

A Practical Introduction to Noise Induced Hearing Loss and Tinnitus Claims

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Noise Induced Hearing Loss and Tinnitus





Technical and Difficult





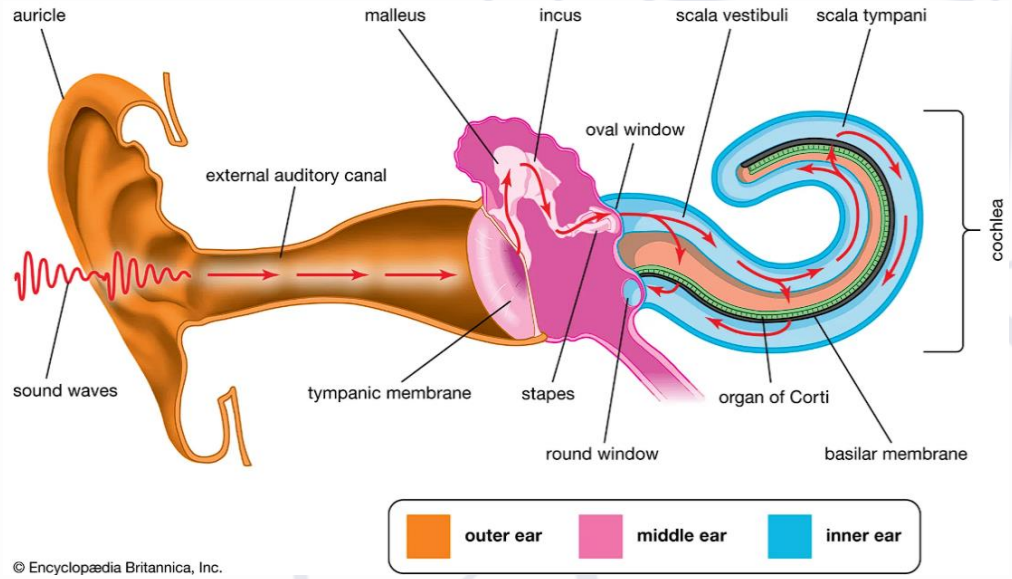
Noise Induced Hearing Loss and Tinnitus

- **Measurements?**

- dB (Decibels): measurement of sound pressure or power.
- dB(A): refers to decibels (dB) measured using the A-weighting filter, which adjusts the measurement to reflect the human ear's sensitivity to different sound frequencies, giving less weight to very low and very high frequencies and more weight to middle frequencies. This is the standard measurement used for assessing environmental noise, noise pollution, and the risk of hearing damage.
- dB LAeq: A-weighted equivalent continuous sound pressure level over a specific time period, representing the total sound energy as a single number. It is calculated by integrating fluctuating noise levels and averaging the energy, with the "A" in LAeq referring to A-weighting, which adjusts the sound level to mimic human hearing sensitivity. This is a key metric in noise regulations, used for assessing noise exposure in workplaces and for environmental noise control.
- dB(C): a measurement of sound pressure level that emphasizes low-frequency sounds and is used to assess impulsive or impact noise, such as those from explosions or heavy machinery, which are crucial for workplace safety assessments under regulations like the UK's Control of Noise at Work Regulations 2005. Unlike dB(A), which measures average sound exposure and aligns with human hearing at lower volumes, C-weighting is more sensitive to the high power of low-frequency components and gives a more accurate reading of these peak levels.
- LEP,d: Daily Personal Exposure Level is a worker's total noise exposure at work normalized to a standard 8-hour working day.
- LEP,w: Weekly Personal Exposure Level is a worker's total noise exposure at work normalized to a standard 40-hour working week

Noise Induced Hearing Loss

- What is NIHL: Permanent or temporary hearing impairment, caused by damage to the sensory hair cells in the inner ear (basilar membrane) from loud sounds



Noise Induced Hearing Loss

- Other Causes of Hearing Loss:

- Sensorineural :
  - Aging
  - Genetics
  - Health Conditions, stroke, diabetes, cardiocascular disease, high blood pressure
  - Infections: meningitis, mumps, measles, cytomegalovirus
  - Ototoxicity from Drugs: opiates, chemotherapy, antibiotics

- Conductive Hearing Loss
  - Earwax
  - Infections
  - Perforated Eardrum



Tinnitus

- Phantom sounds such as ringing, buzzing, humming, hissing, whistling, or roaring
- Rhythmical/Pulsing sounds that beat in time with your heart
- Can affect one or both ears
- Constant or can come and go

- Not just caused by noise – AAHL; ear infections; earwax; medical conditions; and medications

- Subjective – depends entirely on pursuers evidence



Noise Induced Hearing Loss and Tinnitus

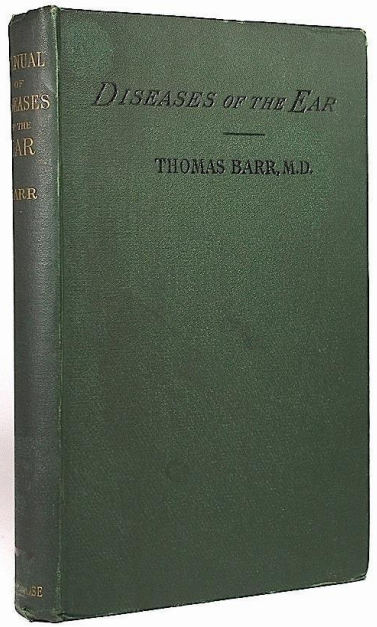
Different Causes

Types of Noise Exposure

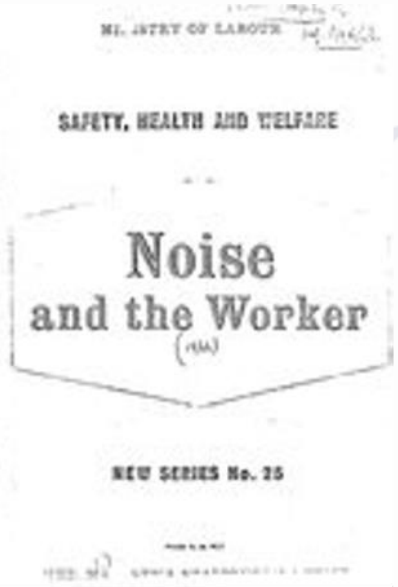
- Long Term High Levels of Background Noise – i.e. working in a factory or using power tools
- Single Incidence of Loud Noise ("sonic shock") - Percussionist
- Military Claims: Mixture of both, high levels of noise and sonic shock type exposure from small arms/artillery/other projectile weapons

- Trauma

• Guilty Knowledge of the risks of Noise Exposure



- 1886: Dr Thomas Barr, Glasgow University: *Enquiry into the effects of loud sounds upon the hearing of boilermakers and others who work amid noisy surroundings*
- 1963: Ministry of Labour publication: "Noise and the Worker" – starting point
- 1972 Code of Practice for Reducing the Exposure of Employed People to Noise
- *Thompson v Smiths Shiprepairers (North Shields) Ltd [1984] 1 QB 405* – General Industry from 1963 based on above publication
- *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd*. [1968] 1 W.L.R. 1776: Shipyard knowledge from 1944
- British Rail knowledge of noise hazards for footplate workers from internal documents dating earlier (1956 per Kellett)



