

Pension loss calculation – Improve Your Game

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The Conventional Approach

Wider Principles

- Pension loss is a head of future pecuniary loss like any other and not an esoteric subject outside the routine assessment of damages.
- The much but unfairly criticised previous leading case of *Auty v National Coal Board*¹ embodied no abstruse method but only the then conventional approach.
- As the conventional approach has shifted following *Wells v. Wells*² so must the assessment of pension loss, away from the old method in *Auty*, into line with the present application of the conventional approach.

Conventional Approach in Practice following Wells v. Wells

The Conventional Approach:

- assesses damages for personal injuries net of tax³
- takes no account of future inflation, setting the multiplicand at date of trial and ignoring the particular avenues of investment open to an individual Claimant⁴
- adopts a rate of discount to be set in the future by the Lord Chancellor and at the time of writing taken to be 2 ½ % pa⁵
- no longer makes *judicial* discounts, using the Ogden Tables now as a starting point rather than a check, being slow to depart from the relevant actuarial multiplier on impressionistic grounds or previously decided multipliers,⁶ and where there is agreed life expectancy an arithmetical multiplier is to be taken over that life expectancy⁷
- refuses to make pseudo-findings of *future fact* on the balance of probabilities, but reflects future chances by assessing the damages based upon an *assumption* which aims at doing justice in monetary terms balancing the favourable and adverse

¹ [1985] 1 W.L.R. 784, [1985] 1 All E.R. 930, C.A.

² [1998] 3 W.L.R. 329, H.L.

³ *British Transport Commission v. Gourley* [1956] A.C. 185, H.L.

⁴ *Mallett v. McMonagle* [1970] A.C. 166 H.L.(N.I.) 175B-176D

Lim Poh Choo v. Camden and Islington Area Health Authority [1980] A.C. 174 H.L. 193B-194B; upheld on this point in *Wells v. Wells* [1998] 3 W.L.R. 319 - per Lord Lloyd 334A, Lord Steyn 353C and Lord Clyde 361E

⁵ *Wells v. Wells* supra - eg per Lord Lloyd 344A;

⁶ *Wells v. Wells* supra - per Lord Lloyd 347D-E

⁷ *Wells v. Wells* supra - per Lord Lloyd 345H-347F

contingencies.⁸ Sometimes the assumption itself balances all the contingencies in which case an arithmetical multiplier can be used on the basis of that assumption but more often the assumption is taken as the nearest convenient starting point and then varied further for contingencies.

- involves *doing one's very best*⁹; *making the best use of such tools to assist the process as are available*¹⁰; and *now that detailed calculations and tables founded on a reasonably reliable basis are available, taking full advantage of them.*¹¹

Conventional Approach - Binding on Pensions

Given the cornerstones of the conventional approach, recent first instance decisions before *Wells* based on *Auty* as binding authority were clearly correct¹². The wider ratio of those cases (that the conventional approach applies to pension loss) remains intact following *Wells*. Encouragement to obtain a quotation on the financial markets to make good the loss and to proffer it as the measure of damage should be ignored.¹³ One might as well suggest that nursing care beginning at some future date to run until the end of a Claimant's life¹⁴ be valued by reference to the cost of a deferred annuity; or, without any change in the logic, the cost of immediate nursing care to a simple annuity; or loss of earnings... . All of which is not the law as it stands.

A Modern but nevertheless "Conventional" Approach

The concept of using the Ogden Tables as a universally adopted basis for the calculation of future recurring losses and expenses over any future tracts of time commended itself to the House of Lords in *Wells*¹⁵. Indeed, the House of Lords used the Ogden Tables in relation to pensions to solve the question of how much discount should be given from an already paid ill-health retirement lump sum including commuted payments in *Longden v. British Coal Corporation*¹⁶. While the first edition of the Ogden Tables had just been published at the time of *Auty*, it had not gained the widespread acceptance which took over a decade in coming, and the Judges in *Auty* did their best, perhaps with misunderstandings as to the nature of actuarial evidence, using the English Life Tables based upon Past Expectation of Life and the Bacon and Woodrow Arithmetical Discount Tables. It should go without saying in the light of the adjustments to the conventional approach enunciated so clearly in *Wells* that the time has come to move on from *Auty*, using the Ogden Tables "to do one's very best"¹⁷.

