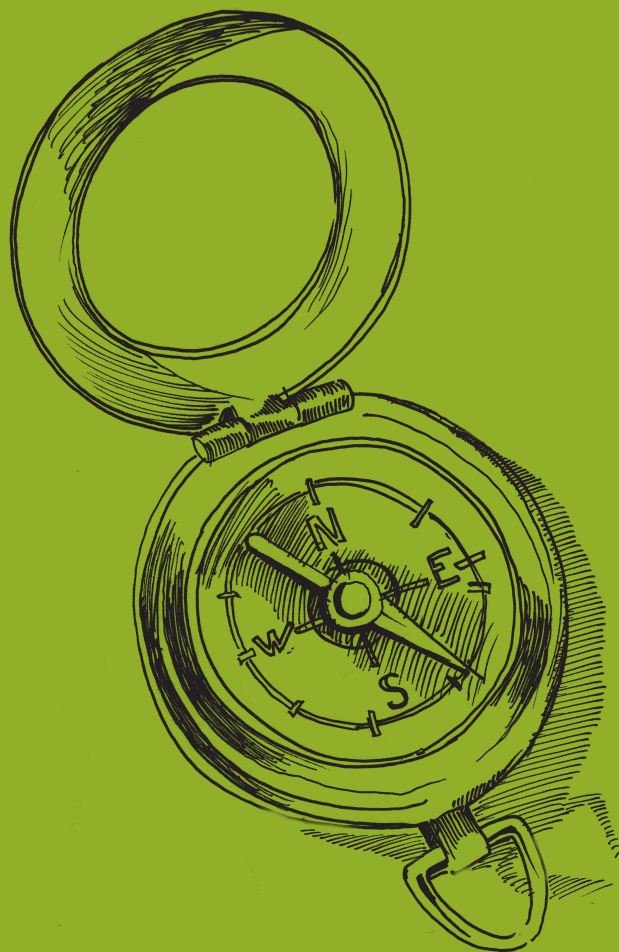


Which Way Now?

Evaluating the
Government's
Fraud Review



The Right Direction for Fraud Policy

The Fraud Advisory Panel has consistently urged a comprehensive national response to financial crime. The Government's Fraud Review captures the spirit of the crisis and echoes many of the Panel's recommendations but it must be followed by

Seven steps are essential:

- Recognise that the state has failed to protect the citizen against fraud. The low priority given to the problem leaves even serious frauds uninvestigated, victims floundering and policies uncoordinated. The Government should make fighting financial crime a criminal justice priority.
- End the reluctance to spend the relatively small sums of additional money required for public protection – the Review identifies a maximum cost of £27 million. Since annual fraud losses run to a minimum of £16 billion this is excellent value for taxpayers' money.
- Strengthen the police response at both local and national level via new funding, new structures including a National Lead Force and the designation of fraud as a policing priority. Civilian expertise should be used to supplement police investigators, not to replace them.
- Reform the courts and legal rules in order to deliver speedier and more comprehensive justice. A start should be made by lifting onerous obligations on investigators and prosecutors which are snarling up cases. A cadre of specialist fraud case judges is another vital step.
- Task an independent authority to facilitate improved co-ordination, develop a national fraud strategy and monitor the performance of government departments as well as front line agencies. Britain needs a permanent and powerful official voice on fraud.
- Take fraud victims seriously. It is unacceptable that the police often refuse to accept crime reports. It is wrong that so many cases go uninvestigated. It is a mistake to regard fraudsters as essentially low risk criminals – the harm they do must be seen to be believed and many are in organised crime.
- Improve our knowledge of fraud but never let data gaps become an excuse for inaction. We already know enough about the damage fraud causes to make a much more serious effort against it.

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The Fraud Advisory Panel

is an independent body with members from both the public and private sectors. Its role is to raise awareness of the immense social and economic damage caused by fraud and to develop effective remedies.

The Panel works to:

- Originate proposals to reform the law and public policy
- Develop proposals to enhance investigation and prosecution
- Advise business on prevention, detection and reporting
- Assist in improving education and training in business and the professions, and amongst the general public
- Establish a more accurate picture of the extent, causes and nature of fraud.