Legal Framework

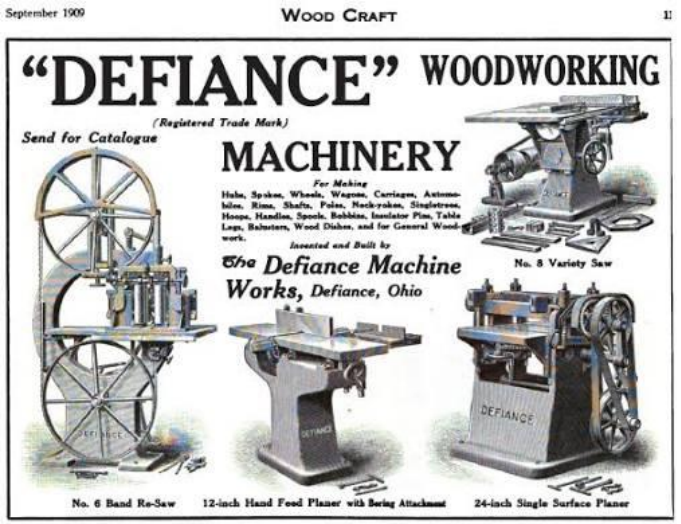
- Common Law Duty of Care (pre-1 January 1990):
- s.29 of the Factories Act 1961 (safe place of employment)
- Noise at Work Regulations 1989
- Control of Noise at Work Regulations 2005
- Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007/3075



Legal Framework

- Pre-Jan 1990 – some industry specific regulations
- Agriculture (Tractor Cab) Regulations 1974 (90dB(A))
- Woodworking Machine Regulations 1974 (90dB(A))







Legal Framework

- Common Law: Negligence
- 1972 Code of Practice for Reducing the Exposure of Employed People to Noise
- Exposure Limit: 90 dB(A) over 8 hour working day
- Equal Energy Trading: i.e. higher level of noise then exposure limited to shorter time
- Peak Noise Ceiling: 135 dB

Legal Framework

- Common Law: Negligence

- 1972 Code of Practice level (90dB(A) applied in **Baker v Quantum Clothing Group Limited [2011] UKSC 17**





Legal Framework

- **Noise at Work Regulations 1989**

- First Action Level: 85dB(A)
- Peak Action Level: 200 pascals (140dB SPL (Sound Pressure Level)
- Second Action Level: 90db(A)

Legal Framework

- **Noise at Work Regulations 1989**

- Reg 4*(1) Every employer shall, when any of his employees is likely to be exposed to the first action level or above or to the peak action level or above, ensure that a competent person makes a noise assessment which is adequate for the purposes—*

  (a) of identifying which of his employees are so exposed; and

  (b) of providing him with such information with regard to the noise to which those employees may be exposed as will facilitate compliance with his duties under regulations 7, 8, 9 and 11.

(2) The noise assessment required by paragraph (1) shall be reviewed when—

(a)there is reason to suspect that the assessment is no longer valid; or

(b)there has been a significant change in the work to which the assessment relates; and, where as a result of the review changes in the assessment are required, those changes shall be made.

- Reg 6: *Every employer shall reduce the risk of damage to the hearing of his employees from exposure to noise to the lowest level reasonably practicable.*

- Reg: 7: *Every employer shall, when any of his employees is likely to be exposed to the second action level or above or to the peak action level or above, reduce, so far as is reasonably practicable (other than by the provision of personal ear protectors), the exposure to noise of that employee.*

Legal Framework

- **Noise at Work Regulations 1989**

- Reg 8: Hearing Protection
- Reg 9: Ear Protection Zones
- Reg 10: Maintenance and Use of Equipment
- Reg 11: Provision of Information to Employees

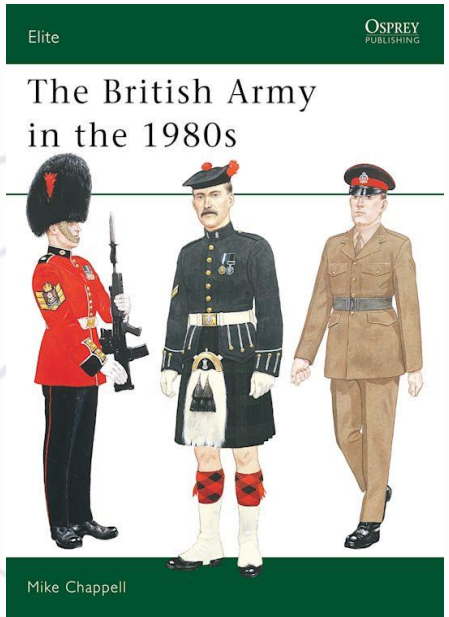
Legal Framework

- **Noise at Work Regulations 1989**

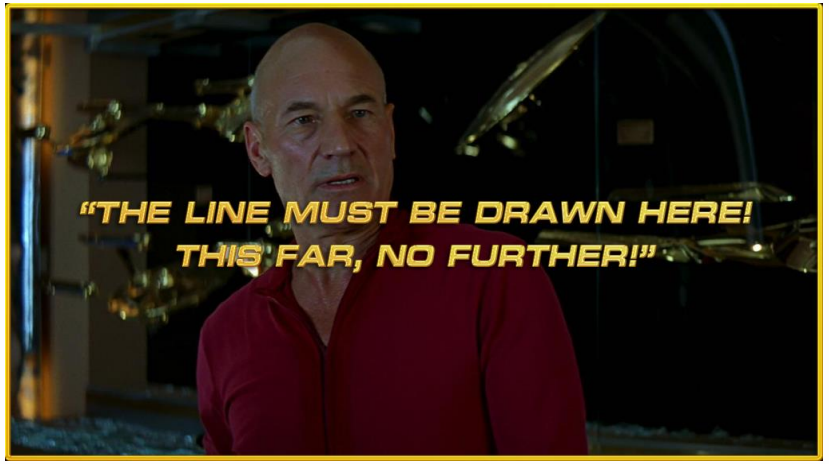
- Reg 3: Disapplied the regulations to ships generally and aircraft/hovercraft moving under their own power
- Reg 14: Specific sections relation to MOD



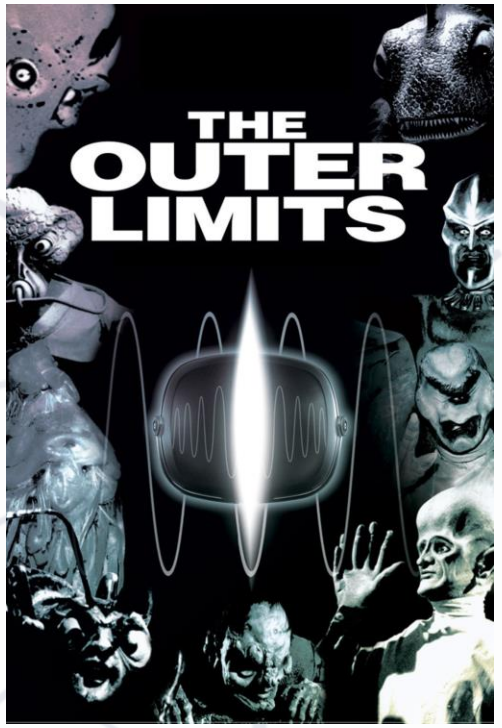




Legal Framework



- Control of Noise at Work Regulations 2005
- Lower Exposure Action Levels
  Daily or weekly personal noise exposure: 80dB(A)
  Peak Sound Pressure of 135 dB(C)
- Upper Exposure Action Levels
  Daily or weekly personal noise exposure: 85dB(A)
  Peak Sound Pressure of 137 dB(C)
- Exposure Limit Values
  Daily or weekly personal noise exposure: 87dB(A)
  Peak Sound Pressure of 140 dB(C)
- When applying Limit Values – take account of hearing protection but not when assessing Action Levels



Legal Framework

- **Control of Noise at Work Regulations 2005**

- Reg.5: Duty to Risk Asses
- Reg 6: General Duty to Reduce insofar as reasonably practicable
- Reg 7: Hearing Protection
- Reg 8: Maintenance and Use of Equipment
- Reg 9: Health Surveillance
- Reg 10: Training

Legal Framework

- **Control of Noise at Work Regulations 2005**

- **Regulation 6:**

Elimination or control of exposure to noise at the workplace

6.—(1) The employer shall ensure that risk from the exposure of his employees to noise is either eliminated at source or, where this is not reasonably practicable, reduced to as low a level as is reasonably practicable.

