

APPENDIX A

## NOISE-INDUCED HEARING LOSS (NIHL)

### WORKING PARTY

#### Terms of Reference

The purpose of the working party, as outlined by the Letter from Lord Faulks dated 13<sup>th</sup> July 2015 is to make recommendations to the Government on:

1. How a fixed costs regime for NIHL cases (and perhaps other similar cases) might work, and
2. How the handling of NIHL claims might be improved by both claimant and defendant representatives (including how evidence is obtained and presented).

The initial work under 1 related to the possible structure of such a regime, rather than the values of the fixed costs themselves. That structure was informed by the proposals for improved handling under 2, which included both pre- and post-issue procedures and the way in which medical and engineering evidence is commissioned.

Our plan was that the working party would consider the issues in two phases:

- In the first phase, having identified the concerns of both claimant and defendant representatives over the conduct of these claims, it would discuss and agree broad ideas for handling cases that would help meet those concerns. It would also outline a possible overall structure (or structures) for a fixed costs system.
- Having reported on the first phase and received broad approval for the intended direction, the second phase would look in more detail at how the improvements and fixed costs structure could be implemented. It was hoped this work could include recommendations as to the level of fixed costs themselves or how they could be calculated.

#### Working Party Membership

The first phase working party membership was as follows:

##### *Chairman*

Andrew Parker

##### *Deputy Chairman*

David Marshall

##### *Claimant Group*

Cenric Clement-Evans

Bridget Collier

Karen Jackson

Dominic Weir

##### *Defendant Group*

Ian Harvey

Roland Jackson

John Latter

Nick Parsons

*District Judge Representative*

District Judge Glennis Corkill

*CJC*

Peter Farr

Andrea Dowsett

Heather Atkinson of the Ministry of Justice also attended as an observer.

During the second phase, the following members were added:

*Claimant Group*

Jennifer Corris

Zoe Holland

*Defendant Group*

Jim Byard

Paul Wainwright

*Bar Representatives*

Peter Ellis

Theo Huckle QC

Additionally, we were assisted by the contributions of Martin Bare, Robert Holkham and Tim Riordan.

The meetings of the working party have been extremely constructive, and we have been able to reach a consensus view on many areas. This final report incorporates relevant material from both phases of our work into one document.

## APPENDIX B

**NIHL Letter of Claim (To be completed by claimant's Solicitors with sign off by claimant)**

**Part A**

We are instructed by xxxx in respect of a Noise Induced Hearing Loss claim against YYYY

To enable Defendants to fully investigate the matter, we attach the following information (tick to confirm attached):

- ELTO Search(es)
- HMRC
- Completed questionnaire
- Completed Part B for each proposed Defendant
- Audiogram
- GP and hospital records
- Anticipated valuation
- Provisional Schedule of Special Damages with supporting evidence
- Personnel/OH file or signed authority from claimant to obtain copy from insured
- Declaration of previous claims

**1. Claimant's Details:**

1.1 Full Name:

1.2 Address:

1.3 Date of birth:

1.4 National Insurance Number:

1.5 Solicitor's reference:

**2. Employment History**

2.1 The following table details our client's full working in both noisy and non-noisy environments:

Defendant	Employer	Employment dates	Exposure to noise? (Yes/No)	Hearing protection? (Yes/No)	Pursued? (Yes/No)	Lead Insurer details	FSCS Interest? (Yes/No)

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**3. Other exposure to noise**

3.1 Has the Claimant served in H.M Armed Forces? If so please identify the service and unit, the period and exposure to noise such as weaponry:

3.2 Has the claimant been exposed to noise in any non-occupational activity such as, but not limited to shooting, motor sport, playing a musical instrument in a group, attending night clubs, prolonged listening to a personal music device? If so, please state the activity(ies) and the duration:

**4. Claimant's symptoms**

4.1 When did the claimant first notice significant hearing loss?:

4.2 Does the claimant suffer from tinnitus? If so, when did he/she first notice the onset and when did they first contact their GP?

4.3 When did the claimant first receive medical/occupational health advice about these symptoms?:

4.4 When did the Claimant first attribute his symptoms (including any Tinnitus) to exposure to noise in his employment?:

4.5 When, and in what circumstances, did the Claimant first learn that he might claim against the Defendant?:

**Part B – to be completed for each proposed Defendant**

**5. Claimant's employment with the Defendant :**

5.1 Company Name:

5.2 Company Address:

5.3 Business description:

- 5.4 Dates of Employment with proposed Defendant:
- 5.5 Which department(s) did the Claimant work in?
- 5.6 Job title(s):
- 5.7 Works or employee number:
- 5.8 Location(s) of work or site worked at:
- 5.9 Name of the Claimant's supervisor(s) or colleagues:
- 5.10 Contracted working hours:
- 5.11 Average overtime worked:
- 5.12 Number and duration of rest breaks:
- 5.13 Detailed description of each of the Claimant's main duties:
- 5.14 All sources of loud noise complained of:
- a) The make and model of machinery or tools:
  - b) How long did the Claimant spend on each machine?
  - c) Period(s), frequency and duration of exposure to noise:
  - d) Claimant's proximity to source(s) of noise:
- 5.15 Please comments on changes in ambient noise levels throughout the period of employment.

6. Claimant's hearing protection and training

- 6.1 Was hearing protection provided?:
- 6.2 What type of hearing protection was provided?:
- 6.3 If appropriate, when was hearing protection first made available?
- 6.4 Did the Claimant wear hearing protection at any time?
- 6.5 If hearing protection was available but not worn, why not?
- 6.6 Was hearing protection enforced? If so, from when?:
- 6.7 Was noise awareness training conducted? If so, what advice or information was given?:
- 6.8 Are any allegations made regarding the efficacy of the hearing protection provided?
- 6.9 When was the Claimant last exposed to excessive noise levels without wearing hearing protection?
- 6.10 If Hearing Protection was provided or hearing tested, what did the Claimant think the purpose of them were?
- 6.11 Please advise whether any works audiograms were taken at the proposed Defendant or any other companies in which the Claimant was employed:

6.12 Please comment on any complaints made by the Claimant, or other employees in relation to noise:

## 7. Claimant's allegations of breach of duty

## 9. Claimant's Request for Disclosure

9.1 In accordance with the Pre Action Protocol for Disease and Illness Claims, please provide the following records at this stage:

- a. Occupational health records
- b. Personnel records

9.2 Please note your insurers may require you to advise them of this request. We enclose a request form and expect to receive the records within 40 days. If you are not able to comply with this request within this time, please advise us of the reason.

9.3 If you are denying liability, please provide the following information:

- a. Records of any previous complaints and/or claims
- b. Risk assessments including noise measurements for the different equipment referred to
- c. Records of hearing protection provided together with attenuation details
- d. Records of information provided, instruction and training given.
- e. Health surveillance records.
- f. Records of any preventative steps taken to reduce exposure to noise.
- g. Noise Surveys
- h. Health & Safety Minutes
- i. Any documents leading up to the obtaining of noise surveys.
- j. Any documents relating to the consideration of any noise surveys
- k. Any other relevant documents specified by the claimant



**SOLICITOR'S DECLARATION**

- We confirm that we are satisfied as to our client's identity and understand that this will enable Defendants to make any payment to the claimant in the event of settlement.
- (Either), we attach our client's signed authority to enable any payments to be made to this firm.
- (Or) We can confirm that any agreed damages should be made payable to the claimant.

Signed:

Dated:

**CLAIMANT'S DECLARATION**

I.....(name of claimant)  
of .....(address)

hereby confirm that:-

1. I have not at any time previously made any other claim for hearing loss of any description (regardless of whether any compensation was paid or not), to include Industrial Deafness and/or tinnitus against any party.
2. I have not made any claim through any scheme (Government, Trade Union or otherwise).
3. I have not previously instructed any solicitors with regard to a claim for Noise Induced Hearing Loss.

**APPLICATION ON BEHALF OF CLAIMANT FOR OCCUPATIONAL HEALTH RECORDS & PERSONNEL FILE**

Statement of Claimant

I, \_\_\_\_\_ authorise you to disclose all of my records relating to me to my solicitor and to your legal and insurance representatives.

Signature of claimant:

Date:

## APPENDIX C

**Draft CJC Claimant's Letter of Response**

Claimant ref:

Insurer ref:

<b>Exception to FRC</b>	<b>Please tick the box that applies</b>
Own expert evidence	
De-Minimis defence	
Four defendants or more	
Test case	

**If own medical evidence requested please provide detailed reasons as to why requested below including details of Audiologist / Expert to be instructed:**

**1. Offer**

- a) The Claimant's Part 36 offer is accepted;
- b) The Defendants Part 36 offer in the sum of £
- c) Settlement cannot be agreed at this stage. Please set out reasons as why settlement cannot be agreed:

**2. Apportionment Schedule**

	Insurer	Policy number	Dates on cover	Coordinator*	Holtby discount	FSCS interest %
D1						
D2						
D3						

<b>Are all defendants within the IDCWP?</b>	<b>Who will coordinate together with contact details of Insurer / Solicitor?</b>

\*Identify the Handling insurer (H) for each Defendant, and the overall Coordinating insurer (C)

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**3. Liability**

	Admitted	Neither admitted / denied	Denied*
Breach			
Causation			
Limitation			

**4. Breach:**

Where Breach cannot be admitted, details of Allegations which are denied must be provided together with any supporting documentation:

Allegation	Admitted	Neither admitted / denied	Explanation	Denied*	Explanation

- For each allegation denied supporting documentation must be provided.
- How many lay witnesses do you seek to rely upon:

**5. Disclosure:**

- Itemised list of relevant documents attached: Y/N , if N please provide an explanation:
- Provide details the searches carried out to locate all relevant disclosure:

- Confirm any ongoing searches and a deadline for when these are to be concluded:

Search	Deadline

- Have all documents that you are required to supply under the pre action protocol being provided: **Y/N**
- Have all documents which adversely affect the Claimant's claim or support the Defendant's claim been provided: **Y/N**
- If the answer to any of the above are N then please provide an explanation below:

**6. Limitation:**

- Is limitation being raised as a Defence: **Y/N**
- If Limitation is being raised a Defence then give detailed reasons for this with reference to all relevant disclosure.

