EMPLOYMENT TRIBUNALS

PRINCIPLES FOR COMPENSATING PENSION LOSS

Fourth Edition
(Second Revision)
2019

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PRINCIPLES FOR COMPENSATING PENSION LOSS

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Foreword to the Fourth Edition

Over recent years, it had become clear that the guidance contained in the third edition of the booklet on *Compensation for Loss of Pension Rights*, published in 2003 and last revised in 2004, was no longer reliable for calculating pension loss in Employment Tribunal cases. Following the decision of the Court of Appeal in *Griffin v. Plymouth Hospital NHS Trust* [2015] ICR 347 in September 2014, the guidance was withdrawn in 2015. That has left a considerable gap in the guidance available to parties and to Employment Tribunals in cases where the measurement of quite significant sums of money by way of pensions loss compensation assumes great importance.

A working group of Employment Judges has worked hard to produce a fourth edition containing guidance for tribunals and parties. The fourth edition is presented in this document, entitled *Employment Tribunals: Principles for Compensating Pension Loss* (and now referred to as the "Principles"). This is an impressive document that stands as tribute to the endeavours of the judicial working group and the input of many public consultees. It has been written and published with little expenditure of public money and with the benefit of invaluable *pro bono* contributions from experts drawn from several disciplines.

It is one of the hallmarks of the tribunal system that it is intended to be accessible, with proceedings handled fairly, quickly and efficiently. The work of the Employment Judges, and those who have assisted them, is a valuable contribution when it comes to turning that aspiration into a practical reality.

Whether the Principles accurately capture the legal essentials of this complex area of compensation law, and whether their application to real-life cases will withstand their first contact with the appellate courts, I must expressly reserve my position. Nevertheless, I pay tribute to the quality of the work undertaken and I commend the Principles to litigants and practitioners in the Employment Tribunal as a mechanism for compensating pension loss.

The Rt Hon Sir Ernest Ryder
Senior President of Tribunals
10 August 2017

Introduction

The President of Employment Tribunals for England and Wales and the President of Employment Tribunals for Scotland have issued short Presidential Guidance confirming the approach that Employment Tribunals will take when calculating the amount of compensation that claimants should receive in respect of their pension loss[1]. That approach will involve applying the principles set out in this further, and more detailed, document. This document is the first revision of the fourth edition of its kind, having evolved from guidance first published in 1990. It is to be referred to as the "Principles". It is publicly available. It does not have statutory force. It does not set out legal advice or financial advice.

The fourth edition of the Principles was prepared by a working group of judges appointed by the two Presidents[2], following a process of public consultation carried out in 2016[3]. The fourth edition constituted a wholesale replacement of the revised third edition of the booklet *Compensation for Loss of Pension Rights: Employment Tribunals*, which was last updated in 2004 and withdrawn in 2015[4]. Self-evidently, the third edition took no account of many significant changes to the pensions landscape in the intervening years. The working group has continued its task with the publication of this revision.

The Principles are guided by five concepts:

- ***Justice***

  When a person is dismissed, they usually suffer financial loss. If a tribunal decides that a dismissal is unlawful, it can award compensation for that loss. The financial loss incurred by a dismissed claimant may include pension loss. By "pension loss", we mean simply this: the person receives a smaller pension in retirement than they would have done if they had not been unlawfully dismissed. It is a type of future loss. It is a matter of justice that, in appropriate cases, pension loss should be compensated.

- ***Simplicity***

  In many cases, pension loss will be a modest amount and straightforward to calculate. In some cases, it may be for a large amount and difficult to calculate. The difficulty in calculation is caused by several factors. First, a person's pension arrangements can be complex. Second, there are many issues that a tribunal cannot predict with certainty. These include the length

[1] See https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions (for England and Wales) and https://www.judiciary.gov.uk/publications/directions-for-employment-tribunals-scotland (for Scotland).
[2] A list of working group members is set out at Appendix 5.
[3] The consultation period lasted from 30 March 2016 to 20 May 2016. The consultation paper and the response are available here: https://www.judiciary.gov.uk/publications/compensation-for-loss-of-pension-rights-in-employment-tribunals
[4] The revised third edition is still available to download at this link, along with confirmation of its withdrawal: https://www.gov.uk/government/publications/compensation-for-loss-of-pension-rights-employment-tribunals-third-edition

of time a person would have remained in work until retirement, the length of their life in retirement when they receive their reduced pension and how their career might have developed but for the dismissal. Precision in such cases is impossible to achieve. The tribunal's task is like trying to hit a moving target. Recognising this, the approach to calculating pension loss should, in most of the cases before the tribunal, be as simple as possible while remaining consistent with the need to achieve a just result. More complex approaches should only be adopted where unavoidable. This is more likely to be the case where, for example, defined benefit schemes and longer periods of unemployment after dismissal are involved.

- ***Proportionality***

  In complex cases, greater accuracy in calculating pension loss comes at a cost. The more accuracy that is required, the greater the need for expert evidence from a person such as an actuary. As a matter of proportionality, the parties should only bear the costs associated with obtaining expert evidence, and be subject to the associated delay, where it is justified by the pension loss at stake. This is more likely to be the case where the statutory cap on the compensatory award for unfair dismissal does not apply.

- ***Pragmatism***

  Previous editions benefited from input from the Government Actuary's Department ("GAD"). This led to a series of bespoke tables and multipliers, unique to the Employment Tribunals. The optimum solution was to retain such tables and multipliers, but updated to the present day. Unfortunately, no funding has been made available to support GAD's further involvement. It followed that the optimum solution was not feasible. The Principles instead adopt a pragmatic alternative for complex cases, which is to use – albeit with some modifications – the Ogden Tables.

- ***Flexibility***

  The Principles are periodically updated to accommodate decisions of the higher courts about how pension loss should be valued and further changes in the pensions landscape and to various tax thresholds. The working group will monitor developments such as the litigation over the firefighters' and judicial pension schemes (see The Lord Chancellor & Anor v McCloud & Ors [2018] EWCA Civ 2844) and the debate over the impact of the pension tax rules on NHS Consultants.

The members of the working group consider that the concepts set out above reflect the overriding objective, set out at Rule 2 of the Employment Tribunals Rules of Procedure 2013, to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable: (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense.

To avoid the unwieldy and cumbersome use of multiple pronouns for a claimant (he/she and his/her), we have chosen to use the plural pronoun (they, their) throughout.

Chapter 1: Understanding the problem

1.1 In the Principles, we use the phrase "unlawful dismissal" to describe three scenarios. Each scenario gives rise to different approaches to the calculation of loss and, therefore, the calculation of pension loss:

(a) Wrongful dismissal. This occurs where an employer terminates an employee's contract of employment in breach of the terms of that contract[5]. It usually means that the employer has not given the employee the required notice to bring the contract to an end. Where a claimant has succeeded in a claim for wrongful dismissal, they are entitled to be put back in the position they would have been in if the contract had been performed lawfully (i.e. if the proper notice had been given). In pension terms, that would mean an award of damages for the pension loss that relates to the notice period.

(b) Unfair dismissal. This occurs where a tribunal decides that an employer's decision to dismiss is unfair[6]. The tribunal may order a respondent to pay a claimant two types of statutory award: a "basic award" and a "compensatory award". The compensatory award is defined as the amount "the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer"[7]. This can include loss of benefits such as pension rights[8]. In what we might call "standard" unfair dismissal cases, the maximum compensatory award is the lower of a monetary cap (which, from 6 April 2019, stands at £86,444) and 52 weeks' pay[9]. To the extent that a claimant's loss (including pension loss) exceeds this monetary cap, it is not recoverable. There are categories of unfair dismissal where this monetary cap does not apply[10] and, in such cases, it may be possible to recover substantial amounts of pension loss.

(c) Discriminatory dismissal. This occurs where a tribunal concludes that an employer's decision to dismiss was because of a protected characteristic such as sex, race, age or disability[11]. The tribunal's approach to compensating discrimination corresponds to the damages that, in England and Wales, a County Court can award in respect of a successful claim in tort or, in Scotland, that a sheriff

[5] The tribunal has jurisdiction to decide a complaint of wrongful dismissal by virtue of Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994.
[6] That is, unfair within the statutory scheme that is mostly set out at Part X of the Employment Rights Act 1996 ("ERA").
[7] Section 123(1) ERA.
[8] Section 123(2)(b) ERA.
[9] Section 124(1ZA) ERA (and see also paragraph 2.25).
[10] See Section 124(1A) ERA. One example is where the tribunal decides that the reason for the dismissal is that the claimant made a protected disclosure (Section 103A ERA).
[11] The list of protected characteristics is at Section 4 of the Equality Act 2010 ("EqA").

can award in proceedings for reparation[12]. That means the tribunal must attempt to identify a sum of money that puts the claimant back in the position they would have been in but for the unlawful conduct. For our purposes, the task facing the tribunal is to ascertain the pension position that the claimant would have been in if the unlawful discrimination had not occurred and then seek, as best as can be done with an award of money, to restore the claimant to that position[13]. In discrimination cases, there is no monetary cap[14].

1.2 A tribunal may conclude that a dismissal is unlawful in one, two or three of the above scenarios[15]. Each of these three scenarios includes a so-called "express" dismissal (which happens when the employer dismisses the employee) and a so-called "constructive" dismissal (which happens when the employee resigns in response to the employer's unlawful conduct). For the sake of simplicity, these Principles use the phrase "unlawful dismissal" to cover all such scenarios. The Principles also use the word "compensation" as a convenient shorthand for damages for breach of contract, the compensatory award for unfair dismissal and tortious-equivalent damages for discrimination.

1.3 When assessing compensation for a claimant's pension loss, difficulties arise because the claimant has not lost money, as such, at the time of dismissal; their loss is experienced in the future, during retirement, in the form of a reduced pension. The approach the tribunal should take to compensating that pension loss depends on the type of pension scheme operated by the employer. In many cases, a reasonable assessment of such loss can be made by adding up the pension contributions that the employer would have made if the dismissal had not occurred. This is known as the "contributions method". It is simple to apply. In other cases, the tribunal must try to work out the reduction in the value of a defined benefit pension. As we shall see, that is not so simple.

1.4 Previous editions of this document received judicial approval for making this task easier, but the third edition was no longer fit for purpose. There had been many changes in the pensions landscape since the third edition in 2004. To name just a few: changes to state pension age; a new state pension system; reduced earnings growth; widespread closure of final salary schemes; the advent of auto-enrolment; and the introduction of complex rules for taxation of pension benefits. These changes meant that the assumptions underlying the tables and multipliers in the third

[12] Sections 119(2)(a), 119(3)(a), 124(2)(b) and 124(6) EqA.
[13] *Livingstone v. Rawyards Coal Co* [1880] 5 App Cas 25 and *Ministry of Defence v. Cannock & others* [1994] ICR 918.
[14] Following the ECJ's decision in *Marshall v. Southampton and South West Hampshire Area Health Authority (No.2)* [1993] IRLR 445.
[15] Where a dismissal is both unfair and discriminatory, the more favourable scheme for compensation should apply (*D'Souza v. London Borough of Lambeth* [1997] IRLR 677). Compensation for discrimination is more favourable for several reasons: there is no monetary cap; it is not subject to the Employment Protection (Recoupment of Benefits) Regulations 1996; it attracts interest; and it includes compensation for injury to feelings.

edition were no longer safe. Tribunals often speak of "old job facts" and "new job facts" when calculating compensation for future loss[16]. The changes in the pensions landscape in recent years had altered both.

1.5 As noted in the introduction, no funding was available to support GAD's involvement in drawing up new tables and multipliers that better reflect the current – and more complex – pensions landscape. The working group's members are not actuaries and they do not have the expertise to undertake this task themselves.

1.6 Based on their combined experience as practitioners and judges, the members of the working group have observed some typical behaviour patterns around pension loss:

(a) Many claimants, particularly those who are not represented, do not seek compensation for pension loss at all, even though they may be entitled to it. They will often focus on lost salary and overlook other benefits such as the employer's contributions to a pension scheme in which they were enrolled.

(b) Even when claimants do seek compensation for their pension loss, it is often poorly expressed or vague. Many schedules of loss, for example, frequently say that pension loss is "to be confirmed"[17]. This makes it difficult for the parties to have a sensible discussion about the possible settlement of their dispute.

(c) Many settlements occur between the liability hearing (the point at which the parties learn that a claimant has won their case) and the remedy hearing (the point at which the parties learn the amount of compensation that the respondent is ordered to pay the claimant). Parties frequently reach agreement on remedy once they know the outcome of the liability hearing or once they are in possession of certain information about matters such as pension rights.

1.7 What causes these patterns of behaviour? It may be ignorance about the occupational pension arrangements that applied in an employment relationship or even ignorance about pensions in general. For others, the cause may be a "fear factor" in dealing with pensions, perhaps due to concerns about complexity. For representatives, there may be a concern that it is not cost-effective to look at pension loss in detail until it is known whether a claimant's claim has succeeded.

[16] The phrases "old job facts" and "new job facts" were used by the EAT in *Kingston Upon Hull City Council v. Dunnachie (no.3)* [2003] IRLR 843. "Old job facts" include whether the claimant would have remained in their old job anyway and, if so, for how long, whether they would have been promoted and whether their pay and pension benefits would have remained stable. "New job facts" concern whether the claimant would be likely to obtain a new job and, if so, what sort of job, by what sort of date and with what level of pay and pension benefits.

[17] This approach is often criticised by respondents, sometimes fairly, for displaying a lack of effort by claimants' representatives. However, it can be an understandable position for claimants' representatives to adopt, because respondents will possess more knowledge than claimants about applicable occupational pension arrangements.

1.8 The working group wishes to confront these concerns. To that end, the Principles serve multiple purposes. They assist parties in understanding the developing pensions landscape, how pension loss arises following an unlawful dismissal and how it might be compensated; they encourage early exchanges of information that make clear whether a particular case is one that might involve significant pension loss; they steer parties towards settlement where appropriate; they ensure that parties invest time and expense in calculating pension loss only where it is proportionate to do so; they describe approaches for calculating loss where expert actuarial advice is not available or affordable; and they have sought to achieve all this without input from GAD. We have aimed for simplicity of expression, aided by several examples. Regrettably, however, it has been impossible to avoid using pensions and tax jargon, especially in more complex scenarios.

1.9 All of us, whether judges or parties, should not lose sight of the artificiality of this exercise. Any calculation of future loss is based on a series of imponderables. All complex pension calculations, even those involving actuarial assumptions, start from a series of estimates and then apply a formula to produce a final figure. That figure may descend to pounds and pence, and look satisfyingly precise, but it is only an extension of the original estimates. Bespoke tables and multipliers appeal because the admirable precision of the awards for pension loss they produce projects a veneer of accuracy. But it is a veneer nonetheless; the precise figures mask the broad brush that produced them.

1.10 We set out below a summary of the main points in these Principles.

(a) The Principles provide a framework for establishing the age at which a claimant will retire from the workforce where that is relevant to the calculation of their compensation. In broad terms, we adopt the approach that, where a claimant has not accrued significant occupational pension rights, the tribunal will assume retirement at state pension age. By contrast, if a claimant has accrued significant occupational pension rights in a scheme with a normal retirement age (and entitlement to an unreduced pension) below state pension age, the tribunal will assume retirement at the scheme's normal retirement age. The tribunal will decide, based on the facts of each case, what level of accrued benefits is "significant" for this purpose. This approach can be displaced by evidence from the parties.

(b) The Principles explain the difference between gross income and net income, which is relevant when assessing both loss of earnings (and how this is affected by the tax relief on pension contributions and the types of pensions tax that might be applied) and loss of pension rights. The Principles explain how awards of compensation are grossed up in accordance with the so-called Gourley principle.

(c) The Principles explain the operation of the new state pension system that was introduced in April 2016. They provide a framework for calculating loss of state pension rights under this new system. It involves use of the Ogden Tables in the small number of cases where such an award may be appropriate.

(d) Insofar as loss of occupational pension rights are concerned, the Principles identify a category of "simple" cases. In such cases, the tribunal will exclusively use the contributions method to assess a claimant's net pension loss. This method requires the tribunal to aggregate the contributions that, but for the dismissal, the employer would have made to the claimant's pension scheme during the period of loss that has been identified. This approach will invariably be adopted in cases where the claimant's lost pension rights relate to a defined contribution scheme, including a scheme into which the claimant was automatically enrolled. It will also be adopted in some cases where the lost pension rights relate to a defined benefit scheme; for example, those cases where the period of loss relates to a relatively short period or where the application of the monetary cap on compensation or a very large withdrawal factor means it will be disproportionate to engage in complex analysis.

(e) The Principles identify a category of "complex" cases. These are cases for which the contributions method is not suited. In general, a case will be a "complex" one if the claimant's lost pension rights derive from a defined benefit scheme (including both final salary schemes and Career Average Revalued Earnings schemes) and the loss relates to a longer period. "Complex" cases include, but are not limited to, career loss cases. Such cases will benefit from a more tailored approach to case management. For example, liability issues and remedy issues will be considered at separate hearings.

(f) The Principles describe a "seven steps" model by which loss will be ascertained in these "complex" cases. The model incorporates the Ogden Tables (with a bespoke age-related modification). The outcome will be imprecise but ought still to be just. Alternatively, the parties may call expert actuarial evidence, with the tribunal's preference being for a jointly-instructed expert. There is also scope for a blended approach, with expert evidence on a limited number of points rather than the overall assessment of loss.

(g) In some "complex" cases, it may also be appropriate for the remedy hearing to proceed in two stages. At the first stage, the tribunal would decide the more straightforward (non-pension) aspects of the compensation and issue a judgment to that effect. It would also make findings of fact on those matters that, in consultation with the parties, were thought relevant to calculating pension loss in the circumstances of the individual case. The parties would then be given a time-limited opportunity to agree the value of pension loss. In the absence of agreement, pension loss would be decided at the

second stage and set out in a further judgment. The underlying idea is that the parties are encouraged to agree the amount of pension loss (with the benefit of the tribunal's findings of fact where appropriate) and only bear the cost of expert actuarial evidence where it is proportionate to do so in view of the compensation at stake.

(h) Finally, to give the parties as much assistance as possible, the Principles contain links to useful websites, either throughout the text or in footnotes. There are also substantial appendices. Appendix 1 summarises the benefits of the main public sector defined benefit pension schemes. Appendix 2 contains "at a glance" extracts from the Ogden Tables. Appendix 3 contains numerous examples of the Principles in operation.

1.11 The Principles do not have the force of law. They are not rigid rules. If the parties wish to advance arguments for using their own calculations, rather than following the recommended approaches, the tribunal will consider them[18].

1.12 The members of the working group meet periodically to review and update the Principles and to ensure that revisions take account of future changes to the pensions landscape and decisions of appellate courts. Weblinks will be checked to ensure that they remain live. Future revisions will also reflect changes to the Ogden Tables. As time passes, the number of examples that are available may also increase.

1.13 If readers wish to suggest further examples that should be provided in a future edition, if they wish to suggest improvements to the Principles or if they identify any errors in the text or examples requiring correction, they should email details to pensionprinciples@ejudiciary.net. This email account will be monitored by a member of the administrative staff of the office of the President of Employment Tribunals for England & Wales. It should not be used for correspondence about individual cases or to seek advice about the application of the Principles to such cases.

[18] As was the case with previous editions; see, for example, *Port of Tilbury (London) Limited v. Birch* [2005] IRLR 92.

Chapter 2: Some preliminary issues

2.1 Before examining how pension loss should be assessed, there are some preliminary points about both pensions and tax to consider. We start with the most basic question of all.

What is a pension?

2.2 A pension is best understood as a regular income that a person receives in retirement. There are three main types of pension arrangement in the UK: state, personal and occupational. They operate in parallel; some individuals in retirement receive all three. An individual will receive only one state pension but may receive money from several different personal or occupational pensions. Those uncertain of what personal pensions they might have can make enquiries via a "Pensions Dashboard" (see https://pensionsdashboardproject.uk/saver/about-the-pensions-dashboard/).

2.3 In short:

(a) The state pension is income that is paid by the state to an individual who receives that income in their capacity as a citizen. At its simplest, individuals qualify for a state pension upon reaching state pension age (see below) and having paid National Insurance ("NI") contributions for sufficient years during their working life.

(b) A personal pension, in contrast, is more like a traditional savings vehicle. Individuals pay money into a pension scheme, often described as a pension "pot" or "fund". There may be a gap of many years, perhaps decades, between when the contributions are made and when the benefits are received. A private provider, chosen by the individual, invests the pot or fund with a view to increasing its value over time. Later in life those individuals can use the money thereby accumulated to purchase an "annuity", which is a financial product giving a retirement income for the remainder of a person's life, and which they receive in their capacity as a consumer. That is why this type of scheme has often been referred to as a "money purchase" scheme. Recent reforms provide more flexibility over the use that can be made of the fund.

(c) An occupational pension, which is sometimes called a workplace pension, is a benefit an employer provides as part of an individual's overall remuneration package and which is a form of deferred pay. Such pensions typically take contributions from the individual, the employer and (through tax relief) the state. These contributions should not be confused with the NI contributions underpinning the state pension. The pension scheme might be associated with the employer, or the employer may offer a group personal pension scheme as a workplace pension forming part of the employee's overall remuneration package, to which the employer will pay

contributions. Although the legal structure of a group personal pension is different from a true occupational pension, for present purposes, these differences are not relevant. In both cases, the fact that the employer pays into the scheme for the employee's benefit means that compensation for pension loss may be payable in a tribunal claim

2.4 There are two main types of occupational pension scheme to consider:

(a) Defined contribution (or "DC") schemes. In such a scheme, a private provider, usually chosen by the employer, invests the pot or fund with a view to increasing it. The usual situation is that both the employer and the employee have contributed defined amounts to the pot or fund, expressed as percentages of salary. The amount of the resulting pension will depend on the performance of that pot or fund and the size of the annuity it can purchase. It operates rather like a personal pension and it is "money purchase" in nature. Group personal pension schemes will be DC schemes.

(b) Defined benefit (or "DB") schemes. In such schemes, the pension benefits are defined in advance and thereby guaranteed regardless of the performance of any underlying fund. Until quite recently, DB schemes were commonly "final salary" schemes. Increasingly, they are Career Average Revalued Earnings (or "CARE") schemes. We explain the difference later. For employees whose earnings quickly reach a plateau, membership of a CARE scheme may well provide better benefits; for others, such as those who anticipate promotion later in their career, the benefits will be less generous.

Some schemes are hybrid in nature. For example, an employer may have closed a DB scheme to new employees but created for them a DC section within the same scheme.

2.5 DB schemes and DC schemes differ greatly in how risk is allocated. In a DB scheme, the employer who has guaranteed the defined benefit faces the risks associated with an employee's life expectancy, inflation and investment performance. In a DC scheme, those risks are faced by the employee, and this creates uncertainty about the level of income that can be expected in retirement.

2.6 There will also usually be an option upon retirement to "commute" part of the pension income. This means that some of the future income element of the pension is sacrificed in exchange for an immediate lump sum, which is usually tax-free.

What is pension loss?

2.7 A claimant may, after an unlawful dismissal, receive a smaller pension in retirement than they would have done if they had not been dismissed. That shortfall in their pension is what we mean by pension loss.

2.8 The tribunal will generally consider two types of pension loss:

(a) Loss of state pension rights
It is possible that a claimant's dismissal results in a reduced state pension in a manner that merits an award of compensation. This is because the state pension system is rooted in an individual's NI record, which is itself linked to employment history.

(b) Loss of occupational pension rights
An occupational pension provides a benefit to an individual in their capacity as an employee; losing that employment, and losing that benefit, causes loss.

2.9 What about personal pensions, the other arrangement we mentioned above? Except in the case of group personal pension schemes provided by an employer, these are usually independent of employment relationships. It may be true that, following dismissal, a person can no longer afford to put money into a personal pension; but it may also be true that they can no longer afford mortgage payments or household bills. A tribunal will make an award that compensates a claimant for their underlying loss of income from employment, rather than for the loss of items on which that income was formerly spent. It will be a matter for a successful claimant to decide how to spend the compensation. A tribunal will only need to consider making an award of compensation for loss of personal pension benefits where the employer had agreed to make contributions to such a scheme. The approach will be the same as when compensating a claimant for loss of an employer's contributions to a DC pension scheme. We provide an example at Appendix 3 (see Christopher).

2.10 These Principles focus on compensating claimants for the loss of state pension rights and the loss of occupational pension rights (for both DC and DB schemes). That said, it may be helpful if we make some points about the way tribunals calculate compensation for loss of earnings.

Loss of earnings

2.11 When awarding compensation to a claimant, it is common for the award to cover past loss of earnings and future loss of earnings. Taking each in turn:

(a) Past loss of earnings relates to income lost between the date of the dismissal and the date of the tribunal hearing. It is straightforward to calculate because the tribunal will have heard evidence about what happened between the dismissal and the hearing and so can make findings of fact about that period.

(b) Future loss of earnings relates to income lost from the date of the tribunal hearing until a terminal date in the future. It may be a date

when the claimant's notice period would have expired or when they would have lost their job anyway. It may be a date when it is thought that they will have mitigated their loss by finding a new job for the same pay. In a few cases, it may even be the date on which, but for the dismissal, they would have retired; this last category includes what is sometimes known as a "career loss" case.

Where a tribunal makes an award for future loss of earnings, it will be calculated separately to its award for past loss of earnings.

2.12 A tribunal has the power to award interest on the compensation payable to a claimant – but only in discrimination cases[19]. This recognises the fact that the claimant has had to wait before receiving compensation for their past loss of earnings and it provides for additional compensation in respect of that delay. Self-evidently, interest is not awarded on future loss[20]. Pension loss is a form of future loss; it is a loss experienced in retirement. It follows that no interest is awarded on compensation for loss of pension rights[21].

2.13 Although pension loss is a type of future loss, it will sometimes go hand in hand with loss of earnings. By way of example, take a case where the tribunal decides that a person would have lost their job anyway, but for a different reason, within a period of three months. At a remedy hearing, the tribunal therefore awards three months' past loss of earnings. The tribunal also decides to award pension loss to the claimant using the "contributions method" (this approach is explained later, in Chapter 4), by aggregating the pension contributions the employer would have made to its DC scheme during the same period of three months.

2.14 Sometimes pension loss will not go hand in hand with loss of earnings. Take, for example, a case where the claimant was dismissed from a job which had a generous DB final salary pension scheme. The tribunal decides that the claimant will find another job within the next six months which pays the same salary as they received before but with much less valuable pension benefits – perhaps the minimum rights under the auto-enrolment regime. The claimant's loss of earnings lasted six months, but the loss of pension rights relates to a longer period. It may even continue until the claimant's retirement.

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[19] See the Employment Tribunals (Interest on Awards etc) Regulations 1996 (as amended). Since 29 July 2013, the rate of interest has been 8% (aligned with Section 17 of the Judgments Act 1838). For past loss of earnings, interest is awarded from the mid-point date between the act of discrimination (in our context, this will usually be the dismissal) and the date of the hearing when the compensation figure is calculated. For awards for injury to feelings, interest is awarded for the whole of the period from the act of discrimination to the date of the hearing. No interest is awarded outside of discrimination cases (e.g. unfair dismissal). This type of interest should not be confused with the interest that accrues on an unpaid judgment, which is governed by the Employment Tribunals (Interest) Order 1990.

[20] As confirmed by Regulation 5 of the Employment Tribunals (Interest on Awards etc) Regulations 1996 (as amended).

[21] See *Ministry of Defence v. Cannock & others* [1994] IRLR 509, para 113.

2.15 That said, the tribunal will not apply different standards of causation to a claimant's loss of earnings and their loss of pension rights. A claimant's pension benefits, it must be remembered, are merely part of the overall remuneration package. The tribunal will be alert to the possibility that a future rise in salary in new employment is sufficient to offset both loss of earnings and loss of pension rights arising from dismissal from the old employment[22].

2.16 We have already noted that a claimant's intended date of retirement is relevant to the assessment of their future loss of earnings. For example, a claimant may already be close to state pension age. Or the tribunal may conclude that a claimant will never work again (the so-called "career loss" case). In both cases, the tribunal will need to decide the likely age at which, but for their dismissal, the claimant would have retired: before state pension age, at state pension age or after state pension age? We return to this point when discussing the state pension in Chapter 3.

Net pay, not gross pay

2.17 It should be emphasised that awards for loss of earnings, whether in the past or in the future, are based on net pay[23]. In this context, "net pay" is what is left from gross pay after income tax and Class 1 (employee) NI contributions have been deducted. We shall briefly explain both.

2.18 For the tax year 2019-2020, the income tax bands, for most people living in England, Wales or Northern Ireland, are:

- A personal allowance of £12,500 – no income tax is paid on earnings up to £12,500;
- On the next slice up to £37,500 (which is £50,000 including the personal allowance), basic rate tax is paid at 20%;
- On the next slice of income up to £150,000, higher rate tax is paid at 40%; and
- On income over £150,000, additional rate tax is paid at 45%.

This is subject to any restriction of the personal allowance, discussed at paragraphs 2.20 and 2.21 below. Details on past income tax rates are available here: https://www.gov.uk/government/publications/rates-and-allowances-income-tax. Note that for taxpayers who live in Wales (even if they work in England) these rates are achieved by a combination of two different regimes: the UK rates applicable in Wales are reduced by

[22] By way of example, see *Aegon UK Corporate Services Ltd v. Roberts* [2010] ICR 596 CA.

[23] We are referring here to loss of earnings that form part of the compensatory award for unfair dismissal, an award of compensation for a discriminatory dismissal and/or damages for wrongful dismissal. Some awards, however, are made gross, such as unpaid wages awarded under Section 24(1) ERA or unpaid holiday pay awarded under Regulation 30(1)(b) of the Working Time Regulations 1998; in such cases, if not deducted at source, a claimant is responsible for any income tax or employee NI contributions that may be due on the sum awarded.

10% in each band, but the National Assembly of Wales has set the Welsh rate of income tax at 10% so the overall effect is the same: https://gov.wales/welsh-rates-income-tax

2.19 The situation is different for taxpayers who live in Scotland, where income tax is partially devolved. For the tax year 2019-2020, the Scottish Government has the same personal allowance, but there is then a starter rate of 19% on income from £12,501 to £14,549. Basic rate income tax applies at 20% to earnings on the next slice from £14,550 to £24,944, and there is then a 21% band (the "intermediate rate") between £24,945 and £43,430. The higher rate of 41% applies between £43,431 and £150,000, whilst the top rate for income over £150,000 is 46%. These rates are also subject to restriction of the personal allowance. Further details on Scottish income tax are available here: https://www.gov.uk/scottish-rate-income-tax/how-it-works

2.20 This situation is more complicated for higher earners. An individual's tax-free personal allowance of £12,500 goes down by £1 for every £2 that their "adjusted net income" exceeds £100,000. Confusingly, "adjusted net income" (which is an HMRC phrase) does not, in this context, mean "net of income tax". It means total gross earnings less certain tax reliefs, which include donations made to charities through Gift Aid and employee pension contributions (those on which no tax relief has been given or those on which only tax relief at the basic rate has been given).

2.21 By way of example, consider an individual earning a gross annual salary of £125,000 who, in the current tax year, has paid employee pension contributions of £9,000 and Gift Aid donations totalling £2,000. This individual's adjusted net income will be £114,000 (which is £125,000 less £9,000 less £2,000). For every £2 that the figure of £114,000 exceeds £100,000, this individual's personal allowance reduces by £1. With an excess of £14,000, this means that their personal allowance has reduced by £7,000 to £5,500. In turn, this means that they will pay basic rate tax at 20% on earnings on the next slice of £37,500[24] between £5,500 and £43,000, while the higher rate tax band is expanded to earnings between £43,000 and £150,000. Additional rate tax is not affected. The effect of restriction of the personal allowance, in other words, is to increase the slice of an individual's earnings upon which they pay tax at the higher rate. As the examples in Appendix 3 demonstrate, this will have an impact when grossing up significant awards of compensation, which (as we shall see) are taxed as income in the year of receipt.

2.22 In addition, employees pay Class 1 NI contributions. NI is calculated on gross earnings (which, in this context, means earnings before income tax and before pension contributions) between lower and upper limits:

[24] In Scotland the figures differ because of the basic and intermediate rates but the principle is the same.

- No Class 1 NI contributions are paid on weekly earnings below £118 a week (equivalent to £5,876 a year);
- No Class 1 NI contributions are paid on weekly earnings between £118 and £166 a week (equivalent to between £6,136 and £8,632 a year) (this threshold, as we shall see, is relevant to the number of qualifying years for state pension purposes);
- Class 1 NI contributions are paid at 12% on weekly earnings between £166 and £962 a week (equivalent to between £8,632 and £50,024 a year); and
- Class 1 NI contributions are paid at 2% on weekly earnings over £962 a week (equivalent to over £50,024 a year).

Further details on NI contributions are available here: https://www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions

2.23 A word of caution: the ET1 claim form distinguishes between "pay before tax" (i.e. gross pay) and "normal take-home pay". In this context, "normal take-home pay" is not necessarily the same as gross pay less income tax and NI contributions. It means pay after all deductions. These may include the claimant's own contributions to a workplace pension, their savings made to a workplace savings scheme or money that they are paying under an attachment of earnings order. These deductions are the claimant's own money, and the claimant loses that money when dismissed. The parties and the tribunal need to be vigilant, to ensure that the right figure for net pay is used when calculating loss of earnings.

2.24 In most cases, the proper amount of net pay needed to calculate loss of earnings (and the amount of any deductions) is revealed by a claimant's payslips, both in respect of their old job and any new job obtained since dismissal. If payslips are not available, an online calculator developed by HMRC can provide a good estimate of net pay. It may be appropriate to use it where there is no other source of information: https://www.gov.uk/estimate-income-tax

2.25 When working out gross pay and net pay, the tribunal and the parties must take care to avoid confusion with the statutory concept of a "week's pay" as set out in the ERA[25]. This concept applies in many contexts. For example, when subject to a monetary cap (presently £525), a "week's pay" is relevant to the calculation of the basic award for unfair dismissal, statutory redundancy pay and awards for failure to provide a statement of employment particulars[26]. When it is not subject to a monetary cap, it is relevant to matters such as the calculation of notice pay for periods of

[25] See Chapter II (Sections 220 to 229) of the ERA. The "week's pay" rules of the ERA will not necessarily apply to the calculation of statutory holiday pay under Regulation 13 of the Working Time Regulations 1998 for employees with normal working hours; further comment is outside the scope of these Principles.
[26] See Sections 119, 162 and 227(1) ERA and Section 38(6) of the Employment Act 2002.

statutory minimum notice, protective awards and the upper limit on the compensatory award for unfair dismissal[27]. While it is correct that a "week's pay" is assessed before deducting income tax and employee NI contributions, the EAT has confirmed that it also includes the employer's pension contributions[28]. For this purpose, there is no distinction to be drawn between contributions to a DC scheme and contributions to a DB scheme. Self-evidently, this increases the potential value of an award for unfair dismissal in cases where the monetary cap operates.

2.26 Importantly, the principle that loss of earnings is compensated on a net basis also applies to loss of pension rights. Just as the tribunal looks to compensate a claimant for the difference between the net amount they earned in the job from which they were dismissed and the net amount they are now earning, subject to the normal rules of causation, so the tribunal looks to compensate a claimant for the difference between the net pension benefits they would have received, but for their dismissal, and the net pension benefits they will now receive.

Tax relief on pension contributions

2.27 Almost all pension schemes are registered for tax. This means, among other matters, that employee contributions paid to the scheme attract tax relief. The mechanism for tax relief is relevant to understanding pension loss. It can also be relevant when working out a claimant's correct net pay for loss of earnings calculations. It requires a brief explanation.

2.28 Consider the situation of an employee who pays basic rate income tax at 20%. The contributions they make to their pension attract tax relief at 20% in this way: for every £1 of gross pay saved to the scheme, the state pays 20 pence in tax relief, making the net cost to the employee 80 pence. For an employee paying higher rate income tax at 40%, the effect is more generous: for every £1 of gross pay contributed to the pension scheme, the state pays 40 pence in tax relief, making the net cost of the contribution 60 pence. The same applies at additional rate income tax: for every £1 of gross pay contributed to the pension scheme, the state pays 45 pence in tax relief, and the net cost to the employee is therefore 55 pence. In each case, if the employer takes those contributions out of their pay <u>before</u> deducting income tax at source, which is what usually happens with an occupational scheme, the tax relief is obtained automatically. This means that the "gross pay" figure appearing on their P60, which is the amount on which income tax is paid, will be less than their gross annual salary. The difference exists because their gross pay has been reduced to reflect their contributions to their pension scheme:

[27] See Sections 88, 89 and 124(1ZA)(b) ERA and Section 190(2) of the Trade Union and Labour Relations (Consolidation) Act 1992.
[28] *University of Sunderland v. Drossou* (EAT/0341/16). In so deciding, the EAT rejected established practice to the contrary (for example, *Payne v. Port of London Authority* (ET/155560/89)).

the reduction in their taxable income is the mechanism by which tax relief on those contributions has been bestowed[29].

2.29 However, if contributions are paid from the employee's pay after deducting income tax (as is always the case with a personal pension scheme), the tax relief is not obtained automatically, but must be actively claimed. The pension scheme administrator will make a claim on the employee's behalf for the basic rate tax of 20%, and this amount will be added to the employee's pension "pot" in the scheme. A higher rate taxpayer will claim tax relief on the extra 20% (and an additional rate taxpayer would claim tax relief on the extra 25%) directly from HMRC, usually through their self-assessment tax return.

2.30 Since April 2006, however, an individual may only claim tax relief on contributions within a set "Annual Allowance" ("AA"). The AA is currently £40,000. It applies to all tax-registered pension arrangements that an individual has in total, not to each separately. In this context, the figure of £40,000 is not the maximum amount of tax relief available, but the maximum amount of payments into a pension scheme that an individual can make that attract tax relief. Put another way, higher rate and additional rate taxpayers obtain more generous tax relief from the state on pension savings up to £40,000 in a tax year, but then pay tax on their pensions savings that exceed £40,000 in a tax year.

2.31 There is a further complication for higher earners. Since April 2016, the AA has been reduced ("tapered") for those who meet two conditions. The first condition is that their "threshold income" (which is their income excluding any pension contributions) exceeds £110,000 during the tax year. The second condition is that their "adjusted income" (which, in this context, means their income plus the pension contributions that they and their employer have both made) exceeds £150,000 during the tax year. For such individuals, every £2 of excess income over £150,000 reduces their AA by £1. This up to a maximum reduction of £30,000 to the AA. It follows that an individual earning an adjusted income of £210,000 or more will have a reduced AA of £10,000.

Further details are available here:
https://www.gov.uk/government/publications/rates-and-allowances-pension-schemes/pension-schemes-rates

2.32 If the AA of £40,000 (or such lower tapered amount as may apply) is exceeded, the individual pays tax on the balance at their marginal rate through self-assessment, just as if it were additional income. The effect is to reduce the individual's net pay further. This tax – known as the AA charge – is therefore relevant when calculating a high earner's loss of earnings based on net pay. (In some cases, the occupational pension scheme meets the charge each year and recovers it from the scheme

[29] Therefore, care must be taken when using a claimant's P60 as the basis for making findings of fact about their rate of pay – it may not accurately reflect their gross annual salary.

member, further down the line, by way of reduced pension benefits. This is discussed further below; as we shall see, its application requires care in respect of DB schemes.)

2.33 To be clear: there is no limit on the maximum amount of contributions that a person can make to a pension scheme that is tax-registered but, if they exceed the AA, tax is levied on the excess.

2.34 It should be noted that, for those who do not pay income tax due to low income, tax relief is still available at the present basic rate level of 20% on the first £2,880 paid into the pension (which has the effect of topping it up to £3,600).

2.35 In addition to the AA, there is a personal "Lifetime Allowance" ("LTA") for all pension savings that a person makes into a registered scheme, which was also introduced in April 2006. Again, it applies to all an individual's tax-registered pension arrangements, not to each separately. Although individuals can have pension savings that exceed the LTA (presently £1,055,000), the excess is subject to a tax charge. Unlike the AA, this is not a charge imposed on an individual's earnings; it is a charge imposed at the point of retirement and on their pension income and/or lump sum, which therefore reduces the net value of their benefits. We will look at this in more detail in Chapter 5, in the context of DB schemes.

Grossing up: the Gourley principle

2.36 We now return to the point that compensation for loss of earnings and compensation for loss of pension rights are both calculated on a net basis. The tribunal must take care, when identifying an award of compensation, that its approach to tax does not put the claimant in either a better or a worse financial position than if the dismissal had not occurred. This is the so-called "Gourley principle"[30].

2.37 Assume, by way of illustration, that an employer unfairly dismisses a claimant on notice. The claimant was unemployed for three months then found another job at the same rate of pay. If she had worked for the respondent for those three months, the claimant would have been entitled to receive a gross salary of £5,000. If the tribunal had ordered the employer to pay her the sum of £5,000, as past loss of earnings, it would have placed the claimant in a better position than if there had been no dismissal. This is because, if the employee had received pay during that three-month period, tax and NI contributions would have reduced the amount received by the claimant - reducing it to, say, £3,500. The Gourley principle requires the tribunal to award net loss of £3,500. Put another way, a gross sum has been reduced to a net sum to make sure that the claimant is not put in a better position.

[30] From *British Transport Commission v. Gourley* [1955] UKHL 4.

2.38 Where a tribunal awards more than £30,000 in compensation for an unlawful dismissal, income tax is generally charged on the excess over £30,000[31]. The compensation is taxed in the year that it is received by the claimant. It is declared by means of self-assessment (the claimant has left employment, so it cannot be paid by the usual method of PAYE deductions). Here, the Gourley principle requires the tribunal to increase the amount awarded to make sure that, when this income tax is paid, the claimant does not end up in a worse position. This is known as "grossing up". (NI contributions are not levied on compensation. Compensation is grossed up to offset the income tax – and only the income tax – that is payable in the year of receipt.)

2.39 Grossing up is done as follows. The tribunal starts by calculating the loss on a net basis. As described above, this is done by identifying the true net pay in the old job and comparing it, where necessary, to the true net pay in any new job; and the same is done regarding the net pension benefits the claimant will now receive compared to the net pension benefits their old job would have delivered but for the dismissal. Having arrived at a net figure, the tribunal then deducts any part of the £30,000 exempt slice that remains available. It then increases the resulting figure by the amount of tax that will be charged and adds that increased figure to the award of compensation. Interest is calculated separately where compensation is being awarded for discrimination, but pension loss does not attract interest; see paragraph 2.12.

2.40 The amount of tax charged will depend on the individual circumstances of the claimant. For some claimants, it will mean that their compensation is grossed up at a single marginal rate; for others, it may mean grossing up in slices using different rates as each separate tax band is exhausted[32]. We provide an explanation and examples at Appendix 3 (see Ashok). In some cases, where it is cost-effective to do so and the parties desire greater precision, it may be appropriate to seek assistance from an accountant. This might be appropriate where, for example, the tribunal must take account of the restriction of the personal allowance or there are complex aspects of a claimant's income from new employment.

2.41 The AA and the LTA have no impact on the grossing up calculation. This is because they do not result in any tax charge on compensation that the tribunal has awarded, which is taxed as income. More particularly:

(a) The AA charge will only be relevant to the tribunal's calculations for loss of earnings if the charge is paid at the time. This is because it will have the effect of reducing net pay.

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[31] See Sections 401 to 403 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") and *Shove v. Downs Surgical Limited* [1984] 1 All ER 7. There are certain exceptions to the charge, which are outside the scope of these Principles. The taxation of a sum identified as "post-employment notice pay" is considered below at paragraph 5.61.

[32] See, by way of illustration, *Yorkshire Housing Ltd v. Cuerden* (EAT/0397/09) and *P A Finlay & Co Ltd v. Finlay* (EAT/0260/14, EAT/0062/16 & EAT/0117/16).

(b) The AA charge will only be relevant to the tribunal's calculations for loss of pension rights if it is paid by the scheme and repaid at the point of retirement. This is because it will have the effect of reducing net pension benefits.

(c) The LTA charge will only be relevant to the tribunal's calculations for loss of pension rights because, if imposed, it will have the effect of reducing net pension benefits, in the manner explained in more detail in the section on DB schemes. It will not affect net pay.

2.42 The Employment Judge and non-legal members are not themselves accountants. When it comes to working out a claimant's net pay in their old job and any new job (for the loss of earnings element) and their net pension benefits (for the loss of pension rights element), the "broad brush" is often applied. Although precision is impossible, the summary set out in this Chapter will hopefully improve accuracy.

2.43 We turn next to the state pension system and our approach to cases where a claimant, through dismissal, loses state pension benefits.

Chapter 3: The state pension system

3.1 Modern governments of all colours have sought, through state pension policy, to address the problem of relative poverty in old age. The policy approach has been influenced by the assumptions made about why people experience poverty in retirement. For example:

(a) If it is thought that people experience poverty in retirement because they have not saved enough during their working lives, in consequence of poor planning and a lack of self-control, there will be pressure on public policy to tend towards state intervention in the form of compulsory saving.

(b) If it is thought that people experience poverty in retirement because of lifelong low incomes or factors outside of their control, there will be pressure on public policy to tend instead towards state intervention in the form of income support for pensioners.

3.2 Over the years, public policy has experimented with carrots and sticks to varying degrees. All governments have faced the difficult task of reconciling the prohibitive cost of universal coverage with the perceived disincentives of means testing. Policy has also shifted because of improved health in old age and increased life expectancy. At various times, public policy has also reflected contemporary assumptions about gender and marriage.

3.3 The state pension in the UK has existed since the Old Age Pensions Act 1908. This provided for payment of a means-tested amount to women and men who had reached the age of 70. That age was seen, at the time, as advanced: few expected to reach it; even fewer expected to go beyond it.

3.4 A more recognisably modern state pension system developed with the implementation of the 1942 Beveridge Report. This resulted in the system of social insurance known as the basic state pension, embodied in the National Insurance Act 1946. The age of receipt for this pension was 65 for men and 60 for women.

3.5 The essential idea since 1946 has been to provide income in retirement to those individuals who have paid sufficient NI contributions during their working lives. With its roots in such contributions, the state pension system has had to consider ways of addressing the difficulties faced by those who experience long-term unemployment (for example through ill health) or who have taken time out of paid employment for other reasons (such as childcare). However, the contributory nature of the state pension system can be misleading: over time, the link has weakened between NI contributions and the state benefits they were originally intended to fund. Nowadays, governments tend to set NI rates according to their overall budgetary needs. The various benefits paid to pensioners depend less on the number of years in which they made NI contributions

and hardly at all on the precise amount of NI contributions they paid: those of pension age can now take advantage of a mixture of pensioner benefits that are universal (e.g. the winter fuel payment) and means-tested.

3.6 The state pension system has recently been the subject of significant reform. A new state pension ("nSP") was launched on 6 April 2016. The nSP is paid to people reaching state pension age on or after that date. For reasons that will be explained shortly, these people are men born on or after 6 April 1951 and women born on or after 6 April 1953 – and they are likely to form the vast majority of claimants to the tribunal. The nSP is based on a person's NI record. There is a new minimum qualifying period: 35 qualifying years are needed to get the full amount of nSP. However, most people will have made, or been credited with, NI contributions before 6 April 2016, and these will be taken into account when the nSP is calculated. There are also provisions dealing with those who were "contracted out" for a period before 2016.

3.7 These points are best explained by reference to the history of the state pension system.

The basic state pension (1946-2016)

3.8 Until April 2016, we talked of the basic state pension ("BSP"). The BSP was payable to an individual who had reached state pension age and who had paid a minimum number of NI contributions. The amount paid depended on the number of qualifying years during an individual's working life that he or she had been credited with accrual to the BSP. A "qualifying year" for this purpose was any year in which the individual earned more than a specified amount.

3.9 A full BSP was paid to those who had accrued a set number of qualifying years. That set number of years has varied over time. For a while, it was 44 years (for men born before 6 April 1945) and 39 years (for women born before 6 April 1950). Later, these figures were reduced to 30 years. They are now at 35 years, following the Pensions Act 2014 (applicable to men born on or after 6 April 1951 and women born on or after 6 April 1953).

3.10 Those people who had accrued fewer than the maximum number of qualifying years received their BSP on a *pro rata* basis. It was possible, in certain circumstances, to fill in the gaps in a NI record by making voluntary (Class 3) NI contributions. A BSP based on an individual's past contributions was known as a Category A pension. Any individual not entitled to a full BSP based on their own NI contributions record might also have been entitled to a supplementary pension based on the record of a partner, which was known as a Category B pension.

