



Case No: B3/2007/0795

**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM NOTTINGHAM**  
**HIS HONOUR JUDGE INGLIS**  
**4NG15127**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/06/2009

**Before :**

**LADY JUSTICE SMITH**  
and  
**LORD JUSTICE JACOB**

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**Between :**

**Stephanie Baker**  
**- and -**  
**Quantum Clothing Group**  
**Meridian Limited**  
**Pretty Polly Limited**

**Appellant**

**1<sup>st</sup> Respondent**  
**2<sup>nd</sup> Respondent**  
**3<sup>rd</sup> Respondent**

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**John Hendy QC, Theodore Huckle & Robert O'Leary** (instructed by **Messrs Wake Smith**)  
for the **Appellant**

**Robert Owen QC & Simon Beard** (instructed by **Weightmans LLP**) for the **1<sup>st</sup> Respondent**

**Christopher Purchas QC & Catherine Foster** (instructed by **Hill Hofstetter**) for the **2<sup>nd</sup> Respondent**

**Toby Stewart** (instructed by **Halliwells**) for **3<sup>rd</sup> Respondent**

Hearing dates : 16-18 March 2009  
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**Approved Judgment**

## Lord Justice Jacob:

1. This is the joint judgment of Smith LJ and myself.
2. On 22<sup>nd</sup> May 2009 judgment in the main appeal was handed down by Smith LJ on behalf of the full Court consisting of Sedley LJ, Smith LJ and me. Largely we found for the claimants in what are taken as test cases about noise-induced deafness in the textile industry. Whilst judgment was reserved we received applications from the respondents that the court should recuse itself on the grounds that Sedley LJ was in a position of apparent bias. Sedley LJ considered this application and concluded that he did not feel it necessary or appropriate to recuse himself. He told the respondents that, if they wished to persist in their application, it would be considered by Smith LJ and myself. We concluded that this was not a case for recusal and so the main judgment was handed down. At the hand-down it was indicated that the applications would be refused and that our reasons would be given later. These are our reasons.

## The Law

3. The most recent House of Lords authority on the subject of apparent bias is *Helow v Secretary of State for the Home Department* [2008] UKHL 62, [2008] 1 WLR 2416. It was an asylum case involving a sympathiser with the Palestinian Liberation Organisation who claimed that she feared attack by Israeli agents. The Judge on appeal from the Immigration Appeal Tribunal was a member of the International Association of Jewish Lawyers and Jurists. The magazine of that association had carried a number of articles and pronouncements which were extremely pro-Israeli and markedly antipathetic to the PLO. The House of Lords held that there was no reason for the judge to recuse himself.
4. To our minds the facts of that case were much stronger than those relied upon here (see below). Yet they were not enough to justify a holding of apparent bias or want of objective impartiality on the part of the judge. One can conveniently take the principles as set out by Lord Hope:

[39] The basic legal test applicable is not in issue. The question is whether a fair-minded and informed observer, having considered the relevant facts, would conclude that there existed a real possibility that the judge was biased, by reason in this case of her membership of the Association: *Porter v Magill* [2002] 2 AC 357. The question is one of law, to be answered in the light of the relevant facts, which may include a statement from the judge as to what he or she knew at the time, although the court is not necessarily bound to accept any such statement at face value, there can be no question of cross-examining the judge on it, and no attention will be paid to any statement by the judge as to the impact of any knowledge on his or her mind: *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451, para 19 per Lord Bingham of Cornhill CJ, Lord Woolf MR and Sir Richard Scott V-C. The fair-minded and informed observer is "neither complacent nor unduly sensitive or suspicious", to adopt Kirby J's neat phrase in *Johnson v Johnson* (2000) 201 CLR 488, para 53, which was approved by

my noble and learned friends, Lord Hope of Craighead and Baroness Hale of Richmond, in *Gillies v Secretary of State for Work and Pensions* [2006] 1 WLR 781, paras 17 and 39.

