

IN THE COURT OF APPEAL
FROM
THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

CLAIM NO: KB-2022-00285

CA -2025-001305

BETWEEN:

JONATHAN BEVAN

Claimant

-and-

MINISTRY OF DEFENCE

Defendant

SKELETON ARGUMENT

ON BEHALF OF THE APPELLANT

Introduction

- I It is assumed that the Court has read the Grounds of Appeal immediately prior to reading this Revised Skeleton Argument.
- II. The Appeal Bundles consist of a Core Bundle (CB), a Supplemental Bundle (SB) and an Authority Bundle (AB). References to the Bundle will be by page number in square brackets [.].

- III Permission to appeal has been granted by the order of Rt. Hon. Lord Justice Stuart-Smith on 5th January 2026. [CB58]. The Grounds of Appeal have been filed with this skeleton argument [CB14]. A chronology is at [CB23].
- IV A Bundle of Authorities has been prepared. This revised skeleton argument incorporates the authorities relied on and the propositions derived from those authorities.
- V The Appellant/Claimant is referred to hereinbelow as “the Claimant” and the Defendant/Respondent as “the Defendant”.
- VI The background facts relevant to breach of duty of this military personal injury case, are that the Claimant alleged he suffered a hearing impairment and psychological injury (“the injury”) caused by dangerous/excessive noise exposure during his military service, whilst working on the Defendant’s Ajax Project vehicles from January 2017 to about December 2020. The Claimant’s unsafe noise exposure was from army equipment and vehicles. [See PC paragraph 5 [CB.75] PC paragraph 12 [CB79]. Symptoms commenced in, or about, 2020 [Paragraph 14 [CB80].
- VII Proceedings were issued on 17th October 2022. [Claim Form CB[69]. Allegations of negligent exposure to dangerous and excessive levels of noise were specifically pleaded in the Particulars of Claim.
[See paragraphs 30(2) [CB87] Paragraph 30(6) [CB88], paragraphs 30(17) and 30(18)] [CB 92].
Based on the pleaded facts in the Particulars of Claim, the Defendant admitted breach of duty in its Defence, which admission was initially made in its correspondence, dated 21st February 2023 [Defence Paragraph 3: CB61: letter at [SB609]. The Claimant was put to proof on causation. [Paragraph 5 Defence CB61].
- VIII Based on the Defendant’s admission, the Claimant’s case proceeded to trial on the basis the breach of duty issue was determined in his favour, and the outstanding issues were causation and quantum of damages. No expert liability evidence on the precise quantification of noise exposure was therefore filed, as unsafe noise exposure was not in issue. Accordingly, the Judge’s judgment on causation of injury was based on the finding

that the Claimant had been “..*negligently exposed to dangerous and unsafe levels of noise..*”

[Judgment paragraph 1 [CB29].

Ground 1 – The findings that the Claimant’s evidence did not satisfy the GC

1.1 The Judge held that the issue of acoustic shock would be determined on the Grindleford Criteria (GC- with each criterion G1-G5). These criteria were based on two articles by the Defendant’s ENT expert (Mr. Parker), who identified the concept of acoustic shock.

- (1) “*Acoustic Shock*” *A New Occupational Disease? Observations from clinical and medico-legal practice.*” [International Journal of Audiology [IJA] 2014-53-764. [SB244 and at SB246 Col 1 “*Acoustic Startle is a..*”and “Discussion” SB248 Col 2]
- (2) “*Acoustic Shock: An update review – Journal of Laryngology and Otology* [JLO] 2020 at [SB 251 [Terminology defined at SB252] and further discussed in the context of *Goldscheider v Royal Opera House* [2020] ICR 1 [SB253/4 Col.2] [These are collectively referred to herein as “the medical authorities”].
- (3) The Judge summarised the criteria for a diagnosis/finding of acoustic shock under the GC, by reference to the medical authorities at paragraph 11 of the judgment [CB30/31]

1.2 In order properly to determine the issue of the acoustic shock, then the findings on the GC had to be consistent with the medical authorities on which they were based. The Judge failed correctly to apply the GC and made erroneous findings in two particular respects: namely that:

- (1) The Claimant’s evidence (both lay and expert) actually met the GC to prove he suffered acoustic shock and a consequent injury.
- (2) The Judge wrongly adopted the additional oral evidence of the Defendant’s ENT expert (Mr Parker) on the requirements of the GC, which were not contained in the medical authorities/medical expert evidence, which defined “acoustic trauma” and which unreasonably expanded the criteria. This led to the Judge to reach an erroneous conclusion to dismiss the claim on causation of injury.

