

ENGLAND AND WALES / JUDGMENT

Andrew Lunt v BAC Impalloy Ltd

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Neutral Citation Number: [2025] EWCC 49 IN THE COUNTY COURT AT WALSALL (SITTING AT THE COUNTY COURT AT COVENTRY) Before : Her Honour Judge Saira Singh

- ----- Between : Mr Andrew Lunt
- and - BAC Impalloy Ltd
- -----
- ----- Case No: 064DC952 Date: 12 August 2025 Claimant Defendant Mr Simon Anderson (instructed by Wixted & Co) for the Claimant Mr Jim Hester (instructed by DAC Beachcroft) for the Defendant Hearing dates: 4, 5 and 6 June 2025
- ----- APPROVED JUDGMENT This judgment was handed down remotely at 2pm on 12 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Her Honour Judge Saira Singh :

Introduction

1. Between October 1999 and February 2020, the claimant, Mr Andrew Lunt, was employed by the defendant, BAC Impalloy Ltd, and its predecessors (to whom I shall refer collectively in this judgment as “Impalloy”). In the course of his work, Mr Lunt used vibrating tools. By this claim, he alleges that he suffers from Hand-Arm Vibration Syndrome (HAVS) and that that condition was caused by the defendant’s negligence and breach of statutory duty in exposing him to excessive levels of vibration and in failing to comply with its common law and statutory obligations to take steps to avoid the risk of such injury. He seeks damages limited to £35,500. 2. Mr Lunt issued this claim on 20 January 2023, some 18 years after first becoming aware of his symptoms, 11 years after receiving a diagnosis by Impalloy’s Occupational Health Physician and 2 years 11 months after leaving his employment at Impalloy. 3. In its defence, Impalloy says that the claim is statute-barred. Mr Lunt contends that the 3-year time limit for bringing this personal injury claim should not commence until the termination of his employment in February 2020. Alternatively, applying *Malone v Reylon Heating Engineering Ltd* [2014] EWCA Civ 904, the latter part of the claim remains within time. However, if his claim is out of time, Mr Lunt contends that the court should exercise its discretion to disapply the limitation period, pursuant to section 33 of the Limitation Act 1980 (LA 1980). 4. If the court decides that it would be equitable to disapply the limitation period and allow the claim to proceed, Impalloy’s pleaded defence was that it

denied breach of duty and did not admit causation. However, at the start of the trial, I was informed by Page 2 counsel that breach of duty was now admitted. Accordingly, only causation and, if appropriate, quantum remained in dispute. 5. I heard the trial of this claim over three days on 4, 5 and 6 June 2025. Mr Lunt was represented by Mr Anderson of counsel and Impalloy by Mr Hester of counsel. I am grateful to them both for their helpful written and oral submissions. 6. I heard oral evidence from Mr Lunt and from medical experts, Mrs Sandy Shiralkar (for Mr Lunt) and Professor Lionel Christopher Bainbridge (for Impalloy). In addition, I had the benefit of a trial bundle running to 616 pages. References in this judgment to numbers in square brackets are to the numbered pages of the trial bundle. There was also a joint authorities bundle, along with several other authorities relied on by Mr Hester. 7. I am not going to repeat all of the evidence and submissions in this judgment, but I have taken them all into account when reaching my decision. Hand-Arm Vibration Syndrome 8. Hand-Arm Vibration Syndrome (HAVS) is a condition caused by the prolonged use of vibrating tools. It affects the blood vessels, nerves and muscles of the hand and arm. It typically presents with cold-induced blanching of the fingers (which explains the old term “Vibration White Finger” (VWF)), where the fingers turn white and are painful when exposed to cold or vibration. In addition, HAVS often also causes sensorineural symptoms, such as numbness, tingling and loss of manual dexterity. Because of these additional manifestations, the condition is now called HAVS, rather than VWF. Page 3 9. The condition is dose-related, such that the more vibration to which a person is exposed, the greater the damage that is caused. 10. As recognised by Smith LJ in *Montracon Ltd v Whalley* [2005] EWCA Civ 1383, it is often difficult to diagnose HAVS and an examining doctor is dependent upon the patient’s (or claimant’s) description of their symptoms. As Smith LJ said, at paragraph 7, “This in turn is dependent upon the perception of the claimant and his use of language.” Furthermore, the development of symptoms depends on an individual’s susceptibility. 11. At paragraph 10 of *Montracon*, Smith LJ considered that diagnosis of HAVS depends on three factors: “first, a history of exposure to vibration sufficient to cause a risk of development of the condition; second, a clinical history and description of symptoms which is consistent with one or more of the components of HAVS; and third, the absence of any constitutional explanation for the symptoms complained of.” I shall refer to these factors as “*Montracon* 1, 2 and 3” respectively. 12. There are two different scales by which the severity of HAVS can be described: the Taylor Pelmear Scale, which deals only with the vascular symptoms, and the Stockholm Workshop Scale, which deals with vascular and sensorineural effects. The Stockholm Workshop Scale consists of a numerical scoring of the vascular symptoms of HAVS by reference to the phalanges affected (e.g. 1V, denoting attacks affecting the distal phalange, or fingertip; 2V, denoting that the distal and middle phalanges are usually affected; and 3V, denoting all phalanges are usually affected). Sensorineural symptoms are scored by reference to the extent of numbness/tingling/reduced sensory perception (e.g. 1SN). Page 4 13. It is accepted that *Montracon* 1 (sufficient history of exposure) is present in this case. However, Impalloy’s case is that *Montracon* 2 and 3 are not satisfied. It is submitted that Mr Lunt’s clinical history is not consistent with HAVS and that there is a constitutional condition which explains the symptoms, namely Carpal Tunnel

Syndrome (“CTS”). The issues 14. The issues for the court to determine are as follows: a) Is the claim (or parts of it) statute-barred as having been brought outside the three year limitation period under section 11 LA 1980? b) If so, is it equitable for the court to exercise its discretion to disapply the primary limitation period under section 33 LA 1980?