(2) If any employee is likely to be exposed to noise at or above an upper exposure action value, the employer shall reduce exposure to as low a level as is reasonably practicable by establishing and implementing a programme of organisational and technical measures, excluding the provision of personal hearing protectors, which is appropriate to the activity.

Noise Induced Hearing Loss and Tinnitus – Contributory Negligence

- Can be contributory negligence, 2005 Regs also put duties on employees to wear supplied hearing protection – s.8(2):

(2) Every employee shall—

(a)make full and proper use of personal hearing protectors provided to him by his employer in compliance with regulation 7(2) and of any other control measures provided by his employer in compliance with his duties under these Regulations; and

(b)if he discovers any defect in any personal hearing protectors or other control measures as specified in sub-paragraph (a) report it to his employer as soon as is practicable.

25%: Doyle v Ag Gen for Scotland [2013] CSOH 164



Legal Framework

- **Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007/3075**

- Broadly similar to the 2005 regulations

- **BUT** this is subordinate legislation made in terms of the Merchant Shipping Act 1995.

- Not covered by s.69 the Enterprise and Regulatory Reform Act 2013



Legal Framework

- **Military Claims**

- Crown Proceedings Act 1947

  s.10: bars tort claims for members of armed forces

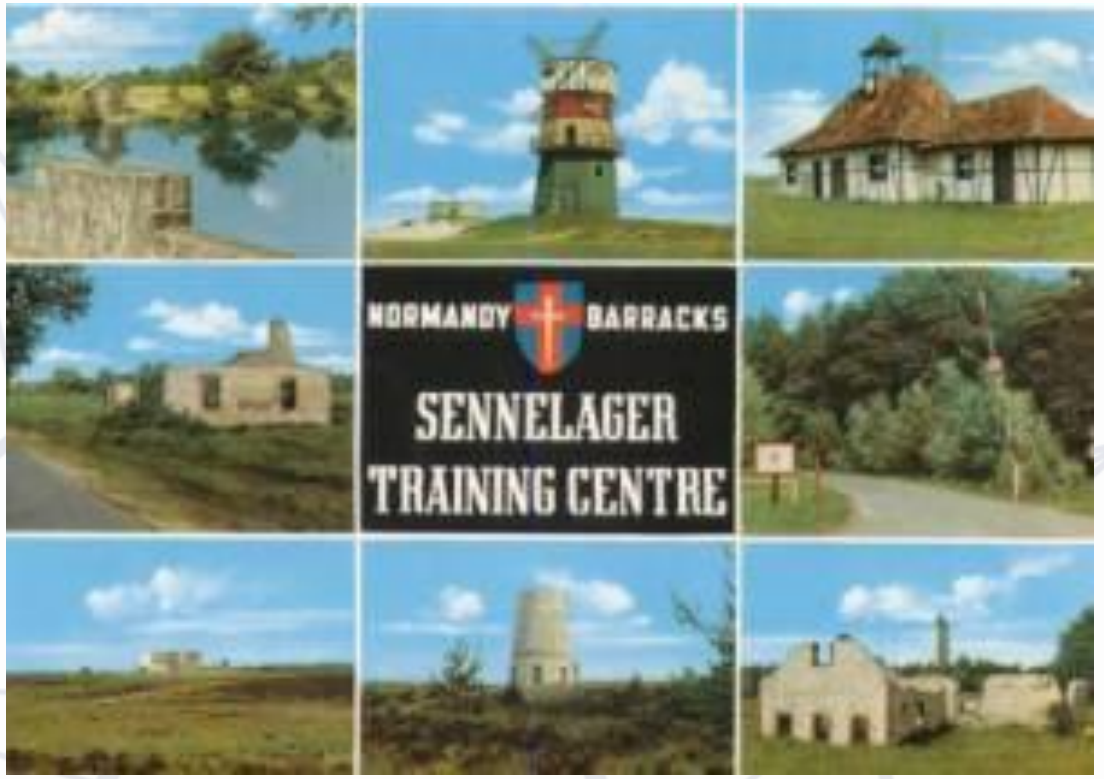
- Crown Proceedings (Armed Forces) Act 1987

  Repeals s.10 of 1947 act
  Into Force: 15 May 1987
  NOT retrospective



Legal Framework

- **Military Claims**
- Combat Immunity Defence
- Matrix Agreement – open till 31 January 2027 – waives certain defences – offset is damages awarded in line with a structured formula



Breach of Duty



- Beware the non-causative breach!
- Lambert v Proserve UK Limited ASPIC, Sheriff Braid [2019] SC EDIN 72
- No risk assessment was carried out and no steps taken in terms of the regulations
- Para [55]: *No evidence was led of any steps taken by the defender to comply with its duties under the regulations. Accordingly, the defender was in breach of its duty of care, inasmuch as the prudent employer would have complied with the Control of Vibration at Work Regulations 2005 and the defender did not.*
- But no evidence of exposure over the lower action level

Legal Framework

- Para [57] *Counsel for the pursuer submitted that causation did not have to be proved, but that it was sufficient to establish an increased risk of HAVS, amounting to material contribution.....It is a step too far to say that simply because the defender failed to carry out a risk assessment, the risk to the pursuer increased; or that because there was a risk (namely the risk which necessitated the risk assessment in the first place) therefore causation must be held to be established wherever an employee develops HAVS*

- Still require to prove level of exposure was negligent

Noise Induced Deafness and Tinnitus

- Guidelines

- Coles, Lutman and Buffin (CLB): Guidelines on the diagnosis of noise-induced hearing loss for medicolegal purposes (2000) (*approach used in Baker v Quantum Clothing at first instance not departed from or adversely commented on by Supreme Court*)

- Lutman, Coles and Buffin (LCB): Guidelines for quantification of noise-induced hearing loss in a medicolegal context (2015) (update on the 2000 guidelines)

- Moore, Lowe and Cox (MLC): Guidelines for Diagnosing and Quantifying Noise-Induced Hearing Loss (2022) *(appropriate for military claims)*

Noise Induced Deafness and Tinnitus

- Guidelines

  MLC more permissive threshold for diagnosis – weighting for impulsive noises (military exposure and intense tones) – Noise Immision Levels

- Rebuttal Study by Lutman, De Carpentier and Green – found the MLC guidelines had a false positive rate higher than 70%

- Sidestepped in Barry v Ministry of Defence [2023] EWHC 459 – had NIHL either way so no need to decide on differing methodologies

- MLC Rejected in Cook v Ketson (County Court)

- Anecdotally has been accepted in other County Court cases

- Clarke v Pegasus Heating Service Limited & Others, Sheffield CC, 14 July 2023 – halfway house – CLB methodology can be supplemented by considering the MLC (more recent data set)

Noise Induced Deafness and Tinnitus

- Abbott v MOD [2026] EWHC 941 (KB)

- Group of test cases for military deafness cases: originally 6, 2 settled, 2 abandoned, 2 decided
- Variety of issues before the court
  - The reliability of military audiometry;
  - The appropriate method for the diagnosis and quantification of military noise-induced hearing loss;
  - Latency;
  - Cochlear synaptopathy;
  - Tinnitus;
  - De Minimis;
  - Assessment of damages for future loss of earnings.

