

In Brief

1. The damage to hearing caused by noise is insidious and the effects are not obvious except by scientific measurement.

2. The medical profession is then drawn into a wider conflict between management and the unions. There is strong scientific evidence for both sides.

3. Noise leaves a characteristic V-shaped signature on an audiogram which, for legal purposes, is not easily forged by other conditions.

4. There is a virtual presumption in law that noise-induced hearing loss resulted from the occupation. The benefit of the doubt is overwhelmingly in favour of the worker.

5, 6 & 7. The factual issues considered under Negligence and Breach of Statutory Duty are the same but the results are different. The legal issues are complex. The Common Law approach holds 1963 as the starting date of liability but Statute Law construction is in favour of 1960.

8. It is no longer fashionable to discuss hearing loss without distinguishing the terms "impairment", "disability" and "handicap" which have been accurately defined in court. However, the frequencies chosen to measure hearing loss make little difference to the court. The court may take an average of all the readings submitted by experts.

9. Proper assessment on a genuinely scientific basis is not possible at present. Social Assessment is probably more important than Medical Assessment. Disability is compensated rather than mere impairment. The date of onset of disability is a particularly important piece of factual evidence as it determines the length of suffering.

10. The Court prefers to assess the evidence for itself. The Broad Jury Approach is one the

common law is used to. Much turns on the claimant's own evidence. A detailed Social history taken by medical practitioners is very helpful. The judges may decide to trust their own observations and conduct their own hearing tests on the spot.

11. There is no basis for a presbycusis correction factor in law. The courts have considered the issue but have largely disregarded it. Damages were not reduced on account of deafness from ageing. Present out-of-court settlement schemes need not have made adjustments for it. A presbycusis correction cannot be forced on an unwilling party. Apportionment of damages between successive employers is possible but apportionment between causes (*age vs noise*) appears not to be.

12. Damages for Tinnitus should be under the heading "Pain and Suffering" and not as increased "handicap" (Blue Book) which would have come under "Loss of Amenity".

13. With thousands of similar workers made redundant, damages for loss of future employment prospects are minimal.

14. Scientific recommendations tend to become "official" after a while, but the path taken can be circuitous. There are various schemes in existence. Many of the recommendations of the Blue Book have been evaluated in Court.

15. The Pearson Report did not recommend the abolition of the fault principle. The tort system still forms a basis for compensation. Out-of-court settlement contracts form a no-fault system. A contract, by definition, does not imply fault. The Welfare State, however, operates the largest no-fault system.

16. A pre-employment audiogram does not absolve an employer from future liability but rather it enhances his duty to protect the

remaining precious hearing. Serial audiograms pick up susceptible new or probationary workers. Their contracts can then be terminated virtually with impunity under present employment laws.

17. Insurers dislike no-fault systems. It does not save them money. Employers may be tempted to pay out compensation rather than to make the working environment safe, unless insurers threaten them with new premiums weighted on the experience of past claims.

18. New safety regulations raise the standard

of care required of employers. The *Cost vs Risk* concept may replace present criteria for negligence.

19. There is, at present, a scientific weighting system to suit every political or economic taste. A multiple scoring system divided broadly into Medical Assessment and Social Assessment would provide a large data base for future analysis. More accurate correlation between Medical and Social parameters forms the basis for improvement of compensation methods.