

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION (MANCHESTER DISTRICT REGISTRY)

His Honour Judge Bird (Sitting as a Judge of the High Court)
[2025] EWC 1145 (KB)

CA-2025-001305

B E T W E E N:

MR JONATHAN BEVAN

Appellant/ Claimant

and

MINISTRY OF DEFENCE

Respondent/ Defendant

RESPONDENT'S APPEAL SKELETON ARGUMENT

Introduction

1. The Claimant served in the Household Cavalry between November 2003 and his discharge on medical grounds was in June 2023.

2. Between about January 2017 and February 2021, the Claimant served at the General Dynamics facility in Merthyr Tydfil, Wales where testing was undertaken on the AJAX class of armoured vehicles.
3. The claim was brought initially for injury to the Appellant's lower back/ shoulder as a result of whole-body vibration exposure as well as for noise induced hearing loss as a result of exposure to noise.
4. Breach of duty was admitted in relation both to noise exposure and whole-body vibration exposure.
5. Accordingly, neither party brought evidence as to breach of duty.
6. The claim for vibration-related injury was abandoned, with no medical evidence in support having ever been served to support a connection between any exposure to vibration on AJAX and the Appellant's back/ shoulder injuries.

Noise Related Injury – Noise Induced Hearing Loss

7. The Appellant's case on causation has never been clear.
8. It has evolved over the course of the litigation ('morphed' as per the Judgment).

9. The Claim Form, Particulars of Claim, the court order following the CCMC, the Claimant's witness statement, the Schedule of Loss and even the trial Case Summary, all refer to this being a Noise Induced Hearing Loss (NIHL) claim.
10. Noise exposure over a period of time (typically many years) may cause, in those susceptible, gradual damage to the hairs of the cochlea which are unable to regenerate – Noise Induced Hearing Loss (NIHL).
11. By means of a hearing test (an audiogram) it is possible to identify whether an individual's hearing problems are due to this mechanism of injury. Comparison is made of the noise-affected frequencies to the adjoining frequencies.
12. Although borderline cases are regularly determined at trial, in most cases it will be clear from the audiology as to whether there is, or is not, such noise damage.
13. In this case both medical experts agreed that the audiology in this case did not show any such noise damage.
14. This is not merely a neutral point, but rather evidence that any noise to which the Appellant was exposed had not so damaged the hairs of his cochlea.
15. It is generally accepted, as by the experts in this case, that in the absence of noise induced hearing loss, there cannot be noise induced tinnitus.

Noise Related Injury – Acoustic Trauma

16. Exposure to the highest levels of noise may result in instantaneous damage to the ear - an explosion for example. There will be immediately noticeable damage to the hearing, often accompanied by pain.

17. The medical experts agreed that there is no evidence to support a finding that the Appellant's hearing problems were caused as a result of acoustic trauma.

Noise Related Injury – Acoustic Shock

18. Belatedly in the weeks before the trial, the Appellant raised the possibility of 'acoustic shock' being the mechanism of injury for the first time.

19. There had been no mention of this third mechanism of noise related injury in the pleadings or in the medical reports of either medical expert, including the Joint Statement.

20. Not only is acoustic shock a different medical diagnosis, it requires a different factual basis to the hitherto presented NIHL, for the reasons set out below.

Medical Experts

21. A significant difficulty for the Appellant in this case was that the Appellant's medical expert has only the most limited experience of acoustic shock, whereas the Respondent's expert is, arguably, the world's leading expert.

22. The Appellant's expert stated that:

- a. His own experience of acoustic shock was limited to some clinical work in the 1980s.
- b. He was unaware of any publications relating to acoustic shock until a few weeks before trial.
- c. He had not heard of the *Grindleford* guidelines until the first day of the trial.
- d. Of note, he had been out of NHS practice for the previous 14 ½ years, solely practising out of Harley Street during this period.
- e. This was the first time that he had ever given oral evidence at trial, notwithstanding that experts are regularly called to give oral evidence in NIHL cases, even on cases allocated to the fast-track.

