

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

WILLIAM ROBERT WILSON

Plaintiff;

-and-

**CHIEF CONSTABLE OF THE POLICE SERVICE
OF NORTHERN IRELAND**

Defendant.

GILLEN J

[1] In this case the plaintiff seeks damages against the defendant arising out of hearing loss sustained whilst he served with the RUC between 1975 until 1988, a period during which he was exposed to loud noise on a number of occasions.

[2] Mr Wilson has been examined by three distinguished ENT consultants for the purposes of these proceedings namely Mr D'Arcy on his own behalf, Mr Harris on behalf of the defendant and subsequently, in a wake of a dispute between these two experts, Mr Toner. All three of these experts are consultants in ENT.

[3] There probably is little dispute between the parties that Mr Wilson has suffered some hearing loss in the lower frequencies and in the better high frequency hearing thresholds. In addition it is common case that he does suffer from tinnitus.

[4] The key issue that is at large between the parties is how long he has been suffering from tinnitus. Has he only be suffering tinnitus from 2008/2009 or has he been suffering from it since his time in the RUC many years ago.

[5] Obviously the resolution of this issue will influence not only the strength and degree of any connection between the tinnitus and his hearing loss suffered in the

RUC but also it will have an impact on the overall damages in respect of the length of time he has endured the condition of tinnitus.

[6] Many hundreds of similar hearing loss and tinnitus cases have been settled in this jurisdiction. In this instance, Mr McNulty QC who appeared on behalf of the plaintiff with Mr Keenan QC and Mr Rooney QC who appeared on behalf of the defendant with Mr Mack invited the court at this stage to confine its determination to the issue of tinnitus that divides the parties, leaving them thereafter to attempt to negotiate the case in the wake of my decision.

Background of this issue

[7] Mr D'Arcy recorded in his report of 8 August 2010 that the plaintiff had complained to him of humming in both ears – on the left side more than the right – which had been present for years. Accordingly Mr D'Arcy concluded that his tinnitus was consequent upon exposure to excessive gunfire noise while a member of the RUC for a period of thirteen years.

[8] Mr Harris in his report of 1 March 2012 (consequent upon an examination of 27 January 2012) recorded that the plaintiff informed him he had been aware of tinnitus for approximately three years. Relying upon that history, Mr Harris concluded:

“Taking into consideration the history that the plaintiff appears to have developed tinnitus about 20 years after he had left the police, I do not think it is possible to apportion a large percentage of his tinnitus due to his police service. Some other factor must be relevant. Relying on this he ascribed possibly up to 25% to 30% of his tinnitus due to his service with the RUC.”

[9] Medical notes and records dated 17 November 2008 included a letter from Dr Ojo recording that Mr Wilson “had a three month history of tinnitus in his left ear. This was associated with reduced hearing”.

[10] Finally, when Mr Wilson was referred to Mr Toner for examination on 23 August 2013, Mr Toner reported on 11 September 2013 that the plaintiff had told him that he had been aware of tinnitus for 20 years more marked in the left ear.

Evidence before me

[11] Mr Wilson in evidence before me asserted that he had suffered this debilitating condition of tinnitus from the time of his service in the RUC. He described the conventional symptoms of tinnitus – buzzing more noise in both ears especially the left, difficulty concentrating, wakening several nights per week with

difficulty getting back to sleep etc. He asserted he had been suffering this now for many years. Whilst he had difficulty because of the passage of time recollecting the details of the meetings with Mr Harris and Dr Ojo, he insisted that there must have been a breakdown of communication and/or understanding between him and these doctors leading to either a mistake in response on his part to a question from them about his tinnitus or a misunderstanding on their part of what question he had been intending to answer.

[12] Mr Wilson speculated that perhaps confusion had arisen as to what he had said about the first time he had received treatment for tinnitus as opposed to when he first suffered the condition.

[13] The plaintiff's explanation for not having sought any medical treatment on the issue of tinnitus until eventually seeing Dr Ojo in November 2008 was that, like many men, he was reluctant to seek out any medical advice.

[14] Mr Harris gave evidence before me making the following points.

- As was his invariable practice in such cases, he had asked Mr Wilson the simple question as to how long he had suffered tinnitus.
- As an aide memoire he had established a pro forma on which he recorded in every case the questions and answers given to this and many other queries. This pro forma recorded in typewritten form the clear question as to how long the patient had suffered tinnitus and he then inserted in his own handwriting the answer.
- You would always ask this question in this type of case in order to inform himself, *inter alia*, whether there was a real connection between the period in the RUC and the tinnitus since the longer the gap between the service and the advent of the condition, the more tenuous the connection. Tinnitus as a condition could arise spontaneously.

Conclusion

[15] I have determined that Mr Wilson has failed to satisfy me on the balance of probabilities that his tinnitus arose any earlier than the period recorded by Mr Harris. In short I preferred the account given by Mr Harris. I have so concluded for the following reasons.

[16] First, I find Mr Harris to be a very impressive witness. Whilst his approach may be icily transactional, he struck me as a conscientious, insightful and diligent consultant who would not have failed to enquire from Mr Wilson the history of his tinnitus. I consider it axiomatic that any ENT consultant would have to do this in order to arrive at a diagnosis of the cause of the condition. How else could he do it?

[17] It was a measure of the care that Mr Harris invests in his practice that he had prepared a written pro forma as a means of channelling his thoughts to ensure that

the question was asked and he faithfully recorded the answer. I did not perceive Mr Harris as a man given to ambiguity or confusion in this area. That his recollections were anchored in written format carried weight with me.

[18] Any lingering doubt that I might have entertained about the strength of this evidence was dispelled by the presence of the note made by Dr Ojo in November 2008. I find it inconceivable that he too would not have enquired specifically as to the history of onset of the tinnitus. It stretches my credulity too far to suggest that he also had confused Mr Wilson with such a fundamental question or that he also had fallen into precisely the same misunderstanding as Mr Harris concerning the history given by Mr Wilson on such a fundamental question.

[19] My reasoning is further underlined by the failure of Mr Wilson to seek treatment for this condition until 2008 when eventually he saw Mr Ojo. I am aware from the many case histories I have read of tinnitus that this is an extremely debilitating condition. For example waking up with a buzzing sound in the ears and experiencing difficulty getting back to sleep is typical. Mr Wilson is an intelligent, articulate man who since leaving the RUC with the rank of the Inspector has become a solicitor in the city of London. I find it difficult to accept that his knowledge of the world and life in general did not lead him to recognise the nature of the condition from which he was suffering at a much earlier stage and that he would have sought medical advice. I believe this is in fact what did happen and that within three months of onset he found himself with Dr Ojo. It is highly unlikely that he would have borne the vicissitudes of this condition for many years before seeking advice.

[20] Finally I pause to observe that in choosing between the credibility of Mr Wilson on the one hand and that of Mr Harris on the other, I noted the absence of any reference in the history recorded by Mr D'Arcy and Mr Harris (although not Mr Toner) of Mr Wilson's service in the UDR prior to his employment in the RUC. Once again Mr Harris not only informed me that he had specifically asked Mr Wilson this question, but he had recorded it in writing in his pro forma. For whatever reason - whether it be tactful omission or gross oversight - Mr Wilson had denied any service and this further served to undermine my faith in his reliability as an accurate historian.

[21] In the event that the parties are unable to use this decision on one discrete area of the case to bring about a settlement the parties should return to me as soon as possible in order that I may make an overall assessment of the damages.