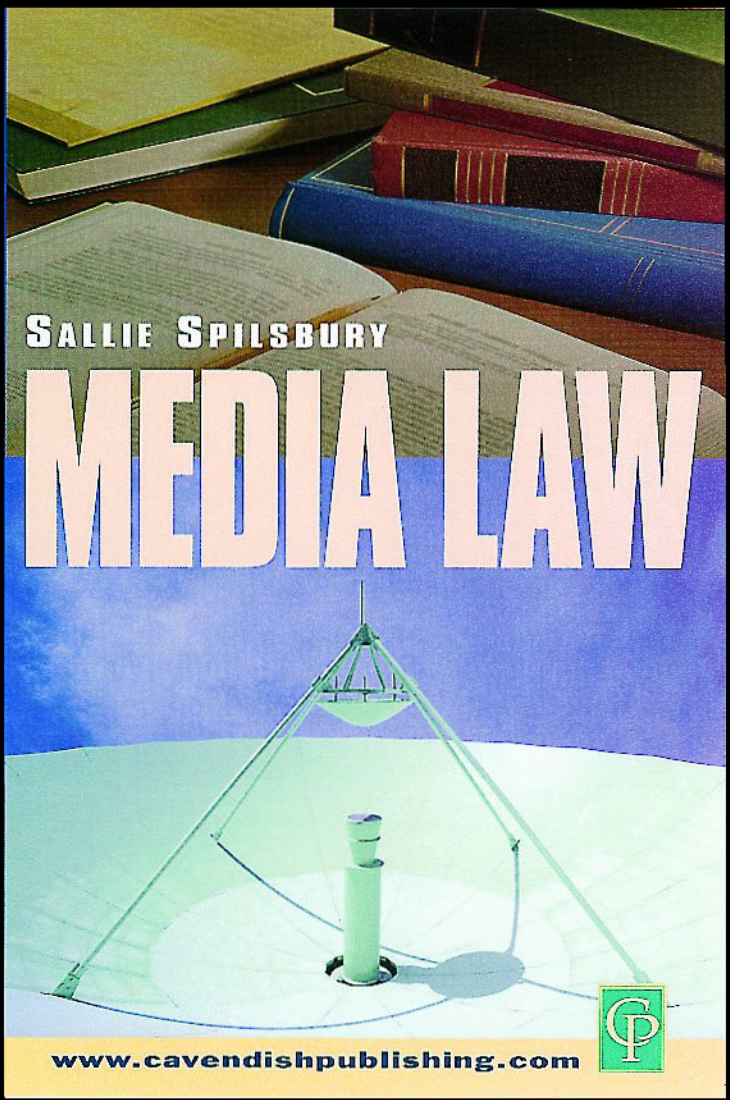
SALLIE SPILSBURY
MEDIA LAW
www.cavendishpublishing.com

DISCLOSURE OF JOURNALISTS' SOURCES

> So that journalists can effectively discharge their right, indeed their duty, to expose wrongdoing, abuse, corruption and incompetence in all aspects of central and local government, of business, industry, the professions and all aspects of society, they have to receive information, including confidential information, from a variety of sources including seedy and disloyal sources.[1]

It is a long standing journalistic tenet that the identity of sources of information provided to the media for possible publication should not be revealed. The Press Complaints Commission Code of Practice places print journalists under an obligation not to reveal their sources,[2] by providing that journalists have a moral obligation to protect confidential sources. The National Union of Journalists code of conduct contains a similar provision. The rationale for this principle was described by Morland J in *John v Express*[3] in the following terms: '... it is vitally important, if the press is to perform its public function in our democracy, that a person possessed of information on matters of public interest should not be deterred from coming forward by fear of exposure. To encourage such disclosure, it is necessary to offer a thorough protection to confidential sources generally.'

