

Monahans
Integrated financial support


**Formulating a Claim
for the Self-Employed
Claimant**

by Richard Formby FCA MAE
Monahans




Topics

- Types of self-employed
- Records & Accounts
- Factors influencing lost profits
- Pension Loss



Types of Self-Employed

- Sole Trader - unincorporated
- Sole Trader - via limited company
- Partnership - traditional
- Partnership - limited liability
- Limited company - private / family



Unincorporated Sole Trader

- Typical small business
- Simple set of accounts - income & expenditure
- Sales/ cost of sales/ expenses = profit
- Tax Return (filed by 31 January)
- Personal allowance - of £6,475
- Tax on the profits - at 20% or 40%
- Class 2 NIC - weekly stamp of £2.40!
- Class 4 NIC - 8% between £5,715 & £43,875, thereafter - 1%



Via LIMITED COMPANY

- Small businesses
- Eg - heating engineer, shop proprietor, garages
- Company has accounts - P&L and Balance sheet
- Accounts at Companies House of no use!
- But there will be full accounts
- Loss equates to
 - Remuneration
 - Dividends
 - Company profits
- Income tax at 20% or 40% - on salary
- Also Corporation tax at 21% - on profits



DIVIDENDS

- Used to save NIC
- The dividend figure in accounts is NET!
- Tax Credit = 1/9th of DIVIDEND
- DIVIDEND + TAX CREDIT = GROSS INCOME
- £9,000 + £1,000 = £10,000 Gross Income
- If basic rate tax payer - no more tax to pay
- If higher rate tax payer - extra tax to pay



What are Earnings?

For sole-trader or partner

- Net profit less tax & NIC

For the incorporated "self-employed"

- Salary
- Profits
- Dividends
- Retained profits
- All adjusted for tax & NIC



Partnerships

Kent v British Railways Board [1995] P.I.Q.R. Q42

Injured partner can only claim his/her loss,
Presumption of equality prevailed over actual IR arrangements.

Ward v Newalls Insulation [1998] 2 All E.R. 690

The court will look at the reality, i.e. the Claimant's loss measured by his/
her contribution, when apportioning profits.



Limited Liability Partnerships

- "Members" not "Partners"
- Annual accounts - filed at companies
- Net profits - as in a traditional partnership
- Profit share - Income Tax & NIC Class 2 and Class 4

In PI terms treat as 'traditional' partnership



Partnerships

With "husband & wife" Partnerships

- Look behind the accounts
- Effort in the business - gather evidence
- Are things what they appear?



Partnerships - Are things what they seem?

	Yr 1	Yr 2	Yr 3	Yr 4
	£'000	£'000	£'000	£'000
Sales	24	22	28	31
Expenses	(10)	(10)	(14)	(15)
Net Profit	14	12	14	16
Shared as:				
Husband	7	4.8	4.6	5.3
Claimant	7	7.2	9.2	10.6
Claimant's %	50%	60%	66.7%	66.7%

3-Line accounting

If the annual turnover is less than £67,000
Self Employed - HMRC Self Assessment (Short)

1. Turnover
2. Total expenses
3. Net profit

May be - no accounts !!



Records

- VAT returns
- Sales Invoices / printouts etc
- Wage records / sub-contractor records
- Cash books
- Diaries / Outlook / notebooks
- Budgets / business plans / loan applications
- Quotations / orders / contracts with customers
- Costs records - invoices / printouts etc
- Expense claims / mileage records

Identify & preserve !



RECORDS

- Establish link between injury & lost profits
- Accounts
 - Pre - event for 3 to 5 years
 - Post event - up to date
- Accounting Gap - 12/18 months spanning the event
- Identify Sales or Production?



SALES or GROSS PROFIT

- Think about the type of business
- Sales may measure the lost input
- But for some - start at Gross Profit level
- For example:-
 - A builder - no control over the materials the customer wants!
 - A Shiatsu practitioner - 'what they do they earn'!



LOSS FORMULA

If you dare!