23. Conversely, as to the Respondent's medical expert:

- a. This is not even the first acoustic shock case to reach the Court of Appeal where Mr Parker has given evidence. Mr Parker was instructed by the successful claimant in *Goldscheider v Royal Opera House* [2019] EWCA Civ 711.
- b. He has authored what are understood to be the only guidelines in the world relating to acoustic shock – the *Grindleford Guidelines*.
- c. Such guidelines were peer-reviewed.
- d. Mr Parker has given talks on the same to the Royal Society.

- e. Mr Parker stated that he had never received criticism of the guidelines either openly or in private correspondence.

24. For the understandable reasons set out in the Judgment, Mr Parker was of the view that the guidelines (his own guidelines) were not met on the facts of this case. Indeed the case failed on 3 out of the 4 necessary criteria.

25. Unsurprisingly, HHJ Bird was of the same view.

26. It is with this background that the Appellant seeks to persuade the court that both Mr Parker and so HHJ Bird were wrong.

The Issues

27. The court is asked to consider the following:

- a. Whether the Judge erred in his application of the *Grindleford* Criteria.
- b. Whether the Judge was unreasonable by preferring the expert evidence of Mr Parker over that of Professor Wright.
- c. Whether the Judge erred in failing to make a finding that the Appellant had suffered some form of acoustic injury when interpreting the correspondence from QEH dated December 2020.

- d. Whether the Judge unreasonably failed to consider the entirety of the Claimant's case on causation following dismissal of the acoustic shock claim.

28. The court's findings in each regard are largely factual issues, which the court should be very slow to interfere with.

Summary of the Respondent's case on causation

29. Breach of duty was admitted.

30. Not all exposure to excessive noise results in injury.

31. It was accepted at the outset of this case by both parties and the Judge that there are three mechanisms of noise-related injury, as set out above, (Judgment, para 8):

a. Noise-induced hearing loss (NIHL).

This encompasses the vast majority of noise-related injuries. Arising from long-term exposure to noise, analysis of audiology must support such an injury. The experts agree there is no evidence of NIHL in this case. (Judgment, para 9).

b. Acoustic trauma.

This involves very high levels of noise exposure. The experts agree there is no evidence of acoustic trauma in this case. (Judgment, para 10).

c. Acoustic shock.

This mechanism was a late addition to the Appellant's claim (Judgment, para 12-19). Diagnosis requires satisfaction of the *Grindleford* Criteria (Parker, 2020). The experts disagree over whether the Appellant has suffered acoustic shock. (Judgment, para 11).

32. The *Grindleford* Criteria are the only diagnostic criteria for acoustic shock (Judgment, para 18). No other criteria have been suggested by the Appellant.

33. The Appellant fails to satisfy the *Grindleford* Criteria (as below). Therefore, the Appellant has not suffered acoustic shock caused by exposure to excessive noise.

34. In any event, there can be no diagnosis of acoustic shock when there is a temporal gap between noise exposure and onset of symptoms.

- a. The Claimant's medical expert gave evidence that if noise exposure ceased on 09/11/2020 and the Claimant did not begin to experience tinnitus until February or March 2021, then the tinnitus was not caused by noise exposure.

- b. The Judge found that relevant noise exposure ceased on 09/11/2020 and that the onset of the Claimant's tinnitus was not until early 2021 (Judgment, para 39 and para 56).
- c. The medical experts both recorded, in their reports, that the onset of tinnitus was after the Claimant had been exposed to noise on AJAX.

35. In the absence of physical noise-related injury, there can be no causally linked psychiatric injury.

Relevant legal principles on appeal

36. The following principles relating to appeals on fact are long settled, but worthy of re-statement:

- a. An appellate court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong: *McGraddie v McGraddie* [2013] UKSC 58.
- b. The trial is not a dress rehearsal. It is the first and last night of the show. In making decisions, the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping: *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114].
- c. *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600:

- i. At [48]: “An appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration”.
- ii. At [57]: “I would add that, in any event, the validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although, as I have explained, it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him, subject only to the requirement, as I shall shortly explain, that his findings be such as might reasonably be made. An appellate court could therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.”
- iii. At [62]: “It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached”

Response to Ground 1

37. The Judge was not unreasonable or plainly wrong in his application of the *Grindleford* Criteria to the evidence in this case. The Judge was correct to find

that the evidence showed that the Appellant had not satisfied the *Grindleford* Criteria and so the Appellant failed to prove that he suffered acoustic shock.

