consultant psychiatrist and a psychotherapist, both of whom were specialists in deafness.

The judge found that the husband's IQ was potentially average, but the effect of his disabilities and ability to understand was limited by his own life experience.

He had concepts of right and wrong in the simple way that it would be wrong for him to assault somebody or to steal.

He knew he had a piece of paper from the court which said that he should not go to the former matrimonial home.

The husband went to the former matrimonial home at times of anxiety on a voluntary basis. There was nothing forcing him to go and no one forced him to go.

Although he had an awareness of the injunction, he went to the former matrimonial home because his thinking system and need overrode his knowledge of the injunction.

The husband knew that when he went to the former matrimonial home he ended up in prison following the court procedures.

In her Ladyship's judgment, a degree of understanding which was not total could be sufficient to breach an injunction. There was no need for a full understanding of the finer points of law provided the contemnor understood what he must not do and what the consequences of breach were.

The assessment of capacity and comprehension was for the judge in the case and Mrs Justice Hogg had made no error of principle. In those circumstances it would be wrong for the Court of Appeal to interfere with the judge's exercise of discretion in continuing the injunction.

Lord Justice Judge and Lord Justice Sedley delivered concurring judgments.

Solicitors: Hillman Smart & Spicer, Eastbourne; Lawson Lewis & Co, Eastbourne.

Practice — interlocutory appeal against interim order — wrong to explore merits

July 21, 1999

Court of Appeal

STEPHENSONS (SBJ) LTD MANDY

Before Lord Justice Nourse, Lord Justice Swinton-Thomas and Lord Justice Mummery

[Judgment June 30]

It would be quite wrong for the Court of Appeal to go into the merits of an interim order restraining the defendant from breaching restrictive covenants relating to confidential information in his contract of employment when a date for the trial of the issues to be heard was fixed to be heard in some two weeks time.

The Court of Appeal so held dismissing an interlocutory appeal by the defendant, Mr Keith Mandy, from an interim order of Judge Conningsby, QC, sitting as a judge of the Queen's Bench Division, dated March 30, 1999 enjoining him from breaching restrictive covenants in his contract of employment with the plaintiffs, his former employers, SBJ Stephenson Ltd. The defendant was given permission to appeal against the judge's order on May 7 by Lord Justice Otton.

Mr Andrew Hochhauser, QC and Mr Vernon Flynn for the defendant; Mr Simon Browne-Wilkinson, QC and Miss Claire Blanchard for the plaintiffs.

LORD JUSTICE NOURSE said that the plaintiffs took the preliminary point that the court ought not to enter into the merits of the appeal, the trial date being fixed for July 20 and the defendant being protected from any loss by the plaintiffs' undertaking as to damages.

A debate now, Mr Browne-Wilkinson said, would be entirely pointless and contrary to the objectives of the Civil Procedure Rules (SI 1998 No 3132) as set out in rule 1.1 to deal with a case justly "(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases".

Expense ought to be saved by not dealing with the appeal at this stage.

It was not a good use of the court's resources. It would be quite wrong in the circumstances to go into the merits of the appeal at that time.

Lord Justice Swinton-Thomas and Lord Justice Mummery agreed.

Solicitors: Charles Russell; Theodore Goddard.

Sex discrimination — severance pay scheme — payment to part-time worker not discriminatory

July 23, 1999

House of Lords

Barry v Midland Bank plc

Before Lord Slynn of Hadley, Lord Nicholls of Birkenhead, Lord Steyn, Lord Hoffmann and Lord Clyde

[Speeches July 22]

A scheme for calculating severance pay on the basis of length of service and terminal salary did not discriminate against women although more women than men worked terminally part-time and thus had lower terminal salaries.

The House of Lords dismissed an appeal by Mrs Jacqueline Barry from the Court of Appeal (Lord Justice Peter Gibson, Lord Justice Ward and Sir John Vinelott) (*The Times* December 29, 1997; [1997] TLR 707; [1999] ICR 319), who had dismissed her appeal from the Employment Appeal Tribunal (*The Times* October 25, 1996; [1996] TLR 591; [1997] ICR 192).

The Employment Appeal Tribunal had upheld the dismissal of her complaint to an industrial tribunal that her employer, Midland Bank plc, had contravened the equality clause deemed by section 1 of the Equal Pay Act 1970, as amended by section 8(1) of the Sex Discrimination Act 1975, to be included in her contract of employment.

Miss Cherie Booth, QC and Mr Clive Lewis for Mrs Barry; Mr Patrick Elias, QC and Mr Jason Coppel for the bank.

LORD SLYNN said that the bank's security of employment agreement with the Banking, Insurance and Finance Union provided for the calculation of an employee's severance payment to be based solely on years of continuous service and final pay. No account was to be taken of fluctuations in pay or hours of work.

Mrs Barry, whose contract incorporated those provisions, had worked for the bank from July 2, 1979. She had worked full-time, 35 hours a week, until she had taken maternity leave; on her return she had worked for 35 hours in alternate weeks, the equivalent of 17.5 hours a week, and had been paid half the full-time salary.