⁸ Mallett v. McMonagle [1970] A.C. 166 H.L. (N.I.) 173F, 174D and 176E-F; *Wells v. Wells* supra - per Lord Hope 356F-357A

⁹ *Wells v. Wells* supra - per Lord Lloyd 332H-333A and Lord Clyde 361A

¹⁰ *Wells v. Wells* supra - per Lord Hope 357E

¹¹ *Wells v. Wells* supra - per Lord Clyde 3464C

¹² *Page v. Sheerness Steel Company* [1996] P.I.Q.R. Q26, Q38 Dyson J

¹³ *Longden v. British Coal Corporation* [1995] P.I.Q.R. Q48, Q50 - C.A. noting Douglas Brown J's unchallenged decision on that score

¹⁴ It is one thing to attempt to refer to I.L.G.S. and past real rates of return in fixing the discount rate in *Wells* and quite another to adduce specific evidence of actual investment opportunity for an individual Claimant as if itself the measure of loss. Obtaining a quotation falls foul of the general principle in footnote 4 above.

¹⁵ An exact analogy for a future loss of pension claim and the same method can be used in such cases.

¹⁶ supra - per Lord Clyde 364B-C

¹⁷ [1998] A.C. 653 and vide infra

¹⁷ See footnote 9 supra; but this must be subject to practicalities e.g. taking into account all the minute changes

Overview of Types of Pension Claims

There are 2 broad types of claim.

- *Type 1:* where the Claimant is young without an established working history; where the position is insecure; or where there are major uncertainties. In such cases the best one can do is to evaluate a notional claim using the Ogden Pension Tables as at the date of compulsory retirement which can then only be discounted dramatically with a broad brush given the flavour of the case. This paper is not really concerned with this type; but with Type 2 cases, where much greater precision is possible.
- *Type 2:* where the Claimant is in long term secure employment with a good quality pension scheme and where there are multiple options for voluntary early retirement, ill-health retirement and death in service benefits. In these cases, if one is to do one's best following *Wells*, a more subtle approach is required with an appreciation of the monetary effects of early/ill-health retirement or death in service if proper compensation is to be made.

The Basic Ogden Multipliers

There is now widespread familiarity with the concept of earnings multipliers and life multipliers which are applied to a current multiplicand to generate a lump sum providing a steady stream of income for the period up to the assumed date of retirement or death, with the fund extinguished at that point. A pension's multiplier is a multiplier to be applied again to a present multiplicand to provide a stream of payments from the assumed date of retirement until the assumed date of death. It already includes an actuarial discount for the chance of early death over the whole period and an arithmetical discount from the date of expected retirement to the date of calculation.

Solution to Type 1 Cases Using the Ogden Tables

Worked Example using basic Ogden Multipliers

Male, 23, in service for 2 years prior to road accident when lost a leg, compulsory retirement age at 65, and now unfit for work. Pension would have been based on the formula (very common):

Length of service (maximum 40 years) \times $1/80$ \times final year's pensionable pay.

On ill-health retirement, length of service enhanced by 5 years or to 15 years whichever is the greater (again a common type of term).

Pensionable pay £10,000 pa

Pension if retired at 65

in tax relief and state pension entitlements at different ages will render calculations so unwieldy, difficult and tedious that, in the context of necessarily imperfect assumptions, the exercise is not worth the attempt. See the worked example below.

$$40 \text{ years} \times 1/80 \times \pounds 10,000 = \pounds 5,000 \text{ pa}^{18}$$

Pension now payable

$$15 \text{ years} \times 1/80 \times \pounds 10,000 = \pounds 1,875 \text{ pa}$$

