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| Neutral Citation No: [2025] NICty 3   | Ref: [2025] NICty 3   |
| Judgment: approved by the court for handing down<br>(subject to editorial corrections)* | ICOS No: 23/105594    |
|   | Delivered: 14/05/2025 |

IN THE COUNTY COURT FOR NORTHERN IRELAND

**BETWEEN:**

**JOHN McDAID**

**Plaintiff**

**and**

**SPANBOARD PRODUCTS LIMITED**

**Defendant**

Mr Paul Boyle BL (instructed by Millar McCall Wylie Solicitors) for the Plaintiff  
Mr Fintan Quinn BL (instructed by Murphy & O'Rawe Solicitors) for the Defendant

**DEPUTY COUNTY COURT JUDGE LOGUE**

***Introduction***

[1] This action was heard on 7 May 2025. I thank Mr Boyle and Mr Quinn for their helpful submissions and the manner in which the case was presented.

[2] The plaintiff in this action was born on 21 February 1954. He claims damages by reason of the negligence and breach of statutory duty of the defendant. He alleges hearing loss attributable to exposure to excessive noise in the course of his employment with them.

[3] It was common case that the plaintiff suffers with hearing loss which is a combination of noise induced and age-related hearing loss. In opening, Mr Boyle advised the court that it was agreed between the parties that upon my determination of the issues, the percentage of hearing loss attributable to noise induced hearing loss was 52.5%. A deduction of 11.6% would also be applied in respect of an uninsured period.

[4] The plaintiff was examined by Mr Ullah FRCS on 26 August 2023 and Mr Stewart FRCS on 14 November 2024. There was a divergence of opinion between the medical experts as regards the classification of the degree of hearing loss between mild and moderate and the extent of any contribution of other employments.

[5] Mr Ullah attributed the noise induced hearing loss fully to the plaintiff's employment with the defendant and classified the plaintiff's hearing loss as moderate. Mr Stewart attributed a quarter of the noise induced hearing loss to other employments and classified the hearing loss as mild. Both ENT consultants gave evidence at hearing.

### *Evidence*

[6] In evidence the plaintiff stated that he worked for the defendant company from 1987 until 2009 in a variety of roles. From 1970 until 1986 the plaintiff worked for a variety of employers as motor mechanic. On 21 March 2016 he attended Braid Valley Hospital where an audiogram was performed, and he was fitted with a hearing aid to his right side.

[7] He stated that he thinks he had suffered problems with hearing for "six, maybe eight" years before he attended Braid Valley. He recalled that in the "months and years" before 2016 family members would comment that he had the TV volume too high and encouraged him to have his hearing tested.

[8] The plaintiff stated he recalled that he could hear a telephone ring, but he had trouble hearing conversation at times. He could not hear his wife if she spoke to him from the 'other room' and rather than ask her to speak louder, he would go into the 'other room' to find out what she had said. He had difficulty hearing a person one to one and found it difficult when in a group, for example in a restaurant, he could not hear people clearly or would struggle to hear a person sitting across from him. In a car, he found it hard to hear passengers in the back and would often ask them to repeat what they have said.

[9] In response to the question did the fitting of a hearing aid in 2016 make a difference he replied in the affirmative. However, he indicated that he sometimes had difficulty hearing a person in front of him rather than to the side of him but when he had an upgraded aid fitted there was an improvement. He had an upgrade fitted around three years ago in Causeway Hospital. The plaintiff stated that he was advised by Mr Stewart when he attended for a medico-legal examination that he would benefit from two hearing aids and currently awaits his regular review appointment so this can be discussed.

[10] In cross examination the plaintiff was asked about noise exposure in his other employments. He stated that he worked in more open environments and did not consider the noise levels were excessive, unlike when he worked for the defendant where he was often in confined spaces with noisy machinery in operation. He conceded that he may have been made aware when he received the results of his audiogram in 2016 that his hearing loss may have been related to noise exposure but could not definitively recall what was said to him or if he understood what that would have meant. The plaintiff accepted that ex-employees of Spanboard were

canvassed by mail years later and having read the flyer he received, he contacted a solicitor to enquire about making a claim for hearing loss.