1.3 In particular, the Judge wrongly interpreted the GC as follows:

(a) As to GC and the criteria under G1-

The Judge fell into error by accepting Mr. Parker's evidence on this issue, that there was "*..no defined acoustic incident from which the ear symptoms commenced straightaway or shortly afterwards..*" [paragraphs 64-69 of the judgment][CB39-40]. In fact, the Particulars of Claim (paragraph 12) [CB79] pleaded multiple examples of "acoustic incidents" in a military context. These included:

(a) Noisy high-pitched ringing in the Claimant's Bowman headset: [PC paragraph 12(1) and (9)] [CB79].

(b) Vehicles which were driven outside had excessively high-pitched engine noise: [PC paragraph 12(2)] [CB79].

(c) One excessively noisy high-frequency alarm sounded every half an hour:[paragraph 12(4)].

(d) Another alarm, known as the Nuclear Biological Chemical Alarm, sounded at high-pitched levels on an intermittent basis: [Paragraph 12(5)] [CB79].

(e) A fan positioned behind the Claimant's head in the Ajax vehicle emitted a high frequency noise: [paragraph 12(8)] [CB79].

(f) Vehicle noise at various frequencies in the hanger was excessively loud throughout the Claimant's daily work schedule. All, or at least some, of these sources of dangerous levels of noise, were properly capable of constituting a "defined acoustic incident" and this evidence was not challenged. The evidential burden rested on the Defendant to prove otherwise, given the admission of breach of duty.

Goldscheider v Royal Opera House Covent Garden Foundation et al [2020] ICR 1 at paragraph 73:[[AB28] :paragraphs 61-69: proposition in support of the burden of proof being on the defendant [AB25]

The Claimant's witness statement also provided the relevant evidence:
[paragraphs 24-32][SB21-23].

[Evidence Oral evidence Mr Parker on factual causation based on Claimant's evidence, which was put to him in cross examination: [SB503 L8 to 504 L33, 483 L2-486 line 35]

1.4. As to GC: Criterion under G1:

In dismissing the case that there was no acoustic shock incident the Judge held “..*That there was no “memorable event. Enough to startle or shock..”* [Paragraph 38 of the Judgment] [CB35]] The Judge was wrong on two bases:

- (a) He adopted the additional oral evidence of the Defendant’s ENT expert (Mr. Parker) which required the need for a “*memorable event*”, when this criterion was not contained in the medical authorities, or the GC. The evidence was given by the Defendant’s ENT expert in re-examination and in answer to the Judge’s questions. It should have been rejected as being inconsistent with the established medical authorities and the GC.

[Oral evidence Mr Parker on acoustic shock definition including memorable event [SB 524 Lines 19-31]

- (b) Further, or alternatively, the Claimant’s evidence unequivocally identified “acoustic incidents” that should have been categorised as capable of causing a “startle or shock” under G1. These “acoustic incidents” occurred in a military setting whereby vehicles and equipment created the dangerous levels of noise levels, including high frequency noise. The causation evidence on “acoustic incidents” should therefore have been considered in this military context and found in favour of the Claimant.

[See witness of the Claimant at paragraphs 25-32] [SB22-23].

[Oral evidence of the Claimant: on noise exposure [SB 277-line 35- 278 line 27]

[Oral evidence Claimant SB 364 line 5 to 23]

[Oral evidence: on tinnitus: Claimant SB 370 lines 1 to line 30]

1.5 Furthermore, the Judge’s finding that there was no element of “surprise” in the Claimant’s reaction to the acoustic incidents was in error. The Claimant’s evidence was that he repeatedly had to turn off high-frequency, loud alarms transmitted through his headset when they sounded without prior notice.

- (a) The alarms sounded approximately every 15 seconds, and as such “unpredictable” and “surprising”.
- (b) Importantly, they were not timed to sound regularly.