- **Judgement is 199 pages long!!!**

Noise Induced Deafness and Tinnitus

- Abbott v MOD [2026] EWHC 941 (KB)
- Court to consider 4 different methodologies

  - The M-NIHL 2020 method
  - The rM-NIHL 2022 method
  - The MLP(18) method

  - CLB (Coles, Lutman and Buffin)

Noise Induced Deafness and Tinnitus

- Abbott v MOD [2026] EWHC 941 (KB)

Court Rejected:

- The M-NIHL 2020 method – superseded by the rM-NIHL 2022 method, evidence from Prof Moore was could look back at M-NIHL 2020 if rM-NIHL 2022 not met.

*"**350.** I unhesitatingly reject the suggestion that, all that notwithstanding, it might in certain cases be reasonable, if a case did not receive a diagnosis under rM-NIHL, to go back to the original method on the basis that it has a positive predictive value or 'PPV' greater than 0.5 (which, Prof. Moore said, indicates the balance of probabilities was met.). It was deficiencies in the original method, notably its tendency to produce false positives, that prompted the revised method and it would be nonsensical, if not improper, to seek to advance a case on the basis of what has been shown to be a deficient test, merely because the better test did not produce the desired outcome."*

Noise Induced Deafness and Tinnitus

- Abbott v MOD [2026] EWHC 941 (KB)

Court Rejected:

- The MLP(18) method: AI based methodology – trained using audiograms from people claiming for NIHL with a control of people with no significant noise exposure.
- Prof. Moore in evidence was unable to explain how MLP(18) got it's results
- Mr Zeitoun, ENT Consultant for one of the claimants conceded he did not understand and therefore did no use MLP(18)

Noise Induced Deafness and Tinnitus

- Abbott v MOD [2026] EWHC 941 (KB)

Court Rejected:

- The MLP(18) method

"***356.*** *In my judgment, that inability to understand how a result was obtained, to interrogate the method to reveal its workings, makes MLP(18) entirely unsuitable as a means of establishing a case in litigation. For a judge to accept a diagnosis on the basis of MLP (18) would be a complete dereliction of duty. Unless the Court could be satisfied, on evidence, that the method was entirely reliable in every case, then it has at least to be possible for a Court to understand how the method produces the result where the outcome is disputed. The alternative would, furthermore, make an appeal against the conclusion impossible on any ground other than the total absence of underlying analysis, because the appellate Court would be equally unable to test the reasoning on which the conclusion was based.*

Noise Induced Deafness and Tinnitus

- Abbott v MOD [2026] EWHC 941 (KB)
- CLB vs rM-NIHL 2022 method: Court preferred rM-NIHL 2022 method:

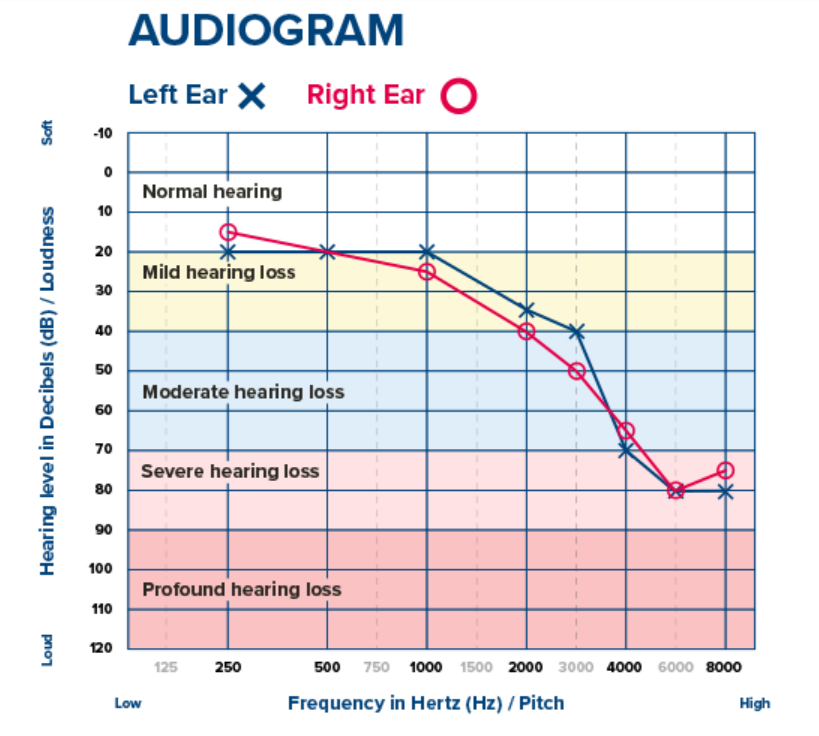
"***418.*** *I conclude, on the basis of all the evidence I have heard, that Mr Steinberg is right when he submits that military NIHL can present without a CLB notch/bulge and the absence of a notch does not exclude NIHL, that*
military noise commonly affects hearing at 8 kHz and this can erase or disguise a notch or bulge; and that military impulse noise tends to produce a different and more variable audiometric pattern than steady state noise.

- ***419.*** *It follows, first, that the original M-NIHL method and the MLP(18) method should not be relied on in medico-legal work (see [346] above and following; second, that CLB is not generally suitable in military cases and third that the rM-NIHL method is the method to be preferred. A proper diagnosis of NIHL depends on the careful application of each element of the rM-NIHL test."*

Noise Induced Deafness and Tinnitus

- Application of the CLB guidelines
- Requirement for a notch to establish NIHL
- No notch = AAHL
- Pollock v Marshall & Anderson Limited and Another [2026] SC EDIN 61





Noise Induced Hearing Loss and Tinnitus



- **Causation – Sonic Shock**

- Grindleford Criteria: Parker, W. A. E., Parker, V. L., Parker, G., & Parker, A. J in Acoustic shock: an update review. The Journal of Laryngology & Otology 2020 - updated paper following *Royal Opera House Covent Garden Foundation v Goldscheider* [2019] EWCA Civ 711.
- Academic Criticism exists
- Considered in Bevan v Ministry of Defense [2025] EWHC 1145 (KB)

Noise Induced Hearing Loss and Tinnitus



- **Causation – Sonic Shock**

- Grindleford Criteria:

G1 - There must be a defined acoustic incident (which need not be negligent)
G2 - Ear symptoms should start straight away or shortly afterwards
G3 - Ear symptoms should be outside physiological or startle responses
G4 - Ear symptoms should be experienced in or arise from the exposed ear(s)
There may be significant psychological overlay or relationship to illness behaviour

Noise Induced Hearing Loss and Tinnitus

- **Bevan v MOD**

- Not originally brought as an acoustic shock case
- Defense expert was one of the authors of Grindleford criteria