Guideline 1 (G1)

38. The ENT experts disagreed on what constitutes a 'defined acoustic incident':

- a. Professor Wright considered that the level of noise heard by the Claimant on a daily basis (i.e. alarm noises through a headset) was sufficient.
- b. Mr Parker considered it must be a memorable event in an individual's life where the index symptoms followed on from it. Contrary to the Appellant's submissions that this evidence only provided orally at trial, Mr Parker refers to the need for this to be 'a violent concussion or impact, and memorable' in the joint statement produced on 22/04/2025. This evidence was given at Mr Parker's first opportunity to respond to Professor Wright's opinion that this is an acoustic shock case.

39. The Judge preferred Mr Parker's interpretation. This must be correct because without a defined date on which the acoustic incident occurred, there would be no means to determine whether the ear symptoms commenced 'straight away or shortly afterwards' as required by G2.

Guideline 2 (G2)

40. The Judge was correct to find that G2 was not satisfied. Notably, the Appellant does not challenge the Judge's factual finding that relevant noise exposure ceased on 09/11/2020 and that the onset of the Claimant's tinnitus was not until early 2021, but asserts that the required temporal link under G2 was satisfied on the basis of those factual findings.

41. G2 requires that ear symptoms start "straight away or shortly after" the defined acoustic incident. The experts gave the following evidence at trial:

- a. Under cross-examination, Professor Wright accepted that if the Court found that noise exposure ceased in November 2020 and tinnitus did not commence until February/March 2021, then on the balance of probabilities there could not be any noise-related injury in this case. When re-examined, he stated that a reasonable period to define "shortly afterwards" under G2 would be "days or weeks" between injury and onset of symptoms.
- b. Mr Parker accepted in oral evidence that the temporal link for all symptoms did not need to be immediate so there may be onset of tinnitus some time (perhaps 2 months) post event. However, he was clear that there would need to be an index symptom that arose "straight away or shortly after" the relevant event, if not tinnitus. He stated in evidence that he considered "shortly after" to mean within "a few hours" and at most "days".

42. On the Claimant's own expert evidence, to satisfy G2 of the *Grindleford* Criteria, onset of symptoms must be within "days or weeks" of noise exposure at most. As above, the Judge found that noise exposure ceased on 09/11/2020 and tinnitus onset was early 2021. The Appellant provided no evidence of physical and/or auditory symptoms prior to the onset of tinnitus in early 2021.

43. Even on the Claimant's own case, there is no sufficient temporal link established between noise exposure and onset of symptoms that satisfies G2. Without satisfaction of all four criteria, there can be no diagnosis of acoustic shock.

44. This constitutes an additional ground upon which to uphold the judgment at first instance (Respondent's Notice, section 6).

Guideline 4 (G4)

45. The Judge was not unreasonable or plainly wrong to conclude that the tinnitus suffered by the Appellant was not sufficiently severe to explain why it manifested bilaterally and not exclusively in the predominantly exposed right ear.

46. G4 requires that ear symptoms are experienced in or arise from the exposed ear. The Appellant's case is that alarms emitted into the right ear via the Bowman headset constituted a number of 'defined acoustic incidents.'

Accordingly, to satisfy G4, it follows that the alleged noise-induced tinnitus should arise in the right ear only, as the exposed ear.

47. The Appellant complains of bilateral tinnitus. Mr Parker's evidence was that this could be explained by acoustic shock in one exposed ear, if the tinnitus was 'overwhelming' i.e. 'catastrophic or at the top end of severe'. He did not consider that the documentary evidence illustrated tinnitus of that severity manifesting in the Appellant.

48. Professor Wright offered no alternative explanation as to how the Appellant's tinnitus could have referred from the right ear to the left ear.

49. Having considered the evidence of both experts and the documentary evidence available to him, the Judge was entitled to find that the tinnitus was not of sufficient severity to explain the Appellant's bilateral tinnitus despite unilateral noise exposure.