It follows that the empowerment of the courts to order a journalist to disclose his sources of information can act as an impediment to freedom of expression. Potential informants will be deterred from coming forward by the prospect that their identity might be made known. These are sentiments expressed in the judgment of the European Court of Human Rights in *Goodwin v UK*.[4] We shall see in this chapter that, whilst the English courts have paid lip service to these principles, some of their judgments have done little to guarantee the anonymity of sources, although a recent decision of the Court of Appeal offers the prospect of a more promising future.[5]

The English *law* on disclosure of sources is governed by statute – the Contempt of Court Act 1981. Section 10 of that Act provides as follows:

> No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it is established to the

1 Morland J in *John v Express* [2000] 1 All ER 280.
2 PCC Code of Practice, cl 15.
3 Morland J in *John v Express* [2000] 1 All ER 280.
4 *Goodwin v UK* (1996) 22 EHRR 123.
5 *John v Express* [2000] 3 All ER 267, CA.

satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.

The starting point in construing the section is that it is intended to protect the source from identification. At the time that s 10 came into force, it was heralded as 'a change in the law of profound significance'.[6] It established a specific right of immunity from disclosure which was enjoyed by the media. In doing so, it reversed the majority of the House of Lords in *British Steel Corpn v Granada*,[7] who had expressed the view that the media enjoyed no special privileges in this area.

When does s 10 apply?

The courts have given a wide interpretation to the circumstances where s 10 will apply. The immunity from disclosure applies both before and after publication of the information provided by the source. Even where the information never actually results in publication, the immunity provisions will still apply.[8]

The section grants immunity not only from disclosure of the identity of the source, but also from disclosure of material from which the source may be identified.[9] This immunity will apply notwithstanding that it may operate to defeat rights of ownership in the material (for example, under the law of confidence or copyright).

The immunity from disclosure is not absolute

Whilst recognising the importance of preserving the anonymity of a source, s 10 makes it clear that the media's immunity from disclosure is not absolute. In the instances set out in the Act, namely, where disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime, the court may require the journalist to disclose his source. But if the exceptions are not relevant to the case in question, the statutory immunity from disclosure will be absolute.[10]

The onus is on the party seeking disclosure to show that disclosure is necessary for one or more of the reasons set out in s 10.[11] This is a question of

6 Lord Scarman in *Secretary of State for Defence v Guardian Newspapers* [1985] AC 339.

7 *British Steel Corpn v Granada* [1981] AC 1096.

8 *O'Mara Books v Express* [1999] FSR 49.

9 *Trinity Mirror v Punch Ltd* [2000] unreported, 17 July. Where a party seeks delivery up of documents to try to determine how they were leaked, s 10 of the Act is a bar to such an application if there is a reasonable chance that the source of the information would be disclosed.

10 *Secretary of State for Defence v Guardian Newspapers* [1985] AC 339; [1984] 3 All ER 601; [1984] 3 WLR 986.

11 *Per* Lord Diplock in *Secretary of State for Defence v Guardian Newspapers* [1985] AC 339.

fact in each particular case. The claimant's evidence must be as specific as possible about the reasons why disclosure is sought. A bare assertion of necessity will not suffice. If clear and specific evidence is not adduced, disclosure ought not to be ordered.[12]

Let us examine how the courts have interpreted the exceptions.

The interests of justice

The phrase 'in the interests of justice' did not appear in the original Contempt of Court Bill, which confined itself to removing immunity from disclosure where it was necessary in the interests of national security or the prevention of disorder or crime. The introduction of the interests of justice exception can be traced back to the committee stage of the Bill, when the then Lord Chancellor, Lord Hailsham, recommended that an exception be introduced where disclosure was vital 'for the administration of justice'. His exception was intended to apply to legal proceedings where it was necessary for the claimant to know the source of information in order to make out its case – for example, a defamation case where the claimant is seeking to show the defendant published a statement maliciously. However, the text of the Act does not reflect Lord Hailsham's amendment. Instead of limiting the exception to immunity where it was necessary for the *administration of justice*, the drafter used the words 'the interests of justice' – a vague and undefined term which lends itself to a number of interpretations. As Lord Hailsham observed, 'What are the interests of justice? I suggest that they are as long as the judge's foot'.[13]

