



Case No: 3YK82382

IN THE SHEFFIELD COUNTY COURT

(Handed down at Lincoln)

Date: 30/07/2015

Before :

HHJ COE QC

Between :

**Ms MANDY BRIGGS
- and -
RHM FROZEN FOOD LIMITED**

Claimant

Defendant

Mr H Vanderpump (instructed by Roberts Jackson Limited) for the Claimant
Miss R Sutton (instructed by DWF LLP) for the Defendant

Hearing dates: 4th and 5th June

JUDGMENT

HHJudge Coe QC :

1. This is the Claimant's claim for damages for noise induced hearing loss ("NIHL") which she alleges she sustained whilst employed by the Defendants between 1981 and 2006. On 8th September 2014 I found that Defendants provided hearing protection to the Claimant and she wore it from 1999 onwards. Following that finding the matter was adjourned part-heard.
2. The Defendant admits that the noise levels to which the Claimant was experienced were likely to be between 85 and 90dB(A) Leq throughout her employment and that the Defendants were in breach of their duty to the Claimant from 1st January 1990 to 1999 when she was provided with training regarding noise and hearing protection. There is a single joint engineering expert, Mr McFeely. His report is at p.432 of the trial bundle. At paragraph 6.2 he sets out:-

“From the commencement of employment in 1981, the Claimant ought to have been provided with ear protection when working with equipment that exposed her to noise in excess of 90dB (A) even though I believe that this would be infrequent. Also I believe that from 1st January 1990 the Claimant ought to have been provided with ear protection upon request and provided with suitable instruction, as it seems likely that she was at a high risk of being exposed to noise in excess of 85dB(A) Lep.d.”

3. At paragraph 9.2 he refers to the 1972 Code of Practice which set a level of 90dB(A) as the maximum acceptable continuous exposure for an eight-hour working day for steady sound levels. The first action level changed to a Lep.d of 85dB(A) following the introduction of the Noise at Work Regulations 1989 from 1st January 1990. At paragraph 10.2.1 he concludes that in the course of the first seven years of her employment the Claimant is unlikely to have been exposed to the allowed maximum level of noise of 90dB(A) Leq nonetheless as he refers to earlier there were some pieces of equipment in the Claimant's environment which could generate noise levels in excess of 90dB(A) though it would be intermittent and exposure would be brief.
4. In his closing submissions the Claimant's counsel attempted to persuade me that the failure to provide ear protection before 1990 gave rise to a breach of duty. The engineering evidence I have referred to simply does not support such a submission. The Claimant's exposure to noise at work was not at that time at a level which required protection. It is right that as the engineer sets out at paragraph 10.3.2 from 1981 there may have been times when the Claimant should have been provided with ear protection, but her noise exposure was unlikely to have reached 90dB(A) Leq. It does not seem to me that the Claimant can establish on a balance of probabilities that there is such a breach of duty on the information available.
5. The Claimant submitted by reference to Munkman on Employer's Liability (and also see paragraph 88 of Parkes v Meridian Limited (14th February 2007)) that where there is a greater than average knowledge the noise level at which protection should be provided could be reduced. I have no evidence to suggest that these Defendants had such knowledge let alone from what date and in respect of what noise exposure. I do not know what the Claimant's daily noise dose before 1990 would have been other than that it would not have reached 90dB(A) Leq.