- Step 1 - Identify lost sales
- Step 2 - Estimate GP (use GP %)
- Step 3 - Deduct any saved expenses or overheads

= **lost net profit**

Step 4 Less Tax & NIC

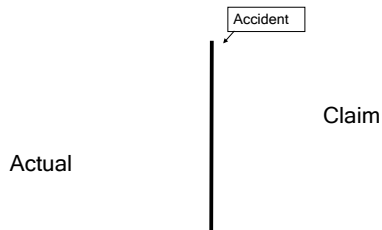
- Tax at 20% or 40%
- NIC at 8% or 1%

To give rough estimated Lost Earnings

(but only in simple cases)



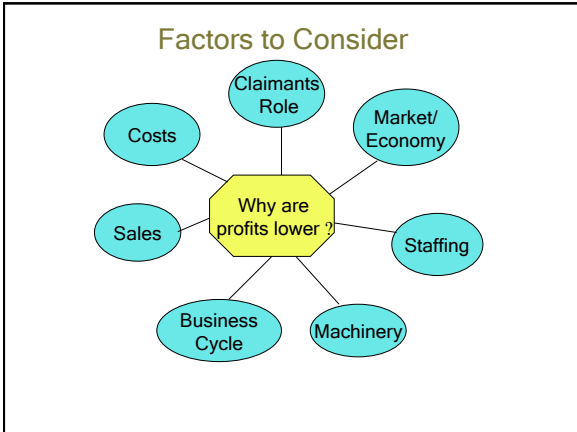
WHERE ARE YOU GOING?

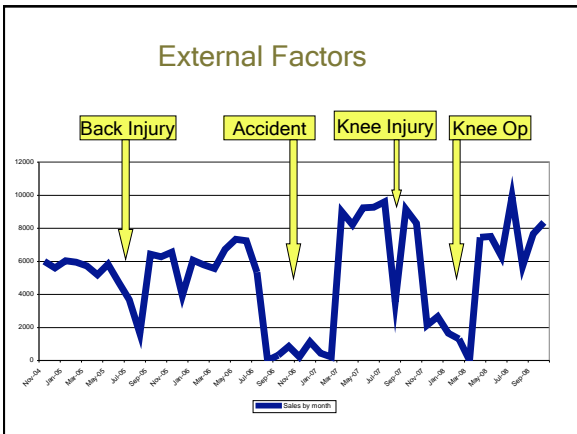


Approach

- Gather Claimant's explanations
- Consider in context of main business factors
- Does the past = the future ?
- Gather evidence







ACCOUNTANCY STUFF

- Sales in the wrong accounting period
- Costs not matched to sales
- Stock & WIP - Round sum / made up
- Expenses - Private / Business

PENSION LOSS

Self-Employed

- Pay contributions
- Build a pension pot
- Retire & buy annuity
- Growth = speculation
- Annuity = speculation
- Issue - risk vs risk-free returns



PENSIONS - TAX CREDITS

- So Claimant's loss = tax relief on contribution
- Treat as multiplicand
- Gross Contribution = amount paid over plus tax credit

E.g. pay £6,000 X 100/80ths = £7,500 gross

- So tax relief =
Lower rate = £1,500 (i.e. £7,500 X 20%)
Higher rate = £3,000 (i.e. £7,500 X 40%)



PENSIONS - MITIGATION

- Don't need earnings to fund private pension
- Up to £3,600 gross p.a. without earnings
- No carry back, but can play 'catch-up!

So many Claimants can mitigate losses !



PENSIONS - FATALS

- Self-employed deceased made contributions
- Contributions from Deceased's 1/3rd of earnings
- Identify contribs. & tax credits @ age 65/68/70etc
- Cannot speculate on growth or annuities

Loss = Dependant's 2/3rds interest in the pot
Discount back from retirement to Trial



PENSIONS - FATALS

- Escalate pension contributions - that is real life
- Check policy terms - escalation clause ?
- Comment from accountant or IFA & from Spouse
- Can you turn £100 pm into £500 pm ?



PENSIONS - FATALS

Example

- Male died aged 42 / £95 gross contribution p.m.
- Policy 5% escalation clause
- So @50 £135 pm / @55 £217 pm / @60 £350 pm
- By 65 £560 pm and by 70 £906 pm
- Tax Credits £22,500 / NPV at Trial = £15,500
- Pension Pot £112,800 / NPV at Trial = £114,000
- Two thirds interest in pot = £76,000