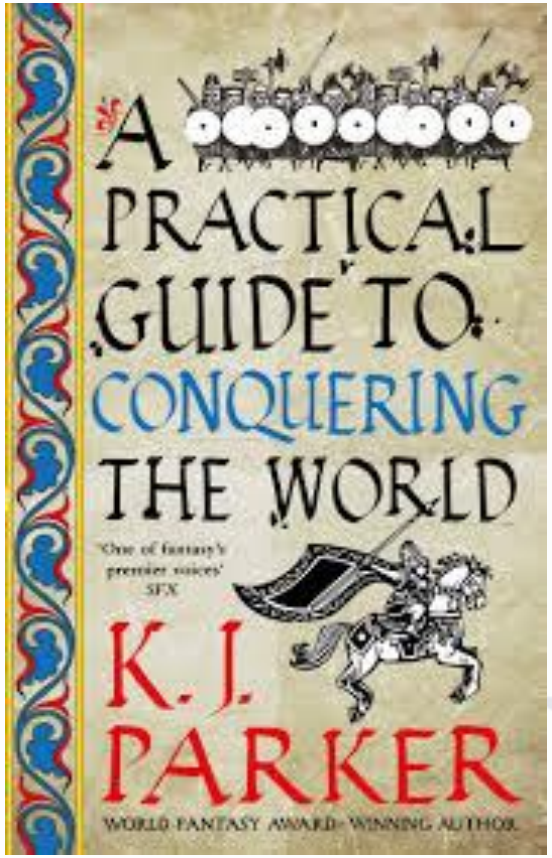
- Bevan case failed at first instance as G1, G2, (no defined incident made out as exposure was repetitive) and G4 (tinnitus was bilateral) were not made out

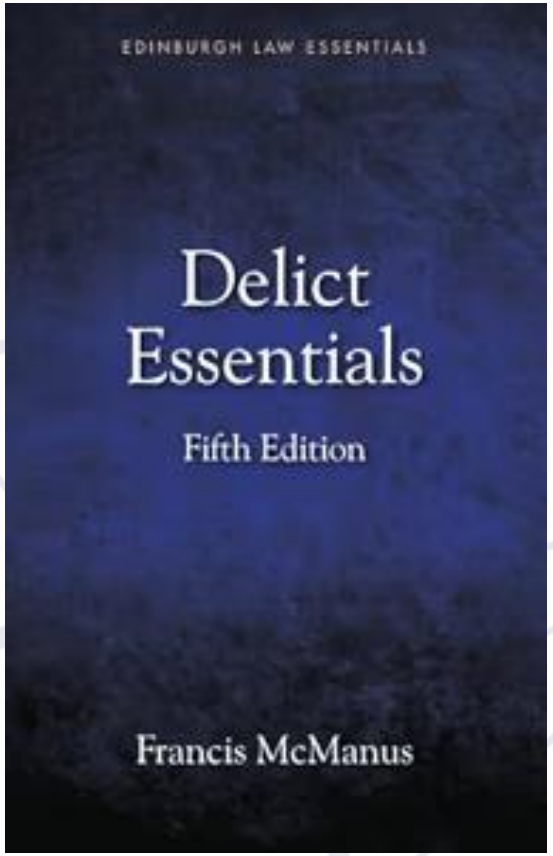
- *62. I am satisfied that the correct question for me to determine is whether Mr Bevan suffered an injury as a result of acoustic shock. In doing so the best (and only) guidelines I have are the Grindleford Criteria which were set out (in collaboration with his co-authors) by Mr Parker. Mr Parker told me (without challenge) that Parker 2020 was peer reviewed and has never been subjected to published (or indeed private) criticism. Mr Parker told me that he was invited to submit an article on the topic after delivering a lecture at the Royal Society of Medicine. Professor Wright, whose experience in these matters is beyond doubt, raised no criticism of the criteria.*

- Appealed: heard in October 2026 – Judgement Awaited



Noise Induced Hearing Loss and Tinnitus





NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Sheriff Campbell K.C., ASPIC, 28 February 2023



- Pursuer was aged 63
- No injurious nose exposure prior to 1990
- Worked for defenders since 1990
- Worked in various parts of plant:

1990 -2000: Newton Bottling Hall

2000 – 2018: Leven Bottling Hall with Occasional work in Clyde Bottling Hall

2018: Office based

NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10







NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Liability fell to be considered under the statutory regime set by the Noise at Work Regulations 1989 and the Control of Noise at Work Regulations 2005
- Broad duties to carry out monitoring, noise level testing, risk assessments etc
- General duty to reduce noise exposure as far as reasonably practicable with hearing protection being a last resort.

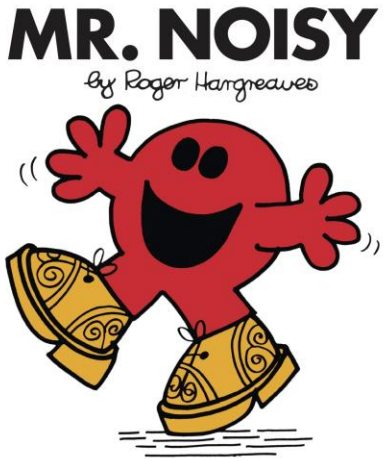
NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Sources of noise:

  Machinery – rinsers, fillers, labellers, packers, depalletisers, case erectors and case sealers

  Bottles – knocking against each other

  Breakages and Collapses





NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Hearing protection provided in Newton Hall in 1995 to 1996
- Wearing this was Mandatory in Bottling Halls
- Pursuer wore hearing protection but required to remove it to scratch ears and Ear plugs worked free – when this occurred there was exposure to noise
- No training on the use of earplugs until 2015-16 (when new ear plugs introduced)
- No assessment made of hearing protection introduced in 1995/6
- No engineering measure to reduced noise of the line in Newton or Leven Halls
- No noise in Newton Hall
- No noise Survey in Level Hall until 2006

NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- 2006 Survey contained insufficient contextual information on operations
- 2008: first risk assessment for Leven Hall – found noise level above 85 dB(A) – ear defenders mandatory
- No extant records for noise levels in Newton Hall (similar halls in range of 85dBA to 95dBA)
- Exposure: 80-93 dB(A) in Clyde Hall
  79-81 dB(A) in Leven Hall

- In Clyde hall depending on where she was working average exposure (LEP'd) could have been above 90dB(A)

NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Para [60] of Judgment summaries submissions made by pursuer
- 1) There were no noise level assessments for Newton hall for 1990 to 2000.
- 2) There were no noise level assessments in Leven hall until 2006.
- 3)The adequacy of at least some of the noise assessments from 2006 was questionable.
- 4) The defender's noise surveys lack adequate description of how measurements were made, and there was no record of line speeds at the time of noise surveys.
- 5) There was no peak level assessment by the defender until 2017.
- 6) Increasing levels of noise in 2014 and 2017 were not adequately explained.
- 7) 2017 noise survey indicates levels well in excess of 90 dBA in certain areas.
- 8) The defender's decision to designate both Leven and Clyde halls mandatory hearing protection zones was significant.

NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- 9) There were no noise risk assessments until 2008.
- 10) The defender produced no documentation or other evidence as to any comparative exercise undertaken by them of the different types of hearing protection provided over the years.
- 11) Control measures other than provision of hearing protection were not the subject of evidence from the defender.
- 12) Making hearing protection available initially on non-mandatory and then on mandatory basis suggested concern around risk of injury from noise.
- 13) There was a significant increase in mechanisation of the lines from 2000. The line operator witnesses gave evidence there was an increase in noise levels.
- 14) The defender made no assessment of whether mechanisation was increasing or decreasing noise levels.

NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Defender's Position – para. [61]

- The defender's position was that the measured noise levels do not disclose any breach of duty at common law or under the Regulations. For the pursuer to succeed, the court would need to accept Mr Dipnal's evidence about at least a bracket of exposure, and the defender invited the court not to accept that evidence. In any event, the attenuation of noise levels by ear plugs removed the risk of hearing damage.

NIHL & Tinnitus: Liability and Causation: Denny v Chivas Brothers [2023] SC Edin 10

- Court found for Pursuer

- Hearing protection – would have had some attenuation on noise levels but could not make a finding as to the level of that.

- Side issue about the pursuer's hearings test and whether they showed NIHL. There is a suggestion in para. [73] that the defenders had at one stage been arguing the pursuer suffered from Idiopathic hearing loss but while they had lodged reports from Mr Swan, he did not give evidence, and it was clear from other evidence that he had changed his opinion.

Alexander McGlinchey v BAE Systems Marine (YSL) Limited

- Sheriff Keir, ASPIC, 25 October 2024
- Pursuer exposed to Noise between 1979 and 1992 at Defender's Shipyard
- Quantum agreed at 5k
- Proof restricted to Liability and Causation



Alexander McGlinchey v BAE Systems Marine (YSL) Limited

- Evidence heard from Pursuer, Dick Bowdler (Acoustic Consultant) and (Jonathan Newton (ENT Consultant): Stuart Robertson (ENT Consultant)

- Exposure: pursuer's evidence was superficial, he was not asked in detail about his duties and stages at which noise occurred, duration or source.

- Dick Bowdler provided modest support – did not provide noise measurements specific to work being carried out by the pursuer, on firmer ground about work when engines running. Not able to assist court with regard to pursuer's aimed greatest exposure when working outside the covered berth area. Accepted that needed to understand duration of exposure and proximity to source. No evidence on that was before the court. Also was unaware of exposure with other employers between 1992 and 2004.

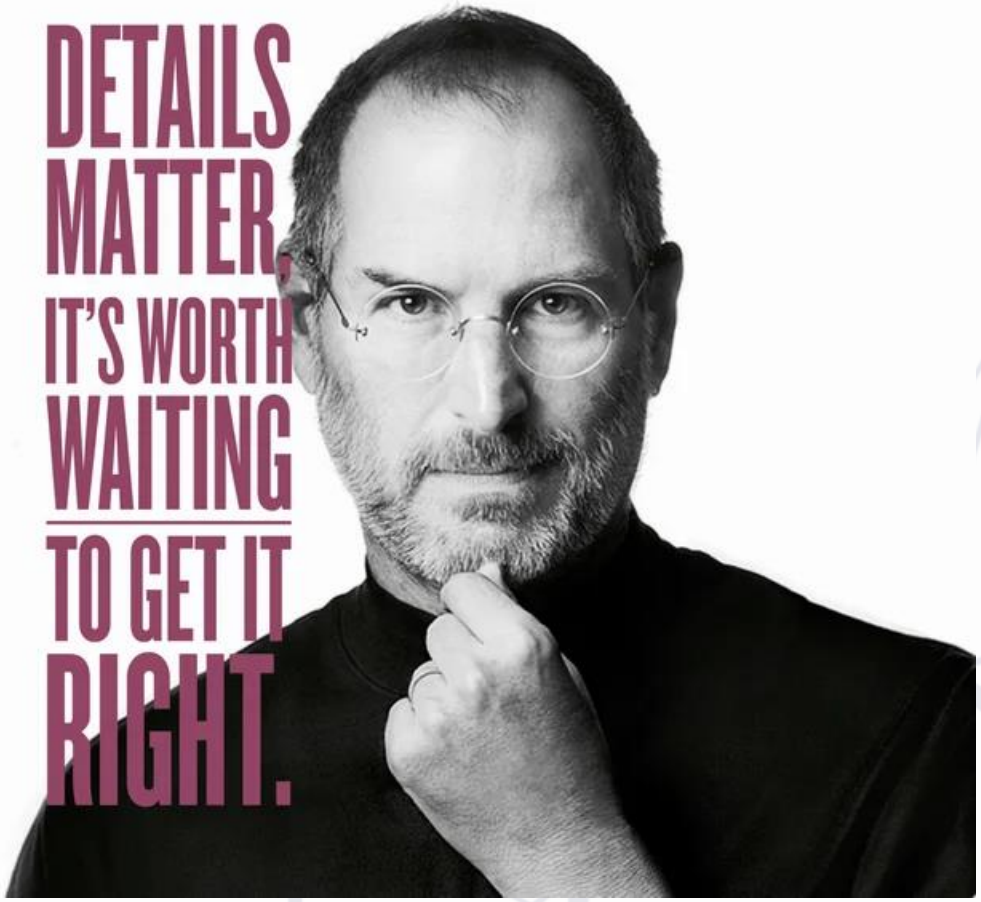
Alexander McGlinchey v BAE Systems Marine (YSL) Limited

- Pursuer did not establish his liability case on balance
- On Causation:
  Newton and Robertson disagreed on whether audiograms showed AAHL.
- Both described as impressive witnesses
- Robertson's views were preferred
- Newton placed reliance for NIHL diagnosis on 2023 Audiogram
- Audiograms did not show a consistent pattern

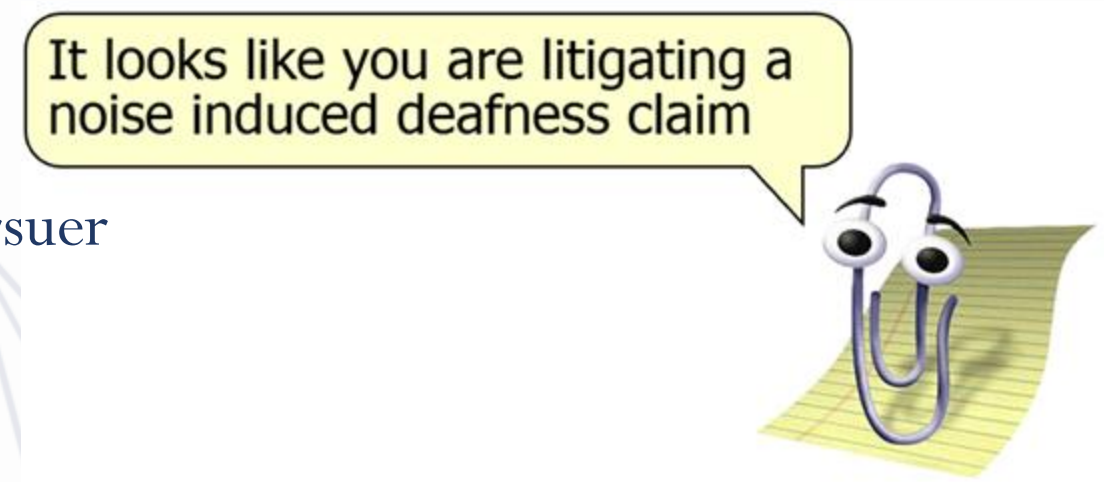
- Pursuer did not establish that he had NIHL



