# Editorial

## Freedom of Press and Public Interest

Two aspects of public policy — the preservation of a free press, and the supression of insider dealing — clashed in the Chancery Division last March. Journalistic freedom won the day. *In re an Inquiry under the Company Securities (Insider Dealing) Act 1985* (*The Times*, April 1, 1987*), Hofmann J ruled in favour of a City journalist who declined to disclose his confidential sources to DTI inspectors appointed under s 177 of the Financial Services Act 1986 to investigate alleged insider dealing activities. The case arose out of two articles on City takeovers written by Mr Jeremy Warner in *The Times* and the *Independent*; the inspectors believed that his sources would confirm the evidence they had already accumulated about suspected links between civil servants and share-dealing rings.

Section 178 of the 1986 Act provides that a refusal to anser inspectors' questions "without reasonable excuse" may be punishable as contempt of court. However, the court held in this instance that, "the public interest in the protection of sources outweighs the value of disclosure for the purposes of the investigations". In the judge's view, the facts stated by the inspectors did not show a probability that only the disclosure of his sources by Mr Warner could prevent further insider dealing. His evidence might provide useful pieces to fit into the jigsaw but it had not been shown to be the key to the puzzle.

The court's attention had been drawn to s 10 of the Contempt of Court Act 1981, which only allows a court to require journalistic disclosure where it is demonstrated as being necessary in the interests of justice or national security or for the prevention of disorder or crime: the section had subsequently been discussed by the House of Lords in *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339. In the present case, however, Hofmann J held that s 10 was not strictly applicable because, *inter alia*, the inspectors were not a court; but he held in any event that it did not matter here because the words "reasonable excuse" were wide enough to require him to take into account the public interest in the protection of sources. And even if the section had applied, the inspectors would not have demonstrated that disclosure of sources

*Subsequently reversed by CA, *The Times*, May 7, 1987.

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was necessary for the prevention of crime.

This case has understandably been hailed with rejoicing by the press, and the *Independent* has promised if necessary to back Mr Warner right up to the House of Lords in the defence of non-disclosure of sources. We share these sentiments, albeit with sneaking regret that upholding the worthy cause of investigative journalism has in this instance cramped the DTI's inquiries into alleged dirty deeds in the City, a dark area of white-collar crime whose investigators need all the help they can get. A long-overdue piece of legislation, The Financial Services Act, criticised in many quarters for doing too little too late, has now been significantly hobbled almost before the ink has dried upon it.