

THE TAKEOVER PANEL

BRITISH PRINTING AND COMMUNICATIONS CORPORATION PLC ("BPCC")/ JOHN WADDINGTON PLC ("WADDINGTONS")

During the late stages of the offer by BPCC for Waddingtons, representatives of BPCC telephoned a large number of Waddingtons shareholders who had not accepted the offer. The calls were made by BPCC staff who had been briefed and provided with a script from which, the Panel understand, they were instructed not to stray.

It is apparent, however, that those making the calls in some cases did expand on the script as they were drawn into conversation. Not being persons conversant with the Take-over Code, they thus entered very dangerous waters.

The Code does not ban any particular ways in which communication to shareholders may be made. The general principle of importance is that new information should be made available to all shareholders equally and at the same time. There is, in addition, a requirement regarding statements about acceptance levels: Practice Note 17 on Rule 24 says:-

- "(2) If, during an offer, any statements, either orally or in writing, are made by the offeror or its advisers about the level of acceptances to the offer or the number or percentage of shareholders who have accepted the offer, an immediate announcement should be made in conformity with this Rule."
(ie a detailed announcement through The Stock Exchange)

Remarks on the telephone in this case such as "nearly reached 50%" and "shortage by some 2/300,000 shares" were therefore in breach of the provisions of this Note. The Panel accepts that these breaches were inadvertent but considers that greater control should have been exercised over those telephoning. It was particularly dangerous to make any mention of the percentage of acceptances received or indeed the closeness to achieving 50%

since the period in which acceptances may be withdrawn had started. In this case, on the afternoon in question, withdrawals exceeded acceptances. Consequently at one stage the total figure for acceptances received fell by a net amount of approximately 3% while the telephoning was in progress.

The Panel makes the following recommendations for the future regarding telephone calls of this kind:-

- (1) There should be a script and the financial advisers should vet it rigorously from the viewpoint of the Code's requirements.
- (2) The calls should be made by experienced members of the financial adviser's staff unless the consent of the Panel has first been obtained.
- (3) Callers should not in any circumstances go beyond the script.
- (4) There should be very close supervision preceded by very careful briefings and the financial advisers must ensure that, if any relevant facts change while the telephoning exercise is in progress, the script is immediately amended.

A Practice Note will be issued in due course.

7 September 1983