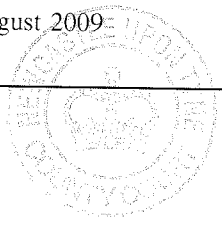


General Form of Judgment or Order

To the Claimant's Solicitor

Hilary Meredith
Churchgate House
25-27 Water Lane
Wilmslow
Cheshire
SK9 5AR
20805 WILMSLOW

In the NEWCASTLE-UPON-TYNE County Court	
Claim Number	7MC03330
Claimant (including ref.)	Mr Charles Bradlaugh DD/106702 <i>CB</i>
Defendant (including ref.)	Ministry of Defence DSL/SVC/127357.196/XC
Date	14 August 2009



Before **HIS HONOUR JUDGE WALTON** sitting at Newcastle-Upon-Tyne County Court, Law Courts, The Quayside, Newcastle Upon Tyne, NE1 3LA.

Please find enclosed sealed Order as approved on 10th August 2009 and copy of approved judgment.

Dated 10 August 2009

In The Newcastle Upon Tyne County	
Claim Number	7MC03330
Claimant	Mr Charles Bradlaugh CB/106702
Ref:	
Defendant	Ministry of Defence DSL/SVC/127357.196/XC
Ref:	
Date	

CONSENT ORDER



Upon the parties agreeing terms of settlement and BY CONSENT it is ordered:-

1. The Defendant do pay the Claimant the sum of £328,941.00 in full and final settlement of all heads of damage in this matter, the breakdown of which is contained in the calculation attached at appendix 1.
2. The Defendant do pay the Claimant his costs in this matter to be assessed if not agreed.
3. That upon payment of the above sum and costs that the Defendant be discharged from any further liability in respect of the Claimant's claim in this action.

Dated this _____ day of _____

Hilary Meredith Solicitors

Hilary Meredith Solicitors
Churchgate House
25-27 Water Lane
Wilmslow
Cheshire
SK9 5AR

Solicitors for the Claimant
Ref: CB/106702

2009

[Signature]

Berrymans Lace Mawer LLP
Castle Chambers
43 Castle Street
Liverpool

L2 9SU

Solicitors for the Defendant
Ref:DSL/SVC/127357.196/XC

In The Newcastle Upon Tyne County	
Claim Number	7MC03330
Claimant Ref:	Mr Charles Bradlaugh CB/106702
Defendant Ref:	Ministry of Defence DSL/SVC/127357.196/XC
Date	

APPENDIX 1

IN THE NEWCASTLE UPON TYNE COUNTY COURT

CLAIM NO: 7MC03330

BETWEEN:

MR CHARLES BRADLAUGH

Claimant

And

MINISTRY OF DEFENCE

Defendant

AGREED CALCULATION OF DAMAGES

Further to the Draft Judgment of His Honour Judge Walton dated 4th June 2009

N.B. net earnings calculations are prepared using the calculator at <http://listentotaxman.com/>

SUMMARY OF HEADS OF LOSS

General damages for PSLA	£9,000
Interest	£240
Damages for loss of congenial employment	£7,500
Interest	£200
Damages for loss of earning capacity	£10,000
Interest	£267
Past loss of earnings	£26,081
Interest	£1,625
Future loss of earnings	£133,804
Future loss of pension	£140,224
TOTAL	£328,941

BREAKDOWN OF CALCULATIONS

Interest as at 4th June 2009

On general damages:

At 2% from 8th February 2008 to 4th June 2009.

Aggregate rate of 2.67%.

On special damages:

At half the Special Account Rate from 6th April 2006 (the start of the loss). This is a period of 3 years and 60 days. The relevant aggregate half rate is 6.23%

General damages

For PSLA	9,000
Interest	240
For loss of congenial employment	7,500
Interest	200
For loss of earning capacity	10,000
Interest	267

Past loss of earnings

Anticipated earnings

Per Appendix 5, save that LSSA/LSA and Operational Allowance is removed.

