

# NOISE INDUCED HEARING LOSS

## DAMAGES, AWARDS AND DISCOUNTS

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In determining the degree of loss it is useful to consider the system adopted in 1974 by the Department of Health and Social Security. A figure of 40dB was adopted as average for hearing at certain frequencies (1000, 2000 and 3000 Hz). An average loss of 40dB is considered as 0% disability and an average loss of 90dB is considered as 100%. Between these limits the relationship between loss and percentage disability is a straight line one, with each additional decibel increasing the assessed disability by 2.

While the figure of 40dB may seem relatively high, the system is generous in not applying an adjustment for presbycusis. Review continues and a new system may be applied with a wider disability range using a more accurate method of determining loss implemented.

### EVERY DECIBEL COUNTS

In terms of the common law most recent cases would tend to suggest that "every decibel counts". The courts are now more willing to award compensation even in cases where the hearing loss is shown to be less than 10 dB if it can be proven that the claimant does have some element of noise induced hearing loss.

Awards are made not upon the mere measurement figures per se (although these provide parameters for the credibility of a claimant in his account of how he is affected in every day life) but upon the basis of the subjective experience of the claimant for which he falls to be compensated. More and more claims nowadays tend to also attract a claim for special damages in particular with regard to the use of tinnitus maskers and/or hearing aids.

Not many claimants actually relish the prospect of going to court and giving evidence, so where a reasonable offer is made in good time litigation can be avoided and cost savings made. Pro rata offers, e.g. discounting pre 1963 exposure, can also be made.

### CASE STUDY EXAMPLE

The claimant was employed with the insured, his only previous employer, for a period of 12 years up to 2005. He was born in 1974 (32 years old). He was regularly exposed to noise levels in excess of 90db (A). He was unaware of the damage his work was causing to his hearing. Hearing protection was provided, although not mandatory or enforced, in the last 3 years of his employment.

Medical evidence showed that the claimant was suffering from a hearing loss of 29db, he also started suffering from tinnitus towards the end of his employment although he did not realise the cause. The tinnitus has remained constant to date and is interfering with his sleep. It is causing him emotional problems and, together with the fact that he struggles to hear people amongst background noise, it is having an effect on the claimant's social life.

He left work in 2005 as a result of his anxiety about continuing exposure to noise and is currently working in a warehouse packing boxes, the job is much less noisy but he is earning less than in his previous employment and worries about his future prospects.

The medical report highlights that the claimant's hearing will further deteriorate with age and he is already in need of digital hearing aids.

### POTENTIAL CLAIM VALUE

General Damages	£13,000
Claim for Hearing aids and future replacement parts	£8,000
Claim for disadvantage on the open labour market	£10,000
Claimant's costs	£9,000
<b>Total</b>	<b>£40,000</b>