**7. Other comments**

APPENDIX D



Association of British Insurers

# Noise Induced Hearing Loss Claims Handling Guidelines



## Noise Induced Hearing Loss Claims Handling: the ABI & IDCWP Guidelines

### DEFINITIONS

For the purposes of these Guidelines:

- (a) **ABI** means the Association of British Insurers;
- (b) **Black Book** means the guidelines on the assessment of NIHL for medico-legal purposes (Kings, Coles, Lutman & Robinson, Guidelines for Medicolegal Practice: Assessment of Hearing Disability 1992);
- (c) **Claim** means a civil claim for personal injury and/or other related losses arising out of NIHL;
- (d) **Claims Portal** means the electronic portal for employers' liability personal injury claims up to £25,000;
- (e) **Claimant** means a person making a Claim and includes that person's legal advisers or representatives;
- (f) **CNF** means Claim Notification Form;
- (g) **Coles Guidelines** means the guidelines on the diagnosis of NIHL for medico-legal purposes (Coles, Lutman and Buffin 2000) (*Clin. Otolaryngology* 25, 264-273);
- (h) **Coordinating Insurer** means, in a Claim involving more than one Defendant, the Handling Insurer for the Defendant with the greatest potential exposure. In a Claim involving a single Defendant, the Handling Insurer will also be the Coordinating Insurer;
- (i) **CRU** means the Compensation Recovery Unit;
- (j) **Defendant** includes legal advisers or representatives;
- (k) **EL** means employers' liability;
- (l) **ELTO** means Employers' Liability Tracing Office;
- (m) **Follow Insurer** means any Insurer on risk who is not a Handling Insurer or Coordinating Insurer;
- (n) **FSCS** means Financial Services Compensation Scheme;
- (o) **Handling Insurer** means the Insurer responsible for handling the Claim for each Defendant;
- (p) **HMRC** means Her Majesty's Revenue & Customs;
- (q) **IDCWP** means the Industrial Disease Claims Working Party;
- (r) **Insurer** means a firm authorised by the Financial Conduct Authority and/or the Prudential Regulation Authority to effect and carry out contracts of employers' liability insurance as principal in the UK, or a firm who carried out contracts of employers' liability insurance as principal in the UK but which is now insolvent, and who are members of the ABI and/or IDCWP;
- (s) **NIHL** means Noise Induced Hearing Loss;
- (t) **Parallel Payment** means the process by which agreed contributions are paid by Insurers separately but simultaneously to the Claimant;
- (u) **Paying Party** means a party liable to pay damages and costs to the Claimant where breach of duty and causation has been proven.

## A. INTRODUCTION

1. Insurers have developed these Noise Induced Hearing Loss Claims Handling Guidelines ("the Guidelines") to facilitate an efficient and streamlined claims handling process between Insurers, with minimal exchanges of correspondence and documents, resulting in the swift resolution of claims. The Guidelines are intended to operate on the basis of pragmatism and reciprocity, but within a framework which takes account of legal principles.

## B. APPLICATION

2. These Guidelines concern interactions between Insurers in respect of claims for personal injury and other related losses arising out of NIHL. The Guidelines are a voluntary good practice guide for Insurers and are intended to strengthen existing practice.
3. These Guidelines are intended to be consistent with any legal or regulatory requirements that may also be relevant.
4. A list of Insurers who have adopted these voluntary Guidelines can be accessed at [www.abi.org.uk/](http://www.abi.org.uk/), which will be updated by the ABI as necessary.
5. These Guidelines will apply to Claims received on or after **01 March 2015**. It is intended that an Insurer who has adopted these Guidelines will follow them in all Claims received on or after this date, unless there is a compelling reason for an Insurer to depart from them.
6. An Insurer who has adopted these Guidelines and who is listed at [www.abi.org.uk/](http://www.abi.org.uk/) should inform the ABI and/or the IDCWP if it is no longer able to observe the Guidelines in principle.
7. These Guidelines will be reviewed periodically, as necessary.

## C. CLAIMS HANDLING

### ***(a) Establishing the roles of Handling Insurer and Coordinating Insurer***

#### *Handling Insurer*

8. For each Defendant to the Claim, the last Insurer on risk during the alleged culpable period of exposure will usually become the Handling Insurer.
9. However, where an Insurer has an overall interest of 50% or more for that Defendant, that Insurer will become the Handling Insurer in place of the last Insurer on risk during the culpable period. The last Insurer on risk should nevertheless continue to handle the Claim until such time as the new Handling Insurer has agreed to take over.
10. Where no Insurer has an overall interest of 50% or more, the Insurer with the greatest interest for that Defendant may, at their request and with the agreement of the last Insurer on risk during the culpable period, become the Handling Insurer.

11. For any Claim commenced and remaining within the Claims Portal<sup>1</sup>, the last Insurer on risk will continue to be the Handling Insurer.

*Coordinating Insurer*

12. In a Claim involving a single Defendant, the Handling Insurer will also act as the Coordinating Insurer.
13. Where the Claim involves more than one Defendant, the Handling Insurer for the Defendant with the greatest interest in the Claim will become the Coordinating Insurer.
14. Where the Coordinating Insurer denies, or intends to deny, any culpable exposure by the Defendant it represents, the Coordinating Insurer will communicate that position to the other Handling Insurers and the Handling Insurer for the Defendant with the next greatest interest in the Claim will instead become the Coordinating Insurer.

**(b) Establishing the relevant EL insurance history**

15. Each Handling Insurer is responsible for establishing the relevant EL insurance history of its insured Defendant. In order to do so, a HMRC schedule will usually be obtained from the Claimant for the Handling Insurer to verify that the employer is the named policyholder in the policy of insurance.
16. Historical records and details of the insured Defendant's EL claims history may be obtained in order to identify the insurance history. Enquiries may also be made with ELTO, the broker or other insurers.

**(c) Notification**

*Handling Insurer*

17. After establishing the relevant EL insurance history of its insured Defendant, the Handling Insurer will notify all identified Insurers potentially on risk with respect to that Defendant as soon as possible.

*Coordinating Insurer*

18. The Coordinating Insurer will notify the Claimant of its role and request that they cease corresponding with other Insurers to the Claim.
19. The Coordinating Insurer will also notify the CRU where appropriate.

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<sup>1</sup> i.e. currently a Claim up to £25,000, involving no more than one Defendant. Due to tight timescales within the Claims Portal, the last insurer on risk should continue to act as Handling Insurer while a claim remains in the Portal.

## D. APPORTIONMENT AND INVESTIGATIONS

### (a) Apportionment

20. Claims should be apportioned between Insurers based on time on risk for the culpable period of exposure. There should be no weighting of exposure to reflect dosage.
21. The Coordinating Insurer should circulate to the Handling Insurer(s) of other Defendants and its own Follow Insurers as soon as practicable an apportionment schedule in the form attached at Appendix 3 setting out the portions of the Claim determined pursuant to this paragraph.
22. Follow Insurers should be prompt in exchanging information and evidence to assist the Handling Insurer/Coordinating Insurer in the handling of a Claim, in order to reduce the need for repeat investigations.
23. For any period of exposure where no Paying Party can be identified, that period should be ignored for the purposes of any CRU liability and the Claimant's costs and any apportionment should follow the same pro-rata contributions to damages as determined by paragraph 20.

### *Provision of Documentation*

24. The exchange of documents between Insurers should be limited to those which are necessary to establish the extent of the Claim and any contributions.
25. The provision of documents by the Handling Insurer/Coordinating Insurers to Follow Insurers will usually be restricted to the following:
  - (i) HMRC schedule;
  - (ii) Letter of Claim/CNF;
  - (iii) Medical evidence, including any questions to or replies from the expert;
  - (iv) Analysis of audiograms;
  - (v) Claimant's schedule of loss;
  - (vi) Any disclosed witness statement of the Claimant; and
  - (vii) Apportionment schedule.

### *Cut-Off*

26. A Handling Insurer who believes that there is a cut-off date of culpable exposure before or during its time on risk will continue to handle the Claim in the same way as any other claim until such time as the new Handling Insurer has agreed to take over. This is to minimise delay, and in turn reduce the risk of prejudicing the defence of the Claim and/or unnecessarily increasing costs. However, no admissions should be made in any Claim by an Insurer seeking to agree a cut-off with the other Insurers on risk.

The burden of proof rests with the Insurer if they claim that there is a cut-off date of culpable exposure before or during their time on risk.