- (c) Multiple alarms/sources of high-pitched noise sounded, and so the Claimant could not prevent them sounding, and had to deal with the noise. This should have been deemed unpredictable and capable causing startle response under the GC.

[See witness statement of the Claimant at paragraphs 25-32] [SB22-23].

1.6 As to GC: Criterion G2:

In finding that the Claimant had suffered no “acoustic incident”, the Judge accepted the evidence of the Defendant’s ENT expert on the GC in the following terms, “*However for that to happen he (Mr Parker) was clear there would need to be some symptom that arose “straightaway or shortly after the relevant event. The temporal link is a test of causation..”*

[Emphasis added][Judgment: paragraph 66. CB39]

The Judge was wrong in that:

- (a) Having found that the tinnitus commenced in, or about, March 2021, and that the Claimant was previously removed from the Ajax Project in November 2020, then the Judge should have found that this temporal/causal link satisfied G2.

[Evidence of C on. Tinnitus:Paragraph 46 of the Judgment] [CB36]

- (b) In addition, the medical authority [IJA] 2014-53-int. p764, expressly stated in support of the Claimant’s causation case, “*..In some cases this came on at time of injury some months post injury...*”. [SB247 Column 2 Line 5].

Thus, the Claimant’s evidence satisfied this criterion on causation, and the Judge was wrong to hold that it did not.

[Oral evidence of Professor Wright that even if symptoms started in March 2021 his causation opinion was unaffected, which remained his evidential position on his oral evidence [SB427- line 1-to 430- line 30] [Evidence Mr Parker:duration of symptoms [SB:522 Line 32 to 523L21 and SB526-Line 3 to 527 line 3]

1.7 As to GC: Criterion G4:

The Judge accepted the evidence of the Defendant’s ENT expert that, “*...the acoustic shock experienced in the right ear might possibly result in hearing loss and tinnitus then the tinnitus would only be experienced in the right (damaged) ear.*” The exception would arise “*..if the tinnitus was “overwhelming” and defined as catastrophic or at the top end of*

severe” (emphasis added).

[Paragraph 67 of the Judgment] [CB39].

Having made those findings, the Judge was then in error as follows:

(a) The undisputed evidence indicated that medical causation met the GC criteria on the right ear, (under the Bowman headset), but not the left one. Irrespective of causation on the left one, then the Judge should have found that causation of injury was established and so made a finding on causation in the Claimant’s favour, namely that the admitted breach of duty had caused, or materially contributed to the Claimant’s overall injury.

(b) The Judge then went on to hold that the Claimant’s case could only be established on a unilateral, and then ultimately bilateral, tinnitus basis if there was “...*tinnitus that was catastrophic or at the top end of severe.*”

[CB39 paragraph 67].

This reference to “*top end/catastrophic*” was not an acknowledged requirement under the GC criteria, and in any event remained wholly undefined on the Defendant’s expert medical evidence.

(c) Further or alternatively, the Defendant’s ENT medical expert, Mr Parker conceded on the joint statement that the Claimant suffered from “severe” tinnitus, and as was accepted by the Claimant’s expert.

[See JS [SB119 Line 5]- internal page 3]

Consequently, the Judge should have concluded that causation of injury was satisfied, as the Claimant’s tinnitus started in one ear, and then became bilateral, as tinnitus in the first ear was “severe” within the said causation criteria.

[Oral evidence of Mr Parker: evidence on right ear causation: [SB 506 line 25 to 507 line 35]

[Oral evidence of Mr Parker on severity of symptoms: [SB 527 line 4 to line 8]

~~1.8 The Judge was wrong on his findings on the relationship between the GC and the psychological condition of the Claimant. [Paragraph 68 of the Judgment] [CB40]~~

~~By accepting the Defendant's ENT expert's evidence without qualification, that "psychological overlay" did not affect the application of the GC the Judge's findings were wrong in that:~~

~~(a) The Claimant had persuasive evidence on the issue of psychological causation of his condition, and its link to the hearing impairment, but the Judge failed to fully consider the Claimant's expert psychiatric causation evidence of Professor J. Morgan, Consultant Psychiatrist for the Claimant. In contrast, the Defendant relied upon no persuasive psychiatric causation expert evidence on this issue. Moreover, it actually agreed (on the ENT evidence) that the Claimant had suffered from a non-organic hearing loss.~~