6. Having rejected this submission, I therefore have to decide the issues of medical causation and quantum on the basis of negligent noise exposure from 1st January 1990 to 1999.
7. The Claimant contends that the audiograms show NIHL and that in accordance with Coles, Lutman and Buffin “Guidelines on the diagnosis of noise induced hearing loss for medicolegal purposes” (“the Guidelines”) she satisfies the three requirements for diagnosis of NIHL, namely: high-frequency hearing impairment; potentially hazardous amount of noise exposure; and an identifiable high-frequency notch or bulge. The Claimant submits that these Guidelines are “conventionally used to decide noise-induced hearing loss cases up and down the country”. Reference is made to many of the previously decided and reported cases in which they have been used as submitted by the Claimant.
8. Put simply the Claimant says that all three requirements are present in her case and that NIHL can be diagnosed on the balance of probabilities.
9. The Defendant argues that causation cannot be established in this case: firstly, because the Claimant’s hearing has deteriorated significantly between the audiograms in 2012 and 2014 despite the fact that there was no further noise exposure; secondly, because there is a degree of asymmetry between hearing levels in the left and right ears; and, thirdly, it is argued (Occam’s Razor) that if possible a patient’s symptoms should be explained with the fewest possible diagnoses.
10. The Claimant’s statement is at Tab 16 (p42) in the bundle. She says that she started to notice a slight loss in a hearing when she had to turn the television up and her friends and family said that she was shouting or talking very loudly. She noticed that she was unable to hear as well as she previously could when she was in a group situation. She struggled to hear on the telephone. She says that she started to notice a bit of an echo when in quieter locations.
11. The Claimant’s expert is Professor Jarrod Homer, a consultant otolaryngologist and head and neck surgeon. He is a Consultant at Manchester Royal Infirmary and at the Christie Hospital and an Honorary Reader at the University of Manchester. He has provided a report dated 24th November 2012 and a supplementary report dated 2nd October 2014. The Defendant’s expert is Mr P H Jones, a retired consultant ENT surgeon, who has provided a report dated 21st January 2014 and a supplementary report which is undated. For this hearing an agenda consisting of 12 questions was agreed and each expert has provided their answers to form a joint report.
12. Audiograms were performed on behalf of each expert at the time of their examination of the Claimant. I have helpfully been provided (at the beginning of the Claimant’s authorities bundle) with colour-coded graphical representations of the audiograms as at 2012 (on behalf of Professor Homer) and as at 2014 (on behalf of Mr Jones) as well as with the two sets of audiograms combined and one including a representation of the expected age associated hearing loss for the Claimant.
13. Professor Homer concluded that the audiometry showed bilateral high-frequency sensorineural hearing loss with an acoustic notch at 4 kHz. He concluded using the Guidelines that on the balance of probabilities the Claimant has noise-induced hearing loss. The diagnosis was made on the basis of an occupational history consistent with

excessive noise exposure and audiometry consistent with the effects of NIHL. He noted that the Claimant has age associated hearing loss, but that it is less than average. He found no suggestion of any other cause of hearing loss. The audiograms show a loss in the right ear of 10dB at 1 kHz, 15dB at 2 kHz, 5dB at 3 kHz and 30dB at 4 kHz. In the left ear the figures are 15dB, 5dB, 5dB and 45dB. In calculating the age associated hearing loss Professor Homer took the average hearing of a 40-year-old female for comparison in light of the Claimant's less than average loss for her age. Those figures are 4dB, 6dB, 8dB and 10dB respectively.