- c) Did Mr Lunt’s exposure to vibration cause HAVS? In other words, are Montracon 2 and 3 satisfied? d) If so, what is the appropriate award for PSLA and what, if any, award should be made for loss of earning capacity and future care and assistance? 15. I remind myself that the burden is on Mr Lunt to prove his case on the balance of probabilities. Summary of the lay evidence 16. In support of Mr Lunt’s case, there were witness statements from Mr Lunt himself [36-52 and 53-56] and Mr Ian Elwell (a former colleague of Mr Lunt) [57-58]. For Impalloy, there were witness statements from Mr Terry Peacock (Supervisor, Page 5 Production Manager and then Works Manager) [59-75] and Mr Gary King (Quality Manager) [76-79]. Mr Lunt was the only lay witness to give oral evidence; a hearsay notice was served in respect of Mr Elwell and Impalloy elected not to call its lay witness evidence. 17. The following is a summary of Mr Lunt’s evidence. (At this stage, I do not make any findings based on the evidence.)
18. Mr Lunt was employed by Impalloy and its predecessors in title between 1999 and February 2020, when he was made redundant. His unchallenged evidence was that during his employment he was required to use vibrating tools and equipment regularly and excessively. He described the nature of the work and his exposure to vibrating tools and equipment at paragraphs 23 to 42 of his first witness statement [39-44]. 19. He said that he recalled using anti-vibration gloves for a trial period in 2018 but they did not help or do anything to control or limit the vibration; if anything, they increased the vibration from the tools. He therefore did not continue to use the gloves after the trial period. 20. He did not recall receiving any training or information from Impalloy about the possibility of suffering problems with his hands or about the risk of HAVS. While he accepted that he must have received a Health and Safety Executive (HSE) leaflet on HAVS, because he had signed for it in January 2014, he said the contents were never discussed with him. 21. He had a HAVS medical assessment in August 2012 with a specialist. In his witness statement, he said he recalled showing Gary King, the health and safety representative, his fingers when they were white but he had simply shrugged his Page 6 shoulders. Nothing was done and he was given no advice. He had subsequently had an occupational health screening in a van at work and had mentioned his symptoms in passing to the doctor. He believed it was this screening that prompted the referral to the occupational health specialist for an assessment. 22. The report from the occupational health specialist [258-259] recommended a review in a year’s time, but that never happened. He said that he had carried on using vibrating tools and equipment in the same way as before. 23. In his witness statement, at paragraph 51, he said that he first noticed a minor change in the condition of his hands in around 2005/2006. The first symptoms were pins and needles, numbness and tingling in his fingers. Over time, he also started to suffer from intermittent white discolouration in his fingers, provoked by the cold weather. His symptoms became more frequent and severe as his vibration exposure

continued at work. He continued to suffer from pins and needles, numbness, tingling and intermittent white discolouration in his fingers provoked by cold weather. Symptoms had neither improved nor deteriorated since he left work at Impalloy. His hobbies of golf and snooker had been affected and he had problems undertaking DIY activities, gardening and handling small objects, including fastening buttons and laces. 24. He said that when the symptoms first developed, he had no idea what the problem might be. He thought they were just general wear and tear and potentially caused by cold conditions. He said that the symptoms did not just occur after using vibrating tools and therefore he did not attribute his symptoms to the use of vibrating tools. 25. He said that after he was diagnosed with HAVS in August 2012 by Impalloy's occupational health specialist, he was supposed to have a review in a year's time but Page 7 although he requested it, there was never any follow up arranged by Impalloy and his duties continued as before. 26. He said that, although he had requested the follow-up on a number of occasions, he did not want to "rock the boat" at work or push the issue. He kept his head down as much as possible as he was scared of being made redundant. As a result, he never thought about the possibility of making a claim.

27. Mr Lunt said that after he left Impalloy, he started to look into his symptoms online in around October 2020 and that was when he realised that his symptoms might be related to his exposure to vibration at tools. He contacted solicitors at that point. 28. In oral evidence, he said that he was sure that his symptoms, including white discolouration in his fingers, had started around 2005 or 2006 even though the claim notification form [67] stated that symptoms were first experienced "in or around the late 2000s" and various other inconsistent dates were recorded in Professor Bainbridge's report, ranging from 2004/2005 (onset of night waking) to 2008/2009 (onset of colour changes in fingers). 29. In his second witness statement, which he made to clarify points of disagreement with Professor Bainbridge's report, he confirmed that he did initially suffer from some pins and needles in his fingers which did used to wake him up. However, that only lasted for a few months and not happened since. 30. He said the same during cross-examination. He maintained that he had not experienced night waking for the last 20 years and denied telling Professor Bainbridge the contrary. Page 8 31. He categorically denied that his symptoms had progressed since he had left Impalloy's employ. He was shown photographs of his fingers taken between 2021 and 2024 [243-252], some of which showed the blanching appearing to extend further down the fingers and into the thumb. He disagreed that they showed there had been a progression since February 2020. He said that the blanching was different every time; sometimes it was the whole finger, sometimes just the tip. It was never the same. 32. He also denied that his sensorineural symptoms had progressed since 2020. He could not say why Professor Bainbridge had recorded in his report [93] that he had agreed that he was dropping things more in the last five years. 33. He confirmed that he had never gone to see his GP when he noticed his symptoms. He said that he did not like doctors and that he just got on with it. He did not think anything could be done for it. He said that he only knew one other co-worker who suffered from HAVS; he had taken that co-worker to the occupational health specialist. None of his friends or family had HAVS but he said his mother-in-law had

CTS. She did not have any blanching or numbness, just electric shocks in her palm and wrists. Engineering evidence 34. I was assisted by an engineering report dated 21 June 2024 by Mr David Smith of Strange, Strange & Gardner, who was instructed as a single joint expert [148-200]. Mr Smith has a BSc in Mechanical Engineering and is an Associate Member of the Institution of Mechanical Engineers. He is an experienced expert witness and says that the development of work-related upper limb disorders is one of his areas of specialist knowledge and expertise. He described in detail how the understanding of the problem of industrial use of vibrating tools developed and referred to successive Page 9 guidance issued by the Health and Safety Executive and to the Control of Vibration at Work Regulations 2005 (“the 2005 Regulations”). 35. His conclusion was that, on the basis of Mr Lunt’s evidence as to the time he spent using vibrating tools and equipment, Mr Lunt’s total daily vibration exposure (A8) exceeded the action level of 2.8m/s² and both the daily exposure action value (EAV) of 2.5m/s² and daily exposure limit value (ELV) of 5.0m/s² of the 2005 Regulations. 36. There was no challenge to Mr Lunt’s evidence of the level and duration of his exposure. Summary of medical evidence 37. The following is a summary of the expert medical evidence (without any assessment or analysis by me at this stage). 38. The earliest medical evidence was the report of Dr Basheer, Consultant Occupational Physician, who examined Mr Lunt in August 2012 on behalf of Impalloy [258-259]. In the report, addressed to Mr Neil Moseley, the CEO of Impalloy, Dr Basheer said he had seen Mr Lunt in the clinic for a HAVS assessment. He noted that Mr Lunt had reported suffering occasional blanching during cold weather, his last episode being in the winter of 2011. Clinical examination of his hands was normal. He expressed the opinion that he was likely to be suffering from early and mild HAVS but was fit to continue working with vibrating tools for the time being. He recommended he be reviewed after one year. 39. The results page of the report [259] show the box for “Mild grade” HAVS being ticked. The box for “Possible medical condition other than HAVS/as well as HAVS Page 10 (delete as appropriate)” remained unticked. The Stockholm grading was 1V in both hands and 0SN. 40. It is not disputed that the recommended review after one year did not happen. Nor was there any review thereafter.

