost employer benefits.
- Approaching post-injury earnings and pension situations.
- Understanding how to account for employee/er pension contributions in earnings.
- Calculating a straightforward Loss of Earnings.
- Factors that can make a claim more complex.
- Provide financial expert case clinics to the team.

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## 1. Guidance on the approach to losses of earnings and pension.

### Employed:

- Keep it simple.
- Know and/or speak with your client. (Step in their shoes – reflect in witness statement)
- How old are they and how long will the work realistically.
- Employees are normally promoted and progress, but how often.
- Employees often receive benefits with their employment. (Shown in Contract)
- Workplace pensions are now law, so must be included if they meet the qualifying rules.
- Income in retirement – how much income and tax-free cash will be taken and what are the correct commutation factors to use on public sector schemes.
- What income is pensionable and what is not.
- Is there a revaluation on current and deferred contributions.
- Is there a dependant pension that is impacted on death.
- How do the scheme rules impact on the Claimant's choices regarding work.

### Self-Employed:

- More complex.
- Remunerated differently. LEL, PA, DA, Dividend tax, corporation tax, expenses.
- Pension contributions can be paid differently to reduce corporation tax liability.

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### 3. What information is required and what to consider.

- Complete the financial loss checklist for each case to give you a framework.

#### Additional Information Required:

- Earnings – Contract; Accounts (Self Employed); HR file; P60's; P45; P11d; Payslips.
- Pension – Past and Current pension statements; Type of scheme; Method of pension payment; Contribution amounts.
- Both – Retirement Age; Would there be any career or promotional changes throughout their career. Evidence to support this.

#### What to consider:

- Career progression, promotions and colleagues or family progression.
- Age now and the Intended Retirement Age based on their age now.
- Will they retire early due to their injuries.
- Are they in receipt of any ill health benefits. (Longden)
- Do they have reduced life expectancy now or in any event.
- Would their employee benefits continue beyond their normal Life Expectancy.
- Disregarding income that is due to death in fatal cases.

### 4. Understanding employer benefits.

- Keep it simple.
- Examples you might see or ask about:
  - PHI – IPP – PMI – DIS – CIC – ASU – Health Cash Plans
  - Discounts e.g. supermarket workers

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- Rewards e.g. air crew & rail staff
- Share Save Scheme's
- Spousal & Dependent death benefits.
- Car allowance/company car

**5. Approaching post-injury earnings and pension situations.**

- Are they classed as Disabled or Non-Disabled post Injury. (Table A-D)
- Are they earning more or less.
- Will they now have to retire early or work longer.
- Would they be in receipt of the same employee benefits.
- How much will it cost to replace the lost benefits.
- Can they afford to pay into a Pension or are the contribution amounts different.

**6. Understanding how to account for employee/employer pension contributions in earnings.**

- Check methodology of contributions. (Salary Sacrifice, Relief at Source or Net payment method)
- Remember pension contributions are based on GROSS salary or income and then netted down to arrive at the multiplicand.
- Are pension contributions removed from earnings or retained – avoid double counting.

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#### 7. Calculating a straightforward Loss of Earnings:

- Mr X earns £50,000 gross per annum.
- To arrive at the net annual loss we must take off tax and NICs
- Mr X now earns **£37,555 NET]**
- Multiplier for a male aged 36.50 at date of calculations = 31.54 (English Law)
- Table A-D contingency for male, employed and level 1 educated = 0.87
- $31.54 \times 0.87 = 27.44$
- Earnings loss =  $£37,555 \times 27.44 = \mathbf{£1,030,509}$

#### 8. Factors that can make a claim more complex – requiring expert input.

- Child claims.
- Self Employed.
- Reduced Life Expectancy.
- Fatal cases – Dependency claims.
- Obtaining quotes for Employee Benefits.
- Impact of earning above £50k, £100k and £150k on tax allowances.
- Utilising the marriage allowance.
- How to reclaim the extra tax relief available if a higher or additional rate tax-payer.
- Removal/Inclusion of pension contributions from earnings.
- All Pensions.
- Revaluation of Defined Benefit (Final Salary Pensions). Separate from Ogden.
- Use of Annual, Lifetime and Carry forward allowances.

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**9. Financial Expert case clinics:**

- Zoom or Teams
- Can check hypothetical and actual case strategies with me.
- Ask any questions that you may not want to ask in a group.

**10. Remember:**

- Always complete the checklist to make life easier.
- It is often considered more reasonable if you put forward two potential scenarios.
- You can claim back the cost of your expert doing your calculations under Smith Graham v Lord Chancellor or Cross Practice Direction 47;5.22(6)

Thank you.

Ian

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