05/06	7,825
06/07	12,468 (based on gross income of 15,743)
07/08	14,383
08/09	15,833 (based on gross income of 20,331)
<u>Sub-total</u>	<u>50,509</u>

Actual earnings

As per the Schedule 24,428

Past loss of earnings:

50,509 – 24,428	26,081
Interest (half rate)	1,625

Future loss of earnings

Anticipated earnings

The anticipated earnings multiplier (13.40) and breakdown is as per the Schedule.

The multiplicands require adjustment to reflect removal of LSSA/LSA and Operational Allowance.

The adjusted figures are as follows:

<u>Period</u>	<u>Gross earnings</u>	<u>Net earnings</u>	<u>Multiplier</u>	<u>Anticipated earnings</u>
09/10	22,304	17,579	0.90	15,821
10/11	25,889	19,668	0.88	17,308

11/12	25,196	19,621	0.86	16,874
12/13	26,259	19,924	0.83	16,537
13/14	29,283	22,506	0.81	18,230
14/15	28,092	21,188	0.79	16,739
15/16	29,278	22,502	0.78	17,552
16/17	29,835	22,391	0.76	17,017
17/18	31,121	23,804	0.74	17,615
18/19	31,930	23,837	0.72	17,163
19/20	32,839	25,016	0.70	17,511
20/21	33,532	24,942	0.68	16,961
21/22	35,413	26,833	0.67	17,978
22/23	37,407	27,616	0.65	17,950
23/24	39,176	29,491	0.64	18,874
24/25	40,426	29,738	0.62	18,438
25/26	41,334	31,014	0.61	18,919
26/27	42,079	30,794	0.59	18,168
4.27 to 7.27	12,659	9,485	0.17	1,612

Total anticipated earnings are 317,267

Actual earnings

Actual earnings as per the Schedule were 175,963. In addition, credit needs to be given for the part-time earnings prior to 2014 (i.e. 5 yrs @ 1,500 = 7,500). Total actual earnings are 183,463

Future loss of earnings:

317,267 – 183,463

133,804

Future loss of pension

The claim is one of 186,965. A deduction of 25% gives a figure of

140,224

TOTAL DAMAGES

£328,941

CHRISTOPHER BARNES

22nd June 2009



IN THE NEWCASTLE UPON TYNE COUNTY COURT

Case No: 7MC03330

Law Courts,
Quayside,
Newcastle upon Tyne,
NE1 3LA

Date: 10 August 2009

Before :

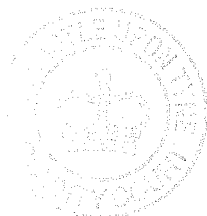
His Honour Judge Walton

Between :

**Charles Bradlaugh
- and -
Ministry of Defence**

Claimant

Defendant



Christopher Barnes (instructed by **Hilary Meredith**) for the **Claimant**
Yaqub Rahman (instructed by **Berrymans Lace Mawer**) for the **Defendant**

Hearing dates: 20 May 2009, 10 August 2009.

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Walton :

1. This is a claim damages for personal injury. The claimant was formally a soldier, serving in the Army Air Corps. As a result of injuries suffered in an accident for which the defendant admits liability, he was medically discharged, leaving the Army in June 2007. The hearing was to assess the compensation to which he is entitled. Issues arose in relation to the following: general damages for pain and suffering and loss of amenity; damages for loss of congenial employment; damages for

disadvantage on the labour market; past and future loss of earnings; pension loss; loss of payments for overseas service; and loss of accommodation and food benefits.