3.11 For the financial year 2019 -2020, the full amount of the weekly BSP is £129.20. It seems odd to give a figure for BSP, given its abolition on 6

April 2016, but this is needed for comparison purposes with the nSP, as will be explained. It was possible to increase BSP by delaying the point of receipt past state pension age, known as "extra state pension". A supplement was also payable upon reaching the age of 80.

Detour: the state pension age

3.12 As noted above, from its inception the state pension age was 65 for men and 60 for women. It remained so until April 2010. It was modified to reflect two changes in the political consensus. The first was the view that women and men should be treated equally. The second was the view that increases in life expectancy should be accompanied by an increase in the length of a working life.

3.13 Only men born on or before 5 December 1953 retain a state pension age of 65 and only women born on or before 5 April 1950 retain a state pension age of 60. The Pensions Act 1995 provided that, between April 2010 and March 2020, the state pension age for women would increase by one month every month (tapered by date of birth) until the state pension age for women reached 65, the same as for men. The Pensions Act 2011 accelerated the process of equalisation. It will now be achieved by November 2018 (in respect of women born on or after 5 December 1953).

3.14 From December 2018, the identical state pension age for both women and men will increase steadily. The rate of increase has, however, been modified. The Pensions Act 2007 aimed to increase it to 66 by 2024-26, to 67 by 2034-36 and to 68 by 2044-46. The Pensions Act 2014 accelerated this change. Women and men born between 6 December 1953 and 5 October 1954 will now have a tapered state pension age falling somewhere between 65 and 66. Those born between 6 October 1954 and 5 April 1960 will have a state pension age of 66. It then tapers again: those born between 6 April 1960 and 5 March 1961 will have a tapered state pension age falling somewhere between 66 and 67.

3.15 Until recently, the intention was that those born between 6 March 1961 and 5 April 1977 would have a state pension age of 67 and that the increase in state pension to 68 would not proceed until 2044-46 (i.e. for those born on or after 5 April 1977). However, on 23 March 2017, the Independent Reviewer of the State Pension Age (John Cridland CBE) produced his final report[33]. His review had been tasked with considering how the state pension system should be funded in the years to come and how to ensure fairness within and between different generations. The final report recommended that the increase in state pension age to 68 should be brought forward to 2037-39 (i.e. for those born after 5 April

[33] Available here: https://www.gov.uk/government/publications/state-pension-age-independent-review-final-report

1970, with tapering) with no further changes until 2047[34]. On 19 July 2017, the Government confirmed it would accept this recommendation[35]. The Government proposes that the next state pension age review will be conducted by July 2023. The Principles will be revised in the light of further changes.

3.16 In the meantime, a state pension calculator is available here: https://www.gov.uk/state-pension-age
The calculator will no doubt be amended to incorporate the accelerated arrival of a state pension age of 68 once it becomes law[36].

Why the state pension age is important

3.17 The state pension age is important in the field of occupational pensions for two reasons. The first reason is that many pension schemes align the age from which a scheme member can claim an unreduced occupational pension – known as their "normal retirement age" or "scheme retirement age" – with their state pension age. Some schemes, still available for those who were insulated from recent pension reforms, may provide for a younger age at which an unreduced pension is available, such as 60 or 65[37].

3.18 The second reason is that it can be important when assessing the appropriate terminal date for a claimant's future lost earnings. As noted at paragraph 2.11(b), the terminal date is when the claimant's lost earnings cease or, if they do not cease, when it is no longer appropriate for the employer to compensate them. This date may not be in the distant future. For example, the tribunal may conclude that a claimant will obtain alternative employment within six months or a year. Or the tribunal may

[34] See paragraph 4.2.2 of the final report.
[35] Department for Work and Pensions, State Pension Age Review, available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630065/state-pension-age-review-final-report.pdf
[36] Further details here: https://www.gov.uk/government/news/proposed-new-timetable-for-state-pension-age-increases
[37] The government's reforms to public sector DB pension schemes generally provided relief for members who were, at a particular date, within ten years of reaching the scheme's retirement age. The effect of the relief was to enable such individuals to remain members of the unreformed DB scheme (so that, for example, all their pension benefits retained the link to final salary) rather than become members of the new DB scheme (so that, for example, their benefits would accrue on a CARE basis). The situation has been made more complex by two factors. First, many members will have accrued benefits in the unreformed scheme before joining the new scheme (so that, for example, some of their benefits are linked to final salary and some are not). Second, there was transitional relief for members who were more than ten years away (but no more than 13½ years) from the scheme's normal retirement age: the effect was to delay, on a sliding scale, the date at which they joined the reformed scheme. That transitional relief was found to have been discriminatory in the judges' and firefighters' schemes by the Court of Appeal in *Lord Chancellor and others v McCloud and others [2018] EWCA Civ 2844.* The Supreme Court refused permission to appeal. The consequences of this decision are not yet clear but the Ministerial Statement is at https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-15/HCWS1725/

conclude that a claimant would have lost their employment, for a different but fair reason, within a short period. In many cases, the tribunal will not be concerned with the date a person intends to retire. However, there are cases where a person's intended date of retirement is relevant to the assessment of future loss of earnings. For example, a claimant may already be close to state pension age. Or the tribunal may be dealing with a "career loss" case. In both situations, as mentioned at paragraph 2.16, the tribunal needs to decide the age at which, but for their dismissal, the claimant would have retired: before state pension age, at state pension age or after state pension age? This is one of the "old job facts" to which we referred earlier.

3.19 A related scenario, more common today than it used to be, is for the tribunal to conclude that a claimant will find work again within a reasonable period but in a job with less generous pension benefits. This may be experienced by a claimant who, in mitigating their loss, moves from public sector to private sector employment. This will result in a period of future pension loss that is much longer than the period of future loss of earnings (unless the diminution in pension benefits is offset by an increase in salary). In such a case, the tribunal must still decide the claimant's likely date of retirement. This is one of the "new job facts" to which we referred earlier.

3.20 In general, the tribunal will proceed as follows:

(a) If the claimant has not accrued significant occupational pension rights, the tribunal will assume retirement at state pension age;

(b) If the claimant has accrued significant occupational pension rights in a scheme with a normal retirement age (and an entitlement to an unreduced pension) below state pension age, the tribunal will assume retirement at the scheme's normal retirement age; and

(c) If the claimant has accrued benefits in more than one occupational pension scheme, the tribunal will assume retirement at the age at which the bulk of those benefits can be taken on an unreduced basis.

This approach provides a clear terminal date for future loss of earnings that should be simple to understand and easy to apply in most cases. It will be for the tribunal to decide, based on the facts of each case, what level of accrued benefits is "significant" for this purpose.

3.21 This is not, however, intended to operate as a concrete principle. It can be displaced by evidence from the parties. For example, a claimant may persuade the tribunal that they would have wished to work beyond state pension age, resulting in a longer period of loss of earnings; it is, after all, increasingly common for people to work past their state pension age. If the tribunal has already found a claimant to be a credible and reliable witness, it may even be enough for them simply to declare "it was my

intention to work until 70". In some cases, a respondent may contend that the claimant would have retired before reaching their state pension age (or even before reaching their scheme pension age), thereby shortening the period of future loss of earnings. The tribunal will weigh up the evidence, and hear submissions from the parties, before deciding the point. We provide examples in Appendix 3 (see Janet, Derek and Peter).

3.22 When awarding loss of earnings beyond state pension age, there are two further points for the tribunal and the parties to bear in mind. First, employees who work beyond state pension age continue to pay income tax on their earnings but they no longer pay NI contributions[38]. Second, they will be entitled to draw upon their state pension while continuing to earn (although some may choose to delay receipt, resulting in higher nSP payments later[39]). In calculating loss of earnings beyond state pension age, therefore, the tribunal should note that a claimant's net pay will increase (because of the absence of NI contributions) and that there should be no deduction for receipt of nSP.

The additional state pension (1961-2016)

3.23 Putting back the age at which the state pension is received has not been the only mechanism by which, over the years, governments have sought to maintain a sustainable state pension system. Another mechanism, which lasted for 55 years until its abolition in 2016, was the additional state pension. This resulted from public pressure, which began to build in the late 1950s, to introduce a method of supplementing the basic state pension through an earnings-related "top-up". A top-up was considered necessary because, in the 1950s, occupational pension schemes were rare.

3.24 This top-up system has varied in structure and gone by different names over the years:

(a) The first top-up scheme was introduced in 1961. Known as the Graduated Retirement Benefit ("GRB"), it operated until 1975. Few such individuals who participated in the GRB will still be in the labour market. It introduced the idea that further NI contributions could result in a "graduated" increase in the pension through the accumulation of "units". An individual could accumulate a maximum number of units during employment in this way: 86 units for men and 72 units for women. Each unit was translated into a weekly pension supplement. Individuals who accrued GRB between 1961

[38] Further details here: https://www.gov.uk/tax-national-insurance-after-state-pension-age/overview. This concerns Class 1 employee NI contributions. The self-employed who continue working beyond state pension age must still pay Class 2 and 4 NI contributions. Also, employer NI contributions continue to be payable in respect of employees who work beyond state pension age; see https://www.gov.uk/employee-reaches-state-pension-age.
[39] nSP increases by 1% for every 9 weeks of deferral (about 5.8% for every full year of deferral). Further details are here: https://www.gov.uk/deferring-state-pension/how-it-works.

and 1975 still retain it; the value of each unit was set each financial year and, for the 2019-20 financial year, stands at a modest 14.16 pence. Thus, for 2019-20, the income supplements available to pensioners in receipt of maximum GRB are £12.18 a week for men (86 x 0.1416) and £10.20 a week for women (72 x 0.1416).

(b) The second top-up scheme, known as the State Earnings-Related Pension Scheme ("SERPS"), operated between 1978 and 2002. It was a response to the growth in occupational pension schemes during the 1970s. In essence, employees would receive a SERPS pension representing 20-25% of their earnings above a "lower earnings limit" (about the same as the weekly basic state pension) and subject to a cap at the "upper earnings limit". The resulting pension income would be calculated at retirement in accordance with complex formulae.

(c) The third and final iteration of the concept of an earnings-related top-up was the State Second Pension ("S2P"). It was introduced by the Child Support, Pensions and Social Security Act 2000 and came into force in April 2002. Whereas SERPS had been of particular value to employees in middle-income brackets, the policy rationale behind S2P was redistributive: to focus on those on low incomes or unable to work because of their caring responsibilities. By introducing three new bands between the lower earnings limit and the upper earnings limit, the effect was to skew the accrual of benefits to those on lower incomes: those in the lowest band, for example, accrued benefits at twice the rate they would have done under SERPS.

3.25 Until April 2016, many individuals, depending on their date of retirement, would have received additional state pension income derived from a combination of GRB, SERPS and/or S2P. As time passed the recipients of GRB in retirement became fewer and fewer, but many people still expected top-up benefits under SERPS and S2P. However, S2P was abolished in April 2016 with the advent of the nSP.

Contracting out of the additional state pension (1961-2016)

3.26 During the years when the state pension incorporated an earnings-related top-up element, it was open to individuals to "contract out" of it. To be clear: it has never been possible for individuals to contract out of the basic state pension, just the additional state pension. Individuals could give up all or part of their additional state pension and opt instead to receive extra pension benefits from their occupational pension or from their personal pension.

3.27 The rules governing contracting out have changed over time:

(a) In relation to the GRB (1961-1975), the decision about contracting out was left to the employer. An employer could contract its

employees out of part of the benefit if it operated an occupational pension scheme that paid out sums at least as good as the top-up benefits payable under the GRB. A decision to contract out did not entirely remove the employee's entitlement to an additional state pension; it simply reduced the maximum number of GRB units that could be accrued: 48 for men and 40 for women.

(b) In relation to SERPS, the choice to contract out was one for the employee. Initially (1978-1988), individuals were only permitted to contract out of SERPS if the employer operated a DB scheme. In return for contracting out, the employee and the employer paid NI contributions at a reduced rate. Latterly (1988-2002), individuals could also contract out of SERPS if the employer operated a DC scheme. The mechanism was straightforward: some of the NI contributions paid by the employer and the employee would be diverted, in the form of age-related rebates, into a money-purchase scheme operated by a private provider. Reflecting the consensus and economic outlook of the time, it was believed that the amounts thereby invested would ultimately yield a better return – and purchase a better annuity – than could be provided by remaining "contracted in" to the additional state pension. For a long time, there were separate rules about the investment of the so-called "protected rights" deriving from NI rebates. These rules were eventually abolished and such sums became an ordinary part of the investments made in individual or group personal pensions.

(c) In relation to S2P (2002-2016), the method for contracting out was essentially the same as the method for contracting out of SERPS: a system of age-related rebates of NI contributions. However, the ability to contract out of S2P through an employer's DC scheme came to an end in April 2012; the process had become increasingly complex and the rebate levels were seen as less attractive. After April 2012, it was only possible to contract out of S2P through an employer's DB scheme; again, this was in the form of reduced NI contributions.

3.28 All contracting out options ceased on 6 April 2016 with the abolition of S2P and the advent of the nSP.

The nSP (April 2016 onwards)

3.29 Recognising that the method of providing an additional state pension had become ever more complex, plans were set out in the Pensions Act 2007 to make S2P a simple flat-rate pension by some point in the 2030s. This would be achieved through annual earnings growth while keeping the various thresholds unchanged. The idea was that the ever-loosening link to an earnings-related element would make contracting out less and less attractive, and it would wither on the vine.

3.30 In an important development, the Pensions Act 2014 accelerated that process. The decision was taken to abolish both the BSP and S2P and to replace them, from 6 April 2016, with a single-tier state pension, which we are calling the nSP. Because the UK had not achieved equalisation of state pension ages by the time nSP was introduced on 6 April 2016, it applies to men and women at different ages: to men born on or after 6 April 1951 and to women born on or after 6 April 1953. A tribunal will only rarely be dealing with claimants born before those dates.

3.31 The nSP is a universal benefit. It is also a simpler benefit: people now know from a younger age how much they are likely to get, which the Government believes will provide a more solid platform for planning for retirement. By returning to a flat-rate system with no earnings-related element, the state pension system will have come full circle to the system that existed before 1961.

3.32 For 2019-2020, the full amount of the nSP is £168.60 a week. Had it not been abolished, the full amount of the BSP would now be £129.20 a week and topped up (save to the extent a person had contracted out) by amounts derived from the GRB, SERPS and/or S2P.

3.33 The nSP is easiest to explain by reference to people who enter the job market after 6 April 2016 and so have no NI record before that date. Such people would need at least ten qualifying years to get some state pension and 35 qualifying years to get the full amount. A qualifying year, as noted above, is a tax year during which a person has made, or been credited with, NI contributions on earnings over a minimum amount. From April 2016, each qualifying year on a person's NI record adds 1/35th of the full amount of the nSP[40].

3.34 Of course, tribunals will mainly deal with claimants whose working lives started before 6 April 2016. These individuals will have made, or been credited with, NI contributions before the nSP was introduced. These NI contributions will be accounted for in essentially the same way when the nSP is calculated, although complicated by periods of contracting out.

3.35 This makes it easier for individuals to calculate the starting amount of their nSP. The Department for Work and Pensions (DWP) has assessed all employees currently in the workforce to determine their starting amount of nSP. Take, for example, a female aged 49 who experienced some periods of time when not making NI contributions (perhaps due to childcare) but, by 6 April 2019, had 21 qualifying years on her NI record. That person can calculate the current starting amount of her nSP easily. As at 6 April 2019, she has accrued 21/35ths of the current weekly rate of £168.60, which would be £101.16 a week. She also knows that she

[40] It is not possible to accrue part years. A person either does, or does not, satisfy the test for a qualifying year. Consequently, when calculating a person's nSP, the denominator will always be 35 and the numerator will always be a whole number between 10 and 35.

must fit in a further 14 qualifying years before reaching her state pension age of 67 to ensure that she gets the full nSP.

3.36 A person's starting amount of nSP will be compared with the amount of BSP (and additional state pension) that the person would have received under the old rules, and the higher of these two amounts will be paid.

3.37 What about those people who, for a period before 6 April 2016, were contracted out? The best answer to this question was given in evidence to the House of Commons Work and Pensions Committee on 25 November 2015, when the former Pensions Minister Sir Steven Webb explained the choice faced by policy-makers when deciding how to treat contracted out benefits[41]:

> **We had a real dilemma. Millions of [us] … have paid less NI than our neighbours [because] we have been contracted out. Our employer paid less; we paid less, and a deal was done that the scheme would replace part of the state benefit. That was the deal. The question is: we get to 2016 and there is no contracting out, there is just one pension, one bit of the system, so what do you do with the past contractors-out?**
>
> **There are two extremes. One is you forget contracting out ever happened, which would be beautiful, simple and clear; I would have loved it. But it would have cost billions because all of us would have suddenly got full state pensions, not reduced ones, and it would have been grossly unfair on our next-door neighbours, who never contracted out, who paid more NI than we did and still got the same pension. So we could not afford to do it and it would not have been fair.**
>
> **The other extreme would have been to remember contracting out forever, to say, "Right, you spent one year, once, contracted out. We will remember that forever". So my daughter starts work and does a year contracted out before we abolish it. In 50 years' time she retires, goes on getting a pension, God willing, for another 20 or 30 years, and in 70 years' time we are still deducting for contracting out. That would have been ridiculous.**
>
> **What did we do? We did a compromise. We said: "In 2016, we will once adjust for past contracting out and make a one-off deduction. That is fair. But then, post-2016, we will allow you to burn off that deduction by subsequent work and contributions." That is why in 2016-17 not many people get the flat rate, because people have not had time to burn it off. But by the end of this Parliament [i.e. 2020], the majority of new pensioners get the flat rate. So within four or five years, we are already in a situation where the majority are getting the flat rate. I would love it to have**

[41] Oral evidence to the Work and Pensions Committee on 25 November 2015: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/understanding-the-new-state-pension/oral/25270.html

been far, far quicker – that would have been great – but there was no money to spend.

3.38 The DWP will not know the precise amount of extra benefits that individuals will receive from their occupational or personal pensions because of an historic decision to contract out for a period. It will depend on the rules of the scheme or the performance of the pension fund. Instead, the DWP will estimate the amount. This estimate is called the "Contracted Out Pension Equivalent" (or "COPE"). A person who was contracted out for only a year would have a small COPE. A person who was contracted out for longer would have a larger COPE. The COPE is then deducted from the starting amount of nSP.

3.39 Some individuals will have time, before they reach state pension age, to accrue more qualifying years, which – to use Sir Steven Webb's description – will "burn off" the COPE deduction and result in a full nSP (subject always to the nSP being capped at 35 qualifying years). Some individuals, such as those reaching state pension age in the near future, will not have time to "burn off" the COPE deduction and so will receive less than full nSP.

3.40 People can check their nSP entitlement by using the online "Government Gateway"[42]. It shows the estimated weekly amount of nSP as at the date of the enquiry (based on a person's existing NI record) and the predicted amount of nSP if there is time, before reaching state pension age, to accrue further qualifying years. It also shows the estimated COPE deduction based on prior periods of contracting out.

3.41 The government of the day sets the uprating policy that will apply to the nSP. At present, this is the so-called "triple lock" system[43]. Under this system, nSP increases by the higher of (a) price inflation (measured by CPI), (b) average earnings growth or (c) 2.5%. In the tax year 2019-20, the full amount of nSP rose to £168.60 per week and the full amount of BSP, for comparison purposes, rose to £129.20 per week.

Loss of state pension: issues for the Employment Tribunal

[42] The link to the Government Gateway is here: https://www.gov.uk/government-gateway. The Gateway is a website previously used to register for online government services. It enabled people to communicate and transact with the Government from a single point of entry. The online services available included child maintenance, driver licensing, income tax self-assessment, tax credits, money claims and, for our purposes, state pension details. The separate link for state pension details is here: https://www.gov.uk/check-state-pension.

[43] In March 2017, the final report of the Independent Reviewer of State Pension Age, John Cridland CBE, recommended that the triple lock should be abandoned. However, by virtue of the confidence and supply agreement reached between the Conservative Party and the DUP and published in June 2017, the triple lock will be retained in the current Parliament; see https://www.gov.uk/government/publications/conservative-and-dup-agreement-and-uk-government-financial-support-for-northern-ireland. CPI is the measure of inflation used in the triple lock; it is examined further when CARE schemes are discussed in Chapter 5.

3.42 Dismissal interrupts an individual's NI record. In most cases, however, it will not interrupt it for long enough to result in a loss of nSP benefits. This is because it will rarely stop a person from going on to accrue the 35 qualifying years needed to receive the full amount of nSP. A current school leaver may have a working life of over 50 years. The period of unemployment following dismissal is, in most cases, unlikely to be so long that nSP benefits are thereby reduced. In any event national insurance credits can be awarded during periods of unemployment (see https://www.gov.uk/national-insurance-credits/eligibility). It follows that a tribunal is unlikely, in most cases, to make an award for loss of nSP. An example of a decision to make no award is given in Appendix 3 (see Jessica).

3.43 Nonetheless, in exceptional cases, dismissal might be said to reduce nSP benefits if NI credits were not available and dismissal means that the claimant will fail to reach 35 qualifying years (or will accrue fewer years) than if not dismissed. The dismissal may also reduce the prospects that they "burn off" any applicable COPE deduction arising from a previous period of contracting out. This will be a loss they experience for the reminder of their life in retirement. One such case might be a claimant, with a pre-existing gap in their NI record resulting from periods of absence from the labour market (such as for childcare reasons), who has been dismissed by their employer at an age where there is insufficient time to accrue more qualifying years. Another example is a career-loss case, where the tribunal is persuaded to award compensation on the assumption that the claimant will never work again – and so never accrue another qualifying year[44].

3.44 It will be for a claimant to show that they are entitled to compensation for loss of nSP benefits. In the first instance, they should obtain a statement of the starting amount of their nSP at current rates. The easiest way to obtain this information is to use the Government Gateway; this requires the claimant to set up a Gateway account and it also presupposes that they can access digital services. If that is not feasible, a claimant can instead complete a BR19 application form to obtain a postal statement of their nSP benefits; alternatively, they can obtain details by telephoning the Government's Future Pension Centre[45].

3.45 Such a claimant would need to persuade the tribunal that, because of the dismissal, they will accrue fewer qualifying years and that they have insufficient time or prospects of making good the resulting gap in their NI record. A failure to claim NI credits may give rise to issues about mitigation of loss. The basis for calculating loss of nSP benefits is straightforward in principle, if not in application: each qualifying year lost

[44] It will still be open to a person to make voluntary NI contributions to accrue further qualifying years, perhaps doing so from compensation they receive, just as they may choose to invest some of their compensation in a private pension plan.
[45] The BR1 application form can be collected from a Post Office or downloaded from here: https://www.gov.uk/government/publications/application-for-a-state-pension-statement. Details for the Future Pension Centre are here: https://www.gov.uk/future-pension-centre

equates to a reduction in nSP of 1/35th, and that loss repeats for each year of retirement in which nSP is received. The annual loss must be converted into a one-off capital sum that can be awarded as compensation.

3.46 A lot of guesswork is needed to reach a capital sum. There are many unknowns. One unknown is the amount by which the nSP is uprated each year (which itself depends on the sustainability of the triple lock). Another unknown is the length of a claimant's life in retirement (although life expectancy calculators are available, including one produced by the Office for National Statistics[46]). Precision is impossible.

3.47 The members of the working group consider that the safest approach is to apply the Ogden Tables. They are explained elsewhere in these Principles. An example of their application to the calculation of loss of state pension is given in Appendix 3 (see Arthur). The sums involved are not trivial: for a 63-year old male whose dismissal results in the loss of three qualifying years, the example produces an award of over £16,000.

3.48 The working group does not propose that there should be adjustments for age or contingencies other than mortality when making an award for loss of state pension rights using the Ogden Tables; those contingencies relate mainly to future employment, not to retirement. That said, if the parties consider that the Ogden Tables approach is inappropriate in an individual case, or that certain adjustments should be made for other contingencies when making an award for loss of state pension rights, they will be free to make their arguments to the tribunal.

3.49 We noted above that, just as loss of earnings are assessed on a net basis, so is loss of pension income. The nSP is treated as earned income for income tax purposes, so that, in principle, income tax is payable on it. However, the maximum amount of the nSP, at 2019-2020 rates, is £168.60 per week or £8,767.20 per annum. For most people, the personal allowance remains available to them in retirement; it is currently set at £12,500. The reality for most people, then, is that no income tax will be charged on nSP income. That is why the Government pays the nSP gross; for most people, the gross amount and the net amount are the same.

3.50 Similarly, when the tribunal awards a claimant a figure of compensation for their loss of state pension rights, it can be assumed that those nSP benefits, while calculated gross, are being assessed on a net basis. Moreover, because a claimant is receiving that sum now, as part of an overall award of compensation, it should still be grossed up to the extent that the overall award exceeds £30,000. The parties will free to make

[46] http://visual.ons.gov.uk/how-long-will-my-pension-need-to-last/

their arguments to the tribunal if they consider that the circumstances of a particular case require a different approach to grossing up[47].

Chapter 4: Occupational pensions – defined contribution schemes

Introduction

4.1 We next consider the issues that arise when compensating a claimant for loss of pension rights arising after dismissal from employment with benefits under a DC scheme. DC schemes are cheaper for employers to operate because they only promise to pay a defined amount into the scheme now, the present cost of which can easily be ascertained. They do not promise to pay a retired employee a defined amount in the future. The present cost of a future benefit is more difficult to ascertain, based as it must be upon a series of imponderables relating to life expectancy, investment returns, length of service and future rates of pay.

4.2 In a DC scheme, the cost to the employer is mainly limited to the total cost of contributions it makes into a pension pot for each employee. The administrative aspects, such as management charges, need not concern us. The employee's contributions into the scheme are sometimes called "member contributions" (where the word "member" relates to their status as a "member" of the occupational pension scheme).

4.3 DC schemes are typically of two types:

(a) In a trust-based scheme, the employer establishes a board of trustees to administer the scheme. They will be responsible for monitoring the performance of the underlying fund and ensuring that it complies with legislative requirements. Such a scheme might be "branded" with the employer's name. There will be ongoing legal and accounting costs involved with keeping records up to date and reporting to members.

(b) In a contract-based scheme, an independent provider (such as an insurance company or building society) is appointed to run the scheme. The employer is responsible for ensuring that the appropriate contributions are made, including in respect of employee contributions deducted from payroll, but the provider handles most of the administration. They are sometimes seen as cheaper alternatives because they can be bought "off the shelf".

4.4 There are certain tax advantages in registering a DC scheme for tax – and most schemes are registered for tax. For example, contributions paid to the scheme attract tax relief; investment returns during the life of

[47] For example, in some cases it might be appropriate to add in state pension income at Steps 1 and 2 of the "seven steps" model, described in Chapter 5, to gain a more accurate picture of net pension loss in a complex DB case. As will become clear, however, that would usually mean that state pension loss would be assessed by reference to an Ogden multiplier that has been subjected to a two-year age adjustment.

the fund are largely free from income tax and capital gains tax; and, on retirement, part of the employee's benefits can be taken as a tax-free lump sum (traditionally up to 25% of the value of the fund). The tribunal will assume it is dealing with a tax-registered scheme in the absence of any evidence to the contrary.

4.5 The aim of the trustees or the independent provider will be to invest the pot or fund of contributions with a view to increasing it. The amount of the resulting pension will self-evidently depend on the performance of that pot or fund. Like personal pensions, a bigger fund will support the purchase of a bigger annuity and a bigger tax-free lump sum. Indeed, one of the few differences between an orthodox DC scheme organised by an employer and a purely personal pension scheme is that in the former case the individual, who benefits from being a member of a larger group, can expect to pay a lower administration charge.

"Pension freedoms"

4.6 A personal pension fund, or occupational DC pension fund, may be used to purchase an annuity. How do annuities work? As a rough idea, take an individual retiring at the age of 65 with a personal pension pot valued at £133,333. Suppose they take a cash-free lump sum of £33,333 (25% of the overall value) and the remaining £100,000 is available to purchase an annuity. At current rates a sum of £100,000 would buy a 65-year old a no-frills annuity (i.e. an annual pension income) of about £5,300. (Annuity rates have fallen: in 2008, it would have been closer to £7,500.) The annuity would reduce further if an individual wanted to retire early and/or build in guaranteed future increases and/or make a portion of the annuity available to their spouse upon death. So, for example, if an individual wanted to retire at age 60 with an income that increased by 3% a year, including 50% joint life cover, £100,000 would presently buy an annuity of about £2,750.

4.7 Given the low level of annuity rates, the legal compulsion to purchase an annuity was the subject of debate. Some criticised it as poor value for money; others defended it as a necessary mechanism for protecting people from themselves (to reduce the risk that they would exhaust the pension pot too quickly). Ultimately this debate was a political one about how much people could or should be trusted to spend their savings.

4.8 An attempt to resolve that debate came with the Pension Schemes Act 2015. It introduced in stages, between 2015 and 2016, one of the more important pension reforms of recent years: the so-called "pension freedoms". These allow individuals to access their full pension pots from age 55 (although the age rises for those born later). Crucially, individuals are no longer compelled to purchase an annuity, although there are tax consequences of exercising the pension freedoms. In April 2015, the Government launched the "Pension Wise" service, in partnership with the Pensions Advisory Service and Citizens Advice, to provide free and

impartial advice to people with a DC pension approaching retirement and considering exercising the freedoms[48].

4.9 Those freedoms will have no impact upon the calculation of pension loss in tribunal cases. We are not concerned with how people spend their pension savings, but how the employer contributes to the cost of accruing them. It is the disappearance of the employer's contributions to the DC scheme, following an unlawful dismissal, which leads to loss that the tribunal can compensate.

Auto-enrolment

4.10 We noted above that some successful claimants forget to claim pension loss entirely and focus instead on their salary loss. This may reflect the fact that, for many years, it was not compulsory for an employer to set up a pension scheme. This landscape has changed in recent years, and continues to change, as the UK moves towards a system in which the law encourages private pension provision through employment even if it does not go so far as to compel it.

4.11 The Welfare Reform and Pensions Act 1999 was a previous attempt to encourage private pension provision. It introduced "stakeholder" pension schemes to the UK in April 2001. Certain employers were required to provide access to a designated stakeholder scheme to their employees. The designated scheme would be a DC scheme set up with certain conditions such as a cap on administration charges and flexibility for stopping and starting contributions. However, there was no compulsion on employees to join such schemes and no compulsion on employers to make contributions to them. Stakeholder schemes had little impact on the work of the tribunals in calculating pension loss and limited effect on encouraging lower earners to improve private pension provision. The system was repealed in October 2012.

4.12 Following the recommendations of the Turner Report[49], the Pensions Act 2008 introduced a new approach, by which most workers would be enrolled automatically (known as "auto-enrolment") into a qualifying pension scheme. The Government has set up a vehicle for that purpose: the National Employment Savings Trust (or "NEST"). NEST is a trust-based not-for-profit DC scheme with low administration charges; we refer in chapter 5 to a useful online calculator on the NEST website. Other pension vehicles operated by private providers are available and

[48] Pension Wise unveiled: https://www.gov.uk/government/news/pension-wise-unveiled. The Pension Wise website is at https://www.pensionwise.gov.uk. A free appointment is available to those aged 50 or over.

[49] The first report of the Pensions Commission ("Challenges and Choices", 2004) is at https://www.webarchive.org.uk/wayback/archive/20070802120000/http:/www.pensionscommission.org.uk/publications/2004/annrep/fullreport.pdf. The second report of the Pensions Commission ("A New Pension Settlement for the Twenty-First Century", 2005) is at http://webarchive.nationalarchives.gov.uk/+/http:/www.dwp.gov.uk/publications/dwp/2005/pensionscommreport/main-report.pdf.

employers are also free to set up their own schemes (or use existing ones), so long as they satisfy certain minimum requirements. The idea is for individual employees to have portable personal accounts.

4.13 The auto-enrolment scheme for employees formally commenced in October 2012 and was implemented fully by February 2018. This new regime has had a long gestation and the hope is that it will provide the architecture for occupational pension provision for many years to come.

4.14 The auto-enrolment scheme can be summarised as follows:

(a) Since October 2012, employers have been required to assess their workforces and enrol eligible workers into an occupational pension. Under the new regime, crucially, workers must no longer make a conscious decision to join such a scheme but instead must make a conscious decision to leave it. The underlying policy idea is that the tendency of some individuals towards inertia on financial matters will encourage them to make pension savings.

(b) The extended period of implementation started with the largest employers and will end with the smallest. It was originally intended to be three years, but has been lengthened twice. As matters stand the implementation period ended in February 2018. The Pensions Regulator wrote to employers to give them 18 months' notice of their staging date for compliance with the regime. By way of overview:

- Employers with more than 250 workers were assigned their staging dates first, falling between October 2012 and February 2014;

- Employers with between 50 and 249 workers were assigned staging dates between April 2014 and April 2015;

- Employers with fewer than 50 workers were assigned staging dates between June 2015 and April 2017; and

- New employers set up between April 2012 and September 2017 were assigned staging dates between May 2017 and February 2018.

(c) As matters stand, most of the respondents seen in the tribunal will either have an existing DC or DB occupational pension scheme or will already have enrolled workers automatically into a DC scheme. Any employer that breaches its obligations will be subject to

compliance and penalty notices issued by the Pensions Regulator[50].

(d) However, not all workers must be auto-enrolled. There are detailed rules about the circumstances in which an individual worker qualifies as an eligible "jobholder" (which is the term used by the new regime). Given that many workers today have atypical working arrangements, it is expected that employers must make continuous assessments of the auto-enrolment eligibility status of their individual workers, such as those on "zero-hours" arrangements. In general terms, the conditions for auto-enrolment are that a worker ordinarily works in Great Britain under a contract, is aged between 22 and their state pension age and is paid "qualifying earnings" by an employer (taking account of bonuses, overtime, maternity pay etc). The gross annual "earnings trigger" for auto-enrolment is £10,000. Once triggered, contributions are paid upon earnings that fall within a qualifying earnings band; this is reviewed annually and, for the 2019-2020 tax year, runs from £6,136 to £50,000[51].

(e) The basic requirements for such a scheme include mandatory minimum pension contributions by both employer and jobholder. In other words, the element of compulsion is not in respect of jobholder membership of such schemes but in respect of employer and jobholder contribution to such schemes. By way of overview:

- Until April 2018, the jobholder made a mandatory minimum contribution of 1% of pensionable pay, while the employer had to make a matching contribution of 1% (i.e. a total of 2%).

- Between April 2018 and April 2019, the jobholder made a mandatory minimum contribution of 3% of pensionable pay, while the employer must contribute 2% (i.e. a total of 5%).

- Since April 2019, the jobholder makes a mandatory minimum contribution of 5% of pensionable pay, while the employer must contribute 3% (i.e. a total of 8%).

(f) These contributions must continue until the worker opts out, leaves employment or reaches the age of 75, whichever is the sooner[52].

[50] Details are here: http://www.thepensionsregulator.gov.uk/en/employers/what-happens-if-i-dont-comply.aspx. An employer can challenge such a notice, first by applying to the Pensions Regulator for a review (http://www.thepensionsregulator.gov.uk/en/employers/apply-for-a-review.aspx) and then by means of an appeal to the General Regulatory Chamber of the First-tier Tribunal (https://www.gov.uk/guidance/appeal-against-a-pensions-regulator-fine).
[51] Details available from the website of the Pensions Regulator: http://www.thepensionsregulator.gov.uk/automatic-enrolment-earnings-threshold.aspx
[52] The Pensions Regulator has provided an employer contribution calculator here: http://www.workplacepensions.gov.uk/employee/employer-contribution-calculator/

4.15 Because of tax relief, the employee's actual contributions will be slightly lower: if tax relief is given at the present basic rate of 20% on an employee contribution of 1%, the effective contribution rate is in fact 0.8%. Similarly, for 3% the effective contribution rate will be 2.4% and for 5% the effective contribution rate will be 4%.

4.16 It is hoped that opt-out rates will not increase as employee contribution rates increase. The eligibility criteria for jobholders are drafted broadly enough to increase the chances of the regime achieving wide coverage. Each month the Pensions Regulator publishes a report detailing how many employers have submitted a declaration of compliance and summarising how many workers are involved. The report for August 2019 [53] indicates that more than 1.5 million employers had confirmed compliance. This covers about 31.6 million workers. Of these, over 10 million workers counted as eligible jobholders who were auto-enrolled, while about 11.5 million were already active members of their employer's scheme on the relevant staging date. The cross-party House of Commons Work and Pensions Committee has described this as a "tremendous success"[54].

Simple DC cases: issues for the Employment Tribunal

4.17 Where a successful claimant has, through dismissal, lost the benefit of membership of a DC scheme, it is usually straightforward to calculate the resulting net loss of pension that is attributable to the employer and which flows from its unlawful conduct. The basis for calculation will be the employer's contributions for whatever period of loss the tribunal has identified. This is known as the "contributions method".

4.18 The contributions method is a "broad brush" approach. The precise level of future pension loss a claimant will experience in retirement because of dismissal from a job with DC pension benefits is, as at the date of the hearing, very difficult to predict. The fund associated with that pension might, in the future, perform well. It might perform poorly. A process of aggregating the employer's pension contributions for the appropriate period of loss is felt to be a tolerably accurate assessment of the pension loss that, after income tax, a claimant will experience in retirement. It is worth emphasising that, despite appearances to the contrary, an award of pension contributions for a past period is not an award of past loss; it is an award designed to capture future net loss of pension income.

4.19 This approach does not extend to the loss of the employee's own contributions: those contributions are deducted from their salary and they are still free to make contributions of the same amount to a personal pension from whatever sum the tribunal awards in respect of salary loss.

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[53] https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/automatic-enrolment-declaration-of-compliance-monthly-report.ashx

[54] See Summary (page 3) of Eleventh Report of Session 2015-16 (May 2016), at https://www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/579/579.pdf.

It is true that the successful claimant may face higher administration charges when no longer a member of a DC scheme, but these charges are often difficult to identify and calculate and would likely be relatively small. For this reason, they can, in most cases, be ignored. If a claimant feels strongly about the point, they will need to adduce evidence of this element of loss and seek to persuade the tribunal, on normal principles, that it is attributable to their dismissal and appropriate for compensation.

4.20 Some occupational schemes permit employees to make additional voluntary contributions (or "AVCs"). Where AVCs to a DC scheme are entirely employee-funded, they can be ignored for the same reason as normal employee contributions. It is feasible, however, that the employer might have provided some form of contribution towards the employee's AVCs; in that case, the loss of that employer contribution should be brought into account when assessing the claimant's pension loss.

4.21 So, in cases where a claimant has incurred occupational pension loss following their unlawful dismissal from employment in which they were a member of a DC scheme (which, for this purpose, includes a scheme into which they were auto-enrolled), compensation will be assessed using the contributions method. Examples are given in Appendix 3 (see Bethan, Christopher, Diane, Edward and Fatima). This will be subject to normal principles about the terminal date for such loss, questions of contributory fault, the application of the statutory cap and so on. The tribunal will use standard case management orders to establish the employee's pensionable pay and the employer's rate of contribution to any DC scheme it operates. It ought to be easy to obtain this information. Even if the employer does not provide the information, it should be apparent from payslips or from previous pension statements.

4.22 There is one proviso to this approach: short service refunds. Those who leave an occupational DC scheme before they have been in it for two years may have the option of a refund of their own contributions, leaving them with no pension for that period. The effect is to treat them as if they had never been a member of that scheme. The "may" is for this reason: since 1 October 2015, members of DC schemes have no longer been entitled to short service refunds if they leave employment (or opt out) with less than two years of qualifying service. This change only applies to individuals who became members of an occupational DC scheme on or after 1 October 2015 (or those who re-joined after having already taken a refund or transferred out); short service refunds are still available to those who joined before that date. Also, regardless of this change, those with less than 30 days' service are still able to request a short service refund. The return of contributions does not, in and of itself, compensate a claimant for the pension benefits that they would have received but for the unlawful dismissal, or for the lost benefit of the employer's pension contributions. The point is that, when compensation is assessed overall, the claimant must give credit for any contributions that have been refunded.

4.23 Because the employer's pension contributions are not treated as part of a claimant's wages, they will not, in an unfair dismissal case, be subject to recoupment[55]. Pension loss must therefore be calculated separately.

4.24 The longer the period of loss, the greater the care that must be taken to ensure that the employer's pension contributions reflect possible future pay rises in the old job. An example is given at Appendix 3 (see Diane).

4.25 As noted above, the tribunal will not apply different standards of causation to a claimant's loss of earnings and their loss of pension benefits. This is because a claimant's pension benefits are merely part of an overall remuneration package. The tribunal must be alert to the possibility that a future rise in salary in new employment is sufficient to offset both pension loss and earnings loss arising from dismissal from the old employment.

4.26 If the respondent takes no part in the proceedings and the claimant has failed to adduce any evidence (e.g. from payslips or pension statements) as to the percentage rate of contributions that the old employer made to a DC scheme, what should the tribunal do? In that scenario, the tribunal should check that the claimant's earnings in the old job exceeded the lower level of the qualifying earnings band. If they did not, and there was no reasonable prospect of them doing so had dismissal not occurred, there will be no pension loss. If they did, the tribunal will assume, in the absence of any basis on which to infer the contrary, that the respondent's contribution rate was at the minimum level required by auto-enrolment. An example is given at Appendix 3 (see Edward). If the claimant's earnings exceeded the upper level of the qualifying earnings band, the contributions should only be incurred on earnings within the band.

4.27 The tribunal will not need to look at annual pay figures for this purpose. The website of the Pensions Regulator helpfully sets out the qualifying earnings band for pay periods of one week, two weeks, four weeks, one month and one quarter[56].

4.28 Auto-enrolment provides that contributions could, in principle, continue until a person's 75th birthday. They may therefore constitute an element of loss that continues beyond state pension age (for those claimants who persuade the tribunal that they would continue working beyond that age).

4.29 Auto-enrolment benefits may be a "new job fact"[57]. When giving credit for earnings received through mitigation of future loss, the tribunal should consider a hypothetical future employer's duty to pay mandatory minimum pension contributions. It can be left to the good sense of the tribunal, with its knowledge of local labour market conditions and having heard evidence from the parties, to decide whether this is appropriate.

[55] Under the Employment Protection (Recoupment of Benefits) Regulations 1996.
[56] http://www.thepensionsregulator.gov.uk/automatic-enrolment-earnings-threshold.aspx
[57] See *Kingston Upon Hull City Council v. Dunnachie (no.3)* [2003] IRLR 843.

The tribunal might decide, having regard to the type of work for which the claimant is likely to apply when mitigating their loss, that a hypothetical new employer might pay more than mandatory minimum contributions that are required for auto-enrolment, and take this into account by a deduction from the loss awarded; or the tribunal may decide that the minimum contributions required by auto-enrolment are appropriate, and deduct accordingly; or it may decide to make no deductions at all, for example on the basis that the claimant would not exceed the lower level of qualifying earnings in the new employment. If the tribunal chooses mandatory minimum employer contributions under auto-enrolment for losses going back some time, it will need to bear in mind their increase to 2% of pensionable pay (from 6 April 2018) and 3% of pensionable pay (from 6 April 2019). An example is given at Appendix 3 (see Fatima).

4.30 It is possible that the tribunal is persuaded that a claimant will experience a lengthy or career-long earnings loss from employment which had DC scheme benefits. An example is that of Fraser in Appendix 3. For such a case, we make the following observations:

(a) Although it will depend on the circumstances, the simplest way to assess loss of DC pension rights in such a case may be to increase the level of the claimant's net earnings in the old job by the percentage of earnings the employer contributed to the DC scheme (and, if there is a new job, doing the same to earnings from the new job) and to use the Ogden Tables to calculate net loss of earnings using this adjusted multiplicand.

(b) This approach has the advantage of simplicity. It is also consistent with paragraph 30 of the explanatory notes to the Ogden Tables. However, an adjustment may be needed to ensure that recoupment is applied correctly and, in a discrimination case, to reflect the fact that no interest is awarded on pension loss.

(c) It bears repeating that, in such a scenario, the claimant is not being compensated for their pension loss by receiving the employer's pension contributions personally, since those contributions are not the measure of their loss. Instead, the contributions method works by identifying a broad-brush one-off sum that compensates the claimant for the net shortfall in their future pension income.

(d) Just as with loss of earnings, it may be appropriate to factor in the possibility of future promotion (whereby an increase in salary would be accompanied by an increase in the amount – albeit not the percentage – contributed to the DC scheme by the employer) as well as adjustments for contingencies other than mortality.

(e) In respect of highly-paid claimants, care must be taken, when using this methodology, to identify the correct level of net earnings to which such contributions are added. There may an AA charge or a

restriction of the personal allowance, either of which will reduce net pay. The net pay set out in the claimant's payslips will be the best guide (subject to our points at paragraphs 2.23 and 2.24). Grossing up may be required.

(f) Such cases will be rare. Significant loss of pension rights is more likely to arise where DB pension benefits are concerned. These Principles discuss the Ogden Tables in more detail in Chapter 5. As with DB cases, it will be open to the parties to obtain expert evidence, such as from an actuary, to achieve greater precision in calculating DC pension loss than the method suggested above.

Chapter 5: Occupational pensions – defined benefit schemes

5.1 We turn next to the issues that arise when compensating a claimant for loss of pension rights arising after dismissal from employment with benefits under a DB scheme. In a DB scheme, the pension benefit is guaranteed regardless of the performance of any underlying pot or fund. DB schemes have often been thought synonymous with final salary schemes. That is understandable since, for many years, DB schemes were usually structured around delivering retirement benefits based on final salary. More recently, however, CARE designs have emerged.

5.2 A profound change in the occupational pensions landscape of the last decade has been the widespread closure of DB schemes in the private sector, at first to new entrants and then to existing members. This has been accompanied by a shift in the public sector from final salary designs to CARE designs. Corroboration of this can be found in the Pensions Trends series that was produced by the Office for National Statistics until 2013 (and, until January 2016, took the form of a periodically updated "pensions compendium")[58] and in the "Purple Book" issued annually by the Pensions Regulator and the Pension Protection Fund[59]. The Purple Book sets out data on the decreasing number of open schemes (where members join a DB section and accrue benefits), the increasing number of those schemes that are closed to new members (in which existing members continue to accrue benefits) or are closed to future accruals (where existing members can no longer accrue new years of service) and those schemes that are being wound up.

Funded and unfunded schemes

5.3 DB schemes are sometimes described as being funded or unfunded (or non-funded). What is the difference? In a funded scheme, the employer sets aside money to meet the predicted cost of the benefits when they fall due. This money is usually called the "employer contribution". The amount of money the employer sets aside is, in turn, based on actuarial advice about the minimum level of ongoing funding required to pay future benefits. This used to be known as the "minimum funding requirement" (or "MFR") but, since the Pensions Act 2004, it has been replaced by a "statutory funding objective". Of the few remaining DB schemes in the private sector based around final salary benefits, most are funded. The associated pension funds can be huge.

5.4 The funding for such schemes does not come solely from the employer's contributions. Most schemes levy a charge on employee members who pay their own contributions; so-called "non-contributory final salary pension schemes" are rare indeed today. As with DC schemes, these can be called "employee contributions" or "member contributions". As

[58] Although still available at this link: https://www.ons.gov.uk/economy/investmentspensionsandtrusts/compendium/pensiontrends/2014-11-28

[59] Available here: http://www.pensionprotectionfund.org.uk/Pages/ThePurpleBook.aspx

more schemes struggle to produce a surplus, attempts can be made to increase employee contributions.

5.5 The third edition of the guidance for calculating pension loss in tribunals estimated that the cost to an employer of operating a final salary scheme was typically 15% of pensionable pay (or 20% of pensionable pay for a non-contributory scheme). This estimate was based on assumptions about investment returns at the time and, today, such percentage figures would probably be higher. The third edition also discussed the "holidays" an employer might take from making pension contributions. Nowadays it is not pension scheme surpluses that are in the news, but deficits. Indeed, there have been examples of employers becoming insolvent while its pension scheme was in deficit, resulting in unexpected hardship and a failure to meet the "pension promise". In a response to this, the Pensions Act 2004 set up the Pension Protection Fund with effect from April 2006[60]. This can provide compensation to affected individuals. It is funded by a levy on those employers operating similar schemes.

5.6 In an unfunded scheme, the employer does not set aside any assets but instead simply pays the benefits as and when they fall due. Indeed, by that definition, the UK state pension system is also an unfunded scheme: benefits are paid out as and when due, and are funded from the public purse. It is now rare to find an unfunded DB pension scheme outside of the public sector. The pension schemes for the NHS, teachers and civil servants are all unfunded and operated centrally (the schemes for police officers and firefighters are unfunded but operated locally). By contrast, the local government scheme is a funded scheme, with assets currently valued at £217 billion[61]. Appendix 1 provides a summary of the benefits available under these schemes.