Annual loss **£3,125**

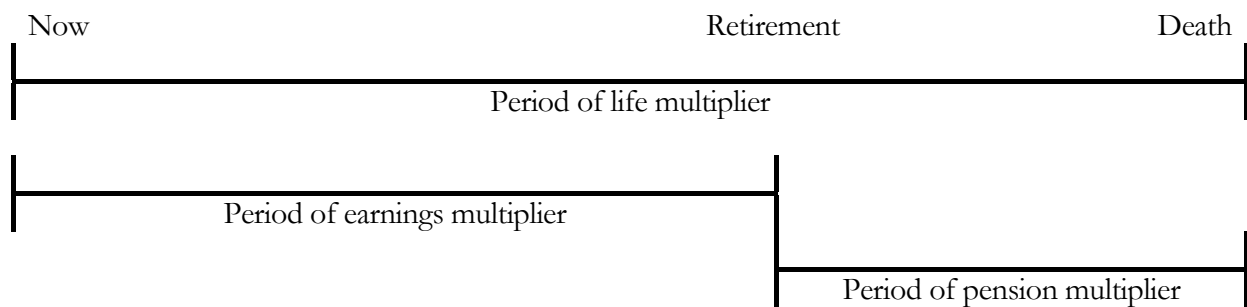
Multiplier (Ogden Table 21
at age 23 at 2.5 % pa discount) **x 5.10**

Current value capitalised annual loss **£15,937**

Adjustment after such a basic calculation will vary depending on the nature of the job and the likelihood of a sustained career. A policeman or fireman with 2 years' service is much more likely to have a long term career than a private soldier (even if he hopes for promotion) where average length of service for raw recruits is very low.

Solution to Type 2 Cases Using the Ogden Tables

Type 2 cases are those where there is a likelihood of a sustained career.



The Multiplier

If one refers to the linear diagram of multipliers above the following relationship becomes apparent:-

$$\text{Earnings Multiplier} + \text{Pension Multiplier} = \text{Life Multiplier}$$

If one does not presently accept the relationship it is evident from the Ogden Tables themselves. At any given age, whatever the age of retirement, the sum of the earnings multiplier and the pension multiplier is the life multiplier. In fact, we do not really need the Ogden Pension Tables at all so long as we have the Life and Earnings Tables.

¹⁸ Bearing in mind increased personal allowances for those over 65, any tax at this sort of level is tiny. See examples below for help in calculating deductions for tax.

The relationship can be rearranged to yield a simple but powerful formula in the calculation of pension loss.

$$\text{Life Multiplier} - \text{Earnings Multiplier} = \text{Pension Multiplier}$$

The Ogden Tables already take into account mortality so that contingency is satisfied if the Tables are used as the starting points for the life and earnings multipliers. Unless there is medical evidence to the contrary or the Claimant has a hazardous lifestyle, there is no justification following *Wells* for tinkering with the life multiplier. The major contingency on the earnings multiplier is the age of retirement. If, when deciding the earnings multiplier the Judge considers only the contingencies as to *age* at retirement (leaving contingencies as to *wage* e.g. promotion etc for consideration when setting the earnings multiplicand - more logical after all), whatever the process of balancing the contingencies from the basic Ogden earnings multiplier, those very same contingencies are automatically taken into account in the case of a Claimant with long term secure employment if the pension multiplier uses the actual earnings and life multipliers assessed on other heads of loss. A *tailored* pension multiplier can be reached by simply taking the earnings multiplier in the case away from the life multiplier in the case.

The Multiplicand

The formula will establish the best starting point for the multiplier, but if the Claimant retires at a date other than the one contended for the multiplicand will be affected because of the different length of service. The potential problem can easily be solved. If the Judge in setting the earnings multiplier and using the Ogden Tables articulates the "assumption" as to age at retirement, we will know in turn the correct assumption as to the length of service in order to fix the multiplicand under a final salary scheme. Even if the assumption is not specifically articulated, it can usually be guessed at with reasonable precision using the tables in reverse.