~~[Report Mr. Parker: SB111: line 31-32 ("*The Claimant for whatever.*") and SB [137 response at Q10] [Evidence: The Claimant's medical expert evidence that demonstrated a causal connection between his psychological condition, and his injury was contained in the reports of:~~

~~(i) Professor Wright: [Reports SB57: lines 495-504] [SB82 lines 531-550]~~

~~Joint statement: [SB121: line 3 "*Whether or not Mr Bevan*"] to line 16.~~

~~Oral evidence Professor Wright on nexus of mental health issues and tinnitus [SB427 Lines 8-18].~~

~~(ii) The Claimant's expert psychiatric causation evidence of Professor J. Morgan:[SB174: paragraphs 6.45-6.47 and J/S [SB221:para 6 "*Professor Morgan was given..*" and [SB222:paragraph 6: "*In Professor Morgan's Opinion, but for*"]~~

~~[Oral evidence Professor Morgan: causation: SB464 line 29-SB 465 line 10] [SB466 line 30- 489 line 10]~~

~~(b) The acceptance by the Judge of the Defendant's ENT expert's evidence on psychological causation issues (including the cause of the Claimant's non-organic hearing loss) was impermissible, particularly as the ENT expert expressly deferred to expert psychiatric evidence.~~

~~[See Report: SB113 Q4/5: Part 35 Responses- dated 10.6.24 at No.5] [SB137]. This an answer to the corresponding question on Part 18 Questions from the claimant [SB125] No.5 SB126] and response is at [SB137 Q5]:~~

~~Report of Mr Parker deferring to psychological expert evidence [SB113 Q4 and 5]~~

~~[Oral evidence of Mr Parker: on psychological issues [SB534 line 16 to 537 line 1]~~

Ground 2 – The finding that the Judge preferred the expert evidence of Mr. Parker

2.1 Paragraph 55 of the Judgment: [CB38] The Judge analysed the Defendant’s ENT expert’s evidence in considerable detail, and he found that he preferred it to the Claimant’s ENT expert’s evidence. In doing so the Judge was in error:

(1) The evidence of Claimant’s ENT expert (Professor Wright) was not addressed in appropriate detail with relevant findings that should have been fully considered:

(a) Professor Wright opined that the Claimant had suffered an “acoustic trauma injury”, during the course of his Ajax service and, importantly, as evidenced by his diagnosis and treatment in December 2020 at QEH.

[See Wright report 29th August 2023- lines 514-518] [SB82-83].

(b) This acoustic trauma/tinnitus caused the development of a non-organic hearing loss/conversion disorder, the extent of which was then ultimately a psychiatric issue to be determined by the psychiatric experts. Furthermore, that the Claimant suffered a non-organic hearing loss injury was actually agreed by Mr Parker:

[SB137: answer to Q10]

[Report of Mr Parker on non-organic hearing loss [SB111 line 31” *Claimant for whatever reason.*”]

[Evidence of Professor Wright: [SB57: lines 495-502] and SB82 lines 531-538]

[Oral evidence of Professor Wright: non-organic hearing loss/tinnitus and psychological sequelae: SB 418 line 20 – [419] line 8-13]

(c) The fact of a hearing impairment injury of some type was probably established, in that the Claimant complained of tinnitus and impaired hearing against background noise.

[WS claimant: paragraph 61: SB28]

(d) It was likely that on investigations in December 2020, Queen Elizabeth Hospital, Birmingham (QEH) determined that the Claimant suffered hearing damage, including, either a temporary threshold shift in his hearing, or permanent damage to the inner ear. This former condition was characterised by Professor Wright as similar to temporary “disco-deafness” caused by excessive noise exposure, but some cases did not resolve and tinnitus continued. However, the hearing damage

was sufficient to trigger a conversion disorder (non-organic/functional disorder), with the extreme symptom presentation.

[Professor Wright: oral evidence: SB452: lines 3 to 453 line 24]

[Report Professor Wright SB61 lines 631-638]

- (e) Although the application of the GC was not disputed by Professor Wright as one approach to the causation issue, ultimately whether this was characterised as an “acoustic shock”, or “acoustic trauma” was “a matter of semantics” as there had been evidence of an organic hearing loss injury/tinnitus, which had triggered a conversion disorder.