27. If the Handling Insurer can evidence, on the balance of probabilities, that there was no culpable exposure during their time on risk, then the handling of the Claim may be passed back to the previous Insurer on risk. However, the original Handling Insurer should, in the first instance, present their suggested revised apportionment schedule, together with any evidence in support of the proposed cut-off date, to all affected Insurers and seek their agreement to the same, before seeking the Claimant's agreement to that cut-off.

***(b) Investigating Breach of Duty***

28. The Handling Insurer is responsible for investigating breach of duty against their insured Defendant, and should initiate investigations as soon as reasonably practicable even where it may seek to argue a cut-off date.

29. The nature and extent of those investigations will vary according to whether the insured Defendant is trading or not.

30. Allowing for pragmatism, and a sensible and flexible approach to investigations, the following should be considered when investigating breach of duty:

(i) Trading insured Defendant

- Documentation should be obtained where available, including but not limited to noise surveys and the provision of personal protective equipment;
- On-site enquiries should be considered, particularly where there is limited documentation;
- Enquiries should be made with former directors and/or health and safety managers.

(ii) Non-trading insured Defendant

- Enquiries should be made with other Insurers on risk and, where possible, ex-directors before making any concessions on breach of duty;
- If the above enquiries do not reveal any evidence that assists in determining breach of duty, the Claimant should be put to proof.

***(c) Investigating Causation***

*Medical Report*

31. The Coordinating Insurer should undertake Black Book and Coles Guidelines type calculations from the hearing levels recorded in the Claimant's audiogram to diagnose NIHL and assess the extent of any NIHL impairment.

*Medical Records*

32. The Coordinating Insurer may seek disclosure of and review the Claimant's medical records, where considered appropriate.

## *Occupational Health/Personnel Records*

33. The Coordinating Insurer may seek disclosure of and review the Claimant's occupational health and/or personnel records, where considered appropriate.

## **E. SETTLEMENT**

### ***(a) Delegated Authority***

34. For Claims up to £25,000 (excluding costs) where breach of duty is agreed by the Handling Insurer(s), the Coordinating Insurer is deemed to have delegated authority and may proceed to settle the Claim as appropriate.
35. However, where a Claim involves one or more insolvent insurers, those insolvent insurers should be advised of a proposed offer by the Coordinating Insurer, along with any supporting documentation where requested, no less than 21 days before an offer is made to the Claimant in order to allow the contributor the opportunity to raise objections. (See Appendix 2 for further information on Claims involving insolvent insurers)

### ***(b) Parallel Payment***

36. Once settlement has been agreed by the Coordinating Insurer, settlement of the Claimant's damages is on a Parallel Payment basis. The Coordinating Insurer will notify settlement details to the Handling Insurer for any other Defendants and also any Follow Insurers for the same insured Defendant. Handling Insurers for other Defendants will similarly notify any Follow Insurers. There should be no delay in payment by Follow Insurers.
37. A letter from the Handling Insurer/Coordinating Insurer seeking Parallel Payment from Follow Insurers should be prominently marked as 'urgent' and include the following (if not previously supplied):
- (i) HMRC schedule;
  - (ii) Letter of Claim/CNF;
  - (iii) Medical evidence, including any questions to or replies from the expert;
  - (iv) Analysis of audiograms;
  - (v) Claimant's schedule of loss;
  - (vi) Any disclosed witness statement of the Claimant;
  - (vii) Apportionment schedule;
  - (viii) Total settlement figure; and
  - (ix) Amount due from the Follow Insurer, payment method and details of payee.

### ***(c) Hearing Aids***

38. Where the Claimant has disclosed medical evidence supporting the need for a hearing aid, agreement to such head of claim is at the discretion of the Coordinating Insurer. If the need for a hearing aid is accepted, the Coordinating Insurer should, where requested, provide evidence to Follow Insurers to show why and how it arrived at its decision. Where appropriate, consideration should be given to alternatives to private provision, such as the NHS or high street providers.

**(d) De Minimis**

39. Any period of culpable exposure by a single Defendant of less than three months and also less than 5% of the total overall exposure by all Defendants should be ignored for the purposes of apportionment.<sup>2</sup>

**(e) Troubleshooting**

40. Any dispute between Insurers that cannot be resolved by the respective claims handlers should be referred to the nominated individual within their organisation(s) for discussion and resolution (see *Appendix 1*).

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<sup>2</sup> The FSCS, which provides protection to policyholders of certain insolvent EL insurers, is unable to waive recovery and the only payment that can be made is in relation to the liability of the insolvent insurer's policyholder.

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## APPENDIX 1

### PARTICIPATING INSURERS AND TROUBLESHOOTERS

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<i>Participants</i>	<i>Representative / Troubleshooter</i>	
Ageas	Steve Baggs	<a href="mailto:Steve.Baggs@ageas.co.uk">Steve.Baggs@ageas.co.uk</a>
Allianz	Mark Merrix	<a href="mailto:mark.merrix@allianz.co.uk">mark.merrix@allianz.co.uk</a>
AIG	John Carr	<a href="mailto:John.Carr1@aig.com">John.Carr1@aig.com</a>
Argent	Kevin Foakes	<a href="mailto:Kevin.Foakes@argentadjusters.co.uk">Kevin.Foakes@argentadjusters.co.uk</a>
Aviva	Rob Allen	<a href="mailto:Rob.Allen@aviva.co.uk">Rob.Allen@aviva.co.uk</a>
Axa Insurance	Derek Worrall	<a href="mailto:Derek.Worrall@axa-lm.com">Derek.Worrall@axa-lm.com</a>
BAI Claims Services Ltd	Michael Mackenzie	<a href="mailto:MichaelMackenzie@baiclaims.com">MichaelMackenzie@baiclaims.com</a>
Capita	Leon Rottenbury	<a href="mailto:Leon.Rottenbury@capita.co.uk">Leon.Rottenbury@capita.co.uk</a>
Dominion Insurance Co Ltd	Simon Janes	<a href="mailto:SJanes@dominion-ic.co.uk">SJanes@dominion-ic.co.uk</a>
Downlands	Mark Blackmore-Saunders	<a href="mailto:mbsaunders@thehartford.com">mbsaunders@thehartford.com</a>
FSCS	Karl Jefferies	<a href="mailto:Karl.Jefferies@fscs.org.uk">Karl.Jefferies@fscs.org.uk</a>
Garwyn Group	Rebecca Payton	<a href="mailto:Rebecca.Payton@garwyn.com">Rebecca.Payton@garwyn.com</a>
QBE (Europe) Ltd	Matt Knight	<a href="mailto:Matthew.Knight@uk.qbe.com">Matthew.Knight@uk.qbe.com</a>
RiverStone	Ian Graham	<a href="mailto:Ian.Graham@rsmi.co.uk">Ian.Graham@rsmi.co.uk</a>
R&Q Insurance (Malta) Ltd	Paul Corver	<a href="mailto:Paul.Corver@rqih.com">Paul.Corver@rqih.com</a>
RSA	Steve Bellingham	<a href="mailto:Steve.Bellingham@uk.rsagroup.com">Steve.Bellingham@uk.rsagroup.com</a>
Zurich	Mary Bell	<a href="mailto:Mary.Bell@uk.zurich.com">Mary.Bell@uk.zurich.com</a>

This list may be amended from time to time, as necessary.



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## APPENDIX 2

### CLAIMS INVOLVING INSOLVENT INSURERS

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FSCS provides protection to policyholders of the following insolvent insurers who carried out contracts of employers' liability insurance:

<b>Insurer</b>	<b>Run-Off Agent</b>
AA Mutual	BAI Claims Services Ltd (BAICS)
Aldgate	BAICS
Builders Accident/BAI	BAICS
Black Sea & Baltic	Pro
Chester Street (formerly Iron Trades)	Capita
Cotton Trades	BAICS
English & American	Pro
European Risks Insurance Company	Knowles Loss Adjusters/Quest Partnership
IICL (Independent Insurance)	Capita
Lemma Europe	Core Claims Solutions
Municipal General Insurance	BAICS
Orion	BAICS
Sovereign Marine	Pro
Trinity	BAICS
United Standard	BAICS

FSCS protection is at 100% where the claim involves exposure covered by a policy of insurance issued after 1/1/72 in England, Scotland & Wales and 29/12/75 in Northern Ireland.

Where claims are protected 100% by FSCS the actual initial funding of the claim will depend on the specific arrangements in place for that insurer and reference should be made to the Run-Off Agents acting for the insurer to clarify what will happen on any given claim.

Where the claim involves exposure on a policy issued before 1/1/72 (and 29/12/75 as appropriate) the pre 1/1/72 (or 29/12/75) element of the claim will be paid by the policyholder. Where there is no solvent paymaster responsible for the policyholder's share of the claim FSCS protection is available to pay 90% of the claim.

The Handling Insurer should make clear to the Claimant that any settlement offer made to them that includes the FSCS funded share of the pre 1/1/72 (or 29/12/75) element of the apportionment will only be paid at 90% in respect of the affected period of exposure.