41. Mr Lunt relies on the expert medical report of Mrs Sandy Shiralkar, Consultant Vascular and General Surgeon, dated 8 June 2022 [80], her contribution to the Joint Report with Professor Bainbridge dated 26 August 2024 [127] and her supplementary report dated 12 May 2025 [139]. 42. In her first report, Mrs Shiralkar recorded that Mr Lunt complained of tingling and numbness in his fingers which he developed in around 2005/2006 and then he noticed that his fingers tips were turning white and later his thumb was affected. She recorded him as telling her that since stopping use of vibrating tools in 2020, his symptoms had neither improved nor deteriorate, but remained the same. She noted that “these symptoms do not wake him up in the middle of the night” [83]. She said she saw some photos on Mr Lunt’s phone captured on 26 December 2020 and 24 January 2021 demonstrating a typical blanching attack. 43. Having taken his history and examined him, Mrs Shiralkar gave her opinion that Mr Lunt had “typical symptoms in the form of tingling and numbness (sensory-neural symptoms) and blanching (Vascular Symptoms) confirmed with photographic

evidence". She diagnosed HAVS in both hands with a Stockholm staging in both hands of 2V 1SN. She concluded that he would not be able to do jobs which involve excessive use of vibrating instruments or which involve outdoor activities in cold, wet weather. Therefore, he had been adversely affected in the open job market. She Page 11 reported that his outdoor hobbies would be affected as well. In her opinion, the disability is unlikely to resolve completely. 44. In the Joint Report, Mrs Shiralkar agreed that Mr Lunt had developed constitutional CTS unrelated to vibration exposure but in her opinion he developed CTS when he was not using vibrating tools. She maintained her opinion that Mr Lunt suffers from HAVS with the Stockholm staging of 2V 1SN in both hands. 45. In her second report, dated 12 May 2025, Mrs Shiralkar reviewed her opinion after being provided with further photographs of Mr Lunt's hands that were taken between 24 September 2020 and 8 April 2024. Based on the photographs, she opined that the Stockholm staging should be 3V 1SN in the right hand and 2V 1SN in the left hand. She noted that she had agreed with a diagnosis of CTS in the Joint Report based on the positive nerve conduction studies carried out by Dr Al-Saleh on 24 July 224 [123]. She restated her opinion that Mr Lunt suffered from HAVS as well as CTS (the CTS being secondary to vibration exposure). She noted that 15% of people exposed to vibration suffer from HAVS as well as CTS. 46. In oral evidence, Mrs Shiralkar said that she no longer agreed that Mr Lunt had developed CTS. She said that she had only agreed in the Joint Report because of the nerve conduction test and because she had deferred to Professor Bainbridge who she said "knows much more than me". On reflection, she no longer diagnosed CTS in Mr Lunt – there was no history of night waking, none of the tests she had done indicated CTS, his little fingers were affected (which was unusual with CTS) and Mr Lunt had confirmed that he had experienced no deterioration in his symptoms. 47. It was put to Mrs Shiralkar that her change to the Stockholm staging in her second report confirmed that Mr Lunt's symptoms had progressed since her first report. She Page 12 said that she would not call it a progression; it was just that the number of phalanges affected varies each time an attack is experienced. She also said that she had not changed her diagnosis, just the Stockholm staging. 48. Impalloy relies on the medical report of Professor Lionel Christopher Bainbridge, Consultant in Plastic and Hand Surgery, dated 23 May 2024 [90], his replies to Part 35 questions dated 18 July 2024 [112], his contribution to the Joint Report dated 21 August 2024 [127] and his supplementary report dated 10 May 2025 [142]. 49. Professor Bainbridge reported that Mr Lunt told him that the very first thing he noticed wrong with his hands was waking up in the middle of the night with pins and needles in his hands. He said that Mr Lunt told him that this continued to happen every night. He reported being told that the symptoms had remained pretty much the same over the years. Professor Bainbridge also reported asking Mr Lunt if his symptoms had got worse and he was dropping things more in the last few years, to which Mr Lunt had responded that this was true in the last five years. 50. Professor Bainbridge recorded that Mr Lunt started to develop colour change in his fingers in 2008-2009 and that there had been no change in the blanching in the last five years, with blanching affecting all four fingers of both hands and sometimes extending into the thumbs. 51. On examination, the CTS-6 Evaluation Tool (for diagnosis of CTS) produced a score of 17.5, which Professor Bainbridge said gave a greater

than 80% probability that CTS was the diagnosis for a claimant's sensorineural symptoms. He noted that the photographs provided by Mr Lunt showing blanching were consistent with Raynaud's phenomenon. Page 13 52. Professor Bainbridge recorded his opinion that the exact diagnosis of Mr Lunt's condition was not 100% clear. Although the CTS-6 Evaluation Tool suggested greater than an 80% probability of having CTS, it was unusual (but not unknown) to have developed this in 2004-2005 and not to have progressed to requiring surgery. 53. Professor Bainbridge noted "a major disparity" between his history taking and examination as compared with those of Mrs Shiralkar. He considered that continuing nighttime pins and needles and tingling was inconsistent with a diagnosis of sensorineural HAVS. The same applied to a deterioration in his dexterity after cessation of vibration exposure. He also suggested that it was illogical that Mr Lunt developed sensorineural HAVS within five or six years of starting work with vibrating tools but had no progression thereafter in his sensorineural symptoms. While he accepted that Mr Lunt had reported a clear progression of his vascular symptoms, the Raynaud's phenomenon could not unequivocally be identified as HAVS. In his opinion, CTS was the probable diagnosis given the clinical examination and history of nocturnal symptoms. 54. In his Part 35 answers, Professor Bainbridge agreed that it was relatively unusual for the little finger to show such clear-cut blanching in the presence of only CTS. However, blanching in the thumb (reported by Mr Lunt) did not occur in HAVS and should make an examiner look for an alternative cause. He also agreed that finger blanching is not among the most common symptoms of CTS but there was clear evidence that an abnormal response to cold (which blanching is) is highly prevalent in peripheral nerve entrapment such as CTS. 55. In response to question 24(a), Professor Bainbridge did not believe that Mr Lunt was disadvantaged in the open labour market but agreed that he would struggle with DIY Page 14 and other activities in the cold. 56. In the Joint Report, Professor Bainbridge clarified that in his opinion, Mr Lunt had developed constitutional CTS unrelated to vibration exposure. In his view, Mrs Shiralkar's view that Mr Lunt developed HAVS and then, with no change in his symptoms, also developed CTS was illogical. 57. In oral evidence, Professor Bainbridge accepted that if the supply of forklift drivers (Mr Lunt's current employment) exceeded demand, he was restricted from finding alternative employment if he lost his job. 58. He was asked at some length whether he attributed the Raynaud's phenomenon to CTS or whether it was just a hypothesis. Essentially, he repeated the answers he gave to questions 23(e) and (g) of the Part 35 questions, namely that while there is literature suggesting only a possible association between Raynaud's and CTS, damage to the sympathetic and parasympathetic fibres running under the median nerves causes blood vessels to be hypersensitive to cold. In his view, there is therefore a link between CTS and Raynaud's phenomenon. However, he did not say in terms that the Raynaud's in this case was, on balance, attributable to CTS. 59. Professor Bainbridge agreed that it was unusual with CTS for the little finger to show such clear-cut blanching as shown by Mr Lunt's photos. As regards the thumb, he said that it is rarely affected in HAVS cases so the Griffin scoring system does not include the thumb. However, when Mr Anderson referred him to the diagram in the HSE's guidance on the 2005 Regulations (at [513]), which includes the thumbs in the scoring, he accepted that the thumb