2. **Hearing.** It was recognised that there was much ground to cover in the time available. It was suggested that I hear submissions and prepare a written judgment, dealing with such matters of assessment as could conveniently be dealt with, and giving rulings on areas of principle where the parties were divided about the correct approach. The suggestion, gratefully adopted by myself, was that matters of calculation following upon the decision be left to the parties in the hope that they could be agreed and a further hearing avoided.
3. **Background.** The claimant was born on 19 July 1987 and is therefore 21 years of age. He applied to join the Army at the age of 15 on 23rd May 2003. He actually enlisted on 18 December 2003. The incident in which he was exposed to live firing without hearing protection and thereby suffered the injury which led to his discharge, occurred on 11 November 2004. A medical board recommended discharge on health grounds in January 2007 and his last day of service in the Army was on 11 June 2007. He is currently at college in Sunderland pursuing a course in film and television production. He hopes to attend university and his long-term goal is to qualify as a television cameraman, if possible assisting war correspondents.
4. **First general damages for pain suffering and loss of amenity.** The parties are not far apart in their submissions as to the appropriate figure. The claimant seeks a sum of £10,000. Mr Rahman, on behalf of the defendant, started at £6000, but suggested in submission somewhere between £6,000 and £10,000. It is submitted for the claimant that the injury to the his hearing falls in the bracket for "moderate tinnitus and hearing loss" in the JSB Guidelines, that is between £9,500 and £19,000. On behalf of the defendant it is submitted that the appropriate bracket is for mild tinnitus.
5. There is a medical report from Mr J. Hill FRCS, consultant otolaryngologist, who records the claimant complaining that he was left with "a slightly fuzzy noise in his left ear. He is only aware of this when there is no background noise. Since the time of the accident he has been aware that his hearing in the presence of background noise is slightly difficult, but he has no problems on a one-to-one basis." In evidence the claimant confirmed the accuracy of this summary. At the medical board he complained "of missing speech on occasions at work and in crowded areas." He said that he "suffers from tinnitus at night and uses a fan to distract him. He dislikes loud radio music in the car and states that he finds it easier to comprehend speech if he is facing people."
6. Mr Bradlaugh has normal hearing on the right side but a high tone sensorineural hearing loss with a dip at 4 to 6 kHz on the left. There is a binaural hearing loss of 10.3 dB at 2 and 3 kHz and binaural hearing loss of 23 dB at 4 kHz. Dr Hill classified the left sided tinnitus as "mild in severity." No change is anticipated other than as the result of ageing.
7. I accept that the claimant's hearing deficit falls within the category of mild tinnitus with some hearing loss" bracket of £8000-£9,500 according to the most recent JSB guidelines. Bearing in mind the claimant's young age it seems to be appropriate to place the award towards the top of the bracket. A figure of £9,000 is appropriate. Bearing in mind the relatively narrow distance between the parties I am not going to

spend what would be disproportionate time analysing the examples of similar awards relied upon by Mr Barnes. In any event these cases tend to turn upon their own facts.

8. **Loss of congenial employment.** The sum of £7,500 is sought on behalf the claimant. That is broadly in line with the award in *Porter v Ministry of Defence*, a decision of Mr Recorder Stuart -Smith QC in July 2005. In that case the claimant was two years or so into his Army career when he suffered a disabling injury to his left hand. His case, as here, was that *absent* the injury he would have continued in the Army for a further 20 years or so.
9. Again the distance between the parties is not great. Mr Rahman suggests a figure of £5,000 on behalf the defendant. He points to the fact that the claimant plans to replace his army career with a career as a cameraman or director in the media and suggests that such a career will be at least as interesting and rewarding to the claimant as the Army.
10. Putting the matter shortly I accept that the claimant from an early age had developed an ambition for an Army career. He was an Army cadet while still at school and made the application to join up when he was but 16. His ambition was to qualify as a pilot. While he has found another career to interest him and if it develops it will no doubt be rewarding, he has still lost the chance of pursuing his first ambition. I agree that the figure contended for on behalf of the claimant is an appropriate one.
11. **General damages for loss of earning capacity/disadvantage on the labour market.** Mr Barnes modified the submission in his skeleton argument to seek 12 months net loss of earnings, as opposed to 2 years, in recognition of the relatively modest level of Mr Bradlaugh's disability. Nevertheless he submitted that the two-stage test necessary for such an award was satisfied. There were significant risks both that the claimant would come onto the open labour market at some point prior to his retirement and that, should that occur, he would be disadvantaged in relation to other persons in competing for employment.
12. Mr Rahman resists the claim. He contends that the injury is relatively modest and insufficient to create a significant risk of disadvantage.
13. I agree that the conditions for an award under this head are met. At a late stage the defendant itself produced a copy of Home Office circular 59/2004 which contains national medical standards for police recruitment. The standards included a hearing standard. Where an applicant seeking employment with the police has hearing in one ear above the standard and hearing in one ear below the standard, he or she will face investigation and assessment. The present case is similar. It seems likely that there will be a number of occupations in which the quality of an applicant's hearing is regarded as important. Even in general terms, the claimant spoke of prospective employers' disinterest when medical retirement from the Army was mentioned. I consider that over the course of his working life, and he is still very young, he will be at risk of coming on to the open labour market and of being at a disadvantage against others who do not have his hearing disability. There will be some restriction in the jobs for which he can be regarded as suitable; and even in jobs for which he is potentially suitable, a disadvantage as against the able-bodied.