Members include representatives from the legal and accountancy professions, industry associations, financial institutions, government agencies, law enforcement, regulatory authorities and academia.

The Panel works to encourage a truly multi disciplinary perspective on fraud. No other organisation has such a range and depth of knowledge, both of the problem and of ways to combat it.

The Panel was established in 1998 through a public spirited initiative by the Institute of Chartered Accountants in England & Wales. It is now a registered charity and company limited by guarantee, funded by subscription, donation and sponsorship.

Contents

- 3 **Chairman's Overview:**
 - The Fraud Review as a Springboard for Action
- 4 **A Year in the Life of The Fraud Advisory Panel**
 - 4 Thinking, Advising, Educating
 - 5 Membership and its Benefits
 - 6 The Panel's Trustees
 - 6 Corporate Members
- 8 **Which Way Now? The Panel Evaluates the Government's Fraud Review**
- 9 **The Fundamental Issues**
 - 9 Immense Financial Loss and Human Damage
 - 10 A Failure of the State
 - 10 Fighting Fraud is Value for Money
 - 11 Undermining Police Standards
 - 11 Blaming the Victim?
- 12 **Measuring and Reporting Fraud**
- 14 **Developing a National Fraud Strategy**
 - 15 Responsibility without Power?
 - 15 Tasking and Supporting a National Authority
- 16 **Policing Fraud**
 - 16 Strengthening the Police Response
 - 17 Supplementing, not Replacing
 - 17 Safeguards for Police Private Sector Partnerships
- 18 **More Effective Investigations, Prosecutions and Trials**
 - 18 Justice Frustrated
 - 19 Plea Bargaining
 - 19 Resourcing the Prosecution
 - 19 Training for Judges and Lawyers
- 20 **Punishing Fraud**
 - 20 Sentencing Policy
 - 20 Expediting Justice
 - 21 Fraudsters are Dangerous

The Fraud Review as a Springboard for Action

The Fraud Advisory Panel has long called for a comprehensive response from Whitehall to the devastating and growing harm caused by financial crime. The Government's Fraud Review, published in July, is a visible sign that the problem is being taken seriously.

The ministers particularly the Attorney General, Lord Goldsmith who commissioned the Review, and the officials who conducted it, deserve high praise for its many valuable recommendations. It is also profoundly helpful when government is prepared to be open about both the extent of the problem and the serious shortcomings in the state's response.

The Review recognises that "we are all victims of fraud"; that the harm it does is second only to the trafficking of the most dangerous drugs; and that the risks of maintaining the present under resourced and uncoordinated approach are immense. It is a potential springboard for meaningful action.

The following pages offer the Panel's evaluation of the Review's analysis and recommendations. The latter are not yet, for the most part, government policy. Ministers have initiated a consultation and we wish to assist them by playing a full part in the

debate. Our response naturally provides more detail on those comparatively few areas where we see matters differently but that should not obscure our warm welcome for the Review as a whole. Our concern is that its promise manifests itself in public policy.

The key issue is funding. Given that the entire package would cost no more than 27 million there should be no doubt of the immense value for taxpayers' money which it offers. 10 and 11 Downing Street please note.

The Fraud Advisory Panel is proud that many of its proposals have made their way into the Review. The Panel has earned a reputation as an authority on fraud. That authority, built up over eight years, is the outcome of many sacrifices of time and energy made by an outstanding body of volunteers. They are ably supported by Mia Campbell, our excellent Manager; Martin Robinson, our Education and Training consultant; and by Simon Pearce who prepared this document.

Gratitude is also owed to our corporate members, the most generous of whom remains, as it has been since the Panel's foundation, the Institute of Chartered Accountants in England & Wales.

Rosalind Wright CB
October 2006

A Year in the Life of the

The Panel is a registered charity. Every penny raised is ploughed back into its activities. Governed by a Board of Trustees, it is chaired by Ros Wright, a former Director of the Serious Fraud Office (see biographies on pages 6-7). Much of the Panel's detailed work is conducted via three multi disciplinary working groups: Investigation, Prosecution and Law Reform; Cybercrime; and Education, Events and Training. The Panel is assisted by a full time Manager, Mia Campbell; a Webmaster, David Ovenden; and an Education and Training Consultant, Martin Robinson.