Further Adjustment

It would be a mistake to think that there will be *no scope at all* for adjustment on the facts of each case after the above method has been followed; but it provides more than the best starting point in a Type 2 case. There can be no scope for *further* adjustment for a contingency which has *already* been taken into account. The length of service was set as a fair assumption, already considering the risks of falling under a bus, unrelated ill health, redundancy, liquidation of the company etc when the multiplier for loss of earnings was set. If that is the *prediction* for the major head of damage on earnings, one should not be doubtful in one's very doubts and discount again when assessing pension loss for identical risks. The very same goes for pensionable pay if the multiplicand has been carried forward from the loss of earnings claim. However, adjustment may be necessary if the various contingencies have not been compartmentalised between multiplier and multiplicand quite as clearly as hoped. If the Judge provides for the prospects of promotion by enhancing the multiplier rather than the multiplicand everything will be thrown out of line. As already discussed, the job may not involve long term secure employment. The quality of the pension scheme may be poor so that there is no entitlement to early retirement/ill-health pension before the date of compulsory retirement. In all those circumstances one can revert to using the Ogden Pension Tables but remembering that much greater adjustment for contingencies will be needed with a broad brush. Nevertheless, the logic can be extended even to Type 1 cases: if the assumption/prediction of 3 years service in the Army for a new recruit was good enough to govern the claim for loss of earnings, why should it not represent the best prediction also for loss of pension, leading to a small arithmetical claim calculated from the tailored multiplier applied to the

multiplicand carried forward? The advice in *Wells*, not to depart from the starting point on *impressionistic* grounds, should lead to this figure standing untouched unless there is some logical reason, based on evidence and capable of articulation, to depart from it.

The Evidential Framework

Much of the evidence going to the assumptions required for pension loss calculation is assembled in relation to the heads of loss other than pension. Nevertheless, the following matters are relevant and can be stored on a standard draft for ease of completion and to ensure a methodical approach.

1. Claimant's age at date of calculation.
2. Claimant's life multiplier at date of calculation (using the Ogden Tables for Projected Mortality as a starting point¹⁹, only to be adjusted in the light of cogent evidence, when that evidence may give a life expectancy and an arithmetical multiplier from Table 28 should then be used).
3. The *assumption* for age at retirement if the accident had not occurred and hence length of service.
4. The *assumption* as to wage at retirement and hence *pensionable pay*.
5. Claimant's attitude to any possible commutation of periodical payments to a tax free lump sum.
6. Spouse's age.
7. Spouse's life multiplier (using similar considerations as for the Claimant's life multiplier)

The pension fund trustees should then be invited to answer a questionnaire (which can again be stored as a standard draft) and to provide the main terms of the scheme which are usually within an Explanatory Booklet for Employees.

1. What is the formula for pension entitlement under the final salary scheme?
2. What constitutes "pensionable pay" under the scheme as distinct from overall earnings?
3. What entitlement is there to a lump sum?
4. If the lump sum is a commutation of entitlement to periodical payments, how is it calculated and with what effect upon annual pension?
5. When did the Claimant's pensionable service commence?
6. Has there been any "pension's holiday" in respect of the Claimant's service?

¹⁹ *Worrall v. Powergen plc* [1999] P.I.Q.R. Q103

7. What are the provisions for:-
- (a) Voluntary early retirement?
 - (b) Ill-health early retirement?
 - (c) Any payments under the pension scheme on redundancy?
 - (d) Preservation of pension on voluntary resignation?
 - (e) Benefits on death in service or otherwise?
 - (f) Widow's pension?
8. In the case of a Claimant who has already retired, what is the current value of the actual entitlement to pension and, if a commuted lump sum has been paid, when and how much?

The trustees can be invited to show a worked example based upon the present day value of the assumptions contended for, so as to make clear how the calculation is to be done in the event of alternative assumptions requiring calculation at a later date.

Answers to the above questions coupled with the explanatory booklet should be more than sufficient in most cases. The problem with calculating pension loss is, and always has been, not so much a difficulty in carrying out the arithmetic once the correct evidence has been obtained, but in making sure that there is a sufficient breadth of evidence so that when the assumptions upon which the damages are to be awarded are articulated by the Judge the figures are easily available and converted. If there is any difficulty in understanding the information from the trustees then, at a relatively late stage just prior to trial, when the issues between the parties are delineated, the trustees can be invited to fill in a questionnaire which can be tailored to meet the competing contentions of the parties and the possible middle ground.