### **History of the application**

5. The main appeal commenced on 16<sup>th</sup> March 2009. The claimants' solicitors were Messrs Wake Smith and their leading counsel Mr John Hendy QC. Messrs Weightmans were the solicitors for Quantum PLC the first respondent and their leading counsel was Mr Robert Owen QC. Because of the test nature of the proceedings, Meridian/Courtaulds (solicitors Hill Hoffstetter, leading counsel Christopher Purchas QC) and Pretty Polly (solicitors Halliwells, counsel Mr Toby Stewart) were permitted to take part: questions affecting other live cases involving these parties would be decided.

6. At the outset of the hearing, Sedley LJ disclosed that he was Hon. President of the British Tinnitus Association ("BTA"). The relevant transcript reads:

"LORD JUSTICE SEDLEY: While I remember, before we go any further, it occurred to me at the weekend that I had better declare that I am President of the British Tinnitus Association. Does anybody mind? It is a voluntary self-help organisation that brings clinicians and patients together. It has no axe to grind at all in liability or litigation terms. Is that all right?"

MR OWEN: Certainly my Lord.

MR PURCHAS: I cannot think there is any possible ground –

LORD JUSTICE SEDLEY: If you do think of something, make sure I know fairly soon."

No objection was made by Mr Stewart.

7. So the three respondents did not object to Sedley LJ sitting, knowing of his position as Hon. President of the BTA. The hearing was completed on 18<sup>th</sup> March. Judgment was reserved.

8. Just over seven weeks later, the Court received a letter from Weightmans dated 5<sup>th</sup> May 2009. We set it out in full:

"On the first day of the hearing Lord Justice Sedley disclosed in open court that he is President of the British Tinnitus Association ("BTA") (which he described as a honorary role) and invited the parties to state if they had any objection to his sitting on the appeal.

On the basis of that single piece of information our clients – the Respondents – were content to waive any objections that they might otherwise have raised.

Since that time further information has come to light which causes our clients and ourselves real concern.

That further information comprises the following:

- (i) it was in November 2007 that Lord Justice Sedley became President of the BTA.
- (ii) the BTA is a charitable organisation whose aims include:
  - a. raising tinnitus awareness
  - b. campaigning to achieve a better deal for those affected by tinnitus. [BTA “Objectives and Activities”]
- (iii) The Appellant in this case, Ms Baker, has mild tinnitus allegedly consequent upon noise exposure and if she is successful in her appeal, will succeed in establishing damages for both damages to her hearing and tinnitus.
- (iv) Lord Justice Sedley himself suffers from mild tinnitus (extract from Conference Speech 2007).
- (v) Within months of Lord Justice Sedley’s ascent to presidency of the BTA, Wake Smith & Tofield (“Wake Smith”) (the Law firm representing Baker) became the sole linked/nominated firm to the BTA.
- (vi) The BTA publicly describe Wake Smith as “*leaders in their field of compensation*”
- (vii) The lead solicitor for Wake Smith (Chris Fry) has co-authored a paper on tinnitus and compensation posted on the BTA website
- (viii) The co-author of the paper is one Andrew McCombe, ENT Surgeon, who was the Claimant’s lead medical expert in the 7 test cases heard in the High Court in Nottingham, (October/November 2006)
- (ix) Wake Smith advertise on their own website their association with the BTA.
- (x) The 2008 BTA medico-legal conference was organised by Wake Smith.

Many of these matters (i), (ii), (v), (vi), (viii), (ix), (x) suggest a web of links between the professionals involved in the case – solicitors and expert – on the appellant’s side, with the BTA – and hence, albeit indirectly, with Lord Justice Sedley. The

BTA's own publications make clear that, at the very least, they assist in the provision of information to persons who may wish to bring compensation claims.