14. In his supplementary report Professor Homer concluded that all the basic criteria for a diagnosis of NIHL were met in this case by reference to the Guidelines, that is, the high-frequency sensorineural hearing loss and the notch/bulge and subject to engineering evidence as to noise exposure. He refers to the engineering evidence available as establishing that the noise exposure criterion is also met. He concluded that there was no significant asymmetry overall (as defined by Robinson). There is, he says, a commonly accepted error of 10dB (plus or minus 5dB) and the difference here at 4 kHz is greater, but the generally accepted clinical definition of significant asymmetry is 15dB in two or more contiguous frequencies which is not the case in the Claimant's audiogram.
15. In respect of the apparent deterioration in the Claimant's hearing he notes that the two audiograms have nearly identical shapes and the deterioration is almost uniformly 10dB down. He gives his opinion that it would be inconceivable that the Claimant would not have noticed a hearing loss of 10 dB across all frequencies, but not made mention of such deterioration. He considered that the most probable explanation would be more accurate threshold estimation in 2012. He sets out that there are varying accuracies in thresholds from audiologist to audiologist and from occasion to occasion. Given the inherent unlikelihood of such a uniform deterioration across all levels he considers there is no real difference in the Claimant's hearing.
16. In respect of the quantification of loss and loss of function Professor Homer agrees that a calculation over 1, 2 and 3kHz is "slightly" preferred by the "Black Book" but emphasises that this method does not imply that hearing loss is restricted to those frequencies or that frequencies outside that range do not confer a disability. He cites (p397) support from ISO 1999, Lutman and Coles, the British ENT Association and the British Society of Audiology for the value of a calculation over 1, 2 and 4 kHz.
17. He goes on to suggest that considering the loss at 4 kHz itself may be useful. This is a critical frequency for hearing and in his view represents the cause of the Claimant's hearing disability. He specifically states that any dismissal of there being any importance of impaired hearing at 4 kHz would be an opinion that would be outside of mainstream ENT and audiological opinion. He considers this to be very basic knowledge within audiology and refers to the "speech banana". He considers that the Claimant's description of her symptoms is entirely consistent with a loss at 4 kHz.
18. In response to the agreed agenda questions Professor Homer does not consider that any evidence about progress of NIHL loss after cessation of exposure to noise is important in this Claimant's case. He categorises the Claimant's tinnitus as slight and again of no relevance in this case being common in the general population. Given the nearly identical shapes of the two audiograms in 2012 and 2014 he repeats his conclusion that there is in all probability no real difference, but is explained by more accurate threshold estimation in 2012. He repeats that there is no significant asymmetry overall and the single

frequency outside of commonly accepted error still does not come within the clinically accepted definition of asymmetry.

19. He accepts that the Claimant's noise exposure would probably have been symmetrical and therefore probably have caused broadly symmetrical loss of hearing. He agrees that there is only ageing loss at 1, 2 and 3 kHz and concludes that the loss at 4 kHz is noise-induced which he categorises as the simplest explanation in light of the exposure to noise and the notching on the basis of the Guidelines. He repeats that 4 kHz is a critical frequency for hearing and is causing the Claimant's hearing difficulty in this case. He agrees that there is no generally accepted method for assessing NIHL disability. He repeats that the criterion of noise exposure is now met in light of the liability findings and the engineering evidence and the Guidelines are appropriate for use in this case and are applied by virtually all the experts in this field.

20. When he gave his evidence Professor Homer was challenged in cross-examination on the key points. He acknowledged that his reference to the DSS using 1, 2 and 4 kHz to calculate binaural loss in its first report was inaccurate. He accepted that. He acknowledged that in his second report he had taken an age appropriate age associated hearing loss figure rather than the younger age chosen for his first. He reiterated that there is not enough asymmetry to raise the issue of there being another cause of the Claimant's hearing loss. He defined asymmetry as being a difference of 15 dB or more in at least two contiguous frequencies in the same direction or 20 dB or more in one. This is the standard test taught to ENT trainees and the standard criterion. He considered that the Claimant has a classic NIHL audiogram and with a history of noise exposure 100 ENT surgeons, if asked, would say this was NIHL. He did not think there was a reasonable view outside that.

21. Given the noise exposure and the notches any other idiopathic cause would have to coincidentally fit with NIHL. He repeated that the difference between the 2012 and 2014 audiograms would be dependent on audiology accuracy and/or the audiologist and the difference in any event would still be within the 15 dB which Robinson indicates is within a 95% margin of probability. The alternative of some other cause of hearing loss which has reproduced the original pattern of the audiogram, but at 10dB or so lower across the board would be very unlikely indeed.

22. He expressed the view that NIHL is the simplest diagnosis in light of the exposure to noise and the notching and is the most probable. The Defendant's hypothesis would depend on age-related change, an idiopathic notch, a second idiopathic process across all frequencies which the Claimant did not notice and an exposure to noise which did not produce NIHL. He considered this to be improbable. This is particularly so where the key cornerstones for diagnosis of NIHL are established and there is no evidence of anything else as being causative. He acknowledged that there is no measurable loss at 1, 2 and 3 kHz, but said that this has always been his view. There is significant loss at 4 kHz which correlates exactly with the symptoms the Claimant reports and which is of consequence to her. His view was that if the Claimant's account is credible then the loss at 4 kHz in her case is significant.