5.7 Even unfunded schemes have a notional level of employer contributions (alongside the employee's contributions) so that the promised benefits can be met. These figures can be obtained upon inquiries being made of either the employer or the trustees of the pension scheme.

Ancillary benefits of DB schemes

5.8 As Appendix 1 illustrates, some public sector DB pension schemes are more generous than others. For example, some of these schemes allow members to take an unreduced ("unabated") pension at a younger age than the age at which they would receive a state pension (although they would still have to wait until state pension age to receive their nSP); an example is police officers. Other schemes have aligned their retirement ages to the later of 65 or state pension age. Members can still elect to leave earlier with a pension, subject to the scheme's rules, but the

[60] Further details at http://www.pensionprotectionfund.org.uk.
[61] According to the LGPS annual report 2016: http://www.lgpsboard.org/index.php/schemedata/scheme-annual-report. The LGPS includes over 13,000 employers and 5.3m members.

amount of their pension is then actuarially reduced to reflect the longer period of receipt[62]. These schemes also have different accrual rates.

5.9 Some DB schemes include a range of other ancillary benefits including pensions for survivors (widows, widowers and dependants), ill health or redundancy (including early retirement with unreduced pensions or "added years" of service) and payments for death in service[63].

5.10 If scheme members leave employment other than for retirement (e.g. they have been dismissed and do not qualify for early retirement), their pension will be deferred in the usual way until they reach the age at which it comes into payment.

Final salary schemes

5.11 The third edition proceeded on the assumption that the DB scheme the tribunal would typically examine when assessing pension loss would be a final salary scheme. That is no longer a safe assumption. As already noted, there has been a widespread move in the public sector to CARE schemes; this affects future benefit accrual for all employees save those with the benefit of provisions protecting those closest to retirement. That said, the steady decline of final salary schemes across the board does not mean that they can be ignored when assessing pension loss. Some of the claimants before the tribunal will have accrued a substantial period of membership in a final salary scheme before being moved into a CARE scheme. Those accrued final salary rights remain valuable: they will still lead to a final salary pension for the period of membership of the final salary scheme and may also benefit from future pay enhancements[64].

5.12 So, it is still necessary for tribunals and parties to understand how final salary pension schemes operate[65]. At their simplest, they provide for an

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[62] The amount of actuarial reduction will vary from scheme to scheme but, by way of illustration, a person typically faces a reduction of around 5% in pension income for each year of early receipt.

[63] Some of these will be so-called "Beckmann rights" which may transfer with employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such rights are outside the scope of these Principles, but see the CJEU's judgments in *Beckmann v. Dynamco Whicheloe Macfarlane Ltd* [2002] IRLR 578 and *Martin v. South Bank University* [2004] IRLR 74 ECJ and the High Court's judgment in *The Procter & Gamble Company v. Svenska Cellulosa Aktiebolaget SCA & another* [2012] IRLR 733.

[64] Sometimes, when DB schemes are closed to future accruals on a final salary basis, the link to final salary at retirement is also broken; instead, the link is to the final salary at the point at which the move to a CARE scheme occurred. However, for all the public sector DB pension schemes summarised in Appendix 1, the link to final salary at retirement is retained in respect of accrued rights.

[65] The words "final" and "salary" can both mislead. As for "final", it may in fact not be the salary paid on the final day of work before retirement. Other formulae are used, such as the best salary paid over 12 consecutive months in the three years prior to retirement or the highest average of any three consecutive salaries paid in the last ten years. As for "salary", pensionable pay may differ from salary. For example, the BBC has decided to cap at 1% the part of a pay rise that would be used to calculate pensionable pay in the final salary sections of its own DB scheme; this was held to be lawful in *Bradbury v. BBC* [2017] EWCA Civ 1144.

income in retirement and for a lump sum (or for the opportunity to exchange some of the pension income for a lump sum). More particularly:

(a) The pension income is calculated using accrual of fractions of pensionable pay. In a sixtieths scheme, for example, one-sixtieth of the full-time equivalent of pensionable pay at retirement will be multiplied by the total number of years in employment. This will then provide a pension income up to a typical maximum of two-thirds of final salary after 40 years' service. In eightieths schemes, the typical maximum is half of pensionable pay after 40 years' service. Part-time employees accrue service on a slower, pro rata, basis. (Some final salary schemes also permit employees to pay AVCs, with the effect of purchasing "added years" of scheme membership.)

(b) The lump sum benefit is usually one of two types:

- Some schemes (usually eightieths) provide for a lump sum in addition to the pension income. In such cases the lump sum accrues in the same way as pension income. Broadly speaking, in an eightieths scheme, the pension income accrues at an effective rate of 1/80 (or 1.25% of pensionable pay) for each year of pensionable service. If the lump sum represents three times an employee's pension income, it will accrue at the rate of 3/80 (or 3.75% of pensionable pay) for each year of service.

- Other schemes (usually sixtieths) only provide for a lump sum in return for a sacrifice of some of the pension income, through a process called "commutation". A typical rate of exchange is for £1 of annual pension income to be converted into a £12 one-off lump sum payment. This 1:12 conversion rate may vary between schemes. It will also be subject to HMRC rules and limits and the rules of the pension scheme.

So, although the accrual rate in most public sector DB schemes has often varied between sixtieths and eightieths, the overall value of benefits has broadly been the same because the latter invariably provides for a lump sum in addition to the pension income whereas the former only provides for a lump sum through commutation.

CARE schemes

5.13 A small number of final salary pension schemes remain in operation in the private sector but, apart from in respect of accrued rights or those benefitting from protection who maintain future accrual rights, they are effectively extinct in the public sector. In their place are CARE schemes.

5.14 When it took office in 2010, the Coalition Government's desire to achieve savings across the public sector was well known. The cost of funding the provision of pensions to public sector workers had risen steadily in recent years, principally because of increased life expectancy. It was thought

that, unless public sector pension schemes were reformed, they would become unaffordable. The Coalition Government commissioned a report on the subject from Lord Hutton. The Hutton Commission published its final report in March 2011[66]. Its key recommendations were as follows:

(a) Final salary designs would be replaced by CARE designs. In other words, pension benefits would no longer be linked to final pensionable pay but to the pensionable pay averaged over the time a person spent as a scheme member. To calculate the "career average" for this purpose, each year's pay would be uprated for inflation, then all such "slices" would be aggregated and the overall total then divided by the number of years of scheme membership. (Final salary schemes benefit those promoted later in their career. CARE schemes, by contrast, often benefit those with consistent incomes throughout their career; this is because, as Appendix 1 illustrates, they often have better accrual rates.)

(b) Existing members would move to new schemes for future accruals, while maintaining the link to final salary for calculating the value of the pension rights they had accrued up to that point.

(c) Normal pension age would be aligned with the state pension age and, accordingly, increase over time with it (save for the police, firefighters and armed services, where the age of entitlement to an unreduced pension would only rise as far as 60).

(d) There would be a cost ceiling for the schemes, limiting employer contributions to a percentage of pensionable pay. To keep costs under control, automatic stabilisers (such as increases to employee contributions or reductions in benefits) would be built in, and would be imposed if agreement could not be reached.

5.15 The Government accepted these recommendations and, in so doing, set out its "preferred scheme design" for reform. The design was set out in a Treasury Command Paper published in November 2011[67]. It formed the basis for negotiations with trade unions about individual schemes across the public sector. Its main features included the following:

(a) Public sector schemes would remain DB schemes, but based on a CARE design rather than a final salary design;

(b) Retirement benefits accrued prior to the implementation of the reforms would, as Lord Hutton recommended, remain linked to the final salary at the date when retirement benefits were taken;

[66] The final report of the Independent Public Service Pensions Commission is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_100311.pdf

[67] Entitled "Public Service Pensions: Good Pensions That Last", it is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last._Command_paper.pdf

(c) There would be an accrual rate of sixtieths, equivalent to 1.66% (as Appendix 1 shows, however, some unions have negotiated better accrual rates);

(d) The "banked slices" would be revalued in line with CPI (although some schemes revalue at a rate that tracks CPI)[68]; and

(f) Lump sums would be available through commutation only, whereby £1 of annual pension income could be converted to a £12 one-off lump sum payment, subject to HMRC rules and limits.

5.16 The Principal Civil Service Pension Scheme (PCSPS) offers a useful illustration. As Appendix 1 shows, the new version of the PCSPS (known as "Alpha") has adopted an accrual rate of 1:43.1. This can be expressed as 2.32%. It is obviously superior to the rate of sixtieths (or 1.66%) set out in the preferred scheme design. In broad terms, prior to the recent pension reforms, the pension schemes for civil servants were as follows:

(a) About 60% were in the "Classic" PCSPS: a final salary scheme, with member contributions of 1.5%, an accrual rate of 1/80ths (1.25%), a maximum pension of 45/80ths, a lump sum of three times the pension income, and entitlement to an unabated pension at age 60. It closed to new members in 2002.

(b) About 25% were in the "Premium" PCSPS: a final salary scheme, with member contributions of 3.5%, an accrual rate of 1/60ths (1.66%), a maximum pension of 45/60ths, no lump sum (but 1:12 commutation), and entitlement to an unabated pension at age 60. It closed to new members in 2007.

[68] The main measure of UK inflation used to be the Retail Prices Index (RPI). In 2003, the main measure of inflation changed to the Consumer Prices Index (CPI). CPI is usually described by reference to a large shopping basket containing all the goods and services bought by UK households. It is calculated differently to RPI (applying a geometric rather than arithmetic mean to the basket of goods) and it does not include owner-occupier housing costs such as mortgages and council tax. The contents of the basket of goods is reviewed regularly to ensure that it is properly representative of people's spending patterns. There has been litigation around attempts by pension scheme trustees to change pension revaluation from RPI to CPI (seen by some as less generous), which usually revolves around the wording of the scheme rules. Insofar as public sector DB schemes are concerned, the Court of Appeal held that the switch from RPI to CPI in 2011 was lawful; see *R (FDA and others) v Secretary of State for Work and Pensions and another* [2012] EWCA Civ 332. On 21 March 2017, the main measure of UK inflation changed again; this time, to CPIH (CPI + Housing). CPIH is the CPI amended to include owner-occupier housing costs (see the ONS announcement here https://www.ons.gov.uk/news/statementsandletters/statementonfutureofconsumerpriceinflationstatisticsintheuk). The move is not without controversy; some contend that CPIH is less generous than CPI because of the way housing costs are valued. As at the date of publication of the fourth edition of the Principles, there has been no announcement that public sector DB pension schemes will move to a system of indexation and revaluation based on CPIH. If this happens, it will be noted in future revisions of these Principles.
Those researching historic CPI increases will find these links helpful:
https://www.gov.uk/government/collections/public-service-pensions-increases and
https://www.ons.gov.uk/economy/inflationandpriceindices/datasets/consumerpriceinflation

(c) About 15% were in the "Nuvos" PCSPS: a CARE scheme, with member contributions of 3.5%, an accrual rate of 1/43.5 (2.3%), a maximum pension of 75% of final pensionable pay, no lump sum (but 1:12 commutation), and entitlement to an unabated pension at age 65. It closed on 31 March 2015.

5.17 The "Alpha" version of PCSPS opened on 1 April 2015. It incorporates CARE, higher member contributions, an accrual rate of 1/43.1 (2.32%), no lump sum (but 1:12 commutation) and entitlement to an unabated pension at the later of 65 or state pension age. On a gross annual salary of £30,000, 1/43.1 represents a "slice" of about £696 in pension income; which is set aside and "banked" each year, then revalued at the point of retirement by reference to CPI. As noted above, those civil servants who remain on static incomes throughout their career will do better under a CARE scheme than a final salary scheme, because of the better accrual rate. Those civil servants benefitting from promotions and pay rises in the later parts of their career do less well.

5.18 It is still possible to pay AVCs into a CARE scheme, and (subject to the annual allowance) they will attract tax relief. In CARE schemes the AVC element will usually operate as a money-purchase supplement, i.e. it will be a DC "add on" to a predominantly DB scheme. Under the current pension freedoms, a member would be entitled to draw down from an AVC pot from the age of 55.

5.19 As this summary demonstrates, a proper assessment of substantial loss of CARE pension benefits must consider the lost "slices" of pensionable pay that, but for the unlawful dismissal, the claimant would continue to have "banked" (see the example of Gaynor at Appendix 3). The prospect of future promotion remains important, but will be less financially valuable. This is because accrued pension rights in a final salary scheme are, by definition, the only rights that will be pegged to final salary at retirement. Accrued rights in a CARE scheme are pegged to the salary in the year that they accrued.

Back to tax

5.20 At Chapter 2 of these Principles, we examined the Annual Allowance (AA) and the Lifetime Allowance (LTA). They are also relevant to DB schemes, almost all of which are tax-registered. Some high-earning claimants appearing in the tribunal will be affected by the AA and LTA in complex ways, which we will now explain.

5.21 The mechanism for assessing whether an individual's public sector pension pot is likely to exceed the LTA is as follows: take the annual pension income at the date of retirement, without any commutation, and multiply it by a factor of 20. If the scheme provided for an additional lump sum without commutation, this should be added separately. By way of example, consider Jane, a highly paid civil servant who retired in May

2016, when (thanks to protection) she was still a member of the "Classic" PCSPS. We will assume that she retired on a final salary of £130,000 after 45 years' service. Her pension at that time would be 45/80ths of £130,000, i.e. £67,500. Multiplied by 20, the deemed value of her pension pot would be £1,350,000. Her separate tax-free lump sum would be three times £67,500, which is £202,500, which should be added. For LTA purposes, then, her pension pot would be valued at £1,350,000 plus £202,500, which is £1,552,000. (This would need to be added to the value of any private pension pot that she had accumulated; for the sake of simplicity, we shall assume that there is none.) The LTA is currently set at £1m, so the deemed value of Jane's retirement benefits would exceed it by £552,000.

5.22 The LTA charge would involve tax being levied on Jane's benefits as follows: there would be a one-off charge of 55% of the amount of the excess that she took as a lump sum and an annual charge based on 25% of the amount of the excess that is taken as pension income (in a DB scheme, the 25% figure is divided by 20 and the annual pension income reduced by that twentieth). Subject to scheme rules, it might be possible to choose whether and in what proportion the tax penalty is borne by the lump sum and/or the pension income. So, Jane might choose to pay 55% of her lump sum of £202,500 in tax (being £111,375); and this would deal with £202,500 of the £552,000 excess. The remaining £349,500 would then be taxed at 25% (being £87,375), such that 1/20th of that amount (i.e. £4,368.75) would be taken from her annual pension income each year in addition to ordinary income tax. Alternatively, Jane could take her entire lump sum tax-free and pay all the excess as tax on her pension income. In that case, all the £552,000 would be taxed at 25% (i.e. £138,000) and 1/20th of that amount (i.e. £6,900) would be taken from her annual pension income in addition to ordinary income tax. Depending on her circumstances, a combination of income tax and the 25% charge may mean that a 55% charge on the lump sum would result in a lower overall tax charge. Jane would need to take financial advice as to how best to meet the charge.

5.23 The LTA is indexed annually in line with CPI. In 2019/2020 it is £1,055,000.

5.24 We described earlier how the AA represents the ceiling up to which – but not beyond – the state will grant tax relief on pension savings. In tax-registered DC schemes, it is straightforward to identify the level of an individual's own contributions. The more generous benefits available in DB pension schemes, however, attract a different regime for calculating the amount of pension savings for tax purposes: put simply, there is a deemed increase in the value of a person's DB pension benefits over the course of a tax year. This figure results from the application of a factor of 16 (which was increased in April 2011 from a factor of 10) to the increase in the value of the pension income (and any separate lump sum) between two input dates. There is scope for rolling over unused AA from previous tax years.

5.25 To explain its operation, we return to Jane; this time, let us assume that she has not yet retired, but is still in employment as a civil servant. She is still in receipt of a gross annual salary of £130,000. However, because she is now younger, we will assume that she was moved into the "Alpha" scheme in April 2015. She pays member contributions of 8.05%, which are equivalent to £10,465. This accrual rate means that, this year, she will "bank" a CARE slice of 1/43.1 x £130,000, which is £3,016.24. The figure of £3,016.24 is then multiplied by 16. This produces a figure of £48,259.84, which we round down to £48,259. This figure of £48,259 represents the deemed increase in the value of Jane's pension pot for that year; put another way, it is the amount by which her pot is deemed to have grown to deliver the promised retirement benefits. Crucially, it is much higher than her actual member contributions of £10,465.

5.26 Although Jane's gross annual salary is £130,000, her adjusted income for AA purposes is £167,794. Where does this figure come from? It is the result of this piece of arithmetic: her gross annual salary of £130,000, less her member contributions of £10,465, plus the deemed increase in value of her pension pot of £48,259.

5.27 As we noted above in Chapter 2, the AA is tapered where a person's adjusted income falls between £150,000 and £210,000. The tax impact on Jane is then as follows: her adjusted income of £167,794 exceeds £150,000 by £17,794. Every £2 of that excess reduces Jane's AA by £1. Half of £17,794 is £8,897; it follows, then, that an excess of £17,794 reduces her AA by £8,897. Jane's AA during the 2017/18 financial year will be £40,000 less £8,897, which is £31,103. The deemed increase in the value of Jane's pension pot of £48,259 exceeds her tapered AA of £31,103 by £17,156.

5.28 Jane adjusted net income for personal allowance purposes is £130,000 less her pension contributions of £10,465, which is £119,535 (reducing her personal allowance by £9,767.50 to £1,732.50). But she will still not reach the additional tax rate. Accordingly, she will pay tax on the sum of £17,156 at the rate of 40%. That will mean that she faces a tax liability of 40% of £17,156, which is £6,862[69].

5.29 There are two options for Jane in paying this: either she can declare it at the end of the tax year, through her self-assessment, or she can ask the pension scheme to pay it for her. If she chooses the second option, known as "Scheme Pays", the scheme will recover the tax from her for that year, and each subsequent year that it paid it for her, when she later retires, together with adjustments for interest levied in the meantime. The is achieved through a corresponding reduction in Jane's pension benefits, using complex actuarial formulae. This will reduce Jane's net pension benefits (and, if she were dismissed, her net pension loss).

[69] Jane might have had unused AA from previous tax years, which she could carry forward to reduce her tax charge. Note that pension input periods may vary and may not necessarily align with the tax year.

Simple DB cases: issues for the Employment Tribunal

5.30 Where the period of loss to be compensated is relatively short, a tolerably accurate assessment of the net value of lost DB pension benefits can be done using the contributions method. As with using that method in DC cases, it is enough to aggregate the employer's pension contributions for all relevant pay periods covered by the award of compensation (without recoupment). There are several points, however, needing emphasis.

5.31 Just as with DC schemes, members of contributory DB schemes may be entitled to a refund of their contributions if they leave with less than two years' qualifying service; this will be subject to the scheme's rules. A claimant who has chosen a refund of their contributions must give credit for them when compensation is assessed.

5.32 The first type of DB case we consider appropriate for the contributions method is where the tribunal decides that the claimant's dismissal would have been very likely to occur within a relatively short period, bringing an end to their loss of earnings and loss of DB pension rights. For example:

(a) A tribunal finds that a dismissal for redundancy was procedurally unfair but that a fair process, which might have taken longer, would almost certainly have led to the same outcome. In other words, the dismissal would still have occurred, but it would have only been delayed[70]. An illustration is given at Appendix 3 (see George).

(b) Another example is a procedurally unfair dismissal for gross misconduct that would still have occurred at a later point if a proper procedure had been followed.

Such scenarios are perhaps rare, but they provide a terminal point for all losses which, even for a claimant who was formerly in a DB scheme, point towards use of the contributions method. They represent what we might call, later in this chapter, a very high "withdrawal factor". However, if the tribunal is satisfied that there is a significant element of ongoing DB pension loss, the contributions method is unlikely to be appropriate. The contributions method is a better choice where, for example, the reduction under the "*Polkey*" principle, or because of contributory fault, is high.

5.33 These Principles do not set in stone the period of loss that would be short enough to merit use of the contributions method in a DB case, since much will depend on the facts. As a rule of thumb, six months would very likely be a short period; twelve months would probably still be short; 18 months

[70] See, on this point, the Court of Appeal's judgment in *O'Donoghue v. Redcar & Cleveland Borough Council* [2001] IRLR 615, as applied in *Zebrowski v. Concentric Birmingham Ltd* (EAT/0245/16). The case of *Abbotts & Standley v. Wesson-Glynwed Steels Ltd* [1982] IRLR 51 provides an early example of this principle in operation a redundancy context.

and above would probably not be short. As always, the parties will be free to make their arguments to the tribunal[71].

5.34 Another scenario involving loss of both earnings and pension rights on a short-term basis is where a claimant mitigates their loss fully by obtaining alternative employment in a role with equivalent DB benefits (replacing like with like) or a role where the total remuneration, even with a less generous pension, exceeds the salary and pensions package of the old job. An example is given at Appendix 3 (see Fiona). Again, if a tribunal is persuaded that the pension loss is truly short-lived, the contributions method is appropriate. Such scenarios may be rare: even where the claimant finds employment with DB scheme benefits, the tribunal should be alert to a change in their value (for example, if the claimant had DB benefits in the old job that were linked to final salary at retirement, whereas in the new job they accrue on a CARE basis).

5.35 The application of the statutory cap on the compensatory award for unfair dismissal may sometimes mean that it is disproportionate to engage in a complex analysis of pension loss. For example, a high award for pension loss will be greatly reduced upon application of the statutory cap of 52 weeks' pay[72]. It will be open to the tribunal to treat the application of the statutory cap as a reason to adopt the contributions method in respect of DB pension loss. For example, if the cap is nearly exceeded by loss of earnings alone, carrying out complex pension loss calculations will waste the tribunal's time and the parties' costs. (We recognise that the parties may not know whether the statutory cap will apply until the outcome of the liability hearing, which is why we recommend that the remedy hearing is parked in cases that may require a complex pension calculation. This is explained further in Chapter 6.)

5.36 Where the contributions method is considered suitable, the tribunal must ascertain the rate of the employer's contribution to the DB scheme:

(a) In a funded scheme, it should be easy to establish the standard level of the employer's contributions. The standard level should be the usual percentage contributions as opposed to any periodic increase (to cover a deficit) or decrease (to benefit from a surplus).

(b) In an unfunded scheme, the contribution rate is the notional level of contributions required from the employer to deliver the benefits. The tribunal will apply those figures, as percentages of the gross annual salary previously enjoyed by the claimant, to the relevant period of

[71] In *Network Rail Infrastructure Ltd v. Booth* (EAT/0071/06), the EAT said this: "it would be a mistake for tribunals to take the view that they were obliged to adopt a substantial loss approach if the period of loss was for more than two years" (our emphasis).
[72] Although tribunals and parties should bear in mind that, applying the EAT's judgment in *University of Sunderland v. Drossou* (EAT/0341/16), a week's pay includes the employer's pension contributions. This will increase the level at which the cap operates, especially where the claimant was a member of a DB pension scheme.

loss that resulted from the dismissal. An example is at Appendix 3 (see Fiona).

The reports and accounts of the scheme may help determine the true rate of employer contributions relative to the claimant's age and gender and, if available, they may be used as a way of producing a fairer figure[73]. If the DB pension scheme provided ancillary benefits such as a pension for a surviving partner, the parties should be careful to identify the value of any separate contributions by the employer (actual or notional) which fund that benefit. The tribunal will manage the proceedings to assist the parties in obtaining these figures.

5.37 Where a claimant has found other paid employment, it will be appropriate for the tribunal – as part of the process of examining mitigation of loss – to take account of any pension contributions made by their new employer during the period of loss, for example those arising from auto-enrolment. Again, there is an example at Appendix 3 (see Hannah).

5.38 This method does not stop the parties from agreeing, in an appropriate case, that the best way to compensate a claimant would be to augment their benefits in the former employer's DB scheme by means of a credit for additional service. This would likely require the trustees' consent as well as additional payments from the former employer to that scheme.

5.39 The third edition had a section on calculating the loss of enhancement of final salary pension rights that accrued before dismissal, as part of what it called the simplified approach. A multiplier was selected by reference to the claimant's gender, their age at dismissal, whether they were in a public sector or private sector pension scheme and their retirement age. This multiplier would then be applied to the amount of the claimant's deferred annual pension to provide them with a further compensatory sum, additional to the aggregate value of the employer's contributions for the relevant period of loss. The further award was designed, in broad terms, to compensate the claimant for the fact that the final salary pension rights they had accrued in the past would, after their dismissal, no longer benefit from future increases in pay. This further award reflected two assumptions:

(a) The first assumption was that earnings growth would outstrip growth in the pension income derived from a final salary scheme. The most populous final salary schemes now exist in the public sector and,

[73] Appendix 7 of the revised third edition provided a table of multipliers to apply to the contribution rates to DB pension schemes to reflect the age and gender of the claimant. Without GAD involvement, we have been unable to produce a similar table. The parties are free to make submissions on the point, and use expert evidence, if they consider that the application of the contributions method in a simple DB case requires use of similar multipliers.

after several years of public sector pay restraint, this assumption is no longer valid (or, at least, is less valid than once it was)[74].

(b) The second assumption was that the employer against which the claimant's claim had succeeded would continue to operate a final salary scheme. That assumption is no longer valid. CARE designs have largely replaced final salary designs in respect of future pensionable service. If a claimant were dismissed from employment carrying CARE benefits, the "slices" of earnings that would have been "banked" in the past would not benefit from future increases in pay resulting from a promotion that, but for the dismissal, they may have achieved. Each slice would only be revalued in line with CPI (or, in some cases, a system that tracks CPI).

Without the involvement of GAD, the working group has been unable to produce replacement multipliers reflecting these changing assumptions. We have borne in mind that these multipliers would only ever be used in simple DB cases for which the contributions method was appropriate. In most cases, especially following the emergence of CARE schemes, the multipliers would be so small that they can safely be ignored. It is unlikely that expert evidence in such a case would be proportionate.

5.40 There are two scenarios, however, where accrued DB pension benefits would benefit from future increases in pay:

(a) The first is a case where a claimant was, because of their age, able to remain in the final salary scheme and continue to accrue benefits linked to final salary. In the public sector, this is usually those within ten years of their normal retirement age at a specified date, with some transitional protection for those who, at the same date, were between ten and 13½ years from normal retirement age.

(b) The second is a case where a claimant had accrued benefits in a final salary scheme before they were removed from the old scheme and transferred to a new scheme based on CARE principles, and where those benefits remain pegged to final salary at retirement (not the final salary at the date of exit from the old scheme). This is true of all reformed DB schemes in the public sector.

If the period of loss is long enough that the loss of enhancement of final salary pension rights is more than negligible, perhaps because the period of loss includes a time at which the claimant might have been promoted, the contributions method is less likely to be appropriate. This would probably be a complex DB case, to which we now turn. Compensation

[74] See the House of Commons Library briefing paper "Public Sector Pay" (29 June 2017), at http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8037. At page 3: "The experience of earnings growth across both the public and private sector is very broad and there are a substantial number of workers who see large rises or falls in pay each year. Nevertheless, since 2012 pay increases have been more positively skewed in the private sector than in the public sector."

for the loss of enhancement of accrued pension rights is built in to the approach we recommend for a complex DB case.

Complex DB cases: issues for the Employment Tribunal

5.41 Many cases featuring a loss of DB pension rights will not be suitable for the contributions method. We call these "complex" cases. They are those cases where the period of loss cannot be categorised as short or which, for some other reason, involve a potentially significant quantifiable loss; a bright-line rule that fits all cases is impossible. Calculating pension loss in a complex DB case will involve choosing one of two approaches (or, sometimes, a blend of these two approaches). The first involves use of the Ogden Tables. The second involves expert evidence, typically from an actuary. We start by explaining the Ogden Tables.

An introduction to the Ogden Tables

5.42 These Principles referred earlier to the Ogden Tables in the context of calculating loss of state pension rights and calculating career-long loss of earnings that include a career-long loss of employer contributions to a DC scheme. Their formal title is "Actuarial Tables with Explanatory Notes for Use in Personal Injury and Fatal Accident Cases". They are named after Sir Michael Ogden QC, who chaired the working group that originally produced them in the early 1980s. They are admissible in evidence in civil proceedings; see Section 10 of the Civil Evidence Act 1995. In 2011, a working group chaired by Robin de Wilde QC produced the most recent (seventh) edition. At the time of publication, an eighth edition is still awaited, although supplementary tables were last issued in July 2019 reflecting the new statutory discount rate in England and Wales (see paragraph 5.48 below).

The full Tables are available here:
https://www.gov.uk/government/publications/ogden-tables-actuarial-compensation-tables-for-injury-and-death.

5.43 The information in the Ogden Tables is provided in two sections:

(a) The tables themselves are produced by GAD. They act as an aid to assessing the lump sum that will compensate for a continuing financial loss caused by personal injury or a fatal accident. Put simply, they help courts produce a single one-off sum that, while not capable of perfect accuracy, represents the present capital value of future loss. The idea is that the one-off sum should fully compensate the claimant, who spends it responsibly and invests it in a risk-averse fashion, such that it is exhausted by the time the period of loss comes to an end (which may be at a defined point in future, like a specific age, or at the end of their life).

(b) The explanatory notes are produced by a working group. They provide commentary on how the multipliers should be used. They are divided into five sections. The most relevant parts of the notes for our purposes are found at Section A ("General") and Section B ("Contingences Other Than Mortality").

5.44 The courts have available to them an alternative to producing a one-off lump sum, which is to make a Periodical Payments Order (PPO). Under a PPO, compensation is paid to a claimant at regular intervals; it is often viewed as a more effective mechanism for compensating claimants. In the personal injury field, the effect of a PPO is to transfer mortality and investment risk from the claimant to the insurer (although the claimant then takes on the risk of the insurer defaulting at some time in the future when a payment is due). PPOs are not available in the Employment Tribunal[75]. Our task, instead, is to identify a one-off capital lump sum that properly compensates a claimant who has been unlawfully dismissed.

5.45 The explanatory notes to the tables make clear that if, for some reason, the facts of a case do not correspond with the assumptions on which one of the Ogden Tables is based, an appropriate allowance can be made for this difference. The notes also acknowledge that, in some cases, the assistance of an actuary should be sought. These Principles make the same acknowledgement; the approach using expert actuarial evidence is discussed below.

5.46 In trying to capture a single figure representing the present capital value of future loss, the Ogden Tables use a system of multiplicands and multipliers. In broad terms:

(a) The multiplicand is the present-day value of the future loss. Where it is an ongoing recurrent loss, which is usually the case with loss of earnings and loss of pension, it will be the present-day value of one year's loss. Because loss of earnings and loss of pension are assessed net of tax, it will be the present-day value of one year's net loss. By way of example, if a claimant's career-long income loss is thought to comprise, at today's value, a net loss of £30,000 for each of the next ten years, the multiplicand will be £30,000. If their recurrent net pension loss is, at today's value, £1,000 for each year spent in retirement, the multiplicand will be £1,000.

(b) The multiplier is a figure derived from the relevant Ogden Table. It takes account of the predicted length of a working life (or the length of time a person will live in retirement). The Ogden Tables are derived from mortality data produced periodically by the Office for National Statistics. The current edition is based on the ONS's 2008-based projections of future mortality rates. It relates to the whole UK population. The multiplier differs with the rate of investment return (what is known as the "discount rate") to which we turn next.

[75] A point that the working group emphasised in its response to the Ministry of Justice's consultation (available at https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/supporting_documents/discountrateconsultationpaper.pdf) on how the personal injury discount rate should be set in future. The consultation ended on 11 May 2017 and the first discount rate determined by the new mechanism came into force in August 2019.

5.47 Whether dealing with loss of earnings or loss of pension, the multiplier chosen must reflect the appropriate rate of return on investments. The current edition of the Ogden Tables provides multipliers in columns that range from minus 2% to plus 3%. These represent various rates of return if the one-off lump sum were to be invested. In the case of *Wells v. Wells* [1999] 1 AC 345, the House of Lords decided that the discount rate applied to compensation should be based on the yields on index-linked government stock (ILGS). This reflects the likelihood that an injured claimant would adopt a risk-averse approach to the investment of their award, so that it would be exhausted at the end of the period which was being compensated and not before.

5.48 The discount rate is fixed by the Lord Chancellor under Section A1 of the Damages Act 1996. When the Damages (Personal Injury) Order 2001 came into force, the rate was set at 2.5%. This reflected the expectation of the time that, once invested in ILGS, a lump sum award of damages would yield annual growth of 2.5%. A corresponding discount of 2.5% would minimise the chances of a claimant being over-compensated.

5.49 The rates of return on ILGS have fallen consistently in recent years. By the time the current edition of the Ogden Tables was released in 2011, its editor was already describing the discount rate of 2.5% as long out of date. The Lord Chancellor confirmed that the discount rate would be reconsidered and, following a consultation period, a panel of experts was convened to advise on any change. On 27 February 2017, the Lord Chancellor announced that the discount rate would be reduced to minus 0.75% with effect from 20 March 2017[76]. This rate reflected the prevailing assumption that, in the current economic climate, a lump sum invested in ILGS will lose money: a negative discount rate increases the amount of compensation to offset that loss. Following further consultation as to the method by which the discount rate is to be set, on 15 July 2019 the rate was increased to minus 0.25% with effect from 5 August 2019. A supplementary set of Ogden Tables was produced (available at the link at paragraph 5.42 above), with a new range of multipliers incorporating a discount rate of minus 0.25%. “At a glance” versions of the Tables are also at Appendix 2, which extract all the relevant columns using that discount rate. Subsequently, however, it was announced that the discount rate in Scotland would remain minus 0.75% and therefore this revision also includes in Appendix 2 tables at that rate for use in Scotland – see the announcement at https://www.gov.uk/government/news/personal-injury-discount-rate-in-scotland-government-actuarys-report

5.50 When applying the Ogden Tables to both loss of earnings and loss of pension, the tribunal will mirror the applicable statutory discount rate

[76] The Lord Chancellor’s statement of reasons for the decision can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594972/discount-rate-statement-of-reasons.pdf

(and will track future changes to the rate). The EAT has confirmed that it is good practice for the tribunal to apply the same discount rate as the courts[77] and the courts themselves are applying it consistently when making lump sum awards[78].

Using the Ogden Tables in the Employment Tribunal

5.51 Save in exceptional cases, the tribunal will only be examining two types of loss to which the Ogden Tables relate.

5.52 The first type is loss of earnings:

(a) Lost earnings are assessed up to a specific point in the future, measured by reference to the age of the claimant at five-yearly intervals: 50, 55, 60, 65, 70 or 75. In other words, insofar as lost earnings are concerned, the Ogden Tables are chiefly aimed at career-long losses ending between the ages of 50 and 75.

(b) The approach is as follows. A multiplier is selected from Tables 3 to 14 depending upon the claimant's gender and the pension age to which their loss of earnings is to be assessed. (When dealing with variable future losses, it may be necessary to apportion the selected multiplier in the manner described at paragraph 23 of the explanatory notes to the Ogden Tables.) On the vertical axis of the selected table, the multiplier reflects the claimant's age at the date of the hearing at which their loss of earnings is to be assessed. On the horizontal axis, the multiplier reflects the discount rate; as explained above, the tribunal will use the minus 0.25% column. If the claimant's loss of earnings ends at an age between the five-yearly intervals provided (e.g. at the age of 62), a process called "interpolation" finds a more accurate multiplier. Paragraphs 13 and 14 of the explanatory notes explain how interpolation is done. It appears complex, but the tribunal and the parties only need to follow the steps set out in the explanatory notes and enter numbers at the appropriate points. In most cases it will not be necessary because at Appendix 2 there are further tables that have already done the interpolation calculations so pension ages from 52 to 77 are covered.

(c) The selected multiplier may then be adjusted further by applying discounts set out at four tables (Tables A to D), to be found at Section B of the explanatory notes. These further tables address three other contingencies besides mortality (which is already built in to the multiplier), which are considered relevant when calculating compensation for personal injury. They are: employment status (i.e. whether a person was employed at the time of the accident);

[77] See *Benchmark Dental Laboratories Group Ltd v. Perfitt* (EAT/0304/04), para 20.
[78] See, for example, *Marsh v. Ministry of Justice* [2017] EWHC 1040 (QB), paras 222-228.

disability status (whether a person had a pre-existing disability[79] at the time of the accident); and educational attainment (measured by reference to degree equivalent or higher, GCSE/A level and below GCSE). If adjustments are made for these contingencies, the resulting sum will reflect an improved estimate of the proportion of time that the claimant would, but for the accident, have spent in employment. In other words, they take account of other factors that influence how a person's working life might have panned out if they had not been injured. The EAT has emphasised that it would not be right, in loss of earnings cases, to use multipliers taken from the main tables without considering other contingencies which those tables do not reflect[80].

(d) There are further contingencies that the Ogden Tables, in their current edition, do not cover, which may be relevant to cases before the tribunal: occupation or industrial sector, geographical region, the possibility that the claimant would have taken time out from work to care for children or other dependants, as well as risks like redundancy. Self-evidently, as generalised tables, they also take no account of risks that are pertinent or unique to the claimant being compensated or the employer for whom they worked.

(e) These Principles deal with ongoing loss of pension, not career-long loss of earnings. Nonetheless, we emphasise that, when awarding career-long loss of earnings, it will usually be appropriate for the tribunal to make an adjustment for contingencies besides mortality. Ultimately, this will be a matter for evidence and submissions.

(f) It is always helpful to bear in mind the words of Elias LJ in *Wardle v. Crédit Agricole Corporate and Investment Bank*[81]:

> **In the normal case, if a tribunal assesses that the employee is likely to get an equivalent job by a specific date, that will encompass the possibility that he might be lucky and secure the job earlier, in which case he will receive more in compensation than his actual loss, or he might be unlucky and find the job later than predicted, in which case he will receive less than his actual loss. The tribunal's best estimate ought in principle to provide the appropriate compensation. The various outcomes are factored into the conclusion. In practice the speculative nature of the exercise means that the tribunal's prediction will rarely be accurate. But it is the best solution which the law, seeking finality at the point where the court awards compensation, can provide.**

[79] The Ogden Tables adopt a slightly different definition of disability for this purpose. It sets out three elements, all of which must be satisfied. The second of these is the definition in the EqA with which employment law practitioners will be familiar.
[80] *Abbey National plc v. Chagger* [2009] IRLR 86, para 114.
[81] [2011] ICR 1290 (at paragraph 52).

5.53 The second type is loss of pension:

(a) Pension loss is assessed from a specific age at which the claimant would have retired, at the same five-yearly intervals (50, 55, 60, 65, 70 or 75), and which continues for the remainder of the claimant's life in retirement.

(b) The process is like the one described above. A multiplier is selected from Tables 15 to 26 depending on the claimant's gender and retirement age. Experience suggests that the tables most likely to require use by the tribunal are those dealing with loss of pension commencing at the ages of 60, 65 and 70 (Tables 19 to 24). On the vertical axis of the selected table, the multiplier again reflects the claimant's age at the date of the hearing at which their loss of pension is to be assessed. On the horizontal axis, the multiplier reflects the discount rate; and, again, the tribunal will use the minus 0.25% column (minus 0.75% in Scotland) found in the supplementary tables.

(c) The calculation of pension loss that varies across different periods carries an additional complexity, which is the need to apportion the selected multiplier with the help of a further multiplier from Ogden Table 28. An example of apportioning the multiplier when an award is made for variable pension loss is at Appendix 3 (see Rosa).

(d) To identify a multiplier for retirement at (say) age 68, it would be necessary to locate a mid-point though interpolation save for the tables at Appendix 2 which reduce the need for interpolation. We have, however, included an example of calculating pension loss from an age below 50 by estimating the multiplier (see Rosa).

(e) As noted above, the Ogden Tables are derived from 2008 mortality data relating to the UK population at large. When calculating loss of occupational pension rights, however, we are dealing with a narrower cohort of individuals: those who have been members of occupational pension schemes and expect to enjoy the associated benefits when retired. It is generally accepted that the wealthier retirements enjoyed by such individuals correlate with increased life expectancy. If we were to apply the Ogden Tables without any adjustment for this factor, claimants would be under-compensated.

(f) Having sounded out actuarial opinion about the appropriateness of using the Ogden Tables, the working group recommends making an allowance for the expected higher life expectancy of members of occupational pension schemes, compared to the average for the UK population at large. If using the Ogden tables themselves, this is done by reducing the age of the claimant and the assumed retirement age by two years when selecting the multiplier. The adjustment increases the length of the claimant's life in retirement. However, the tables for loss of pension in Appendix 2 anticipate

this adjustment so the actual age and retirement age of the claimant can be used to find the multiplier. These adjusted tables cover retirement ages 52-77. There are several examples of this adjustment in Appendix 3 (see Tom, Gaynor, Ahmed and Rosa).

(g) This general approach is subject to the right of either party to contend that the adjustment for future mortality should be greater or less. Appendix 3 includes an example of a case where the tribunal might decline to make the age adjustment (see Katarzyna).

(h) The explanatory notes to the Ogden Tables make clear that the tables at Section B (dealing with contingencies other than mortality) do not apply to loss of pension rights. The notes suggest that, if an adjustment is made to one, it may be appropriate to adjust the other. However, we do not recommend using the tables at Section B when considering pension loss. This is for several reasons:

- The Section B tables are designed for cases dealing with loss of earnings before retirement age. The relationship between these factors and loss of pension is opaque. The explanatory notes to the Ogden Tables are vague as to what adjustment is needed for pension loss as opposed to loss of earnings (saying only "some reduction would often be appropriate").

- The Section B tables have not been updated since the discount rate was lowered to minus 0.75%, let alone to minus 0.25% in England and Wales.

- The Section B tables do not cover the sort of contingencies that may be relevant to tribunal cases, like occupation, industrial sector, geographical region, future care responsibilities or future redundancy risks.

(i) We propose an alternative approach: to apply what previous editions called a "withdrawal factor". This factor caters for other contingencies that arise in the case, and which may affect how long employment would have continued but for the unlawful dismissal (i.e. whether the claimant would have "withdrawn" from the pension scheme, for different reasons, at a future date). It is conceptually similar to a "*Polkey*" analysis, in that the tribunal engages in some speculation about what the future – indeed, a hypothetical future – may have held. The contingencies could arise from the claimant's personal situation; for example, ill health, caring responsibilities or family circumstances. Equally, they might be factors affecting the respondent, such as the overall viability of the business, its plans for restructuring or the extent to which its workers tend to remain for full careers (e.g. police officers). Put another way, the possibility that the claimant would have left the respondent's employment (and its DB pension scheme) for other reasons can be allowed for by making one or more adjustments during the quantification

process after assessing the "old job facts". We provide examples at Appendix 3 (see Ahmed, Rosa and Katarzyna).

(j) That said, a huge discount for withdrawal would suggest that DB pension loss could be better assessed by the contributions method. As Underhill LJ said in *Griffin v. Plymouth Hospital NHS Trust*[82]:

> **In such a case [the claimant] would have suffered, perhaps only a year or two later, precisely the same kind of loss as is being claimed for in the proceedings; and it is more appropriate simply to award lost contributions up to that date, as per the simplified approach, rather than embarking on the exercise of valuing rights on retirement which would almost certainly never have accrued and then applying a massive "finger-in-the-air" discount. The question is whether the uncertainties that would have to be reflected in such a discount are so great that they undermine the point of assessing the hypothetical whole-career loss in the first place. Whether that is so in any particular case is a matter for the judgment of the tribunal.**

(k) The Ogden Tables also assist when calculating the loss of a tax-free pension lump sum. In most cases, we should make clear, lump sum calculations can safely be ignored. This is because most DB schemes in the public sector (whether using a final salary or CARE design) only provide for a lump sum through commutation of part of the pension income. In such cases, the loss can adequately be assessed using the pension income in the presumed absence of commutation. For those who have accrued benefits in a scheme that provided for a separate tax-free lump sum (such as the older final salary schemes based on eightieths), a further calculation is necessary. Because the lump sum is invariably a multiple of the gross pension income, the lost lump sum will simply be the same multiple of the lost gross pension income. Once we have that figure, we turn to Table 27 of the Ogden Tables, so that the sum can be adjusted at the discount rate of minus 0.25% (minus 0.75% in Scotland) for the "term certain" reflecting its early receipt. We provide examples at Appendix 3 (see Tom and Rosa).

The seven steps model

5.54 Bringing the above comments together, the working group's members have identified seven steps that the tribunal and the parties should follow when calculating loss of DB pension rights using the Ogden Tables.

5.55 ***Step 1: Identify what the claimant's net pension income would have been at their retirement age if the dismissal had not occurred***.

[82] [2015] ICR 347.

(a) The starting point is to contact the employer's pension department or the administrators of its pension scheme. They should be able to provide gross figures confirming not just the claimant's current projected pension income at retirement (i.e. what their pension income will be following their dismissal) but also what their pension income would have been, at today's rates, if they had continued to work until retirement and not been dismissed. In a career-loss case, this will be the claimant's retirement age – and the claimant may already have this figure from a recent pension statement[83]. If not, the tribunal would expect the respondent to take responsibility for obtaining these figures. In a case that may require a complex DB calculation, the tribunal will use its case management powers to direct early provision of this information.

(b) Paragraph 3.20 above is relevant for cases where the tribunal must decide the age at which, but for the dismissal, the claimant would have retired.

(c) The employer or scheme administrators might also be willing to provide a further statement of the claimant's projected pension benefits based on a hypothetical scenario. Such a scenario might include the claimant's promotion at a future date. If the claimant had accrued service in a DB scheme with a final salary design, this would enhance the value of their accrued benefits as assessed at Step 1. This is the mechanism by which the complex approach can produce compensation for the loss of enhancement of accrued pension rights (see paragraphs 5.39 and 5.40 above).

(d) If a pension statement cannot be provided, it may be possible for the parties to establish a tolerably accurate figure at Step 1 through deduction. This is easier when dealing with a pension scheme with a final salary design (see the example of Tom in Appendix 3). It is trickier when dealing with a pension scheme with a CARE design (see the example of Gaynor in Appendix 3). The tribunal is not equipped to predict the compound impact of annual CPI revaluation of all the slices of earnings – not just those banked before dismissal but also those that would continue to be banked if dismissal had not occurred. If a party wishes to aim for greater precision, they will need to obtain estimates from the scheme administrators or instruct an expert. If they do neither then, in the interests of simplicity, the tribunal will ignore the impact of CPI revaluation.

(e) Once in possession of a gross figure for pension income, the tribunal should, as part of Step 1, take account of any withdrawal factors that may apply. The analysis is like the one done when applying the "*Polkey*" principle; the tribunal considers the "old job facts" and engages in a degree of speculation about what the future

[83] Statements are issued annually; see https://www.pensionsadvisoryservice.org.uk/pension-problems/avoiding-problems/what-you-have-the-right-to-ask-your-scheme.

may have held. For example, without applying any withdrawal factor and based entirely on a pension statement, a tribunal might decide that, if a claimant had not been dismissed but worked through until retirement for the same employer, their gross annual pension income would have been £8,000. However, the tribunal might decide that there was a 25% chance that the respondent would become insolvent within the next five years or that the claimant would have been made redundant. It might decide that the claimant's service to retirement would have included a reduction to part-time working because of caring for an elderly parent. After taking account of such factors (usually expressed as percentage reductions), the tribunal might decide that a fairer, albeit broad-brush, assessment is that the claimant's gross annual pension income at retirement would, but for the dismissal, have been a figure lower than £8,000. Examples of this are given at Appendix 3 (see Ahmed, Katarzyna and Rosa).

(f) As can be seen, the parties may disagree about the claimant's retirement age and promotion prospects and the withdrawal factors that might apply. These are the sorts of matters on which a tribunal might make rulings at a first-stage remedy hearing (a concept we examine in Chapter 6) before performing detailed calculations. They can offer a platform for the parties to reach agreement on pension loss while keeping down their legal costs.

(g) Finally, any gross figure must be converted to a net figure. This can be done by using the HMRC online calculator, which provides a workable estimate of take-home pay[84]. It has been used on several occasions in the examples at Appendix 3.

5.56 ***Step 2: Identify what the claimant's net pension income will be at their retirement age in the light of their dismissal***.

(a) The tribunal and the parties should have this figure, at least in part, as a result of their enquiries at Step 1. The claimant may already have received an updated statement of projected pension benefits to reflect the fact that, after the termination of their employment, they will accrue no more pensionable service. Otherwise, the employer's pension department or the administrators of its pension scheme should be able to provide gross figures confirming the claimant's projected annual pension income at retirement in the light of their dismissal.