Thinking, Advising, Educating

In the last twelve months the Panel has delivered a strong range of publications and events.

i Contributing to Policy Development

- Establishing the *Bringing to Book* Special Project Group which published detailed proposals to reform the law and court procedures as they relate to cases of serious fraud.
- Convening a ground breaking expert seminar on victims of fraud and publishing the findings in the Panel's first occasional paper (both as part of an ongoing project to explore the wider human and social impact of fraud .
- Reporting on how perceptions of the data protection legislation affects private sector fraud investigations.

- Submitting a response to the All Party Parliamentary Group on Identity Fraud on immediate steps government could take to combat the problem.
- Holding two members' roundtables in order to contribute to the Government's Fraud Review.
- Devising a major debate on the role of expert witnesses in serious fraud cases.
- Making proposals for revising the Financial Services Authority *Handbook*.
- ii Helping Business and the Professions
 - Publishing a second edition of *Fighting Fraud: A Guide for SMEs*.
 - Providing guidance for industry on the likely effects of the Government's Fraud Bill.
 - Issuing *Cybercrime: Protecting Your Mobile Device* in order to raise awareness of threats to data transmission.
 - Disseminating *Sample Fraud Policy Statements* to help organisations formulate their own anti fraud strategies.
 - Staging major conferences on internal audit in conjunction with the Institute of Internal Auditors UK and Ireland), film and music piracy, and money laundering.

Fraud Advisory Panel

- Running seminars on procurement fraud, corporate fraud and cybercrime's threat to SMEs.

The Panel offers a free one-hour generic training presentation entitled *Fraud: Is this a risk you manage?*. Subsequent sessions cost £500 plus VAT. Beneficiaries have included financial institutions, charities, museums, local and central government.

Further information on all the above, together with forthcoming activities, is available on the Panel's website www.fraudadvisorypanel.org.

Membership and its Benefits

The Panel has 43 corporate members listed on pages 6-7, 178 individual members and 36 observers. Individual membership costs £50 a year. Corporate membership costs £1,000 and allows up to 20 employees to participate in Panel activities. All members are required to conform to a Code of Conduct.

Key benefits of membership include:

- Influencing public policy via the Panel's research and proposals.
- Participation in any of the Panel's multi-disciplinary working groups: Investigation, Prosecution and Law Reform, Cybercrime and Education, Events and Training.

- Opportunities to network and exchange information with experts from banking and insurance, accountancy, the law, academia, IT and security.
- Attendance at guest speaker meetings with the opportunity to hear expert, and often alternative, points of view.
- Preferential rates for Panel briefings, seminars and conferences.
- Entitlement to a free one hour training session on a fraud related subject of the member's choice.
- Access to the members' website.
- Recognition as a corporate member through listings on the public website and in the annual review.

For further information please contact Mia Campbell at the Fraud Advisory Panel, Chartered Accountants' Hall, PO Box 433, Moorgate Place, London, EC2P 2BJ; 020 7920 8721; info@fraudadvisorypanel.org.

The Panel's Trustees



Rosalind Wright CB
Chairman since May 2003;
Chairman, Supervisory Board, OLAF
(the European Union's Anti fraud
Office); a Director of the Office of
Fair Trading; independent member
of the Department of Trade and
Industry's Legal Services Group and
the Insolvency Service Steering Board;
Vice Chairman, Jewish Association for
Business Ethics; Bencher of the Middle
Temple; Director of the Serious Fraud
Office 1997-2003; General Counsel
and Executive Director in charge of
the Investor Protection Policy & Legal
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Authority 1987-97; Head of the DPP's
Fraud Investigation Group for the City
and Metropolitan Police areas 1983-1987.



Felicity Banks MSc FCA
Head of Business Law at the Institute
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Chairman, Investigation, Prosecution
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Inside Fraud Bulletin; UK representative
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International Chambers of Commerce;
member of the Home Office panel on
the future of internet crime.



