



A Client's Guide: Noise Induced Hearing Loss

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Contents

1. What is noise induced hearing loss?	3
2. What are the symptoms of noise induced hearing loss?	4
3. Medical analysis and treatment	5
4. Compensation	6
5. How will my case be funded?	7
6. The Claims process	8
7. Exposure to noise in the military	10
8. Acoustic Shock	11
9. The Team	12

1. What is Noise Induced Hearing Loss?

Noise Induced Hearing Loss (NIHL) is also known as Industrial Deafness or Occupational Deafness.

NIHL occurs as a result of exposure to noise over a prolonged period.

According to the Health and Safety Executive (HSE), more than one million people are exposed to potentially damaging noise levels in their workplace.

If you are suffering from hearing loss and worked in noise throughout the day for a significant period of time and were not provided with hearing protection you may be suffering from noise induced hearing loss.

The following industries are known to have exposed employees to excessive levels of noise:

Construction, Engineering, Textile Mills, Packaging Factories, Paper Mills, Mining, Tool Making, Car Manufacturing, Energy and Water Supply, Foundries, Steel Production.

2. What are the Symptoms of Noise Induced Hearing Loss?

Noise Induced Hearing Loss affects the higher hearing frequencies. Symptoms include:

- Lack of hearing
- Struggling to hear in the presence of background noise
- Failing to hear the doorbell or the telephone
- Ringing or buzzing in the ears known as Tinnitus

Tinnitus is a buzzing or ringing in the ears which can occur as a result of prolonged exposure to noise in the workplace.

Noise damage occurs over time whilst working in a noisy environment, however any damage caused by noise will cease when a person stops working in a noisy environment.

A person suffering from NIHL may not notice their hearing loss until they get older and start to suffer from age related hearing loss in addition to noise induced hearing loss.

3. Medical Analysis & Treatment

If you suspect that you may have Noise Induced Hearing Loss or tinnitus, you should visit your GP and ask to be referred for an audiogram. An audiogram is a hearing test which is conducted by a qualified audiologist in a sound proof booth.

Noise induced hearing loss affects the higher hearing frequencies. An audiogram will be able to show whether your hearing loss has been caused by noise or whether your hearing loss is just down to age. It could also be a combination of both.

If you are suffering from noise induced hearing loss, the hospital may recommend the use of a hearing aid.

Noise induced tinnitus only occurs if you have noise induced hearing loss.

There is no known cure for tinnitus. If you suffer from tinnitus you could obtain a detinnitising amplifier or attend therapy classes and counselling.

4. Compensation

Can I claim compensation?

In order to make a claim for compensation you must have been exposed to excessive noise over a significant period after **1963**.

If your employer is still trading, we can always bring a claim against them.

If your employer is dissolved and we can trace their insurers we can also bring a claim against them. The insurers can be located through an employer's liability tracing organisation.

In order to bring a claim you will need to prove:

1. Your employer breached the duty they owed to you by exposing you to noise levels which were above the legal limits and not providing you with adequate hearing protection.
2. Your noise induced hearing loss and tinnitus is a consequence of the breach of duty.
3. You bring your claim within 3 years of linking your hearing loss to your exposure to noise.

What can I claim?

You can claim compensation for the physical injury you have sustained (General Damages) and your financial loss (Special Damages).

General Damages

The amount you will receive is dependant on a number of factors such as your age, your level of loss and whether you are suffering from tinnitus in addition to hearing loss.

General Damages usually range from £1,000 to £7,000.

Special Damages

Special Damages are the financial losses you have incurred as a result of your injury. These can be:

- Hearing Aids, batteries and replacements
- Treatment for tinnitus such as tinnitus amplifiers or therapy/counselling classes
- Travel expenses for attending medical appointments

5. How will my case be funded?

There are two ways in which your claim can be funded:

1. Conditional Fee Agreement (CFA) - this is known as a '*no win, no fee*' agreement. We act for you on the basis that we only get paid if we win your case. If we win your case, we will recover the majority of our costs from your employer that was at fault (usually their insurers).

Due to a change in the law which came into effect of 1 April 2013 we are no longer able to recover all the costs from your opponent and will therefore seek the recovery of any shortfall from you damages to a maximum of 25% of your damages.

In addition you may also take out an ATE Insurance (After the Event) to cover your liability for your opponent's costs.

2. Privately paying – You can pay us privately on an hourly rate basis or we agree to a budget to investigate your claim.

Some Personal Injury cases can be funded through BTE Insurance (Before the Event). BTE Insurance is often provided with household insurance policies as a part of your legal expense cover. Unfortunately claims for noise induced hearing loss are rarely covered by most BTE policies, however you should always check your policies and make enquiries with your provided.