23. He felt that it would be proper in this case to look at the loss at 4 kHz in isolation. He entirely refuted the suggestion that the "speech banana" is something that is shown to patients. He has never shown it to a patient. He said it is used by ENT surgeons and audiologists. He expressed the view that there would be a cumulative effect of the

negligent and non-negligent noise exposure. He could not think of any idiopathic cause for a drop in hearing of about 10dB across all frequencies effectively mirroring the earlier audiogram, but with an overall downward shift.

24. In his initial report Mr Jones sets out the Claimant's description of her symptoms and the report she gave to him of suffering high-pitched tinnitus which echoes in her ear and which occurs about three times a week. He sets out her employment history. He then identifies the areas in which he disagrees with Professor Homer. He considers it is wrong to describe the notch at 4 kHz as acoustic because it can occur for a number of reasons although most commonly in NIHL and idiopathic loss.

25. By reference to the decision in Parques v Meridian, Mr Jones disagrees with the use of the Guidelines although he accepts that they are widely used. I should say that having considered the case of Parques it seems to me that looking at paragraphs 117 and 118, the learned Judge concluded that "the general approach set out by Mr Parker seems to me probably equates the approach of most doctors". Thus "there should be a history of noise exposure such that it may give rise to identifiable noise damage and a clear picture on the audiogram that exhibits a notch or dip typically at about 4 kHz and at least 10dB deep and bilateral unless some other condition in one of the ears has obscured the picture, even though a certain degree of asymmetry may be acceptable".

26. Mr Jones points out that on Professor Homer's evidence the Claimant can have no NIHL at 1, 2 and 3 kHz. He corrects Professor Homer's error in respect of the DSS formula. He points out the asymmetry and states that Professor Homer does not comment upon it. He is equivocal about the need for a hearing aid at age 65. He then reviews the medical records. Having reviewed the audiograms he concludes that the changes since Professor Homer's audiogram in the lower frequencies up to 2 kHz represent non-organic rather than organic hearing loss, but in the high frequencies a genuine hearing loss particularly of 30dB in the range at 3 kHz on the right. He concludes that there is bilateral asymmetric and increasing high-frequency loss and considers that there are some anomalies. He concludes that the hearing loss in the left ear cannot be due to noise because it is too severe and because of the marked asymmetry. He concludes that there is an idiopathic 4 kHz loss on the left so that either the Claimant has noise induced hearing loss on both sides and an additional idiopathic loss on the left which coincidentally has its maximum impact in the region of 4 kHz or she has an idiopathic cause which has affected both ears, but the left more than the right. He concludes (Occam's razor) that the latter is more likely. This view is, he says, supported by the increased loss in the absence of noise exposure.

27. In his supplementary report Mr Jones sets out his opinion that the Claimant has little or no NIHL at 1, 2 and 3 kHz. Of course Professor Homer agrees with this. He considers that she has bilateral asymmetric high-frequency hearing loss which has increased recently. He says that because of the asymmetry there must be an idiopathic loss because significant asymmetry cannot be due to NIHL where the noise exposure is largely symmetrical. The significant progression cannot be due to NIHL since exposure has ceased. A 15dB loss at 4 kHz would cause no significant disability and it is not logical to base assessment of either 3 or 4 kHz depending on the site of the maximum loss. He reiterates that it is incorrect and illogical to suggest that 15dB is not significant. He reiterates by reference to the literature his view that loss of a few decibels at 4 kHz is of no great importance particularly with good hearing at 3 kHz.

28. He expresses the view that the “speech banana” graphical representation is a “Just so” story to explain to those with hearing loss why it is sometimes possible to hear, but not to distinguish speech. He refers to the literature on this subject. He considers that the literature cited by Professor Homer is generally of poor quality, in particular any suggestion that noise-induced hearing loss can increase after noise exposure has ceased. Professor Homer does not pursue this argument in any event. His criticism of the literature is comprehensive.