In *Secretary of State for Defence v Guardian Newspapers Ltd*,[14] Lord Diplock sought to limit the interests of justice exception. He expressed the view that s 10 used the word 'justice' in the technical sense of the administration of justice in the course of legal proceedings already in existence. Lord Diplock went on to say that, where the only or predominant purpose of a legal action was to obtain possession of a document in order to identify the source of a leak, he found it impossible to envisage any case where it would be *necessary* in the interests of justice to order disclosure. The *Guardian* case concerned an application for disclosure in the interests of *national security*. Lord Diplock's narrow interpretation of s 10 was therefore *obiter*. It was, however, followed by the Court of Appeal in *Maxwell v Pressdram*,[15] a defamation case in which the claimant wished to know the identity of the defendant publication's source of information. The court refused to order disclosure, finding that as a question of fact it was not *necessary* to make such an order in the context of the

12 *Per* Lord Fraser in *Secretary of State for Defence v Guardian Newspapers* [1985] AC 339. The court requires evidence and not assumption.

13 *Hansard*, HL, 10.2.1982, Vol 416, col 2.

14 *Secretary of State for Defence v Guardian Newspapers* [1985] AC 339, p 350.

15 *Maxwell v Pressdram* [1987] 1 WLR 298.

proceedings. The judge was of the view that the claimant's interests could be protected by a statement in his summing up to the jury without any need for the source to be identified.

However, in the later case of *X v Morgan-Grampian*,[16] the House of Lords rejected Lord Diplock's interpretation of the meaning of the interests of justice as too narrow. The Law Lords referred to 'the interests of justice' as extending to enabling a person to: (a) exercise important legal rights; and (b) protect himself from serious legal wrongs, regardless of whether the person resorts to legal proceedings to attain those objectives. On this wider definition, enabling an employer to know which of its employees has leaked confidential information could be said to be in the interests of justice because it would put the employer in a position where it could terminate the employment of the disloyal employee in order to protect itself from further disclosures. This would be the case even though the employer may not have to commence legal proceedings in order to be in a position where it could dismiss the employee. In the words of Lord Oliver, 'the interest of the public in the administration of justice must, in my opinion, embrace its interest in the maintenance of a system of law within the framework of which every citizen has the ability and the freedom to exercise his legal right to remedy a wrong done to him … whether or not through the medium of legal proceedings'.

The breadth of concept of the interests of justice has, as we shall see below, substantially reduced the media's immunity from disclosure.

National security

The case of *Secretary of State for Defence v Guardian*[17] concerned the leak of confidential information by a government employee. The Crown sought disclosure of the name of the employee on the ground that the disclosure was necessary in the interests of national security. The House of Lords favoured a narrow interpretation of 'national security'. It stressed that, in deciding whether disclosure of the identity of the source was necessary in the interests of national security, it is the circumstances and subject matter of the material which has been disclosed that matters, and not just the category of persons who were lawfully entitled to see the material. It will not always follow that, because a document is restricted to a limited high level circulation, its 'leak' will constitute a risk to national security. If a Crown employee were in breach of trust by disclosing material to the media, it would not necessarily follow that national security has been endangered. The court observed that there must be many documents dealing with parliamentary, political and other matters unconnected with national security which a government will wish to

16 *X v Morgan-Grampian* [1990] 2 WLR 1000; [1990] 2 All ER 1; [1991] 1 AC 1.

17 *Secretary of State for Defence v Guardian Newspapers* [1985] AC 339; [1984] 3 All ER 601; [1984] 3 WLR 986.

be confined to the eyes of a few in high places. However, that will not mean that any leak of their contents will be damaging to national security.

The prevention of disorder or crime

In *Re An Inquiry*,[18] the House of Lords were called on to consider the phrase 'the prevention of … crime'. In their Lordships' view, the phrase referred to the prevention of crime generally. The detection of and punishment for a crime would be an example of something which serves to prevent crime generally because it would have an overall deterrent value. Accordingly, disclosure of the identity of a source could be ordered where it was necessary for the detection or punishment of a particular crime.

The courts have not been called upon to consider the necessity of disclosure for the prevention of disorder. Most instances of disorder will involve crimes – for example, public order offences. It would not be surprising if the courts were to adopt a similar approach to the interpretation of 'disorder'.

The meaning of 'necessary'

National law

If disclosure of a source is to be ordered, it must be necessary in at least one of the interests specified in s 10. In *Re An Inquiry*,[19] Lord Griffiths observed that the word 'necessary' has a meaning lying somewhere between 'indispensable' on the one hand and 'useful' or 'expedient' on the other. It was, he said, a question for the judge to decide which end of the scale of meaning he would place it on the facts of any particular case. The nearest paraphrase he could suggest was 'really needed'.