Judgment paragraph 44 [CB36]

[see Report Professor Wright 29.8.23 – lines 514-538] [SB82]

[SB378:Oral evidence: line 30 to SB 383- line 19: cross examination of Professor Wright and questions from the Judge]

[Oral evidence of Mr Parker on semantics issue: [SB528 line 22 to line 33]

- 2.2 The Judge failed to make any, or any appropriate and reasoned analysis of why the Claimant’s ENT expert’s conclusions on medical causation did not satisfy the GC criteria, and/or why overall they would not be preferred. [See judgment paragraphs 61-69 “Acoustic Injury?”][CB39] Had a balanced and full analysis been made of Professor Wright’s conclusions then it should have led the Judge to conclude that Professor Wright’s conclusions accorded with the GC and/or represented a persuasive causal explanation for the undisputed symptoms with which the Claimant continued to present (assuming the Court found he was a credible witness).

Ground 3 – The finding in relation to the OEH investigations and treatment

- 3.1 The Judge made findings in relation to the clinical correspondence in December 2020 from QEH which were relied upon to reject the Claimant’s causation case. In particular, reliance was placed on it to identify:
- (a) when the tinnitus of the Claimant commenced and;
 - (b) whether there was a diagnosis of the Claimant’s condition at this time that supported a finding of acoustic shock (See paragraph 45 of the Judgment: CB36]

Three letters of the treating clinicians (from Lt Col Linda Orr Consultant ENT Surgeon and Mr J. Muzaffar, Specialist Registrar ENT at Queen Elizabeth Hospital, Birmingham and an MDT record) identified the findings of the examination, investigations and treatment of an acoustic trauma injury. The Judge fell into error in the following respects:

- (1) Whilst the Judge addressed the issue of diagnosis of the Claimant's condition, the Judge failed fully to consider all the relevant medical and other evidence, which established on balance, there was an acute acoustic hearing injury (and subsequent psychological injury) that forged a causal nexus to the admitted negligence.
 - (2) The Judge, furthermore, failed to find that, based on the medical documentation, the treating clinicians diagnosed some damage to the Claimant's hearing, (the Defendant did not rely on any witness evidence to support its case on this issue). The evidence relied upon was as follows:
 - (a) The letter of Mr. Muzaffar identified evidence of an organic injury as follows:[SB257: letter dated 7.12.20]
 - (i) New changes on the hearing audiometry compared to the audiometry of November 2019.
 - (ii) The Claimant was to be treated as suffering acute acoustic trauma with oral steroids.
 - (iii) The hearing category was H2 H1 (normal is H1H1).
 - (iv) A finding of "mild scarring on his tympanic membranes bilaterally" and "this does seem to show some new changes". [SB257: para 5]
 - (b) The first letter of Lt. Col. Orr ENT Surgeon, dated 2.6.21, found:[SB261]
 - (i) Some reasonably significant new changes.
 - (ii) The Claimant was medically downgraded.
 - (iii) That his hearing categorisation was H2H1.
 - (iv) With "small changes possibly of recent onset".
 - (v) The record of the MDT meeting also confirmed the likelihood that the Claimant was suffering from an acoustic trauma. He had a Permanent E2 marker. [SB260: para 3]
- [Oral evidence of Professor Wright: [SB411 lines 24-412, line 28]

[Oral evidence Mr Parker on the issue of management by Lt Col Orr: [SB496]
Line 9 -SB497 line 9 and SB 501 Line 25-502 line 7]