Additional Receipt of Pension/Incapacity Pension

In many cases a Claimant will be able to exercise an early or ill-health retirement option following an accident and obtain periodical payments and/or a lump sum prior to normal retirement. The House of Lords' decision in *Parry v Cleaver*²⁰ is the leading authority and the following propositions from it are sound:

- Additional receipts of pension are not to be deducted from other heads of loss²¹
- After the date of normal retirement, credit must be given for any payments under the scheme. Whether labelled as *retirement* or *incapacity/injury*, the pensions are of one and the same kind²²
- No credit is to be given for periodical payments prior to the date of normal retirement, not even from the later pension loss claim itself²³.

The first two propositions have never been challenged, nor were they in the recent case of *Longden v. British Coal Corporation*²⁴. However while the third proposition was clearly the ratio of *Parry v. Cleaver* it arose essentially from the monetary result of the case as against any detailed discussion of the

²⁰ [1970] A.C.1 H.L.

²¹ Ibid. Per Lord Reid at 20G-21A

²² Loc. cit.

²³ Vide infra

²⁴ [1998] A.C. 653 H.L.

issues involved. It was challenged in *Longden* but upheld. *Parry v. Cleaver* did not involve the commutation of periodical payments to a lump sum. In *Longden* the House of Lords decided that:

- Where the lump sum is a commutation of periodical payments, that proportion of it which represents the period after normal retirement should be deducted²⁵.

This is only logical bearing in mind the diagram set out above. We could again apply our formula but rearranged to give us a close approximation to the correct proportion to be deducted:

$$\text{Deductible Proportion} = \text{Pension Multiplier} \div \text{Life Multiplier}$$

Strictly, however, the multipliers should be taken *as at the date when the lump sum was actually paid*, not at trial/settlement, but using the "assumptions" found or contended for in the trial to fix the end point of the earnings multiplier. The strict formula to apply but using multipliers taken from the Ogden Tables at the date of actual retirement/receipt of the lump sum is:

$$\text{Deductible Proportion} = \frac{\text{Life multiplier} - \text{Earnings multiplier to the date of the retirement assumption}}{\text{Life multiplier}}$$

This will ensure internal consistency and that the same contingencies are taken into account in the same fashion, but may not be worth the candle for most people unless there is a long delay between retirement and trial.

- *Longden* was narrowly decided on the facts because the lump sum was a commutation. The logic of *Longden* suggests that if the lump sum is not a commutation but paid compulsorily under the scheme, there should be no deduction of any part²⁶. Paid in a *different accounting period* and containing no element attributable to the period of loss, what can there be to deduct?

Miscellaneous

Widow's Pension

The method used in *Auty* can be adapted for use with our more modern tools.

The widow's pension is usually expressed as a proportion of the Claimant's entitlement - often 1/2. If we add on to the Claimant's pension multiplier, as already evaluated, the extent by which the wife's life multiplier exceeds the Claimant's life multiplier *but reduced by the proportion of the widow's entitlement*, we have a combined pension multiplier for the couple, what I call an Adjusted Joint Life Pension Multiplier²⁷.

²⁵ Ibid 672D-F

²⁶ No decided case on the point, which may yet be litigated.

²⁷ See the Worked Example below

Alternative Occupational Pension

It was conceded in *Auty* that where the Claimant is able to obtain alternative pensionable work, the value of the additional pension should be offset. The eventualities of the alternative position are likely to be very different from those of the original. If so, it is not possible simply to subtract the alternative pension from the figures in the original calculation. Rather, a quick calculation in reverse gives the credit to be allowed, discounted back to date of trial, and then in turn adjusted for eventualities if necessary. Often the Claimant is unemployed at trial but with some residual earning capacity. The chance of obtaining alternative pensionable employment should be taken into account in the overall adjustment for eventualities, but there will usually be little or no chance of an injured Claimant obtaining work with entitlement to a much-coveted and increasingly rare (because expensive) *final salary* pension²⁸.