*FSCS are signatories to these Guidelines but are unable to support the de-minimis definition at paragraph 39 where compliance with that definition would require FSCS to fund any part of the settlement that would have been paid by another party unless that party's culpable exposure period of 3 months has itself been excluded from the apportionment calculation and the settlement agreed with the claimant.*

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APPENDIX 3

SPECIMEN LETTER FROM CO-ORDINATING INSURER TO HANDLING INSURERS AND OWN FOLLOW INSURERS

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NIHL Fast Track/Delegated Handling

Your Ref:  
Our Ref

Dear Sirs

**Your Insured:**  
**Our Insured:**  
**Claimant:**

Please find enclosed a copy of the following:

- |       |                              |        |
|-------|------------------------------|--------|
| (i)   | HMRC schedule                | Yes/No |
| (ii)  | Letter of Claim/CNF          | Yes/No |
| (iii) | Medical evidence             | Yes/No |
| (iv)  | Analysis of audiograms       | Yes/No |
| (v)   | Claimant's schedule of loss  | Yes/No |
| (vi)  | Claimant's witness statement | Yes/No |
| (vii) | Apportionment schedule       | Yes/No |

We understand that you were on cover for the period (Click&Type) to (Click&Type) .

As we are the last on cover/have the majority share for the defendant with the largest interest **we will act as Coordinating Insurer.**

Please confirm your own period of interest and agreement to contribute towards this claim.

Please also confirm the periods for which insurance cover is known for your insured and any periods for which it remains unknown during the alleged employment period. Such unknown periods will need to be Holtby discounted from damages if no paymaster can be established.

We consider apportionment to be as per the below table, subject to further evidence becoming available.

CONTRIBUTOR (DEFENDANT)	PERIOD OF INTEREST	PERCENTAGE SHARE	FINANCIAL SHARE
		(Click&Type) %	£(Click&Type)
		(Click&Type) %	£(Click&Type)
		(Click&Type)	£(Click&Type)
		(Click&Type) %	£(Click&Type)
MONTHS/ TOTAL			

We will notify you in the event that your share of this claim should change by more than 10%.

We are investigating the issue of breach of duty and will advise the outcome in due course. Please note that provided there are no breach of duty, causation or limitation issues, it will be our intention to deal with this matter under the NIHL Claims Handling Guidelines (up to £25,000 damages).

We will proceed to settle the claim on a Parallel Payment basis.

We will be paying our share only leaving other contributing insurers to pay their respective proportions on a Parallel Payment basis. We will notify you of the sum(s) and payment details due from you.

We look forward to hearing from you.

Yours faithfully

---

APPENDIX 4

SPECIMEN LETTER FROM HANDLING INSURER TO CO-ORDINATING INSURER

---

NIHL Fast Track/Delegated Handling

Your Ref:  
Our Ref

Dear Sirs

**Your Insured:**  
**Our Insured:**  
**Claimant:**

We understand that you have recently been notified of this matter and that you will be Co-ordinating Insurer pursuant to the NIHL Claims Handling Guidelines.

We confirm our interest for the period (Click&Type) .

We also confirm that insurance cover has been established throughout alleged employment period apart from the period(s) (Click&Type) to (Click&Type) which will need to be Holtby discounted if no paymaster can be established.

**OR**

We are making further enquiries into insurance cover for the remainder of the alleged employment period.

Unless you have already done so, please provide copies of the following:

1. HMRC schedule;
2. Letter of Claim/CNF;
3. Medical evidence, including any questions to or replies from the expert;
4. Analysis of audiograms;
5. Claimant's schedule of loss;
6. Any disclosed witness statement of the Claimant; and
7. Apportionment schedule.

We calculate that our interest is approximately (Click&Type) % of our insured's share, although this may change as evidence develops. Please notify us in the event that our share of this claim changes by more than 10%.

We have investigated breach of duty in respect of our insured and, subject to limitation and causation; we are prepared to contribute to settlement on a time on risk basis.

We look forward to hearing from you.

Yours faithfully

---

APPENDIX 5

SPECIMEN LETTER FROM FOLLOW INSURER TO SAME DEFENDANT HANDLING  
INSURER

---

NIHL Fast Track/Delegated Handling

Your Ref:

Our Ref:

Dear Sirs

**Our Mutual Insured:**

**Claimant:**

We confirm our interest for our mutual Insured during the period (Click&Type) . We are prepared to contribute to this claim on the usual time on risk basis, subject to breach of duty, limitation and causation.

We calculate that our interest is approximately (Click&Type) % of the claim based upon the information presented, but appreciate that this may change as evidence develops. Please notify us in the event that our share of this claim should change by more than 10%.

Should you consider that this is a claim for settlement, we authorise you to do so on a full and final basis up to £25,000 in respect of damages, plus costs on the best possible terms.

Unless you have already done so, please provide copies of the following in due course:

1. HMRC schedule;
2. Letter of Claim/CNF;
3. Medical evidence, including any questions to or replies from the expert;
4. Analysis of audiograms;
5. Claimant's schedule of loss;
6. Any disclosed witness statement of the Claimant; and
7. Apportionment schedule.

We look forward to hearing from you.

Yours faithfully

---

## APPENDIX 6

### SPECIMEN LETTER – INSOLVENT INSURER TO HANDLING INSURER

---

#### NIHL Fast Track/Delegated Handling

Your Ref:  
Our Ref:

Dear Sirs

**Our Mutual Insured:**  
**Claimant:**

We understand that you have recently been notified of this matter and that you will be Handling Insurer pursuant to the NIHL Claims Handling Guidelines.

We confirm our interest for the period (Click&Type) and that we are prepared to contribute on a time on risk basis, subject to breach of duty, limitation and causation.

Unless you have already done so, please provide copies of the following:

1. HMRC schedule;
2. Letter of Claim/CNF;
3. Medical evidence, including any questions to or replies from the expert;
4. Analysis of audiograms;
5. Claimant's schedule of loss;
6. Any disclosed witness statement of the Claimant; and
7. Apportionment schedule.

We await your views on breach of duty, limitation, causation and quantum, in due course.

We calculate that our interest is approximately (Click&Type) % of the Insured's share but appreciate that this may change as evidence develops.

If you consider that there is any potential cut-off date, please present your suggested revised apportionment, together with the evidence in support of the proposed cut-off date, to us & all other relevant insurers, **before approaching or seeking the Claimant's agreement.**

#### **Delegated Authority**

##### Claims Funded by FSCS (Delete as appropriate):

We confirm that once breach of duty and apportionment have been agreed, and assuming there are no issues in relation to diagnosis/causation and/or limitation, we are happy for this matter to be dealt with under the NIHL Claims Handling Guidelines (up to £25,000 damages).

##### For Solvent Policyholders (Delete as appropriate):

We have sought our Client's Insured's permission to allow this claim to be dealt with pursuant to the NIHL Fast Track Guidelines on a delegated authority basis. We will revert to you with clarification within 21 days of your letter/communication. **In the interim, please**

**note that no offers or compromises ought to be made in relation to our Client's period of cover until such a time as we have provided you with our express authority.**

### **Funding**

#### Claims Funded by FSCS (Delete as appropriate):

This claim will be funded by the Financial Services Compensation Scheme ("FSCS") under their Third Party Rights procedure at a rate of (Click&Type) %. We trust that you will notify the Claimant accordingly.

#### For Solvent Policyholders (Delete as appropriate)

This claim will be funded directly by our Client's Insured.

### **Parallel Payments**

Please note that any payment agreed on behalf of [Insolvent Insurer]'s policyholder in respect of their period of interest must not be paid by any party other than [Insolvent Insurer]'s policyholder or the FSCS, after agreement by [Insolvent Insurer]. This parallel payment will prevent an eligible liability being funded in error by a Handling or Coordinating Insurer, who is then unable to recover a contribution. For further clarification, please contact the writer or the FSCS.

We look forward to hearing from you.

Yours faithfully

---

APPENDIX 7

**SPECIMEN LETTER FROM CO-ORDINATING INSURER TO OTHER HANDLING  
INSURERS ADVISING SETTLEMENT**

---

NIHL Fast Track/Delegated Handling

Your Ref:  
Our Ref

Dear Sirs

**Your Insured:**  
**Our Insured:**  
**Claimant:**

We refer to previous correspondence advising you of our interest as Co-ordinating Insurer.

Under the Delegated Authority provided by the ABI NIHL Claims Handling Guidelines settlement has now been agreed with the Claimant for damages in the sum of £ . Details of the Claimant's costs are still awaited.

Following your agreement to contribute towards this claim we consider apportionment to be as per the below table:

CONTRIBUTOR (DEFENDANT)	PERIOD OF INTEREST	PERCENTAGE SHARE	FINANCIAL SHARE
		(Click&Type) %	£(Click&Type)
		(Click&Type) %	£(Click&Type)
		(Click&Type)	£(Click&Type)
		(Click&Type) %	£(Click&Type)
MONTHS/ TOTAL			

Damages and costs are to be paid by parallel payment.

We have discharged our share as Co-ordinating Insurer to the Claimant's solicitors direct.

Please arrange to send payment for your own share and that for any Follow Insurers to the Claimant's solicitors within the next 14 days to avoid the Claimant seeking to enforce judgment. The payment should be made to the Claimant / Claimant's solicitor (delete as appropriate).

We will provide apportionment of the Claimant's costs once these have been agreed.