- (c) Based on this correspondence the Judge should have found that, on balance, there was damage caused to the Claimant's hearing/tinnitus from the admitted excessive noise and this was sufficient to establish a causal link to the onset of the conversion/psychological disorder and so satisfy the Claimant's causation case.
- (d) The Judge was in error in finding there was no diagnosis (presumptive/working or otherwise) of the Claimant's hearing loss condition following the examination at QEH in December 2020. The Judge held "*...a decision to treat a patient if he has suffered an acoustic shock is not the same as a decision that he has suffered acoustic shock in my view makes it clear there was no diagnosis..*" [paragraph 45: CB36].
- (e) The Judge failed fully to consider the evidence of the Claimant's expert ENT expert, Professor Wright, namely that a reasonable ENT clinician would not have prescribed a high dosage of steroids to treat his presenting condition, if the clinical condition/diagnosis of the Claimant's hearing injury did not justify the same. Given there was no evidence that this was prophylactic treatment, it was illogical to find that the clinicians treated the Claimant without the belief that he was presenting with an injury that required such treatment. In addition, no witness evidence was relied on by the Defendant on this issue.
[See oral evidence of Professor Wright on acoustic trauma [SB411 line 24 to 412 line 35: and SB 432 line 6-13]
[Oral evidence Mr Parker acoustic trauma/prescription-[SB 492 line 19 to 493 line 15] [Oral evidence of Mr Parker on steroid prescription: SB493 line 3. to line 15: Steroid prescription]

- (f) The Judge accepted the Defendant ENT expert's evidence as to the reasons for arranging the MRI scan by QEH, namely that it demonstrated that no diagnosis had been established. The Judge was wrong to do so. The evidence of the Defendant's ENT expert, was wholly speculative, impermissible, and not based on any witness evidence from the treating clinicians of QEH [see Judgment paragraph 45][CB36]. Furthermore, it did not discharge the evidential burden which rested on the Defendant, given the admission of breach of duty. Further, or in the alternative, even if Mr Parker's evidence was plausible, the arranging of an MRI scan was equally consistent with an investigation to establish the extent of damage as opposed to the fact of organic damage to the Claimant's hearing.

[Mr Parker's oral evidence on the MRI scan: SB495 line 10-496 line 2]

Goldscheider v Royal Opera House Covent Garden Foundation et al [2020] ICR 1 at paragraph 73:[AB28]:paragraphs 61-69: proposition in support of the burden of proof being on the defendant (AB25-27).

GROUND 4 – The dismissal of the acoustic shock claim and the failure to consider the Claimant's entire case on causation of injury.

- 4.1 The Judge dismissed the claim on the basis that there was no "acoustic shock" episode and that determined the entire claim at that stage, without additional analysis of the Claimant's full causation case. The Judge was wrong to do so, because the Judge should have gone on to ask if there was an alternative basis on which the Claimant's causation case (on all the evidence) that could succeed in law on the basis of a nexus between the injury suffered, and the admitted negligence. Particular "labels" were not determinative on causation of injury. The appropriate approach was set out in:

Goldscheider v Royal Opera House Covent Garden Foundation et al [2020] ICR 1 at paragraph 73:[AB28][And appended to this skeleton argument]

- 4.2 The appropriate further consideration should have determined the claim on the basis of the entire pleaded case on the Particulars of Claim, lay and the expert medical evidence of Professor Wright, Namely, that the Claimant suffered an injury caused by the negligence,

which in turn, was caused by the admitted negligence and which triggered a psychological/conversion injury of non-organic hearing loss. The dismissal of the acoustic shock claim did not therefore preclude the Claimant succeeding on his overall causation case based on the pleaded case [CB 97: paragraph 31] and supporting expert and lay witness evidence (as summarised below).

4.3 The dismissal of the acoustic shock claim did not therefore preclude the Claimant succeeding on his overall causation case, if the following facts had been fully assessed and findings made:

(1) The Claimant's case that his hearing injury and consequent damage was diagnosed in December 2020 at the QEH, so as to prove causation of injury. The finding there was no hearing injury sustained which then caused a psychological injury, was plainly wrong. Reliance is placed on the following:

(a) That, whilst Professor Wright accepted the GC in assessing the causation case on the basis of a label of "acoustic shock", he ultimately concluded there was no discernible difference between "acoustic shock" and "acoustic trauma" (through repetitive high frequency noise exposure, but not including gunfire, or ordnance). and described it as "a matter of semantics". Professor Wright therefore opined that the fundamental medical issue was therefore causation of a hearing injury caused by repeated exposure to (admitted) excessive and dangerous noise, which, in turn, then caused a psychological injury. He concluded the Claimant had suffered some form of hearing injury as he developed undisputed tinnitus and he had problems hearing properly against background noise. It could not have arisen spontaneously and in support of his conclusions he maintained that the hearing injury was demonstrated by QEH in December 2020.