James Perry
Consultant on anti money laundering
and anti fraud services; former
Detective Chief Superintendent
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Commander in Charge of its Economic
and Specialist Crime Unit; former
Chair of the Association of Chief
Police Officers' National Financial
Investigation Working Group.

Corporate Members

Accountancy Investigation & Discipline Board, Accountants' Joint
Association of Chartered Certified Accountants, Association of Ce
BDO Stoy Hayward LLP, Bentley Jennison, Bishop International L
Chantrey Vellacott DFK LLP, CIFAS – the UK's Fraud Prevention
Denton Wilde Sapte, Finance & Leasing Association, Financial Ser
HBOS Plc, Institute of Chartered Accountants in England & Wale
Law Society of England & Wales, Law Society of Scotland, Legal &
Merrill Lynch Europe Plc, MHA Consulting, NHS Counter Fraud
PricewaterhouseCoopers LLP, Protiviti Ltd, Prudential Plc, Royal



Alex Plavsic

Head of Financial and Fraud Investigation at KPMG Forensic; conducted independent reviews for regulators including the Bank of England, the Financial Services Authority and government departments; investigated serious fraud cases including Polly Peck and Group Torras.



Monty Raphael

Senior Partner, Peters & Peters until April 2005; now its Head of Fraud and Regulatory practice; expert on money laundering legislation; Director of Transparency International UK ; conducted fraud enquiries for regulators, Inland Revenue and HM Customs & Excise; Visiting Professor in Law at Kingston University; former President, London Criminal Courts Solicitors Association; founder of the Business Crime Committee of the International Bar Association and Chair of its Anti Corruption Working Group; Honorary Solicitor to the Howard League for Penal Reform.



Ken Farrow

Director of Fraud Services at Control Risks Group, providing fraud /anti money laundering preventative and investigative services; formerly Head of the City of London Police Economic Crime Department; Chair of the Association of Chief Police Officers National Working Group on Fraud.



Will Kenyon

Partner in PricewaterhouseCoopers' Forensic Services group; founding head of Forensic Investigations, PricewaterhouseCoopers GmbH, Germany 1998 2001; involved in investigations and recovery actions for some of the most significant fraud cases of the last decade.



Education and Training Consultant: Martin Robinson FCIS, FIIA, Chairman, Education, Events and Training Working Group: independent risk and audit consultant; Training Development Adviser to the Institute of Internal Auditors UK and Ireland; Audit Adviser to the Institute of Chartered Secretaries and Administrators.

Disciplinary Scheme, Argos Ltd, Association of British Insurers, Certified Fraud Examiners USA, AVIVA Plc, Baker Tilly, Ltd, BSKYB Ltd, Cadbury Schweppes Plc, Capcon Plc, Service, Control Risks Group Ltd, Deloitte & Touche LLP, Financial Services Authority, Gallaher Group Plc, Grant Thornton UK LLP, Institute of Chartered Accountants of Scotland, KPMG LLP, Lloyds TSB Bank Plc, MCL Software Ltd, & Security Management Service, OVAG Ltd, PKF UK LLP, & SunAlliance Plc, UBS AG, WestLB AG



Which Way Now? The Panel Evaluates the Government's Fraud Review

The purpose of the Fraud Review was to “recommend ways of reducing fraud and the harm it does to the economy and society”. Published in July it proposes 62 measures for consideration by ministers. Public consultation closes on 27th October 2006.

In both the scope and substance of its recommendations the Review is a landmark in official attitudes to fraud. The Government is to be congratulated on the immense thoroughness of this intellectual effort. But publication marks a beginning, not an end. It must be followed by action.

Moreover the details of the proposals matter deeply, as do the principles which inform them. There are also issues of timing and resourcing which are linked

to the vital question of whether the Government as a whole has the political will to transform the state's response to fraud. It is time to ask ‘which way now?’

The following pages provide the Fraud Advisory Panel's response to what it believes are the main points of the Review. It concentrates largely on those issues where the Panel's analysis, emphasis or recommendations differs in some significant respect from those of the Review Team. It should be borne in mind, however, that the area of mutual agreement is both deep and broad.

