Editorial

Secondary Insider Dealing

In April 1988 Mr Brian Fisher was acquitted on the direction of the judge at Southwark Crown Court in respect of two charges brought under the Company Securities (Insider Dealing) Act 1985. The defendant had profited from share deals based on inside information about an impending takeover bid gleaned from an employee of a merchant bank, who had told him that the information was sensitive and confidential and had warned him that his receipt of it made him an "insider". However, the judge ruled that he could not be guilty because the sensitive information had been freely given to him and he had not therefore "obtained" it within the meaning of s 1(3) of the 1985 Act. Obtaining the information, he said, entailed actively seeking or procuring it.

This restrictive and, on the face of it, rather odd interpretation was a considerable and frustrating setback to the DTI's campaign against secondary insider dealing, and several prosecutions were put on ice pending a reference to the Court of Appeal by the Attorney General under s 2 of the Criminal Justice Act 1972. The Court gave its ruling in October (*Attorney General's Reference No 1 of 1988, The Times, October 19, 1988*). Delivering the judgment of the Court, the Lord Chief Justice held Parliament had intended to give the word "obtained" a wider meaning than "acquired by purpose and effort". The vice, he said, "lies in the way the information is used, not in the method of receipt".

This welcome victory for common-sense may yet be overturned in the House of Lords. But the contingency should not stand in the way of the DTI resuming its active pursuit of insider dealers. The law in this area is strewn with technical complexities. There are plenty of people around who are all too willing to probe it for profitable loopholes. One apparent loophole — the product of a palpable misinterpretation by the lower court rather than the error of a draftsman — has now been closed. It must surely remain so.