(b) If the tribunal decides that, because of the dismissal, the claimant will never work again, it will be enough to convert this figure into a projected net annual pension income and then proceed to Step 3.

[84] https://www.gov.uk/estimate-income-tax. Where appropriate, it is important to state that a person is (or is assumed to be) over state pension age, so that no deduction for NI contributions is made.

(c) However, cases where a tribunal concludes that a claimant will never work again are rare. A more common outcome is that the claimant mitigates their loss by finding alternative work by the time of the remedy hearing (perhaps on reduced pay) or that the tribunal concludes that the claimant will find alternative work by a specific date in the future. This is the sort of analysis in which the words of Elias LJ in the *Wardle* case, quoted at paragraph 5.52(f) above, are especially pertinent. In such circumstances, the tribunal is required to decide the amount by which this actual or anticipated new job affects the claimant's future loss, both in terms of earnings and pension. As we have emphasised before in these Principles, the tribunal and the parties must be alive to the possibility that a future rise in salary in the new employment might be sufficient to offset both the loss of earnings and the loss of pension caused by the dismissal. If it is thought this will occur in the not-too-distant future, it could point towards use of the contributions method.

(d) If the new employment has DB pension benefits (and experience suggests this happens more rarely nowadays), the basis on which those benefits accrue must be established. The new benefits will not necessarily replace like with like. Take a situation where the old employer's pension scheme was based on a final salary design but the new employer's pension scheme is based on a CARE design. For some claimants on static incomes throughout their career, a CARE scheme may deliver better benefits (because of the better accrual rate), even to the extent of meaning no pension loss and reduced earnings loss. For other claimants, such as those with a good chance of experiencing promotions throughout their careers and the accompanying increases in their pensionable pay, a CARE scheme may deliver inferior benefits, because those promotions will have no impact on the value of their accrued benefits. To assist the tribunal, the claimant should obtain a statement of projected pension benefits from the new employer's DB scheme. (We repeat the point made above that, in the interests of simplicity, the tribunal will ignore the impact of annual CPI revaluation on banked slices in a CARE scheme; if a party wishes to aim for greater precision, they will need to obtain more accurate figures from the pension scheme administrators or instruct an expert.)

(e) If the new employment has DC pension benefits (and experience suggests this is more often the case), we still need an estimate of the pension income that the scheme will deliver; if we simply take account of pension contributions the new employer pays into the DC scheme, we will not be comparing like with like[85]. The preferred solution would be for the administrators of the new scheme to provide a statement of projected pension benefits at today's value. Statements are issued annually and include assumptions about

[85] In taking this approach, we have been mindful of the points made by the EAT in *Network Rail Infrastructure Ltd v. Booth EAT/0071/06 (paras 14 and 15) and by the Court of Appeal in Griffin v. Plymouth Hospital NHS Trust [2015] ICR 347 (para 64)*.

likely investment performance. The Pension Wise website, to which we have already referred in the context of "pension freedoms" (see paragraph 4.8 above), can assist individuals in understanding their pension statement[86].

(f) If, for some reason, a statement is not available, there is an alternative: the website for the NEST service (see paragraph 4.12) provides a simple and helpful online calculator[87]. The information required by the calculator to produce an estimate of gross pension income from a DC scheme is: date of birth; gender; intended age of retirement; the rate of both employee contributions and employer contributions to the scheme; and the claimant's gross annual salary. The figure produced by the NEST calculator should be treated with caution; the further away that a person is from their retirement age, the less likely that the figure it produces will be accurate. However, it can provide a workable estimate of pension income – especially for older claimants – that, in the absence of a statement of benefits or expert input, may be thought better than nothing and a rational way to proceed. Its use is shown in examples in Appendix 3 (see Tom, Katarzyna and Rosa). It may also provide the parties with a way to carry out their own broad-brush evaluation of pension loss prior to instructing an expert and which provides a platform for settlement.

(g) When assessing the pension benefits that the new employment delivers (or that the anticipated employment will deliver), a similar analysis to the one conducted at Step 1 should be adopted. This may mean looking at the "new job facts", such as the claimant's promotion prospects in the new employment or considering what withdrawal factor (usually expressed as a percentage reduction) might apply to membership of a new pension scheme. Speculation is inevitable. Much will depend on the tribunal's assessment of the facts and its knowledge of the local labour market.

(h) The claimant may give evidence that, because of their dismissal, they will delay their retirement; deprived of the benefits of the old employer's DB scheme, they assert that they can no longer afford to retire at the normal retirement age under the scheme and now must work until, or beyond, state pension age. In such a case, it may be appropriate to assess their loss of earnings for a longer period and for their loss of pension to commence at a later age or to apply an apportioned multiplier to variable periods of loss.

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[86] https://www.pensionwise.gov.uk.

[87] http://www.nestpensions.org.uk. The NEST online pension calculator is at: https://www.nestpensions.org.uk/schemeweb/NestPublicWeb/faces/public/BE/pages/pensionCalculationPublicArea.xhtml. Users should disable the assumption that 25% of the fund is taken as a tax-free lump sum; this will ensure that like is compared with like. Also, when dealing with a tranche of loss that does not start until the future (e.g. the tribunal decides that a claimant will be out of work for, say, three years, and will then start a job with DC benefits), a corresponding adjustment must be made to the date of birth and date of retirement.

(i) When using the NEST calculator to assess loss in a case where a claimant was dismissed from employment with DB benefits and has found (or is expected to find) employment with inferior DC benefits, it may assist to work through different scenarios (including the claimant's subsequent promotion or their withdrawal from the new scheme) to arrive at a workable figure at Step 2.

(j) Once again, the parties may disagree about many aspects of the claimant's case, such as their retirement age, promotion prospects and the withdrawal factors that might apply in relation to any new employment. And, once again, these are the sorts of matters on which a tribunal might make rulings at a first-stage remedy hearing before carrying out detailed calculations. As before, they can offer a platform for the parties to reach agreement on pension loss while keeping down their legal costs.

(k) Finally, any gross figure must be converted to a net figure. As before, this can be done by using the HMRC online calculator, which provides a workable estimate of take-home pay[88].

5.57 ***Step 3: Deduct the result of Step 2 from the result of Step 1, which produces a figure for net annual loss of pension benefits***.

(a) This should be a straightforward piece of arithmetic. The result is our multiplicand.

(b) In case it is necessary to carry out a separate lump sum calculation (see Step 6), keep a note of the difference between the gross figure produced at Step 1 and the gross figure produced at Step 2.

5.58 ***Step 4: Identify the period over which that net annual loss is to be awarded, using the Ogden Tables to identify the multiplier***.

(a) We explained above that, to reflect the improved mortality of those in occupational pension schemes, we recommend a two-year age adjustment. Take a female claimant, aged 57 at the date of the remedy hearing, and who, the tribunal decides, had intended to retire at the age of 67 from the employment from which she was unlawfully dismissed. Without the adjustment, and with a discount rate of minus 0.25%, the multiplier in her case would be 23.33. The adjustment requires that, purely for the purposes of calculating her loss of pension income[89], we treat her as being aged 55 at the date of the remedy hearing and with an intended retirement age of 65. This produces a multiplier of 25.41.

[88] https://www.gov.uk/estimate-income-tax. Where appropriate, it is important to state that a person is (or is assumed to be) over state pension age, so that no deduction for NI contributions is made.
[89] Not her state pension loss, her lump sum loss or her loss of earnings.

(b) In Appendix 2, we have provided "at a glance" tables for pension loss from retirement ages between 50 and 75 at discount rates of minus 0.25% and minus 0.75%. The two-year age adjustment has been made, so if using these tables, the claimant's actual age and retirement age should be used.

(c) In the personal injury field, adjustments are made to the multiplier to reflect the various contingencies of the case besides mortality. As we have noted, we recommend that tribunals focus on the withdrawal factor, which adjusts the multiplicand. Another reason to be wary about preferring a single adjustment to the multiplier over adjustments to the multiplicand is that the former effectively results in a uniform withdrawal factor applied to both the old job and the new job. That said, if a party prefers the approach of adjusting the multiplier instead of the multiplicand, they will be free to make their arguments to the tribunal.

5.59 ***Step 5: Multiply the multiplicand by the multiplier, which produces the present capital value of that loss***.

Once again, this should be a simple piece of arithmetic.

5.60 ***Step 6: Check the lump sum position and perform a separate calculation if required***.

(a) Most public sector DB schemes do not provide for a tax-free lump sum other than by commuting the pension income, subject to the scheme's rules and HMRC limits. It follows that, in most complex DB cases, the figure produced at Step 5 above will cover the pension loss (albeit in the presumed absence of commutation); no further compensation will be appropriate.

(b) However, let us imagine that a claimant was a member of a pension scheme that did provide for separate entitlement to a lump sum, such as some of the older public sector DB schemes with a final salary design based on an eightieths accrual rate. Although these schemes have long since closed to new members or to further accruals, the tribunal may encounter claimants who have accrued past benefits in such schemes (and which are still pegged to final salary at retirement). Examples include the "Classic" version of the PCSPS and the 1995 NHS scheme; see Appendix 1.

(c) It is straightforward to calculate the loss of lump sum in such cases. As noted above, the lump sum accrues in the same way as pension income. In an eightieths scheme, the pension income accrues at an effective rate of 1/80 for each year of pensionable service; and, because the lump sum is a multiple of three times an employee's pension income, it accrues at the rate of 3/80 for each year of pensionable service. In such a case, rather than work from first principles, it would be enough simply to take the gross figure from

Step 3 above (see paragraph 5.57(b)) and multiply it by three. The resulting figure is then added to the figure produced at Step 5. This calculation has been performed in the examples of Tom and Rosa at Appendix 3.

5.61 ***Step 7: Taking account of the other sums awarded by the tribunal, gross up the compensation awarded***.

(a) Finally, the tribunal must gross up the award of compensation in accordance with the Gourley principle. The approach to adopt has been described elsewhere in these Principles and in examples at Appendix 3. Not all elements of the compensation will need to be grossed up – just those that are treated as taxable income under Sections 401 - 403 ITEPA. Care should be taken with awards for injury to feelings[90]. In addition, since 6 April 2018 some element of awards of compensation for dismissal might be designated as "post-employment notice pay" ("PENP") by HMRC and subjected to tax and NI under sections 402B – 402E ITEPA (see https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim13876). Awards for termination beyond any PENP element will be exempt from tax up to £30,000. The process of grossing up can lead to complications; we have tried to keep matters as simple as possible in Appendix 3, but there will be cases where the input of an accountant would be desirable.

(b) The parties and the tribunal would need to bear in mind that the lump sum would have been a tax-free benefit in the claimant's hands. It will now form part of an award of compensation that will be subject to income tax to the extent that it exceeds £30,000. It must therefore also be grossed up.

(c) Although some commentary in these Principles on the calculation of loss of earnings has been inevitable, we have generally kept away from broader principles for the assessment of remedy in a successful case. Guidance on the order of deductions can be found in the Court of Appeal's decision in *Digital Equipment Company Ltd v. Clements* [1998] ICR 258. Tribunals should be wary of making the same deduction twice. If, for example, the tribunal has already taken account of *Polkey*-type considerations when assessing loss of pension benefits (in the context of applying a withdrawal factor, as a percentage reduction), it would not be appropriate to make a further *Polkey* deduction to the final figure that includes loss of

[90] The taxation of compensation for injury to feelings changed in 2018. Section 406 ITEPA was amended with effect from 6 April 2018 to provide that "injury" does not include injury to feelings, making compensation for injured feelings relating to termination of employment taxable if paid on or after that date. Compensation for injury to feelings in connection with pre-termination discrimination remains exempt from tax, as does compensation for injury to health caused by termination or otherwise.

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pension. It may only be appropriate to apply such a deduction to the loss of earnings element.

The expert evidence approach

5.62 The main reason why parties may prefer to use the Ogden Tables is that it will be cheaper than instructing an expert.

5.63 There may be cases, however, where the amount of pension loss at stake is such that the parties are prepared to incur the cost of instructing an expert. Indeed, once armed with the tribunal's findings of fact, the parties may wish to outsource the entire calculation process to an expert. Alternatively, they may prefer a blended approach, by which the expert provides evidence on one or more constituent parts of the calculation to help the tribunal achieve greater precision in its award. Such evidence could focus on these (non-exhaustive) factors:

(a) Adjustments to the quantification process, taking account of:

- More recent mortality data;
- More relevant mortality data (e.g. based on geographical area or occupational sector);
- More precise withdrawal factors (e.g. based on geographical area or industrial/occupational sector);
- A claimant's education and/or training history; and
- A claimant's health.

(b) The future performance of the pension fund under consideration. A more accurate assessment of pension loss might be achieved with better information about matters such as the solvency prospects of a DB scheme or the investment performance of a DC scheme.

(c) The impact of future compound CPI revaluation on the slices of earnings that a claimant has already banked in a CARE scheme and on the further slices of earnings which, but for their dismissal, they would continue to have banked.

(d) The impact of the tax charging regime associated with the LTA and the AA, when establishing the figures at Step 1 and Step 2. If the value of pension benefits exceeds the LTA, a tax charge will apply and have the effect of reducing net pension benefits (as explained at paragraph 5.22 above). If the deemed increase in the value of pension benefits exceeds an individual's AA, a tax charge will also apply (see paragraph 5.29 above). If the "Scheme Pays" option has been chosen, it will reduce the value of net pension income.

(e) Complexities in establishing the true level of net earnings (caused, for example, by an election to pay the AA charge when it falls due or by a restriction of the personal allowance).

(f) Complexities in the grossing up calculation.

Whereas evidence on items (a) to (c) above might typically come from an actuary, evidence on items (d) to (f) might come from an accountant.

5.64 In addition, actuarial evidence is not necessarily limited to complex DB cases. There are certain scenarios where an expert might give evidence in a simple case, although it may not be cost-effective. For example, in a simple DB case, an actuarial expert might give evidence on whether the claimant's age and health justify the application of a multiplier (and, if so, of what value) to the aggregate value of the employer's notional contributions to an unfunded DB scheme. Expert evidence might also assist in a case involving lengthy or career-long loss of earnings from employment which had DC scheme benefits; see paragraph 4.30 above.

5.65 In a case where expert evidence is considered appropriate, the tribunal, in consultation with the parties, would make directions. The strongly preferred approach would be for a jointly instructed expert. The parties would be encouraged to agree the basis for funding such evidence.

5.66 In the absence of agreement, prescription is unwise, since so much will depend on the circumstances of the case. Just as with expert medical evidence sometimes used in determining whether a claimant meets the statutory definition of a disabled person, situations vary. For example, if a respondent wishes to instruct an expert to argue that the tribunal should apply a discount rate above the statutory rate, which goes against the recommended approach of these Principles, it is highly unlikely that the tribunal will order the claimant to contribute to the costs incurred. Conversely, if a claimant wishes to instruct an expert to argue that the tribunal should apply a discount rate below the statutory rate, it is highly unlikely that the tribunal will order the respondent to contribute to the costs incurred. If both parties would welcome limited input from an expert on more recent general mortality data, or mortality data that was relevant to the claimant's occupation, or the impact of the LTA charge on pension income, or the impact of repaying the amount of the AA charge absorbed by the scheme under a "Scheme Pays" mechanism, the tribunal may be more inclined to order a party to contribute an appropriate amount to the cost. We recognise that expert evidence can be expensive and that many parties, but most especially claimants, will find it unaffordable. The claimant's ability to contribute towards the cost of expert evidence could be assisted by an interim award of compensation made at the first-stage remedy hearing. The parties will be free to make their arguments to the tribunal.

5.67 Where a joint expert has been instructed, the intention would be for the tribunal to adopt their recommended approach unless there was a very good reason to do otherwise. If the expert was not jointly instructed or if the expert's views were disputed by one of the parties, the tribunal would have to hear argument on the point and reach its own decision on the amount to award for pension loss.

5.68 If the parties were unable or unwilling to fund expert evidence, the tribunal would have to do its best with the available material, using the broader brush of the Ogden Tables. This would produce a figure which, while less precise, should still be just and proportionate.

Compensating for the loss of ancillary benefits in DB schemes

5.69 At paragraph 5.9 of these Principles, we mentioned the ancillary benefits bestowed by some DB pension schemes. It may be appropriate to award compensation for the loss of those benefits. The most significant is likely to be death-in-service benefit; it is a real loss that a claimant suffers even though it is the surviving dependants who stand to benefit financially[91]. Other benefits deriving from membership of such schemes, like survivor pensions payable to partners and dependants, are subject to further contingencies after dismissal involving the survival of those dependants. We observe that they are speculative and difficult to value as a one-off capital sum, but that is not intended to deter the parties from presenting their arguments to the tribunal.

5.70 In many DB schemes, death-in-service benefit is often two or three times salary. Other provisions may apply (such as a multiple of pensionable pay, or a multiple of pension income, perhaps less lump sums that may be payable under other arrangements). The usual approach to valuing a lost benefit of this nature is to identify the cost of securing equivalent insurance on the open market[92].

5.71 While there is a wide range of information in the public domain regarding the cost of pension annuities, the same does not hold good for life cover; brokers and life companies will generally not provide information save in the context of specific individual requirements. An example is provided in Appendix 3 (see Adrian). The intention is that the example is not too remote from actual cost, but an indicator of the approach to adopt rather than a set of data on which reliance can be placed.

5.72 One of the examples in Appendix 3 deals with early retirement on the grounds of poor health (see Rosa).

[91] As confirmed by the Court of Appeal in *Fox v. British Airways plc* [2013] ICR 1257.
[92] Although the case of *Fox v. British Airways plc* justified a different approach. The claimant in that case had died soon after dismissal and so he was unable put alternative life insurance cover in place. His estate was entitled to be put in the position that the claimant would have been in if he had not been unlawfully dismissed. In those circumstances, it was virtually certain that he would still have been in employment at the date of death and his beneficiaries would have become entitled to be paid out in full under the death-in-service benefit. It followed that his loss should be calculated as the whole amount of the lost benefit.

Chapter 6: Case management

6.1 With the assistance of the parties, the tribunal will seek to identify at an early stage those cases with a realistic prospect of a significant award for pension loss. In England and Wales, a question on the tribunal's standard case management agenda form[93] will invite the parties to specify the type of pension scheme in which the claimant accrued benefits prior to their dismissal (i.e. whether DC or DB). Some cases will obviously raise the prospect of a complex approach: dismissals of civil servants, teachers, nurses, medics, academics, firefighters and so on. Appendix 1 will assist in such cases.

6.2 In such cases, the tribunal will be more likely to list a hearing on liability first and "park" issues of remedy. There is no point the parties incurring significant time and cost associated with preparing detailed calculations of pension loss (including the possibility of instructing an expert) until it is known if, and to what extent, the claimant's claim has succeeded; this includes, for example, whether the statutory cap will apply. The liability stage should ideally include findings about reductions for *Polkey* and/or contributory fault, since they have a bearing on whether it is appropriate to categorise a case as simple (and therefore suited to the contributions method) or as complex (and therefore suited to use of the Ogden Tables or use of expert evidence)[94].

6.3 The tribunal will discourage professionally represented claimants from using the phrase "to be confirmed" in schedules of loss when setting out pension loss. The tribunal and the parties need to know as early as possible the sort of case with which they are dealing. This is part of the overriding objective; it helps the tribunal manage the case in a way that saves expense, retains flexibility and is proportionate to its complexity. Early consideration of these Principles will enable those preparing schedules of loss for claimants to provide a workable estimate of the pension loss claimed at an early stage of the proceedings (even if the details can wait). Similarly, they should enable respondents to produce a counter-schedule. With a clearer sense of their respective positions, the parties are better equipped to achieve settlement.

6.4 Even in cases where either or both parties are not legally represented, there is scope for the tribunal, through interventionist case management methods, to assist the parties in understanding what is required of them.

6.5 To assist in that process, the parties will be directed to disclose to one another documents and information relevant to pension loss, much of which will be in the hands of the respondent. Examples include:

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[93] Available here: https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf

[94] For further guidance on the clarity needed when proceeding with a split hearing on liability and remedy, see the comments of Elias LJ at paras 67 to 70 of *Salford Royal NHS Foundation Trust v. Roldan* [2010] ICR 1457.

(a) Pension scheme rules (for the old job and any new job obtained). If the details we have provided in Appendix 1 are insufficient in the circumstances of the case, information required might include:

- The rate of employee contributions (preferably expressed as a percentage of salary);
- The rate of employer contributions (preferably expressed as a percentage of salary) – and, in an unfunded DB scheme, the notional level of employer contributions (and, possibly, also the reports and accounts of the scheme, which may be needed to determine the true standard rate of employer contributions);
- Details of any ancillary benefits of the scheme, such as death-in-service benefit;
- Normal retirement age under the scheme, i.e. the age at which an individual can retire with an unreduced pension;
- In a DC scheme or a funded DB scheme, the current value of the invested funds;
- In a DB scheme, whether the claimant has accrued benefits in part of the scheme that has now closed to future accruals (and, if so, the way in which those benefits accrued, e.g. by reference to final salary and accrual rate);
- In a DB scheme, whether future accruals are based on a final salary, CARE or other design; and
- In a DB scheme, whether there is any separate entitlement to a lump sum (not just through commutation of pension income);

(b) A statement of the claimant's projected benefits in their old job in the light of their dismissal and (ideally) a statement of projected benefits if dismissal had not occurred on in certain other scenarios that may help quantify the impact of various withdrawal factors;

(c) In respect of any new job obtained by the claimant, a statement of their projected benefits;

(d) The claimant's payslips from their old job, setting out deductions from pay and corroborating, if necessary, the percentage amount of their contributions to the old job's pension scheme; and

(e) As above, but for the claimant's new job.

6.6 If the claimant succeeds at the liability stage, and there is a realistic prospect of a significant award for pension loss, the tribunal can then allocate dates for a two-stage remedy hearing. Ideally this would be

done as part of a case management discussion with the parties following the liability hearing, so that the parties understand what is required of them. Failing that, there should be a preliminary hearing, probably by telephone, to set out orders and directions such as an updated schedule (and counter-schedule) of loss, disclosure of further evidence if required, preparation and exchange of witness evidence and so on.

6.7 The purpose of the first-stage remedy hearing would be to enable the tribunal to do three things:

(a) First, to issue a judgment on non-pension compensation (the basic award for unfair dismissal, a sum for loss of statutory rights, awards for injury to feelings, holiday pay and the like);

(b) Second, to rule on as many areas as possible that are relevant to calculating pension loss, without descending into precise figures. This may include the age at which the claimant would have retired but for their dismissal, their future promotion prospects and what adjustments should be applied to reflect various withdrawal factors relevant to the old job and the new job; and

(c) Third, to hear submissions on whether the Ogden approach or the expert evidence approach (or a blend of the two) will be adopted.

At Appendix 3, we have given examples of how this approach would be followed in three hypothetical cases (Ahmed, Katarzyna and Rosa).

6.8 In many cases, it will be appropriate for the tribunal to give the parties a time-limited opportunity to agree a figure for pension loss. The period for this purpose would be agreed between the parties and the tribunal. If the parties did agree a figure for pension loss, there would be no need for a second-stage remedy hearing. The tribunal could issue a supplementary judgment on remedy by consent under Rule 64 of its Rules of Procedure. If the parties did not agree a figure for pension loss, the second-stage remedy hearing would go ahead. In most cases, the “seven steps” model would then produce a suitable figure and the tribunal would issue judgment accordingly. In cases where the tribunal had approved the use of expert evidence, it would adopt the joint expert’s recommended approach unless there was a very good reason to do otherwise. If the parties have each instructed an expert, the tribunal will simply have to decide whose figures to adopt after hearing submissions.

6.9 The parties would be consulted throughout. The underlying idea is that they are given every encouragement to agree a figure for pension loss (with the benefit of the tribunal’s findings of fact where appropriate) and that they bear the cost of obtaining expert evidence only where it is proportionate to do so in view of the potential compensation at stake.

6.10 If the circumstances justified it, it might be possible for the tribunal to offer Judicial Mediation or Judicial Assessment.

Appendix 1
Summary of main public sector defined benefit pension schemes

Introduction

Complex cases will mostly involve DB pension schemes and many of those will be public sector schemes. This appendix therefore provides a summary of the principal terms of the main public sector defined benefit pension schemes. The differing provisions applying in England and Wales and in Scotland have been set out where relevant.

This summary is intended to assist parties and the tribunal by providing core information in relation to each scheme. It should be viewed as a "starting point" in the assessment of pension loss. It will be the responsibility of any party wishing to depart from this to provide supporting evidence.

By way of background, each of the main areas of the public sector operates a DB pension scheme for employees working in that area. The main schemes relate to civil service, local government, NHS, education, firefighting and police. Historically, these schemes operated on a final salary basis, involving an accrual rate of either sixtieths or eightieths and with the ability to commute part of the eventual pension for a lump sum. These schemes have now switched the basis of accrual from final salary to CARE. In local government in England and Wales (not in Scotland), the change took place on 1 April 2014; in all other public sector DB schemes the change took place on 1 April 2015.

Broadly, the schemes maintained the existing final salary basis of accrual for members who, at a specified date, were within ten years of normal retirement age (and applied the change on a tapered basis for members approximately ten and 13½ years from normal retirement age). The change to CARE was implemented immediately in respect of future service only for members more than 13½ years from normal retirement age. For example, where the scheme's normal retirement age was 65, the tapering occurred in respect of those individuals aged between 51½ and 55 as at 1 April 2012. The effect of tapering was to delay their entry into the new scheme[95]. Where the normal retirement age was younger (for example, in respect of service as a police officer or firefighter), the tapering occurred at a younger age. In some cases, therefore, the tribunal must be alert to the possibility that a claimant's pension rights prior to dismissal accrued in both a final salary scheme and a CARE scheme; and it will need to be alert to the possibility that, if the dismissal had not occurred, a claimant benefiting from tapering may not have moved into the new CARE scheme for some time.

The summary below provides details of the main features of the current CARE scheme in each case together with the main features of the relevant DB scheme prior to the change in the basis of accrual. It should be noted that, in all cases, there were even earlier iterations of the DB arrangements and claimants may have retained entitlement to benefits under those earlier iterations. Details of

[95] In the Local Government Pension Scheme, this is known as the "underpin".

some of them have been included in this summary but others have not (such as local government service prior to the 2008 scheme and NHS service prior to the 1995 scheme). Where the summary does not provide such information and it is relevant to the calculation of pension loss, information should be obtained from the administrators of the relevant scheme.

Employer contribution rates have not been specified in this summary. This is because they vary from scheme to scheme (in the case of the local government scheme, they also vary from employer to employer within the scheme). By way of illustration, employer contribution rates currently range from a low of 14.38% in the NHS scheme to a high of 27.9% in relation to certain members of the PCSPS. The employer contribution rate will be relevant in those DB cases where the contributions method for calculating pension loss is appropriate and for working out the value of a "week's pay"[96].

[96] See paragraph 2.25 above.

Civil Service

The Principal Civil Service Pension Scheme ("PCSPS") was created under the Superannuation Act 1972. It has been modified on several occasions. It is comprised of several separate sections; each section provides benefits on a different basis depending on the point at which a member joined the scheme.

The current scheme, operating on a CARE basis, was established under the Public Service Pensions Act 2013 and comprises what is referred to as the "Alpha" section. The PCSPS had already changed to accrual on a CARE basis from 2007, in what is referred to as the "Nuvos" section. Prior to that that, two defined benefit sections were in operation: the "Classic" scheme from 1972, and the "Premium" scheme from 2002. While the earlier sections are closed to new members, existing members may continue to accrued benefits under them.

Up to date information about the scheme can be obtained here:
http://www.civilservicepensionscheme.org.uk

	"Classic" PCSPS	**"Premium" PCSPS**	**"Nuvos" PCSPS**	**"Alpha" PCSPS**
Benefit basis	Final salary (1/80th) with additional lump sum	Final salary (1/60th)	Career average. 2.3% of pensionable earnings each year, revalued in line with CPI.	Career average. 2.32% (1/43.1) of pensionable earnings each year, revalued in line with CPI.
Member contributions	1.5%	3.5%	3.5%	Based on member's pensionable pay at rates applicable to the band into which the member's salary falls, starting at 4.6% of pensionable salary and rising to 8.05% for the highest paid employees.

Normal retirement age	60	60	65	The later of age 65 or state pension age
Retirement benefits	A pension based on 1/80th of final salary, accrued for each year of pensionable service. Additional lump sum based on 3/80th of final salary, accrued for each year of pensionable service.	A pension based on 1/60th of final salary, accrued for each year of pensionable service. Optional commutation of pension to receive lump sum (at rate of 1:12).	A pension based on accrual of career-average pension of 2.3% for each year of pensionable service revalued at CPI. A maximum lump sum of 25% of the total value of pension benefits. Optional commutation of pension to receive lump sum (at rate of 1:12).	A pension based on accrual of career-average pension of 2.32% for each year of pensionable service revalued at CPI. A maximum lump sum of 25% of the total value of pension benefits. Optional commutation of pension to receive lump sum (at rate of 1:12).
Death benefits	2 x pensionable pay	3 x pensionable pay	The higher of: (a) 2 x the member's final pay, less any lump sum payments payable under PCSPS arrangements; or (b) 5 x the pension built up, less any payments already made from PCSPS arrangements.	The higher of: (a) 2 x the member's final pay, less any lump sum payments payable under PCSPS arrangements; or (b) 5 x the pension built up, less any payments already made from PCSPS arrangements.

Ill-health benefits	Single tier with enhancements based on length of service	*Lower tier*. To qualify, the member must be considered permanently incapable of doing their own job. *Higher tier*. To qualify, the member must be considered permanently incapable of working in any kind of employment.	*Lower tier*. To qualify, the member must be considered permanently incapable of doing their own job, or another similar role. The amount of pension will be the member's total Nuvos pension built up to date. *Higher tier*. To qualify, the member must be considered permanently incapable of working in any kind of employment. The amount of pension will be the lower tier pension plus an increased Nuvos pension.	*Lower tier*. To qualify, the member must be considered permanently incapable of doing their own job, or another similar role. The amount of pension will be the member's total Alpha pension built up to date. *Upper tier*. To qualify, the member must be considered permanently incapable of working in any kind of employment. The amount of pension will be the lower tier pension plus an increased Alpha pension.

Local Government

The Local Government Pension Scheme ("LGPS") is governed by regulations, currently the Local Government Pension Scheme Regulations 2013. Up to date information can be obtained from the LGPS member site here:
https://www.lgpsmember.org
This website includes further detail on variances such as the "Rule of 85".

	2008 LGPS	**2014 LGPS**
Benefit basis	Final salary (1/60th)	Career average. 2.04% (1/49th) of pensionable earnings each year, revalued in line with CPI
Member contributions	Tiered contributions based on salary bands, rising from 5.5% to 7.5%.	Tiered contributions based on salary bands, rising from 5.5% to 12.5%.
Normal retirement age	65	The later of age 65 or state pension age
Retirement benefits	A pension based on 1/60th accrual for each year of pensionable service. Optional commutation of pension for increased lump sum at rate of 1:12.	A pension based on accrual of career-average pension of 2.04% per year of pensionable service revalued at CPI. Optional commutation of pension for increased lump sum at rate of 1:12.
Death benefits	3 x pensionable pay	3 x pensionable pay
Ill-health benefits	*Tier 1*. Immediate payment with service enhanced to normal pension age (65). *Tier 2*. Immediate payment with 25% service enhancement to normal pension age. *Tier 3*. Temporary payment of pension for up to three years.	*Tier 1*. Immediate payment with service enhanced to normal pension age. *Tier 2*. Immediate payment with 25% service enhancement to normal pension age. *Tier 3*. Temporary payment of pension for up to three years.

Scottish Local Government Pension Scheme

The Scottish Local Government Pension schemes tend to be administered locally and there are some regional variations but, in general, the benefits of current schemes are in line with the schemes in England and Wales. The accrual rate is 1/49th, revalued in line with CPI. Up to date information can be obtained from http://scotlgps2015.org.

Health Service

The National Health Service Pension Scheme ("NHSPS") is governed by regulations, currently the National Health Pension Scheme Regulations 2015. The Scheme operates with some differences between different categories of staff, but the main provisions are set out below. More detailed, and up to date, information about the scheme can be obtained from:
https://www.nhsbsa.nhs.uk/nhs-pensions

	NHSPS 1995 Section	**NHSPS 2008 Section**	**2015 NHSPS**
Benefit basis	Final salary (1/80th) Additional lump sum of 3 x pension and further option to exchange part of pension for more cash.	Final salary (1/60th) Option to exchange part of pension for cash up to 25% of capital value.	Career average. 1.85% (1/54th) of pensionable earnings each year, revalued in line with CPI plus 1.5%.
Member contributions	Tiered contributions based on salary bands, rising from 5% to 8.5%.	Tiered contributions based on salary bands, rising from 5% to 8.5%.	Tiered contributions based on salary bands, rising from 5% to 14.5%.
Normal retirement age	65 (lower ages apply for individuals undertaking particular roles, such as those with Mental Health Officer status)	65 (lower ages apply for individuals undertaking particular roles, such as those with Mental Health Officer status)	The later of age 65 or state pension age
Retirement benefits	A pension based on 1/80th accrual for each year of pensionable service. Additional lump sum of 3 x pension.	A pension based on 1/60th accrual for each year of pensionable service. Optional commutation of pension for increased lump sum at rate of 1:12.	A pension based on accrual of career-average pension of 1/54th per year of pensionable service revalued at CPI plus 1.5%. Optional commutation of pension for increased lump

			sum at rate of 1:12.
Death benefits	2 x pensionable pay	2 x pensionable pay	The higher of: (a) 2 x relevant earnings; or (b) 2 x revalued pensionable earnings for the scheme year at the highest revalued pensionable earnings.
Ill-health benefits	Two-tier benefit payable after two years' service.	Two-tier benefit payable after two years' service.	Two-tier benefit payable after two years' service.

NHS pensions in Scotland

In Scotland, health service pensions are administered by the Scottish Public Pensions Agency (SPPA). Up to date information on pensions can be obtained from their website at www.sppa.gov.uk. The pensions provided under the old (2008) NHS scheme were similar to those in England and Wales. The 2015 scheme is also similar save that whilst the accrual rate is the same at 1/54th, the revaluation measure is CPI plus 1.25%.

Education

The Teachers' Pension Scheme ("TPS") is governed by regulations, currently the Teachers' Pensions Regulations 2010. Up to date information about the scheme can be found at: https://www.teacherspensions.co.uk.

	2007 scheme	2015 scheme
Benefit basis	Final salary (1/60th)	Career average. 1.75% (1/57th) of pensionable earnings each year, revalued in line with CPI.
Member contributions	6.4% of salary	Tiered contributions based on salary bands, rising from 7.4% to 11.7%.
Normal retirement age	65	The later of age 65 or state pension age.
Retirement benefits	A pension based on 1/60th accrual for each year of pensionable service. Optional commutation of pension for increased lump sum at rate of 1:12.	A pension based on accrual of career-average pension of 1/57th per year of pensionable service revalued at CPI. Optional commutation of pension for increased lump sum at rate of 1:12.
Death benefits	3 x final salary	3 x average pensionable pay
Ill-health benefits	Two-tier benefit	Two-tier benefit

Education in Scotland

The Scottish Teachers' Superannuation Scheme is administered by the SPPA. Up to date information can be obtained from their website www.sppa.gov.uk

	2007 scheme	2015 scheme
Benefit basis	Final salary (1/60th) (best consecutive three years revalued salary from last ten years)	Career average. 1.75% (1/57th) of pensionable earnings each year, revalued in line with CPI plus 1.6%.
Member contributions	Tiered	Tiered contributions based on salary bands,

		rising from 7.4% to 11.9%.
Normal retirement age	65	The later of age 65 or state pension age
Retirement benefits	A pension based on 1/60th accrual for each year of pensionable service. Optional commutation of pension for increased lump sum.	A pension based on accrual of career-average pension of 1/57th per year of pensionable service revalued at CPI +1.6%. Optional commutation of pension for increased lump sum at rate of 1:12.
Death benefits	3 x final salary	3 x average pensionable pay
Ill-health benefits	Two-tier benefit	Two-tier benefit

Fire Service

Responsibility for firefighters' pension schemes is devolved. This means that there are separate statutory provisions applicable in England and in Wales. These are the Firefighters' Pension Scheme (England) and the Firefighters' Pension Scheme (Wales), operating under the Firefighters' Pension Scheme (England) Regulations 2014 and the Firefighters' Pension Scheme (Wales) Regulations 2015 respectively. These replaced the previous schemes: the Firefighters' Pension Scheme 1992 (which operated across both England and Wales), and the Firefighters' Pension Scheme 2006 (which operated in England only) and the Firefighters' Pension Wales Scheme 2007 (which operated in Wales only). The prior schemes continue in operation for those who remain eligible.

Up to date information about the scheme can be found at:
https://www.yourpensionservice.org.uk/firefighters

	2006 FPS	**2015 FPS**
Benefit basis	Final salary (1/60th) ("fast accrual" in 1992 Scheme)	Career average. 1.675% (1/59.7) in England and 1.629% (1/61.4) in Wales of pensionable earnings each year, revalued in line with CPI
Member contributions	8.5% of salary	Tiered contributions based on salary bands, between 10.5% (increasing to 11% from 1 April 2018) and 14.5%.
Normal retirement age	60 (55 in 1992 Scheme)	60
Retirement benefits	A pension based on 1/60th accrual for each year of pensionable service. (The 1992 Scheme operated on a "fast accrual" basis of 1/60th for each of the first 20 years of service and 2/60ths for each subsequent year up to a maximum of 40/60ths.) Optional commutation of pension for increased lump sum at rate of 1:12 (1:20.8 in the 1992 Scheme).	A pension based on accrual of career-average pension of 1.675% (1/59.7) in England and 1.629% (1/61.4) in Wales per year of pensionable service revalued at CPI. Optional commutation of pension for increased lump sum at rate of 1:12.

Death benefits	3 x final salary (3 x final salary in 1992 Scheme)	3 x final pay
Ill-health benefits	Two-tier benefit	Two-tier benefit

Firefighters' Pension Scheme (Scotland)

In Scotland, there were two pre-existing pension schemes known as the Firefighters' Pension Scheme (FPS) and the New Firefighters Pension Scheme introduced in 2006 (NFPS). Retained and volunteer firefighters could not be members of FPS but could be members of the NFPS. The benefits of both schemes were similar to that of "Old FPS".

A new firefighters pension scheme known as the Scottish Firefighters Pension Scheme 2015 was introduced in 2015 with transitional protections similar to England and Wales. The terms of this scheme are similar to the 2015 scheme for England and Wales, save that the accrual rate in Scotland is 1.623% (1/61.6) of pensionable earnings in each year revalued in line with CPI.

Police Service

Whilst pension schemes have been in existence for police officers since 1890, the modern structure of the Police Pension Scheme was set out in 1987. Revisions to that structure were made in 2006, before the current CARE structure was put in place by the Police Pensions Regulations 2015. Up to date information about the scheme can be found at:
http://www.yourpensionservice.org.uk/police

	1987 Scheme	2006 Scheme	2015 Scheme
Benefit basis	Final salary (1/60th) – "fast accrual"	Final salary (1/70th) with additional lump sum	Career average. 1.808% (1/55.3) of pensionable earnings each year, revalued in line with CPI
Member contributions	Tiered contributions based on salary bands, ranging from 14.25% to 15.05%.	Tiered contributions based on salary bands, ranging from 11% to 12.75%.	Tiered contributions based on salary bands, ranging from 12.44% to 13.78%.
Normal retirement age	55 – 60 depending on rank, or 50 after 25 years' service	55	60
Retirement benefits	A pension based on "fast accrual" of 1/60th for each of the first 20 years of service and 2/60ths for each subsequent year up to a maximum of 40/60ths. Optional commutation of pension for increased lump sum at a rate of approximately 1:20.	A pension based on 1/70th accrual for each year of pensionable service. Additional lump sum of 4 x annual pension.	A pension based on accrual of career-average pension of 1/55.3 per year of pensionable service revalued at CPI. Optional commutation of pension for increased lump sum at rate of 1:12.
Death benefits	2 x pensionable pay	3 x pensionable pay	3 x final pay
Ill-health benefits	Single-tier benefit	Two-tier benefit	Two-tier benefit

Police Pension Scheme (Scotland)

In Scotland, the 1987 and 2006 schemes operate in a similar way to the equivalent schemes in England and Wales. The 2015 scheme is also similar save that the accrual rate in Scotland is 1.783% (1/56.1) of pensionable earnings each year revalued in line with CPI plus 1.25%.

USS – Universities Superannuation Scheme Limited

This is a private scheme set up by trust deed in 1975. Employing universities contribute as do their staff (academic and some non-academic) who are members of the scheme.

There was a final salary scheme for those employed before 1 October 2011. This scheme closed on 31 March 2016 when staff transferred to a new defined benefit scheme which capped the eligible pensionable salary but increased the accrual rate to 1/75. Accrued benefits, based on 1/80 pensionable salary in the final year of the scheme for each year of service to date, transferred with them. Those employed after 1 October 2011 joined a career average (rather than final salary) scheme. Each year pension benefit of 1/80 of salary for that year was added. This scheme also closed in March 2016 and staff transferred, with accrued benefits, to the new scheme.

From 1 April 2016 all staff are members of USS Retirement Income Builder. From that date pension accrues at 1/75 salary, with eligible salary capped at £57,216.50 (2018/19), plus 3/75 salary towards a lump sum. For any salary above the cap, employer and member contributions are made to a defined contribution scheme, USS Investment Builder. All members may also choose to contribute to this; if so, the employer matches 1% salary.

In October 2016 all members of the pre-2016 schemes were issued with accrued benefit statements, to which benefit accruing after April 2016 is added. Normal Pension Age is 65. Accrued benefit is increased for those working and contributing beyond that date to reflect deferred payment.

Retirement on reduced pension is permitted from age 55, or 50 if redundant. Retirement for ill health attracts an enhanced pension based on expected service to 65.

	USS Retirement Builder	
Benefit Basis	1/75 of each year's salary, up to a salary cap, currently £57,216.50, uprated for inflation each year.	
Member Contributions Employer contribution	8% salary 18% salary up to cap. 12% salary above cap	Proposed increase is subject to consultation Proposed decrease is subject to consultation
Retirement benefit	Accrued benefit from final salary scheme of 1/80 salary in 3 best years in last 13, adjusted for inflation.	Death Benefit (1) <u>Death in service</u> – (A) lump sum of 3x salary

	Years from April 2016: 1/75 salary for each year of membership.	(B) pension for spouse, or other financial dependant, and any eligible child (2) Death in retirement – Pension for spouse; at discretion for other financial dependant and eligible children

Appendix 2
Ogden Tables (at a glance)

This appendix provides "at a glance" extracts from the Ogden Tables. The age of the claimant appears in the left-hand column of each table; the relevant retirement age along the top row.

There are two sets of tables:

- The first set provides tables for use in **Scotland** using a discount rate of **minus 0.75%**. Those tables are at pages 104-117.

- The second set provides tables for use in **England and Wales** using a discount rate of **minus 0.25%**. Those tables are at pages 118-131.

The first and second tables in each set provide multipliers for calculating compensation for annual loss of pension from retirement age for men and women respectively. **When using these tables remember that the two-year reduction in age and retirement age (to reflect the greater life expectancy of members of occupational pension schemes) has already been made.**

The third and fourth tables in each set provide multipliers for calculating compensation for an annual loss of earnings up to retirement age for men and women respectively. These tables can be used in cases where there is no pension loss. **The two-year age adjustment has not been made in these tables because the longer life expectancy is not relevant to losses ending at retirement age.**

The Ogden Tables are prepared by the Government Actuary's Department. The tables in this appendix are reproduced with kind permission of and assistance from Helen Lacey of Bath Publishing.