Tax Allowances and Relief

As in any personal injuries action the damages must be computed net of tax. It should be remembered that Personal Allowances are increased for those between 65-74 years and slightly increased again at 75. There is an income limit (total income) of £18,300 pa before the higher allowance is gradually whittled down. Very few claims for loss of *final salary* pension will qualify and recourse will then have to be made to the detailed provisions in any given year. While the old Married Couple's Allowance remains for those who qualified (with one or other 65 when abolition occurred) in April 2000, it has no longer any relevance for claims for loss of future pension. The age for women's entitlement to State pension will rise to 65 in 2020.

Higher Personal Allowances

	2004/2005
Single person	
- aged 65-74	£6,830
- aged 75+	£6,950
Allowance reduced by 1/2 of income over	£18,900

State Retirement Pension

	2004-2005
Claimant (Category A)	£79.60 per week or £4,139.20 pa
Non-contributing spouse/adult dependent - extra	£47.65 per week or £2,477.80 pa

The tax deductions fall, in line with first principles, to be taken from the top slice of tax. A little care is required to get details from the Claimant of other sources of income. For most it will be an entitlement to the basic State Pension only, hence the inclusion of its current levels in the information above. The total income as it should have been is to be netted down and then the netted down total of the actual income subtracted to leave the total net annual loss. Handy

²⁸ cf money purchase/personal pensions - vide infra

conversion charts for incomes in retirement have appeared in the 2004 edition of the PNBA *Facts and Figures Tables for the Calculation of Damages* at p200ff.

Personal Pension Plans

There can be no claim for losses under personal pension plans, which are *money purchase* schemes, converted into an annuity with the option of a tax free lump sum at the date of retirement. There is no formula for fixing the value of the pension but rather only speculation on the performance of the fund against inflation. More importantly, it is not *future remuneration for past work*, in the form of insurance, following *Parry v Cleaver*. Rather it is easily distinguished as the proceeds of an *investment* by the individual of *remuneration already received*. One might as well claim the lost investment proceeds of speculation with the same money on the Stock Exchange, but not under a pension's umbrella (or gold bars under the bed), as attempt to shoe horn a claim for loss of personal pension into *Parry v Cleaver*. The Claimant should simply receive his loss of earnings *before* contributions into the fund. The loss of tax relief is a quite separate matter and if properly proved can be used to reduce the tax payable on the loss of *earnings* claim – it has nothing to do with loss of *pension*.

Hybrid Personal/Employer-Funded Schemes

Such schemes are *money purchase* plans but linked to an employer, perhaps instigated by and with contributions from him. Again there is no identifiable formula for fixing the value of the pension which depends upon the performance of the fund. Similarly, the scheme is essentially an investment of remuneration albeit *at source*. The only sensible solution in line with principle is to calculate the loss of earnings before deduction of the employee's contributions (but taking into account tax relief) and to value the employer's contributions as current benefits in kind. The scheme is an *investment*, as against a vehicle for payment of *future remuneration* in retirement within the spirit of *Parry v Cleaver*. There is no conflict with *Dens v National Coal Board*,²⁹ which can easily be distinguished as dealing with a classical final salary scheme.

Again, even weighty encouragement to obtain a quotation on the financial markets to make good either or both aspects of the supposed loss should be politely ignored. No other head of personal injury damage is calculated by reference to how the *financial markets* assesses the cost of making good the loss by *their criteria* in a lump sum investment, rather than the *Court* assessing it using the *current prescribed discount rate* (and standard rules such as the inclusion of current benefits in kind as part of the claim for loss of earnings). In fact, once the fog clears and the simplicity of the obvious answer is appreciated, the temptation to rush to the Financial Adviser can easily be overcome.