It has been generally accepted at all levels of the judiciary that the word 'necessary' has a higher meaning than 'expedient'. It would not, therefore, be sufficient for a claimant to show that disclosure by the media offers the easiest way of identifying the leak. Similarly, an order for disclosure will not be necessary where there are other means of establishing the identity of the source, unless the case has a special urgency.[20] In the *Special Hospital Service* case, the judge observed:

> What weighs in my mind in considering whether it is necessary to make an order are:
>
> (1) the failure of … members of the management to make any attempt to discover the source other than making an application to the court, and

18 *Re An Inquiry* [1988] 2 WLR 33; [1988] 1 All ER 203.

19 *Ibid*.

20 *Special Hospital Service Authority v Hyde* [1994] BMLR 75.

(2) the absence of any evidence to show that inquiries, if made, would not have been fruitful.

In *John v Express*,[21] Lord Woolf agreed with this observation, noting:

> ... before the courts require journalists to break what a journalist regards as a most important professional obligation to protect a source, the minimum requirement is that other avenues should be explored … It cannot be assumed that it will not be possible to either find the culprit or, at least, to narrow down the number of persons who could have been responsible.

In the *John* case, a draft written opinion from counsel found its way to a journalist. The Court of Appeal placed great weight in deciding that disclosure was not necessary on the fact that no internal inquiry had been held before the application for disclosure was made.

A party who seeks disclosure of the identity of a source should try to adduce evidence to deal with these points where relevant.

The European Court of Human Rights

The European Court of Human Rights has considered the word 'necessary' in the context of whether an order that the identity of a source be disclosed is in contravention of Art 10 of the European Convention on Human Rights.[22] An order to disclose a source is, the Court held, a restriction on freedom of expression. Pursuant to the provisions of Art 10(2) any such restriction must be necessary in a democratic society. The restrictions must be narrowly interpreted and the necessity for them convincingly established. The restriction must also be proportionate to the aim pursued. The right to freedom of expression as enshrined in Art 10 of the Convention required that any order to reveal a source's identity must be limited to exceptional circumstances where vital public or individual interests are at stake. In each instance where the Court has to decide whether disclosure was to be ordered, the Court should consider whether exceptional circumstances existed in that particular case.

The Strasbourg Court's interpretation of 'necessary' is clearly more rigorous than the 'sliding scale' approach identified by English national courts. National courts are obliged to take Strasbourg jurisprudence into account when deciding cases which involve a question concerning Convention rights.[23] This requirement may lead to the national courts following the approach of the Strasbourg Court more closely. The Court of Appeal decision in *John v Express*[24] may herald the beginning of this approach.

---

21 *John v Express* [2000] 3 All ER 267, CA.

22 *Goodwin v UK* (1996) 22 EHRR 123.

23 HRA 1998, s 2.

24 *John v Express* [2000] 3 All ER 267, CA.

The application of s 10 – the interests of national security and the prevention of disorder or crime

In those cases where the courts have been called on to consider whether disclosure of a source is necessary in the interests of national security or the prevention of crime or disorder, the courts have treated the question as a straightforward question of fact. In *Re An Inquiry*, the House of Lords expressly rejected the need to balance competing interests. Lord Reid said:

> The judge in deciding whether or not a journalist has 'reasonable excuse' for refusing to reveal his sources is not carrying out a balancing exercise between two competing areas of public interest. The court starts with the presumption that the journalist's refusal to reveal his sources does provide a reasonable excuse for refusing to answer the inspector's questions and the burden is upon the inspectors to satisfy the judge *as a question of fact* that the identification of his source is necessary for the prevention of crime.

The interests of justice

We saw in the earlier part of this chapter that the phrase 'interests of justice' has been interpreted widely by the courts. This wide definition has meant that the courts have generally not applied s 10 in relation to the interests of justice in the same way that they have in relation to the national security and prevention of crime.