Yours faithfully



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**APPENDIX 8**

**SPECIMEN LETTER FROM HANDLING INSURER TO FOLLOW INSURERS ADVISING SETTLEMENT**

---

NIHL Fast Track/Delegated Handling

Your Ref:  
Our Ref

Dear Sirs

**Your Insured:**  
**Our Insured:**  
**Claimant:**

We refer to previous correspondence confirming our interest as Handling Insurer.

Under the Delegated Authority provided by the ABI NIHL Claims Handling Guidelines settlement has now been agreed with the Claimant for damages in the sum of £ . Details of the Claimant's costs are still awaited.

Following your agreement to contribute towards this claim we consider apportionment to be as per the below table:

CONTRIBUTOR (INSURER)	PERIOD OF INTEREST	PERCENTAGE SHARE	FINANCIAL SHARE
		(Click&Type) %	£(Click&Type)
		(Click&Type) %	£(Click&Type)
		(Click&Type)	£(Click&Type)
		(Click&Type) %	£(Click&Type)
MONTHS/ TOTAL			

Damages and costs are to be paid by parallel payment.

We have discharged our share as Handling Insurer to the Claimant's solicitors direct.

Please arrange to send payment for your own share to the Claimant's solicitors within the next 7 days to avoid the Claimant seeking to enforce judgment. The payment should be made to the Claimant / Claimant's solicitor (delete as appropriate).

We will provide apportionment of the Claimant's costs once these have been agreed.

Yours faithfully

APPENDIX E1



## Treasury Committee

House of Commons, Committee Office, 14 Tothill Street, London SW1H 9NB  
Tel 020 7219 5769 Fax 020 7219 2069 Email [treascom@parliament.uk](mailto:treascom@parliament.uk) Website  
[www.parliament.uk/treascom](http://www.parliament.uk/treascom)

Jon Thompson Esq  
Chief Executive and First Permanent Secretary  
HM Revenue & Customs  
100 Parliament Street  
London SW1A 2BQ

25 July 2016

*Dear Jon,*

### WORK HISTORIES FOR WORKERS AFFECTED BY OCCUPATIONAL DISEASES

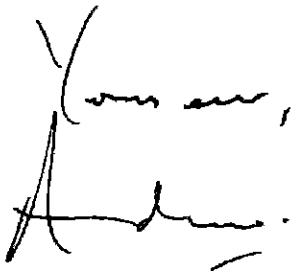
In the course of your evidence session before the Treasury Committee on 8 June, you responded to questions on HMRC's production of work histories for workers seeking compensation for occupational diseases from their former employers.

Following the meeting, the Committee's attention was drawn to correspondence on the same subject between Irwin Mitchell solicitors (representing claimants) and Ms Alison Hilton at HMRC. In front of the Committee, you referred to "microfiche records from the 1940s and 1950s". Ms. Hilton states that all work histories were recorded on microfiche up to 1997. The solicitor's firm also indicated that according to HMRC, employment histories usually only go back to 1960-61. I would be grateful if you could clarify which description of the extent of the problem is correct.

During the evidence session, you told the Committee that HMRC was "going to see what [it] can do to improve the service". Given the importance of the work histories to claimants and their families, the Committee is keen to obtain further information from you about the measures put in place to expedite the process. Greater transparency about the manner in which HMRC prioritises claims, and the technical barriers that have led to the current delays

in the production of work histories, would facilitate access to compensation for those affected. We would be grateful if you would answer the following questions:

- What is HMRC's overall strategy and timetable for reducing the delay in the production of work histories to a level substantially less than the current 383 days?
- What is the complete list of categories of applications for work histories that will be fast-tracked, and what criteria were used to establish this list?
- What are the specifications of the microfiche readers used by HMRC, including their model and manufacturer?
- What efforts have HMRC made to source machines, or components thereof, from abroad?

A handwritten signature in black ink, appearing to read 'Andrew Tyrie', with a horizontal line underneath.

**RT HON ANDREW TYRIE MP**  
**CHAIRMAN OF THE TREASURY COMMITTEE**



HM Revenue  
& Customs

Jon Thompson  
Chief Executive

The Rt Hon Andrew Tyrie MP  
Chair of the Treasury Select Committee  
House of Commons  
London SW1A 0AA

2/75  
100 Parliament Street  
London  
SW1A 2BQ

2 August 2016



[www.gov.uk](http://www.gov.uk)

Dear Mr Tyrie,

Thank you for your letter of 25 July 2016 regarding work histories for individuals affected by occupational diseases.

First of all I would like to clarify that HMRC holds complete employment records, in microfilm format, covering the period 1961-62 to 1996-97. After 1996-97 the department began storing employment information on our digital systems, meaning that this more recent data is far more easily accessible. It is also the case that HMRC holds some older records dating from the 1940s and 1950s (mostly in paper format) but this information is often very difficult, or impossible, to extract. As such, when compiling an employment history for a customer, we predominantly use the records held from 1961-62 to the current day.

I should highlight that in recent years there has been a significant growth in demand for these employment records, driven by a dramatic increase in the number of compensation claims being pursued for noise induced hearing loss (which represent around 90 per cent of all requests received by HMRC). HMRC has gone from handling 45,000 employment history requests in 2011-12 (for roughly 900,000 individual records) to 150,000 requests in 2014-15 (for over 3 million individual records). This has put considerable pressure on our record retrieval service and caused significant delays for our customers, which I recognise is a problem that the department needs to resolve.

In your letter you asked a number of questions relating the work the department is undertaking to improve the record retrieval service, which I have looked to answer in turn.

With regards to HMRC's overall strategy and timetable for reducing employment history delays, there are two key areas we are looking at: improving our existing infrastructure and reducing demand for our records. As I mentioned at Treasury Select Committee on 8 June, the microfilm reader machines the department uses to compile an employment history are no longer manufactured, and it is proving increasingly challenging to source spare parts to ensure that they are adequately maintained. In the past we have tested more modern microfilm readers, but these have been shown to damage our older, more fragile, tapes. However, the department recently hosted a successful demonstration of some alternative

---

Information is available in large print, audio and Braille formats.  
Text Relay service number – 18001



equipment, and we are now looking at options to trial a small number of these machines to see if they could help improve the service.

In relation to reducing demand for our records, a significant proportion of the requests the department receives relate to speculative claims that are, ultimately, not pursued. Unfortunately it appears that it is often the case that these requests are not subsequently withdrawn by the legal firms who are submitting them. For this reason, in the latter part of July, we audited a sample of 150 outstanding employment history requests (contacting firms to ascertain whether they still required this information). This exercise led to over 40% of the cases reviewed being withdrawn from our pipeline. Given these results, we now looking to extend this audit to a larger number of cases, to help reduce our backlog further and improve turnaround times.

We have also worked closely with the Ministry of Justice to see whether the evidential requirement for a full employment history could be amended to focus on providing claimants with information relating to a smaller number of relevant years. The advantage being that HMRC could process more requests more quickly if this were the case. However, this work has shown that a vast majority of claims relate to industrial diseases with a long latency period, or are the product of some form of prolonged exposure. Unfortunately, in both these circumstances a full employment history is required to help determine liability for compensation.

In answer to your second question concerning our system of prioritisation. We have worked hard to ensure that requests for employment histories are dealt with fairly and that we give priority to appropriate cases. As such, we have three categories of employment histories that are fast-tracked:

- Requests relating to serious life-threatening conditions, which are processed within 10 working days;
- Requests relating to claims where there is a limitation issue, which means that compensation can only pursued within a set timeframe from the point of diagnosis. These requests are also processed within 10 working days;
- Requests concerning Criminal Injury Compensation Authority cases, where an individual has been the victim of a violent crime. These requests are processed within 25 working days;

For each of these priority categories we ask for evidence to demonstrate that the relevant employment history request qualifies for prioritisation. This was not always the case, but it became apparent that some abuse of this system was occurring.

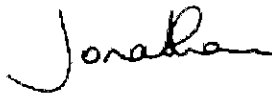
On your third and fourth points, you asked for some details about the microfilm reader machines used by HMRC and the efforts the department have made to source these machines from abroad. I can confirm that we operate two different models of machine, both manufactured by Canon: the MS350 and MS500 Digital Microfilm Scanners. These microfilm readers are maintained under a commercial agreement with an external supplier, and as part of this contract they are required to conduct a broad search for available parts, including with overseas vendors where appropriate.

---

Information is available in large print, audio and Braille formats.  
Text Relay service number – 18001



I hope this provides you with the information you are looking for, and offers you reassurance that progress is being made to tackle our backlog of requests and improve the records retrieval service.



**JON THOMPSON  
CHIEF EXECUTIVE**

---

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Text Relay service number – 18001



APPENDIX E2





# BEATING THE QUEUE

A simple solution to HMRC work history delays lies in the hands of practitioners, explains Helen Blundell

'HMRC told to get on top of work history delays' thundered the *FT*, while the *Guardian* described HMRC staff as 'scouring the net for microfiche readers to access work records.' Law firms have been reporting delays in providing work histories from HMRC of up to 14 months, and issuing press releases and contacting their MPs to highlight the delays.

Work histories, which are based on the client's National Insurance number, are important where the claimant has worked for a number of firms in their career. This is particularly the case where an employer has a history of takeovers and mergers (where the corporate identity of the employing company may not be clear), and where, due to the lapse of time, recollection of the employer's name has faded. Claimants suffering from an occupational disease such as mesothelioma or asbestos-related lung cancer, which have a long latency period or 'long-tail', tend to fall into this category.