Average Life Expectancy Short of Retirement

Unless medical evidence practically rules out survival beyond normal retirement age, the chance that the Claimant may survive is an eventuality which calls for compensation under the conventional approach. The medical evidence should address the longest realistic life expectancy and a calculation carried out to that date but then heavily discounted against the flavour of the medical evidence for its improbability.

²⁹ [1988] A.C. 1 H.L.

Death in Service Benefits

Quite apart from the pension payments under a final salary scheme, although unrelated to pension and to be paid prior to normal retirement, there is often death in service benefit. This has nothing to do with a claim for pension itself but certainly stands to offset any temptation to discount further for the risk of mortality. In fact, if the Ogden Tables are used as the starting point and mortality is thereby taken into account, the loss of death in service benefit is a separate loss that stands to be compensated and was in fact compensated in *Auty*. Those not entitled to *death in service benefits* have to provide for themselves by purchasing *term life assurance* at the cost of a regular premium. Provision for death in service benefits therefore amounts to another benefit in kind, which can be added on to the loss of earnings claim, as the *term* is usually for the term of the wage loss³⁰. Some evidence will be required as to the size of the benefit in kind i.e. the sort of premium that would be required each year to produce the lump sum envisaged under the scheme in the event of death.

Worked Type 2 Example including alternatives of Widow's Pension and Death in Service Benefits

Basic Facts

Male aged 40, married, previously worked as an established company accountant in industry (basic pay plus contractual overtime - £25,000 pa gross) but now, following brain injury, capable only of low grade clerical work (basic pay with no available overtime - £10,000 pa gross) with the same company who are a secure and sympathetic employer. The Claimant is very likely to have remained as an employed company accountant with them and is now likely to remain with them as a clerk. No impairment of life expectancy. Unconnected constitutional condition was/is likely to become increasingly troublesome and may force retirement between 55 and 65.

The Pension Trustees' Questionnaire

	Question	Answer
1.	What is the formula for pension entitlement under the final salary scheme?	Pension = length of service (years subject to an overall maximum of 40 years) x $\frac{1}{80}$ x final year's pensionable pay
2.	What constitutes <i>pensionable pay</i> under the scheme as distinct from overall earnings?	Basic pay and contractual overtime pay only, without reference to bonus payments and additional voluntary overtime
3.	What entitlement is there to a lump sum?	3 x final year's pensionable pay tax free on top of the annual entitlement.

³⁰ Some schemes also provide for a lump sum on death in early retirement and multipliers longer than the earnings multiplier may be appropriate.

- | | | |
|----|---|---|
| 4. | If the lump sum is a commutation of entitlements to periodical payments, how is it calculated and with what effect upon annual pension? | Not applicable |
| 5. | When did the Claimant's pensionable service commence? | Aged 22½ |
| 6. | Has there been a <i>pension holidays</i> in respect of the Claimant's service? | None |
| 7. | What are the provisions for:- | |
| | (a) Voluntary early retirement? | At 55 without penalty (subject to the company's approval which has never yet been known to be withheld). |
| | (b) Ill-health early retirement? | At any age without penalty (but with the approval of the company medical officer) with an ill-health enhancement of 5 years additional service on top of actual years service or up to 20 years total service, whichever is the higher. |
| | (c) Payments under the scheme on redundancy? | Not applicable |
| | (d) Preservation of pension on voluntary resignation? | Pension preserved with previous employer; or value transferable to new employer's final salary scheme; or value transferable into a personal pension plan. |
| | (e) Benefits on death in service or otherwise? | 2 x final year's pensionable pay |
| | (f) Widow's pension? | Not applicable |
| 8. | In the case of a Claimant who has already retired, what is the current value of the actual entitlement to pension and, if a commuted lump sum has been paid, when and how much? | Not applicable ³¹ |

³¹ This is far too much information in most cases; but these pretty common terms go to show that the value of the pension is pretty secure and there should be no undue rush to discount for contingencies.