	Men - Loss of pension at discount rate -0.75% **Age adjusted SCOTLAND**																									
Age	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**	**76**	**77**
0	68.85					61.71					54.40					46.96					39.47					32.00
1	68.47					61.34					54.05					46.64					39.17					31.73
2	67.74					60.68					53.44					46.08					38.67					31.30
3	67.02					60.01					52.83					45.53					38.18					30.87
4	66.30					59.34					52.22					44.98					37.69					30.45
5	65.59					58.68					51.62					44.43					37.21					30.03
6	64.88					58.03					51.02					43.89					36.73					29.61
7	64.18					57.38					50.42					43.36					36.25					29.20
8	63.48					56.74					49.84					42.83					35.79					28.80
9	62.79					56.10					49.25					42.30					35.32					28.39
10	62.10					55.46					48.67					41.78					34.86					27.99
11	61.42					54.84					48.10					41.26					34.40					27.60
12	60.75					54.22					47.54					40.76					33.95					27.21
13	60.09					53.61					46.98					40.25					33.51					26.83
14	59.44					53.00					46.43					39.76					33.07					26.45
15	58.79					52.41					45.88					39.27					32.64					26.08
18	58.15	56.95	55.71	54.44	53.14	51.82	50.59	49.32	48.02	46.70	45.35	44.09	42.81	41.50	40.16	38.79	37.53	36.25	34.93	33.58	32.21	30.97	29.70	28.40	27.07	25.71
19	57.53	56.32	55.10	53.84	52.55	51.24	50.02	48.76	47.47	46.16	44.82	43.58	42.30	41.01	39.68	38.31	37.07	35.79	34.49	33.15	31.79	30.56	29.31	28.02	26.69	25.35
20	56.91	55.72	54.50	53.26	51.98	50.67	49.45	48.21	46.94	45.63	44.30	43.07	41.81	40.52	39.20	37.85	36.61	35.35	34.06	32.74	31.38	30.16	28.91	27.64	26.33	24.99
21	56.30	55.12	53.91	52.67	51.41	50.11	48.90	47.67	46.41	45.11	43.79	42.56	41.31	40.04	38.73	37.39	36.16	34.91	33.63	32.32	30.98	29.76	28.53	27.27	25.98	24.65
22	55.71	54.52	53.33	52.10	50.85	49.57	48.36	47.13	45.88	44.60	43.29	42.07	40.82	39.56	38.27	36.94	35.72	34.47	33.20	31.91	30.58	29.38	28.15	26.89	25.62	24.31
23	55.12	53.95	52.75	51.53	50.29	49.02	47.83	46.60	45.36	44.10	42.80	41.58	40.35	39.09	37.80	36.50	35.28	34.05	32.79	31.50	30.19	28.99	27.78	26.53	25.26	23.97
24	54.54	53.37	52.19	50.97	49.74	48.48	47.30	46.09	44.85	43.59	42.31	41.11	39.88	38.62	37.35	36.05	34.86	33.62	32.37	31.10	29.80	28.62	27.41	26.17	24.92	23.63
25	53.96	52.81	51.63	50.42	49.20	47.95	46.77	45.57	44.34	43.09	41.82	40.63	39.42	38.17	36.90	35.61	34.43	33.22	31.97	30.70	29.41	28.25	27.05	25.82	24.57	23.30
26	53.38	52.25	51.08	49.88	48.66	47.42	46.26	45.07	43.85	42.60	41.34	40.16	38.96	37.72	36.47	35.18	34.00	32.80	31.57	30.31	29.03	27.87	26.69	25.48	24.24	22.97
27	52.82	51.68	50.53	49.35	48.14	46.90	45.74	44.57	43.36	42.12	40.86	39.69	38.50	37.28	36.03	34.76	33.59	32.39	31.18	29.93	28.65	27.51	26.33	25.14	23.91	22.65

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
28	52.27	51.14	49.98	48.82	47.62	46.39	45.24	44.06	42.87	41.66	40.40	39.23	38.05	36.84	35.61	34.34	33.18	31.99	30.79	29.55	28.29	27.14	25.98	24.80	23.58	22.34
29	51.73	50.60	49.46	48.29	47.10	45.89	44.74	43.58	42.39	41.18	39.95	38.79	37.60	36.40	35.18	33.93	32.78	31.60	30.40	29.18	27.93	26.80	25.63	24.46	23.26	22.03
30	51.18	50.08	48.93	47.77	46.59	45.39	44.26	43.10	41.91	40.71	39.49	38.35	37.17	35.98	34.76	33.52	32.38	31.21	30.02	28.80	27.57	26.45	25.30	24.13	22.93	21.72
31	50.64	49.55	48.43	47.27	46.09	44.89	43.78	42.63	41.45	40.25	39.03	37.91	36.75	35.56	34.35	33.11	31.99	30.83	29.65	28.44	27.21	26.11	24.97	23.81	22.62	21.41
32	50.11	49.03	47.92	46.78	45.60	44.41	43.30	42.17	41.00	39.81	38.59	37.47	36.33	35.16	33.94	32.72	31.60	30.46	29.29	28.08	26.86	25.77	24.65	23.50	22.31	21.11
33	49.60	48.52	47.42	46.29	45.13	43.93	42.83	41.71	40.56	39.37	38.16	37.05	35.91	34.75	33.56	32.33	31.22	30.09	28.93	27.74	26.52	25.43	24.33	23.19	22.02	20.82
34	49.10	48.02	46.93	45.81	44.66	43.48	42.37	41.26	40.11	38.95	37.74	36.63	35.50	34.35	33.17	31.96	30.85	29.73	28.57	27.40	26.19	25.11	24.01	22.88	21.73	20.54
35	48.62	47.54	46.45	45.33	44.20	43.03	41.93	40.81	39.68	38.52	37.34	36.23	35.10	33.96	32.79	31.59	30.49	29.37	28.23	27.06	25.87	24.79	23.70	22.58	21.44	20.27
36	48.14	47.07	45.98	44.87	43.74	42.59	41.50	40.39	39.26	38.11	36.93	35.84	34.71	33.58	32.41	31.23	30.14	29.02	27.89	26.74	25.55	24.48	23.39	22.28	21.16	20.00
37	47.66	46.60	45.52	44.41	43.30	42.15	41.07	39.97	38.84	37.70	36.53	35.44	34.34	33.20	32.05	30.87	29.79	28.68	27.56	26.41	25.24	24.18	23.10	22.00	20.87	19.73
38	47.19	46.14	45.06	43.97	42.85	41.72	40.64	39.55	38.43	37.30	36.14	35.05	33.95	32.83	31.68	30.52	29.44	28.35	27.23	26.09	24.93	23.88	22.80	21.71	20.60	19.46
39	46.73	45.68	44.61	43.53	42.42	41.29	40.22	39.13	38.03	36.90	35.75	34.68	33.58	32.46	31.33	30.17	29.10	28.01	26.90	25.77	24.62	23.58	22.52	21.43	20.33	19.20
40	46.28	45.23	44.17	43.09	41.99	40.87	39.81	38.73	37.63	36.51	35.37	34.30	33.21	32.10	30.97	29.83	28.77	27.68	26.58	25.46	24.32	23.28	22.23	21.15	20.05	18.94
41	45.82	44.79	43.73	42.65	41.56	40.45	39.40	38.33	37.23	36.12	34.99	33.93	32.85	31.75	30.63	29.48	28.44	27.36	26.27	25.15	24.02	23.00	21.95	20.88	19.79	18.68
42	45.37	44.35	43.31	42.24	41.14	40.04	39.00	37.93	36.84	35.74	34.61	33.57	32.49	31.39	30.28	29.15	28.10	27.05	25.96	24.85	23.72	22.71	21.67	20.61	19.53	18.43
43	44.93	43.92	42.88	41.82	40.74	39.63	38.60	37.54	36.47	35.36	34.24	33.20	32.14	31.06	29.94	28.82	27.79	26.73	25.65	24.55	23.43	22.42	21.40	20.35	19.28	18.18
44	44.51	43.49	42.46	41.41	40.34	39.24	38.21	37.16	36.09	35.00	33.88	32.84	31.79	30.72	29.62	28.49	27.47	26.42	25.35	24.26	23.15	22.15	21.13	20.09	19.02	17.94
45	44.09	43.08	42.05	41.01	39.94	38.85	37.83	36.78	35.73	34.63	33.53	32.50	31.45	30.38	29.29	28.18	27.15	26.12	25.06	23.98	22.87	21.88	20.86	19.83	18.78	17.70
46	43.68	42.68	41.66	40.62	39.55	38.47	37.45	36.42	35.36	34.29	33.18	32.16	31.12	30.05	28.97	27.87	26.86	25.82	24.76	23.69	22.60	21.61	20.61	19.58	18.54	17.47
47	43.28	42.29	41.27	40.23	39.18	38.10	37.09	36.06	35.01	33.93	32.85	31.83	30.79	29.73	28.66	27.56	26.56	25.53	24.48	23.41	22.33	21.35	20.35	19.33	18.29	17.24
48	42.88	41.90	40.89	39.86	38.81	37.74	36.74	35.71	34.66	33.60	32.51	31.51	30.47	29.42	28.35	27.26	26.26	25.25	24.21	23.15	22.06	21.10	20.11	19.10	18.06	17.01
49	42.50	41.52	40.52	39.50	38.45	37.38	36.39	35.37	34.33	33.27	32.19	31.19	30.17	29.12	28.05	26.97	25.98	24.97	23.93	22.88	21.81	20.84	19.87	18.86	17.84	16.79
50	42.13	41.16	40.16	39.15	38.10	37.04	36.05	35.04	34.01	32.95	31.87	30.88	29.87	28.83	27.76	26.68	25.70	24.70	23.67	22.62	21.56	20.61	19.63	18.63	17.62	16.58
51	41.78	40.81	39.82	38.81	37.77	36.71	35.73	34.72	33.70	32.64	31.57	30.58	29.58	28.54	27.49	26.41	25.43	24.44	23.42	22.38	21.31	20.37	19.41	18.41	17.40	16.37
52	41.44	40.48	39.50	38.49	37.45	36.39	35.42	34.42	33.40	32.35	31.28	30.30	29.29	28.27	27.22	26.15	25.18	24.18	23.17	22.14	21.08	20.14	19.18	18.20	17.20	16.17

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
53		40.17	39.19	38.18	37.15	36.09	35.12	34.13	33.11	32.07	31.00	30.03	29.03	28.01	26.97	25.90	24.93	23.95	22.94	21.91	20.86	19.92	18.97	18.00	17.00	15.98
54			38.89	37.89	36.87	35.81	34.84	33.85	32.84	31.80	30.74	29.77	28.78	27.76	26.72	25.66	24.70	23.72	22.71	21.69	20.64	19.72	18.77	17.79	16.81	15.80
55				37.62	36.60	35.55	34.58	33.60	32.59	31.55	30.49	29.53	28.54	27.52	26.49	25.43	24.48	23.50	22.50	21.48	20.44	19.52	18.58	17.61	16.62	15.62
56					36.34	35.30	34.34	33.36	32.35	31.32	30.26	29.30	28.32	27.30	26.27	25.22	24.27	23.30	22.31	21.29	20.25	19.33	18.39	17.43	16.46	15.45
57						35.07	34.11	33.13	32.13	31.11	30.05	29.08	28.10	27.10	26.07	25.02	24.07	23.10	22.12	21.11	20.07	19.15	18.22	17.27	16.29	15.30
58							33.89	32.92	31.93	30.91	29.86	28.88	27.90	26.91	25.89	24.84	23.88	22.92	21.94	20.94	19.91	18.98	18.05	17.10	16.14	15.15
59								32.72	31.73	30.72	29.68	28.70	27.71	26.72	25.71	24.68	23.71	22.74	21.77	20.77	19.76	18.83	17.89	16.95	15.99	15.02
60									31.54	30.54	29.51	28.53	27.54	26.55	25.54	24.52	23.55	22.58	21.60	20.62	19.61	18.68	17.74	16.80	15.85	14.88
61										30.37	29.35	28.37	27.38	26.38	25.38	24.36	23.40	22.43	21.44	20.46	19.47	18.54	17.61	16.66	15.71	14.75
62											29.19	28.23	27.24	26.24	25.22	24.21	23.26	22.29	21.30	20.31	19.32	18.41	17.47	16.53	15.57	14.62
63												28.09	27.11	26.10	25.09	24.06	23.12	22.15	21.17	20.18	19.18	18.28	17.35	16.41	15.46	14.49
64													26.99	25.98	24.97	23.94	23.00	22.04	21.05	20.06	19.05	18.15	17.23	16.29	15.34	14.38
65														25.90	24.86	23.83	22.90	21.93	20.95	19.94	18.94	18.04	17.12	16.19	15.23	14.27
66															24.80	23.74	22.81	21.86	20.87	19.87	18.84	17.95	17.03	16.10	15.14	14.17
67																23.70	22.75	21.80	20.81	19.80	18.78	17.87	16.96	16.03	15.07	14.10
68																	22.73	21.76	20.78	19.77	18.74	17.83	16.90	15.98	15.02	14.04
69																		21.76	20.77	19.77	18.73	17.80	16.88	15.94	14.99	14.01
70																			20.79	19.78	18.75	17.80	16.86	15.92	14.97	14.00
71																				19.82	18.79	17.82	16.87	15.92	14.97	14.00
72																					18.85	17.86	16.89	15.93	14.98	14.02
73																						17.92	16.94	15.97	15.00	14.04
74																							17.00	16.01	15.04	14.07
75																								16.07	15.09	14.11
76																									15.15	14.16
77																										14.22

	Women -Loss of pension at discount rate -0.75% Age adjusted SCOTLAND																									
Age	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**	**76**	**77**
0	75.34					68.08					60.62					52.96					45.17					37.29
1	74.89					67.66					60.22					52.59					44.82					36.97
2	74.13					66.95					59.57					52.00					44.29					36.51
3	73.38					66.25					58.93					51.42					43.77					36.05
4	72.63					65.56					58.29					50.84					43.25					35.60
5	71.88					64.87					57.65					50.26					42.74					35.15
6	71.14					64.18					57.02					49.69					42.22					34.70
7	70.41					63.50					56.40					49.12					41.72					34.25
8	69.68					62.83					55.78					48.56					41.22					33.81
9	68.96					62.16					55.16					48.00					40.72					33.38
10	68.25					61.50					54.56					47.45					40.23					32.95
11	67.54					60.85					53.96					46.91					39.74					32.53
12	66.84					60.20					53.36					46.37					39.26					32.11
13	66.15					59.55					52.77					45.83					38.78					31.69
14	65.47					58.92					52.19					45.31					38.32					31.28
15	64.79					58.29					51.62					44.79					37.85					30.88
18	64.12	62.89	61.63	60.33	59.02	57.67	56.40	55.11	53.78	52.43	51.05	49.75	48.42	47.06	45.68	44.27	42.96	41.61	40.23	38.83	37.39	36.07	34.72	33.33	31.92	30.48
19	63.46	62.23	60.98	59.70	58.39	57.06	55.80	54.51	53.20	51.85	50.49	49.20	47.88	46.54	45.16	43.76	42.46	41.12	39.75	38.36	36.94	35.63	34.29	32.91	31.51	30.08
20	62.80	61.59	60.35	59.08	57.78	56.45	55.21	53.93	52.63	51.30	49.93	48.66	47.35	46.02	44.65	43.26	41.96	40.64	39.29	37.90	36.49	35.19	33.86	32.50	31.11	29.69
21	62.16	60.95	59.72	58.46	57.17	55.86	54.61	53.35	52.06	50.74	49.39	48.11	46.83	45.50	44.15	42.77	41.48	40.16	38.83	37.45	36.05	34.76	33.44	32.10	30.72	29.31
22	61.53	60.32	59.10	57.85	56.58	55.27	54.04	52.77	51.50	50.19	48.85	47.59	46.30	44.99	43.65	42.28	41.00	39.70	38.37	37.01	35.62	34.33	33.03	31.70	30.33	28.94
23	60.90	59.70	58.48	57.24	55.98	54.69	53.46	52.21	50.94	49.64	48.32	47.06	45.78	44.48	43.16	41.80	40.53	39.23	37.91	36.57	35.20	33.92	32.61	31.29	29.95	28.57
24	60.27	59.09	57.88	56.65	55.39	54.11	52.90	51.65	50.39	49.10	47.79	46.55	45.27	43.98	42.67	41.33	40.06	38.77	37.47	36.13	34.77	33.51	32.21	30.90	29.56	28.20
25	59.65	58.48	57.28	56.05	54.81	53.54	52.33	51.10	49.84	48.56	47.26	46.03	44.77	43.49	42.17	40.85	39.61	38.32	37.02	35.70	34.35	33.10	31.82	30.51	29.18	27.83
26	59.03	57.87	56.68	55.47	54.23	52.97	51.78	50.55	49.31	48.03	46.74	45.52	44.27	43.00	41.70	40.37	39.14	37.88	36.59	35.26	33.93	32.69	31.42	30.13	28.80	27.46
27	58.43	57.27	56.09	54.89	53.66	52.40	51.22	50.01	48.78	47.51	46.22	45.01	43.78	42.52	41.22	39.91	38.68	37.43	36.16	34.85	33.51	32.29	31.03	29.75	28.44	27.10

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
28	57.83	56.68	55.51	54.32	53.09	51.85	50.67	49.47	48.25	47.00	45.72	44.51	43.29	42.03	40.76	39.45	38.23	36.99	35.73	34.43	33.11	31.89	30.65	29.38	28.07	26.75
29	57.24	56.10	54.94	53.75	52.54	51.30	50.14	48.94	47.73	46.48	45.22	44.03	42.80	41.56	40.29	39.00	37.79	36.56	35.30	34.02	32.71	31.50	30.26	29.00	27.72	26.40
30	56.65	55.53	54.37	53.19	51.99	50.76	49.60	48.42	47.21	45.98	44.72	43.54	42.33	41.10	39.84	38.55	37.36	36.13	34.88	33.61	32.31	31.12	29.89	28.64	27.36	26.06
31	56.07	54.95	53.81	52.64	51.45	50.23	49.08	47.90	46.71	45.48	44.23	43.06	41.86	40.64	39.39	38.11	36.92	35.71	34.48	33.21	31.92	30.73	29.52	28.28	27.01	25.72
32	55.50	54.39	53.26	52.10	50.91	49.70	48.56	47.40	46.21	44.99	43.75	42.58	41.40	40.19	38.94	37.68	36.50	35.30	34.07	32.82	31.53	30.36	29.15	27.93	26.67	25.39
33	54.94	53.83	52.71	51.56	50.38	49.18	48.05	46.89	45.71	44.51	43.28	42.12	40.94	39.74	38.51	37.25	36.08	34.89	33.67	32.42	31.16	29.98	28.80	27.58	26.33	25.06
34	54.39	53.29	52.17	51.03	49.87	48.67	47.54	46.40	45.23	44.03	42.81	41.66	40.49	39.29	38.08	36.83	35.67	34.48	33.27	32.05	30.78	29.63	28.43	27.23	26.00	24.74
35	53.84	52.75	51.64	50.50	49.35	48.17	47.05	45.90	44.74	43.56	42.35	41.21	40.04	38.86	37.65	36.42	35.26	34.09	32.89	31.66	30.42	29.26	28.09	26.89	25.67	24.42
36	53.30	52.22	51.11	49.98	48.84	47.67	46.56	45.43	44.27	43.09	41.89	40.76	39.61	38.43	37.23	36.00	34.86	33.69	32.50	31.29	30.05	28.91	27.74	26.56	25.34	24.11
37	52.76	51.69	50.60	49.48	48.33	47.17	46.08	44.95	43.80	42.63	41.44	40.32	39.17	38.00	36.81	35.60	34.46	33.31	32.13	30.92	29.69	28.56	27.41	26.23	25.02	23.79
38	52.24	51.17	50.08	48.97	47.84	46.68	45.59	44.48	43.34	42.18	40.99	39.88	38.74	37.59	36.40	35.19	34.07	32.92	31.75	30.56	29.34	28.21	27.07	25.90	24.71	23.49
39	51.72	50.66	49.58	48.48	47.35	46.20	45.12	44.01	42.89	41.73	40.56	39.45	38.32	37.17	36.00	34.80	33.68	32.54	31.38	30.20	28.99	27.88	26.73	25.57	24.40	23.19
40	51.20	50.16	49.08	47.98	46.87	45.73	44.65	43.55	42.43	41.29	40.12	39.03	37.90	36.76	35.59	34.41	33.30	32.17	31.02	29.84	28.64	27.54	26.41	25.26	24.08	22.89
41	50.70	49.65	48.59	47.50	46.39	45.26	44.19	43.10	41.99	40.85	39.70	38.60	37.50	36.36	35.20	34.02	32.93	31.80	30.65	29.49	28.30	27.20	26.09	24.95	23.78	22.59
42	50.19	49.17	48.10	47.03	45.92	44.80	43.74	42.66	41.55	40.42	39.27	38.20	37.09	35.96	34.81	33.64	32.55	31.44	30.31	29.14	27.96	26.88	25.77	24.64	23.48	22.30
43	49.70	48.67	47.63	46.56	45.46	44.34	43.29	42.22	41.12	40.00	38.86	37.78	36.69	35.57	34.43	33.27	32.19	31.08	29.96	28.81	27.63	26.55	25.46	24.33	23.19	22.02
44	49.22	48.20	47.16	46.10	45.01	43.90	42.85	41.79	40.69	39.59	38.45	37.39	36.30	35.19	34.06	32.90	31.83	30.73	29.61	28.47	27.31	26.24	25.15	24.03	22.90	21.74
45	48.74	47.73	46.70	45.64	44.56	43.46	42.42	41.36	40.28	39.17	38.05	36.99	35.92	34.81	33.68	32.54	31.47	30.39	29.28	28.14	26.99	25.93	24.84	23.74	22.61	21.46
46	48.28	47.27	46.25	45.19	44.13	43.03	42.00	40.95	39.87	38.78	37.65	36.61	35.53	34.44	33.33	32.18	31.13	30.05	28.94	27.82	26.67	25.62	24.55	23.45	22.34	21.19
47	47.82	46.83	45.80	44.76	43.69	42.61	41.59	40.54	39.47	38.38	37.27	36.22	35.17	34.08	32.97	31.84	30.78	29.72	28.62	27.50	26.37	25.32	24.26	23.17	22.05	20.93
48	47.38	46.39	45.38	44.34	43.28	42.19	41.18	40.14	39.08	38.00	36.89	35.86	34.80	33.72	32.62	31.50	30.46	29.39	28.30	27.20	26.06	25.03	23.97	22.89	21.79	20.66
49	46.94	45.96	44.95	43.92	42.87	41.79	40.78	39.75	38.70	37.62	36.52	35.50	34.45	33.37	32.28	31.16	30.13	29.08	27.99	26.89	25.77	24.74	23.70	22.62	21.53	20.41
50	46.52	45.54	44.54	43.52	42.47	41.40	40.40	39.37	38.33	37.25	36.16	35.14	34.10	33.04	31.95	30.84	29.81	28.76	27.69	26.60	25.48	24.46	23.42	22.36	21.27	20.16
51	46.11	45.14	44.14	43.13	42.08	41.02	40.02	39.00	37.96	36.90	35.81	34.80	33.76	32.71	31.63	30.52	29.50	28.46	27.40	26.31	25.20	24.19	23.15	22.09	21.03	19.92
52	45.71	44.75	43.76	42.74	41.71	40.65	39.66	38.65	37.61	36.55	35.47	34.46	33.44	32.39	31.31	30.22	29.20	28.16	27.10	26.03	24.93	23.92	22.89	21.85	20.77	19.69

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
53		44.37	43.38	42.37	41.34	40.29	39.31	38.30	37.27	36.21	35.14	34.14	33.12	32.07	31.01	29.92	28.91	27.88	26.83	25.75	24.66	23.66	22.64	21.60	20.54	19.45
54			43.02	42.02	40.99	39.94	38.97	37.97	36.94	35.90	34.82	33.83	32.81	31.77	30.71	29.63	28.63	27.60	26.55	25.49	24.40	23.41	22.40	21.36	20.30	19.23
55				41.68	40.65	39.61	38.63	37.64	36.62	35.58	34.52	33.52	32.51	31.48	30.43	29.35	28.35	27.34	26.30	25.23	24.15	23.16	22.16	21.13	20.08	19.01
56					40.33	39.29	38.32	37.33	36.32	35.28	34.22	33.24	32.23	31.20	30.15	29.08	28.09	27.08	26.04	24.99	23.91	22.93	21.93	20.91	19.87	18.80
57						38.99	38.02	37.03	36.02	34.99	33.94	32.95	31.96	30.93	29.88	28.82	27.83	26.83	25.80	24.75	23.68	22.70	21.71	20.69	19.66	18.60
58							37.73	36.74	35.74	34.72	33.67	32.68	31.68	30.67	29.64	28.57	27.58	26.58	25.56	24.53	23.46	22.48	21.49	20.48	19.46	18.41
59								36.47	35.47	34.45	33.41	32.42	31.43	30.42	29.39	28.34	27.34	26.34	25.34	24.30	23.25	22.27	21.28	20.28	19.26	18.22
60									35.20	34.19	33.16	32.18	31.18	30.17	29.15	28.11	27.12	26.11	25.11	24.09	23.04	22.07	21.08	20.08	19.07	18.04
61										33.94	32.92	31.94	30.94	29.93	28.92	27.88	26.90	25.90	24.89	23.87	22.84	21.86	20.88	19.88	18.88	17.86
62											32.68	31.71	30.71	29.71	28.69	27.66	26.68	25.69	24.68	23.66	22.63	21.67	20.69	19.70	18.69	17.68
63												31.49	30.50	29.49	28.47	27.44	26.48	25.49	24.48	23.46	22.43	21.48	20.51	19.51	18.51	17.50
64													30.30	29.30	28.26	27.24	26.28	25.30	24.29	23.27	22.24	21.30	20.33	19.34	18.34	17.33
65														29.12	28.09	27.04	26.10	25.12	24.12	23.10	22.06	21.13	20.17	19.18	18.18	17.16
66															27.93	26.88	25.93	24.97	23.97	22.94	21.90	20.97	20.02	19.03	18.03	17.01
67																26.74	25.79	24.82	23.83	22.81	21.76	20.83	19.88	18.90	17.90	16.88
68																	25.67	24.71	23.72	22.70	21.65	20.71	19.76	18.79	17.79	16.77
69																		24.61	23.62	22.61	21.56	20.61	19.65	18.69	17.70	16.68
70																			23.54	22.54	21.50	20.53	19.57	18.60	17.62	16.61
71																				22.48	21.45	20.47	19.49	18.52	17.54	16.55
72																					21.41	20.42	19.43	18.46	17.48	16.49
73																						20.37	19.38	18.40	17.42	16.44
74																							19.34	18.35	17.36	16.39
75																								18.30	17.31	16.33
76																									17.27	16.28
77																										16.23

	Loss of Earnings (Men) at discount rate -0.75% - no age adjustment SCOTLAND																									
Age	**Losses for life**	**50**	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**
1	127.21																										
2	125.07																										
3	122.92																										
4	120.79																										
5	118.67																										
6	116.57																										
7	114.49																										
8	112.42																										
9	110.36																										
10	108.32																										
11	106.29																										
12	104.29																										
13	102.30																										
14	100.33																										
15	98.38																										
16	96.45	38.30					44.63					51.10					57.67					64.24					70.74
17	94.55	37.02	38.26				43.31	44.57				49.73	51.01				56.23	57.53				62.75	64.03				69.20
18	92.66	35.75	36.98	38.23			41.99	43.25	44.51			48.36	49.64	50.92			54.82	56.09	57.38			61.28	62.54	63.81			67.67
19	90.80	34.50	35.72	36.95	38.19		40.69	41.93	43.19	44.46		47.01	48.27	49.55	50.82		53.41	54.68	55.95	57.24		59.83	61.07	62.33	63.60		66.16
20	88.96	33.25	34.47	35.68	36.91	38.16	39.40	40.63	41.88	43.14	44.40	45.67	46.92	48.18	49.45	50.73	52.02	53.27	54.54	55.81	57.09	58.38	59.62	60.86	62.11	63.38	64.66
21	87.14	32.02	33.22	34.43	35.65	36.88	38.12	39.34	40.58	41.82	43.08	44.34	45.58	46.83	48.10	49.36	50.64	51.88	53.13	54.40	55.67	56.95	58.17	59.41	60.65	61.90	63.17
22	85.33	30.79	31.99	33.19	34.40	35.61	36.84	38.07	39.29	40.52	41.77	43.02	44.25	45.49	46.75	48.01	49.27	50.50	51.74	53.00	54.26	55.53	56.74	57.96	59.19	60.44	61.69
23	83.53	29.57	30.76	31.95	33.15	34.36	35.58	36.79	38.01	39.23	40.47	41.71	42.93	44.17	45.41	46.66	47.92	49.14	50.37	51.61	52.86	54.12	55.32	56.53	57.75	58.98	60.23
24	81.75	28.37	29.54	30.73	31.92	33.12	34.33	35.53	36.74	37.96	39.18	40.41	41.63	42.85	44.08	45.32	46.57	47.78	49.00	50.23	51.47	52.72	53.91	55.11	56.33	57.54	58.77

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
25	79.99	27.17	28.34	29.51	30.69	31.88	33.09	34.28	35.48	36.68	37.90	39.12	40.33	41.54	42.76	44.00	45.23	46.44	47.65	48.87	50.10	51.33	52.51	53.71	54.91	56.12	57.33
26	78.25	25.98	27.14	28.31	29.48	30.66	31.85	33.04	34.23	35.42	36.63	37.85	39.04	40.24	41.46	42.68	43.91	45.10	46.30	47.51	48.73	49.96	51.13	52.31	53.50	54.70	55.91
27	76.52	24.80	25.95	27.11	28.27	29.45	30.63	31.80	32.99	34.17	35.37	36.58	37.77	38.96	40.16	41.37	42.59	43.78	44.97	46.17	47.38	48.60	49.76	50.92	52.10	53.30	54.49
28	74.81	23.63	24.77	25.92	27.08	28.24	29.42	30.58	31.75	32.94	34.12	35.32	36.50	37.69	38.87	40.07	41.29	42.46	43.65	44.83	46.03	47.24	48.40	49.56	50.72	51.90	53.09
29	73.11	22.47	23.61	24.75	25.90	27.05	28.21	29.38	30.54	31.71	32.89	34.07	35.25	36.42	37.60	38.79	39.99	41.17	42.33	43.51	44.70	45.90	47.05	48.20	49.35	50.51	51.69
30	71.43	21.31	22.45	23.58	24.72	25.87	27.02	28.17	29.33	30.49	31.66	32.84	34.00	35.17	36.35	37.52	38.71	39.87	41.04	42.21	43.38	44.57	45.71	46.85	48.00	49.15	50.31
31	69.77	20.17	21.29	22.43	23.56	24.70	25.84	26.98	28.13	29.29	30.45	31.61	32.77	33.93	35.10	36.27	37.44	38.59	39.75	40.92	42.08	43.25	44.38	45.52	46.66	47.80	48.95
32	68.14	19.04	20.15	21.27	22.40	23.53	24.67	25.80	26.94	28.09	29.24	30.40	31.54	32.70	33.85	35.02	36.19	37.33	38.47	39.63	40.79	41.95	43.07	44.19	45.33	46.46	47.60
33	66.54	17.92	19.02	20.13	21.25	22.38	23.51	24.63	25.76	26.91	28.05	29.20	30.33	31.48	32.63	33.78	34.95	36.08	37.21	38.36	39.51	40.67	41.77	42.88	44.01	45.14	46.27
34	64.94	16.80	17.90	19.00	20.12	21.23	22.36	23.48	24.60	25.73	26.87	28.01	29.14	30.27	31.41	32.56	33.71	34.84	35.96	37.10	38.24	39.39	40.49	41.59	42.70	43.82	44.95
35	63.36	15.70	16.79	17.89	18.99	20.10	21.21	22.33	23.44	24.56	25.69	26.83	27.95	29.07	30.20	31.35	32.49	33.60	34.73	35.85	36.98	38.12	39.21	40.31	41.41	42.51	43.63
36	61.80	14.60	15.69	16.77	17.87	18.97	20.08	21.18	22.29	23.41	24.53	25.65	26.77	27.88	29.01	30.14	31.28	32.38	33.49	34.61	35.73	36.87	37.94	39.03	40.12	41.23	42.33
37	60.25	13.51	14.59	15.67	16.76	17.86	18.95	20.05	21.15	22.26	23.37	24.49	25.59	26.71	27.82	28.94	30.07	31.17	32.27	33.38	34.50	35.62	36.69	37.76	38.85	39.94	41.05
38	58.71	12.43	13.50	14.57	15.66	16.74	17.84	18.92	20.02	21.11	22.22	23.34	24.43	25.53	26.64	27.75	28.88	29.96	31.06	32.16	33.27	34.39	35.44	36.51	37.59	38.67	39.76
39	57.18	11.36	12.42	13.49	14.56	15.64	16.73	17.81	18.89	19.98	21.08	22.19	23.28	24.37	25.47	26.58	27.69	28.77	29.86	30.95	32.05	33.16	34.22	35.27	36.34	37.41	38.49
40	55.66	10.29	11.35	12.41	13.47	14.54	15.63	16.70	17.78	18.86	19.95	21.05	22.13	23.22	24.31	25.41	26.52	27.59	28.67	29.75	30.84	31.94	32.99	34.04	35.09	36.16	37.23
41	54.16	9.23	10.28	11.34	12.39	13.46	14.53	15.60	16.67	17.75	18.83	19.92	21.00	22.08	23.16	24.25	25.35	26.42	27.49	28.56	29.65	30.73	31.77	32.82	33.87	34.92	35.98
42	52.68	8.18	9.22	10.27	11.32	12.38	13.45	14.51	15.57	16.65	17.72	18.80	19.87	20.94	22.02	23.10	24.19	25.25	26.32	27.38	28.46	29.54	30.57	31.60	32.64	33.69	34.74
43	51.22	7.13	8.17	9.21	10.26	11.31	12.37	13.43	14.48	15.55	16.62	17.69	18.75	19.82	20.89	21.97	23.04	24.10	25.15	26.21	27.28	28.35	29.38	30.40	31.44	32.47	33.52
44	49.77	6.10	7.12	8.16	9.21	10.25	11.30	12.35	13.40	14.46	15.52	16.59	17.64	18.70	19.76	20.83	21.91	22.95	24.00	25.06	26.11	27.18	28.19	29.22	30.24	31.27	32.30
45	48.34	5.06	6.09	7.12	8.16	9.20	10.24	11.28	12.33	13.38	14.43	15.49	16.55	17.59	18.65	19.71	20.78	21.82	22.86	23.91	24.96	26.01	27.03	28.03	29.05	30.07	31.10
46	46.92	4.04	5.06	6.09	7.11	8.15	9.19	10.22	11.26	12.31	13.35	14.41	15.45	16.50	17.55	18.60	19.66	20.70	21.73	22.76	23.81	24.86	25.86	26.87	27.88	28.89	29.91
47	45.52	3.02	4.04	5.06	6.08	7.11	8.14	9.18	10.21	11.25	12.29	13.33	14.37	15.41	16.46	17.50	18.55	19.58	20.61	21.64	22.67	23.72	24.72	25.71	26.72	27.72	28.73
48	44.14	2.01	3.02	4.04	5.05	6.08	7.10	8.13	9.16	10.19	11.23	12.27	13.30	14.33	15.37	16.41	17.45	18.48	19.50	20.53	21.55	22.58	23.58	24.57	25.57	26.56	27.56

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
49	42.78	1.00	2.01	3.02	4.03	5.05	6.07	7.09	8.12	9.15	10.18	11.21	12.24	13.27	14.30	15.33	16.37	17.38	18.40	19.42	20.44	21.46	22.45	23.44	24.43	25.42	26.41
50	41.44		1.00	2.01	3.01	4.03	5.05	6.06	7.08	8.10	9.13	10.16	11.18	12.21	13.23	14.26	15.29	16.31	17.31	18.33	19.34	20.36	21.34	22.32	23.31	24.28	25.27
51	40.12			1.00	2.01	3.01	4.03	5.04	6.06	7.08	8.09	9.12	10.14	11.16	12.18	13.20	14.22	15.23	16.24	17.25	18.25	19.26	20.24	21.22	22.19	23.17	24.14
52	38.82				1.00	2.01	3.01	4.03	5.04	6.05	7.07	8.08	9.10	10.12	11.13	12.15	13.17	14.17	15.17	16.18	17.18	18.18	19.15	20.13	21.09	22.06	23.03
53	37.55					1.00	2.01	3.01	4.02	5.03	6.05	7.06	8.07	9.08	10.09	11.11	12.12	13.12	14.12	15.12	16.11	17.11	18.08	19.04	20.01	20.97	21.93
54	36.30						1.00	2.01	3.01	4.02	5.03	6.04	7.05	8.05	9.07	10.07	11.08	12.08	13.07	14.06	15.06	16.05	17.01	17.98	18.94	19.90	20.85
55	35.07							1.00	2.01	3.01	4.01	5.02	6.03	7.04	8.04	9.05	10.05	11.04	12.04	13.03	14.01	15.00	15.96	16.92	17.87	18.83	19.78
56	33.87								1.00	2.00	3.01	4.01	5.01	6.02	7.02	8.02	9.03	10.01	11.00	11.99	12.98	13.96	14.91	15.87	16.82	17.77	18.72
57	32.69									1.00	2.00	3.01	4.00	5.00	6.01	7.01	8.01	9.00	9.98	10.97	11.95	12.93	13.88	14.83	15.78	16.73	17.67
58	31.52										1.00	2.00	3.01	4.00	5.00	6.00	7.00	7.98	8.97	9.94	10.93	11.91	12.85	13.80	14.74	15.69	16.63
59	30.35											1.00	2.00	3.00	3.99	4.99	5.99	6.98	7.95	8.93	9.91	10.89	11.84	12.78	13.71	14.66	15.60
60	29.19												1.00	2.00	3.00	3.99	4.98	5.97	6.95	7.93	8.90	9.87	10.83	11.77	12.70	13.63	14.57
61	28.05													1.00	1.99	2.99	3.98	4.97	5.95	6.93	7.90	8.87	9.82	10.76	11.69	12.63	13.55
62	26.92														1.00	1.99	2.99	3.97	4.96	5.94	6.90	7.87	8.82	9.76	10.70	11.62	12.55
63	25.82															1.00	1.99	2.98	3.96	4.94	5.92	6.88	7.83	8.78	9.71	10.63	11.55
64	24.74																1.00	1.99	2.98	3.96	4.93	5.90	6.85	7.79	8.73	9.65	10.57
65	23.70																	1.00	1.99	2.97	3.95	4.92	5.88	6.82	7.76	8.69	9.60
66	22.68																		1.00	1.98	2.97	3.94	4.90	5.85	6.79	7.72	8.64
67	21.69																			0.99	1.98	2.96	3.93	4.89	5.83	6.76	7.68
68	20.73																				0.99	1.98	2.95	3.92	4.87	5.80	6.73
69	19.78																					0.99	1.98	2.95	3.90	4.86	5.78
70	18.85																						0.99	1.97	2.94	3.89	4.84
71	17.92																							0.99	1.97	2.94	3.88
72	17.00																								0.99	1.96	2.93

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
73	16.07																									0.99	1.96
74	15.15																										0.99
75	14.22																										
76	13.32																										
77	12.44																										
78	11.58																										
79	10.77																										
80	9.99																										
81	9.27																										
82	8.61																										
83	7.99																										
84	7.42																										
85	6.89																										
86	6.38																										
87	5.90																										
88	5.44																										
89	5.00																										
90	4.59																										

	Loss of Earnings (women) at discount rate -0.75% No age adjustment SCOTLAND																									
Age	**Losses for life**	**50**	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**
1	133.87																										
2	131.69																										
3	129.52																										
4	127.36																										
5	125.21																										
6	123.07																										
7	120.96																										
8	118.85																										
9	116.77																										
10	114.70																										
11	112.65																										
12	110.62																										
13	108.60																										
14	106.60																										
15	104.62																										
16	102.65	38.53					44.98					51.60					58.38					65.26					72.17
17	100.71	37.25	38.51				43.65	44.94				50.22	51.54				56.94	58.29				63.77	65.12				70.62
18	98.78	35.98	37.23	38.49			42.33	43.61	44.91			48.85	50.16	51.49			55.52	56.85	58.20			62.29	63.63	64.98			69.09
19	96.88	34.72	35.96	37.21	38.47		41.02	42.29	43.58	44.87		47.49	48.79	50.10	51.43		54.11	55.43	56.76	58.10		60.82	62.15	63.49	64.83		67.56
20	94.99	33.46	34.70	35.94	37.19	38.45	39.72	40.98	42.26	43.54	44.84	46.14	47.43	48.73	50.05	51.38	52.71	54.02	55.34	56.67	58.01	59.37	60.68	62.01	63.34	64.69	66.05
21	93.12	32.22	33.44	34.68	35.91	37.17	38.43	39.68	40.95	42.22	43.51	44.80	46.08	47.37	48.68	49.99	51.32	52.62	53.93	55.24	56.58	57.92	59.23	60.54	61.86	63.20	64.55
22	91.26	30.99	32.20	33.42	34.65	35.89	37.15	38.39	39.65	40.91	42.19	43.47	44.74	46.02	47.32	48.62	49.93	51.23	52.53	53.83	55.15	56.49	57.78	59.09	60.40	61.72	63.06
23	89.41	29.76	30.97	32.18	33.40	34.63	35.87	37.11	38.36	39.61	40.88	42.15	43.41	44.69	45.97	47.26	48.56	49.84	51.14	52.43	53.74	55.06	56.35	57.64	58.94	60.26	61.58

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
24	87.58	28.54	29.74	30.95	32.16	33.38	34.61	35.84	37.08	38.32	39.58	40.84	42.09	43.36	44.63	45.91	47.20	48.47	49.75	51.04	52.34	53.65	54.92	56.21	57.50	58.80	60.12
25	85.76	27.34	28.52	29.72	30.93	32.14	33.36	34.58	35.80	37.04	38.29	39.54	40.78	42.04	43.30	44.58	45.85	47.11	48.38	49.66	50.95	52.25	53.51	54.78	56.06	57.36	58.66
26	83.97	26.14	27.32	28.50	29.70	30.91	32.12	33.33	34.55	35.77	37.01	38.25	39.49	40.73	41.98	43.25	44.52	45.76	47.02	48.29	49.57	50.86	52.11	53.37	54.64	55.92	57.22
27	82.19	24.95	26.12	27.30	28.49	29.68	30.89	32.09	33.30	34.51	35.73	36.97	38.20	39.43	40.67	41.93	43.19	44.43	45.67	46.94	48.20	49.48	50.72	51.97	53.24	54.50	55.78
28	80.42	23.78	24.93	26.10	27.29	28.47	29.66	30.86	32.06	33.26	34.48	35.70	36.92	38.14	39.38	40.62	41.87	43.10	44.34	45.59	46.85	48.11	49.34	50.58	51.84	53.10	54.36
29	78.68	22.61	23.76	24.92	26.09	27.27	28.45	29.63	30.83	32.02	33.23	34.45	35.65	36.87	38.09	39.32	40.56	41.78	43.02	44.26	45.50	46.76	47.98	49.21	50.45	51.70	52.96
30	76.95	21.45	22.59	23.74	24.90	26.07	27.25	28.42	29.60	30.79	31.99	33.20	34.40	35.60	36.81	38.03	39.27	40.48	41.70	42.93	44.17	45.41	46.63	47.84	49.07	50.31	51.56
31	75.24	20.30	21.43	22.58	23.73	24.89	26.05	27.22	28.39	29.57	30.76	31.96	33.15	34.35	35.55	36.76	37.98	39.19	40.39	41.61	42.85	44.08	45.28	46.49	47.71	48.94	50.17
32	73.54	19.15	20.28	21.42	22.56	23.71	24.87	26.02	27.19	28.36	29.54	30.73	31.91	33.10	34.29	35.50	36.71	37.90	39.10	40.31	41.53	42.76	43.95	45.15	46.36	47.57	48.80
33	71.86	18.02	19.14	20.27	21.40	22.55	23.69	24.84	25.99	27.16	28.33	29.51	30.68	31.86	33.05	34.24	35.45	36.63	37.82	39.02	40.22	41.44	42.63	43.82	45.01	46.22	47.44
34	70.20	16.90	18.01	19.13	20.25	21.39	22.53	23.66	24.81	25.97	27.13	28.30	29.46	30.63	31.81	33.00	34.19	35.37	36.55	37.73	38.93	40.14	41.31	42.50	43.68	44.88	46.09
35	68.54	15.78	16.89	18.00	19.11	20.24	21.37	22.50	23.64	24.79	25.94	27.10	28.25	29.42	30.59	31.76	32.95	34.11	35.29	36.46	37.65	38.85	40.01	41.18	42.36	43.55	44.75
36	66.91	14.67	15.77	16.88	17.98	19.10	20.22	21.35	22.48	23.61	24.76	25.91	27.06	28.21	29.37	30.54	31.71	32.87	34.03	35.21	36.38	37.57	38.72	39.88	41.06	42.23	43.42
37	65.29	13.57	14.66	15.76	16.86	17.97	19.09	20.20	21.32	22.45	23.59	24.73	25.87	27.01	28.16	29.33	30.49	31.63	32.79	33.96	35.13	36.30	37.45	38.60	39.76	40.93	42.10
38	63.69	12.48	13.56	14.65	15.74	16.85	17.96	19.07	20.18	21.30	22.43	23.56	24.69	25.83	26.97	28.12	29.28	30.42	31.56	32.72	33.88	35.05	36.18	37.32	38.47	39.63	40.80
39	62.10	11.40	12.47	13.55	14.64	15.73	16.84	17.94	19.05	20.15	21.27	22.40	23.52	24.65	25.78	26.92	28.07	29.21	30.34	31.48	32.64	33.80	34.93	36.06	37.20	38.35	39.50
40	60.52	10.33	11.39	12.46	13.55	14.63	15.72	16.82	17.92	19.02	20.13	21.25	22.36	23.48	24.60	25.74	26.88	28.00	29.13	30.27	31.41	32.56	33.68	34.81	35.93	37.07	38.22
41	58.96	9.26	10.32	11.38	12.46	13.54	14.62	15.70	16.80	17.89	19.00	20.11	21.21	22.32	23.44	24.56	25.70	26.81	27.93	29.06	30.19	31.33	32.44	33.56	34.68	35.81	36.95
42	57.42	8.20	9.25	10.31	11.38	12.45	13.53	14.60	15.68	16.78	17.87	18.98	20.07	21.17	22.28	23.40	24.52	25.63	26.74	27.86	28.98	30.12	31.22	32.32	33.44	34.56	35.69
43	55.90	7.15	8.20	9.25	32.16	33.38	34.61	35.84	37.08	38.32	39.58	40.84	42.09	43.36	44.63	45.91	47.20	48.47	49.75	51.04	52.34	53.65	54.92	56.21	57.50	58.80	60.12
44	54.39	6.11	7.15	8.19	30.93	32.14	33.36	34.58	35.80	37.04	38.29	39.54	40.78	42.04	43.30	44.58	45.85	47.11	48.38	49.66	50.95	52.25	53.51	54.78	56.06	57.36	58.66
45	52.90	5.08	6.11	7.14	29.70	30.91	32.12	33.33	34.55	35.77	37.01	38.25	39.49	40.73	41.98	43.25	44.52	45.76	47.02	48.29	49.57	50.86	52.11	53.37	54.64	55.92	57.22
46	51.42	4.05	5.08	6.10	28.49	29.68	30.89	32.09	33.30	34.51	35.73	36.97	38.20	39.43	40.67	41.93	43.19	44.43	45.67	46.94	48.20	49.48	50.72	51.97	53.24	54.50	55.78

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
47	49.96	3.03	4.05	5.07	6.10	7.13	8.18	9.22	10.27	11.32	12.38	13.45	14.51	15.58	16.65	17.72	18.80	19.88	20.95	22.03	23.11	24.20	25.26	26.33	27.40	28.48	29.56
48	48.53	2.01	3.03	4.05	5.07	6.09	7.13	8.17	9.21	10.26	11.31	12.37	13.43	14.48	15.55	16.62	17.69	18.75	19.83	20.89	21.97	23.05	24.11	25.17	26.23	27.30	28.37
49	47.11	1.00	2.01	3.03	4.04	5.06	6.09	7.12	8.16	9.21	10.25	11.30	12.35	13.41	14.46	15.53	16.59	17.64	18.70	19.77	20.84	21.91	22.96	24.01	25.07	26.13	27.19
50	45.71		1.00	2.01	3.02	4.04	5.06	6.09	7.12	8.16	9.20	10.24	11.28	12.33	13.38	14.43	15.50	16.55	17.60	18.66	19.72	20.78	21.83	22.87	23.92	24.98	26.03
51	44.33			1.00	2.01	3.02	4.04	5.06	6.08	7.11	8.15	9.19	10.23	11.27	12.31	13.36	14.41	15.46	16.51	17.55	18.61	19.67	20.70	21.74	22.79	23.82	24.88
52	42.97				1.00	2.01	3.02	4.04	5.06	6.08	7.11	8.14	9.18	10.21	11.25	12.29	13.34	14.38	15.42	16.46	17.51	18.56	19.59	20.62	21.66	22.70	23.73
53	41.62					1.00	2.01	3.02	4.04	5.05	6.07	7.10	8.13	9.16	10.20	11.24	12.27	13.31	14.34	15.38	16.42	17.46	18.49	19.52	20.54	21.57	22.61
54	40.29						1.00	2.01	3.02	4.03	5.05	6.07	7.09	8.12	9.15	10.18	11.22	12.24	13.28	14.31	15.34	16.38	17.39	18.42	19.44	20.46	21.49
55	38.99							1.00	2.01	3.02	4.03	5.05	6.06	7.08	8.11	9.13	10.17	11.19	12.21	13.24	14.27	15.30	16.32	17.33	18.34	19.37	20.38
56	37.70								1.00	2.01	3.02	4.03	5.04	6.06	7.08	8.10	9.12	10.15	11.16	12.19	13.21	14.24	15.24	16.25	17.26	18.27	19.29
57	36.43									1.00	2.01	3.02	4.03	5.04	6.05	7.07	8.09	9.10	10.12	11.14	12.16	13.18	14.18	15.18	16.19	17.20	18.20
58	35.17										1.00	2.01	3.02	4.02	5.03	6.05	7.06	8.07	9.08	10.10	11.11	12.13	13.13	14.12	15.12	16.12	17.13
59	33.92											1.00	2.01	3.01	4.02	5.03	6.04	7.04	8.05	9.06	10.07	11.08	12.08	13.07	14.07	15.06	16.06
60	32.68												1.00	2.01	3.01	4.01	5.02	6.03	7.03	8.04	9.04	10.05	11.04	12.03	13.02	14.01	15.00
61	31.45													1.00	2.00	3.00	4.01	5.01	6.02	7.01	8.02	9.02	10.01	10.99	11.98	12.96	13.95
62	30.24														1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	8.99	9.97	10.95	11.93	12.91
63	29.04															1.00	2.00	3.00	4.00	5.00	5.99	6.98	7.97	8.96	9.94	10.90	11.88
64	27.88																1.00	2.00	3.00	3.99	4.99	5.98	6.96	7.95	8.92	9.90	10.86
65	26.74																	1.00	2.00	2.99	3.99	4.98	5.96	6.94	7.92	8.89	9.86
66	25.63																		1.00	1.99	2.99	3.98	4.97	5.95	6.92	7.90	8.86
67	24.55																			1.00	1.99	2.99	3.97	4.96	5.93	6.90	7.87
68	23.49																				1.00	1.99	2.98	3.96	4.94	5.92	6.88
69	22.45																					1.00	1.99	2.98	3.96	4.93	5.90
70	21.41																						1.00	1.99	2.97	3.95	4.92

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
71	20.39																							1.00	1.98	2.97	3.94
72	19.35																								0.99	1.98	2.96
73	18.31																									0.99	1.98
74	17.27																										0.99
75	16.23																										
76	15.20																										
77	14.19																										
78	13.21																										
79	12.27																										
80	11.39																										
81	10.56																										
82	9.78																										
83	9.06																										
84	8.39																										
85	7.76																										
86	7.16																										
87	6.59																										
88	6.05																										
89	5.53																										
90	5.05																										