A summary of the Panel's main observations and recommendations are set out on the inside front cover of this document. Its formal response to the consultation is available at www.fraudadvisorypanel.org.

The Fundamental Issues

Three inescapable conclusions emerge from the many facts presented by the Review.

- Fraud is a major and growing threat to public safety and prosperity.
- The state's response falls well below the level required to meet that threat.
- A principal reason for that failure is serious underfunding of the police response.

Immense Financial Loss and Human Damage

Fraud hits as hard as all but the worst violent offences. The Review states that "We are all victims of fraud. We pay higher prices in shops, higher interest rates on our mortgages, and higher premiums on our insurance policies because of fraud. Tax and benefit fraud means higher taxes. Fraud victims sometimes suffer devastating losses of pensions and life savings, ruining their lives, and honest businesses can be bankrupted."

The evidence bears out this statement.

- Work by the Home Office suggests that fraud may be second only to Class A drug trafficking as a source of harm from crime. The Attorney General says "there is evidence that fraud funds terrorism, drugs and people trafficking".
- A report for the Home Office in 2000 estimated that fraud cost at least £13.8 billion a year. Updating for inflation brings this to a current cost of at least £16 billion a year, or £655 for every household. The Home Office estimates that 'ordinary' theft costs £4.2 billion a year.
- The taxpayer lost between £1.1-£1.9 billion in 2004-2005 through 'carousel' VAT fraud alone. Earlier this year, Her Majesty's Revenue & Customs (HMRC) investigators admitted to

The Guardian that this was leeching £100 million a week, or £5 billion over a year. "That would build and equip a dozen hospitals or 300 secondary schools."

- A 2005 PricewaterhouseCoopers survey of 300 British companies found they were losing an average of £1 million a year from "tangible frauds" (those that result in an immediate and direct financial loss).
- The Association of British Insurers (ABI) calculates that fraud adds 5% to the cost of the average premium, up from 3.7% in 1998.
- CIFAS – the UK's Fraud Prevention Service – an alliance of suppliers of consumer credit estimates that between 2001-2004 no fewer than 180,000 families reported that a loved one had been impersonated after death by fraudsters seeking to obtain cards and loans.

Fraud is becoming a leading area of criminal activity. A 2003 Home Office study found that over 25% of those who had committed a 'mainstream' offence (theft, criminal damage, drug related or violent offences) had also committed fraud.

Perhaps the single most dangerous aspect of the problem is the growing involvement of organised crime. The new Serious Organised Crime Agency (SOCA) has made tackling fraud one of its priorities. The Financial Services Authority has warned of widespread attempts to infiltrate financial institutions in order to obtain confidential customer information and perpetrate identity fraud. The ABI reports that staged motor accidents and arson, designed to fraudulently obtain insurance payouts, are putting lives at risk as well as costing honest policyholders money. An industry wide investigation uncovered over 400 linked motor accidents staged by a single gang.

A Failure of the State

The Review's Interim Report (published in March 2006) identified the following "main problems" in the state's response.

- "Poor information about the scale, nature and extent of fraud and the harm it causes to the economy and society."
- "There is no national policy for tackling fraud" and this results in uncoordinated activities that fail to make the best use of resources.
- "Whether a fraud gets investigated can depend on whether the victim can organise and finance the investigation...The chance of a low or medium value fraud against the private sector being investigated is very small."
- "Lack of prosecution or judicial control" plus "burdensome disclosure requirements... unnecessarily extend the length of trials without enhancing the quality of justice."
- "The penalty for fraud is relatively low" compared with those for other acquisitive crimes.

The Review's final report adds that "many" uninvestigated serious frauds include "cases involving organised crime and possible terrorist connections".

This is not to say that the present government has not done much to combat fraud, notably via the creation of SOCA, money laundering legislation, and proposing, for the first time, a statutory definition which will facilitate both crime reporting and prosecutions. Yet the Review confirms the Panel's long standing concern that the state is failing in one of its basic duties: to offer the citizen a reasonable level of protection from crime. Lack of funding for police investigations is the root of the problem.