In *John v Express*,[25] the Court of Appeal observed that s 10 imposes a two stage process of reasoning on the court in relation to the interests of justice. First, the judge has to decide whether disclosure is necessary for one of the reasons set out in the Act. If so, the judge is left with the task of deciding whether, as a matter of discretion, he should order disclosure. This involves a second stage of reasoning – and it is this second stage which is not generally required in relation to the national security/ prevention of crime exceptions.

The second stage involves weighing the conflicting interest involved – the need for disclosure on the one hand and the need for the protection of the source on the other. Lord Woolf observed that 'it is important that when orders are made requiring journalists to depart from their normal professional standards, the merits of their doing so in the public interest are clearly demonstrated'.

The first instance decision in the *John* case[26] had found that the disclosure of the identity of the source who supplied the draft opinion was necessary in the interests of justice in order to safeguard the integrity of legal professional privilege without which the trust and confidence in the legal system would collapse.

---

25 *John v Express* [2000] 3 All ER 267, CA.

26 *Ibid*.

The Court of Appeal disagreed, holding that even if it were necessary in the interests of justice to order disclosure, the first instance order should not be allowed to stand. It would be wrongly interpreted by the public as an example of lawyers attaching a disproportionate significance to the danger to their professional privilege while undervaluing the interests of journalists (and therefore the public).

Earlier case law

The Court of Appeal's decision in the *John* case is something of a departure from the way in which the courts had previously applied the balancing exercise inherent in the second stage of the interests of justice test.

In the *Morgan-Grampian* case,[27] the House of Lords had held that the question whether disclosure is necessary in the interests of justice is a balancing exercise which would turn on the facts of each particular case. Lord Bridge observed as follows:

> It will not be sufficient, *per se*, for a party seeking disclosure of a source protected by s 10 to show merely that he will be unable without disclosure to exercise his legal right or to avert the threatened legal wrong on which he bases his claim in order to establish the necessity of disclosure. The judge's task will always be to weigh in the scales the importance of enabling the ends of justice to be attained in the circumstances of the particular case on the one hand against the importance of protecting the source on the other hand …

He went on to say:

> It would be foolish to attempt to give comprehensive guidance as to how the balancing exercise should be carried out. But it may not be out of place to indicate the kind of factors which will require consideration … One important factor will be the nature of the information obtained from the source. The greater the legitimate public interest in the information which the source has given to the publisher or the intended publisher, the greater will be the importance of protecting the source. But another and perhaps more significant factor which will very much affect the importance of protecting the source will be the manner in which the information was itself obtained by the source. If it appears to the court that the information was obtained legitimately, this will enhance the importance of protecting the source. If it appears to the court that the information was obtained illegally, this will diminish the importance of protecting the source unless, of course, this factor is counterbalanced by a clear public interest in publication of the information, as in the classic case where the source has acted for the purpose of exposing iniquity.

The *Morgan-Grampian* case concerned a confidential document about the financial affairs of the claimant company (Tetra). The document was removed from the claimant's premises and its contents were revealed to a journalist, Mr

27 *X v Morgan-Grampian* [1990] 2 WLR 1000; [1990] 2 All ER 1; [1991] 1 AC 1.

Goodwin, who promised not to reveal the identity of the informant. The claimant sought, and obtained, an interim injunction to restrain the disclosure of the information which the source had disclosed and sought an order to require the delivery up of the journalist's notes in the hope that they would reveal the identity of the informant and enable them to recover the missing document.

Applying the balancing exercise to determine whether disclosure of the notes were necessary, Lord Bridge, who gave the leading speech, held that the notes should be delivered up. The importance to the claimants of obtaining disclosure lay in the threat of severe damage to their business and consequentially to the livelihood of their employees which would arise from disclosure of what was contained in the document. The threat could, according to the House of Lords, only be diffused if Mr Goodwin's source could be identified. On the other hand, the importance of protecting the source was much diminished by the source's complicity in the breach of confidentiality. This was not counterbalanced by any legitimate interest which publication of the information was calculated to service. According to Lord Bridge, 'disclosure in the interests of justice is, on this view of the balance, clearly of preponderating importance so as to override the policy underlying the statutory protection of sources'.