Reading the members' correspondence and press reports suggested that an open dialogue might prove more useful, and APIL arranged to meet with HMRC to

discuss how, if possible, we could help to reduce the queue for work histories.

Of course, everything is not as clear cut as the news reports and press releases might suggest - and during the course of our discussions, it became clear that some really simple actions could make an enormous difference to the size of the queue and, inevitably, to the time spent waiting for HMRC to respond to requests.

## Short life expectancy and imminent limitation cases

If your client has a short life expectancy due to their work-related disease and is not expected to survive the current waiting times for a work history, or if you have been instructed at short notice and limitation is about to expire, then HMRC can expedite your request.

You must provide evidence either of the diagnosis or of the urgency created by the imminent limitation expiry with your request for a work history. Staff do keep an eye on these requests, and if they suspect the facility is being abused, then they will contact you to discuss.

## Other, non-fatal claims

Around 95% of requests for work histories are currently made in relation

to noise induced hearing loss (NIHL) claims. HMRC currently receives around 150,000 requests a year; only 2% of these relate to fatal diseases which are in need of urgent responses.

Some background is vital to understand what needs to be done to reduce the queue for work histories.

HMRC holds some 1.7 billion national insurance records, and those created before 1997-98 are stored on microfiche. In order to access the details, HMRC's staff at Longbenton, Tyne & Wear must find the correct reel of film containing the National Insurance details for the relevant period, and then extract the information using a microfiche reader.

HMRC currently has a total of 40 reader machines, which are built to run for a maximum of five hours per day. The machines are currently being used for between eight and ten hours a day, at least five days a week. Inevitably, this overuse leads to breakdowns, usually with one or two machines undergoing maintenance at any particular time.

## So, why not buy more reader machines? Why not hire more staff?

It was at this stage in our conversation with HMRC that we realised it was not

that simple. The old records have to be kept in a temperature-controlled, moisture-free environment, in what is known as 'the chiller'. The number of people who can be in the storage space at any time has to be limited, due to both space constraints, and the need to keep the chiller at the correct temperature.

So, even with more staff and/or more microfiche readers, it would be physically impossible to extract many more records from the chiller to meet the needs of a larger staff or machine capacity.

In fact, HMRC has been looking at some more modern readers, and while some of those tested have risked damaging the older films, advances in technology mean that HMRC is hopeful that one or two new readers that have recently come onto the market might either supplement or replace their old, less reliable, existing equipment.

But there is still the 'chiller v capacity' issue, which limits how much work can be done each day.

#### **So is there another way to resolve this problem?**

We think there is, and HMRC agrees. Practitioners need to do just one

thing - which may seem trivial, but which, if done by everyone, could reduce the queue by up to 40%.

We know from our own experience, and HMRC knows from recent random sampling, that around 40% of non-asbestos related disease claims, mostly NIHL, do not proceed beyond the production of an audiogram. At that stage, it becomes apparent that the client is either not deaf, not deaf enough, or does not have *noise induced* deafness.

But the queue is a self-perpetuating monster: because it takes 14 months to obtain a report, practitioners submit their request immediately upon taking instructions, to join the back of the queue. This means that around 40% of the NIHL requests in that queue relate to cases which are no longer going ahead.

#### **Report back and step out of the queue**

We strongly urge all members to change their practices and routinely notify HMRC once it is clear that a claim will no longer proceed.

At the moment, very few practitioners bother to notify HMRC once it becomes apparent that the claim will not continue, and the work history is

no longer required. If all firms altered their case closure routines to include a prompt to contact HMRC and remove the request from the queue, this would make an enormous difference to the waiting times for both their own requests, and those being made by other practitioners.

It takes up to seven hours for a full work history to be compiled. Even with the additional correspondence, it would only take 20 minutes for staff to locate a request and remove it from the queue.

Case management systems can be easily modified to generate a standard letter or email at the time the client is notified that the claim will not go forward. Routines for closing files can be modified, to prompt a simple email to HMRC. Taking this single step when closing a file would benefit all future claimants enormously.

- In order to withdraw request from the work history queue at HMRC, write to: NIC&EO; HM Revenue and Customs; BX9 1AN, or email direct to [technicalqueries.rrs@hmrc.gsi.gov.uk](mailto:technicalqueries.rrs@hmrc.gsi.gov.uk).

*Helen Blundell is legal services manager at APIL*

## PICArbs

# Don't litigate. Arbitrate.

"In respect of the defendant's failure to ADR, I impose costs on the indemnity basis and interest on costs, the defendant's refusal was unreasonable"

– Master O'Hare

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Personal Injury claims  
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APPENDIX F

## AUDIOGRAM REQUIREMENTS

### Quality Standard

In order to prepare the standard as outlined below, research discussions were held with Dr Huw Cooper, Chairman for the British Society of Audiology and Consultant Clinical Scientist in Audiology and Alison Walsh the President of the British Academy of Audiology and Clinical Scientist in Audiology.

The discussions focused upon five key areas:

1. The qualifications of the Audiologist
2. The conditions that the Audiometry is carried out in;
3. Retests and the need for the same;
4. Content of a potential report and;
5. A suggested Audit process

Their opinions in respect of these categories are detailed below:

### Audiology

#### Audiologist:

In order to be classed as a Qualified Audiologist, the Audiologist must be able to demonstrate the below:

- That they hold a degree in Audiology / Health Care Science;
- Are registered with both the BSA and the RCCP/HCCPC\*\*;
- Have a good understanding of the CLB paper;
- Agree to undergo training on NIHL once per year and;
- Be willing to submit to an audit process ;

\*\* It was commented that Hearing Aid Dispensers do not hold the requisite qualifications to produce reports of this nature.

#### Testing Conditions:

The Audiologist must confirm on the Audiogram:

- The Audiology was out in compliance with the BSA Guidelines.
- In particular, the room where the audiology is carried out should have ambient noise levels of no higher than 35dB.
- They have had sight of the Claimant's ID.
- That an examination of the ears has taken place and there was no cause for concern.

#### Retests:

- So long as the above conditions have been complied with there should be no reason to have the Claimant retested.
- A suitably qualified Audiologist will be able to assess at the time of carrying out the test whether there is a need to repeat the test.

- Should the Audiologist decide that there is a need to repeat the test then this can be carried out the same day with the client being permitted a break of one hour before the next test is carried out.
- If the Audiologist believes that the client is trying to feign the test results then they may wish to leave a few days between testing so that they can prepare to carry out different methods of testing which would produce accurate results/refuse to carry out the test(latter is preferred).

### **Audiologist Report:**

The Audiologist report should be compliant with Para 3.1 of PD 35 of the CPR and in particular it should confirm the following:

1. That an examination of the ears has taken place and there is no cause for concern.
2. The Audiometry was carried out in accordance with BSA Guidelines and in particular that the ambient noise levels were below 35dB;
3. Comment upon the presence of tinnitus and the appropriate grade and provide details of the supporting literature used in this assessment;
4. State whether hearing aids are recommended to the Claimant and whether the need for such has been accelerated as a result of the Claimant's noise exposure and if so for how many years.
5. Confirm that both the GP records and the results of their examination show no other possible cause of the hearing loss.
6. Audiologist must confirm that they have had sight of acceptable ID.
7. Contain a statement of truth to be signed by examining Audiologist.

Given that breach is admitted the Audiologist does not need to comment upon exposure.

Alison Walsh of the BAA did comment that should the Claimant present to the Audiologist with other symptoms alongside their hearing loss then a report should be obtained from an ENT Surgeon so as to rule out other causes such as Acoustic Neuromas.

### **Suggested Audit Process:**

There are potentially two options:

1. Audit the Audiologists annually by having an independent Audiologist observe the testing for a period of one hour. At this audit, the Audiologist must also produce evidence to confirm that they have attended training on NIHL in the past 12 months. This is the process used by the BAA.
2. Dr Cooper suggested another option which would involve a supervisor being present at all testing. Dr Cooper also recommended that we carry out further research with UKAS for advice on the content of any Audit / Supervision.

Further research with UKAS is currently underway.