29. In his answers to the joint report questions he gives his view that NIHL cannot progress after cessation of exposure. The tinnitus reported by the Claimant is not due to noise and is not of great relevance, but it is, he says, supporting evidence that the hearing loss has increased. He considers that the deterioration in the Claimant's hearing shown on the audiogram is due to idiopathic loss or age associated hearing loss and probably idiopathic. The asymmetry is significant in his view and given that the Claimant's noise exposure was symmetrical it should have caused symmetrical loss. He reiterates that the asymmetrical and progressive loss at 4 kHz is either entirely idiopathic or partially noise-induced hearing loss and partially idiopathic. He chooses the simpler or idiopathic cause.

30. He states that while a marked high-frequency loss above 2 kHz would have a significant effect on speech perception in noise a change of 15dB at 4 kHz with good hearing 3 kHz “could have no significant effect”. He agrees that there is no generally accepted method for assessing noise-induced hearing loss disability. He says that the Black book was never endorsed by the sponsoring bodies because of controversy which surrounded its publication. He agrees that given that there was noise exposure it is possible that the Claimant would suffer some NIHL. He repeats that he considers that the Guidelines are highly flawed, but does not consider that that is of particular relevance in the case where there is asymmetry and progression and so they would not be applicable in any event.

31. When he gave his evidence he maintained his criticism of the Guidelines and expressed the view that they are something of a “curate's egg”. He opined that a lot of the “good parts” are not original and that using them over diagnoses NIHL in his view. He said that he would prefer it if people used a more rational method although he acknowledged that he does look at them to see if a Claimant “passes or fails”. He repeated his view that the asymmetry is too great to be due to exposure to symmetrical noise and in any event felt that the loss in the worse ear is too severe to be due to the level of noise to which the Claimant was exposed. He did agree that the additional loss could be an error in the audiometry. He felt that there was some non-organic loss likely at the lower frequencies, but could not say what it was. It could be, for example, due to the Claimant being tired. Since he concludes that the loss at 3 kHz is idiopathic he felt that therefore the difference at 4 kHz was also likely to be idiopathic. He agreed that the 2012 audiogram was likely to be more accurate. He considered that Professor Homer's test for significant asymmetry was being incorrectly applied because it is a test used to look for vestibular neuroma. He interpreted the Robinson paper (which identifies a test of not more than 15 dB difference) as meaning that 15 dB is not acceptable. While he acknowledged that on a narrow view 15 dB would be on the 95th centile for accuracy he felt that it is important to take the broad view and say that 15 dB is too much.

32. In respect of disability in the Claimant's case he considered that the speech banana is demonstrably incorrect. He said that the effect of this level of loss at 4 kHz would not have an impact and there is nothing to suggest that it would. However, he did agree that the ability to hear speech in noise is affected by hearing loss at 3 kHz and 4 kHz. Somewhat surprisingly he considered that the use of the word “could” in his report p428, in the context of opining

that the loss at 4 kHz could have no significant effect, has much the same meaning as "would not". He considered that a more detailed analysis of hearing disability would be entering into the realms of sensory psychology. He agrees that tinnitus is a very "soft" sign. He also agreed that this Claimant's level of loss would be similar to that of Mrs Baker, one of the Claimants in Parkes.

33. In response to a question of mine he expressed the view that it is important not to label people with a diagnosis if there is nothing seriously wrong and it would be best to tell a patient like Mrs Briggs that her hearing is as good as most people's and to reassure her that there was nothing really wrong.

34. Having summarised the evidence I should say, first of all, that I accept the Claimant's account of her symptoms as set out in her statement. It was not challenged at this hearing. I find her to be a credible witness.