is, in fact, included in the Griffin score. Is the claim statute-barred? Page 15 Applicable legal principles 60. The primary limitation period for personal injury claims is three years from the date when the cause of action accrued or the date of knowledge (if later) of the person injured (section 11 LA 1980). 61. Section 14(1) LA 1980 in relevant part defines the “date of knowledge” as the date on which the claimant first had knowledge “(a) that the injury in question was significant; and (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of statutory duty; [...] and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.” 62. Section 14(2) provides: “For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.” 63. Section 14(3) provides: “For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire— (a) from facts observable or ascertainable by him; or (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek; but a person shall not be fixed under this sub-section with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.” 64. It is common ground that the threshold for whether the injury is “significant” is low, akin to the *de minimis* principle. Page 16 65. In *A v Hoare* [2008] UKHL 6, Lord Hoffmann considered the interplay between sections 14(2) and (3). At paragraph 34, he said that the test is not whether the claimant himself would have considered the injury sufficiently serious to justify proceedings, but whether he would “reasonably” have done so. “You ask what the claimant knew about the injury he had suffered, you add any knowledge about the injury which may be imputed to him under section 14(3) and you then ask whether a reasonable person with that knowledge would have considered the injury sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.” 66. Section 14(3) requires an objective approach. In *Adams v Bracknell Forest Borough Council* [2004] UKHL 29 at paragraph 43, Lord Hoffmann said: “Section 14(3) requires one to assume that a person who is aware that he has suffered a personal injury, serious enough to be something about which he would go and see a solicitor if he knew he had a claim, will be sufficiently curious about the causes of his injury to seek whatever expert advice is appropriate.” 67. The test is what a person with the essential characteristics of the claimant would do if acting reasonably (*Johnson v Ministry of Defence* [2012] EWCA Civ 1505). 68. The knowledge required to satisfy section 14(1)(b) is a broad knowledge of the essence of the causally relevant act or omission to which the injury is attributable. “Attributable” means “capable of being attributed to”, in the sense of being a real possibility (*Spargo v North Essex District Health Authority* [1994] 1 WLR 1234 at 1241). Was the claim, or any part of it, brought within the primary limitation period? Page 17

69. Mr Anderson submitted that Mr Lunt's cause of action against Impalloy finally accrued when he was made redundant on 14 February 2020. He submitted that there was a continuing breach of duty by Impalloy until that date. He submitted that that was implicit in paragraphs 39 and 40 of the Court of Appeal's decision in *Malone v Relyon Heating Engineering Limited* [2014] EWCA Civ 904.
70. Mr Anderson submitted that on that basis, Mr Lunt's claim in respect of the exposure to vibrating tools from 15 February 2017 was in time. For the rest of the time, the question was when Mr Lunt's cause of action initially accrued and when was his date of knowledge, if later. He accepted that Mr Lunt would have known that his symptoms were significant some time between 2012 and 2017. He acknowledged that, if the court found that Mr Lunt's condition met the tests in section 14 LA 1980 before 2017, then he needed to rely on section 33 in order to proceed in respect of that portion of his exposure.
71. Mr Hester submitted that Mr Lunt had the requisite knowledge no later than 2012, when he was diagnosed with HAVS by the occupational health specialist. Thereafter, there was a new breach of duty every day until Mr Lunt left Impalloy on 14 February
2020. The claim form was issued on 20 January 2023 and therefore the material part of the claim was out of time. 72. In *Malone*, a Noise-Induced Hearing Loss claim, it was common ground that the claimant had constructive knowledge of his deafness in 2001 when he had seen an ENT specialist and got a hearing aid. The judge at first instance found that he had suffered additional harm following an explosion in 2001. She held that the cause of action accrued in 2004, when the claimant left the defendant's employment. On that basis, the limitation period expired in 2007. The claimant issued proceedings in 2009. Page 18 The judge disappplied the limitation period under section 33 LA 1980. The Court of Appeal held that the judge had erred in finding that there was only one period of delay; she should have found that there were two limitation periods: the first started running in 2001, which was when the claimant had knowledge of his injury for the purposes of section 14 LA 1980; the second started running in 2004, which was when the claimant's employment with the defendant ceased. Therefore, there were two periods of delay; the first between 2004 and 2009 and the second between 2007 and 2009. 73. I am not persuaded that *Malone* assists Mr Lunt on the facts of this case, where there is no suggestion of a deterioration due to a specific incident or occurrence that starts limitation running again. 74. In my judgment, on the balance of probabilities Mr Lunt had knowledge that his injury was significant and attributable to Impalloy's acts or omissions by August
2012. That was when he received a diagnosis of HAVS by Dr Basheer, the occupational health specialist [258]. The link with his working conditions, namely his exposure to vibrating tools, would, in my view, have been clear to Mr Lunt at that point given the opinion given by Dr Basheer that he could continue working with vibrating tools for the time being. He would not have mentioned that if there was no correlation between Mr Lunt's symptoms and the use of vibrating tools. 75. In my judgment, Mr Lunt knew at that point that his injury was "significant", bearing in mind the low threshold, and sufficiently serious to

require investigation. The fact that he asked for the follow-up review recommended by Dr Basheer on more than one occasion bears that out and also, in my view, demonstrates that he was aware of the diagnosis and the link with his working conditions. The fact that he ultimately did not Page 19 investigate further until after he left Impalloy does not, in my view, detract from my

conclusion.