[11] Mr Ullah examined the plaintiff on 22 August 2023. He did not state the classification of hearing loss in his report but at hearing, applying the current World Health Organisation ('WHO') grading system to the 2016 audiogram, opined that the plaintiff suffered moderate hearing loss. In his opinion the WHO grading system was to be preferred. The system involves taking an average of the four lower frequencies for the better ear and the results used to select the appropriate grade. Normal is -10 to 4.9dB but can be up as high as 19.9dB. Mild is 20 to less than 35dB, moderate is 35 to less than 50dB and moderately severe is 50 to less than 65dB.

[12] Using the pure tone average of the 2016 audiogram, an average comes in at 35dB for both ears. Before the updated WHO grading system it was considered 26-40dB was slight impairment although most experts say mild, moderate was 41-60dB. In Mr Ullah's opinion, having examined the plaintiff, the plaintiff had moderate hearing loss, on the basis of the audiogram results by application of the WHO grading which also references the level of difficulty hearing in a quiet and noisy environment. He fell into that category in 2016 and prior to then would have had a period of progressing hearing loss towards moderate. He could not speculate without previous tests, but he would say that even that stage age would have played a part as well as the noise induced element. Mr Ullah considered that the plaintiff's need for a hearing aid had been accelerated, people do not normally need a hearing aid until around the age of 70. He agreed with Mr Stewart's opinion that the plaintiff would benefit from two hearing aids.

[13] In cross examination, Mr Ullah stated he had not provided a classification of the plaintiff's hearing loss in his report because at that stage the classification system was in a stage of transition between the Global Burden of Disease method and the WHO method of grading. He considered the WHO grading system to be the correct method of classification of degrees of hearing loss and opined that this would accord with the accepted current practice.

[14] Mr Stewart examined the plaintiff on 14.11.24. He classified the degree of hearing loss suffered by the plaintiff to be mild. His method involves finding the average of the whole frequency range rather than the 4-frequency average used by the GDB or the WHO systems. Mr Stewart considered the plaintiff's employment as a mechanic may have contributed to the noise induced hearing loss as the plaintiff's work involved the use of air tools without ear protection. He also considered that the plaintiff would find it beneficial to have two hearing aids fitted.

[15] In cross-examination he accepted that using his method the average loss over the frequency range shown in the 2016 audiogram was 37dB in the right ear and 38 dB in the left ear. He disagreed with Mr Ullah that there was an accepted standard method of grading or that the WHO system is universally accepted. Mr Stewart first described the results as falling into mild to moderate but accepted that using the

current WHO grading system the results fell into the moderate range albeit toward the lower end.

### *Decision*

[16] At hearing the defendant raised a limitation defence. The plaintiff was cross-examined on the delay in bringing proceedings. In evidence he stated that he was aware of hearing loss for some years prior to 2016 and conceded that he was prompted to pursue a claim for damages when he received a leaflet in respect of hearing loss claims; former workers of the defendant having been canvased regarding same.

[17] The civil bill in this matter was issued on 12 December 2023. I have no hesitation in exercising my discretion under the Limitation (Northern Ireland) Order 1989 to permit the action to proceed. I am satisfied that the cogency of the evidence available to the defendant has not been affected by any delay.

[18] Having considered all of the evidence, I prefer the evidence of Mr Ullah and find the application of the WHO grading system in this case an appropriate method to classify the level of hearing loss.

[19] As set out in the World Report on Hearing (2021) the WHO has adopted a grading system based on audiometric measurements. The system is a revision of an earlier approach adopted by WHO. Hearing loss is categorised as mild, moderate, moderately severe, severe, profound or complete and unilateral hearing loss has been added. In addition to the classifications, the revised system provides a description of the functional consequences for communication that are likely to accompany each level of severity.

[20] Under this grading system, mild hearing loss is from 20 to less than 35 dB and moderate from 35 to less than 50dB.

[21] The hearing experience in a quiet environment for most adults with mild hearing loss is, 'Does not have problems hearing conversational speech' and in a noisy environment, 'May have difficulty hearing conversational speech.'

[22] For moderate hearing loss the hearing experience in a quiet environment for most adults is, 'May have difficulty hearing conversational speech' and in a noisy environment, 'Difficulty hearing and taking part in conversation.'

[23] I find that the plaintiff suffers with moderate hearing loss. His hearing loss was likely present for some years prior to 2016 when he first underwent audiometry hearing test. I accept that his need for hearing aids would have been accelerated by his noise induced hearing loss. He makes no complaint of tinnitus.