Conscious of our duty of candour owed to the court we should make it clear that, apart from items (iv), (vii) and (viii), these matters were identified before the conclusion of the hearing and the advice of Leading Counsel then instructed was that it would not be in our client's interest to raise them in support of an application for recusal. Our clients accepted Leading Counsel's advice.

Items (iv), (vii) and (viii) were, however, not discovered until a fortnight had passed since the hearing, and our clients waiver, either by word on day 1 or by continued participation in the hearing thereafter, was accordingly not made with the full knowledge now available.

Applying the test now laid down by the House of Lords in *Porter v Magill* and without needing to suggest that Lord Justice Sedley would have dealt or would deal with the appeal other than on its merits, we and our clients putting ourselves, as that test requires, in the shoes of a fair minded and informed observer would suggest that there is a real possibility of bias when:

- a. a Judge suffers from the same condition as is in issue – in terms of responsibility (or not) for it – in the appeal;
- b. the Judge does not himself disclose this – while disclosing other facts perceived by him to be relevant to his ability to sit;
- c. this occurs in the context of the web of links to which we have already referred.”

9. The letter concluded by suggesting the appeal should be relisted before another panel.
10. By letter of 13<sup>th</sup> May 2009, Halliwells supported Weightmans' letter. They sought to attach blame to the conduct of Wake Smith. They said “we must express our surprise and disappointment that Wake Smith did not disclose their relationship with the BTA on the first day of the appeal.” In that context, they referred to the wasted costs of the appeal.
11. Also on 13<sup>th</sup> May, Hill Hoffstetter supported Weightmans and made their own application for a fresh hearing before a fresh panel. They too sought to blame Wake Smith (“Notwithstanding the fact that the constitution of the Court was known ..., Wake Smith failed to identify their own connection with the BTA and therefore, indirectly with Sedley LJ ..). They made many of the same points as Weightmans, supporting the overall “web of links” allegation.

12. Also on 13<sup>th</sup> May, Wake Smith responded in detail to the applications. They first said that Sedley LJ had mentioned that he had mild tinnitus at the outset of the hearing. The transcript does not record this. I have no recollection of this being mentioned; Smith LJ does. In view of the uncertainty on this issue, we will proceed on the basis that he did not. They then submitted that Sedley LJ obviously had a special interest in tinnitus – otherwise he would not have accepted the honorary presidency. That led to a paragraph about why the fact that he had the condition did not constitute apparent bias. We return to this subject later.
13. The Wake Smith letter then at length dealt with the “web of links” allegation. We set it out in full:

“The matter of Sedley LJ’s association with the BTA was raised fairly and squarely by him at the outset of the appeal hearing. As we recall it, counsel for all respondents (including very eminent and experienced leading counsel for Courtaulds and Quantum as well as junior counsel for PP) were invited to consider and given the opportunity of time to take instructions. On instruction given in court (including senior representatives of the solicitors’ firms and insurer representatives) that opportunity was declined and the court was told that no issue was or would be taken by the respondents as to Sedley LJ’s membership of the appeal panel. There was no reason why further information could not have been sought of the details of the judge’s relationship with the BTA at that stage. Moreover, in an aside during the hearing, Mr Byard (Weightmans) told Mr Fry (Wake Smith) that Weightmans had checked the BTA website and it is obvious that they had ample opportunity to do so during the remainder of the appeal hearing, let alone in the period since.

The information which it is suggested has “now” come to light is readily available within minutes of accessing the BTA’s website.

It is clear that the website is an information resource with no emphasis on making compensation claims, although as part of general information, Wake Smith (as well as Irwin Mitchell) are mentioned as firms who can advise on legal issues. However, the Professional Advisors Committee of the BTA does not include any lawyers, and makes clear at <http://www.tinnitus.org.uk/index.php?g=PAC> that its aims are to promote and help to monitor proper research into the condition.