APPENDIX G1

# ORDER

In the County Court  
Sitting at [insert]  
District Judge Atherton

Case number:

---

Parties

Claimant

Defendant

---

**Warning: you must comply with the terms imposed upon you by this order: otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.**

On 7th June 2016

District Judge Atherton sitting in the County Court at [.....] considered the papers in the case and

**ordered** that:

- 1) The Claim is allocated to the Fast Track.
- 2) At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another is to serve a witness statement giving reasons within 21 days of receipt of that proposal. That witness statement must not be shown to the trial judge until questions of costs arise.
- 3) Disclosure of documents will be dealt with as follows:
  - a) By 4pm on 19th July 2016 both parties must give to each other standard disclosure of documents by list and category which, in the case of the Claimant must include medical records, and, in the case of the Defendant, must include occupational health records and personal records relating to the Claimant and relevant to the issue of hearing loss and the dates and nature of the Claimant's employment in their custody, possession or control.
  - b) By 4pm on 2nd August 2016 any request must be made to inspect the original of, or to provide a copy of, a disclosable document.
  - c) Any such request unless objected to must be complied with within fourteen days of the request.
- 4) Evidence of fact will be dealt with as follows:

- a) By 4pm on 30th August 2016 both parties must serve on each other copies of the signed statements of themselves and of all witnesses on whom they intend to rely and all notices relating to evidence, including Civil Evidence Act notices.
  - b) Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.
- 5) The Claimant has permission to rely on the written expert evidence of (complete) annexed to the Particulars of Claim.
  - 6) The Defendant has permission to rely upon the written expert evidence of a consultant ENT surgeon or like medical expert on noise induced hearing loss provided that the report is served by 4.00pm on 13th September 2016
  - 7) The parties have permission to rely upon the written report of a jointly instructed acoustic engineer,
  - 8) By 12th July 2016 the expert should be agreed and instructed, and if no expert has been instructed by that date the Claimant must apply to court by 4pm the following day for further directions.
    - a) By 27th September 2016 the expert will report to the instructing parties.
    - b) By 25th October 2016 the parties may put written questions to the expert.
    - c) By 8th November 2016 the expert must reply to the questions.
    - d) A copy of this order must be served on the expert by the Claimant with the expert's instructions.
    - e) The expert may apply direct to the court for directions where necessary under Rule 35.14 Civil Procedure Rules.
    - f) A party seeking to call the expert to give oral evidence at trial must apply for permission to do so before pre-trial check-lists are filed.
    - g) Unless the parties agree in writing or the Court orders otherwise, the fees and expenses of the expert shall be paid by the parties giving instructions for the report equally.
  - 9) The Claimant and Defendant's medical experts are to have joint discussions and produce a joint Part 35 compliant statement by 6th December 2016
  - 10) The trial will be listed as follows:
    - a) By 4pm on 20th December 2016 pre-trial check lists must be sent to the court.
    - b) The trial window is between 23rd January 2017 and 20th February 2017 inclusive.
    - c) The estimated length of trial is one day.
    - d) By 4pm on 19th July 2016 the Defendant must inform the Claimant of its availability for the trial period and by 4.00pm on 26th July 2016 the Claimant must file a consolidated list of agreed dates of availability. The provision of individual dates of availability by reference to each witness or representative will not be acceptable. The case will be listed on the information available to the Court immediately after 26th July 2016.



- 11) Not more than seven nor less than three clear days before the trial, the Claimant must file at court and serve an indexed and paginated bundle of documents which complies with the requirements of Rule 39.5 Civil Procedure Rules and Practice Direction 39A. The parties must endeavour to agree the contents of the bundle before it is filed. The bundle will include a case summary and a chronology.
- 12) The parties must file with the court and exchange skeleton arguments at least three days before the trial, preferably by email if that is possible.
- 13) Because this Order has been made without a hearing, the parties have the right to apply to have the order set aside, varied or stayed. A party making such an application must send or deliver the application to the court (together with any appropriate fee) to arrive within seven days of service of this Order.

# ORDER

In the County Court  
at

Case number:

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Parties

Claimant

Defendant

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**Warning: you must comply with the terms imposed upon you by this order: otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.**

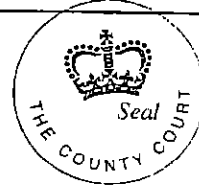
At a hearing conducted by telephone on  
before District Judge sitting at  
the Judge heard the for the Claimant and for the Defendant  
and made the following Order

- 1) The Claim is allocated to the Fast Track.
- 2) At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another is to serve a witness statement giving reasons within 21 days of receipt of that proposal. That witness statement must not be shown to the trial judge until questions of costs arise.
- 3) Disclosure of documents will be dealt with as follows:
  - a) By 4pm on both parties must give to each other standard disclosure of documents by list.
  - b) By 4pm on any request must be made to inspect the original of, or to provide a copy of, a disclosable document.
  - c) Any such request unless objected to must be complied with within seven days of the request.
  - d) A request for disclosure of medical records may be complied with by disclosure of those records, or provision of a signed authority for the requesting party to obtain them.
- 4) Evidence of fact will be dealt with as follows:
  - a) By 4pm on both parties must serve on each other copies of the signed statements of themselves and of all witnesses on whom they intend to rely and all notices relating to evidence, including Civil Evidence Act notices.
  - b) Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.

- 5) The Claimant has permission to rely on the written expert evidence annexed to the Particulars of Claim.
- 6) The Defendant has permission to obtain an independent audiogram which shall be filed and served by
- 7) The Parties may raise written questions of the expert by which must be answered by 4pm on . No other permission is given for expert evidence.
- 8) The parties have permission to rely on the jointly instructed written evidence of an expert acoustic engineer.
  - a) By , the expert should be agreed and instructed, and if no expert has been instructed by that date the Claimant must apply to court by 4pm the following day for further directions.
  - b) By the expert will report to the instructing parties.
  - c) By the parties may put written questions to the expert.
  - d) By the expert must reply to the questions.
  - e) A copy of this order must be served on the expert by the Claimant with the expert's instructions.
  - f) The expert may apply direct to the court for directions where necessary under Rule 35.14 Civil Procedure Rules.
  - g) A party seeking to call the expert to give oral evidence at trial must apply for permission to do so before pre-trial check-lists are filed.
  - h) Unless the parties agree in writing or the Court orders otherwise, the fees and expenses of the expert shall be paid by the parties giving instructions for the report equally.
- 9) The Parties may, if so advised, raise written questions of the medical expert on the engineers report by 4pm on which must be answered by 4pm on .
- 10) Schedules of Loss must be updated as follows:
  - a) By 4pm on the Claimant must send an up to date schedule of loss to the Defendant.
  - b) By 4pm on the Defendant, in the event of challenge, must send an up to date counter-schedule of loss to the Claimant.
  - c) Any element of a schedule not challenged by way of counter-schedule shall be deemed admitted.
- 11) The trial will be listed as follows:
  - a) By 4pm on pre-trial check lists must be sent to the court.
  - b) The trial window is between inclusive.
  - c) The estimated length of trial is one day.

**Notice of Allocation to  
the Fast Track**

In the County Court at Liverpool	
<b>Claim Number</b>	
<b>Date</b>	23 October 2015



	<b>1<sup>st</sup> Claimant</b>
	<b>Ref</b> <span style="background-color: black; color: black;">[REDACTED]</span>
	<b>1<sup>st</sup> Defendant</b>
	<b>Ref</b> <span style="background-color: black; color: black;">[REDACTED]</span>

On 22 October 2015 District Judge Jenkinson sitting at Liverpool Civil and Family Court, 35 Vernon Street, Liverpool, L2 2BX considered the papers in the case and

**IT IS ORDERED THAT:**

**ALLOCATION**

1) The Claim is allocated to the Fast Track.

**DISCLOSURE**

2) Disclosure of documents will be dealt with as follows:

- a) By 4pm on 20 November 2015 both parties must give to each other standard disclosure of documents by list.
- b) By 4pm on 27 November 2015 any request must be made to inspect the original of, or to provide a copy of, a disclosable document.
- c) Any such request unless objected to must be complied with within fourteen days of the request.

**LAY WITNESS EVIDENCE**

3) Evidence of fact will be dealt with as follows:

- a) By 4pm on 1 January 2016 both parties must serve on each other copies of the signed statements of themselves and of all witnesses on whom they intend to rely and all notices relating to evidence, including Civil Evidence Act notices.
- b) Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.
- c) Evidence of fact is limited to 3 witnesses on behalf of each party.
- d) Witness statements must not exceed 6 pages of A4 in length save for the statement of the Claimant which must not exceed 10 pages of A4 in length.

**SEPARATE MEDICAL EXPERTS**

4) The parties each have permission to rely on the written evidence of an expert ENT Surgeon.

<b>Notes:</b>	
<ul style="list-style-type: none"> <li>• You and the other party, or parties, may agree to extend the time periods given in the directions <b>except</b> <ul style="list-style-type: none"> <li>- where a rule, practice direction or court order requires a party to comply with a direction within a specified time <b>and</b> specifies the consequences of failing to comply;</li> <li>- where an extension of time will affect the date given for returning the pre-trial checklist or the date of the trial or trial period</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• If you do not comply with these directions, any other party to the claim will be entitled to apply to the court for an order that your statement of case (claim or defence) be struck out.</li> <li>• Leaflets explaining more about what happens when your case is allocated to the fast track are available from the court office, <b>or online at <a href="http://www.hmcourts-service.gov.uk/cms/infoabout.htm">www.hmcourts-service.gov.uk/cms/infoabout.htm</a></b>.</li> </ul>

The court office at the County Court at Liverpool, Liverpool, Civil And Family Courts, 35 Vernon Street, Liverpool, L2 2BX. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 0151 296 2200 Fax: 01264 785 132. Check if you can issue your claim online. It will save you time and money. Go to [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk) to find out more.

a) This permission relates to the following:

- i) Professor Homer for the Claimant;
- ii) An expert to be advised for the Defendant.

b) By 4pm on 15 January 2016 the parties must exchange the reports of the ENT surgeons.

c) Unless the reports are agreed, there must be a without prejudice discussion between the ENT Surgeons by 4pm on 10 June 2016 in which the experts will identify the issues between them and reach agreement if possible. The ENT Surgeons will prepare for the court and sign a statement of the issues on which they agree and on which they disagree with a summary of their reasons in accordance with Rule 35.12 Civil Procedure Rules, and that statement must be sent to the parties to be received by 4pm on 24 June 2016

d) The ENT Surgeons joint statement may include action, if any, which may be taken to resolve the outstanding points of disagreement, any further material points not raised in any Agenda and the extent to which the issues are agreed.

e) A copy of this order must be served on the ENT Surgeons by each party with their expert's instructions. The experts are reminded of their right where necessary to apply to the court directly for further directions under Rule 35.14 of the Civil Procedure Rules.