Most NIHL cases are funded by way of CFA. However we will discuss both options with you.

6. The Claims Process

You must bring your claim within 3 years from the date you linked your hearing loss to your exposure to noise.

The following is a brief guide to how your case is likely to progress:

1. Trace the Defendants

If your employer(s) is/are still trading, we can locate their details from Companies House.

If your employer(s) is/are dissolved, we can trace their insurers through the Employers Liability Tracing Organisation (ELTO).

If we cannot trace your employer we will not be able to bring a claim.

2. Obtain your HMRC employment history

As it may have been a long time since you were employed with the companies which exposed you to noise, they may have closed down and if not they may not have any documents which show that you were employed with them.

As such we make a request to the HMRC to provide your employment history schedule which will confirm the tax years where you were employed throughout your working career. This will prove where you worked and when.

3. Send a Letter of Claim

Once we have traced your employer(s) we will submit the claim to your employer/insurers outlining to them that you have suffered from noise induced hearing loss / tinnitus as a result of your employment with them.

We will send a Letter of Claim to every employer that exposed you to noise and every insurer that we can trace from the time that you were employed.

4. Response from your employers (or their insurers)

Your employer / insurer have 21 days in which to acknowledge the claim and a further 3 months in which to investigate the claim.

They may respond as follows:

- **Deny** the claim by providing documents which show that noise levels were below the legal limit or they can prove that they provided you with hearing protection and they had systems in place to enforce the use of hearing protection and have a safe system of work in place.

If they can prove the above, then they will not have breached the duty they owed to you and your claim will fail at this stage.

- **Accept** they were in breach of duty where they know noise levels were above the legal limit and they did nothing to protect their employer.
- **Neither accept nor deny** – this is usually the case when the company has been dissolved for some time and there are no documents in which to prove whether or not the noise levels were above legal limits or what policies were in place.

If either of the above occurs, then case is decided upon whether your medical evidence proves that you have hearing loss and whether you have brought your claim within the required 3 years.

5. Obtain Medical Evidence

Once the insurers have responded we will obtain your GP & Hospital records and send you for a medical assessment with an ENT consultant who will conduct an audiogram and assess your work history.

The ENT consultant will provide a report outlining:

- Your exposure to noise
- Whether or not you suffer from NIHL/Tinnitus
- The level of your NIHL
- Whether you require any treatment

This will then be submitted to the insurers who will then decide whether they or not they accept you have NIHL and whether you have brought your claim in time.

6. Settlement or Court Proceedings

Once the insurers have assessed the medical evidence they will decide whether or not to settle your claim.

If they do not accept that your employer exposed you to above legal limits of noise, you do not have noise induced hearing loss or that you have not brought your claim within 3 years then they may reject your claim.

If your claim is rejected you will then have to decide whether or not you wish to issue Court Proceedings.

Court proceedings must be issued within 3 years of the date in which you linked your hearing loss with exposure to noise.

Most cases settle without the need to attend trial. Therefore it is unlikely that you will need to attend Court. If you do we will guide you through the process.

7. Exposure to Noise in the Military

People exposed to noise in the workplace can bring a claim for hearing loss following exposure to noise after 1963. However for exposure to noise in the Army, Navy and RAF can only be claimed for exposure to noise after 1987.

If the military failed to take reasonable safety measures such as unsafe training or equipment that was not working properly then it is possible to bring a claim for compensation.

It is a common misconception that a claim can only be brought after a person has left the armed forces. This is not the case. If however an injury is sustained during engagement with an enemy in the course of combat a civil claim is unlikely to be successful as the principle of combat immunity may arise.

In those cases, it might be possible to pursue a claim under the no fault Armed Forces Compensation Scheme. Under the scheme, applicants do not have to show that someone else is at fault.

8. Acoustic Shock Syndrome

Acoustic Shock is hearing damage caused by a sudden high pitched noise, often the result of a malfunctioning headset at a call centre. This loud, high pitched noise is called an acoustic incident, and though its damage is immediate, the affected worker could go days or weeks before noticing a change in their hearing.

Acoustic Shock is a very serious condition, which can lead to:

- Permanent hearing loss,
- Hyperacusis: Increased – and painful – sensitivity to sound, and
- Severe tinnitus.

Call centre employees should be trained on the dangers of Acoustic Shock and how to protect themselves against potential hearing damage.

The Health and Safety Executive has just recently begun funding research towards finding effective monitors and headset filters that will sufficiently reduce or eliminate acoustic incidences from occurring.

However, if you are or previously were a call centre employee and you feel as though you have been a victim of Acoustic Shock, you may file a compensation claim against your current or previous employer.

9. The Team

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