There is no claimant/defendant “slant” on the site or the BTA as a whole, and the inclusion of Mr McCombe on the Professional Advisors Committee does not imply that he takes any particular stance. It is known to us that Mr McCombe regularly advises defendants in hearing loss cases. Part of the reason for choosing him as an expert for these test cases was

that he was not perceived to be particularly identified with “the claimant side”.

Sedley LJ did not become honorary president in 2007 but 2006 according to the website. He follows Lord (Jack) Ashley of Stoke, founder president in 1991, and Lord McLennan of Rogart in that role.

Wake Smith are not the solicitors to the BTA or their “nominated solicitors” whatever that is intended to mean. If the BTA has solicitors they are not Wake Smith. There is no financial (or other business) relationship between Wake Smith and the BTA. The BTA agreed to permit Wake Smith to have a link on their website in order that those accessing the site could seek legal advice from the firm amongst others. Irwin Mitchell also have a link on the website. We assume that if any of the respondents’ solicitors acted for claimants in deafness cases and wished to advertise their services on the BTA website, they would also be permitted to have a link. Wake Smith offers a legal advice line to members of the BTA, on a variety of legal issues, and as a result a very limited number of enquiries have been received across the range of legal services and not just personal injury and occupational illnesses. In that respect we have only one or two ‘open matters’.

The references to Wake Smith on the BTA website are two in number and reasonably difficult to find other than by specific search for “Wake Smith”. The firm’s website is (incorrectly) referenced under “Other sites of interest” at the very end of the links page at <http://www.tinnituus.org.uk/index.php?g=node/19>. No indication is given as to what form of litigation they conduct or whether they act for claimants or defendants (cf. the Irwin Mitchell reference). There is also a link at the page giving information about compensation at <http://www.tinnitus.org.uk/index.php?g=node/35> (whose content was essentially written by Messrs Allen and Tucker of Irwin Mitchell in 2004) to the article referred to co-authored by Mr Fry and Mr McCombe. That article presents a factual description of the sorts of claims for benefit and compensation that can be made and examples of awards by references to the JSB guidelines and some Lawtel case notes. It points out that each case must be considered on its facts and offers the services of Wake Smith for advice on “whether or not you have a claim”.

Wake Smith has no organisational role within or on behalf of the BTA, and had no part in organising the 2008 BTA conference, though the firm did take a stand at the conference as an advertiser and Mr Fry attended and listened to various lectures.

Sedley LJ had attended the 2007 BTA conference and gave a short introductory address as the new president (the note of this copied with the Weightmans letter is set out at <http://www.tinnitus.org.uk/files/Transcript%20of%20Conf.pdf>), but Wake Smith were not represented at that conference and did not at either conference have any contact with the judge. Indeed, there has been no contact between the firm and Sedley LJ in the context of their respective limited associations with the BTA. We have no knowledge of any contact at all between the firm and the judge other than in the context of the appeal hearing in March and otherwise in the ordinary course of presenting cases before the Court of Appeal, including the case Furniss v Firth Brown Tools [2008] EWCA Civ 182.

As we understand it, the BTA is a non-partisan association justifying great authority and respect for its work supporting research into tinnitus. As the website home page makes clear:

The British Tinnitus Association is a world leader in providing support and advice about tinnitus. We provide accurate, reliable and authoritative information, much of it written by medical professionals or clinical researchers. Most of it is available on this website and is free to download and use (if we've been of help you might consider a donation to help us help others; we rely on public support for funding). We have our own research programme and provide bursaries for UK professionals to pursue their interest in tinnitus. Our Professional Advisers Committee includes some of the leading UK professionals working on tinnitus, and we seek to promote 'Better Tinnitus Awareness' through information leaflets, a confidential helpline (operated by staff with over 50 years of cumulative experience), school education programmes, training courses, and an annual conference.

So far as we are aware the BTA takes no significant role with respect to legal issues and its activities are overwhelmingly concentrated upon medical issues with respect to tinnitus. We cannot find the reference to "campaigning to achieve a better deal for those affected ..." but in any event such a reference has to be considered in this context. We would hope that the

BTA's aims and efforts are supported by all right-thinking people including the respondents'."