The application of the balancing exercise

The House of Lords

The problem with the interest of justice balancing exercise as implemented by the House of Lords in the *Morgan-Grampian* case is that it is likely to lead to disclosure of the identity of the source. The court is, in essence, weighing unquantifiable and non-specific arguments in favour of freedom of expression and the so called chilling effect on the one hand against, on the other hand, specific and quantifiable claims about the potential for further harm if the leak is not identified. Look how Donaldson LJ expressed the balance in the *Morgan-Grampian* case when he purported to weigh 'the *general* public interest in maintaining the confidentiality of journalistic sources against the necessity for disclosure in a *particular* case'. The balance is the tangible against the hypothetical. The tangible will be accorded priority in the vast majority of cases. The presence of a chilling effect on sources coming forward has thus effectively been consigned to the back burner.

The European Court of Human Rights

When the European Court of Human Rights came to consider the *Morgan-Grampian* case,[28] its application of the balance came down in favour of non-disclosure of the notes.

28 *Goodwin v UK* (1996) 22 EHRR 123.

It held that the order for disclosure of the source was an interference with freedom of expression.

In order to be a legitimate interference it must be necessary in a democratic society. The necessity must be convincingly established. The order to disclose the source had to be viewed in the light of the fact that publication of the information had already been successfully restrained by way of interim injunction. The Court conceded that Tetra did have further legitimate reasons for wanting disclosure (namely, the prevention of any further disclosures and the termination of the errant employee's contract), but the interest of a democratic society in a free press outweighed Tetra's residual interests. The disclosure order had a potential chilling effect on the readiness of people to give information to journalists. The Court observed that the protection of the sources from which journalists derive information is an essential means of enabling the press to perform its important function of 'public watchdog' in a democratic society. The Court also took into account the fact that, although about six years had passed since the case was before the House of Lords, Tetra had no further harm arising from unauthorised disclosures despite the continuing anonymity of the leak. This latter information had not, of course, been available to the House of Lords.

The application of the balance by the House of Lords and the European Court of Human Rights shows a difference in emphasis between the rights of the parties (in particular Tetra) and the wider interest of the general public. The House of Lords paid lip service to the wider public interest, but clearly felt that it was outweighed by the importance of reducing the potential for serious damage to Tetra if the source was not identified. The European Court of Human Rights accorded priority to the wider public interest, envisaging that disclosure should only be ordered in exceptional cases. The Court of Appeal decision in the *John* case[29] was in line with the decision of the Strasbourg Court because it also accorded real weight to the general public interest of the general public in imparting and receiving information rather then consigning it to the background.

In *Camelot Group v Centaur Ltd*,[30] the Court of Appeal sought to reconcile the judgments of the European Court of Human Rights and the House of Lords in the *Morgan-Grampian* case in a case involving very similar facts to *Morgan-Grampian*. The claimant sought disclosure of a leaked document to assist it in identifying the source of the leak. The Court of Appeal considered the judgment of the House of Lords and the European Court. It concluded that the tests applied by the two courts were substantially the same, albeit that the courts reached different conclusions. The Court of Appeal drew the following principles from the cases:

29 *John v Express* [2000] 3 All ER 267, CA.

30 *Camelot Group v Centaur Ltd* [1998] 2 WLR 379; [1999] QB 124; [1998] 1 All ER 251.

(a) there is an important public interest in the press being able to protect the anonymity of its sources;

(b) the law does not enable the press to protect that anonymity in all circumstances. Hence, the exceptions set out in s 10;

(c) when assessing whether an order forcing disclosure of the source should be made, a relevant but not conclusive factor is that an employer may wish to identify an employee so as to exclude him from future employment;

(d) whether sufficiently strong reasons are shown in any case to outweigh the important public interest in the protection of sources will depend on the facts of each case. The mere fact that there is a disloyal employee present will not invariably lead to an order for disclosure;

(e) great weight should be attached to judgments, particularly recent judgments on the disclosure of sources, in order to achieve consistency in decision making when applying s 10.