[See references to Professor Wright's evidence: report 29th August 2023-
[SB82] lines 514-538]

[JS ENT experts [SB118] paragraph 6: "non-organic hearing loss"]

[Oral evidence of Professor Wright: Semantic issue: [SB 380 line 34- SB382
line 17] [Oral evidence of Mr Parker: Semantic issue: [SB484 line 19 to 485
line 2]

(b) The investigations and clinical findings by the treating clinicians at QEH in December 2020, indicated a diagnosis of hearing damage (whether a temporary threshold shift, as per the audiograms, or a permanent inner ear injury). Nevertheless, there was sufficient organic damage to the Claimant's hearing to trigger a non-organic hearing loss, as proven by the fact of the onset of his tinnitus and that he was unable to hear fully against background noise.

(c) Professor Wright concluded that the fundamental medical issue was therefore the causation of a hearing injury caused by repeated exposure to (admitted) excessive and dangerous noise, which, in turn, then caused a psychological injury. Some form of hearing injury was established by his undisputed tinnitus and problems hearing against background noise, as found by QEH in December 2020, sufficient to cause his subsequent conversion disorder.

[See references to Professor Wright's evidence: report 29th August 2023- lines 514-538] [SB82].

[JS ENT experts [SB118] paragraph 6: "*Although we agree the claimant.*"]

and Professor Wright JS: SB [121] lines 3-16 and report Professor Wright [SB57: lines 496-501]

(d) Moreover, and of relevance, it was not disputed that the Claimant genuinely presented with the injury/symptoms.

As per: Goldscheider v Royal Opera House Covent Garden [2020] paragraph 74 [AB28]

(e) Mr Parker, accepted that the Claimant suffered from severe tinnitus. This opinion apparently developed over time to "overwhelming tinnitus" in order to satisfy causation.

[Report SB 112 lines 1-6]

[Oral evidence of Mr. Parker on "overwhelming tinnitus" [SB 537 line 7 to line 26]

(f) The Defendant did not challenge the Claimant's case on the basis of an alternative causation case, but simply relied upon the contention that this was not an acoustic shock case and put the Claimant to proof.

(g) The Judge's finding of no diagnosis of acoustic shock therefore did not answer the Claimant's case on causation on the totality of the evidence. Reliance is placed on the factors in Ground 3, herein namely the findings at QEH, to prove an organic injury.

[See Letter of Mr. J. Muzaffar Registrar ENT Surgery [SB257] and 2 letters of Ms L. Orr Consultant ENT Surgeon: 6.12.20 and 22.12.20

[SB261 to SB264] In particular and as stated;

(i) There was a finding of a diagnosis of an injury whether it was a temporary threshold shift, (as per the audiograms) or a permanent injury to the inner ear. This was against a background of the Claimant's hearing being normal prior to working on the Ajax Project.

(ii) There was sufficient organic damage to the Claimant's hearing to trigger a non-organic hearing loss/impairment/tinnitus (and associated psychological injury).

(iii) The Judge should then have gone on to assess whether there was a sufficient nexus to the psychiatric injury of which the Claimant complained, based on the admitted negligence.

(iv) Had the Judge done so, then the finding should have been that whilst the Claimant's case on acoustic shock failed, his overall case on causation succeeded. The admitted negligent exposure of the Claimant to excessive noise on a protracted basis was not "the occasion for the injury", but the likely cause of it.

Goldscheider v Royal Opera House Covent Garden [2020] [paragraph 69: SB60] [AB27]

4.4 Further, this is a case where, on the totality of the evidence, the Judge should have drawn an inference of a causal link to the admitted negligence "...taking a common sense and

pragmatic approach to the evidence in circumstances where the evidence is somewhat equivocal...” The injury was of a kind that was highly likely to have caused by such a breach of duty and so the Judge should have made the causation of injury inference in favour of the Claimant:

Clerk and Lindsell on Torts at 2-07 [AB39-41]

Drake v Harbour [2008] EWCA Civ 25 at paragraphs 27-28.[AB32-38]

Timothy Meakin

7 Bedford Row

London

WC1

Counsel for the Claimant/Appellant

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