14. Following these submissions, Sedley LJ made the following written statement:

"1. In view of the content of the objections which have now been raised to his sitting as a member of the court hearing this appeal, Lord Justice Sedley makes the following observations.



2. Had Lord Justice Sedley or any member of the court considered his presidency of the BTA to be disqualifying factor, he would have stood down. Neither he nor they did so. Nor was it submitted from the Bar at the start or in the course of the appeal that he should do so.
3. Insofar as reliance is now placed on material derived from the BTA's website, Lord Justice Sedley makes the following observations:
  - (a) The objects of the BTA are those quoted in Wake Smith's letter and not those described in paragraph (i) of Hill Hofstetter's letter. It is a voluntary and charitable organisation which brings together patients and health professionals and sponsors research into tinnitus, which is as often spontaneous as traumatic in origin.
  - (b) Lord Justice Sedley accepted the honorary post of President of the BTA in 2006 with the knowledge and agreement of the Master of the Rolls. Judges today value some engagement, albeit formal, with the outside world.
  - (c) None of the facts (if they are facts) set out at paragraphs (v) to (x) of Weightman's letter and (ii)-(v) and (vii) of Hill Hofstetter's letter are known to Lord Justice Sedley
  - (d) He does not regard the fact that he himself has mild tinnitus as a disqualifying factor in the present proceedings any more than if a judge who has back trouble tries a spinal injury case or a judge who is a motorist tries a running down case.
  - (e) While he is embarrassed by the garbled transcription of his introductory words at the BTA conference, which was published without his approval, it reflects his entirely honorary role in the association.
  - (f) For avoidance of yet further issues he also wishes it to be known that in 2008, at a dinner of the Industrial Law Society at which he was the guest speaker, he nominated the BTA to receive one half of the proceeds of a sweepstake on the length of his speech. The winner of the sweepstake did the same with his half.
4. For these reasons, as well as because of the lateness of the application, Lord Justice Sedley does not propose

to recuse himself from the case. These observations are, however, to be sent to the parties, who may submit any comment on them by midday on 20 May. Lady Justice Smith and Lord Justice Jacob will then decide whether the objection to his participation should be upheld.

This procedure is not to be regarded as in any sense a precedent for the processing of objections of this kind.”

15. Following receipt of that statement, the applicants wrote to the court persisting in their applications and enclosing various materials. However, no attempt was made to challenge the factual aspects of Wake Smith’s submission.

### **Novelty of the application**

16. Before considering the substance of the applications in detail, we draw attention to the fact that the complaint here is not that there is a connection between Lord Justice Sedley and Mrs Baker but an indirect link between the Lord Justice and Mrs Baker’s solicitor. This is a novel type of application in our experience. We do not think that a tenuous connection between a judge and a firm of solicitors in the case could ever be regarded by the well informed observer as a giving rise to a possibility of bias. In *Locabail (UK) Ltd v Bayfield Properties* [2000] QB 451, in paragraph 25, the Court of Appeal sought to give practical guidance about the kind of situations in which the judge ought to or need not recuse himself. One of the factors, which would not normally give rise to the need for recusal was the ‘previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him’. We observe that the connection alleged in this application, which relies on an indirect link between Lord Justice Sedley and Wake Smith (via the BTA) is far more tenuous than the link between a judge and a firm of solicitors by whom he has previously been instructed.

