

Goldscheider v Royal Opera House

On 17 March 2019 the Court of Appeal rejected an appeal by the Royal Opera House (ROH) against the original decision in this unusual case of injury to hearing of an orchestral musician.



**Finch
Consulting**

Engineering Confidence.



Susan Dearden
Head of Legal



Dr Chris Nelson
Principal
Consultant



Timothy Ward
Principal
Consultant



Melvin Sandell
Senior Consultant

On 1 February 2012, Christopher Goldscheider, a viola player with ROH, was taking part in rehearsals for a series of operas in Wagner's 'Ring Cycle'. He was seated in the orchestra pit immediately in front of the principal trumpet player, the bell of whose instrument was said to be close to his right ear. He suffered an injury to his hearing which appears similar to the 'acoustic shock' suffered by some call centre workers who use headsets, and he has been unable to work since. He brought a claim for personal injury and, at trial in March 2018, the Court found ROH to have been in breach of duty under the Control of Noise at Work Regulations 2005 and to have caused the injury.

The Court of Appeal has upheld the original finding in favour of the Claimant, but on narrower grounds, rejecting the finding that ROH should have enforced the use of hearing protection in the orchestra pit at all times as it was likely that someone would be exposed in excess of the Upper Exposure Action Value which is a daily exposure level of 85 dB. The appeal judges found that this degree of protection would not be reasonably practicable. That is a sensible approach as there will be occasions when daily exposures in this environment will not reach 85 dB and in our view the use of hearing protection can, and should, be managed in an appropriate but flexible manner in this sector.

Although ROH had implemented various preventative measures prior to the incident, and Mr Goldscheider was wearing hearing protection, the Court of Appeal agreed that ROH had failed to reduce the risk to hearing, and the noise exposure, to the lowest level reasonably practicable, and was therefore in breach of the 2005 Regulations.

There are some technical aspects to the judgment that are less persuasive. We understand that ROH and its legal team are currently considering their position in respect of a possible further appeal to the Supreme Court and we await their decision with interest.

Meanwhile, this case serves as a reminder that the 2005 Regulations are as relevant to the music and entertainment sectors as to the traditional noisy industries, and that employers need to apply good practice to ensure that risks to hearing in the workforce are controlled. The special challenges for this sector, in which the 'noise' is also the 'product', are well understood, and the industry worked with the HSE when the 2005 Regulations came into force to develop its 'Sound Advice' guidance.

At Finch, we are already working with a number of leading organisations in this sector to ensure that appropriately high standards of health and safety are established and maintained. This case raises the profile of noise at work in the music sector which is just one of many health and safety issues on which we can assist.

Ivanhoe Business Park
Ashby de la Zouch
Leicestershire
LE65 2AB

Ashby de la Zouch
+44 (0) 1530 412 777

Birmingham
+44 (0) 1217 289 814

Edinburgh
+44 (0) 1313 572 223

finch-consulting.com