76. Every day after that, there was a new breach of duty by Impalloy in respect of which Mr Lunt had three years to bring a claim. The claim form was issued on 20 January
2023. It follows that, in my judgment, all but about three weeks of his claim is statute- barred and if he is to proceed with the majority of his claim, he requires the court's permission under section 33 LA 1980. Section 33 LA 1980 77. The court has a discretion to extend the time for bringing a personal injury claim, the discretion being contained in section 33 LA 1980. Section 33 provides: "(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—
- (a) the provisions of section 11 ... of this Act prejudice the plaintiff or any person whom he represents; and
 - (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents; the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates. ... Page 20
- (3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—
- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
 - (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 ...
 - (c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
 - (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
 - (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.” 78. Section 33(1) requires the court, having regard to all the circumstances of the case and in particular to the matters in section 33(3), to balance the relative prejudice to the parties. If the court concludes that it would be equitable to allow the case to proceed, it has a discretion to disapply section 11. Page 21 79. As was helpfully set out in both counsel’s skeleton arguments, guidance on the application of section 33 was provided by Sir Terence Etherton MR in *Carroll v The Chief Constable of Greater Manchester Police* [2017] EWCA Civ 1992. At paragraph 43, he summarised the general principles as follows:
- a) Section 33 is not confined to a “residual class of cases”. It is unfettered and requires the judge to look at the matter broadly.
 - b) The matters specified in section 33(3) are not intended to place a fetter on the discretion given by section 33(1), as is made plain by the opening words “the court shall have regard to all the circumstances of the case”, but to focus the attention of the court on matters which past experience has shown are likely to call for evaluation in the exercise of the discretion and must be taken into a consideration by the judge.
 - c) The essence of the proper exercise of the judicial discretion under section 33 is that the test is a balance of prejudice and the burden is on the claimant to show that his or her prejudice would outweigh that to the defendant.
 - d) The burden on the claimant under section 33 is not necessarily a heavy one. How heavy or easy it is for the claimant to discharge the burden will depend on the facts of the particular case.
 - e) Furthermore, while the ultimate burden is on a claimant to show that it would be inequitable to disapply the statute, the evidential burden of showing that the evidence adduced, or likely to be adduced, by the defendant is, or is likely to be, less cogent because of the delay is on the defendant. If relevant or potentially Page 22 relevant documentation has been destroyed or lost by the defendant irresponsibly, that is a factor which may weigh against the defendant.
 - f) The prospects of a fair trial are important. The Limitation Acts are designed to protect defendants from the injustice of having to fight stale claims, especially when any witnesses the defendant might have been able to rely on are not available or have no recollection and there are no documents to assist the court in deciding what was done or not done and why. It is, therefore, particularly relevant whether, and to what extent, the defendant's ability to defend the claim has been prejudiced by the lapse of time because of the absence of relevant witnesses and documents.
 - g) Subject to considerations of proportionality (see (l), below), the defendant only deserves to have the obligation to pay due damages removed if the passage of time has significantly diminished the opportunity to defend the claim on liability or amount. h) It is the period

after the expiry of the limitation period which is referred to in sub- subsections 33(3)(a) and (b) and carries particular weight. The court may also, however, have regard to the period of delay from the time at which section 14(2) was satisfied until the claim was first notified. The disappearance of evidence and the loss of cogency of evidence even before the limitation clock starts to tick is also relevant, although to a lesser degree.

- i) The reason for delay is relevant and may affect the balancing exercise. If it has arisen for an excusable reason, it may be fair and just that the action should proceed despite some unfairness to the defendant due to the delay. If, on the other hand, the reasons for the delay or its length are not good ones, that may tip the Page 23 balance in the other direction. I consider that the latter may be better expressed by saying that, if there are no good reasons for the delay or its length, there is nothing to qualify or temper the prejudice which has been caused to the defendant by the effect of the delay on the defendant's ability to defend the claim.
 - j) Delay caused by the conduct of the claimant's advisers rather than by the claimant may be excusable in this context. k) In the context of reasons for delay, it is relevant to consider under sub-section 33(3)(a) whether knowledge or information was reasonably suppressed by the claimant which, if not suppressed, would have led to the proceedings being issued earlier, even though the explanation is irrelevant for meeting the objective standard or test in section 14(2) and (3) and so insufficient to prevent the commencement of the limitation period.
 - l) Proportionality is material to the exercise of the discretion. In that context, it may be relevant that the claim has only a thin prospect of success, that the claim is modest in financial terms so as to give rise to disproportionate legal costs, that the claimant would have a clear case against his or her solicitors, and, in a personal injury case, the extent and degree of damage to the claimant's health, enjoyment of life and employability.
 - m) An appeal court will only interfere with the exercise of the judge's discretion under section 33, as in other cases of judicial discretion, where the judge has made an error of principle, such as taking into account irrelevant matters or failing to take into account relevant matters, or has made a decision which is wrong, that is to say the judge has exceeded the generous ambit within which a reasonable disagreement is possible. Page 24 80. It is also relevant to remind myself of the words of Leggatt J (as he then was) regarding the fallibility of human memory and recollection of historic events at paragraphs 15-22 of *Gestmin SPGS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm). While that was a commercial case, it is relevant more generally. I do not reproduce those paragraphs here, but I have them well in mind.
81. Mr Anderson submitted that Mr Lunt would suffer substantial financial prejudice if he were to lose the right to bring his claim. By contrast it was not clear what prejudice Impalloy would suffer, beyond the loss of a windfall defence. It had failed to lead any evidence to discharge the evidential burden of showing that the evidence adduced would be less cogent

due to the delay. There was no complaint about any missing documentation or witnesses. Furthermore, Impalloy could not complain about the delay in bringing a claim when it had failed to train Mr Lunt on the risks associated with exposure to vibrating tools and what to do if his condition worsened.

82. Mr Hester's submissions focused on the quality of Mr Lunt's evidence and the inconsistencies between the various accounts he had given. In a HAVS case, diagnosis relies on an individual's own description of their symptoms and their progress. The accounts Mr Lunt had given varied in material ways. Therefore, Impalloy was prejudiced and at a disadvantage in relation to causation. 83. The burden is on Mr Lunt to show that the prejudice to him, if he is not permitted to pursue his claim, would outweigh the prejudice to Impalloy if he is permitted to pursue his claim. That burden is not necessarily a heavy one. 84. Having regard to all the circumstances of the case and in particular the factors in section 33(3) LA 1980 and taking into account the guidance in Carroll, I note the following matters in particular: Page 25
- a) Mr Lunt had the requisite knowledge for the purposes of section 11 and 14 LA 1980 in August 2012. His employment ceased in February 2020. He commenced proceedings on 20 January 2023. However, here is no suggestion from Impalloy that it would have been in any better evidential position as to causation if Mr Lunt had commenced proceedings sooner. This is not a case where it has ceased trading in the meantime.
 - b) There was no evidence before the court that the delay in bringing the claim meant that Impalloy had lost documents or that relevant witnesses were no longer available. Indeed, it adduced witness statements from two individuals who worked with Mr Lunt. There was no witness statement from Mr Neil Moseley, Impalloy's CEO, but there was no suggestion that that was because he was no longer available. In fact, he signed the disclosure statement in Impalloy's list of documents in these proceedings.
 - c) Mr Lunt's unchallenged evidence was that Impalloy did not provide him with any training or education regarding HAVS and exposure to vibrating tools. Had it done so, and had it instituted an annual review of his condition after the occupational health report in August 2012, he may have had actual knowledge on which he could have taken legal advice earlier.
 - d) Mr Lunt's evidence was that he did try and follow up on Dr Basheer's examination and pursue a review. However, he did not wish to push things and "rock the boat" at work because both he and his wife worked at Impalloy. He had been scared of losing his job and it was not until a few months after he left that he started looking into a claim. Page 26
 - e) The passage of time will inevitably have had an effect on the recollection of Mr Lunt. However, the court has the benefit of some contemporaneous documentation, for example, in the form of Dr Basheer's report, and no doubt there would have been further such reports if Mr Lunt had undergone the recommended review.
 - f) There are no issues as to the litigation conduct of Impalloy or Mr Lunt.