#### JOINT ENGINEERING EXPERT

5) The parties have permission to rely on the jointly instructed written evidence of an expert Acoustic Engineer.

a) By 20 November 2015 the Acoustic Engineer should be agreed and instructed, and if no expert has been instructed by that date the Claimant must apply to court by 4pm the following day for further directions.

b) By 22 April 2016 the Acoustic Engineer will report to the instructing parties.

c) By 6 May 2016 the parties may put written questions to the Acoustic Engineer.

d) By 27 May 2016 the Acoustic Engineer must reply to the questions.

e) A copy of this order must be served on the Acoustic Engineer by the Claimant with the expert's instructions.

f) The expert may apply direct to the court for directions where necessary under Rule 35.14 Civil Procedure Rules.

g) Unless the parties agree in writing or the Court orders otherwise, the fees and expenses of the Acoustic Engineer shall be paid by the parties giving instructions for the report equally.

#### UPDATED SCHEDULE AND COUNTER SCHEDULE OF LOSS

6) Schedules of Loss must be updated as follows:

a) By 4pm on 8 July 2016 the Claimant must send an up to date schedule of loss to the Defendant with copies of all documents relied on in support of the schedule which have not been disclosed previously.

b) By 4pm on 22 July 2016 the Defendant, in the event of challenge, must send an up to date counter-schedule of loss to the Claimant with copies of all documents relied on in support of the counter-schedule which have not been disclosed previously.

c) Any element of a schedule not challenged by way of counter-schedule shall be deemed admitted.

#### PRE-TRIAL DIRECTIONS

7) Pre-trial directions are as follows:

a) By 4pm on 5 August 2016 pre-trial check lists must be sent to the court.

b) A party seeking to call oral expert evidence at trial must apply for permission to do so when pre-trial check lists are filed.

c) There will be a CMC on the first available date after 12 August 2016 before an Industrial Disease District Judge with a time estimate of half an hour.

d) The CMC will be conducted by telephone, unless the court orders otherwise. The Claimant must make the relevant arrangements in accordance with Practice Direction 23A Civil Procedure Rules.

e) At the CMC the court will consider:-

i. Any applications for permission to call oral expert evidence (in which case the report(s) of the relevant expert(s) should be filed at least 3 days prior to the CMC;

ii. Whether the case requires re-allocation to the multi-track in the light of estimated length of trial and/or complexity.

#### TRIAL DIRECTIONS

8) The trial will be listed as follows:

a) The trial window is between 12 September 2016 and 30 September 2016 inclusive.

- b) The estimated length of trial is one day.
- c) The trial should be listed before a Circuit Judge, Recorder, or Industrial Disease District Judge.
- d) Not more than seven nor less than three clear days before the trial, the Claimant must file at court and serve an indexed and paginated bundle of documents which complies with the requirements of Rule 39.5 Civil Procedure Rules and Practice Direction 39A. The parties must endeavour to agree the contents of the bundle before it is filed. The bundle will include a case summary and a statement of the issues.
- e) Any party who wishes to adduce CCTV, video or similar evidence at a trial or hearing shall inform the court of this in writing at least 7 days prior to the trial or hearing, and at the same time send a copy of the disc (in a format that can be replayed by the court's equipment, namely DVD Region 2) to the court, so that its compatibility with the court's equipment can be verified.
- f) Unless the court confirms prior to the trial or hearing that the disc has been verified as compatible, that party shall attend the trial or hearing with a sufficient number of laptops or other devices that are capable of viewing the CCTV, video or similar evidence.

#### 7 DAY NOTICE

- 9) Because this Order has been made without a hearing, the parties have the right to apply to have the order set aside, varied or stayed. A party making such an application must send or deliver the application to the court (together with any appropriate fee) to arrive within seven days of service of this Order

The claimant must pay a hearing fee of £545.00 unless you make an application for a fee remission. If the court is notified in writing that the hearing is no longer needed the hearing fee will be refunded in full or in part in certain circumstances, please refer to the leaflets explaining more about what happens when your case is allocated to track. Failure to pay the fees may result in your claim being struck out. The above fees must be paid by 4pm on 5 August 2016

APPENDIX G2

# ORDER

**In the County Court  
Sitting at [insert]  
Before District Judge Atherton**

Case number:

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**Parties**

Claimant

Defendant

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**Warning: you must comply with the terms imposed upon you by this order: otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.**

On 7th June 2016

District Judge Atherton sitting in the County Court at [.....] considered the papers in the case and

**ordered that:**

- 1) The Claim is allocated to the Fast Track.
- 2) There be a trial of a preliminary issues as to whether the claim is statute barred on the grounds that it had been brought outside of the limitation period provided for under S.11 of the Limitation Act 1980 or whether there should be an order under S.33 of the Limitation Act 1980 to disapply section 11.
- 3) At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another is to serve a witness statement giving reasons within 21 days of receipt of that proposal. That witness statement must not be shown to the trial judge until questions of costs arise.
- 4) The below directions deal with the preliminary issues alone ("the limitation issues").
- 5) Disclosure of documents will be dealt with as follows:
  - a) By 4pm on 19th July 2016 both parties must give to each other standard disclosure of documents by list and category.
  - b) By 4pm on 2nd August 2016 any request must be made to inspect the original of, or to provide a copy of, a disclosable document.
  - c) Any such request unless objected to must be complied with within fourteen days of the request.



- d) Disclosure is to be limited to the limitation issues.
- 6) Evidence of fact will be dealt with as follow:
- a) By 4pm on 30th August 2016 both parties must serve on each other copies of the signed statements of themselves and of all witnesses on whom they intend to rely and all notices relating to evidence, including Civil Evidence Act notices.
  - b) Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.
  - c) The statements are to be limited to the limitation issues.
- 7) The Claimant has permission to rely on the written expert medical evidence annexed to the Particulars of Claim.
- 8) Permission to the Defendant to ask questions of the Claimant's medical expert by 13th September 2016 with replies 14 days after receipt of questions.
- 9) The trial of the limitation issues will be listed as follows:
- a) By 4pm on 25th October 2016 weeks pre-trial check lists must be sent to the court.
  - b) The trial window is between 31st October 2016 and 21st November 2016 weeks inclusive.
  - c) The estimated length of trial is one day.
  - d) By 4pm on 12th July 2016 the Defendant must inform the Claimant of its availability for the trial period and by 4.00pm on 19th July 2016 the Claimant must file a consolidated list of agreed dates of availability. The provision of individual dates of availability by reference to each witness or representative will not be acceptable. The case will be listed on the information available to the Court immediately after 26th July 2016
  - e) If necessary, directions for the further conduct of this case will be given at the conclusion of the trial.
- 10) Not more than seven nor less than three clear days before the trial, the Claimant must file at court and serve an indexed and paginated bundle of documents which complies with the requirements of Rule 39.5 Civil Procedure Rules and Practice Direction 39A. The parties must endeavour to agree the contents of the bundle before it is filed. The bundle will include a case summary and a chronology.
- 11) The parties must file with the court and exchange skeleton arguments at least three days before the trial, preferably by email if that is possible.
- 12) Because this Order has been made without a hearing, the parties have the right to apply to have the order set aside, varied or stayed. A party making such an application must send or deliver the application to the court (together with any appropriate fee) to arrive within seven days of service of this Order.

APPENDIX H

## SUGGESTED CONSULTATION QUESTIONS

1. Do you agree with the recommendations of the CJC report:
  - a. for fixed recoverable costs?
  - b. for pre-litigation process improvements?
  - c. for post-litigation process?
  - d. On other matters?

Please give reasons for any points not agreed.

2. The fixed recoverable costs proposals were negotiated by the CJC working party, including the list of excluded cases. Do you agree with the proposals as a package? If not, what is your evidence to support any alternative proposal both as to the level of costs which should be allowed and as to the likelihood that this could form part of an agreed scheme?
3. One of the excluded categories of case is for "test cases". Do you agree that this should be an excluded category and if so, how would you define test cases in this context?
4. Do you consider that cases where limitation is ordered to be tried as a separate issue should be included within the fixed costs regime or excluded? Please give reasons for your response.
5. One of the key proposals for a new pre-litigation process is for the claimant to send a more detailed letter of claim, which is accompanied by an audiogram and a HMRC schedule of employment history. How should compliance with these requirements best be enforced?
6. The CJC working party suggests that the pre-litigation process changes be introduced as an annex to the Occupational Disease and Illness Protocol. Do you agree? If not, how should the changes be introduced?
7. A better response letter from defendants is also key. How should compliance with this requirement be enforced?
8. The CJC report proposes a system of accreditation for audiologists, although it does not recommend that this is carried out via MedCo. Do you agree? If so, how would you propose that accreditation is implemented and enforced?
9. The CJC report proposes that standard directions should be used by the courts. Do you agree? The report contains examples of current standard directions for use in the fast track at Appendix G: we would welcome comments on those drafts or any other proposals, especially if they can be agreed by representative bodies.