### **Conclusions on the “web of links”**

17. Sedley LJ made it plain that he had no knowledge of any of the matters on the BTA Website constituting the so-called “web of links”. In those circumstances, we do not think that any fair-minded reasonable observer would consider that there was any real possibility that he might be biased arising from the so-called ‘web of links’. We are surprised that the applications have been pursued thereafter as they have been.
18. But even if the facts giving rise to the “web of links” relied upon had been known to Sedley LJ it would not have moved that observer to conclude that there was any real possibility of bias. We will explain that conclusion by reference to the website. But before doing so we must record a matter of concern. By a letter of 20<sup>th</sup> May, when renewing its application, Hill Hoffstetter sent further submissions, an extract from the transcript and “a bundle of selected documents.” The bundle is paginated. It consists of pages downloaded from the BTA website and an attachment to the site downloadable separately as a pdf file entitled “BTA Compensation Advice”. What is disturbing is that these pages are interleaved with those from the BTA website, thereby giving the impression that they are all from the BTA website. In fact, pages 1-13 are from the BTA website, pages 14-20 from the Wake Smith pdf, pages 21-26

from the BTA website and the last pages of the bundle are from the Wake Smith pdf. Only by noting the address at the bottom is the reader alerted to what the fact that the Wake Smith pdf is not itself part of the BTA website.

19. We turn first to the BTA website, for the extra information said to constitute the “web of links” is derived from this.
20. First there is the nature and purpose of the BTA (item ii of the Weightmans letter). The suggestion is that it is a campaigning organisation aiming to achieve a better deal for those affected by tinnitus. If there is any innuendo in this suggestion that the BTA is an organisation for helping potential claimants, that would be clearly unjustified. The website provides under the heading “Welcome” a short description of the BTA. Wake Smith quote it in full in their letter so there is no need to repeat it. On the next two pages under the heading “About the BTA” there is a fuller description of its activities. These include a freephone helpline, support of research, a quarterly magazine, the aim of raising awareness of the condition, the running of Therapy Days, and so on. No reasonable person would draw the inference that this was an organisation designed to help claimants. The objects and purpose of the BTA are quite unrelated to litigation and would not cause a reasonable person to think that anyone associated with the BTA might be biased towards a claimant with tinnitus.
21. Given that tinnitus can be caused by noise exposure and is a known form of industrial injury, it is not surprising that the BTA site has information about compensation. It also has information about a range of other relevant subjects – under the heading “Information” there are 31 topics. Compensation is just one of them.
22. If one goes to that topic one sees that it was partly provided by a named partner of Irwin Mitchell a firm of solicitors, and partly by Wake Smith. For more detail the Wake Smith pdf we have referred to can be downloaded. The advice about compensation actually given on the site can be summarised thus: go to a solicitor who knows what he is doing. It tells the reader what sort of questions to ask to find out if he does. There is no “steer” to Wake Smith or Irwin Mitchell.
23. The next point for consideration is item (v) of Weightman’s letter. It appears to suggest some sinister connection between Sedley LJ becoming Hon. President in 2007 (“Within months of Lord Justice Sedley’s ascent to the presidency of the BTA) and Wake Smith becoming ‘the sole/nominated firm to the BTA’. In fact, the date is wrong by a year; Sedley LJ became the Hon President in November 2006. Moreover, Wake Smith is not the ‘sole/nominated firm to the BTA’. They were not and are not nominated by the BTA. They are not and never have been the BTA’s solicitors. Quite wrongly, Hill Hofstetter assert in their letter of 13<sup>th</sup> May that “(iv) Wake Smith have been and are legal advisers to the BTA since Sedley LJ became President in 2006.”
24. It is true that there is a link on the BTA website to Wake Smith’s website. But the reasonable observed would wish to see that link in its true context which is as follows. On the BTA website there is a heading “Useful Website Links”. There is then a disclaimer (not mentioned by any of the applicants) which says:

Provision of these website links does not constitute endorsement by the BTA of their content, products or services.

When clicking on the links you will leave the BTA website.