- g) Mr Lunt is not under any disability within the meaning of that term in section 33(3)(d).
- h) Mr Lunt contacted solicitors to initiate a claim in around October 2020. Dr Shiralkar was instructed in June 2021, although she did not examine Mr Lunt until June 2022. I note that this was happening through the Covid pandemic, which may provide an explanation for the delay. I do not place great weight on this factor, but in the circumstances in my view Mr Lunt acted promptly after October 2020. 85. Having balanced those matters, I have concluded that the prejudice to Mr Lunt in not disapplying the limitation period outweighs the prejudice to Impalloy if the limitation period is disapplied. It admits breach of duty and I am not persuaded that the passage of time has significantly diminished Impalloy's opportunity to defend the claim. In my judgment, it would be inequitable for Mr Lunt to lose the opportunity to pursue damages for his pain suffering and loss of amenity, and other losses. 86. For those reasons, in my judgment, it would be equitable to disapply the limitation period and allow the action to proceed. Causation Page 27 87. As I have already set out above, in order to establish causation, Mr Lunt must fulfil the three Montracon criteria. Montracon 1 88. Montracon 1 is that there must be a history of exposure to vibration sufficient to cause a risk of development of HAVS. 89. It was accepted by Mrs Shiralkar and Professor Bainbridge that there is a dose relationship in HAVS, such that the greater the exposure to vibration, the greater the damage caused.
90. Mr Lunt's evidence, which was not challenged, was that he was exposed to vibrating tools for around six hours a day for 20 years, other than the year when he was employed as a paint spraying operative in 2015-2016.
91. Mr Smith's expert opinion, based on Mr Lunt's estimated time spent on vibrating tools and adopting reasonable values for tool vibration levels, was that Mr Lunt's total daily vibration exposure exceeded the action level of 2.8m/s² and both the EAV of 2.5m/s² and ELV of 5.0m/s² of the 2005 Regulations. 92. It is common ground and I find as a fact that there was sufficient exposure to vibration and that, therefore, Montracon 1 is made out. Montracon 2 and Montracon 3 Page 28 93. Montracon 2 is that there must be a clinical history and description of symptoms consistent with HAVS. Montracon 3 is that there is no alternative, constitutional explanation for the symptoms. Summary of submissions 94. In relation to Montracon 2, Mr Hester submitted that Mr Lunt's clinical history and symptoms were not consistent with HAVS. Both experts agreed that if symptoms continued to progress more than one year after exposure ceased, it could not be HAVS. He submitted that Mr Lunt's symptoms continued to progress for more than one year after exposure ceased, so that alone meant that it could not be HAVS. In his submission, there were three clear pieces of evidence as to progression. First, the photos of May 2023 [243] and April 2024 [248-252] showed progression of blanching since earlier photos and the history taken by Mrs Shiralkar in May 2022. Second, Mr Bainbridge had reported being told by Mr Lunt that his sensorineural symptoms had worsened over the past five years, that period of time having been volunteered by Mr Lunt. Third, Mr Lunt's evidence in his second witness statement was that he had "noticed" symptoms more since leaving Impalloy's employment. His

attempt to back-track on that in cross-examination was not convincing.

95. Mr Hester submitted that other atypical symptoms were the fact that Mr Lunt's thumbs were affected and also the slow progression of both sensorineural and vascular symptoms after rapid onset. 96. In relation to Montracon 3, Mr Hester submitted that the court should find that there was an alternative, constitutional explanation for Mr Lunt's symptoms, namely CTS. Professor Bainbridge's opinion that it was CTS was based on the history that he had taken of night-waking, the CTS-6 assessment which showed an 80% likelihood of Page 29 CTS [97] and positive nerve conduction studies [127]. That was his view based on the literature and his considerable knowledge. By contrast, Mrs Shiralkar had deferred to Professor Bainbridge in relation to CTS, in light of his experience. Furthermore, she had had four different opinions in relation to CTS in this case and the court should not accept her evidence.
97. Mr Anderson submitted that the court should prefer the expert opinion of Mrs Shiralkar. It was submitted that Professor Bainbridge was not giving a truly independent view. By contrast, Mrs Shiralkar made appropriate concessions and formed opinions based on the evidence, her clinical judgment and knowledge of what she had seen in practice. She had yielded to the nerve conduction studies, but logically concluded that CTS must have emerged after her own examination in 2022, which showed no evidence of CTS. Her reasons for returning to the opinion, in cross-examination, that there is no CTS were: the involvement of the little finger (which the median nerve does not supply); the lack of night-waking; the absence of a report of shooting pains; the fact that there are reports of false positive nerve conduction studies in up to 40% of patients; and the presentation of "classic Reynauds", which in her opinion does not happen with CTS.
98. Mr Anderson submitted that if there was any night-waking, it was early on and transitory, which was Mr Lunt's evidence.
99. Mr Anderson also pointed to the report of Dr Basheer [258], which neither expert had seen before the trial. Dr Basheer's score of 0SN ran contrary to Professor Bainbridge's opinion that Mr Lunt's Reynaud's phenomenon was caused by CTS. There would have to be sensorineural symptoms for that diagnosis. Page 30 100. It was also submitted that Mrs Shiralkar had reasonably amended her Stockholm grading to 3V on the right hand on the strength of the photographic evidence that was now available. In Mr Anderson's submission, that did not mean that there was a progression of symptoms. Assessment of the credibility of Mr Lunt
101. Much was made of the discrepancies between the accounts given by Mr Lunt to the respective medical experts. The principal discrepancies concerned the night-waking and the progression of his condition. In my view, those discrepancies can in large part be explained by the difference in approach of the two experts and the questions that were put to Mr Lunt (of which more shortly). He was unable to explain why Professor Bainbridge had recorded that his sensorineural symptoms continued to wake him up at night and he was quite clear