14. The loss is not one which will materialise in the immediate future while he retrains. The loss of future earnings calculation compensates him for loss of earnings over that time and also allows for time spent obtaining employment. The disability is a modest one and while he is young, likely to be less of a factor than when he grows older. Doing the best I can I would award the sum of £10,000 under this head of loss.
15. Special damages. No issue appeared to arise in relation to past loss of earnings, which are a matter of calculation. The principal issue which arises is in relation to the calculation of future loss of earnings. The parties adopted fundamentally different methods of calculating this aspect of the claim.
16. **Future loss of earnings.** The case on behalf of Mr Bradlaugh is that, but for the index accident, he would have remained in the Army for a full 22 year term. A career in the Army had always been his ambition. He joined the Cadet Force at the age of 14. His family has a history of service within the armed forces. His father was in the Coldstream Guards for 22 years.
17. A career forecast prepared by Capt Stokes for the defendant opines that had he served a full 22 year term the claimant's promotion would have been in line with the average. Of those serving a full 22 years, 63% leave with the rank of Warrant Officer one or two. The claimant's calculation of future loss assumes he would have attained such rank.
18. There is a fundamental difference in approach between the parties as to the approach to calculating future loss. The claimant invites a similar approach to that recommended in *Herring v Ministry of Defence* [2003] EWCA Civ 528 at para [23] :
19. "in any claim for injury to earning capacity based on long-term disability, the task of the court in assessing a fair figure of future earnings loss can only be effected by forming a view as to the most likely future working career ("the career model") of the claimant had he not been injured. Where, at the time of the accident, the claimant is in an established job or field of work in which he was likely to have remained but for the accident, the working assumption is that he would have done so and the conventional multiplier/multiplicand method of calculation is adopted, the court taking into account any reasonable prospects of promotion and/or movement to a higher salary scale or into a better remunerated field of work, by adjusting the multiplicand at an appropriate point on the scale of the multiplier. However, if a move of job or change of career at some stage is probable, it need only be allowed for so far as it is likely to increase or decrease the level of the claimant's earnings at the stage of his career at which it is regarded as likely to happen."
20. The claimant relies also on the comments of Lord Justice Moore-Bick in *Brown v Ministry of Defence* [2006] EWCA Civ 546 at para [26]: "...since Miss Brown had chosen a career in the Army, that can properly be taken to provide a fair reflection of her earning capability. Accordingly, for the reasons explained in *Herring v Ministry of Defence*, it was right to adopt that as the basis for assessing loss of future earnings without making any reduction in the chances of her failing to complete a full term of service."
21. The defendant submits that the court should take into account undisputed statistical evidence to the effect that the average length of service is 11 years and one month.

Bearing in mind the uncertainties in the case, the defendant recommends an approach consistent with the principles set out in *Blamire v South Cumbria Health Authority* [1983] P.I.Q.R., Q1. In that case a lump sum approach to compensation for future loss was adopted where the claimant's employment position was sufficiently uncertain as to discourage arithmetical calculation.