Psychological overlay

50. The Appellant has wrongly conflated two issues with respect to the psychological evidence under this heading. The Appellant's psychological condition is relevant for two reasons.

51. First, the Judge had to consider whether the Appellant's psychological condition impacted on the applicability of the *Grindleford* Criteria (Judgment, para 68). Mr

Parker's evidence was that psychological overlap did not impact diagnosis but was more likely to influence the degree of disability that someone exposed to acoustic shock might experience. Professor Wright did not offer any alternative interpretation of this element of the *Grindleford* Criteria.

52. Accordingly, the Judge reasonably preferred Mr Parker's evidence in this respect.

53. Second, the question of whether there was a link between any potential ear-related symptoms and psychological injury goes to establishing causation between the exposure and the psychological injury allegedly suffered by the Appellant. This is a separate and unrelated issue to the relevance of psychological overlay in respect of the diagnostic exercise conducted with reference to the *Grindleford* Criteria.

54. The Respondent's position in relation to the causative link between noise exposure and psychological injury is addressed below.

Summary – Ground 1

55. It is seemingly uncontroversial evidence and agreed between the parties that an individual must satisfy all four *Grindleford* criteria for a diagnosis of acoustic shock. If the Judge found that one or more criterion was not satisfied, then he was correct to find that there was no acoustic shock.

56. This is not even a near miss. The Appellant did not meet 3 of the 4 criteria.

Response to Ground 2

57. The Judge did not wrongly prefer the evidence of Mr Parker over the evidence of Professor Wright. The evidence of Professor Wright as it was given by him at trial and as it was summarised in closing submissions was properly considered and has been accurately summarised by the Judge.

58. For the reasons set out at the beginning of this Skeleton Argument, given the disparity in relevant experience between the experts, it was always going to be an uphill struggle for the Appellant to persuade a court that Professor Wright ought to be preferred over Mr Parker.

59. The Appellant has failed to particularise exactly how the Judge inaccurately summarised the Appellant's case on causation. As per paragraph 6 of the Judgment, the Judge understood the Appellant's case to be that the primary injury was hearing loss and/ or tinnitus and that the Appellant suffered psychological injury as a result of the tinnitus in the form of a conversion disorder. It is not apparent how that inaccurately represents the Appellant's case.

60. The Judge's conclusion in this respect was reasonable and rationally supportable:

- a. The Judge reasonably identified that the first question to determine was whether the Appellant had suffered hearing loss and/or tinnitus as a result of noise exposure. He rightly chose to do this with reference to the *Grindleford* criteria, an approach that was not criticised by Professor Wright in evidence or the Appellant in closing submissions.
- b. As the experts agreed this was not a NIHL or acoustic trauma case, once the Judge determined that there was no acoustic shock with reference to the *Grindleford* Criteria, the Judge came to the only logical conclusion that there was no evidence of any injury caused by noise exposure.
- c. It was agreed that inner ear damage could only be evidenced post-mortem and there was no repeatable change in audiology that showed any level of hearing loss. There was no other sufficient evidence of ear-related injury caused by noise.
- d. The Appellant's case was that tinnitus triggered the conversion disorder. Without any causative link between noise exposure and hearing loss/tinnitus, there could be no causative link between noise exposure and psychological injury. Accordingly, the Judge was not required to consider the conversion disorder in any greater detail than he did.

61. Furthermore, the Judge was entitled to prefer one expert over another:

- a. The judgment focusses almost entirely on the ENT evidence and relevant factual evidence provided. It is clear that the Judge considered the evidence of both ENT experts in considerable detail when preparing his judgment.

- b. The Judge states that he found Mr Parker's evidence compelling amid a backdrop of Mr Parker authoring the diagnostic *Grindleford* Criteria, never having been criticised (publicly or privately) at peer-review and there being no direct criticism or challenge from Professor Wright as to the appropriateness of the use or application of the *Grindleford* Criteria in this case (Judgment, para 62).
- c. Professor Wright conceded under cross-examination that he only became aware of Mr Parker's 2020 article on the *Grindleford* Criteria on day one of trial. He further conceded in evidence that he did not reference any medical literature (including Parker 2014 or Parker 2020) in preparing his initial reports or when drafting his supplementary reports on acoustic shock.