25. The list of links comes under various sub-headings. It is sufficient to set out the first few to give an idea of the range. The first sub-heading is “International Tinnitus Organisations” (14 are provided). “Tinnitus and Hyperacusis Centres (5); “UK Tinnitus Self Help Groups” (8); and “Sites for Younger People (6) are the next three. There are 8 other headings providing altogether 37 more links which it unnecessary to specify. The final heading is “Other Sites of Interest”. There are 11 of these, a miscellaneous ragbag, including self help groups, the Charity Commission and Age Concern. It ends with Wake Smith’s and Irwin Mitchell’s.
26. So there is a link. But it is not the sole link or even the sole link to a firm of solicitors. Weightman’s point (vi) is connected with point (v). It is that “the BTA publicity describes Wake Smith as leaders in their field of compensation.” So it does (the quotation is not exact, but no matter). That description is provided next to the link to the Wake Smith website.
27. In our judgment, no fair-minded observer would draw an inference of any substantial connection between Wake Smith and the BTA from this linkage on the BTA website. The suggestion of a connection between Wake Smith and Sedley LJ is fanciful.
28. Point (vii) draws attention to the fact that a partner in Wake Smith has co-authored the paper on compensation “posted” on the BTA website. It appears to us to be a sensible paper giving balanced information. It is obviously not a BTA document. Its provision on the site is far from suggesting a significant tie-up between Wake Smith and the BTA – even farther from suggesting any connection between Sedley LJ and Wake Smith.
29. Point (viii) is about Mr McCombe who gave expert evidence for the claimant. He was a co-author of the paper on compensation. No attempt was made at trial to suggest that Mr McCombe was biased. Why the point is raised now we are unable to understand – and we are unable still less to see why it suggests any connection with Sedley LJ at all.
30. Point (ix) is about Wake Smith’s website. It says “The Industrial Diseases Team is delighted to be associated with the BTA (link given). The BTA is a leader in providing support advice and information about BTA”. This little bit of puffery would not concern the reasonable, fully-informed observer, quite apart from the fact that it has nothing to do with Sedley LJ.
31. Weightmans final point (x) is simply, and inexplicably, wrong. Contrary to what is asserted, the 2008 BTA medico-legal conference was not organised by Wake Smith. The firm had a stand there and no more.
32. The upshot of all this is that the “web of links” is quite without substance. The objection on this basis should never have been made, and once made should have been dropped as soon as Sedley LJ had made his statement.

### **The tinnitus objection.**

33. We turn to the objection based on the fact that Sedley LJ himself suffers from mild tinnitus and we are accepting for present purposes that this was not disclosed. It too is a point of no substance. It amounts to a contention that no judge with any particular disability should hear a case involving that disability. A judge with poor eyesight or only one eye could not hear a case about an eye injury, a judge in a wheelchair could not hear a case about an injury which made the victim wheelchair bound and so on. And, taken to its logical conclusion, the argument would mean that a disabled judge could not hear a case about disability living allowance, or a woman judge hear a case about sexual discrimination against a woman. The examples multiply.
34. This objection, like that of the “web” has no substance. Coupling the one objection with the other makes no difference: zero plus zero is zero. The objections here are well on the far side of being “unduly sensitive or suspicious.”

### **The Delay**

35. Sedley LJ said outset that “if you think of something make sure I know fairly soon.” In those circumstances it is particularly surprising that Weightmans say they only discovered certain of the matters relied upon two weeks after the hearing. We have unchallenged evidence from Mr Fry of Wake Smith leading to the clear inference that Mr Byard of Weightmans had visited the BTA website during the hearing. Even accepting that the matters concerned were only found two weeks later, there is no explanation of why they were not found earlier. Further, it is astonishing that, having found the material, the applicants took no action for a further five weeks. We draw the inference from this delay that the matters now relied on were not, at the time of discovery, seen as serious.
36. Finally, we think that this objection simply comes too late. It is not open to a party which thinks it has grounds for asking for recusal to take a leisurely approach to raising the objection. Applications for recusal go to the heart of the administration of justice and must be raised as soon as is practicable.
37. For all these reasons, we refused recusal. The applications were without merit.