

# Unanimous Decision in Mackenzie v Alcoa Manufacturing (GB) Ltd

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Patrick Limb QC & Gareth McAloon have succeeded in the Court of Appeal for the Appellant in *Mackenzie v Alcoa Manufacturing (GB) Ltd* [2019] EWCA Civ 2110.

The Court of Appeal has this morning handed down judgment in this significant decision on a noise-induced hearing loss ("NIHL") claim in which they have overturned the decision of Garnham J and dismissed the Claimant's claim for damages.

The Court unanimously agreed that whether or not inferences, such as that drawn against the Defendant in *Keefe v Isle of Man Steam Packet Company Ltd* [2010] EWCA Civ 683, can be drawn generally against Defendants to historic NIHL claims who have disclosed no noise surveys, depends on the circumstances of the case and that the guidance in *Keefe* should not be elevated to a rule of law. In this case, it was a relevant factor that the long passage of time may have caused such documents to be lost and that the presence of expert engineering evidence (which did not support exposure to excessive noise) could, even if an inference were drawn, mitigate against a finding that that inference ought to be to the extent that there is a positive finding of breach for excessive exposure to noise above the common law threshold applicable. Accordingly, the Court endorsed the decision of HHJ Vosper QC at first instance and his refusal not find the Defendant in breach of duty.

Guidance was also given on when it was that it could be said that a common law duty to undertake noise surveys first arose, and has urged caution on appellate courts when considering whether to overturn findings of fact by a trial judge who has had the advantage of hearing and considering the entirety of the evidence in a case.

For a full commentary please click [here](#).

The judgment can be found [here](#).

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