(under fairly robust cross-examination) that he only experienced night waking in the very beginning and it had stopped after a few months. I accept that evidence, which is consistent with what Mrs Shiralkar reported, namely “These symptoms do not wake him up in the middle of the night.” [83]. The use there of the present tense indicates that, as of June 2022 (two years before Professor Bainbridge examined him), his sensorineural symptoms did not wake him up at night. It is also consistent with the OSN score given by Dr Basheer in 2012, which is likely to have been based on questions about sensorineural symptoms, including night waking, being a classic symptom of CTS. 102. In relation to progression, even Professor Bainbridge recorded that, in relation to the sensorineural symptoms, “Symptoms have remained pretty much the same over the years.” [92]. He did, of course, go on to delve further, and I will return to that when I assess the medical expert evidence. Page 31

103. As regards the date of onset of his vascular symptoms, in my view it is unsurprising, given the passage of time, that Mr Lunt cannot exactly recall when they started. He was clear that it was after the sensorineural symptoms and I accept that evidence. He was consistent in that regard, in the history recorded on examination by both Mrs Shiralkar and Professor Bainbridge, in his witness statements and when giving oral evidence.
104. Mr Lunt was consistent in saying that the blanching of his fingers had not progressed in the last five years. That is what he told Professor Bainbridge and he repeated that in oral evidence. I accept that the extent of the blanching varies from attack to attack, and that the description reported by Mr Lunt when he was examined would likely have been his memory of the most recent attack. That would explain the difference between the record made by Mrs Shiralkar of the distal two phalanges [83] and that made by Professor Bainbridge of blanching down to the proximal compartment. It is noteworthy that at the same time, Professor Bainbridge also recorded that Mr Lunt said that there had been no change over the last five years. 105. The photographs in the trial bundle were taken on 26 September 2020 [237-238], 26 December 2020 [239-242], 24 January 2021 [244-247], 31 May 2023 [243] and 8 April 2024 [248-252]. In my judgment, those photographs are evidence that Mr Lunt experienced vascular symptoms in the form of blanching of the fingers and that the extent varied. However, they represent a minimal sample of the total number of attacks suffered and I note that there is no suggestion that the frequency and duration of attacks increased after Mr Lunt’s examination by Mrs Shiralkar in June 2022.
106. Overall, given that his symptoms originated 20 years ago, in my view it is understandable that Mr Lunt does not have a perfect chronological recollection of his Page 32 symptoms, although it might have been sensible for him to concede that he could not remember details exactly. Nevertheless, I found Mr Lunt to be an honest witness. I certainly did not form the view that he was attempting to mislead the court or tailor his evidence. In my judgment, he was not that sort of witness. On the contrary, he came across as a straightforward individual who was doing his best to assist the court. Assessment of the medical experts 107. I found Mrs Shiralkar to be a straightforward witness who was doing her best to assist the court. She gave evidence in an open and flexible manner. That flexibility was demonstrated in her

willingness to adapt her opinion and make concessions based on the evidence that became available, such as the nerve conduction studies in 2024 and the photographs from 2023 and 2024. She was prepared to defer to Professor Bainbridge whom she said “knows much more than me” about CTS and hand surgery. She was criticised for having given four different opinions, but in my view, that criticism is unwarranted. While she changed her position as to the presence of CTS, she maintained her opinion that Mr Lunt had HAVS. That did not change. Whether or not the court accepts her opinion, in my view, she cannot be criticised for varying her position in the face of the evidence. 108. Professor Bainbridge is clearly an expert in his field of hand surgery and has published papers on CTS. He was keen to share his knowledge of the subject when giving evidence. As I have already said, Mrs Shiralkar was prepared to, and did, defer to Professor Bainbridge on matters within his expertise. However, when giving oral evidence, Professor Bainbridge was not prepared to afford Mrs Shiralkar the same respect as regards her expertise with vascular conditions such as Reynaud’s. Page 33

109. By his own admission, Professor Bainbridge has “strong views” on the subject of HAVS and CTS. In my view, that is likely to have informed his approach to his examination of Mr Lunt and the questions that he asked of him. For example, having recorded that Mr Lunt’s sensorineural symptoms had remained “pretty much the same” over the years, he nevertheless went on to “put to him the proposition that his symptoms have got worse in that he was dropping things more in the last few years” and records the response as “he thought that this was true in the last five years”. It seems to me that in doing so, he was looking for answers that supported his views, rather than obtaining a reliable history from Mr Lunt. 110. I have already indicated that I accept Mr Lunt’s evidence that the night waking stopped after a few months. It follows that that must cast doubt on the CTS-6 evaluation that Professor Bainbridge undertook, given that nocturnal numbness is one of the symptoms that is fed into the evaluation. 111. Professor Bainbridge also omitted, in his first report, to note that it is unusual for the little finger to show blanching in the presence of only CTS. He accepted that in answer to the Part 35 questions [119]. In my judgment, that was a material fact which he should have mentioned in his first report. 112. In the same answer, and in oral evidence, he stated that thumb blanching does not occur with HAVS. However, when he was challenged about that in cross-examination, he had to resile from that statement in light of the diagram depicting the Griffin numerical scoring of vascular symptoms in the HSE guidance on the 2005 Regulations. The diagram includes scoring for the thumb [513]. 113. In my judgment, those matters undermine the reliability of Professor Bainbridge’s opinion. Page 34 Findings of fact
114. On the balance of probabilities and taking into account the evidence I make the following findings of fact regarding Montracon 2 and 3.

115. Mr Lunt first experienced sensorineural symptoms in the form of pins and needles, numbness and tingling in his fingers in around 2005 or 2006, some six years after he started working at Impalloy. In the beginning, his symptoms used to wake him up in the night but his night waking stopped after a few months.
116. He experienced vascular symptoms in the form of blanching of all of his fingers and his thumbs. Those symptoms started about a year after the sensorineural symptoms.
117. Mr Lunt was diagnosed with HAVS in August 2012 by Dr Basheer, Impalloy's occupational health consultant. When he was diagnosed, he was found to have no sensorineural symptoms. His Stockholm score was 0SN and 1V. In making his diagnosis, as an occupational health specialist, Dr Basheer would have been aware of, and would have carried out, tests for CTS and would have asked about sensorineural symptoms, including night waking. That was accepted by Mrs Shiralkar and Professor Bainbridge, neither of whom had seen Dr Basheer's report until the trial. Furthermore, the fact that there was a box on the report form for "Possible medical condition other than HAVS/as well as HAVS (delete as appropriate)", which remained unticked, is a strong indication that tests would have been done to exclude conditions such as CTS. If a possible medical condition other than HAVS had been indicated, that box would most likely have been ticked.
118. There was no progression of Mr Lunt's vascular symptoms post-one year after leaving Impalloy. On examination in 2022, he was already experiencing blanching of all four Page 35 fingers and his thumb. He described to Professor Bainbridge that the blanching sometimes went down to the proximal compartment and there had been no change in the blanching in the last five years. The re-staging to 3V in the right hand by Mrs Shiralkar in May 2025 was based on objective photographic evidence which she had not seen before and is consistent with the extent of the blanching experienced by Mr Lunt varying from attack to attack.
119. Mr Lunt's symptoms are consistent with one or more components of HAVS – namely sensorineural symptoms and vascular symptoms. The fact that those symptoms developed at different rates does not detract from that finding. I accept Mrs Shiralkar's evidence that that is common. Therefore, in my judgment, Montracon 2 is satisfied.
120. There is no constitutional explanation for Mr Lunt's symptoms. The absence of night waking after the first few months, the scoring of 0SN in 2012 and the fact that his little fingers (which are not supplied by the median nerve) are affected lead to the conclusion, on the balance of probabilities, that he is not suffering from CTS (whether constitutional or vibration-induced). The CTS-6 evaluation undertaken by Professor Bainbridge is unreliable, given that it assumes continued nighttime waking. While there is a positive nerve conduction study, I accept Mrs Shiralkar's evidence that in light of the other symptoms, that is likely to have been a false positive. Therefore, in my judgment, Montracon 3 is satisfied.
- Conclusion on causation 121. In light of those findings, on the evidence before the court and on the balance of probabilities, in my judgment Mr Lunt is suffering from HAVS with a Stockholm score of 1SN 2SV in the left hand and 1SN and 3V in the right hand. His condition Page 36 was caused by his excessive exposure to vibrating tools in breach of Impalloy's duty over a period of 20