22. Mr Rahman submitted that there were points of distinction between the present case and *Herring* which made the latter a less than useful guide. Frankly I reject that submission. While he submits that the judges in *Herring* and *Brown* did not have the statistical evidence made available here, it seems to me that reliance upon this as a matter of distinction is misplaced. In the last sentence of the passage from *Herring* already quoted Lord Justice Potter said in terms that "if a move of job or change of career at some stage is probable, it need only be allowed for so far as it is likely to increase or decrease the level of the claimant's earnings at the stage of his career at which it is regarded as likely to happen." He went on, "If such a move or change is unlikely significantly to affect the future level of earnings, it may be ignored ... so that it will generally be appropriate to make a moderate discount from the multiplier in respect of contingencies for "the vicissitudes of life".
23. In *Brown* at [22] Lord Justice Moore-Bick said "provided that the career model that is selected does fairly reflect the claimant's earning capability, the chances of his actually obtaining a particular form of occupation used as the model or of leaving it before the normal retirement age will usually be irrelevant, since it can be assumed that, if he does so, he will take up some alternative employment at a broadly comparable rate of pay. The chances of a career change need only be separately assessed if it is one that would significantly alter his earning capability one way or the other."
24. In other words, even if statistics suggest that the generality of person leave the Army as a career before the end of the 22 year term, that can be ignored as a factor in the case of a particular individual if it is decided on the evidence that the Army represents an appropriate career model for that individual. It can reasonably be assumed that if in the course of his Army career circumstances were to arise which resulted in his changing that career for another, he would obtain other employment at a comparable rate elsewhere. There may be cases where for one reason or another that is not a reasonable assumption, but they are not this case.
25. I also reject the suggestion that there is a point of distinction between the present case and *Brown*, in that the claimant here had no earlier pattern of employment before the Army and obtained relatively modest academic qualifications at school. It is difficult to ignore what actually happened. Mr Bradlaugh had always wanted to join the Army. He had commenced upon his career in it. It is not a case of someone saying they planned a certain career, he had actually embarked upon it. I am satisfied it was his intention to continue in that career for the full period of 22 years. For that matter there are reasons, given his personal motivation and family history, to suppose that is what he would have done and if I had to assess the issue as one of probability, I would find it more probable than not, that he would have remained in the Army for that period. But my understanding of *Brown* and *Herring* is that such an assessment is unnecessary. It is only necessary to be satisfied, as I am, that an Army career along the lines set out by Capt Stokes is a proper career model for the claimant, for it to provide the basis of calculation for his future loss of earnings.

26. So far as promotion is concerned, Capt Stokes considers that the claimant's promotion would have been in line with the average. Having seen the claimant and been impressed by him, I believe his promotion within the Army would at least have followed an average pattern.
27. In short the career model advanced on the claimant's behalf does seem to me the best and fairest reflection we have of his earning capability. It seems reasonable to suppose that if Mr Bradlaugh left the Army for some reason before the completion of the 22 year term he would do so only for an alternative employment which provided broadly similar financial remuneration.
28. It follows that I reject the suggestion that this case can only be fairly dealt with by adopting a lump sum approach in *Blamire*. There is here much of the material that was absent, for instance, in *Van Wees v Karcour* [2007] EWHC165 (QB), a case heard by Mr Justice Langstaff. At para [134] the judge set out the material which was not in evidence before him and which persuaded him to adopt at least a partial *Blamire* approach. In contrast, here we do have "accurate identification of salary rates, rates of pay progression, dates of promotion" these being part of Capt Stokes' model. While the defendant objects that the figures for the claimant's residual earning capacity may prove conservative if he "hits the jackpot" as a film director, that strikes me as a relatively unlikely scenario given Mr Bradlaugh's age and likely experience over the years under consideration. If anything I accept that the assumptions in relation to partial earnings capacity are generous to the defendant, bearing in mind that the employment upon which the claimant has set his heart is of a highly specialist kind; one for which there must be a risk he will not have any aptitude ; at very least one where some luck is required to obtain and remain in steady employment.
29. It is then said the claimant should discount at each stage of the calculation of loss of earnings for the chance that the promotion in question would not have occurred, either because he left the Army or was in the cohort who failed to achieve promotion at that time. But I think the answer to this is again to be found in *Brown*. At [35] Lord Justice Potter called into question the appropriateness of a discount for the contingency that promotion would not be achieved where the court was satisfied it probably would have been. I am satisfied that in all probability Mr Bradlaugh would have been promoted along the lines of Capt Stokes' model. A discount is not appropriate.
30. So far as other contingencies are concerned –"injury, disenchantment, incompatibility with family life"-Lord Justice Potter thought "no more than 10%" appropriate in the case of a career in the police, given the absence of statistical information that the risk of injury leading to loss of employment in the police was any higher than in the band of more active or hazardous occupations referred to in the Ogden Tables. And, as here, it was noted that the claimant "was a man...well capable and adapted to finding another door to open if the first door closed against him."
31. In short it seems to me that in discounting 0.92 for contingencies other than mortality the claimant's calculation reflects the observations in *Brown* and seems to consistent with it. That gives a multiplier of 13.40 over the period with which I am concerned. The claimant's calculation of special damage sets out an apportionment as between the earnings anticipated at each stage of his career which I accept.