Alexander McGlinchey v BAE Systems Marine (YSL) Limited



Noise Induced Hearing Loss and Tinnitus



- Preparation is key

- As detailed evidence as possible from pursuer

- Detailed pleadings

- Seek to recover documentation

- Make best use of any expert instructed

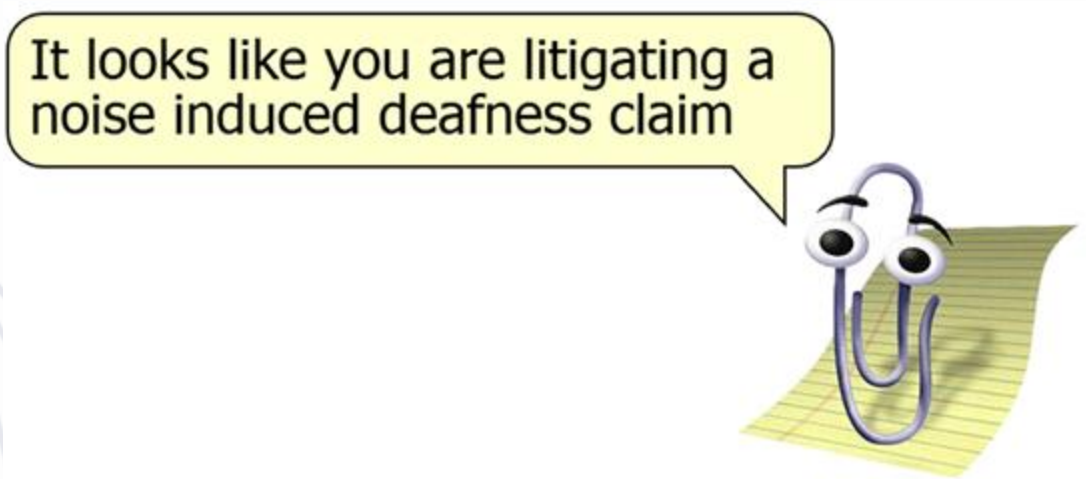
- Ensure expert has full information about noise exposure (employment and other)

- Calculations justifiable: similar exposure, similar tools etc

- Do the premises (and tools) still exist – site visit?

Noise Induced Hearing Loss and Tinnitus

- Common Problems



- Timebar/Constructive knowledge
- Apportionment/Holby
  - Unsued employers
  - Non occupational noise – shooting, discos etc

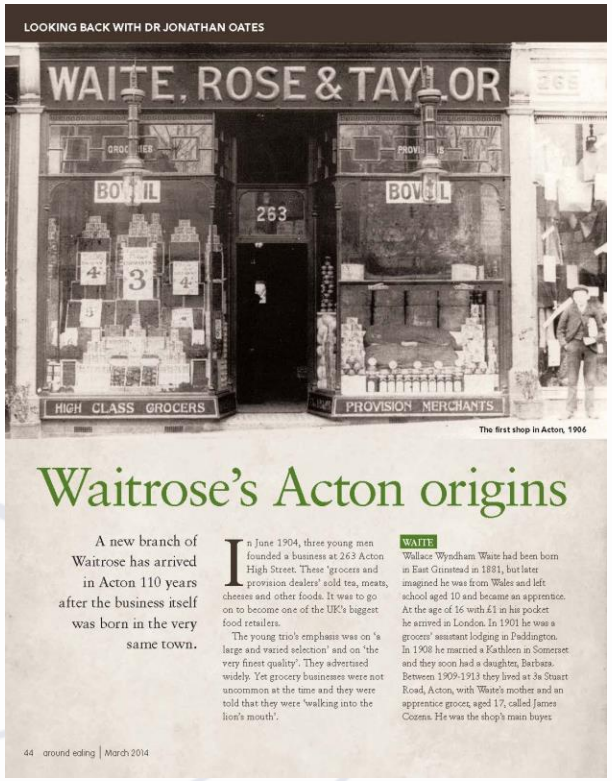
Noise Induced Hearing Loss and Tinnitus: Quantum

- JCG Guidelines

Quantum : James Nelson v John Lewis PLC – Sheriff Primrose K.C., ASPIC 12 July 2023

- NIHL and Tinnitus – claimed to be caused by a head injury
- Pursuer worked at Waitrose in Comely Bank
- Night shift Stock Replenisher
- 13 October 2018 around 10.30pm
- Hit on the side of the head by a ball – either balled up packaging or a stock item





LOOKING BACK WITH DR JONATHAN OATES

WAITE, ROSE & TAYLOR

263

HIGH CLASS GROCERS

PROVISION MERCHANTS

The first shop in Acton, 1906

Waitrose's Acton origins

A new branch of Waitrose has arrived in Acton 110 years after the business itself was born in the very same town.

In June 1904, three young men founded a business at 263 Acton High Street. These 'grocers and provision dealers' sold tea, meats, cheeses and other foods. It was to go on to become one of the UK's biggest food retailers.

The young trio's emphasis was on 'a large and varied selection' and on 'the very finest quality'. They advertised widely. Yet grocery businesses were not uncommon at the time and they were told that they were 'walking into the lion's mouth'.

WAITE

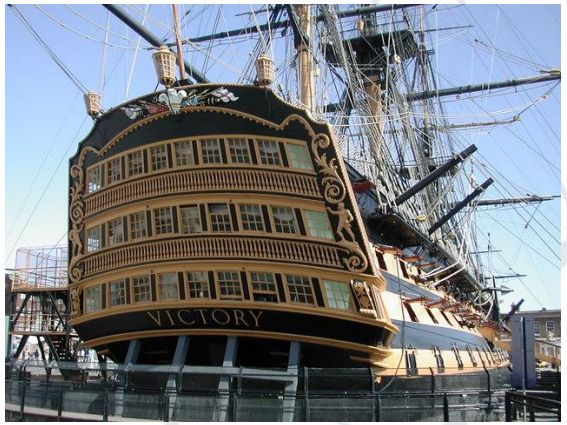
Wallace Wyndham Waite had been born in East Grinstead in 1881, but later imagined he was from Wales and left school aged 10 and became an apprentice. At the age of 16 with £1 in his pocket he arrived in London. In 1901 he was a grocers' assistant lodging in Paddington. In 1908 he married a Kathleen in Somerset and they soon had a daughter, Barbara. Between 1909-1913 they lived at 3a Stuart Road, Acton, with Waite's mother and an apprentice grocer, aged 17, called James Cozens. He was the shop's main buyer.

Quantum : James Nelson v John Lewis PLC

- Ball thrown by a James Moran
- Complainants about horseplay since June 2018

- Succeeded on liability

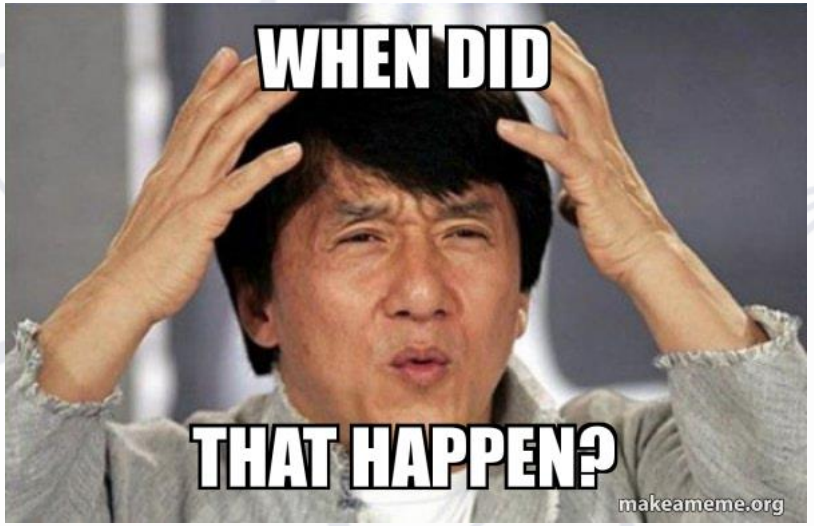






Quantum : James Nelson v John Lewis PLC

- Unclear on evidence when hearing loss had come on – GP records suggested that it was on the 11 October 2018
- Sheriff did not accept pursuer's evidence about when the unilateral deafness and tinnitus had started – he said after being struck by ball
- Pursuer claimed a causative link between his hearing loss/tinnitus and being struck on the head
- No mention to the GP of trauma or ball
- Failed to show causative link
- Decree of Absolvitor