years. 122. In light of his condition, Mr Lunt is no longer able to work with vibrating tools or in a job involving outdoor work in cold, wet conditions.

123. His hobbies of golf and snooker have been affected by his condition and he has problems doing DIY and gardening, as well as handling small objects, including fastening buttons and laces. 124. I should say that, had I found that Mr Lunt was not suffering from HAVS, in my judgment it would not have been open to me to make a finding of vibration-induced CTS. That was not Mr Lunt's pleaded case and the authorities are clear that parties must clearly identify the issues in the litigation and the place to do that is in the statements of case (see *Clements-Siddall v Dunbobbin* [2023] EWCA Civ 1300). Quantum
125. Given my conclusion that Mr Lunt is suffering from HAVS, the appropriate chapter for the assessment of damages for pain, suffering and loss of amenity (PSLA) in the Judicial College Guidelines (17th edition) is Chapter 8A. The assessment of damages is not tied to the Stockholm Workshop Scale grading; it depends more on the extent of the symptoms and their impact, having regard to the following factors: age at onset; whether one or both hands are affected and, if only one, whether it is the dominant hand; number of fingers affected; extent of impaired dexterity and/or reduction in grip strength; frequency and duration of painful episodes; and effect of symptoms on work, domestic and social life. Page 37
126. Mr Anderson submitted that Mr Lunt's injury falls within the "Serious" bracket at Chapter 8A(b). He submitted that the appropriate award would be £30,000.
127. Mr Hester submitted that the correct bracket would be "Moderate" at Chapter 8A(c) and that an award towards the lower end, in the region of £12,000, would be appropriate.
128. Mr Lunt was in his 40s when he developed symptoms of blanching. He therefore had at least 25 years of working life remaining after onset. I have found that both hands are affected. All fingers are affected by numbness and tingling. All fingers and both thumbs are affected by blanching, to varying degrees. There is limited impairment of dexterity and/or reduction in grip strength. He experiences symptoms once a day in winter and three times a week in summer. He is unable to return to working with vibrating tools or to work in a job which involves working outside or in cold environments. His condition has affected his domestic life in terms of his ability to do DIY and gardening, and handle small objects. His hobbies of golf and snooker are also affected. 129. Taking into account those factors, in my judgment, the injury falls into the Serious bracket, as there is a marked interference with work and domestic activity, with attacks throughout the year. In my judgment, the appropriate award for PSLA is £30,000.
130. Mr Lunt also seeks a *Smith v Manchester* award on the basis that he is disadvantaged on the open labour market. He relies on Mrs Shiralkar's evidence on that issue. Mr Anderson submitted that a multiplier of six months was appropriate because of the restriction in terms of his ability to work outdoors in cold, wet weather and operate the tools that he used for over 20 years. Mr Lunt seeks an award of £15,240. Page 38

131. Mr Lunt also seeks an award of £4,465.50 for future care and assistance with tasks such as DIY and the like, which he can no longer undertake himself. That is based on a figure of £150 per annum and a multiplier of 29.77, having regard to Table 1 Ogden Tables (8th edition).
132. Mr Hester helpfully set out the applicable legal principles for a *Smith v Manchester* award, as set out in *Moeliker v A Reyrolle & Co Limited* [1977] 1 WLR 32. I have had regard to them when making my decision on this head of loss.
133. A *Smith v Manchester* award will be appropriate in a case where the claimant is in employment at the time of the trial, but there is a risk he may lose his employment at some time in the future and he may be at a disadvantage in finding another, or an equally well paid, job. The court has to first ask: what is the risk that he will at some time before the end of his working life lose that job and be thrown on the labour market? The risk must be “substantial” or “real”, not “speculative” or “fanciful”. If the court comes to the conclusion that there is no “substantial” or “real” risk of the claimant losing his present job during the rest of his working life, no damages will be recoverable under this head. Factors to consider include whether the claimant is tied to working in one particular geographical area, the general employment situation in their trade or geographical area or both and any undertaking or statement of intention by their employers as to their future employment.
134. I have already found that Mr Lunt will be unable to work with vibrating tools or in a job that involves working outdoors. In that sense, he is disadvantaged on the open labour market, because that limits the type of job available to him. He is currently employed as a forklift truck driver. He is 56 and has 11 years until retirement age. However, the difficulty is that in my view there is insufficient evidence on which to Page 39 base a finding that there is a “substantial” or “real” risk of Mr Lunt losing his present job. There is no evidence regarding the security, or otherwise, of his current job, or of the general employment situation in that field or other suitable fields, or of the situation in his geographical area. 135. For those reasons, I make no *Smith v Manchester* award.
136. As regards the future care and assistance claim, I have found that Mr Lunt’s condition has affected his ability to do tasks such as DIY. Having found that he can no longer work with vibrating tools, it must follow that he cannot use such tools at home for DIY either. Therefore, in my judgment, he is likely to have to engage someone else to do tasks that involve using such tools on his behalf. Impalloy has not advanced any figures contrary to those in the updated schedule of loss. In those circumstances, I would award £4,465.50 for future care and assistance, on the basis claimed in the updated Schedule of Loss.

Conclusion

137. Drawing the threads together, for all the reasons set out above, I find that Mr Lunt is suffering from HAVS which was caused by his excessive exposure to vibrating tools due to Impalloy’s breach of duty. I award damages of £30,000 for PSLA and £4,465.50 for future care and assistance. Page 40

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