	Men - Loss of pension at discount rate -0.25% **Age adjusted ENGLAND AND WALES**																									
Age	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**	**76**	**77**
0	47.54					42.05					36.58					31.14					25.80					20.62
1	47.52					42.03					36.54					31.09					25.74					20.55
2	47.27					41.79					36.32					30.89					25.55					20.38
3	47.02					41.55					36.09					30.68					25.36					20.21
4	46.76					41.31					35.86					30.47					25.17					20.04
5	46.50					41.06					35.64					30.26					24.98					19.86
6	46.24					40.82					35.41					30.05					24.79					19.69
7	45.99					40.58					35.18					29.84					24.59					19.52
8	45.73					40.34					34.96					29.63					24.41					19.35
9	45.47					40.10					34.73					29.42					24.21					19.18
10	45.22					39.85					34.51					29.21					24.02					19.01
11	44.96					39.61					34.28					29.00					23.83					18.84
12	44.71					39.37					34.06					28.80					23.65					18.67
13	44.45					39.14					33.84					28.59					23.46					18.51
14	44.20					38.90					33.62					28.39					23.28					18.34
15	43.95					38.67					33.40					28.19					23.09					18.18
18	43.71	42.67	41.63	40.57	39.51	38.44	37.41	36.36	35.31	34.25	33.18	32.17	31.14	30.10	29.04	27.99	27.00	25.99	24.97	23.94	22.91	21.95	20.99	20.00	19.02	18.02
19	43.47	42.44	41.39	40.34	39.28	38.21	37.18	36.15	35.10	34.04	32.97	31.95	30.93	29.89	28.85	27.79	26.80	25.80	24.78	23.77	22.73	21.78	20.81	19.84	18.85	17.86
20	43.23	42.20	41.16	40.11	39.06	37.99	36.96	35.93	34.88	33.83	32.76	31.75	30.72	29.70	28.65	27.60	26.61	25.61	24.61	23.58	22.56	21.60	20.65	19.68	18.70	17.70
21	43.00	41.97	40.93	39.89	38.83	37.77	36.74	35.71	34.67	33.62	32.56	31.54	30.52	29.50	28.46	27.41	26.42	25.43	24.43	23.41	22.38	21.44	20.47	19.51	18.54	17.55
22	42.77	41.74	40.70	39.66	38.61	37.55	36.53	35.49	34.46	33.42	32.36	31.34	30.32	29.30	28.27	27.23	26.24	25.24	24.24	23.24	22.22	21.26	20.31	19.35	18.38	17.40
23	42.55	41.51	40.48	39.44	38.39	37.34	36.31	35.28	34.25	33.21	32.16	31.15	30.13	29.11	28.07	27.04	26.06	25.06	24.07	23.06	22.05	21.10	20.14	19.19	18.22	17.25
24	42.32	41.30	40.26	39.21	38.17	37.12	36.11	35.07	34.04	33.00	31.96	30.95	29.94	28.91	27.89	26.85	25.87	24.89	23.89	22.89	21.88	20.94	19.99	19.03	18.06	17.09
25	42.09	41.07	40.04	39.00	37.95	36.91	35.89	34.87	33.84	32.79	31.75	30.76	29.74	28.72	27.70	26.67	25.69	24.71	23.71	22.71	21.71	20.78	19.83	18.87	17.91	16.94
26	41.86	40.85	39.82	38.79	37.75	36.69	35.69	34.66	33.64	32.60	31.55	30.55	29.56	28.54	27.51	26.48	25.51	24.53	23.54	22.54	21.54	20.61	19.67	18.72	17.76	16.79
27	41.64	40.62	39.61	38.58	37.53	36.49	35.47	34.46	33.44	32.40	31.36	30.36	29.36	28.35	27.33	26.30	25.33	24.36	23.37	22.38	21.37	20.45	19.51	18.57	17.61	16.64

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
28	41.43	40.41	39.38	38.36	37.33	36.28	35.27	34.25	33.24	32.21	31.17	30.17	29.17	28.16	27.15	26.12	25.15	24.18	23.20	22.21	21.21	20.28	19.35	18.41	17.46	16.50
29	41.21	40.20	39.17	38.15	37.12	36.08	35.07	34.06	33.04	32.01	30.98	29.99	28.98	27.97	26.97	25.95	24.98	24.01	23.03	22.05	21.05	20.13	19.19	18.26	17.31	16.36
30	41.00	39.99	38.97	37.94	36.91	35.88	34.88	33.86	32.84	31.82	30.79	29.80	28.80	27.80	26.78	25.77	24.81	23.84	22.86	21.88	20.89	19.97	19.04	18.11	17.16	16.21
31	40.78	39.78	38.77	37.74	36.70	35.67	34.68	33.67	32.65	31.63	30.60	29.62	28.62	27.62	26.61	25.59	24.64	23.68	22.69	21.72	20.73	19.82	18.89	17.96	17.02	16.07
32	40.57	39.57	38.57	37.54	36.51	35.47	34.48	33.48	32.47	31.44	30.41	29.44	28.45	27.45	26.43	25.42	24.47	23.51	22.54	21.55	20.57	19.66	18.75	17.82	16.87	15.93
33	40.37	39.37	38.37	37.35	36.32	35.28	34.29	33.29	32.29	31.26	30.23	29.25	28.27	27.28	26.27	25.25	24.30	23.35	22.39	21.41	20.41	19.51	18.60	17.67	16.74	15.79
34	40.18	39.18	38.17	37.16	36.14	35.10	34.10	33.11	32.10	31.09	30.06	29.08	28.09	27.11	26.11	25.09	24.14	23.19	22.22	21.26	20.27	19.36	18.45	17.53	16.60	15.66
35	39.99	38.99	37.98	36.97	35.96	34.92	33.93	32.92	31.92	30.91	29.89	28.91	27.93	26.94	25.94	24.94	23.98	23.03	22.07	21.10	20.13	19.22	18.31	17.39	16.47	15.53
36	39.80	38.80	37.80	36.79	35.77	34.75	33.75	32.75	31.75	30.74	29.72	28.75	27.76	26.77	25.78	24.78	23.84	22.88	21.92	20.96	19.98	19.08	18.17	17.25	16.33	15.40
37	39.62	38.62	37.62	36.61	35.59	34.57	33.58	32.58	31.58	30.57	29.56	28.58	27.60	26.62	25.62	24.62	23.68	22.73	21.77	20.81	19.84	18.94	18.04	17.12	16.20	15.27
38	39.44	38.44	37.44	36.43	35.42	34.40	33.41	32.41	31.41	30.40	29.39	28.42	27.44	26.46	25.47	24.47	23.52	22.58	21.63	20.67	19.70	18.80	17.90	16.99	16.07	15.15
39	39.26	38.26	37.26	36.25	35.25	34.23	33.24	32.24	31.25	30.24	29.23	28.26	27.28	26.30	25.31	24.32	23.38	22.43	21.48	20.52	19.56	18.67	17.76	16.85	15.95	15.02
40	39.08	38.09	37.09	36.08	35.07	34.06	33.07	32.08	31.08	30.08	29.07	28.10	27.12	26.15	25.16	24.17	23.23	22.29	21.33	20.38	19.42	18.53	17.63	16.73	15.81	14.90
41	38.91	37.91	36.92	35.91	34.90	33.89	32.91	31.91	30.91	29.91	28.91	27.94	26.97	25.99	25.01	24.02	23.09	22.14	21.19	20.24	19.28	18.39	17.50	16.60	15.69	14.77
42	38.73	37.75	36.74	35.74	34.74	33.72	32.74	31.76	30.76	29.75	28.75	27.79	26.82	25.84	24.85	23.87	22.94	22.00	21.06	20.10	19.14	18.26	17.37	16.47	15.56	14.65
43	38.56	37.57	36.58	35.58	34.57	33.56	32.58	31.59	30.60	29.60	28.59	27.63	26.67	25.69	24.71	23.72	22.80	21.86	20.92	19.97	19.01	18.13	17.24	16.34	15.44	14.53
44	38.39	37.41	36.42	35.42	34.41	33.40	32.42	31.44	30.45	29.45	28.44	27.48	26.52	25.55	24.57	23.58	22.65	21.72	20.78	19.83	18.88	18.00	17.11	16.22	15.32	14.41
45	38.23	37.25	36.26	35.26	34.25	33.24	32.27	31.28	30.29	29.30	28.30	27.33	26.37	25.40	24.43	23.44	22.52	21.58	20.65	19.70	18.75	17.87	16.99	16.10	15.20	14.29
46	38.08	37.09	36.10	35.10	34.11	33.09	32.12	31.14	30.15	29.15	28.15	27.20	26.23	25.26	24.29	23.31	22.38	21.45	20.52	19.57	18.62	17.75	16.87	15.98	15.08	14.18
47	37.93	36.95	35.95	34.96	33.95	32.95	31.97	30.99	30.00	29.01	28.01	27.06	26.10	25.12	24.15	23.17	22.25	21.32	20.39	19.45	18.50	17.62	16.75	15.86	14.97	14.07
48	37.79	36.81	35.82	34.82	33.81	32.80	31.84	30.85	29.87	28.87	27.87	26.92	25.96	24.99	24.02	23.04	22.12	21.20	20.26	19.32	18.38	17.51	16.63	15.74	14.86	13.96
49	37.65	36.68	35.68	34.68	33.68	32.67	31.70	30.73	29.74	28.74	27.74	26.79	25.83	24.87	23.89	22.91	22.00	21.07	20.14	19.20	18.26	17.39	16.52	15.63	14.74	13.85
50	37.52	36.55	35.56	34.56	33.55	32.54	31.58	30.60	29.61	28.62	27.62	26.67	25.71	24.75	23.77	22.79	21.88	20.96	20.03	19.09	18.14	17.28	16.41	15.53	14.64	13.74
51	37.40	36.43	35.45	34.45	33.43	32.42	31.46	30.48	29.49	28.50	27.50	26.56	25.60	24.63	23.66	22.68	21.76	20.84	19.91	18.98	18.03	17.17	16.30	15.42	14.54	13.64
52	37.30	36.32	35.34	34.34	33.33	32.31	31.35	30.38	29.39	28.39	27.39	26.45	25.49	24.52	23.55	22.57	21.66	20.74	19.81	18.87	17.93	17.07	16.20	15.33	14.44	13.55

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
53		36.24	35.24	34.25	33.24	32.22	31.25	30.28	29.29	28.29	27.29	26.35	25.39	24.43	23.45	22.47	21.56	20.64	19.71	18.77	17.83	16.97	16.11	15.23	14.35	13.45
54			35.17	34.17	33.16	32.14	31.17	30.19	29.20	28.21	27.20	26.26	25.31	24.34	23.36	22.38	21.47	20.55	19.63	18.69	17.74	16.88	16.02	15.14	14.26	13.37
55				34.11	33.09	32.07	31.11	30.13	29.14	28.13	27.13	26.18	25.23	24.26	23.28	22.30	21.39	20.47	19.55	18.61	17.66	16.80	15.94	15.06	14.18	13.29
56					33.04	32.01	31.05	30.07	29.08	28.08	27.06	26.12	25.16	24.19	23.22	22.23	21.32	20.40	19.48	18.54	17.59	16.73	15.86	14.99	14.11	13.22
57						31.98	31.00	30.03	29.04	28.04	27.02	26.06	25.11	24.14	23.16	22.18	21.26	20.34	19.41	18.48	17.53	16.66	15.80	14.93	14.05	13.15
58							30.97	29.99	29.00	28.00	26.99	26.02	25.06	24.10	23.12	22.13	21.21	20.28	19.35	18.42	17.48	16.61	15.73	14.86	13.99	13.10
59								29.97	28.97	27.98	26.97	25.99	25.02	24.05	23.09	22.10	21.16	20.24	19.31	18.37	17.43	16.56	15.68	14.81	13.93	13.05
60									28.96	27.96	26.96	25.98	25.00	24.03	23.05	22.08	21.13	20.19	19.26	18.33	17.39	16.51	15.63	14.76	13.88	13.00
61										27.96	26.95	25.97	24.99	24.00	23.03	22.05	21.11	20.16	19.22	18.29	17.36	16.47	15.59	14.71	13.83	12.95
62											26.95	25.97	24.99	23.99	23.01	22.03	21.09	20.15	19.20	18.25	17.32	16.44	15.55	14.66	13.78	12.91
63												25.99	24.99	24.00	23.00	22.01	21.08	20.13	19.18	18.23	17.28	16.41	15.52	14.63	13.74	12.86
64													25.03	24.02	23.02	22.01	21.08	20.13	19.17	18.22	17.26	16.38	15.50	14.61	13.71	12.82
65														24.06	23.04	22.03	21.09	20.14	19.18	18.21	17.25	16.37	15.48	14.59	13.69	12.79
66															23.10	22.06	21.13	20.17	19.21	18.23	17.25	16.38	15.49	14.59	13.68	12.77
67																22.14	21.18	20.23	19.26	18.27	17.28	16.39	15.50	14.60	13.69	12.77
68																	21.27	20.30	19.33	18.34	17.34	16.43	15.53	14.63	13.72	12.79
69																		20.41	19.42	18.43	17.42	16.50	15.58	14.67	13.75	12.83
70																			19.54	18.54	17.53	16.58	15.66	14.74	13.81	12.88
71																				18.68	17.66	16.69	15.74	14.81	13.89	12.95
72																					17.81	16.82	15.85	14.91	13.97	13.04
73																						16.97	15.98	15.01	14.07	13.13
74																							16.12	15.13	14.17	13.23
75																								15.28	14.29	13.33
76																									14.43	13.45
77																										13.59

	Women -Loss of pension at discount rate -0.25% Age adjusted ENGLAND AND WALES																									
Age	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**	**76**	**77**
0	51.73					46.16					40.56					34.97					29.42					23.95
1	51.69					46.11					40.51					34.91					29.35					23.87
2	51.44					45.87					40.28					34.70					29.15					23.69
3	51.19					45.63					40.06					34.49					28.96					23.52
4	50.93					45.39					39.83					34.28					28.77					23.34
5	50.68					45.15					39.61					34.07					28.58					23.17
6	50.42					44.91					39.38					33.86					28.38					22.99
7	50.17					44.67					39.16					33.65					28.19					22.82
8	49.91					44.43					38.93					33.44					28.00					22.65
9	49.66					44.19					38.71					33.23					27.81					22.47
10	49.40					43.95					38.48					33.03					27.61					22.30
11	49.15					43.72					38.26					32.82					27.43					22.13
12	48.90					43.48					38.04					32.61					27.24					21.96
13	48.65					43.24					37.82					32.41					27.05					21.79
14	48.40					43.01					37.60					32.21					26.86					21.62
15	48.16					42.78					37.38					32.00					26.68					21.45
18	47.91	46.86	45.78	44.71	43.63	42.54	41.49	40.42	39.34	38.26	37.17	36.11	35.04	33.97	32.89	31.80	30.75	29.71	28.64	27.57	26.49	25.47	24.44	23.40	22.34	21.29
19	47.67	46.61	45.55	44.48	43.40	42.31	41.26	40.20	39.12	38.04	36.95	35.90	34.84	33.77	32.69	31.60	30.56	29.51	28.45	27.39	26.31	25.29	24.26	23.22	22.18	21.12
20	47.43	46.38	45.31	44.25	43.17	42.09	41.03	39.97	38.90	37.83	36.74	35.69	34.63	33.56	32.49	31.41	30.36	29.32	28.26	27.20	26.13	25.11	24.09	23.06	22.01	20.96
21	47.19	46.14	45.08	44.02	42.94	41.86	40.81	39.75	38.69	37.61	36.53	35.48	34.43	33.37	32.29	31.21	30.18	29.13	28.08	27.02	25.95	24.94	23.91	22.88	21.85	20.80
22	46.95	45.90	44.85	43.79	42.72	41.64	40.59	39.53	38.47	37.40	36.32	35.27	34.22	33.16	32.10	31.02	29.98	28.95	27.89	26.84	25.77	24.76	23.74	22.72	21.68	20.64
23	46.72	45.67	44.62	43.56	42.49	41.42	40.37	39.31	38.26	37.19	36.12	35.07	34.02	32.96	31.90	30.83	29.79	28.75	27.71	26.66	25.60	24.58	23.57	22.55	21.52	20.48
24	46.49	45.44	44.39	43.33	42.27	41.20	40.15	39.10	38.04	36.98	35.91	34.87	33.82	32.76	31.70	30.64	29.61	28.57	27.53	26.48	25.42	24.42	23.40	22.38	21.35	20.32
25	46.25	45.21	44.16	43.10	42.05	40.98	39.94	38.89	37.83	36.76	35.70	34.67	33.62	32.56	31.51	30.44	29.42	28.39	27.34	26.30	25.25	24.24	23.24	22.21	21.19	20.16
26	46.01	44.98	43.94	42.88	41.82	40.76	39.72	38.68	37.62	36.56	35.49	34.46	33.42	32.37	31.31	30.25	29.23	28.20	27.16	26.12	25.07	24.08	23.07	22.05	21.03	20.00
27	45.78	44.74	43.71	42.66	41.60	40.54	39.51	38.46	37.41	36.36	35.29	34.26	33.22	32.18	31.12	30.06	29.04	28.02	26.99	25.94	24.89	23.90	22.90	21.89	20.87	19.84

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
28	45.55	44.52	43.48	42.43	41.39	40.32	39.29	38.25	37.20	36.15	35.09	34.06	33.02	31.98	30.93	29.87	28.86	27.83	26.80	25.77	24.72	23.73	22.73	21.73	20.72	19.69
29	45.33	44.29	43.26	42.21	41.16	40.11	39.08	38.04	37.00	35.94	34.89	33.86	32.83	31.79	30.74	29.69	28.67	27.66	26.63	25.59	24.55	23.56	22.57	21.57	20.55	19.54
30	45.10	44.08	43.04	41.99	40.95	39.89	38.87	37.83	36.79	35.74	34.68	33.67	32.64	31.59	30.55	29.50	28.50	27.47	26.45	25.42	24.38	23.40	22.40	21.40	20.40	19.38
31	44.87	43.85	42.83	41.78	40.73	39.68	38.66	37.63	36.59	35.54	34.49	33.47	32.45	31.41	30.36	29.32	28.31	27.30	26.28	25.25	24.21	23.23	22.25	21.25	20.24	19.23
32	44.65	43.63	42.61	41.57	40.53	39.47	38.45	37.42	36.39	35.34	34.29	33.28	32.25	31.22	30.19	29.13	28.14	27.12	26.11	25.08	24.05	23.07	22.09	21.09	20.09	19.08
33	44.44	43.41	42.39	41.36	40.32	39.27	38.25	37.22	36.19	35.15	34.10	33.08	32.07	31.04	30.00	28.96	27.95	26.95	25.94	24.91	23.88	22.91	21.93	20.94	19.94	18.93
34	44.22	43.21	42.18	41.15	40.12	39.07	38.05	37.02	36.00	34.95	33.91	32.90	31.88	30.85	29.82	28.78	27.78	26.77	25.77	24.75	23.72	22.75	21.77	20.78	19.80	18.79
35	44.01	42.99	41.97	40.94	39.91	38.87	37.85	36.83	35.80	34.77	33.72	32.71	31.70	30.67	29.64	28.61	27.61	26.61	25.60	24.58	23.56	22.59	21.62	20.64	19.64	18.65
36	43.80	42.79	41.76	40.74	39.71	38.67	37.66	36.63	35.60	34.57	33.54	32.53	31.51	30.49	29.47	28.43	27.44	26.44	25.43	24.42	23.40	22.44	21.46	20.48	19.50	18.50
37	43.59	42.58	41.56	40.54	39.50	38.47	37.46	36.44	35.42	34.38	33.35	32.35	31.33	30.32	29.29	28.26	27.27	26.28	25.27	24.26	23.24	22.28	21.31	20.34	19.35	18.36
38	43.38	42.37	41.36	40.34	39.31	38.27	37.27	36.25	35.23	34.20	33.16	32.16	31.16	30.14	29.12	28.09	27.10	26.11	25.11	24.10	23.08	22.12	21.16	20.19	19.21	18.22
39	43.17	42.17	41.16	40.14	39.11	38.08	37.07	36.06	35.04	34.01	32.98	31.98	30.98	29.96	28.94	27.92	26.94	25.94	24.94	23.95	22.93	21.97	21.01	20.04	19.06	18.08
40	42.97	41.96	40.96	39.94	38.92	37.89	36.88	35.87	34.86	33.83	32.80	31.80	30.80	29.79	28.77	27.75	26.77	25.78	24.79	23.78	22.78	21.82	20.86	19.89	18.92	17.94
41	42.77	41.77	40.76	39.74	38.73	37.70	36.70	35.69	34.67	33.65	32.62	31.63	30.63	29.62	28.61	27.58	26.61	25.62	24.63	23.63	22.62	21.68	20.72	19.75	18.78	17.80
42	42.57	41.57	40.57	39.55	38.53	37.51	36.51	35.51	34.49	33.47	32.45	31.45	30.46	29.45	28.44	27.42	26.44	25.46	24.47	23.47	22.47	21.52	20.57	19.61	18.64	17.66
43	42.38	41.38	40.38	39.36	38.35	37.32	36.33	35.33	34.31	33.30	32.27	31.29	30.29	29.28	28.28	27.26	26.29	25.30	24.32	23.32	22.32	21.38	20.43	19.47	18.51	17.53
44	42.19	41.20	40.19	39.18	38.16	37.14	36.15	35.15	34.14	33.12	32.10	31.11	30.13	29.12	28.11	27.10	26.13	25.15	24.17	23.17	22.17	21.23	20.29	19.33	18.36	17.40
45	42.00	41.01	40.01	39.00	37.99	36.96	35.97	34.97	33.97	32.96	31.93	30.95	29.96	28.96	27.96	26.94	25.98	25.00	24.02	23.03	22.03	21.09	20.15	19.19	18.24	17.26
46	41.82	40.83	39.83	38.83	37.81	36.79	35.80	34.80	33.80	32.79	31.77	30.79	29.80	28.80	27.80	26.79	25.82	24.85	23.87	22.88	21.89	20.95	20.01	19.06	18.10	17.14
47	41.65	40.66	39.66	38.66	37.64	36.62	35.64	34.64	33.64	32.62	31.61	30.63	29.64	28.65	27.65	26.64	25.68	24.70	23.73	22.74	21.75	20.82	19.88	18.93	17.98	17.01
48	41.48	40.50	39.50	38.49	37.48	36.46	35.47	34.48	33.48	32.47	31.45	30.48	29.49	28.50	27.50	26.49	25.53	24.57	23.59	22.60	21.61	20.69	19.75	18.80	17.85	16.89
49	41.31	40.33	39.34	38.33	37.32	36.30	35.32	34.33	33.33	32.32	31.30	30.33	29.35	28.36	27.35	26.35	25.39	24.43	23.45	22.47	21.48	20.55	19.62	18.68	17.73	16.77
50	41.16	40.17	39.19	38.19	37.17	36.15	35.17	34.18	33.18	32.17	31.16	30.18	29.20	28.21	27.22	26.21	25.26	24.29	23.32	22.34	21.35	20.43	19.49	18.56	17.61	16.65
51	41.01	40.03	39.04	38.04	37.03	36.01	35.03	34.04	33.05	32.04	31.02	30.05	29.07	28.08	27.08	26.08	25.12	24.16	23.20	22.22	21.23	20.30	19.38	18.44	17.49	16.54
52	40.88	39.89	38.90	37.90	36.90	35.88	34.89	33.90	32.91	31.91	30.89	29.92	28.94	27.95	26.95	25.95	25.00	24.04	23.07	22.10	21.11	20.19	19.26	18.32	17.38	16.43

Age	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
53		39.77	38.77	37.78	36.77	35.75	34.77	33.78	32.78	31.78	30.77	29.79	28.81	27.83	26.84	25.83	24.88	23.92	22.95	21.97	21.00	20.08	19.15	18.21	17.27	16.32
54			38.66	37.65	36.65	35.63	34.65	33.66	32.66	31.65	30.65	29.68	28.70	27.71	26.72	25.72	24.76	23.81	22.84	21.87	20.88	19.97	19.04	18.10	17.17	16.22
55				37.55	36.53	35.52	34.54	33.55	32.56	31.55	30.53	29.57	28.59	27.60	26.60	25.61	24.66	23.70	22.73	21.76	20.78	19.86	18.94	18.01	17.06	16.12
56					36.44	35.41	34.44	33.45	32.46	31.45	30.43	29.46	28.49	27.51	26.51	25.50	24.56	23.60	22.63	21.66	20.68	19.76	18.84	17.91	16.97	16.02
57						35.33	34.34	33.36	32.37	31.36	30.34	29.37	28.39	27.41	26.42	25.41	24.45	23.51	22.55	21.57	20.59	19.67	18.75	17.82	16.88	15.94
58							34.26	33.27	32.28	31.28	30.26	29.28	28.30	27.32	26.33	25.33	24.37	23.41	22.45	21.49	20.50	19.58	18.66	17.73	16.80	15.85
59								33.20	32.20	31.20	30.19	29.20	28.22	27.24	26.25	25.25	24.29	23.33	22.36	21.40	20.43	19.49	18.57	17.64	16.72	15.78
60									32.13	31.13	30.12	29.14	28.14	27.16	26.17	25.18	24.21	23.25	22.28	21.32	20.35	19.42	18.49	17.57	16.63	15.70
61										31.07	30.06	29.07	28.08	27.09	26.10	25.11	24.14	23.17	22.20	21.24	20.27	19.35	18.42	17.48	16.56	15.62
62											30.00	29.02	28.02	27.03	26.03	25.04	24.08	23.11	22.14	21.16	20.20	19.27	18.34	17.41	16.48	15.55
63												28.97	27.98	26.97	25.97	24.97	24.02	23.05	22.07	21.10	20.12	19.21	18.27	17.34	16.41	15.47
64													27.94	26.93	25.92	24.92	23.96	23.00	22.02	21.04	20.06	19.14	18.22	17.28	16.33	15.40
65														26.91	25.89	24.87	23.93	22.96	21.98	20.99	20.00	19.09	18.16	17.22	16.28	15.33
66															25.88	24.85	23.90	22.94	21.95	20.96	19.96	19.05	18.12	17.18	16.23	15.28
67																24.85	23.89	22.93	21.94	20.95	19.94	19.02	18.09	17.16	16.20	15.24
68																	23.91	22.94	21.95	20.95	19.94	19.01	18.08	17.14	16.19	15.22
69																		22.97	21.98	20.98	19.96	19.02	18.08	17.13	16.18	15.22
70																			22.02	21.03	20.01	19.04	18.09	17.14	16.19	15.23
71																				21.08	20.07	19.08	18.12	17.17	16.21	15.25
72																					20.14	19.14	18.16	17.19	16.24	15.28
73																						19.20	18.21	17.23	16.27	15.32
74																							18.26	17.27	16.31	15.35
75																								17.33	16.34	15.38
76																									16.39	15.41
77																										15.45

	Loss of Earnings (Men) at discount rate -0.25% - no age adjustment ENGLAND AND WALES																									
Age	**Losses for life**	**50**	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**
0	100.10																										
1	99.23																										
2	97.86																										
3	96.49																										
4	95.11																										
5	93.74																										
6	92.36																										
7	90.99																										
8	89.62																										
9	88.26																										
10	86.89																										
11	85.53																										
12	84.17																										
13	82.82																										
14	81.48																										
15	80.14																										
16	78.80	35.09					40.37					45.62					50.81					55.89					60.78
17	77.48	34.01	35.06				39.27	40.32				44.51	45.54				49.68	50.69				54.74	55.72				59.62
18	76.16	32.93	33.98	35.03			38.18	39.22	40.27			43.40	44.43	45.46			48.56	49.56	50.57			53.61	54.57	55.54			58.46
19	74.86	31.86	32.90	33.95	34.99		37.09	38.13	39.17	40.21		42.30	43.32	44.35	45.39		47.45	48.44	49.45	50.46		52.47	53.44	54.40	55.37		57.31
20	73.56	30.79	31.83	32.87	33.91	34.96	36.01	37.04	38.08	39.12	40.16	41.21	42.22	43.25	44.28	45.31	46.34	47.33	48.33	49.33	50.34	51.35	52.30	53.27	54.22	55.19	56.17
21	72.27	29.73	30.76	31.80	32.84	33.88	34.93	35.96	36.99	38.03	39.07	40.11	41.13	42.15	43.17	44.20	45.23	46.22	47.22	48.21	49.22	50.22	51.18	52.13	53.09	54.05	55.02
22	70.98	28.66	29.70	30.73	31.77	32.81	33.85	34.88	35.91	36.95	37.98	39.02	40.04	41.06	42.07	43.10	44.12	45.11	46.11	47.10	48.10	49.10	50.05	51.01	51.95	52.92	53.88
23	69.69	27.60	28.63	29.67	30.70	31.74	32.78	33.80	34.83	35.87	36.90	37.93	38.95	39.96	40.98	42.00	43.02	44.01	45.00	45.99	46.99	47.98	48.93	49.88	50.83	51.78	52.75
24	68.41	26.54	27.57	28.60	29.64	30.67	31.71	32.73	33.76	34.79	35.82	36.85	37.86	38.87	39.89	40.91	41.92	42.91	43.89	44.88	45.88	46.87	47.81	48.76	49.70	50.66	51.61

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
25	67.13	25.49	26.51	27.54	28.58	29.61	30.64	31.66	32.69	33.71	34.74	35.77	36.78	37.79	38.80	39.81	40.83	41.81	42.79	43.78	44.77	45.76	46.70	47.64	48.58	49.53	50.49
26	65.86	24.44	25.46	26.48	27.52	28.55	29.58	30.60	31.62	32.64	33.67	34.69	35.70	36.70	37.71	38.72	39.74	40.72	41.69	42.68	43.66	44.65	45.59	46.53	47.46	48.41	49.36
27	64.60	23.39	24.41	25.43	26.46	27.49	28.52	29.54	30.55	31.57	32.60	33.62	34.62	35.63	36.63	37.64	38.65	39.63	40.60	41.58	42.56	43.55	44.48	45.42	46.35	47.29	48.24
28	63.34	22.34	23.37	24.39	25.41	26.43	27.46	28.48	29.49	30.51	31.53	32.55	33.55	34.55	35.55	36.55	37.57	38.54	39.51	40.49	41.46	42.45	43.38	44.31	45.24	46.18	47.12
29	62.08	21.30	22.32	23.34	24.36	25.38	26.40	27.42	28.44	29.45	30.46	31.48	32.48	33.48	34.48	35.48	36.48	37.46	38.43	39.40	40.37	41.35	42.28	43.21	44.14	45.07	46.01
30	60.83	20.26	21.28	22.30	23.32	24.34	25.35	26.36	27.38	28.39	29.40	30.42	31.42	32.42	33.41	34.41	35.41	36.38	37.35	38.32	39.28	40.26	41.19	42.12	43.05	43.97	44.90
31	59.59	19.22	20.24	21.26	22.27	23.29	24.31	25.32	26.33	27.34	28.35	29.36	30.36	31.35	32.35	33.34	34.34	35.31	36.27	37.25	38.21	39.17	40.10	41.03	41.95	42.88	43.80
32	58.37	18.19	19.20	20.22	21.24	22.25	23.27	24.28	25.28	26.29	27.30	28.31	29.30	30.30	31.29	32.29	33.27	34.24	35.20	36.17	37.14	38.10	39.01	39.94	40.86	41.79	42.71
33	57.15	17.16	18.17	19.19	20.20	21.22	22.23	23.24	24.24	25.25	26.26	27.26	28.25	29.24	30.23	31.22	32.22	33.17	34.14	35.10	36.06	37.03	37.94	38.85	39.78	40.70	41.62
34	55.94	16.14	17.15	18.16	19.17	20.18	21.20	22.20	23.20	24.21	25.21	26.22	27.20	28.19	29.18	30.17	31.16	32.12	33.07	34.03	34.99	35.96	36.87	37.78	38.70	39.62	40.54
35	54.73	15.11	16.12	17.13	18.14	19.16	20.16	21.17	22.17	23.17	24.17	25.18	26.16	27.14	28.14	29.12	30.11	31.06	32.02	32.98	33.93	34.89	35.80	36.71	37.63	38.54	39.46
36	53.53	14.09	15.10	16.11	17.12	18.13	19.14	20.13	21.14	22.13	23.13	24.14	25.12	26.10	27.09	28.08	29.06	30.01	30.96	31.92	32.88	33.83	34.73	35.65	36.56	37.47	38.38
37	52.34	13.08	14.08	15.08	16.09	17.10	18.11	19.11	20.10	21.10	22.10	23.10	24.08	25.06	26.05	27.03	28.02	28.96	29.91	30.87	31.82	32.78	33.67	34.58	35.49	36.40	37.31
38	51.14	12.06	13.07	14.07	15.07	16.08	17.09	18.08	19.08	20.07	21.07	22.07	23.05	24.03	25.01	25.99	26.97	27.92	28.86	29.82	30.77	31.72	32.62	33.52	34.42	35.34	36.24
39	49.95	11.04	12.05	13.05	14.05	15.05	16.06	17.06	18.05	19.05	20.04	21.04	22.02	22.99	23.97	24.95	25.93	26.88	27.82	28.77	29.72	30.67	31.57	32.47	33.36	34.27	35.18
40	48.76	10.03	11.03	12.04	13.04	14.04	15.04	16.03	17.03	18.03	19.02	20.01	20.99	21.96	22.94	23.92	24.89	25.84	26.78	27.73	28.67	29.62	30.52	31.41	32.31	33.21	34.11
41	47.58	9.02	10.02	11.02	12.02	13.02	14.03	15.02	16.01	17.01	18.00	18.99	19.96	20.94	21.91	22.88	23.86	24.80	25.74	26.69	27.63	28.57	29.47	30.37	31.26	32.16	33.05
42	46.41	8.01	9.01	10.01	11.01	12.01	13.01	14.01	14.99	15.98	16.98	17.97	18.94	19.91	20.88	21.85	22.83	23.77	24.71	25.65	26.59	27.53	28.42	29.32	30.21	31.10	32.00
43	45.24	7.01	8.00	9.00	10.01	11.00	12.00	12.99	13.98	14.97	15.96	16.95	17.92	18.89	19.86	20.83	21.80	22.74	23.68	24.61	25.55	26.50	27.38	28.27	29.16	30.06	30.95
44	44.08	6.00	7.00	8.00	9.00	10.00	10.99	11.98	12.97	13.96	14.94	15.93	16.91	17.87	18.84	19.81	20.78	21.72	22.65	23.59	24.52	25.46	26.36	27.24	28.13	29.01	29.91
45	42.93	5.00	6.00	7.00	7.99	8.99	9.99	10.97	11.96	12.94	13.93	14.92	15.89	16.86	17.83	18.79	19.76	20.70	21.63	22.57	23.50	24.43	25.32	26.21	27.09	27.98	28.86
46	41.79	4.00	5.00	5.99	6.99	7.99	8.98	9.97	10.95	11.94	12.92	13.91	14.88	15.85	16.82	17.78	18.74	19.68	20.62	21.55	22.48	23.41	24.29	25.18	26.07	26.95	27.83
47	40.65	3.00	4.00	4.99	5.99	6.99	7.98	8.97	9.96	10.94	11.92	12.90	13.87	14.84	15.80	16.77	17.73	18.67	19.60	20.53	21.46	22.39	23.28	24.16	25.04	25.92	26.80
48	39.52	2.00	3.00	4.00	4.99	5.98	6.98	7.97	8.95	9.94	10.92	11.90	12.87	13.84	14.81	15.76	16.73	17.66	18.59	19.53	20.45	21.38	22.26	23.15	24.02	24.90	25.78
49	38.40	1.00	2.00	3.00	3.99	4.98	5.98	6.97	7.96	8.94	9.93	10.90	11.87	12.84	13.80	14.77	15.72	16.66	17.59	18.52	19.45	20.37	21.26	22.14	23.01	23.89	24.76

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
50	37.30		1.00	2.00	2.99	3.99	4.98	5.97	6.96	7.94	8.92	9.91	10.88	11.84	12.80	13.77	14.73	15.66	16.60	17.52	18.44	19.37	20.25	21.14	22.01	22.88	23.75
51	36.20			1.00	2.00	2.99	3.99	4.98	5.97	6.95	7.93	8.91	9.89	10.85	11.82	12.77	13.73	14.67	15.60	16.53	17.45	18.37	19.26	20.14	21.01	21.89	22.75
52	35.13				1.00	2.00	2.99	3.99	4.97	5.96	6.94	7.92	8.89	9.87	10.83	11.79	12.74	13.68	14.62	15.54	16.47	17.38	18.27	19.15	20.02	20.89	21.76
53	34.06					1.00	2.00	2.99	3.98	4.97	5.96	6.93	7.91	8.88	9.84	10.80	11.76	12.70	13.63	14.56	15.48	16.40	17.29	18.17	19.04	19.91	20.77
54	33.01						1.00	2.00	2.99	3.98	4.96	5.95	6.92	7.89	8.86	9.82	10.78	11.72	12.65	13.58	14.51	15.42	16.31	17.19	18.06	18.93	19.79
55	31.98							1.00	2.00	2.98	3.97	4.96	5.94	6.91	7.88	8.85	9.80	10.74	11.68	12.61	13.53	14.45	15.34	16.22	17.10	17.96	18.82
56	30.96								1.00	1.99	2.98	3.97	4.95	5.93	6.89	7.86	8.83	9.77	10.70	11.64	12.56	13.48	14.37	15.25	16.13	17.00	17.86
57	29.95									1.00	1.99	2.98	3.96	4.94	5.92	6.88	7.85	8.80	9.73	10.67	11.60	12.52	13.40	14.29	15.17	16.04	16.91
58	28.95										1.00	1.99	2.98	3.96	4.94	5.91	6.87	7.82	8.77	9.70	10.63	11.56	12.45	13.32	14.20	15.08	15.95
59	27.95											1.00	1.99	2.97	3.95	4.93	5.90	6.85	7.80	8.73	9.66	10.59	11.49	12.37	13.25	14.12	15.00
60	26.95												1.00	1.99	2.97	3.95	4.92	5.88	6.83	7.77	8.70	9.63	10.53	11.42	12.30	13.17	14.04
61	25.95													1.00	1.98	2.96	3.94	4.91	5.86	6.80	7.75	8.67	9.58	10.47	11.36	12.22	13.09
62	24.97														1.00	1.98	2.96	3.93	4.90	5.85	6.78	7.72	8.63	9.53	10.41	11.29	12.15
63	24.01															1.00	1.98	2.96	3.92	4.88	5.83	6.76	7.68	8.58	9.47	10.35	11.22
64	23.06																1.00	1.98	2.95	3.92	4.87	5.81	6.73	7.64	8.54	9.42	10.29
65	22.14																	1.00	1.98	2.95	3.91	4.86	5.79	6.70	7.61	8.49	9.37
66	21.24																		1.00	1.97	2.94	3.90	4.84	5.77	6.68	7.57	8.45
67	20.36																			0.99	1.97	2.94	3.89	4.83	5.74	6.65	7.53
68	19.50																				0.99	1.97	2.93	3.88	4.81	5.72	6.62
69	18.65																					0.99	1.97	2.93	3.86	4.80	5.70
70	17.81																						0.99	1.96	2.92	3.85	4.78
71	16.97																							0.99	1.96	2.92	3.84
72	16.13																								0.99	1.95	2.91
73	15.29																									0.99	1.95
74	14.44																										0.99

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
75	13.59																										
76	12.75																										
77	11.93																										
78	11.14																										
79	10.38																										
80	9.65																										
81	8.97																										
82	8.35																										
83	7.76																										
84	7.22																										
85	6.71																										
86	6.23																										
87	5.77																										
88	5.33																										
89	4.90																										
90	4.51																										
91	4.14																										
92	3.79																										
93	3.46																										
94	3.18																										
95	2.93																										
96	2.71																										
97	2.52																										
98	2.35																										
99	2.19																										

	Loss of Earnings (women) at discount rate -0.25% No age adjustment ENGLAND AND WALES																									
Age	**Losses for life**	**50**	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**	**72**	**73**	**74**	**75**
0	104.54																										
1	103.60																										
2	102.23																										
3	100.86																										
4	99.48																										
5	98.11																										
6	96.74																										
7	95.37																										
8	94.01																										
9	92.64																										
10	91.28																										
11	89.93																										
12	88.58																										
13	87.23																										
14	85.88																										
15	84.54																										
16	83.21	35.30					40.67					46.04					51.41					56.72					61.92
17	81.88	34.21	35.28				39.57	40.64				44.93	45.99				50.28	51.33				55.57	56.61				60.76
18	80.56	33.13	34.19	35.26			38.47	39.54	40.61			43.82	44.88	45.94			49.15	50.20	51.26			54.43	55.46	56.49			59.60
19	79.24	32.06	33.11	34.17	35.25		37.38	38.44	39.51	40.57		42.71	43.77	44.83	45.90		48.03	49.08	50.13	51.18		53.29	54.32	55.34	56.38		58.45
20	77.94	30.98	32.04	33.09	34.16	35.23	36.29	37.35	38.41	39.47	40.54	41.61	42.66	43.72	44.79	45.85	46.91	47.95	49.00	50.05	51.11	52.16	53.18	54.20	55.23	56.26	57.30
21	76.63	29.91	30.96	32.02	33.08	34.14	35.21	36.26	37.32	38.38	39.44	40.51	41.56	42.61	43.68	44.74	45.80	46.83	47.88	48.93	49.98	51.03	52.04	53.06	54.09	55.11	56.15
22	75.33	28.84	29.89	30.94	32.00	33.06	34.12	35.18	36.23	37.29	38.35	39.41	40.46	41.51	42.57	43.63	44.69	45.72	46.76	47.80	48.85	49.90	50.91	51.93	52.95	53.97	55.00
23	74.02	27.77	28.82	29.87	30.93	31.98	33.04	34.09	35.15	36.20	37.26	38.32	39.36	40.41	41.47	42.52	43.58	44.61	45.65	46.68	47.73	48.78	49.78	50.80	51.81	52.83	53.86

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
24	72.72	26.71	27.75	28.80	29.86	30.91	31.96	33.01	34.06	35.11	36.17	37.23	38.27	39.31	40.37	41.42	42.47	43.50	44.53	45.57	46.61	47.65	48.66	49.67	50.68	51.70	52.72
25	71.43	25.64	26.69	27.73	28.79	29.84	30.89	31.93	32.98	34.03	35.08	36.14	37.18	38.22	39.27	40.32	41.37	42.39	43.43	44.46	45.50	46.53	47.53	48.54	49.55	50.57	51.58
26	70.14	24.59	25.62	26.67	27.72	28.77	29.82	30.86	31.90	32.95	34.00	35.05	36.09	37.13	38.18	39.22	40.27	41.29	42.32	43.35	44.38	45.42	46.41	47.42	48.43	49.44	50.45
27	68.86	23.53	24.57	25.61	26.66	27.70	28.75	29.79	30.83	31.88	32.92	33.97	35.00	36.04	37.09	38.13	39.17	40.19	41.22	42.24	43.28	44.30	45.30	46.30	47.30	48.31	49.32
28	67.58	22.48	23.51	24.55	25.59	26.64	27.68	28.72	29.76	30.80	31.85	32.89	33.92	34.96	36.00	37.04	38.08	39.10	40.12	41.14	42.17	43.20	44.19	45.19	46.18	47.19	48.19
29	66.30	21.43	22.46	23.50	24.54	25.58	26.62	27.65	28.69	29.73	30.77	31.82	32.84	33.88	34.91	35.95	36.99	38.01	39.02	40.04	41.07	42.09	43.08	44.07	45.07	46.07	47.07
30	65.03	20.38	21.41	22.45	23.48	24.52	25.56	26.59	27.63	28.67	29.70	30.74	31.77	32.80	33.83	34.87	35.90	36.92	37.93	38.95	39.97	40.99	41.98	42.97	43.96	44.96	45.95
31	63.77	19.34	20.37	21.40	22.43	23.47	24.50	25.53	26.57	27.60	28.64	29.67	30.70	31.73	32.75	33.79	34.82	35.83	36.84	37.86	38.87	39.89	40.88	41.86	42.85	43.84	44.84
32	62.52	18.30	19.33	20.35	21.38	22.42	23.45	24.48	25.51	26.54	27.58	28.61	29.63	30.65	31.68	32.71	33.74	34.75	35.76	36.77	37.78	38.80	39.78	40.76	41.75	42.74	43.73
33	61.27	17.26	18.29	19.31	20.34	21.37	22.40	23.43	24.45	25.48	26.52	27.55	28.57	29.58	30.61	31.64	32.66	33.67	34.68	35.68	36.69	37.71	38.69	39.66	40.65	41.63	42.62
34	60.02	16.22	17.25	18.27	19.30	20.32	21.35	22.38	23.40	24.43	25.46	26.49	27.51	28.52	29.54	30.56	31.59	32.59	33.60	34.60	35.61	36.62	37.60	38.57	39.55	40.53	41.52
35	58.78	15.19	16.21	17.24	18.26	19.28	20.31	21.33	22.35	23.38	24.40	25.43	26.45	27.46	28.48	29.49	30.52	31.52	32.52	33.52	34.53	35.54	36.51	37.49	38.46	39.43	40.42
36	57.54	14.16	15.18	16.20	17.22	18.24	19.27	20.29	21.31	22.33	23.35	24.38	25.39	26.41	27.42	28.43	29.45	30.45	31.45	32.45	33.45	34.46	35.43	36.40	37.37	38.34	39.32
37	56.31	13.13	14.15	15.17	16.19	17.21	18.23	19.25	20.27	21.28	22.30	23.33	24.34	25.35	26.36	27.37	28.39	29.38	30.38	31.38	32.38	33.38	34.35	35.32	36.28	37.26	38.23
38	55.08	12.11	13.12	14.14	15.16	16.18	17.20	18.21	19.23	20.24	21.26	22.28	23.29	24.30	25.31	26.32	27.33	28.32	29.31	30.31	31.31	32.31	33.27	34.24	35.20	36.17	37.15
39	53.86	11.09	12.10	13.11	14.13	15.15	16.17	17.18	18.19	19.20	20.22	21.24	22.24	23.25	24.26	25.27	26.28	27.26	28.26	29.25	30.24	31.24	32.20	33.16	34.13	35.09	36.06
40	52.64	10.07	11.08	12.09	13.11	14.12	15.14	16.15	17.16	18.17	19.18	20.20	21.20	22.20	23.21	24.22	25.23	26.21	27.20	28.19	29.18	30.17	31.13	32.09	33.05	34.02	34.98
41	51.43	9.05	10.06	11.07	12.09	13.10	14.11	15.12	16.13	17.14	18.15	19.16	20.16	21.17	22.17	23.17	24.18	25.17	26.15	27.13	28.13	29.11	30.07	31.02	31.99	32.94	33.91
42	50.23	8.04	9.04	10.06	11.07	12.08	13.09	14.09	15.10	16.11	17.12	18.13	19.13	20.13	21.13	22.13	23.13	24.12	25.10	26.08	27.07	28.06	29.01	29.96	30.92	31.88	32.83
43	49.03	7.03	8.03	9.04	10.05	11.06	12.07	13.07	14.08	15.09	16.09	17.10	18.10	19.09	20.09	21.10	22.09	23.07	24.06	25.04	26.02	27.00	27.96	28.90	29.86	30.81	31.77
44	47.84	6.02	7.03	8.03	9.03	10.05	11.05	12.06	13.06	14.06	15.07	16.07	17.07	18.07	19.06	20.06	21.06	22.03	23.01	23.99	24.97	25.95	26.90	27.86	28.80	29.75	30.70
45	46.66	5.01	6.02	7.02	8.02	9.03	10.04	11.04	12.04	13.04	14.05	15.05	16.04	17.04	18.03	19.02	20.02	21.00	21.98	22.95	23.93	24.91	25.86	26.80	27.75	28.69	29.65
46	45.48	4.01	5.01	6.01	7.02	8.02	9.02	10.03	11.03	12.03	13.03	14.03	15.02	16.01	17.01	18.00	18.99	19.97	20.95	21.92	22.89	23.87	24.82	25.76	26.71	27.65	28.59
47	44.31	3.00	4.01	5.01	6.01	7.01	8.01	9.01	10.02	11.01	12.01	13.01	14.01	15.00	15.99	16.98	17.97	18.94	19.92	20.89	21.87	22.83	23.78	24.73	25.67	26.61	27.55
48	43.16	2.00	3.00	4.01	5.00	6.00	7.01	8.00	9.00	10.00	11.00	12.00	12.99	13.98	14.97	15.96	16.95	17.92	18.89	19.86	20.84	21.81	22.75	23.69	24.63	25.57	26.51

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
49	42.01	1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	9.99	10.99	11.98	12.97	13.96	14.95	15.93	16.91	17.88	18.85	19.81	20.78	21.73	22.66	23.61	24.54	25.48
50	40.88		1.00	2.00	3.00	4.00	5.00	6.00	7.00	7.99	8.99	9.98	10.97	11.96	12.95	13.93	14.92	15.89	16.86	17.83	18.80	19.76	20.70	21.65	22.58	23.52	24.45
51	39.75			1.00	2.00	3.00	4.00	5.00	5.99	6.99	7.99	8.98	9.97	10.96	11.95	12.93	13.91	14.88	15.85	16.82	17.79	18.75	19.69	20.62	21.56	22.49	23.43
52	38.62				1.00	2.00	3.00	4.00	4.99	5.99	6.99	7.98	8.97	9.95	10.94	11.93	12.91	13.88	14.85	15.81	16.77	17.74	18.68	19.61	20.55	21.48	22.41
53	37.51					1.00	2.00	3.00	4.00	4.99	5.98	6.98	7.97	8.96	9.94	10.93	11.91	12.88	13.84	14.81	15.77	16.73	17.67	18.61	19.54	20.47	21.40
54	36.41						1.00	2.00	3.00	3.99	4.98	5.98	6.97	7.96	8.94	9.92	10.91	11.88	12.85	13.81	14.78	15.73	16.67	17.61	18.54	19.46	20.39
55	35.33							1.00	2.00	2.99	3.99	4.98	5.97	6.96	7.95	8.93	9.91	10.88	11.85	12.82	13.77	14.74	15.67	16.61	17.54	18.47	19.39
56	34.25								1.00	2.00	2.99	3.99	4.98	5.97	6.96	7.94	8.92	9.89	10.86	11.83	12.79	13.74	14.68	15.61	16.54	17.48	18.40
57	33.18									1.00	2.00	2.99	3.99	4.97	5.96	6.95	7.93	8.90	9.87	10.83	11.80	12.76	13.69	14.62	15.55	16.48	17.41
58	32.12										1.00	2.00	2.99	3.98	4.97	5.96	6.94	7.91	8.88	9.84	10.81	11.77	12.71	13.63	14.57	15.49	16.42
59	31.06											1.00	2.00	2.99	3.98	4.96	5.95	6.92	7.89	8.86	9.82	10.78	11.72	12.66	13.58	14.51	15.43
60	30.00												1.00	2.00	2.98	3.97	4.96	5.94	6.91	7.88	8.84	9.80	10.74	11.67	12.60	13.52	14.45
61	28.94													1.00	1.99	2.98	3.97	4.95	5.93	6.89	7.86	8.82	9.76	10.70	11.63	12.55	13.47
62	27.90														1.00	1.99	2.98	3.96	4.94	5.91	6.88	7.84	8.79	9.72	10.65	11.58	12.50
63	26.86															1.00	1.99	2.98	3.96	4.94	5.90	6.86	7.81	8.76	9.69	10.61	11.53
64	25.85																1.00	1.99	2.97	3.95	4.93	5.89	6.84	7.79	8.72	9.65	10.57
65	24.85																	1.00	1.99	2.97	3.95	4.92	5.87	6.82	7.76	8.69	9.61
66	23.88																		1.00	1.98	2.96	3.94	4.91	5.86	6.80	7.74	8.66
67	22.93																			1.00	1.98	2.96	3.93	4.90	5.84	6.78	7.71
68	21.99																				1.00	1.98	2.96	3.92	4.88	5.83	6.76
69	21.06																					1.00	1.98	2.95	3.92	4.87	5.81
70	20.14																						1.00	1.98	2.95	3.91	4.86
71	19.22																							1.00	1.97	2.94	3.90
72	18.29																								0.99	1.97	2.94
73	17.35																									0.99	1.97

Age	Losses for life	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
74	16.40																										0.99
75	15.45																										
76	14.50																										
77	13.57																										
78	12.66																										
79	11.79																										
80	10.97																										
81	10.19																										
82	9.46																										
83	8.79																										
84	8.15																										
85	7.55																										
86	6.98																										
87	6.43																										
88	5.91																										
89	5.42																										
90	4.95																										
91	4.51																										
92	4.11																										
93	3.75																										
94	3.43																										
95	3.16																										
96	2.93																										
97	2.72																										
98	2.53																										

Appendix 3
Examples

This appendix provides examples of points discussed in the Principles. In all cases, it is assumed that the claimants have succeeded in their claims: the tribunal has decided that they were unlawfully dismissed.