In the *Camelot* case, the court heard evidence that the continued anonymity of the informant posed a future threat of further disclosure (as in the *Morgan-Grampian* case) and that the continued unidentified presence of the disloyal employee on Camelot's staff would be damaging to staff relations and morale. On the other side of the balance, the court examined the publication at issue in the case and inquired whether it was itself in the public interest. The leaked document had contained the claimant's unpublished annual accounts. The accounts were due to be published in the press a few days later, but at the time of disclosure they were the subject of an embargo. The court did not consider that it would further the public interest to secure publication of the accounts a week earlier than planned. On the other hand they felt that the early publication had enabled the defendant and the informant to further their private interests.

The Court of Appeal were following the approach of the House of Lords in *Morgan-Grampian*, placing the emphasis on private rights and the individual nature of the source, and barely giving credence to the wider public interest in securing confidence amongst potential informants. Indeed, Schiemann LJ dismissed the chilling effect in the following terms:[31]

> To some extent, the effect of disclosing the identity of one source who has leaked important material can have a chilling effect on the willingness of other sources to disclose material which is important. If the other sources are put in the position of having to guess whether or not the court will order disclosure of their names then they may well not be prepared to take the risk that the court's decision will go against them. That is a consideration, however, which will only be met if there is a blanket rule against any disclosure. That is, however, not part of out domestic law or of the Convention. So the well

31 *Camelot Group v Centaur Ltd* [1998] 1 All ER 251, p 261.

> informed source is always going to have to take a view as to what is going to be the court's reaction to his disclosure in the circumstances of his case.

The Court of Appeal accordingly ordered disclosure. There was the risk of future leaks if the source was not uncovered (this will almost always be present in such cases), and the continued presence of a disloyal employee was damaging to morale and staff relations (again, something which will almost always be present). The actual publication in question could not be said to be in the public interest given that the contents were due to be made public a few days later in any event. Therefore, the balance came down in favour of disclosure. Although the court was at pains to point out that the presence of a disloyal employee will not automatically lead to disclosure, its approach suggests that it usually will unless the material which is disclosed happens to be on a matter which is in the public interest (for example, if it exposes wrongdoing).

The future

The apparent change of approach demonstrated by *John v Express* has been emphasised above. The *John* case postdates both the *Morgan-Grampian* case and the *Camelot* case. The media must hope that future cases follow the spirit of the *John* decision and afford real weight to the wider public interest in freedom of expression if the anonymity of sources is to be truly protected.

The Human Rights Act 1998

The coming into force of the Human Rights Act may have a profound change in the way that s 10 is applied – indeed, it is one of the major reasons for the 'media friendly' Court of Appeal decision in the *John* case. As explained in Chapter 1, the emphasis in the jurisprudence of the European Court of Human Rights is on the preservation of the right to receive and impart information and ensuring a free media. As the *Goodwin* case shows, any exceptions to this right must be narrowly interpreted, both in the sense of what is 'necessary' and in the interpretation of 'the interests of justice'. The specific interest of an applicant in a particular case ought not to be accorded precedence over the protection of the source unless the interests of justice really do demand it. The fact that the information is, or is about to be made public in any event is a factor which ought to be taken into account.[32] It is to be hoped that the future offers the media a rosier picture than they have been presented with to date.

32 HRA 1998, s 12.

Hints and tips for the media

(a) The media should avoid making unqualified promises that they will not disclose the identity of their source. The court may order disclosure pursuant to s 10 of the Contempt of Court Act 1981. The fact that a journalist has promised anonymity to the source will not provide a defence. The media entity in question and the individual journalist may be in contempt of court if it refuses to comply with a court order.

(b) If the media receive documents from a source from which the source may be identified, serious consideration should be given to the destruction of the documents by the media *before* any legal action is taken to recover the documents or to seek the identity of the source. However, where the documents are original documents of or belonging to any government department, it will be a criminal offence dishonestly to destroy or deface such documents.[33] Once legal proceedings have been begun, or where the media entity is aware that they are contemplated, documents must *not* be destroyed or defaced. Any such action is likely to be a contempt of court.

(c) The media may be able to resist disclosure of information where it would incriminate them in a crime, for example, receiving stolen goods.[34] This is known as the privilege against self-incrimination. The privilege will not apply in civil proceedings involving intellectual property claims or 'commercial information'. It will not, therefore, apply in cases where proceedings are brought for breach of confidence or copyright infringement.

33 Theft Act 1968, s 20.

34 Supreme Court Act 1981, s 72.