35. Having considered the detail of the written expert evidence and the oral testimony they gave I find that the opinions of Professor Homer are to be preferred. His views are conventional and the argument with which he supports them is logical and, by reference to the various publications, well-researched. He was neither overly dogmatic nor did he display any lack of independence. He acknowledges that the Claimant has suffered only modest impairment. His views are supported by the literature and by other clinicians. He was willing to acknowledge the minor errors in his reports.

36. On the other hand I consider that the primary thrust of Mr Jones' evidence was to seek to challenge the evidence of Professor Homer whilst not putting forward a diagnosis to explain the Claimant's hearing difficulties and/or audiograms. There were points in his evidence where he appeared to change his account. He did not remain consistent. He appeared overly anxious to explain away any suggestion of NIHL and therefore he appeared somewhat dogmatic. Essentially he asked me to accept that the Claimant has some unknown but idiopathic cause for her hearing loss and that whatever symptom she reports, that loss would not cause her any particular impairment.

37. I agree with the analysis of the learned Judge in the Parkes case (paragraph 115) where he said "Mr Jones was undoubtedly dogmatic (for example as to the non effect of high-frequency hearing loss on disability) and has a disconcerting manner of giving evidence, citing authority for propositions he is advancing at a rapid rate, and thereby illustrating his wide knowledge of the material without imparting the essence of it to the listener ... the manner of a witness may obscure the quality of what he says. Mr Jones presented as sceptical and in some areas dogmatic, but I nonetheless valued the opportunity to consider his contribution to the evidence in the case ...".

38. I therefore make the following findings. Firstly, in respect of the apparent increase in hearing loss after the cessation of noise exposure, I consider that on a balance of probabilities this is due to the fact that the audiogram in 2012 is the more accurate. The Claimant may have been tired or "cheesed off" (Professor Homer's phrase) in 2014. The audiologist may have been less accurate and all the circumstances of the testing may have produced the apparent increase. The overall drop of about 10 dB is not outwith this possibility. More importantly I am satisfied that there is no idiopathic cause which could account for the mirroring of the original audiogram albeit about 10 dB lower across the board. Professor Homer was very clear that he could not think of any idiopathic cause that would produce this result. Mr Jones did not specifically identify any such cause. On the balance of probabilities

therefore I do not find that there has been a significant increase in the Claimant's hearing loss since she stopped being exposed to noise. Her own evidence does not suggest that that is the case in any event.

39. The report of tinnitus was not considered to be significant in the event by either of the experts. Mr Jones described it as a "soft" sign. Professor Homer considered it to be common in the general population. The appreciation of tinnitus is particularly subjective. I do not consider that any later development and reporting of tinnitus at this level would indicate any increase in hearing loss such as to undermine the diagnosis of NIHL.

40. I have considered the issue of the asymmetry carefully. At 15 dB it is within the 95% margin of accuracy referred to in the Robinson paper. I accept Professor Homer's evidence that the test for significance in asymmetry requires a difference at two contiguous frequencies. Mr Jones did not really address this point, but takes a broad view that this is too significant to be attributable to symmetrical noise exposure. I am satisfied and find on a balance of probability that whilst the asymmetry at 4 kHz is very much at the upper end of what is acceptable it is not beyond that and does not constitute "significant asymmetry". Of itself, therefore, I do not consider that it is either inconsistent or so inconsistent with that expected in NIHL as to negate the diagnosis. The Claimant was exposed to potentially dangerous levels of noise. She does have the classic notching at 4 kHz. The expert evidence was that in 50 to 75% of cases where this notching is shown on the audiogram it will be attributable to NIHL. That information taken with the exposure to noise in my view establishes on a balance of probability that the Claimant has noise-induced hearing loss.

