



Guide to Noise Claims

Chris Fry
Managing Partner, Unity Law

Theo Huckle QC
Doughty Street Chambers

With assistance from
Joseph Wynn
Barrister, KBW Chambers



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PREFACE

When we started out in noise work, we were armed with little more than the pre-action protocols and a blind faith that the medical expert opinion confirming Noise Induced Hearing Loss was likely to be scientifically accurate, and reliable. For years the battle ground in litigation was primarily over whether a claim had been brought in time, and occasionally whether noise levels were high enough to show that the defendant was in breach of duty. Diagnosis was rarely at issue.

Even in the cases which became part of the 'Nottinghamshire & Derbyshire Deafness Litigation' (*Baker v Quantum Clothing Group*), in which we acted for the claimants, we successfully settled 50 or more deafness claims with little difficulty against the defendants who, faced with thousands of recently issued cases, fought the case all the way to the Supreme Court.

That litigation changed the way that deafness cases are argued. Defendants now overwhelmingly focus their challenges on non-legal matters of diagnosis, and for understandable reasons. Despite expert evidence from three different claimant instructed medical experts supporting a diagnosis of noise damage in the textiles litigation referred to above, only one of seven lead cases succeeded in persuading the trial judge of hearing damage. That case related to Stephanie Baker, whose successful appeal to the Court of Appeal changed the common law, only to be overturned by the Supreme Court which restored the status quo.

Since that case, firms have rushed into the NIHL claims market on the assumption that the law is relatively settled and is a potentially more profitable alternative to road traffic work given that deafness work still largely escapes Portal costs and is, for now, outside the Fixed Recoverable Costs regime.

The market reaction has been severe. Those defending NIHL cases are largely very effective and experienced in this area of work. They have seized on the naivety of some claimant lawyers in the work to achieve a number of decisions which have been useful to them. In addition, underestimating the complications and numerous risks at each stage of an NIHL case has led to a number of firms taking on what they thought were viable claims, often at considerable expense, only to find out later on when an experienced solicitor or barrister gets involved, that they are not viable.

This Guide is designed as a manual to help lawyers understand the core principles and identify viable cases as early as possible.

We have provided a ‘real world’ case study, and attached a worked-example of how this played out under each aspect of a case: breach of duty, causation, limitation and quantum. We have included sample pleadings which demonstrate how we brought those cases to a successful conclusion. There may well be better or alternative ways of litigating the same cases, and we would be happy to receive any feedback and suggestions for further innovation in NIHL litigation. The case-law is again rapidly evolving with many bright young lawyers pursuing new approaches and we already look forward to further editions of this Guide!

Chris Fry and Theo Huckle QC
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