The examples are not intended to set out rigid approaches to the brief facts on which they are based. They are illustrative only. They are not intended, for example, to offer views on what the correct award for loss of statutory rights should be. The examples have a narrative rather than arithmetic presentation. Any readers who would like to see examples of other scenarios, or to offer such examples, are welcome to send details to pensionprinciples@ejudiciary.net.

Note on Grossing up

These examples relate to paragraphs 2.39 and 2.40 of the Principles. They apply the income tax rates in England and Wales, not Scotland. For 2019/2020 the rates in England and Wales are as follows (gross figures):

Personal Allowance @ 0% on the first	**£ 12,500**
Basic Rate @ 20% on the next slice of	**£ 37,500**
Higher Rate @ 40% on the next slice of	**£100,000**
Additional Rate @ 45% on anything over	**£150,000**

In addition, the personal allowance is reduced by £1 for every £2 of income above £100,000. It tapers to zero at income of £125,000.

Single Marginal Rate

In some cases, it will be apparent that all the taxable elements of the award will need to be grossed up at a single rate. An example is where gross income from other sources in the tax year exhausts the personal allowance and the basic rate band (i.e. is £50,0000 or more), but the Tribunal award after grossing up will still leave the gross income in the year below £100,000 (when the personal allowance is affected). In that situation all the award will be taxed at the higher rate of 40% and the personal allowance is unaffected.

In such cases the formula is:

$$\frac{x}{(100 - r)} \times 100 = y$$

Where: x is the award before grossing up;
y is the award after grossing up; and
r is the rate of income tax as a percentage of 100.

Multiple Rates

There are a number of reasons why the simple formula will not produce an accurate result, even once taxable income from other sources is taken into account. Firstly, different elements of the award will need to be grossed up at different rates. Secondly, it is important to make sure the different rate bands are split by reference to the grossed-up figures, not the net amounts. Thirdly, in cases where the grossed-up award will take taxable income over £100,000 the personal allowance will be tapered.

In **PA Finlay & Co Ltd v Finlay EAT 0260/14, 0062/16 and 0117/16** the EAT approved as correct (see paragraph 21) a calculation undertaken by an accountant grossing up £166,318 to £252,574.55 using the 2013/2014 tax rates. The personal allowance was tapered to zero and £30,000 was exempt from tax as a termination payment. The calculation was expressed in the form of a table as follows:

Tax bandings	**Gross**	**Tax**	**Net**
Up to £32,010 @ 20%	32,010.00	6,402.00	25,608.00
Next £117,990 @ 40%	117,990.00	47,196.00	70,794.00
Earnings over £150,000 @ 45%	72,574.55	32,658.55	39,916.00
Total	222,574.55	86,256.55	136,318.00
Add: tax free amount	30,000.00	0.00	30,000.00
Total Award Grossed Up	**252,574.55**	**86,256.55**[97]	**166,318.00**

Below is a modified version of that table which can be used for grossing up in differential rate cases in **England and Wales**. The methodology is identical but the modifications are as follows:

- The rates for 2019/2020 have been used

- The personal allowance has been incorporated, but the effect of tapering is recognised by including a "New Rate" ("NR") of 60% within the higher rate band to reflect the fact that each £2 of income in that band will reduce the personal allowance by £1. This has the effect of moving that £1 into the higher rate band of 40%. It follows that for each £1 between £100,000 and £125,000 the effective tax rate is 40% plus 40% of 50 pence, which is 20% of £1. 40% + 20% = 60%. Representing the tapering of the personal allowance in this way means that this table can be used for all grossing up cases for England and Wales taxpayers whether the personal allowance is affected or not.

- The left-hand side of the table is for details of other taxable income to be inserted - a reminder that it must be taken into account. Of course, a Tribunal without precise figures might have to use estimated figures.

	Other Income			**Taxable Tribunal Award**		
	Gross	***Tax***	***Net***	***Gross***	***Tax***	***Net***
PA (0%) to 12,500	0	0	0	0	0	0
BR (20%) the next 37,500	0	0	0	0	0	0
HR (40%) up to 100,000	0	0	0	0	0	0
NR (60%) from 100,001	0	0	0	0	0	

[97] This figure corrects an error which appears in the table in the *Finlay* judgment.

to 125,000						
HR (40%) 125,001 to 150,000	0	0	0	0	0	0
AR (45%) 150,001 upwards	0	0	0	0	0	0
TOTALS	0	0	0	0	**0***	0
*Amount to be added to taxable and non-taxable awards is £**0**						

Filling in this "*Finlay* table" in a methodical way should enable grossing up to be done reasonably accurately in differential rate cases. It is used in some of the examples that follow. After filling in the "Other Income" side of the table the Tribunal can complete the side for its award. For tax bands which will be exhausted by the award start with the gross figure and work out the net; for the final band of relevance start with the remaining net figure and work out the gross and the tax by using the formula for marginal rate calculations. There are notes about this with the Ashok example below.

Finally, it is recognised that this approach does not necessarily lead to mathematical precision. There may be other factors affecting tax which the parties wish to raise (e.g. the Tribunal award rendering child benefit payments taxable). In most cases, however, this approach should provide a reasonably accurate way of grossing up the Tribunal award at the prevailing tax rates in England and Wales.

Because tax rates differ in **Scotland** a different table is needed as follows, including the "starter rate" ("SR") of 10% and the "intermediate rate" ("IR") of 21%:

	Other Income			**Taxable Tribunal Award**		
	Gross	***Tax***	***Net***	***Gross***	***Tax***	***Net***
PA (0%) to 12,500	0	0	0	0	0	0
SR (19%) The next £2,049						
BR (20%) the next 10,394	0	0	0	0	0	0
IR (21%) the next 18,486						
HR (41%) up to 100,000	0	0	0	0	0	0
NR (60%) from	0	0	0	0	0	

100,001 to 125,000						
HR (41%) 125,001 to 150,000	0	0	0	0	0	0
AR (46%) 150,001 upwards	0	0	0	0	0	0
TOTALS	0	0	0	0	**0***	0
*Amount to be added to taxable and non-taxable awards is £**0**						

Ashok – grossing up at higher rate

Ashok was unfairly dismissed from a job paying him a gross annual salary of £50,000. The tribunal awards Ashok a basic award of £5,000 and a compensatory award of £38,400, calculated as set out below. The compensatory award includes an award for loss of DC pension rights, which has been calculated using the contributions method (by which the tribunal has aggregated the employer's pension contributions at 15% of gross salary corresponding to the period of loss).

The expression "contributions to hearing" is used, but this is a convenient shorthand in cases where the contributions method is used. It is not intended to mislead about the nature of pension loss, which is always a form of future loss, which is why it attracts no interest. The contributions method, it should be emphasised, does not compensate for the loss of the employer's contributions themselves; instead, it is the mechanism by which the loss of pension income in retirement, after deduction of tax, is assessed.

The unfair dismissal award comprises the following:

Basic award		£5,000
Compensatory award		
• Loss of statutory rights	£450	
• Net loss of earnings to hearing	£8,000	
• Net pension loss (contributions to hearing)	£1,200	
• Net loss of future earnings	£25,000	
• Net pension loss (future contributions)	£3,750	
Total compensatory award (net)		£38,400
Total of basic and compensatory awards		£43,400

The total award exceeds £30,000 by £13,400 (the basic award counts against the £30,000 exempt slice). This is the sum that must be grossed up.
We will assume that, in the tax year in which Ashok is due to receive the award, his earnings from his new job have already exhausted his personal allowance of £12,500 and the entire 20% basic rate band. The tribunal's grossing up calculation will therefore be at a single marginal rate of 40%.

The calculation is as follows:

- £13,400/60 x 100 = £22,333
- The tax element is £22,333 less £13,400, which is £8,933
- The sum of £8,933 is added to the compensatory award
- The compensatory award is now £38,400 plus £8,933, which is £47,333

So, after grossing up, the tribunal awards Ashok a basic award of £5,000 and a compensatory award of £47,333.

Ashok – grossing up at basic rate

The facts are as above but, this time, Ashok's gross earnings in the tax year of receipt are only £5,000. This means that he has only used some of his personal allowance of £12,500 and none of the 20% basic rate band. The process of grossing up would then look like this:

- Ashok's taxable earnings of £5,000 means that £7,500 of his personal allowance is available
- This reduces the taxable sum to £5,900 (£13,400 less £7,500)
- The sum of £5,900 is taxed at 20%
- £5,900/80 x 100 = £7,375
- The tax element is £7,375 minus £5,900, which is £1,475
- The sum of £1,475 is added to the compensatory award
- The compensatory award is now £38,400 plus £1,475, which is £39,875.

So, after grossing up, the tribunal awards Ashok a basic award of £5,000 and a compensatory award of £39,875.

Ashok – grossing up at differential rates

Assume that Ashok was unfairly dismissed from a job paying him a gross annual salary of £100,000 and that, this time, his earnings in the tax year in which the award of compensation is to be received are £27,000.

The tribunal has decided that Ashok was dismissed for making a protected disclosure, so the statutory cap does not apply.

The compensatory award includes an award for lost DC pension rights, calculated using the simple method of aggregating employer pension contributions at 10% of gross salary corresponding to the period of loss.

The tribunal calculates Ashok's compensation as a basic award of £5,000 and a compensatory award of £88,500 as follows:

Basic award		£5,000
Compensatory award		
• Loss of statutory rights	£500	
• Net loss of earnings to hearing	£35,000	

- Net pension loss (contributions to hearing) £3,500
- Net loss of future earnings £45,000
- Net pension loss (future contributions) £4,500

Total compensatory award (net) £88,500

Total of basic and compensatory awards £93,500

The total award exceeds £30,000 by £63,500. This is the sum that must be grossed up. The process of grossing up using the *Finlay* table is as follows:

	Other Income			**Taxable Tribunal Award**		
	Gross	***Tax***	***Net***	***Gross***	***Tax***	***Net***
PA (0%) to 12,500	12,500	0	12,500	0	0	0
BR (20%) the next 37,500	14,500	2,900	11,600	23,000 *[Note 1]*	4,600	18,400
HR (40%) up to 100,000	0	0	0	50,000	20,000	30,000
NR (60%) from 100,001 to 125,000	0	0	0	25,000	15,000	10,000
HR (40%) 125,001 to 150,000	0	0	0	8,500	3,400	5,100 *[note 2]*
AR (45%) 150,001 upwards	0	0	0	0	0	0
TOTALS	27,000	2,900	24,100	106,500	**43,000***	63,500
*Amount to be added to taxable and non-taxable awards is £**43,000**						

Note 1: This is the gross figure left in the 20% band after £14,500 has been used by other income – i.e. 37,500 – 14,500 = £23,000.

Note 2: This is the last applicable band so work backwards with net figures. The net figure is the Tribunal taxable award of £63,500 minus £58,400 already allocated to the lower bands = £5,100. That figure is 60% of the gross figure. The gross figure is obtained by dividing 5,100 by 60 (i.e. 100 – 40%) and multiplying it by 100.

- The sum of £43,000 is added to the compensatory award
- The compensatory award is now £88,500 plus £43,000, which is £131,500

So, after grossing up, the tribunal awards Ashok a basic award of £5,000 and a compensatory award of £123,166. This means the total award is as follows

Basic award	£5,000
Compensatory award	£123,166
Total award	£128,166

Of that total award, £30,000 is exempt from tax, and on the remaining £98,166 Ashok will pay tax of £34,666, leaving him with a net award of £93,500.

In some of the complex DB examples, we address the position where the size of the tribunal's taxable award is such that it leads to restriction of the personal allowance, which will affect the grossing up calculation (see Tom) and, in respect of increased tax paid on any new job secured by the claimant, merit a further award of compensation (see Ahmed and Katarzyna).

2. Retirement age

These examples relate to paragraph 3.21 of the Principles.

To identify a terminal date for a claimant's loss of income from employment, a tribunal may need to decide whether they would have retired before, at or after state pension age. It should be remembered that a person's state pension age varies in accordance with their date of birth and (at least until November 2018) their gender.

Janet – award of loss of earnings beyond state pension age

Janet is aged 64. She has a tapered state pension age between 65 and 66. She was recently dismissed from employment as a cleaner after ten years with a local company. In her evidence, she states that she has worked almost all her adult life, supporting two children and then a disabled husband who recently died; she says that her grandchildren no longer want regular involvement with her and that she liked the bustle of work and the fact that it took her out of herself. She has been unable to find work in the eight months since her dismissal and she does not think she will ever find paid employment again. She says that she had intended to work until age 70 and then perhaps work part-time thereafter.

The tribunal may decide that Janet is likely to find similar work quickly and draw an end to her future loss, perhaps within a further six months. Alternatively, it may decide that she will face insurmountable barriers to finding new work. Let us assume that the tribunal is persuaded to award loss of earnings until the point at which Janet intended to retire. It must therefore decide the age at which she would have retired had it not been for her unlawful dismissal. If the tribunal found Janet to be a reliable and credible witness generally, it may accept her evidence that she intended to work until age 70. In the interests of simplicity and given the level of speculation involved, the tribunal may decide not to award further loss based on part-time work beyond that date.

It should be remembered that, in calculating loss of earnings beyond Janet's state pension age, her net income must be assumed to have gone up. This is because she would have ceased paying Class 1 employee NI contributions upon reaching state pension age. Also, the tribunal should make no deduction for receipt of nSP. This is because Janet is entitled to receive nSP from state pension age, regardless of whether she is in work.

Derek – award of loss of earnings until state pension age

Derek is aged 64. He has a tapered state pension age between 65 and 66. He was recently dismissed from employment as a shop assistant. In his evidence, he says nothing about when he intended to retire but did mention how he had shortly been hoping to spend more time with friends and grandchildren and his dismissal means that he does not look forward to this as much. In the absence of much more to go on, the tribunal decides that Derek would have retired in

any event from his job upon reaching state pension age. It therefore awards no loss of earnings beyond then.

Peter – award of loss of earnings until retirement before state pension age

In most cases, a tribunal will not be awarding loss of earnings until state pension age, simply because it can safely be assumed that a claimant will manage successfully to mitigate their loss long before then. This example is directed instead at a situation where the tribunal accepts that a claimant will not work again before retirement, but draws an end to that loss before they reach their state pension age.

Peter is aged 61. He was recently dismissed from employment as a school janitor. His state pension age is 66. However, if he had not been dismissed, he would have been entitled to an unreduced Local Government pension from the age of 65. This is because he was a member of the cohort insulated from recent pension reforms based on proximity to scheme retirement age. In the absence of any evidence suggesting he would have worked beyond 65, the tribunal concludes that Peter's loss of income will cease from the date.

3. Loss of state pension

These examples relate to paragraphs 3.42 to 3.50 of the Principles.

Jessica – no award of compensation for loss of state pension

Jessica is aged 43. She was unemployed for a year after leaving College at the age of 19. She then inherited some money and spent a year travelling. She returned to the UK and found a job in retail, which she performed for seven years. After spending six years at home raising two children, she qualified as a teaching assistant. Her unlawful dismissal from her job as a teaching assistant is what brought her to the tribunal.

Jessica has checked the Government Online service and this confirms that, as at the date of her dismissal, she had accrued 16 qualifying years towards her nSP. Her state pension age under current rules is 67 (although the Government proposes to increase it to 68). That means she has 24 years (and probably 25) in which to accrue the 19 further qualifying years she needs for the full amount of nSP. For the tribunal to be persuaded that, for Jessica, this dismissal would cause a loss of state pension rights, it would have to be persuaded that she would be out of work for at least five (and probably six) years. After hearing evidence, the tribunal decides that Jessica would mitigate her loss by finding other work within 15 months. It therefore awards her no compensation for loss of state pension.

Arthur – award of compensation for loss of state pension

This example involves use of the Ogden Tables.

Arthur is dismissed from his job as a security guard at the age of 63 years. The tribunal decides on the evidence it hears that he would have stayed in the same job until he reached his state pension age of 66, retired at that age and then not worked beyond it. However, as at the date of his dismissal, due to prior periods of unemployment and sickness, Arthur had only accrued 32 qualifying years. His nSP, at present rates, is 32/35ths of £168.60, which is £154.15. Arthur persuades the tribunal that he will not find work again before reaching state pension age. The tribunal therefore concludes that, in addition to loss of earnings and loss of occupational pension rights, his dismissal has resulted in the loss of three qualifying years. In other words, Arthur's nSP is £14.45 per week (i.e. 3/35ths x £168.60) below the amount that it would have been but for the fact he was unlawfully dismissed. At present values, this amounts to a loss of £751.40 for each year of his retirement during which he receives nSP.

There are numerous unknown factors at play when trying to convert this into a capital sum. The figure of £751.40 is based on 2019/20 rates, and (by current government policy, at least) will benefit from the triple lock until Arthur reaches state pension age in three years' time; and it will likely continue to increase for at least some of the years when it is received. Also, no-one knows how long Arthur will live in retirement. It is safer to address these unknown factors by applying an Ogden Table multiplier to our multiplicand of £751.40. There is no

need to “net down” this figure because it is assumed that Arthur will not pay tax on his state pension.

Appendix 2 of these Principles contains a bespoke table of multipliers for retirement ages at the discount rate of minus 0.25%. For an individual male aged 63, in respect of pension loss commencing from the age of 66, the multiplier is 23.00. This includes the two-year age adjustment.

Arthur’s loss of state pension rights is therefore: 23.00 x £751.40 = £17,282.20.

4. Simple DC cases

These examples relate to paragraphs 4.17 to 4.30 of the Principles.

The expression "loss to hearing" is sometimes used, but this is a convenient shorthand in cases where the contributions method is used. It is not intended to mislead about the nature of pension loss, which is always a form of future loss, which is why it attracts no interest. The contributions method, it should be emphasised, does not compensate for the loss of the employer's contributions themselves; instead, it is the mechanism by which the loss of pension income in retirement, after deduction of tax, is assessed.

Bethan – contributions method – short period of loss

Bethan succeeds in a complaint of wrongful dismissal. She has a contractual notice period of three months. She remained unemployed for this period, making reasonable but ultimately unsuccessful attempts to mitigate her loss. She had received a gross annual salary of £40,000. Her employer contributed 6% of her salary into its DC pension scheme on her behalf.

The award of compensation to Bethan in respect of the net pension loss arising from her wrongful dismissal will be as follows:

6% x £40,000 x 0.25 (3 months)	£600.00

This will be payable in addition to three months' net salary and the loss of any contractual benefits.

Christopher – contributions method – personal pension case

This example also relates to paragraph 2.9 of these Principles.

Christopher succeeds in a complaint of unfair dismissal. He had been employed on a gross annual salary of £25,000 and his employer paid contributions of 3% into his personal pension scheme. He remains unemployed at the date of the hearing, which takes place nine months after his dismissal. The tribunal decides that he will remain unemployed for a further six months, at which point he will obtain a job at an equivalent salary and with the same level of employer pension contributions.

The award of compensation to Christopher in respect of the net pension loss arising from his unfair dismissal will be as follows:

Loss to hearing:	3% x £25,000 x 0.75 (9 months)	£562.50
Future loss:	3% x £25,000 x 0.5 (6 months)	£375.00
Total:		£937.50

Diane – contributions method – lost future pay rise

Diane succeeds in a complaint of unfair dismissal. The hearing takes place six months after her dismissal. The tribunal decides that it will take her a further nine months to obtain an alternative position with equivalent benefits. She was employed at a salary of £30,000 per annum, but the tribunal is satisfied from the evidence it hears that that her salary would have increased to £35,000 three months after the hearing. Her employer contributed 5% of her salary into its DC pension scheme.

The award of compensation to Diane in respect of the net pension loss arising from her unfair dismissal will be as follows:

Loss to hearing:	5% x £30,000 x 0.5 (6 months)		£750.00
Future loss:	5% x £30,000 x 0.25 (3 months)	£375.00	
	5% x £35,000 x 0.5 (6 months)	£875.00	
Total future loss:			£1,250.00
Total:			£2,000.00

Edward – Rule 21 judgment – assumption of auto-enrolment

A tribunal issues a Rule 21 liability judgment in favour of Edward, following his employer's failure to file an ET3 response to his complaint of unfair dismissal. Edward was earning a gross annual salary of £20,000. The tribunal arranges a separate remedy hearing, at which Edward tells the tribunal that his employer started a pension scheme a short while ago, but he is unclear as to the type of scheme or the level of employer contribution. He is also unable to provide any documentary evidence, having not kept his payslips.

Edward obtained an alternative job at an equivalent salary six months after dismissal, with the hearing taking place shortly after that. His new employer is paying only the minimum employer contribution into its auto-enrolment compliant scheme.

In the absence of any evidence to the contrary, the tribunal concludes that Edward had, in his old job, been enrolled into a scheme which complied with the auto-enrolment rules and into which his employer was paying the minimum level of contributions. The compensation the tribunal awards to Edward in respect of his net pension loss will therefore be as follows:

3% x £20.000 x 0.5 (6 months)	£300.00

Furthermore, as Edward's new employer is paying the same contribution rate as his old employer, no further loss arises.

Note that, in this example, Edward's earnings in the old and new jobs exceed the lower level of the qualifying earnings band, hence his auto-enrolment rights.

Fatima – contributions method – changing rate of employer contributions under auto-enrolment

Fatima was dismissed on 6 July 2017. She had been employed on a gross annual salary of £25,000 and a member of her employer's DC pension scheme into which her employer was paying contributions of 3% of her salary. Fatima found an alternative job on 6 January 2018; it pays her the same salary, but her new employer only operates an auto-enrolment pension scheme into which it pays the minimum employer contributions (1% up to 5 April 2018, 2% from 6 April 2018 to 5 April 2019, and 3% from then on).

Fatima's claim for unfair dismissal was heard on 6 April 2018; she was successful. The tribunal noted that, within 12 months, her new employer would be paying the same level of pension contribution rate as her old employer. The tribunal's award in respect of the net pension loss arising from Fatima's unfair dismissal therefore ended 12 months after the hearing:

Loss to hearing:		
3% x £25,000 x 0.5 (6 months)	£375.00	
2% (3% - 1%) x £25,000 x 0.25 (3 months)	£125.00	
Total loss to hearing:		£500.00
Future loss: 1% (3% - 2%) x £25,000 x 1 (12 months)		£250.00
Total:		£750.00

Note that, in this example, Fatima's earnings in her new job exceed the lower level of the qualifying earnings band, hence her auto-enrolment rights.

Fraser - Career-long DC case

This example relates to paragraph 4.30 of the Principles.

Fraser was dismissed from his job in Glasgow on 1 November 2018. He has succeeded with his claim of unfair dismissal on the ground of having made a protected disclosure, and pension loss falls to be considered at a remedy hearing.

Fraser's gross annual salary at the point of dismissal was £65,000. As a senior employee, he had been able to negotiate a significant employer contribution, of 15% of his gross salary, into his employer's DC pension scheme; he had been required to contribute 5%.

Fraser found alternative employment starting on 1 May 2019. His new job attracts the same salary, £65,000 per annum, but his new employer operates only a DC scheme which satisfies the minimum auto-enrolment requirements, i.e. with an employer contribution of 3% of qualifying band earnings, i.e., in the tax year 2019/20, £6,136 to £50,000.

At the time of his dismissal, Fraser was 54, and the tribunal accepts evidence that he will continue working until his pension age of 70, some 16 years away. The tribunal is also satisfied that, save for his unfair dismissal, Fraser would

have worked for his old employer up to that age, i.e. that it would not be appropriate to apply any withdrawal factor.

With regard to pension loss, the tribunal considers that, due to the significant disparity between the level of employer contributions, which will remain through to Fraser's retirement, it would not be appropriate to use the contributions method, but, instead, to add the employer contributions to net salary and to use the Ogden Tables to calculate net loss of earnings applying the relevant multiplier drawn from the table in Appendix 2 for annual earnings loss to retirement age (men) at the Scottish discount rate. For a man aged 54 retiring at 70 at a discount rate of -0.75% the multiplier is 16.05.

The outcome of the pension loss calculation is then as follows:

Net earnings in previous employment -	£46,239.00
Pension contributions -	£9,750.00
Total -	£55,989.00

Net earnings in current employment -	£46,239.00
Pension contributions -	£1,315.92
Total -	£47,554.92

Loss each year from 54 - 70 is £55,989.00 - £47,554.92 = £8,434.08

Multiplied by 16.05 = £135,366.98.

That is the award for loss of earnings and pension contributions before grossing up.

5. Simple DB cases

These examples relate to paragraphs 6.30 to 6.40 of the Principles.

They are examples of the types of case where the tribunal can properly decide to use the contributions method, even though dismissal was from employment with DB scheme benefits.

George – contributions method – short period of loss (Polkey)

George is made compulsorily redundant by his public sector employer, having come last in an exercise in which he and others were scored against selection criteria. He had been earning a gross annual salary of £35,000 and was in his employer's DB pension scheme.

He succeeds in his complaint of unfair dismissal. The tribunal decides that his employer consulted inadequately about those criteria. The tribunal also decides that adequate consultation would have made no difference to the selection criteria ultimately adopted by the employer; it would simply have delayed George's dismissal (as he would still have come bottom) by the period of one month that such consultation would have lasted.

George's basic award for unfair dismissal is zero, as he has already received a statutory redundancy payment from his employer (see Section 122(4)(b) ERA).

As for his compensatory award, the tribunal assesses it on this basis: a sum for one month's loss of net earnings and a sum for loss of net pension benefits corresponding to the same period.

As for the pension loss, the evidence before the tribunal is that the employer's average contribution rate to that scheme was 17.5%. No further information is available as to whether George's age or gender suggest a different contribution rate. The award of compensation to George in respect of the net pension loss arising from his unfair dismissal will therefore be as follows:

17.5% x £35,000 x 1/12 (one month)	£510.42

Note that it is possible that the compensatory award might be reduced further by reference to any redundancy pay that George's employer paid him over and above his entitlement to statutory redundancy pay; see Section 123(7) ERA.

Hannah – contributions method – short period of loss (closure of DB scheme)

Hannah is unfairly dismissed, having been a member of a DB pension scheme. She was earning a gross annual salary of £28,000 with her former employer and its contribution rate in respect of future service at the time of her dismissal was 14.5%. However, the evidence before the tribunal at the hearing is that the employer closed its scheme to further accrual six months after Hannah's

dismissal and replaced it with a DC scheme into which it now pays 6% employer contributions.

Nine months after her dismissal, but still prior to the hearing, Hannah found a replacement job at the same salary. Her new employer is also paying employer contributions at the rate of 6% into its DC pension scheme. Given the short period of loss, the tribunal decides that the appropriate basis for assessing Hannah's pension loss is to use the contributions method.

The award of compensation in respect of the net pension loss arising from her unfair dismissal will therefore be as follows:

14.5% x £28,000 x 0.5 (6 months)	£2,030.00
6% x £28,000 x 0.25 (3 months)	£420.00
Total:	£2,450.00

If Hannah's new job came with only auto-enrolment pension rights, the tribunal might consider that the pension loss would extend beyond the date she started her new job even though her loss of earnings would have ceased then. Using the contributions method, her ongoing loss of pension rights would be 3% (i.e. 6% less 3%) of her salary. The tribunal would need to decide how long this loss would continue.

Fiona – contributions method – full mitigation

Fiona qualified as a teacher in Scotland. She started as a mathematics teacher at the age of 21 but she was dismissed in circumstances that the tribunal decides involved direct racial discrimination and racial harassment. She is now aged 25.

Before her dismissal, she earned a gross annual salary of £34,000 and was a member of the Scottish Teachers' Superannuation Scheme, which is unfunded. The tribunal is informed that she paid employee pension contributions of 8.7% of her gross pay. The parties have provided no further information about pension rights, apart from Fiona's representative who has provided a printout from the scheme's website; this shows that the rate of contribution paid by employers into this scheme is currently 17.2%.

Since being dismissed, Fiona has left teaching and, with her mathematics degree, she has obtained a job in financial services. Her starting salary was £45,000 and she has already done extremely well. By the time of the remedy hearing, her gross annual salary is £80,000 and she is in line to receive a bonus of an equivalent sum. She was unemployed for a period of three months before obtaining this higher paid employment. She has stated that she will never return to teaching.

The tribunal awards Fiona £20,000 for the injury to her feelings and three months' loss of net earnings (having taken care to add back in her own pension contribution rate of 8.7%, to identify the true level of her net pay).

Regarding net pension loss, the tribunal decides that, although Fiona was in a DB pension scheme, it is appropriate to calculate her loss using the contributions method. The tribunal accepts the website page as a reliable source of evidence for the employer's contribution rate.

The calculation is as follows:

£34,000 x 17.2% x 0.25 (3 months)	£1,462.00

6. Complex DB cases

These examples relate to paragraph 5.51 onwards of the Principles (especially the seven steps model at paragraphs 5.54 to 5.61).

These are examples where the parties have declined to provide expert actuarial evidence on any element of the pension loss calculation or expert accounting evidence on grossing up.

Tom – career loss – final salary scheme – no withdrawal factor – mitigation in job with auto-enrolment

Tom was dismissed from a public sector job in Swansea, after 30 years' service, at the age of 55. He was unfairly dismissed for making a protected disclosure, so the statutory cap does not apply. The job from which he was dismissed paid him a gross annual salary of £40,000. He was a member of a final salary scheme based on an accrual rate of sixtieths.

The tribunal decides that, but for his unlawful dismissal, Tom would have carried on working until retirement at age 65 (the age at which he could take an unreduced occupational pension) – he would not have waited until his state pension age of 67. By that point, he would have completed 40 years' service.

The tribunal also decides that Tom would have been promoted at the age of 61 to the next management grade, with a higher gross annual salary of £50,000.

Our focus will be on calculating Tom's award for pension loss using the "seven steps" model rather than his award for loss of earnings.

Step 1: Identify what Tom's net pension income would have been at his appropriate retirement age if the dismissal had not occurred.

A statement of Tom's pension benefits, obtained from the administrators of the scheme, confirms that the present-day value of his annual pension income at the date of dismissal is 30/60ths of £40,000, which is £20,000. This could, in any event, have been inferred from what we already know about the benefits of the scheme. However, Tom would have been promoted to a position with a salary of £50,000 after ten years of further service. But for his dismissal, then, the present-day value of Tom's gross pension income at retirement would have been 40/60ths of £50,000, which is £33,333. Using the HMRC online calculator which estimates take-home pay, the net value of a pension income of £33,333 is **£29,168**.

The tribunal decides that no withdrawal factor is appropriate. This is because Tom's employment was highly stable; his employer faced no risk of insolvency; he had no dependants for whom he might assume caring responsibilities in the future; he was in good health; and there was no prospect of him moving to fresh pastures.

Step 2: Identify what Tom's net pension benefits will be at his retirement age, given that he has been dismissed.

The present-day gross value of Tom's annual pension income at the date of his dismissal, is 30/60ths of £40,000, which is £20,000. The HMRC online calculator confirms that the net value of a pension income of £20,000 is about £18,501.

The tribunal decides that Tom will find another job within two years of dismissal. Based on its knowledge of the local labour market, the tribunal decides that it will be a job in retail management; it will be less well paid, with poor promotion prospects and with auto-enrolment into a DC pension scheme. To keep our example simple, we will add that the tribunal assumes that Tom will remain in this new job without resigning or being dismissed and that he will still choose to retire at the age of 65 once he has accessed his public sector pension.

The tribunal decides to use the NEST calculator to approximate the pension income Tom would receive, at today's value, if he were to spend eight years between the ages of 57 and 65 receiving a gross annual salary of £25,000 in a job where the employer makes post-April 2019 minimum contribution levels under the auto-enrolment regime. The NEST calculator tells us that, if Tom declined to choose a lump sum (so that we compare like with like), his gross annual pension income from that job would be £870. If this sum had been added to his gross pension income from the old job, it would have increased his gross annual pension income to £20,870. Using the HMRC online calculator, his net annual pension income would increase to **£19,197** a year.

Step 3: Deduct the result of Step 2 from the result of Step 1, which produces a figure for net annual loss of pension benefits.

£29,168 less £19,197 is **£9,971**.

In other words, following his unlawful dismissal, Tom's net annual pension income has reduced by £9,971. This is our multiplicand.

(Note that £9,971 is the net shortfall in Tom's pension income. His gross shortfall would be £33,333 less £20,870, which is £12,463. We may need this figure later, when looking at the lump sum position.)

Step 4: Identify the period over which that net annual loss is to be awarded, using the Ogden Tables to identify the multiplier.

To adjust for the improved mortality of those in occupational pension schemes, the tribunal decides to make the two-year age adjustment, purely for the purposes of calculating Tom's occupational pension loss. This has the effect of treating him as if he is 53, not 55, and as if he was due to retire at 63, not 65.

Our "at a glance" extracts from the Ogden Tables at Appendix 2 have already factored this in and show that the correct multiplier is 24.26. The tribunal does

not adjust the multiplier further on the basis that the withdrawal factors already deal adequately with non-mortality contingencies.

Step 5: Multiply the multiplicand by the multiplier, which produces the present capital value of that loss.

In Tom's case, this is the following arithmetic calculation:

24.26 x £9,971 = £241,896.46

(If Tom's age had not been adjusted in the manner we have recommended, this calculation would have been 22.18 x £9,971 = £221,156.78.)

Step 6: Check the lump sum position and perform a separate calculation if required.

This is a sixtieths scheme, with a lump sum available via commutation only on a 1:12 basis. Tom has no entitlement to a separate tax-free lump sum; the figure at Step 5 above covers it and no further compensation is appropriate.

(What if Tom had been entitled under the terms of his pension to a separate tax-free lump sum, calculated at three times his gross pension income? The loss would be three times the gross shortfall in his pension caused by his unlawful dismissal. Three times £12,463 is £37,389. Tom would be receiving this money now as compensation, instead of waiting to receive it at the age of 65. He is aged 55 at the date of the remedy hearing so, put another way, he would receive the shortfall in his lump sum ten years early. This takes us to Ogden Table 27 – "Discounting Factors for Term Certain". At a discount rate of minus 0.25%, we apply a multiplier of 1.0253, increasing the amount awarded from £37,389 to £38,334.94. In awarding this sum to Tom, the parties and the tribunal would need to bear in mind that it would have been a tax-free benefit in his hands. It will now form part of an award of compensation that will be subject to income tax to the extent that it exceeds £30,000, and so it must be grossed up in accordance with usual principles to ensure that Tom is properly compensated. However, we shall continue with our original assumption that no further compensation for loss of a lump sum is appropriate in Tom's case.)

Step 7: Taking account of the other sums awarded by the tribunal, gross up the compensation awarded.

In Tom's case, we have not itemised the other elements of his award of compensation, which would have included additional sums attracting tax such as compensation for loss of earnings. However, for illustrative purposes, we will imagine that the total sum awarded to Tom, incorporating the sum of £241,896.46 for loss of pension rights, is £400,000. We will ignore injury to feelings.

We must deduct the tax-exempt element of £30,000 from the figure of £400,000; this reduces the amount we must gross up to £370,000. Let us also

assume that Tom has no other taxable income in the tax year of receipt. Expressed as a *Finlay* table the effect is as follows:

	Other Income			**Taxable Tribunal Award**		
	Gross	***Tax***	***Net***	***Gross***	***Tax***	***Net***
PA (0%) to 12,500	0	0	0	12,500	0	12,500
BR (20%) the next 37,500	0	0	0	37,500	7,500	30,000
HR (40%) up to 100,000	0	0	0	50,000	20,000	30,000
NR (60%) from 100,001 to 125,000	0	0	0	25,000	15,000	10,000
HR (40%) 125,001 to 150,000	0	0	0	25,000	10,000	15,000
AR (45%) 150,001 upwards	0	0	0	495,454	222,954	272,500
TOTALS	0	0	0	645,454	**275,454***	370,000
*Amount to be added to taxable and non-taxable awards is £**275,454**						

The overall award will therefore be £400,000 plus £275,454, which is £675,454.

Note on withdrawal factor

At Step 1 of the above examples, the tribunal applied no withdrawal factor. However, these scenarios might have justified a percentage reduction to the multiplicand:

- The evidence shows that Tom's elderly parents require care. It might be appropriate to make an adjustment on the basis that he would have retired early to look after them.

- Tom is now assumed to have been dismissed by a private sector employer. The evidence shows his employer was struggling financially, with fixed charges over its premises and a poor order book from fewer customers. It might be appropriate to make an adjustment on the basis of the chance that it would close its final salary pension scheme to future accruals in the next five years.

- The evidence shows that Tom's employer was planning to restructure the business by selling off the part in which he worked. Bearing in mind that TUPE does not protect pension rights, it might be appropriate to make an adjustment on the basis that Tom would transfer to an employer that offered a much less generous pension such as that provided for by auto-enrolment.

These sorts of assessments are common in tribunals: they are not scientific and are necessarily speculative. The parties must be prepared to bring evidence about, and make submissions on, these points at a remedy hearing dealing with pension loss, so that the tribunal can issue a reasoned judgment on them.

Gaynor – career loss – CARE scheme – CPI revaluation considered – no withdrawal factor

This example will illustrate how banked slices of earnings are accrued and revalued in a CARE scheme and also the difficulty of predicting the value of accrued benefits in the absence of details about CPI revaluation. It also shows the application of the seven steps model in a CARE scheme context. It relates to paragraphs 5.19 and 5.55(d) of the Principles.

Gaynor was born on 31 March 1957. She is a Band 3 nurse on a gross annual salary of £20,000, at the top of her pay scale and neither seeking nor expecting promotion. Her annual pay increases in recent years have been 1%. She has been a member of the 2015 section of the NHS pension scheme (a CARE scheme) since 1 April 2015, which has an accrual rate of 1/54. She was dismissed on 31 March 2019, at the age of 62, after four years of membership of that scheme.

The tribunal decides that, if Gaynor had not been dismissed, she would have continued working until reaching state pension age on 31 March 2023 (in her case, 66), resulting in four more years of membership of the 2015 scheme. The statutory cap on compensation for unfair dismissal does not apply. We assume that she remains 62 at the date of the remedy hearing.

For the purposes of this example, we will assume that Gaynor had no accrued service in the 1995 or 2008 sections of the NHS scheme (both final salary designs). We also ignore the fact that, if she had been a longer serving employee, she would have been insulated from recent pension reforms by virtue of being within ten years of normal retirement age as at 1 April 2012.

Step 1: Identify what Gaynor's net pension income would have been at her retirement age if the dismissal had not occurred.

We would expect this figure to be produced by the pension scheme administrators.

However, it provides an opportunity to explain how CARE revaluation works. For the purposes of this example, we have estimated CPI at 0.3% for year 1 (2015-16), 0.7% for year 2 (2016-17), 2.6% for year 3 (2017-18) and 2% for year 4 (2018-19). In accordance with the rules of the 2015 section of the NHS pension scheme, revaluation tracks CPI at 1.5% over these rates, producing uprating figures of 1.8% for year 1 (2015-16), 2.2% for year 2 (2016-17), 4.1% for year 3 (2017-18) and 3.5% for year 4 (2018-19). Revaluation is compound. It works like this:

Year	Pensionable salary (1% growth)	Banked slice	Revaluation			
			Y1 1.8%	Y2 2.2%	Y3 4.1%	Y4 3.5%
2015-16	20,000	370.37	377.04	385.34	401.14	415.18
2016-17	20,200	374.07		382.30	397.98	411.91
2017-18	20,402	377.81			393.30	407.07
2018-19	20,606	381.59				394.95
Total						**1,629.11**

Pausing there, we note that, following dismissal (and before commutation), Gaynor's gross pension income will be £1,629.11. We can also observe that the uprating of her pension has been at a higher rate than her 1% wage growth, which explains why the revalued banked slice for 2015-16 (£415.18) is higher than the non-revalued banked slice for 2018-19 (£394.95).

Gaynor's future loss until 2022, measured for the purposes of Step 1, must assume that she has not been dismissed. Working out her pension entitlement under the CARE scheme in this hypothetical scenario of four more years of scheme membership is difficult. Even if the tribunal were to assume that her annual pay increases in future would continue to be limited to 1%, the future rates of CPI over the next four years are unknown. This will affect the revaluation of the slices of her earnings that, but for the dismissal, she would have banked over the next four years and the further revaluation of her historic banked slices, as this table shows:

Year	Pensionable salary (1% growth)	Banked slice	Revaluation						
			Y1 1.8%	Y2 2.2%	Y3 4.1%	Y4	Y5	Y 6	Y 7
2015-16	20,000	370.37	377.04	385.34	401.14	415.18	?	?	?
2016-17	20,200	374.07		382.30	397.98	411.91	?	?	?
2017-18	20,402	377.81			393.30	407.07	?	?	?
2018-19	20,606	381.59				394.95	?	?	?
2019-20	20,812	385.41					?	?	?
2020-21	21,020	389.26						?	?
2021-22	21,230	393.15							?
Total									**?**

In the absence of a statement of projected benefits from the scheme's administrators (based on an assumption of working until state pension age) or expert evidence, the tribunal is not equipped to predict the compound impact of future CPI rates. As a result, if the parties do not provide this information, the tribunal will ignore CPI revaluation. In such a scenario, the tribunal would use the three banked slices of £385.41, £389.26 and £393.15 for 2019-22 to produce additional pension income of £1,167.82. The slices banked for 2015-19 would retain the total value of £1,503.84.

We recognise that this is likely to be less than Gaynor's true entitlement. It serves to emphasise the difficulties in obtaining precision without expert input and how important it is to ensure that the tribunal has the proper information from those who administer the pension scheme. The tribunal will use its case management powers to maximise the prospects of its production but, ultimately, it needs a mechanism for calculation if this information is not forthcoming.

As matters stand, total gross income at Step 1 would be £1,503.84 plus £1,167.82, which is £2,671.66. We will assume, for the sake of simplicity, that the tribunal declines to apply a withdrawal factor; it accepts that Gaynor would have worked through to retirement if she had not been dismissed.

This pension income would be within Gaynor's personal allowance. There is no need to "net it down".

Step 2: Identify what Gaynor's net pension income will be at her retirement age in the light of her dismissal.

We already have this figure: £1,503.84. Again, there is no need to net it down.

For the sake of simplicity, we will assume that the tribunal decides that Gaynor will not work again until reaching her state pension age, despite her best efforts to mitigate her loss.

Step 3: Deduct the result of Step 2 from the result of Step 1, which produces a figure for net annual loss of pension benefits.

The difference is £1,167.82. That is our multiplicand.

Step 4: Identify the period over which that net annual loss is to be awarded, using the Ogden Tables to identify the multiplier.

The tribunal decides to adjust Gaynor's age so that she is treated as being 60, not 62, at the date of the hearing. Her loss of pension now runs from 64, not 66.

Our "at a glance" extracts from the Ogden Tables at Appendix 2 have already made that adjustment so for a 62-year-old woman retiring at 66 the correct multiplier is 26.03. The tribunal does not adjust the multiplier further on the basis

that the withdrawal factors already deal adequately with non-mortality contingencies.

***Step 5*: Multiply the multiplicand by the multiplier, which produces the present capital value of that loss.**

26.03 x £1,167.82 = **£30,398.35**. This is the capital value of Gaynor's pension loss.

***Step 6*: Check the lump sum position and perform a separate calculation if required.**

No separate calculation is required.

***Step 7*: Taking account of the other sums awarded by the tribunal, gross up the compensation awarded.**

We will ignore this step for now.

Instead, we ask: what if the contributions method had been adopted for a period of four years of future loss? The employer contribution rate to the NHS 2015 scheme is 14.38%. As the calculation below shows, that would have produced an award for pension loss of only £9,068.01. It is considerably below the award produced by the complex approach, suggesting its use was justified in this case.

2019-20	£20,812 x 14.38%	£2,992.76
2020-21	£21,020 x 14.38%	£3,022.68
2021-22	£21,230 x 14.38%	£3,052.87
Total		**£9,068.01**

Ahmed – blend of final salary and CARE pension rights – mitigation of loss – withdrawal factor – includes loss of earnings

In this example, gross figures for annual salary have been converted into net figures for annual salary using the HMRC online calculator referred to in the Principles (https://www.gov.uk/estimate-income-tax), inputting the default income tax code. Salary and pensionable pay are treated as equivalent.

Ahmed was born on 1 May 1968. He started a job in local government in Leeds aged 25 in May 1993.

He was a member of the "old" Local Government Pension Scheme (LGPS) for 21 years between 1993 and 2014. It had a final salary design. For the purposes of this illustration, we shall assume the benefits accrued during these 21 years were in the 2008 section of the LGPS, which are summarised in Appendix 1.

On 1 April 2014, shortly before he turned 48, Ahmed moved to the "new" 2014 LGPS. This has a CARE design. A member of the 2014 LGPS becomes entitled to an unreduced pension at their state pension age. In Ahmed's case, that will be 67. He reaches that age on 1 May 2034.

Ahmed resigned on 1 May 2018, after 25 years' service, when aged 50. At the time of his resignation he performed a service delivery management role. As at the date of his constructive dismissal, he was on a gross annual salary of £40,000. After deductions for income tax and NI contributions, this amounts to net pay of £30,737.

At a preliminary hearing by telephone, dealing with case management, the tribunal notes that Ahmed was in a public sector DB scheme. It decides to list a hearing that, at this stage, deals with liability only. Orders are nonetheless made for the disclosure of pension-related information, so that the parties can prepare more informed schedules and counter-schedules of loss.