Example Schedule

Claimant's age:	40
Claimant's life multiplier:	25.61 (Ogden Table 1)
Assumption for age at retirement in keeping with the earnings multiplier	62 ½
Earnings multiplier:	16.5 (carried forward from future loss of earnings claim where based on Ogden Table 9 for retirement at 65 - 18.05 - but discounted for the chance of early retirement based on general contingencies and the constitutional condition)
Claimant's Pension multiplier:	25.61 - 16.5 = 9.11
Length of service:	62.5 - 22.5 = 40 years
[If appropriate, expand to include widow's pension – see below for additional working*]	

Netting down to establish the annual loss at 62.5

Annual income retiring as company accountant:

40 years x $\frac{1}{80}$ x £25,000 =	£12,500.00	
State Retirement Pension (£79.60 x 52 weeks)	<u>£4,139</u>	
Annual gross income		£16,639
less higher personal allowance ³²	<u>-£6,830</u>	
taxable income	£9,809	
tax on first £2,020 @ 10%		£202
tax on balance (£7,789) @ 22%		<u>£1,714</u>
		<u>-£1,916</u>
Net annual income in retirement (a)		£14,723

³² Assuming Higher Personal Allowances and entitlement to State Retirement Pension strictly only available at age 65 throughout the period given the closeness to that age, and ignoring increased allowances at 75.

Annual income retiring as Clerk

40 years x $\frac{1}{80}$ x £10,000 = £5,000.00

State Retirement Pension
(£79.60 x 52 weeks) £ 4,139

Annual gross income **£9,139**

less higher personal allowance -£6,830
taxable income £ 2,309

tax on first £2,020 at 10% £202
tax on balance (£289) @ 22% £ 64

-£297

Net annual income in retirement (b) **£8,873**

Annual loss

Net income as an accountant (a) £14,723
less
Net income as a clerk (b) -£8,873

Annual loss at retirement **£5,850**

**Claimant's [or **Adjusted Joint Life – see below]
Pension multiplier** **x 9.11**

**Total current capitalised value of
lost annual pension** **£53,293**

Loss of lump sum at the assumed age of 62.5

As a company accountant: 3 x £25,000 = £75,000

less as a clerk 3 x £10,000 = -£30,000

Loss at 62 ½ **£45,000**

Discount over 22 ½ years to age 40 (Table 27) **x 0.5735**

£25,807

Total loss of pension claim **£79,100**

Adjustment for any contingencies other than length of service and pensionable pay...

Additions to Schedule Incorporating Widow's Pension on above Figures

[Insert in the preamble]

*Wife aged:	35
Wife's life multiplier:	28.51 (Ogden Table 2)
Widow's entitlement:	$\frac{1}{2}$
Widow's life multiplier	28.51
Minus Claimant's life multiplier (from above)	<u>- 25.61</u>
Widow's survival multiplier	2.9
Widow's entitlement	<u>x 50%</u> ³³
Widow's adjusted survival multiplier	1.45
Add to Claimant's Pension Multiplier (from above)	<u>9.11</u>
Adjusted Joint Life Pension Multiplier**	10.56

[Then use this multiplier at the appropriate point in the Schedule**. If the figures are adjusted in the above calculation to use an Adjusted Joint Life Pension Multiplier, it makes £5,850 x 1.45 difference i.e. £8,482 on to the schedule, which is well worth the little effort required.]

Loss of Death in Service Benefits

As an accountant	2 x £25,000	£50,000
less as a clerk	2 x £10,000	<u>£20,000</u>
Loss of term life assurance during period of service to the value of		£30,000
Benefit in kind:		
Equivalent to an annual premium		£100 pa
Earnings multiplier (from above)		<u>x 16.5</u>
Total		£1,650³⁴

³³ In a pension scheme where the lump sum is a commutation, unlike this example, the widow's proportion is usually expressed as a fraction of the Claimant's pre-commutation entitlement. In other words, when commuting the retiring employee only commutes part of the pension during his/her own lifetime, and not on the joint lives of both. In those circumstances the widow's entitlement should be adjusted upwards as a true proportion of the post-commutation multiplicand – a point for purists only ...

³⁴ This paper will shortly appear in the 3rd Edition of the Personal Injuries Handbook – Sweet & Maxwell