32. In the result, I would accept the basic arithmetical approach of the claimant's schedule to future loss. In relation to the future loss of earnings claim it was accepted by Mr Barnes that the claimant should give credit for part time earnings in the period before the assumed progression to earnings as a cameraman. The likely level appeared to be about £1,500 per annum. No substantial dispute was taken with the rest of the claimants calculation of residual earnings capacity. I have already rejected the point that the court should factor in the possibility that the claimant "hits the jackpot" as a film director, which seems a very remote possibility within the timescale at which we are looking.
33. **Pension loss.** Mr Rahman's submission was that the claimant's calculation again did not properly reflect the statistical facts. By the end of two years service only 55% of those who started out remained in the Army. By 10 years the figure dropped to 20%. Only 12% actually complete the full 22 years. Bearing the figures in mind he contended for an initial discount of 25% from the claimant's pension loss claim to reflect the chances that he would not have completed his term.
34. Thereafter a further discount was required for the contingency that promotion would not take the anticipated route. That chance in *Brown* was assessed at 15% ; here he suggested 10% a total deduction of 35%.
35. On behalf of the claimant Mr Barnes conceded that the claimant's calculation so far did not make the necessary deduction for contingencies. However the deduction in *Brown* of 30% was too high for the present case : she had only 8 weeks service before her injury. Here the claimant had served just over three years before the Medical Board recommended discharge. He submitted the discount should be no more than 15%, in line with *Porter*, a comparable case.
36. It does seem to me there is a role for the defendant's statistics here but they ought not to be applied without regard for the personal qualities of the particular claimant. I have already found that Mr Bradlaugh was if anything likely to see out his term given his commitment and antecedents. That being so, and given the claimant's additional years in the Army I agree that the discount for failure to complete the term should be more in line with *Porter* than *Brown*, say 15%. To that should be added a discount of 10% for the chance that his career would not have followed the predicted course, a total of 25%.
37. **Loss of accomodation and food benefits.** I accept the defendant's point that the evidential wherewithal to value such a claim is absent. It seems to me to involve a speculation too far to quantify. It was not pressed by Mr Barnes with any great vigour.
38. **Loss of payment for hazardous overseas duty.** Likewise I accept, as did Mr Justice Royce in *Hanks v Ministry of Defence* [2007] EWHC 966, that compensation for extra payments on account of service overseas and/or in extra hazardous operations should be disregarded where there is no evidence about the payments themselves or the likely incidence of such payments in the claimant's case.
39. This judgment will be sent out to the parties to check. Thereafter a date will be set for it to be delivered in open court. The time then allowed will depend upon the extent to which the parties are able to agree the calculations that follow upon it. From caution I will allow a day for the handing down of the judgment, but if agreement is possible I

would be grateful if the parties' solicitors notified the court as soon as ever possible so that the time estimate can be reduced. If all matters are agreed and a draft order submitted no-one need attend. I can deal with any application for permission to appeal on paper at least in the first instance. If an agreed order is submitted I would be grateful if it could clearly distinguish between the items allowed under the various heads of loss.