Quantum : James Nelson v John Lewis PLC

Sheriff Primrose Commented on Quantum:

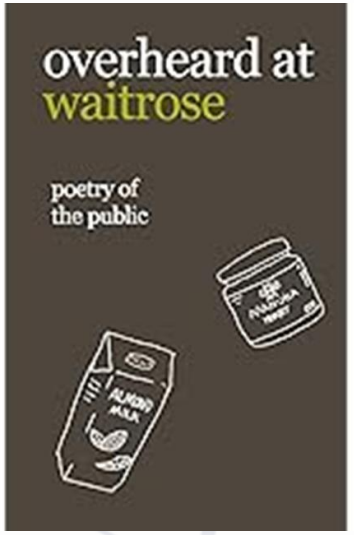
- Minor Head Injury, with injury to right ear of permanent deafness and tinnitus that could be improved with treatment
- Pursuer was aged 60 at proof (55 at injury)
- Pursuer required a hearing aid
- Struggles crossing the road, hearing on the telephone, speaking to colleagues and finds social interactions difficult
- Sleep and ability to drive were impacts
- Hobby of bagpipe making impacted as no longer able to tune instruments

- There was also a claim for hearing aids

NIHL and Tinnitus Quantum : James Nelson v John Lewis PLC

- Pursuer's submissions were £57,000 for solatium – based on JC – 21(B)(d) and JC – 63 (16th Edition)
- Defender submitted award should £5,000 – based on JC- 21(B)(d) and (e)
- Future deterioration unlikely to be related to accident
- Sheriff Primrose KC stated he would have awarded:

Solatium: £12,500
Service: £2,500
Needs and Expenses: NIL as unrelated
Inconvenience: £150



Quantum : DS v NHS Grampian

- Medical negligence case – missed pineal cyst on MRI scan successful at first instance - [2024] SC ABE 11, Sheriff Bovey K.C., Aberdeen Sheriff Court, 9 November 2023
- Pursuer appealed on level of damages
- Defender cross-appealed on Liability and Causation
- Sheriff Principal Wade K.C., Sheriff Fife and Sheriff Kerr – [2025] SAC (Civ) 21 – 16 July 2025







Quantum: DS v NHS Grampian

- Found for defender
- Pursuer's appeal centered around the loss of a career – upheld sheriff was correct to reject this as no proper basis to support a loss of past or future earnings
- Wide variety of symptoms: insomnia, visual distortion and tinnitus that resolved after 2 years: Sheriff awarded £7,500 – not commented on in appeal

• Quantum: Pollock v Marshall & Anderson Limited and Another [2026] SC EDIN 61

- Esto Comment: Sheriff Keir

- 76 years old
- Hearing test 10 years ago showed hearing loss: told AAHL
- NIHL at nodest level comparted to AAHL
- Bilateral Tinnitus: mild to moderate
- Accelerated hearing aids by 3 or 4 years
- £8,000 for solatium

• Quantum: Pollock v Marshall & Anderson Limited and Another [2026] SC EDIN 61

- Hearing Aids
- Evidence was that told needed them 10 years prior
- Not obtained them
- Sheriff of view that would not steps to get them
- Would not have made an award even if case successful



New Way to Own
AN AMAZING
New Hearing Aid!

- Comes to you by mail
- Satisfaction Guaranteed Or Your Money Back
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Single Unit. This is all you wear. $75 Complete.

New Radionic Zenith "75"
THE HEARING AID THAT NEEDS NO "FITTING"

So good we can offer you this
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Wear the Zenith "75" at home, at work, anywhere. If it isn't better than you ever dreamed ANY hearing aid could be, return it within 10 days of receipt and Zenith will refund your money in full.

Saves you over $100, too! Because the new Zenith "75" needs no "fitting," it saves you embarrassing visits to salesrooms and annoying sales pressure. Also, it saves you over $100 cash money. If its price had to include conventional selling costs and profits, this top quality hearing aid would have to sell for $195 instead of $75! So do as tens of thousands have already done. Find new happiness and success by mailing the coupon below—right now!

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*Plus tax of $1.50 in Illinois or New York City; $1.88 in California, except Los Angeles, $2.25.

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Hearing Aids







Hearing Aids

- Hazeal MacDonald v Indigo Sun - £5k every 5 years: multiplier/multiplicand approach allowed

- Coffin and Tarrant v Ford Motor Company, Winchester County Court, March 2008
  Coffin: £2,500 for 2 hearing aids
  Tarrant: £1,250 for 1 hearing aid

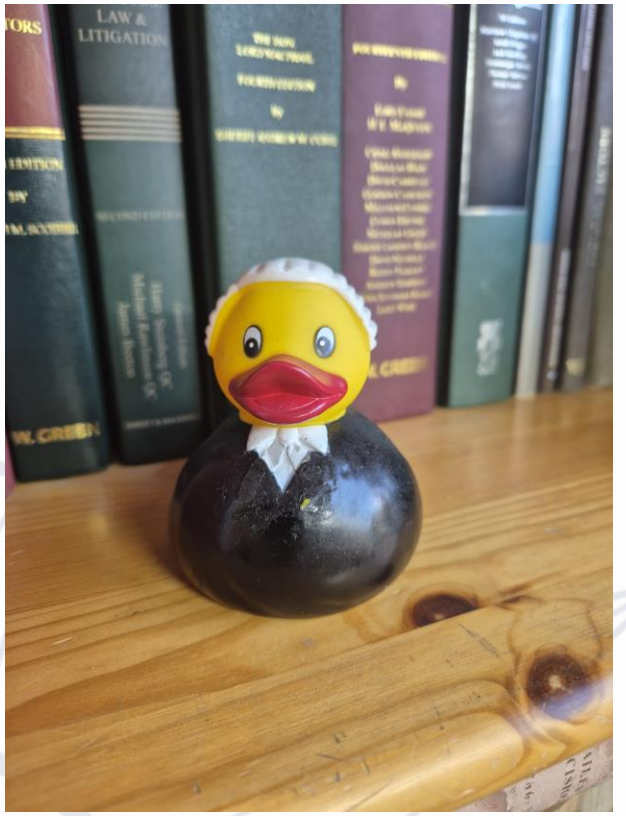
- Fact dependent: need from NIHL only, acceleration, will they purchase/wear

QUOCS

- Keep an eye on where court draws line on s.8(4) of Civil Litigation (Expenses and Group Proceedings)(Scotland) Act 2018, namely:

  (b) behaves in a manner which is manifestly unreasonable in connection with the claim or proceedings, or

  (c) otherwise, conducts the proceedings in a manner that the court considers amounts to an abuse of process.

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Any Questions?



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