In a reserved judgment following the liability-only hearing, the tribunal decides that Ahmed's resignation was a constructive unfair dismissal, following 12 months of racist bullying by colleagues and a failure by senior managers to support him and treat his grievance seriously. Ahmed also succeeds in a complaint of harassment related to race and a complaint that his constructive dismissal was an act of direct race discrimination.

Having consulted the parties, the tribunal lists a first-stage remedy hearing. At this hearing, the tribunal will determine some of his non-pension losses and make findings on those matters that will assist the parties in calculating his pension loss for themselves and thereby promote settlement.

The first-stage remedy hearing is held on 1 May 2019, when Ahmed is 51. He gives evidence that he found no alternative work for a period of 12 months, but has just secured new employment as a manager in the NHS on a gross annual salary of £37,000. After deductions for income tax and NI contributions, this amounts to net pay of £28,697.

The tribunal decides that, during the period from 1 May 2018 to 1 May 2019, Ahmed made reasonable efforts to mitigate his loss and so this loss should be compensated in full.

In his new job, Ahmed has joined the 2015 section of the NHS pension scheme. This also has a CARE design. The retirement age for that scheme, once again, is his state pension age of 67. The tribunal finds that, whether we are speaking of the old LGPS job or the new NHS job, Ahmed would have wished to retire at the age of 67.

The tribunal decides that, if Ahmed not been constructively dismissed, he would have wanted to remain in his local government job and that he would have been promoted to a role earning a gross annual salary of £45,000 gross (or £34,137 net) with effect from 1 May 2020. The tribunal decides that he would have stayed in that role until the age of 57 (on 1 May 2025), but had only a 50% chance of completing the next ten years to retirement at 67 (on 1 May 2035); this is because of the impact of attempts to reduce the number of mid-level managers through IT reform and digitalisation of local government services.

The Tribunal finds that if he were to stay in local government until May 2025 then leave, he would not be able to find alternative employment with defined benefit pension rights.

Having heard evidence about the structure of NHS management roles and Ahmed's renewed vigour to further his career, the tribunal decides that he is likely to be promoted in his new job to a role paying a gross annual salary of £42,000 (£32,097 net) on 1 May 2021 and then further promoted to a role paying a gross annual salary of £45,000 (£34,137 net) on 1 May 2025. The tribunal notes that the process of IT reform and digitalisation is also proceeding apace in the NHS. It therefore decides that Ahmed has a 75% chance of staying in the new job until 1 May 2021, but then a 50% chance of making it to 1 May 2025 and only a 20% chance of staying until retirement on 1 May 2035.

The Tribunal finds that if he is to leave the NHS after May 2020 he will not be able to find alternative employment with defined benefit pension rights.

The percentage chances identified above represent the application of various Polkey/withdrawal factors based on the evidence given to the tribunal (which we have not described in detail) and submissions from the parties.

The Tribunal's findings that no alternative defined benefit pension rights will be available means that the withdrawal factors do not need to be adjusted to take account of the possibility of alternative pensionable employment.

The tribunal decides to treat it as a complex DB case because Ahmed will continue to experience a potentially substantial and quantifiable pension loss.

At the end of the first-stage remedy hearing, the tribunal issues a judgment in respect of part of the remedy. This is in the sum of £30,226.00:

Basic award for unfair dismissal: 24.5 x 508		£12,446.00
Compensatory award for unfair dismissal:		
Loss of statutory rights only		£500.00
Total award for unfair dismissal:		£12,946.00
Compensation for discrimination:		
Injury to feelings on termination	£16,000.00	
Interest thereon (May 2018 to May 2019) at 8%	£1,280.00	
Total award for injury to feelings		£17,280.00
Total:		**£30,226.00**

The tribunal decides not to award any sum for past loss of earnings at this stage, as it does not yet know what impact this will have on grossing up. It notes that the award for injury to feelings is no longer exempt from income tax.

Having consulted the parties, the tribunal gives Ahmed and his former local government employer 21 days to agree a figure for loss of earnings and loss of pension and, in the absence of agreement, to inform the tribunal if they wish to instruct an expert to assist in calculating his lost pension. However, the parties do not reach agreement. They also decide against instructing an expert. They return to the tribunal for a second-stage remedy hearing for these figures to be judicially determined (and, in the case of pension loss, by applying the seven steps model).

After hearing submissions from the parties, the tribunal approaches the supplemental points of remedy as set out below.

Past loss of earnings

1 May 2018 to May 2019	£30,737.00 *	
Interest thereon from mid-point date at 8%	£1,229.48	
Total		£31,966.48

* Ahmed's past loss of earnings are subject to recoupment.

Future loss of earnings

1 May 2019 to 1 May 2020		
Lost from old job	£30,737.00	
Earned from new job	£28,697.00	
Difference (one year)		£2,040.00
1 May 2020 to 1 May 2021		
Lost from old job	£34,137.00	
Earned from new job	£28,697.00	
Difference (one year)		£5,440.00
1 May 2021 to 1 May 2025		
Lost from old job	£34,137.00	
Earned from new job	£32,097.00	

Difference (four years x £2,040) £8,160.00

To keep the illustration simple, we have not applied *Polkey* to adjust the above sums to reflect the withdrawal factors of 75%, 50% and 20%. The tribunal would no doubt decide whether to do so after submissions from the parties.

However, we think it is worth providing one example of how an Ogden multiplier is used in a loss of earnings context. Let us assume that the tribunal does not adjust the figures for loss of earnings in the immediate two-year period (from 1 May 2019 to 1 May 2021), but decides to adjust the last figure (from 1 May 2021 to 1 May 2025) using an Ogden multiplier; this is because it is loss arising between two and six years in the future (when Ahmed will be aged between 53 and 57) and would ordinarily raise an issue about accelerated receipt. In fact, what the example shows is that a negative discount rate (close to zero), for loss in the mid-term, makes little overall difference to the award. The tribunal looks at the "at a glance" table in Appendix 2, dealing with loss of earnings for men using the minus 0.25% discount rate. Ahmed is 51 at the date of the remedy hearing. Taking a broad-brush approach, the tribunal decides that it is compensating him for loss of earnings from the age of 55. The multiplier is 3.99. Having regard to the modest amount involved and the fact that it has already addressed some contingencies besides mortality through use of *Polkey*/withdrawal factors, the tribunal declines to make any further adjustment to the multiplier. When applied to the multiplicand of £2,040, it produces a slightly amended figure for loss for the final period (from 1 May 2020 to 1 May 2024) of £8,139.60. This difference is about £20; that is all.

The tribunal makes no award for loss of earnings after 1 May 2025 because Ahmed's projected net annual earnings, at today's value, will be the same: £34,137.00.

In respect of loss of earnings, therefore, the tribunal's award is for the sum of £31,966.48 for past loss and the sum of £15,619.60 for future loss (subject to grossing up – see below). The latter figure is derived from £2,040 + £5,440 + £8,319.60.

Pension loss

In respect of pension loss, the tribunal follows the seven steps model.

***Step 1*: Identify what Ahmed's net pension income would have been at his retirement age if the dismissal had not occurred.**

The tribunal must take account of rights Ahmed has already accrued in the LGPS (both on a final salary and CARE basis) and the additional rights he would have accrued (on a CARE basis) if he had not been dismissed.

A statement from the pension scheme administrators is obtained, from which the tribunal can reach the following conclusions:

- Ahmed's accrued rights in the old LGPS scheme will produce a gross annual pension income of 21/60ths of his final salary. Because the tribunal found that Ahmed would have been earning £45,000 within two years of his resignation, his pension income would be 21/60 x £45,000, which, at today's value, is £15,750 per annum.

- Prior to his constructive dismissal, Ahmed had three years of membership of the CARE scheme as well. The accrual rate is 1/49th (or 2.04%) for each year of scheme membership. His gross annual salary at the time was £40,000 per annum, which means that he "banks" £816 per year. The pension statement has already taken account of CPI revaluation and informs us that the present-day value of these three banked slices is a gross pension income of £2,600.

- That means, but for the dismissal, Ahmed's accrued rights prior to dismissal would have produced a gross annual pension income of £15,750 plus £2,600, making a total of £18,350.

If Ahmed had remained in local government employment until reaching state pension age on 1 May 2035, he would have continued to accrue 1/49th of his salary on a CARE basis for each further year of service: a total of 17 more slices to bank. This would have resulted in further accrual of pension income as follows (some of these figures have been rounded):

- Two years (1 May 2018 to 1 May 2020): 2 x 1/49 x £40,000 = £1,632
- Five years (1 May 2020 to 1 May 2025): 5 x 1/49 x £45,000 = £4,592
- Ten years (1 May 2025 to 1 May 2035): 10 x 1/49 x £45,000 = £9,184

This last figure is subject to a withdrawal factor of 50% because of the finding that Ahmed had a 50% chance of staying in the LGPS until retirement. This means that the additional annual pension he would have derived from the final ten years is halved from £9,184 to £4,592.

The additional pension per annum from prospective service which Ahmed lost because of his constructive dismissal is therefore assessed as £1,632 + £4,592 + £4,592 = £10,816. Without expert evidence, the tribunal ignores the impact of post-2019 CPI revaluation on the three banked slices prior to the constructive dismissal and the 17 banked slices after dismissal.

In summary, if Ahmed had not been dismissed, his total gross pension income at retirement would have been £15,750 (accrued final salary) + £2,600 (accrued CARE) + £10,816 (prospective CARE), which is £29,166. (For the sake of simplicity, we have not included his nSP entitlement in this calculation. While it would increase the accuracy of calculating the overall net value of his pension benefits – both occupational and state – it must be borne in mind that we do not apply the age-related adjustment to the Ogden multiplier when compensating for loss of state pension.)

We use the HMRC calculator, taking care to confirm that Ahmed is now over state pension age so that NI contributions are ignored, using a default tax code. This produces a net pension income of **£25,834**.

***Step 2*: Identify what Ahmed's net pension income will be at his retirement age in the light of his dismissal.**

Ahmed experiences a substantial loss because his 21 years of accrued benefits in the LGPS final salary scheme are now pegged to gross annual salary at dismissal (£40,000) and not the gross annual salary he would have received if dismissal had not occurred and he had been promoted (£45,000). Those accrued rights are now worth 21/60 x £40,000, which is £14,000. The present-day value of his three banked slices in the CARE scheme is a gross pension income of £2,600. His accrued LGPS rights at dismissal will now produce a gross pension income of £14,000 plus £2,600, which is £16,600.

There are other pension rights to consider at Step 2, deriving from Ahmed's partially successful mitigation of loss through obtaining employment in the NHS. In the 2015 section of the NHS scheme, he gets an annual pension income based on 1/54th of pensionable earnings for each year of scheme membership, subject to the withdrawal factors explained above. The tribunal calculates Ahmed's NHS pension rights at age 67 as follows:

- 1 May 2019 to 1 May 2021: 2 x 1/54 x £37,000 = £1,370
  Reduction by 25% due to withdrawal factor £1,027.50
- 1 May 2021 to 1 May 2025: 4 x 1/54 x £42,000 = £3,111
  Reduction by 50% due to withdrawal factor £1,555.50
- 1 May 2025 to 1 May 2035: 10 x 1/54 x £45,000 = £8,333
  Reduction by 80% due to withdrawal factor £1,666.67

So, absent CPI revaluation, Ahmed's gross pension income from his NHS job will be £4,249.67.

Added together with his accrued LGPS pension, Ahmed's total gross pension income will be £20,894.67. For the sake of simplicity, we have not included his nSP in this calculation.

Using the HMRC calculator, while taking care to confirm that Ahmed is now over state pension age so that NI contributions are ignored, this equates to a rounded down net pension income of **£19,515**.

***Step 3*: Deduct the result of Step 2 from the result of Step 1, which produces a figure for net annual loss of pension benefits.**

£25,834 less £19,182 is **£6,652**. That is his projected annual loss from when he retires - our multiplicand.

***Step 4*: Identify the period over which that net annual loss is to be awarded, using the Ogden Tables to identify the multiplier.**

The tribunal makes the two-year age adjustment: Ahmed is deemed to be two years younger (49 instead of 51), with a retirement age two years earlier (65 instead of 67). But the "at a glance" extracts from the Ogden Tables at Appendix 2 have already factored that in and show that the correct multiplier is

22.68 (age 51 retiring at 67). The tribunal does not adjust the multiplier further on the basis that the withdrawal factors already deal adequately with non-mortality contingencies.

Step 5: Multiply the multiplicand by the multiplier, which produces the present capital value of that loss.

22.68 x £6,652 = **£150,867.36**.

Step 6: Check the lump sum position and perform a separate calculation if required.

No separate calculation is required. Both the 2014 LGPS scheme and the 2015 NHS scheme require the employee to commute some annual pension income to secure a lump sum. There are no lump sum rights on top of the annual pension. Because the tribunal has worked with uncommuted figures, it can safely ignore lump sum compensation.

Step 7: Taking account of the other sums awarded by the tribunal, gross up the compensation awarded.
The tribunal's total award before grossing up is as follows:

Unfair dismissal		
Basic award	£12,446.00	
Compensatory award (loss of statutory rights)	£500.00	
Total award for unfair dismissal:		£12,946.00
Compensation for discrimination		
Injury to feelings	£16,000.00	
Interest thereon	£1,280.00	
Total award for injury to feelings		£17,280.00
Past loss of earnings		
1 May 2017 to 1 May 2018	£30,737.00	
Interest thereon	£1,229.48	
Total		£31,966.48
Future loss of earnings		£15,619.60
Pension loss		£150,867.36
Total		**£228,679.44**

The injury to feelings award of £17,280 is now chargeable to tax, but £30,000 of the remainder is exempt as a termination payment. That means that **£198,679.44** of the tribunal award will be taxed as income in the 2019/20 tax year.
Information about Ahmed's circumstances shows that in that tax year he will also have taxable income from his new NHS job of £37,000. Using the *Finlay* table, the grossing up calculation is as follows:

	Other Income			**Taxable Tribunal Award**		
	Gross	***Tax***	***Net***	***Gross***	***Tax***	***Net***
PA (0%) to 12,500	12,500	0	12,500	0	0	0
BR (20%) the next 37,500	24,500	4,900	19,600	13,000	2,600	10,400
HR (40%) up to 100,000	0	0	0	50,000	20,000	30,000
NR (60%) from 100,001 to 125,000	0	0	0	25,000	15,000	10,000
HR (40%) 125,001 to 150,000	0	0	0	25,000	10,000	15,000
AR (45%) 150,001 upwards	0	0	0	242,326.25	109,046.81	133,279.44
TOTALS	37,000	4,900	32,100	355,326.25	**156,646.81**	198,679.44
*Amount to be added to taxable and non-taxable awards is £**156,646.81**						

The grand total of the tribunal's award is therefore as follows:

Total before grossing up	£228,679.44
Add tax from *Finlay* table	£156,646.81
Total after grossing-up:	**£385,326.25**
Less amount already awarded at first-stage:	£30,226.00
Balance outstanding:	**£355,100.25**

Accordingly, in a supplemental judgment, the tribunal awards Ahmed a further sum of £355,100.25.

Katarzyna – no age adjustment made – withdrawal factor – use of NEST calculator – includes loss of earnings

In this example, gross figures for annual salary have been converted into net figures for annual salary using the HMRC online calculator referred to in the Principles (https://www.gov.uk/estimate-income-tax), inputting the default income tax code. Salary and pensionable pay are treated as equivalent.

Katarzyna was born on 1 July 1984. She is now aged 34. On 1 July 2009, at the age of 25, she commenced work with an NHS hospital in England as a specialist clinical technician. She has always worked part-time, at 25 hours a week, which represents 66.66% (or 2/3rds) of a full-time (37½-hour) equivalent working week. She was paid at Band 6. This meant a pay range of between £28,000 and £37,000 for a 37½-hour week and between £18,666 and £24,666 for a 25-hour week. The net equivalents (after deductions for income tax and NI contributions) are between £22,577 and £28,697 for a 37½-hour week and between £16,230 and £20,310 for a 25-hour week.

A few years ago, Katarzyna was diagnosed with lupus. She is a disabled person within the meaning of the Equality Act 2010.

Katarzyna resigned on 1 July 2018, after nine years' service, because of a failure by hospital management to comply with the duty to make reasonable adjustments for her disability.

As at the date of her resignation, her gross annual salary was £20,000 (which nets down to £17,110) – the full-time equivalent was £30,000. At this point, she had accrued six years of service in the 2008 section of the NHS pension scheme (final salary design, 1/60ths accrual, with a normal retirement age of 65) and three years of service in the 2015 section of the NHS pension scheme (CARE design, 1/54ths accrual, with a normal retirement age that aligns with state pension age). Her state pension age is 68, which she reaches on 1 July 2052.

At a preliminary hearing by telephone, dealing with case management, the tribunal notes that Katarzyna was in a public sector DB scheme. It decides to list a hearing that, at this stage, deals with liability only. Orders are nonetheless made for the disclosure of pension-related information, so that the parties can prepare more informed schedules and counter-schedules of loss.

The liability hearing is held on 23 to 26 April 2019. The tribunal decides that Katarzyna was constructively dismissed, which was both unfair and an act of disability discrimination. No statutory cap applies. Having consulted the parties, the tribunal lists a first-stage remedy hearing. At this hearing, the tribunal will determine some of her non-pension losses and make findings on those matters that will assist the parties in calculating her pension loss for themselves and thereby promote settlement.

The first-stage remedy hearing takes place on 1 July 2019, when Katarzyna is just about to commence new employment. The tribunal makes the following findings:

- Katarzyna is unlikely to find other employment in her technical specialism. There are no alternative medical specialist employers in her local area, to which she is tied by family responsibilities.

- For the same reason, it is unlikely that, but for the dismissal, she would have changed employer. The need for adjustments to accommodate her disability added to her reluctance to change jobs. But for her dismissal, she would have wished to remain in work until 68, when she reached her state pension age; this is because she would have worked until the age when she could draw the bulk of her pension benefits without reduction.

- The technical nature of her NHS work limited Katarzyna's opportunity for career progression. She would have reached the top of her pay band in 2020 and have remained in that role until retirement: a final salary, at today's rates, of £24,666 for a 25-hour working week (or £37,000 for a full-time employee).

- Because of medical advances in the use of artificial intelligence to assist in making diagnostic assessments, the tribunal is reluctant to conclude that Katarzyna's job would have remained open to her until 2052. It recognises that there may have been further training opportunities for her and the chance to diversify in her technical specialism, but decides there is a 20% risk that her job might disappear. Also, although she successfully manages her symptoms, the tribunal also decides that there is a 30% chance that Katarzyna might lose her job through a medical incapability procedure. Applying a broad brush, it concludes that there is therefore only a 50% chance she would have remained in employment until reaching state pension age. We have not set out the evidence heard by the tribunal that was the basis for this conclusion; it is illustrative only.

- Since her constructive dismissal, Katarzyna initially found no paid work at all. However, she started an NVQ with a placement as a volunteer to gain experience. The tribunal finds that this represents reasonable steps to mitigate her loss. The award for past loss of earnings is therefore a year's net pay. This is a figure of £17,100, which will be subject to recoupment.

- The volunteering has led to Katarzyna finding work on similar hours with a gross annual salary of £12,000 (the net equivalent is £11,595). It is also anticipated that she will progress through promotion in such a new role, reaching her former pay grade within 12 years of her dismissal. Her loss of earnings will therefore be extinguished after 12 years. However, she is unlikely to find employment with another DB scheme. Any new job is far more likely to be in the private sector with auto-enrolled DC scheme benefits.

At the end of the first-stage remedy hearing, the tribunal issues a judgment in respect of part of the remedy. This is in the sum of £15,872:

Basic award for unfair dismissal: 9 x 508	£4,572.00	
Compensatory award for unfair dismissal:		
Loss of statutory rights only	£500.00	
Total award for unfair dismissal:		£5,072.00
Compensation for discrimination:		
Injury to feelings on termination	£10,000.00	
Interest thereon (July 2018 to July 2019) at 8%	£800.00	
Total award for injury to feelings		£10,800.00
Total:		**£15,872.00**

The tribunal decides not to award any sum for past loss of earnings at this stage, as it does not yet know what impact this will have on grossing up.

Having consulted the parties, the tribunal gives Katarzyna and her former NHS employer 21 days to agree a figure for loss of earnings and loss of pension and, in the absence of agreement, to inform the tribunal if they wish to instruct an expert to assist in calculating her lost pension. However, the parties do not reach agreement. They also decide against instructing an expert. They return to the tribunal for a second-stage remedy hearing for these figures to be judicially determined (and, in the case of pension loss, by applying the seven steps model).

After hearing submissions from the parties, the tribunal approaches the supplemental points of remedy as set out below.

Past loss of earnings

1 July 2018 to 1 July 2019	£17,100.00 *	
Interest thereon (from midpoint)	£684.00	
Total		£17,784.00

* Katarzyna's past loss of earnings are subject to recoupment.

Future loss of earnings

For the purposes of this example, we will assume that the tribunal calculates 11 years of future net lost earnings (taking account of likely pay progression) as being, at today's value, £195,000. After deducting the income Katarzyna will receive through mitigating her loss (£160,000), the tribunal awards her the sum of £35,000 for net loss of earnings. The tribunal applies the Ogden Tables and (for reasons of simplicity) we shall simply assume this increases the sum for future net loss of earnings to £37,000.

Pension loss

In respect of pension loss, the tribunal follows the seven steps model.

<u>Step 1</u>: Identify what Katarzyna's net pension income would have been at her retirement age if the dismissal had not occurred.

The tribunal must take account of the rights Katarzyna has already accrued in the NHS scheme (both on a final salary basis in the 2008 section and on a CARE basis in the 2015 section) and the additional rights she would have accrued (on a CARE basis in the 2015 section) if she had not been dismissed. A statement from the pension scheme administrators is obtained, from which the tribunal can reach the following conclusions:

- Katarzyna's accrued rights in the 2008 scheme can be calculated using either her part-time final salary (6/60 x her part-time final salary) or her full-time final salary (2/3 x 6/60 x her full-time final salary); the result will be the same. If she had not been dismissed, her part-time final salary, at today's value, would have been £24,666. So, her accrued final salary rights are 6/60 x £24,666, which is £2,466.

- Prior to her constructive dismissal, Katarzyna had three years of membership of the 2015 scheme as well. The CARE accrual rate is 1/54th (or 1.85%) for each year of scheme membership. Her gross annual salary at the time of dismissal was £20,000, so she would have "banked" a gross pension income of £370 (rounded down) for that year. The pension statement has already taken account of CPI revaluation and informs us that the present-day value of these three banked slices is a gross pension income of £1,775.

That means, but for the dismissal, Katarzyna's accrued rights prior to dismissal would have produced a gross pension income of £2,466 plus £1,775.

Katarzyna was 34 when she resigned. If she had remained in her NHS job until she reached state pension age of 68 on 1 February 2052, she would have continued to accrue 1/54th of her salary on a CARE basis for each further year of service: a total of 34 more slices to bank. From 2020, she would have been at the top of her pay scale. This would have resulted in further accrual of pension income as follows (these figures have been rounded):
Two years (1 July 2018 to 1 July 2020): 2 x 1/54 x £20,000 = £741
32 years (1 July 2020 to 1 July 2052): 32 x 1/54 x £23,333 = £13,828

Without expert evidence, the tribunal ignores the impact of post-2017 CPI revaluation on the three banked slices prior to the constructive dismissal and the 32 banked slices after dismissal. This last figure is subject to a withdrawal factor of 50% because of the earlier finding that Katarzyna had a 50% chance of staying with the NHS until retirement. This means that the additional annual pension she would have derived from this period is halved from £13,828 to £6,914.

The additional pension per annum from prospective service which Katarzyna lost because of her constructive dismissal is therefore £741 plus £6,914, which is £7,655.

In summary, if Katarzyna had not been dismissed, her total gross pension income at retirement would have been £2,466 (accrued final salary) + £1,775 (accrued CARE) + £7,655 (prospective CARE), which is **£11,896**. (For the sake of simplicity, we have not included her nSP entitlement in this calculation.)

The figure of £11,896 is beneath Katarzyna's personal allowance, so the gross sum and the net sum are the same.

Step 2: Identify what Katarzyna's net pension income will be at her retirement age in the light of her dismissal.

The statement from the pension scheme administrators confirms that Katarzyna's accrued rights in the 2008 section of the NHS scheme must now be calculated using her part-time final salary at dismissal, which is £20,000. Her accrued final salary rights are: 6/60 x £20,000. At present values, that is £2,000. We already have the present-day value of her three banked slices, which is a gross pension income of £1,775. Following her dismissal, Katarzyna's accrued rights from her NHS job will produce a gross pension income of £2,000 plus £1,775, which is £3,775.

Katarzyna has found paid employment from July 2019 after a year out of work. This new job only carries minimum auto-enrolment rights in a DC pension scheme. The tribunal notes that the minimum contribution levels required by auto-enrolment will be 5% employee contributions and 3% employer contributions. Taking a broad-brush approach to the profile of Katarzyna's gross income over the next 12 years, until her loss of earnings is extinguished, the tribunal decides to use these figures:

- Gross annual salary July 2018 to July 2019: nil
- Gross annual salary July 2019 to July 2020: £12,000
- Gross annual salary July 2020 to July 2030 (assumed average): £17,000
- Gross annual salary July 2030 to July 2052 (assumed average): £23,333

The tribunal calculates that this equates to an average salary, at today's value, of £21,070 over 33 years. It decides, in the interests of simplicity, to use the contribution rates that apply from April 2019. In the absence of any expert evidence, and having consulted the parties, the tribunal uses the NEST calculator to assess what pension this arrangement might generate at today's value. It takes care, when entering details, to adjust Katarzyna's date of birth so that she is treated as now starting 33 years' membership of an auto-enrolled pension with minimum contributions and an intention to take that pension at the age of 68. The option for a lump sum is declined, so that we compare like with like. The NEST calculator predicts a gross annual pension income from the age of 68 of £4,640. With nothing better to go on, the tribunal adopts this figure.

The tribunal also decides, in the interests of consistency, to apply a withdrawal factor of 30% to reflect the chance that Katarzyna might lose her job through a medical incapability procedure. That reduces the figure to £3,248.

In summary, the tribunal decides that, having been dismissed, Katarzyna's gross annual pension income will be £3,775 plus £3,248, which is **£7,023**.

The figure of £7,023 is, once again, beneath Katarzyna's personal allowance, so the gross sum and the net sum are the same.

Step 3: Deduct the result of Step 2 from the result of Step 1, which produces a figure for net annual loss of pension benefits.

£11,896 less £7,023 is **£4,873**. That is our multiplicand: the net loss of pension she will suffer each year from retirement.

Step 4: Identify the period over which that net annual loss is to be awarded, using the Ogden Tables to identify the multiplier.

The tribunal has heard medical evidence about the impact of Katarzyna's condition on her life expectancy. It declines to make the two-year adjustment to her age. (A reminder: this example is for illustrative purposes only.) Because the "at a glance" extracts from the Ogden Tables at Appendix 2 already incorporate that adjustment, it is necessary to treat her as aged 36 and retiring at 70 to get the unadjusted figure. The correct multiplier is 25.43.

Step 5: Multiply the multiplicand by the multiplier, which produces the present capital value of that loss.

25.43 x £4,873 = **£123,920.39**.

Step 6: Check the lump sum position and perform a separate calculation if required.

No separate calculation is required. Both the 2008 and 2015 sections of the NHS scheme require the employee to commute some annual pension income to secure a lump sum. There are no lump sum rights on top of the annual pension. Because the tribunal has used uncommuted figures, it can safely ignore lump sum compensation.

Step 7: Taking account of the other sums awarded by the tribunal, gross up the compensation awarded.

The tribunal's total award before grossing up is as follows:

Unfair dismissal		
Basic award	£4,572.00	
Compensatory award (loss of statutory rights)	£500.00	
Total award for unfair dismissal:		£5,072.00
Compensation for discrimination		
Injury to feelings	£10,000.00	
Interest thereon	£800.00	
Total award for injury to feelings		£10,800.00
Past loss of earnings		
1 July 2018 to 1 July 2019	£17,100.00	
Interest thereon (from midpoint)	£684.00	

Total	£17,784.00
Future loss of earnings	£37,000.00
Pension loss	£123,920.39
Total	£194,576.39

£30,000 of this is exempt as a termination payment. The rest (including injury to feelings) is taxable. That means that the balance of £164,576.39 will be taxed as income in the 2019/20 tax year.

Katarzyna's only other taxable income in 2019/20 is nine months from July 2019 to March 2020, when the tribunal assumes she will be earning a gross annual salary of £12,000 (or £1,000 for each month). The grossing up calculation using the *Finlay* table is as follows:

	Other Income			**Taxable Tribunal Award**		
	Gross	***Tax***	***Net***	***Gross***	***Tax***	***Net***
PA (0%) to 12,500	12,000	0	12,000	500	0	500
BR (20%) the next 37,500	0	0	0	37,500	7,500	30,000
HR (40%) up to 100,000	0	0	0	50,000	20,000	30,000
NR (60%) from 100,001 to 125,000	0	0	0	25,000	15,000	10,000
HR (40%) 125,001 to 150,000	0	0	0	25,000	10,000	15,000
AR (45%) 150,001 upwards	0	0	0	143,802.52	64,711.13	79,091.39
TOTALS	12,000	0	12,000	281,802.52	**117,211.13**	164,576.39
*Amount to be added to taxable and non-taxable awards is £**117,211.13**						

The grand total of the tribunal's award is therefore as follows:

Total award	£194,576.39
Add tax due on taxable element	£117,211.13
Total after grossing-up:	**£311,787.52**
Less amount already awarded at first-stage:	£15,872.00
Balance outstanding:	**£295,915.52**

Accordingly, in a supplemental judgment, the tribunal awards Katarzyna a further sum of £**295,915.52**.

Rosa – loss of pension rights that vary with period – apportionment of multiplier – pension loss from early age – withdrawal factors – enhancement on grounds of ill-health – use of NEST calculator – loss of lump sum – delay in payment of lump sum

In this example, gross figures for annual salary have been converted into net figures for annual salary using the HMRC online calculator referred to in the Principles (https://www.gov.uk/estimate-income-tax), inputting the default income tax code. Salary and pensionable pay are treated as equivalent. The main purpose of this example is to illustrate how the Ogden multiplier must be apportioned for variable periods of pension loss.

Rosa was born on 1 July 1982. She commenced employment with a major retail bank in London at the age of 25. The bank operated a DB pension scheme, which Rosa joined. The scheme provides for 1/80th of final salary for each year of service, up to a maximum of 40/80ths after 40 years' service, with a separate entitlement to a tax-free lump sum of three times the annual pension income (it was not necessary to commute the pension income to receive the lump sum). The scheme had a normal retirement age of 55, meaning that employees could retire from that age with an unreduced pension. The scheme also had ill-health benefits: someone who left the job on health grounds because they were unable to work would have 5/80ths added to their pensionable service.

Rosa was dismissed in January 2018, shortly after she told her employer she was pregnant. She was aged 35 at her dismissal and had just completed ten years' service. Rosa's normal retirement age under the DB scheme was 55, which she will reach on 1 July 2037. Her state pension age is 68, which she will reach on 1 July 2050. At the date of her dismissal, Rosa was paid a gross annual salary of £30,000. This was the top of her pay grade. After deductions for income tax and NI contributions, this amounts to net pay of £23,937 (this would be relevant when calculating loss of earnings).

At a preliminary hearing by telephone, dealing with case management, the tribunal notes that Rosa was in a private sector DB scheme. It therefore decides to list a hearing that, at this stage, deals with liability only. Orders are nonetheless made for the disclosure of pension-related information, so that the parties can prepare more informed schedules and counter-schedules of loss.

At the liability hearing in May 2019, Rosa succeeds in showing that her dismissal was unfair and an act of pregnancy discrimination. No statutory cap applies. Having consulted the parties, the tribunal lists a first-stage remedy hearing. At this hearing, the tribunal will determine some of her non-pension losses and make findings on those matters that will assist the parties in calculating her pension loss for themselves and thereby promote settlement.

The first-stage hearing is held on 1 October 2019, when Rosa is 37. The tribunal makes the following findings.

- Rosa was at the top of the relevant pay scale and further rises would have been cost of living only, if anything. The tribunal did not consider she would ever be promoted from her existing grade.

- Rosa's baby was born on 30 June 2018. She had been planning to take maternity leave of 12 months before returning to work on 1 July 2019, initially on a part-time basis (50%). She and her partner Sue had no plans for any more children.

- Sue is employed by the same bank, but in a much more senior role. Before the first-stage remedy hearing, Sue was offered a new role setting up a branch of the bank in New York. It was a five-year contract from July 2020 to the end of June 2025. Rosa has decided to accompany her. Sue's remuneration package is eye-wateringly high. If Rosa had still been employed by the bank, she could not have transferred there too. However, the bank has a scheme under which employees can take up to five years as a career break. They must resign but have a conditional right to return to their old job, or the nearest equivalent, on the same terms and conditions (including membership of the pension scheme). The tribunal decides that, but for the dismissal, Rosa would have stayed with the bank for the rest of her career. It also concludes that she would have moved with Sue to New York even if she had not been dismissed, taking the five-year career break, then returning to work full-time.

- Medical evidence shows that Rosa has a degenerative condition. The condition is likely to render her incapable of working beyond the age of 50. The tribunal concludes that she would have ended up taking ill-health retirement. The condition does not, however, affect her life expectancy.

- Rosa will not get a job with pension rights in New York. When she comes back to the UK in 2024, the tribunal considers it very unlikely she will get employment with a pension above and beyond that provided for by the auto-enrolment regime: probably a private sector role in administration, in which she will earn more than the qualifying amount for auto-enrolment purposes (the tribunal's estimate is a gross annual salary of £25,000).

Having consulted the parties, the tribunal gives Rosa and the bank 21 days to agree a figure for loss of earnings and loss of pension and, in the absence of agreement, to inform the tribunal if they wish to instruct an expert to assist in calculating his lost pension. However, the parties do not reach agreement. They also decide against instructing an expert. They return to the tribunal for a second-stage remedy hearing for these figures to be judicially determined (and, in the case of pension loss, by applying the seven steps model).

The following calculation deals only with loss of pension rights.

<u>Step 1</u>: Identify what Rosa's net pension income would have been at her retirement age if the dismissal had not occurred.

A statement from the pension scheme administrators is obtained, from which the tribunal can draw several conclusions. At the time of her dismissal, Rosa had worked for the bank for ten years and had therefore accrued 10/80ths of her final salary which is valued at £3,750. On the face of it she had a further 20 years of service to go until reaching 55, the normal retirement age under the scheme. This would have meant an annual pension of 30/80ths of final salary. The tribunal ignores cost of living rises on the basis that they are cancelled out by inflation so, at face value, if she had not been dismissed, the present-day value of Rosa's bank pension would have been 30/80 x £30,000, which is £11,250.

However, the tribunal makes several adjustments, to reflect the prospects of withdrawal from the pension scheme. It goes through it period by period:

- For the period from January 2018 to June 2019 (18 months), the tribunal accepts that, if Rosa had not been dismissed, she would have carried on working (or been on maternity leave) until 1 July 2018. This would have added 1.5/80ths to her pensionable service.

- For the period from July 2019 to June 2020 (one year), Rosa would have been working part-time. Under the DB scheme rules, this would have counted pro rata. This would have added 0.5/80ths to her pensionable service.

- For the period from July 2020 to June 2025 (five years), Rosa would have been on a career break with Sue in New York. No pension rights would have accrued in this period.

- Thereafter, Rosa would have been back in the UK and returned to full-time work with the bank. She could, in principle, have worked until reaching the age of 55 in July 2036 and then taken an unreduced pension. However, the tribunal decides that the likelier outcome is that she would have worked for the bank between July 2025 to June 2032 (seven years), having wanted to go back to her old job. Because of her medical position, she would have retired early, at the age of 50, in July 2032. The tribunal therefore adjusts the loss in this period by limiting it to 7 years (7/80ths), but adding 5/80ths for the ill-health retirement enhancement. That makes 12/80ths.

- The tribunal also decides, having heard evidence on the future of retail banking and increased automation, that there is only a 50% chance that Rosa's type of job will still be needed in 2025. The loss of 12/80ths for this final period is therefore reduced by 50% to 6/80ths.

This means that the calculation of pension loss at Step 1 is as follows:
- Accrued rights at dismissal: 10 x 1/80 x £30,000
- Dismissal to end of maternity leave: 1.5 x 1/80 x £30,000
- Return from maternity leave: 0.5 x 1/80 x £30,000
- Career break: Nil
- Return from career break and early retirement: 6 x 1/80 x £30,000

That is a total of 18 x 1/80 so Rosa's gross annual pension at retirement from age 50 is calculated to be 18 x 1/80 x £30,000 = £6,750

The figure of £6,750 is beneath Rosa's personal allowance, so the gross sum and the net sum are the same.

(In the interests of simplicity, the tribunal ignores Rosa's nSP entitlement, which would take it over her personal allowance (at today's rates) and require a small amount of "netting down". While including nSP would increase the accuracy of calculating the overall net value of Rosa's pension benefits – both occupational and state – it must be borne in mind that we do not apply the age-related adjustment to the Ogden multiplier when compensating for loss of state pension.)

Step 2: Identify what Rosa's net pension income will be at her retirement age in the light of her dismissal.

There are three different periods to consider:

(1) The first period is for when Rosa is between 50 and 55. Her actual pension benefits at age 50 will be nil, because there will be no pension entitlement from the bank or from any other job.

(2) The second period is for when Rosa is between 55 and 68, during which she can receive her deferred bank pension of £3,750 per annum.

(3) The third period is for when Rosa is 68 and above. As noted above, the tribunal has decided that, in 2025 at the age of 43, Rosa will find full time employment with auto-enrolment DC pension rights. In this hypothetical scenario, requiring a degree of speculation, the tribunal predicts a job paying (at today's value) a gross annual salary of £25,000. The tribunal's approach to withdrawal at Step 2 mirrors its approach at Step 1: it decides that Rosa will be unable to work in this new role beyond age 50. The auto-enrolment pension would not provide for any early retirement with enhanced benefits. It also decides that Rosa would wait until the age of 68 before accessing the additional pension generated by this job. Applying the Principles, the tribunal notes that this new role would involve employer contributions of 3% (£750) and employee contributions of 5% (£1,250) per annum. The NEST calculator estimates that, without taking 25% of the fund as a tax-free lump sum, seven years of these contributions would lead to a gross pension income, at today's value, of £2,650 from her state pension age of 68.

These figures are below Rosa's personal allowance, so do not need to be "netted down".

Step 3: Deduct the result of Step 2 from the result of Step 1, which produces a figure for net annual loss of pension benefits.

In Rosa's case, there are three multiplicands from three different ages:

(1) For the five years between ages 50 and 55, Rosa's net pension income from the bank would (but for the dismissal) have been £6,750. As it is, she will have no pension in this period. For this period, the multiplicand is £6,750.

(2) For the 13 years between the ages of 55 and 68, the multiplicand changes. Rosa's bank pension of £3,750 will now be in payment. Her annual loss for this period – the multiplicand – is £6,750 less £3,750, which is £3,000.

(3) From the age of 68 (when she decides to take her auto-enrolled pension) until the day she dies, Rosa's annual loss reduces to £6,750 less £3,750 less £1,280. The multiplicand for this period is £1,720.

Step 4: Identify the period over which that net annual loss is to be awarded, using the Ogden Tables to identify the multiplier.

A simplistic approach would be to say that Rosa will lose five lots of £6,750 for period (1), 13 lots of £3,000 for period (2) and whatever number of lots of £1,720 until she dies for period (3). The Ogden Tables will inform and improve these multipliers and take account of the negative discount rate.

At the date of the hearing, Rosa is 37. Her degenerative condition does not adjust her life expectancy. The tribunal proceeds with the usual approach of adjusting her age so that she is treated as being 35 at the hearing, with the three periods of loss now being:

(1) The five years between ages 48 and 53 (loss from age 48);
(2) The 13 years between ages 53 and 66 (loss from age 53); and
(3) Her loss from age 66.

But her loss itself starts (or, rather, is now deemed to start) at the age of 48.

The "at a glance" extracts in Appendix 2 provide a multiplier for loss of pension for a woman aged 35 at the minus 0.25% discount rate, but not for any retirement age so low. Having heard submissions from the parties, the tribunal's best estimate is to use a multiplier of 43.16.

It would be wrong for the tribunal to apply the multiplier of 43.16 to each multiplicand separately. It would have the effect of compensating Rosa for the loss of £6,750 per annum for the rest of her life (when that loss will last for only five years) and for the loss of £3,000 per annum for the rest of her life (when it will only last for 13 years). Instead, the tribunal needs to adjust the multiplier of 55 using the "apportionment method" described at paragraph 22 of the explanatory notes to the Ogden Tables.

We must start with Table 2 of the Ogden Tables. This provides multipliers for pecuniary loss for life for females. A 34-year old has a life expectancy of a further 55.69 years (using the column for a discount rate of 0% gives the actual

life expectancy). In other words, we can infer from Ogden Table 2 that Rosa will live to the age of 89.69. This means that, if Rosa draws her bank pension from the (deemed) age of 48, she will be drawing it for 41.69 years. That is the assumed period of her pension loss in retirement, even though she experiences that loss at different levels across three periods.

Next, we turn to Table 28. This is the table dealing with multipliers for pecuniary loss for a term certain. We need to find a multiplier for a term certain of 41.69 years. Table 28 tells us that, for a term certain of 41 years, the multiplier is 43.18, and that, for a term certain of 42 years, the multiplier is 44.29. The tribunal decides that a suitable midway multiplier for a term certain of 41.69 years is 43.74.

However, this multiplier of 43.74 needs to be split, so that each segment of the three periods of loss is represented by a figure. This is done as follows:

- The first five years of loss (between the deemed ages of 48 and 53) is represented by a multiplier for a term certain of five years, which is 5.03.

- To get the multiplier for the next 13 years of loss (between the deemed ages of 53 and 66), we need to identify the multiplier for a term certain of 18 years (which is 18.41) and subtract the multiplier for a term certain of five years (which is 5.03). This gives us a multiplier of 13.38.

- To get the multiplier for the final 23.69 years of loss (between the deemed ages of 66 and 89.69), we need to identify the multiplier for a term certain of 41.69 years (which, as we have already established, is 43.74) and subtract the multiplier for a term certain of 18 years (which is 18.41). This gives us a multiplier of 25.33.

Each of those smaller segmented multipliers can be shown as a percentage or fraction of the whole; so, for the first five years, the segmented multiplier of 5.03 is 11.5% of the figure of 43.74; for the next 13 years, the segmented multiplier of 13.38 is 30.6% of the figure of 43.74; and, for the final period of 23.69 years, the segmented multiplier of 25.33 is 57.9% of the figure of 43.74.

The tribunal's multiplier of 43.16 can now be split up in identical proportions to the way in which the Table 28 multiplier has been treated above. So: the first five-year period is now represented by a multiplier of 4.96 (which is calculated by taking 11.5% of 43.16); the next 13 years is now represented by a multiplier of 13.21 (which is calculated by taking 30.6% of 43.16); and the final period of 23.69 years is now represented by a multiplier of 24.99 (which is calculated by taking 57.9% of 43.16).

The tribunal does not discount those multipliers further, being content that contingencies other than mortality are adequately covered by the withdrawal factors considered at Steps 1 and 2.

<u>Step 5</u>: Multiply the multiplicand by the multiplier, which produces the present capital value of that loss.

The multiplicand for each segment of life in retirement past the deemed age of 48 is now multiplied by the appropriate segmented multiplier to calculate the lost pension income for each period. The total of those losses represents the full sum of lost pension income.

(1) Deemed ages 48 to 53 (five years): £6,750 x 4.96	£33,480.00
(2) Deemed aged 53 to 66 (13 years): £3,000 x 13.21	£39,630.00
(3) Deemed ages 66 to 89.69 (23.69 years): £1,720 x 24.99	£42,982.80
Total	**£116,092.80**

Rosa's net loss of pension income is therefore £116,092.80.

Step 6: Check the lump sum position and perform a separate calculation if required.

Here, we revert to Rosa's true age. The two-year age adjustment has no application to lump sums which, by their nature, are received once and do not depend on longevity in retirement.

As matters stand, Rosa's lump sum at age 55 will be three times her gross annual pension income: 3 x £3,750 = £11,250. As noted above, to ensure that we are comparing like with like, we will assume that Rosa does not opt to take 25% of the pension fund she built up from auto-enrolment as a tax-free lump sum.

If there had been no dismissal (and allowing for the withdrawal factors discussed above), Rosa's gross pension income would have been £6,750, and her lump sum would have been three times that amount, which is £20,250. Rosa would have received that lump sum at the age of 50 when taking early retirement on the grounds of ill-health.

It follows that Rosa's dismissal has caused a £9,000 shortfall in her lump sum and has also deprived her of the opportunity to invest £20,250 over the five-year period between ages 50 and 55.

Dealing first with the £9,000 shortfall. Rosa will receive her compensation from the tribunal at the age of 36, which is earlier receipt by 14 years than if dismissal had not occurred. Using Ogden Table 27, the tribunal selects a multiplier of 1.0357. That increases the sum awarded to £9,321.30 (a negative discount rate assumes that money invested will shrink compared to price inflation, not grow, and so its application will increase the overall sum).

As for the lost opportunity to invest £20,250 over five years, the tribunal has no evidence about anticipated investment performance but wishes to award something for this loss. It assumes an annual rate of return of 3%. An internet based compound interest calculator shows that compound interest for 5 years at 3% per annum would amount to £3,272,74. This is a loss which Rosa will experience at age 55; she is currently 37. Using the current discount rate, the

tribunal consults Ogden table 27 for a term certain of 18 years and applies a multiplier of 1.0461, making an award of £3,423.61.

The total award for loss of Rosa's net pension income, therefore, is:

£116,092.80 + £9,321.30 + £3,423.61= **£128,837.71**

Step 7: Taking account of the other sums awarded by the tribunal, gross up the compensation awarded.

No calculations are shown for this step, because we have not set out Rosa's loss of earnings.

7. Loss of death-in-service benefit

This example relates to paragraphs 5.68 to 5.70 of the Principles.

Adrian – DB scheme – loss of death-in-service benefit

Adrian, aged 45 at dismissal and a smoker, has been unlawfully dismissed from employment that included membership of a DB pension scheme. The scheme provided for a death-in-service benefit of twice his annual salary (which was £100,000). Adrian has lost this benefit in consequence of his dismissal.

Having heard evidence, the tribunal decides that Adrian would have continued in employment until the age of 70. Consequently, if Adrian wishes to purchase level term insurance, this would be over a 25-year term. At this stage, he has made enquiries about taking out life insurance that would pay out £200,000 in the event of his death before age 70. There may be other specific factors in relation to his lifestyle which may render cover more expensive but, leaving it at his cigarette consumption, a wide range of total cost of policies can be found online. They vary from discount brokers at the cheaper end of the market, advisory brokers in the middle range and direct purchase from insurers and banks at the expensive end. The total cost of premiums over the life of the policy varied from £13,000 to £20,000.

The policy premium would normally be paid by monthly instalments. There will therefore be an element of advance payment discount to be deducted from the total of the monthly premiums. It may also be possible to tailor the policy to provide for an increasing lump sum to keep step with projected rising earning levels. It is an area where the parties might seek some expert input.

Appendix 4
Glossary of Acronyms

AA	Annual Allowance
AVC	Additional Voluntary Contributions
BSP	Basic State Pension
CARE	Career Average Revalued Earnings
COPE	Contracted Out Pension Equivalent
CPI	Consumer Price Index
DB	Defined Benefit
DC	Defined Contribution
DWP	Department for Work and Pensions
EAT	Employment Appeal Tribunal
EqA	Equality Act 2010
ERA	Employment Rights Act 1996
GAD	Government Actuary's Department
GRB	Graduated Retirement Benefit
HMRC	Her Majesty's Revenue and Customs
ILGS	Index-linked Government Stock
ITEPA	Income Tax (Earnings and Pensions) Act 2003
LGPS	Local Government Pension Scheme
LTA	Lifetime Allowance
MFR	Minimum Funding Requirement (now, Statutory Funding Objective)
NEST	National Employment Savings Trust
NI	National Insurance
nSP	New State Pension
ONS	Office for National Statistics
P60	End-of-year certificate of income tax and NI paid
PCSPS	Principal Civil Service Pension Scheme
PENP	Post Employment Notice Pay
PPO	Periodical Payments Order
S2P	State Second Pension
SERPS	State Earnings-related Pension Scheme
SFO	Statutory Funding Objective
SPPA	Scottish Public Pensions Agency

Appendix 5

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