

THE TAKEOVER PANEL

STOCK EXCHANGE

DEALINGS IN THE COURSE OF A TAKE-OVER SITUATION

It is sometimes thought that Directors of companies, brokers and others "in the know" have a great advantage over ordinary shareholders because of their inside knowledge and that this enables them to deal secretly in securities to their great personal profit. Whilst it is true that this possibility does sometimes exist, we believe that, in general, advantage is very rarely taken of it. It is, or ought to be, very well known to Directors, for the law and ethics of the matter have been constantly and widely publicised and it is axiomatic in the City, that inside information must never be used for personal gain. Scrupulous precautions are taken in the City to ensure that advance information about company transactions is kept secret and the Council of The Stock Exchange is constantly vigilant to watch the situation generally and to investigate cases in which suspicion arises. The City Panel is also involved precisely because it is foreknowledge of intended take-overs or mergers which may enable and tempt dishonourable men to make some private profit for themselves. Our Rules are designed to prevent or to require full disclosure of any such transactions. We have from time to time investigated cases of dealings which give rise to suspicion. Sometimes our investigations have shown the transactions to be innocent. Occasionally they have been inconclusive and have left an unhappy impression that some improper transaction has taken place, to the scandal of the City and the injury of ordinary shareholders. These cases, although we emphasise that they are highly exceptional, have fortified and increased the determination of the Panel untiringly to investigate and fully to expose such cases if they occur in order to protect the interests of honest shareholders and the good name which the City rightly enjoys.

The present case, although the amount of money involved is not significant, does, in the opinion of the Panel, reveal circumstances in which the requirements of the Code, and indeed apart from the Code the normal requirements of proper behaviour by any director or broker, have been ignored and a deliberate attempt made to conceal from the Panel Executive the real nature of the transactions which had taken place.

The facts have, however, now been fully related to us and except at one or two points, there is not much dispute about them. It is sufficient to summarise them as we now find them to be. Mr. R. A. Woods is the Managing Director of a quoted company called Norbury Insulation Group Limited. This company has a small Board, consisting of Sir Edward Beetham as Chairman,

Mr. E. H. Thomas as Finance Director and Mr. Woods himself. Arbuthnot Latham & Co. Ltd. acted as the Bankers for Norbury Insulation and as their advisers in the take-over transaction in connection with which our enquiry has arisen. Mr. Woods had an association with an investment company incorporated in the British Virgin Islands called Wiltshire Investments Limited. This company existed to hold the investments of an overseas family trust of which Mr. Woods was one of the settlors and also a potential beneficiary. The family trusts including Wiltshire held investments of the order of £1 million and Wiltshire employed as one of its stockbrokers the Earl of Norbury, an authorised dealer member associated with but not a partner of a City firm. He had no personal connection with Norbury Insulation, the name being entirely a matter of coincidence.

Some time in the autumn of 1970, Norbury Insulation decided to make a bid for Hayeshaw Ltd. It is difficult to pinpoint the exact date at which the intention to make such a bid was first formed or at which, in the language of Rule 30, there were preliminary discussions or reasons to suppose that an approach would be made. We are satisfied that by the 9th November the intention was sufficiently crystallised to result in Arbuthnot Latham being instructed. A public offer was announced on 19th November.

On 27th October 1970, Lord Norbury was instructed by Mr. Woods to sell 12,500 shares of Hayeshaw on behalf of Wiltshire. Mr. Woods had no formal authority to give instructions for Wiltshire but Lord Norbury had a general discretion in regard to investments for Wiltshire. In practice, however, Mr. Woods was in the habit of telling Lord Norbury what to do and Lord Norbury always accepted these instructions. Wiltshire did not at this point hold Hayeshaw shares and Lord Norbury sold "short". On 30th October Mr. Woods instructed him to buy 12,500 Hayeshaw shares and on 5th November 1970 to buy a further 17,000. On 9th November Lord Norbury was instructed to buy further Hayeshaw shares and between that date and 19th November 27,000 shares were bought on the market. Between 20th November and 15th December a further 12,500 shares were bought. Whatever may be thought of the purchases prior to 9th November, it is clear that on and from that date the purchases took place in a take-over situation. By reason of Mr. Woods' Managing Directorship of Norbury Insulation and the fact that he was a settlor and potential beneficiary of the family trusts whose investments were held by Wiltshire, and on occasion dealt with on the instructions of Mr. Woods, Wiltshire was clearly an associate for the purposes of the City Code. Under Rule 30, no dealings of any kind should

have taken place by Mr. Woods and Wiltshire between 9th and 19th November and those taking place thereafter should have been reported in accordance with Rule 29. They were not.

On 15th December, it became known to Norbury Insulation that the interim figures for Hayeshaw showed unexpectedly a significant loss. After discussion at Arbuthnots, Norbury Insulation decided that it wished to withdraw its bid and Mr. Dick of Arbuthnots arranged to call at the Panel offices to secure Panel permission for the withdrawal. There is at this point some dispute as to the facts, but on it we prefer the recollection of Lord Norbury and find that after taking the decision to withdraw, Mr. Woods telephoned Lord Norbury and instructed him to sell all the Hayeshaw shares which he had purchased for Wiltshire at best immediately. Lord Norbury carried out this instruction after the close of business. Subsequently that afternoon, Mr. Dick was informed that the Panel would not consent to the withdrawal of the Norbury Insulation offer. That evening, Mr. Woods met Lord Norbury socially and although he may at that time have thought it possible that the Panel might, on a further application, agree to the withdrawal of the offer, he instructed Lord Norbury to cancel the sales as best he could without upsetting the jobbers and, if possible, to buy further Hayeshaw shares. Lord Norbury did succeed in cancelling all but 5,000 of the sales, and purchased a further 20,000 shares.

