

# Court Decisions

## Farley v. Skinner,

11th October 2001, before the Lords of Appeal, Lord Steyn, Lord Browne-Wilkinson, Lord Clyde, Lord Hutton, Lord Scott of Foscole.

This important case was the subject of an appeal to the House of Lords. The original action was brought by the appellant Farley, against the respondent Skinner in the Queen's Bench Division in May 1999. The judge found for Farley, and awarded damages. Skinner appealed to the Court of Appeal in November 1999 and there was a disagreement between the 2 judges. In March 2000 the case came before a three-member Court of Appeal which found for Farley. Finally it was appealed to the House of Lords.

In the words of Lord Steyn

“The central question is whether a buyer (Farley) who employed a surveyor to investigate whether a property in the countryside was seriously affected by aircraft noise, may in principle recover non-pecuniary damages against the surveyor (Skinner), for the latter's negligent failure to discover that the property was so affected. The trial judge answered this question in the affirmative. A two-member Court of Appeal disagreed on it. The point was then re-argued before a three-member Court of Appeal. By a majority the Court of Appeal reversed the decision of the trial judge and ruled that there was no right to recover non-pecuniary damages in such cases. The second Court of Appeal was deluged with authorities. So was the House on the present appeal. The hearings of what was a comparatively simple

case took up an exorbitant amount of time. This circumstance underlines the importance, in the quest for coherent and just solutions in such cases, of simple and practical rules”

The facts of the case were that in 1990 the plaintiff, a successful businessman, contemplated retirement. He owned a flat in London, a house in Brighton and a property overseas. He wanted to buy a gracious countryside residence. He became interested in a beautiful property known as Riverside House in a the village of Blackboys in Sussex which was situated some 15 miles from Gatwick International Airport. The property is in the heart of the countryside. There is a stream running through the middle of it. The property has a croquet lawn, tennis court, orchard, paddock and a swimming pool. Although the attractive house required some modernisation and refurbishment, it appeared to be ideal for the plaintiff. There was, however, one question mark over the transaction. For the plaintiff a property offering peace and tranquillity was the *raison d'être* of the proposed purchase. He wanted to be reasonably sure that the property was not seriously affected by aircraft noise.

The plaintiff engaged as his surveyor the defendant, who had been in practice as a sole practitioner for some years. The surveyor had to investigate the usual matters expected of a surveyor who inspects a property. In addition the plaintiff also specifically asked the surveyor to investigate, amongst other things, whether the property would be affected by aircraft noise. The plaintiff told the surveyor that he did not want a property on a flight path. The surveyor accepted these instructions.

On 17 December 1990 the surveyor sent his report to the plaintiff. From the plaintiff's point of view it was a satisfactory report. About aircraft noise the surveyor reported:

“You have also asked whether we felt the property might be affected by aircraft noise, but we were not conscious of this during the time of our inspection, and think it unlikely that the property will suffer greatly from such noise, although some planes will inevitably cross the area, depending on the direction of the wind and the positioning of the flight paths”.

Comforted by this reassuring report the plaintiff decided to buy the Property. The purchase price was £420,000 (which included £45,000 for chattels). The purchase was completed on 28th February 1991.

In the next few months the plaintiff caused the house to be modernised and refurbished at a total cost of £125,000. During this period he was unaware that there was a significant problem associated with aircraft noise. On 13 June 1991 the plaintiff and his partner (who had 32.74% beneficial interest) moved in. Since 1991 they have lived there three to four days a week for seven to nine months of the year.

After he moved in the plaintiff quickly discovered that the property was indeed affected by aircraft noise. In fact, the property was not far away from a navigation beacon (The Mayfield Stack) and at certain busy times, especially in the morning, the early evening, and at weekends, aircraft waiting to land at Gatwick would be stacked maintaining a spiral course around the beacon until there was a

landing slot at the airport. Aircraft frequently passed directly over, or nearly over, the position of the house. The impact of aircraft noise on the tranquillity of the property was marked. The property was undoubtedly affected by aircraft noise.

It is common ground that the plaintiff's enjoyment of the property was diminished by aircraft noise at those times when he was enjoying the amenities of the property

outdoors and aircrafts were stacked up, maintaining their spiral course around the beacon, waiting for a landing slot at the airport. Nevertheless, after initial vacillation, the plaintiff decided not to sell the property and he does not presently intend to do so.

The five Law Lords found unanimously that the final judges decision should stand, as should the amount of £10,000 awarded in

damages.

This expensive and prolonged case shows two things: first that the plaintiff, Farley, was unwise to expect a surveyor to give an expert opinion on a question of exposure to aircraft noise, and second, that Skinner the surveyor was doubly unwise to venture his opinion, on a topic he was unqualified and a situation (the action of flight paths) on which he was uninformed.

# Standards News

## Some draft publications made available for public comment during 2001

Number	Title
01/561184DC	BS ISO 1996-1. Acoustics. Description and measurement of environmental noise qualities and assessment procedures.
01/202453DC	IEC 60034-9 Rotating electrical machines, Part 9: Noise limits.
01/202495DC	BSIEC 60034-9/A1 Rotating electrical machines: Noise limits
01/560341DC	BSENISO 3381 Railway applications. Noise emission: Measurement of noise in vehicles.

### Bikers

Here on the Nottinghamshire/Leicestershire border, we have hundreds of enthusiasts who like to dress up in gaily-coloured leathers, jump on to their powerful and far from standard bikes with deafening exhausts and usually illegal number plates, and then scream out to the country for their gatherings and road races. On the road itself, they intimidate other road-users as they blast by at speeds often well in excess of 100mph. Hostelrys out in the sticks hold "bikers' nights" and for hour after hour, one hears the scream of highly tuned engines destroying what little peace we can get nowadays. It's obvious from their behaviour that many of them have some sort of death wish. Well, that's their choice, but if they are going to go around killing themselves, could they at least do it quietly?