[24] I found the plaintiff to be a credible witness who gave his evidence in a forthright and straightforward manner. I accept his evidence that in his employment as a mechanic he worked in open environments with intermittent use of power assisted tools or equipment such as would generate high levels of noise for significant periods. I was not persuaded that he was exposed to excessive noise in the course of his employment as a mechanic. I accept that during his employment with the defendant he worked for prolonged periods in a noisy environment. I find the defendant liable for that element of hearing loss attributable to noise induced hearing loss which has already been agreed at 52.5%.

[25] No claim for special damages in respect of hearing aids was presented to the court. Counsel for the plaintiff, Mr Boyle, referred the court to the 2015 decision of Colton J in *Atkinson v Chief Constable of the PSNI* [2015] NIQB 92. As set out in para [18] of that judgment, Colton J took the view that the risk that a plaintiff may require a hearing aid earlier than would otherwise be the case is a matter that can legitimately be taken into account in assessing general damages. In assessing general damages in that case, he included a spot figure of £1,000 for the said risk.

[26] It is now some nine and a half years since the decision in *Atkinson*. Counsel for the plaintiff invited me to increase the spot figure. In closing, it was submitted on behalf of the plaintiff that I was not bound to adopt a strict mathematical approach to reflect inflationary rises but rather the appropriate figure is a matter entirely of judicial discretion.

[27] Mr Quinn, for the defendant, submitted that it was significant that the plaintiff suffers both age related, and noise induced hearing loss. There are many occasions when an additional premium is not paid. No claim was made for a specific hearing aid. NHS aids are free of charge and are suitable alternatives. The imposition of the spot figure is not automatic simply because a hearing aid is required.

[28] I am mindful that in assessing damages I should avoid double compensation in respect of an award for deterioration of hearing loss, but I accept that within my consideration of the amount of general damages regard should be had to the acceleration of the need for a hearing aid which, of itself, represents a detriment to the person, in addition to the hearing loss. I find the plaintiff is entitled to an award for this detriment.

[29] I consider it suitable that the spot figure is increased given the lapse of time since the original figure was awarded. I find that it is fair, just and reasonable to increase the spot figure from £1,000 to £1,500.00. Whilst I agree it is a matter of judicial discretion as to what that figure should be and slavish application of inflationary rises is not required I take comfort in the fact that this figure closely mirrors the figure which would be achieved if one applies the RPI rate in similar fashion to the approach taken by the Judicial Studies Board upon revision of the General Guidelines for the Assessment of General Damages in Northern Ireland.

[30] The plaintiff has suffered moderate hearing loss, and I accept that this is permanent, and he has suffered with this for some years and at least from 2016, that being the date of the relevant audiogram which is around nine years ago. I accept that for a time prior to 2016 he likely suffered from a degree of hearing loss and was encouraged by his family to seek medical assessment. However, the exact progress of hearing loss cannot be ascertained definitively. He does not suffer with tinnitus and has no history of same.

[31] The plaintiff is now 71 years and nine months old. I accept the plaintiff experiences the functional consequences for communication set out in the WHO grading system and that whilst he manages sufficiently on a day-to-day basis, he experiences difficulties particularly in crowded environments and may also experience a level of difficulty in a quiet environment. It is common case that his hearing loss is a combination of noise induced hearing loss and age-related hearing loss and that going forward age will remain a factor.

[32] In assessing damages in the case, I have considered the Sixth Edition of the said Guidelines. The categories of hearing loss therein are set at mild, moderate and severe. I note that the WHO grading system differentiates between moderate hearing loss and moderately severe hearing loss. According to the 2016 audiogram, the plaintiff's hearing loss met the criteria for moderate having just exceeded the lower threshold of 35dB.

[33] For moderate hearing loss the NI Guidelines suggest awards of between £20,000 and £60,000. Ultimately, of course, the appropriate level of damages requires a degree of judgment by the court.

[34] Having considered all of the evidence, I consider the full extent of the plaintiff's hearing loss claim would attract an award of £30,000 to include a figure of £1,500 for the risk that he required hearing aid(s) earlier than might otherwise be the case.

[35] It has been agreed that 52.5% of his hearing loss is attributable to noise induced hearing loss and that a discount of 11.6% should be applied in respect of an uninsured period. The amount therefore decreed in respect of general damages against the defendant in this case is £14,726.85 and having succeeded in his claim the plaintiff is also awarded full costs to include counsel.