Copies of the contract notes in respect of the purchases by Wiltshire were in due course passed to Arbuthnot Latham, who were also Wiltshire's bankers, whose Banking Department received them in that capacity for settlement. The Corporate Finance Department of Arbuthnot Latham did not become aware of the transactions until the middle of December. At this time, there were market rumours suggesting a leak and a Stock Exchange enquiry into dealings was requested by Rowe & Pitman, brokers to Norbury Insulation, supported by Arbuthnot Latham. On 23rd December Mr. Dick called at the City Panel's offices with the senior partner of Lord Norbury's firm and with Lord Norbury himself. Mr. Dick explained that it had come to his notice that the brokers had been purchasing both Norbury Insulation and Hayeshaw shares for the account of Wiltshire and that Wiltshire had had control since June of over 10% of the Norbury Insulation equity. The purchases therefore ought to have been announced as required by the City Code; as it was, they were not announced until 24th December. The details of the transactions were listed in the formal offer document by Norbury Insulation dated 7th January.

Following its own enquiries, The Stock Exchange referred the matter for investigation by the City Panel. Lord Norbury and Mr. Woods were interviewed. Mr. Woods was accompanied by Sir Edward Beetham and Mr. Dick. Sir Edward Beetham and Mr. Thomas were also interviewed at a separate meeting. Both Lord Norbury and Mr. Woods insisted during these interviews that the purchase of Hayeshaw shares had been entirely at Lord Norbury's discretion, that Mr. Woods had been unaware of them at the time and embarrassed when he knew and that the transactions on 15th/16th December were a mere coincidence inspired by a hunch and/or a newspaper tip which Lord Norbury had about another possible investment which, however, he did not make. On 15th March, Lord Norbury (who had in the meantime taken legal advice) submitted to the Panel a formal statement in writing in which he said that in fact the transactions in Hayeshaw shares had been conducted entirely on the instructions of Mr. Woods. On 29th March, Mr. Woods submitted a written statement in which he said that his earlier denial to the Director General of having had any business dealings with Lord Norbury (whom he had said he only knew slightly on a social basis) was based on a misunderstanding as he thought the Director General was enquiring as to the business of Norbury Insulation. We regret that we were not able to accept Mr. Woods' statement as in all respects a full and accurate account of what had in fact happened.

The profits made by Wiltshire were, we are assured, paid over to Norbury Insulation in March after our enquiry began. This was done on the instructions of Mr. Thomas in his capacity as Protector of the family trusts.

At a hearing before the City Panel on 29th March, Lord Norbury and Mr. Woods voluntarily appeared before the Panel and accepted the procedure which was fully explained to them. They were joined by Sir Edward Beetham, Mr. Thomas and Mr. Dick, and presented their evidence and arguments. It was contended, on behalf of Mr. Woods and also Lord Norbury, that they were not familiar with the requirements of the Code. The City Panel think it right to say generally that they are not and are unlikely to be impressed by pleas of ignorance of the Code. The existence of the Code is very widely publicised; the General Undertaking, which companies give to The Stock Exchange on receiving quotation for their shares, includes an obligation to disclose any information required by the Code. It must be clearly understood by all concerned and particularly by company chairmen, managing directors and finance directors, as well as by brokers dealing during take-over situations, that it is their duty to familiarise themselves fully with the Code and to comply with its requirements.

Still less is the Panel able to accept ignorance of the Code as any excuse in this particular case. The Directors of Norbury Insulation had accepted the General Undertaking, and the company had been sent a copy of the Code. Mr. Thomas said that he had always had a copy in his possession. In regard to the notification of transactions which the Code requires, it is the duty both of company directors or others who give instructions for such transactions and for the brokers who carry them out to take steps to ensure that the proper disclosure is made.

It must be added that even if there had been no requirement in the Code, the purchases for which Mr. Woods gave instructions, of shares in a company for which the company of which he himself was Managing Director was to his knowledge intending to make a take-over offer were such as, according to ordinary canons of propriety, ought never to have been undertaken. Mr. Woods had not informed his Board that these purchases were being made and we are unable to accept his explanation of them.

Our conclusion in regard to Lord Norbury is that he was in the habit of accepting instructions from Mr. Woods on behalf of Wiltshire. He knew him to be a Managing Director of Norbury Insulation. It is not however established that he knew of the take-over situation before 19th November when the intention to offer was publicly announced. After that date, he did know this and conducted various transactions on the specific instructions of Mr. Woods. In particular, he carried through the transactions referred to on 15th/16th December. These transactions were not reported by him or by his firm as required by Rule 29 of the City Code. In interviews with the Panel at the executive level, he alleged that he had conducted these transactions at his own discretion and endeavoured to conceal the full facts. This attempt to deceive the Panel was made in collusion with Mr. Woods. On 15th March he made a formal statement in writing which we accept as substantially accurate. We shall report the facts as we have found them to the Council of The Stock Exchange for their consideration.

As to Mr. Woods, we are satisfied as we have said that the transactions in Hayeshaw shares were carried out on his express instructions and that he was in breach of Rules 30 and 29 of the City Code and of General Principle 10. In the enquiries by the Panel Executive he persistently denied the full facts and only disclosed some of them in his formal statement dated 29th March or in his evidence to us later that day. In the view of the Panel his conduct deserves the most severe censure for his breaches of the Code and his subsequent lack of frankness with the Panel. It appears that he did not at any relevant time inform the other two Directors of Norbury Insulation what he was

doing. The circumstances throw doubt upon his fitness to remain Managing Director of the Company.

The Panel have since been informed that Mr. Woods proposes to submit the question of his resignation to the Annual General Meeting of Norbury Insulation Group Ltd. to be held next month. At this meeting Mr. Woods would not vote his family shares.

2nd April 1971.