Response to Ground 3

62. It cannot be said that no reasonable judge could have reached the same conclusions as HHJ Bird in relation to the findings on the correspondence from Queen Elizabeth Hospital in December 2020.

63. The Appellant does not allege that the Judge erred in his interpretation of that correspondence in finding that the Appellant's tinnitus onset was early 2021. The Appellant challenges the Judge's failure to find that there was a diagnosis of acoustic shock and/or acoustic injury in those consultations.

64. The Appellant has selectively chosen evidence from the correspondence that is supportive of his case. When looked at in its entirety, this correspondence shows that there was uncertainty over the Appellant's test results in December 2020 and onwards. There was no definitive diagnosis given. The audiograms showed no evidence of NIHL. It was reasonable for the Judge to conclude that a solitary contemporaneous reference that the Appellant was to be treated as for 'acute acoustic trauma' does not constitute a diagnosis of acoustic trauma or acoustic shock for the purposes of this case.

65. The views of the ENT experts on the correspondence were appropriately weighed by the Judge, but not determinative.

66. In any event, consideration of the correspondence alone fails to take into account the persuasive force of the *Grindleford* Criteria in diagnosing acoustic shock.

67. The Judge was entitled to come to the conclusion that there was no definitive diagnosis of acoustic shock and/or injury during that period or after. That conclusion was not unreasonable or plainly wrong. It fits with the Claimant's own lay evidence.

Response to Ground 4

68. It was not suggested by the Appellant at trial that there was another proposed mechanism of injury save for the three set out at paragraph 8 of the Judgment.

69. NIHL and acoustic trauma were discounted as mechanisms of injury by both ENT experts. The Judge reasonably found against the Appellant on acoustic shock.

70. The Appellant's case was that tinnitus (caused by acoustic shock) triggered the conversion disorder. Without any causative link between noise exposure and hearing loss/tinnitus, there could be no causative link between noise exposure and psychological injury. Accordingly, the Judge was not required to consider the conversion disorder or the psychological evidence in any greater detail than he did.

71. The Judge makes this logical conclusion:

- a. Para 6, Judgment: *First, Mr Bevan says he suffered 2 types of injury: The primary injury is hearing loss and tinnitus (which are connected). In addition, he suffered psychological damage as a result of the tinnitus in the form of a "conversion disorder" (or functional neurological disorder "FND") which led to non-organic hearing loss. If the primary injury was not caused by the negligent exposure the relevance of FND falls away.*
- b. Para 70, Judgment: *Because I have found that there was no acoustic shock and there is no suggestion that there was NIHL or acoustic trauma, it follows that Mr Bevan's tinnitus (and any hearing loss) was not caused by exposure to noise whilst at GD. It follows that any*

psychological harm (FND) leading to non-organic hearing loss is not attributable to the negligent exposure.

72. The experts agreed that many cases of hearing loss and/or tinnitus are unexplained, even with the very best investigation (Judgment, para 7).

73. In any event, it is not incumbent on the Defendant to provide an alternative cause of the Appellant's tinnitus and/or psychological injury. The burden of proof remains on the Appellant to prove, on the balance of probabilities, that the alleged injuries were caused by the admitted exposure to excessive noise. The Judge reasonably determined that he had failed to do so.

Conclusion

74. The High Court was right to dismiss the claim for the reasons set out in the Judgment.

75. Given the late switch to acoustic shock being the mechanism of injury in this case, and the disparity in relevant experience between the experts, there was no other realistic option for the court.

76. The Judgment may be further upheld for the additional ground set out in the Respondent's Notice.

Jim HESTER

Georgia BANKS

Parklane Plowden Chambers

Newcastle-upon-Tyne

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

CA-2025-001305

B E T W E E N:

MR JONATHAN BEVAN

Appellant/ Claimant

and

MINISTRY OF DEFENCE

Respondent/ Defendant

RESPONDENT'S APPEAL SKELETON ARGUMENT

Government Legal Department
102 Petty France
Westminster
London
SW1H 9GL

(Ref: Z2113428/AQG/DS1)