41. On behalf of the Defendant it was suggested that even if there is an element of noise-induced hearing loss there is in addition some idiopathic cause for the hearing loss. Mr Jones did not suggest what that cause would be. It is clear that it is not age associated hearing loss. The Claimant has some age associated hearing loss, but not as much as one would expect. Mr Jones suggested that by reference to the Guidelines, given the level of the Claimant's noise exposure, her NIHL is too great and thus there must be some idiopathic cause. Given that I have found that there has been no progression in hearing loss post noise exposure and that the asymmetry at 4 kHz is not significant, there is no concrete evidence in this case on which I could base a finding of any idiopathic loss. Again what evidence there is, points the other way. Given that the 2014 audiogram mirrored the 2012 audiogram so precisely and that cannot be explained by an idiopathic cause (although Mr Jones did try by reference to non-organic loss in the lower frequencies (which I do not accept)) the only real pattern here is of NIHL. Mr Jones himself is critical of the Guidelines and both experts agree that they are only guidelines and have to be applied with that in mind. It may be that the Claimant's hearing loss at 4 kHz in her left ear is greater than would be predicted by reference to her level of noise exposure in much the same way that her level of age associated hearing loss is less than would be predicted for a woman of her age. It is not, by itself, a reason to suggest that there must be some other cause. On the balance of probabilities therefore, I find that all of Claimant's hearing loss which is not age associated is noise-induced.

42. The Defendant submits that the Claimant has to prove some material contribution to her hearing difficulty and that even if this is noise-induced; the impact on the Claimant is de minimis and therefore does not sound in damages. As set out above Mr Jones' view is that a modest loss of 15dB at 4 kHz when the hearing elsewhere is good would make very little difference and would not be noticeable to the Claimant. Of course to some extent this argument is founded upon the submission that not all of the Claimant's hearing loss is noise-induced and I have rejected that submission. I was referred to Rothwell v Chemical and

Insulating Co Ltd [2008] 1 AC, a case which concerned pleural plaques and which identifies the test at paragraph 19 where it is set out that the question to be addressed in this context is whether or not the Claimant has suffered damage. That means: is she appreciably worse off?

43. First of all I should say that I accept Professor Homer's evidence about the significance of loss at this frequency and I accept his evidence about the usefulness of the "speech banana". It seemed to me that Mr Jones' rejection of the accuracy of the speech banana was not founded on current clinical practice and experience. It is agreed, of course, that there is no fixed method of assessing disability. Professor Homer and Mr Jones are not experts in sensory psychology. Professor Homer felt that some people might be able to adapt, but that some people would have a significant disability with a loss at 4 kHz. In his report (although not in his oral evidence) Mr Jones seemed to allow for the possibility of some significant effect. As I have already indicated I accept the Claimant's evidence. She describes a hearing disability. It is not suggested that she is not straightforward in this regard.

44. To some extent there has been a rehearsal of the arguments dealt with by His Honour Judge Gosnell in the case of Hinchcliffe v Six Continents Ltd and Cadbury UK Ltd (12th May 2015). In this case I accept that it is appropriate to look at the loss at 4 kHz for the reasons identified by Professor Homer. I accept the Claimant's evidence. I accept Professor Homer's evidence that she is likely to need hearing aids sooner than would otherwise have been the case. In the circumstances I conclude that the Claimant's difficulties outlined above and the future sooner need for hearing aids make her appreciably worse off. She has suffered damage which is more than de minimis.

45. By reference to the Judicial College Guidelines at page 20 (slight hearing loss) and to the decisions in the case of Hinchcliffe and in respect of Mrs Baker in the case of Parkes I assess the quantum of damages here if all of the noise-induced hearing loss fell to be compensated in the sum of £4,000. There is in fact a large measure of agreement between Counsel on this point. The experts did not finally agree on a figure for the overall noise-induced hearing loss. On behalf of the Defendants it was submitted that it is 7.6 dB. Professor Homer seemed to agree to 9 dB. In his report at p397 he suggested 10 dB and Mr Jones at p404 said that the maximum possible NIHL is 15 dB at 4 kHz. Of course the Defendants are only responsible for half of this and so it would seem that the compensatable loss is in the region of 5-7.5 dB. The assessment of quantum is not just based on this calculation, but also upon the Claimant's account of her symptoms.

46. In the circumstances there will be judgement for the Claimant in the sum of £2,000. There are no special damages.