Fighting Fraud is Value for Money

The Review highlights a number of organisations which have achieved remarkable value for money in combating fraud.

- In 2004-2005 the NHS Counter Fraud & Security Management Service spent less than £18 million and saved £189 million.
- The Audit Commission's National Fraud Initiative which uses data mining to identify frauds cost £1 million and saved £111 million.
- The police private sector Dedicated Cheque and Plastic Card Unit, which fights card fraud, cost £3.7 million and saved £10 million.

The Review Team has produced a comprehensive package of recommendations for strengthening the police response to fraud, creating a national authority to co-ordinate public and private sector initiatives, a national centre to receive and analyse information in order to aid investigations, and major improvements in the way courts handle fraud cases. Its estimate of the expense involved "are confined to the direct cost and make no estimate of savings from reducing fraud losses" but "overall the recommendations should save public money." The maximum bill for these measures runs to £27 million a year. Savings of public expenditure are estimated at between £23 and £37 million.

The sum sought by the Fraud Review Team is tiny compared to total public expenditure which runs to several hundred billion pounds a year. Given the known facts about the financial cost and human damage caused by fraud it is frankly ludicrous to argue that such monies could not be found.

The Review's figures prompt a number of questions about current Whitehall priorities. Since, for instance, it would cost only £14.5 million a year to double the number of police officers in fraud squads one might reasonably ask why quite so many fraud cases have gone uninvestigated. One might also query why, given the widespread view that the electronic preparation and presentation of evidence can save 10-15% of a court's time in a complex fraud case, a mere £15,000 has not been found to run a confirmatory exercise.

The Review reports that its modest proposals are to be considered "within the context of the 2007 Comprehensive Spending Review". Though there is a place for debate about details there should be no question, not least at the Treasury, which will exert a huge influence, that public safety and justice are worth some additional taxpayers' money.

Undermining Police Standards

The lack of resources for fraud investigations is eroding standards of law enforcement that the public has a right to expect and which police officers themselves would prefer to uphold.

- The Review states that there is “a lack of willingness by police forces to accept reports of fraud outright” because of “a lack of capacity...even when reports are taken, little is done with them.”
- The Interim Report noted that “whether a fraud gets investigated can depend on whether the victim can organise and finance the investigation... The chance of a low or medium value fraud against the private sector being investigated is very small.”
- The Review quotes a letter sent in 2005 by a police force to a bank which had reported a 100,000 employee fraud: “The investigation of fraud is extremely expensive in terms of hours spent obtaining statements and preparing a prosecution case. The Constabulary is required under the Crime and Disorder Act to produce a crime reduction strategy. Our strategy identifies priority areas and police resources are directed to those priority areas. Fraud is not one of them.”
- The Review reports that police “fraud investigations yielding proceeds returned to victims as compensation are less attractive investigative targets than money laundering investigations where (because there are no identifiable victims) the assets seized are usually confiscated and retained by the police”. Though such funds must in fact be allocated under a ‘police incentivisation scheme’ the point is well made.

Blaming the Victim?

The Panel notes with concern the Review’s view that fraud “should be one of the easiest crimes to prevent. Fraudsters mostly extract money by exploiting carelessness, ignorance or gullibility. Elementary caution and healthy scepticism about offers that look too good to be true would prevent most people becoming victims of fraud.”

This comes dangerously close to ‘blaming the victim’. Fraud strikes the prudent as well as the unwise; indeed it afflicts people who have had no direct contact with the original crime, such as the pensioners of companies bankrupted by swindlers. The statement also takes far too little account of the immense cunning of criminals, particularly organised gangs, of their diverse methods and constant innovation.

Measuring and Reporting Fraud

The Review pulls no punches about the state's poor knowledge of fraud, and its use of the available information.

- Official fraud statistics “as they currently stand do not provide much useful information on the number, occurrence or type of fraud offences”.
- “Reporting of fraud to the police is bureaucratic, inconsistent and not conducive to accurate measurement...Fraud is not a national police priority, so even when reports are taken, little is done with them.”
- The lack of data can frustrate analysis of crime patterns and makes it harder to justify the allocation of scarce police resources.

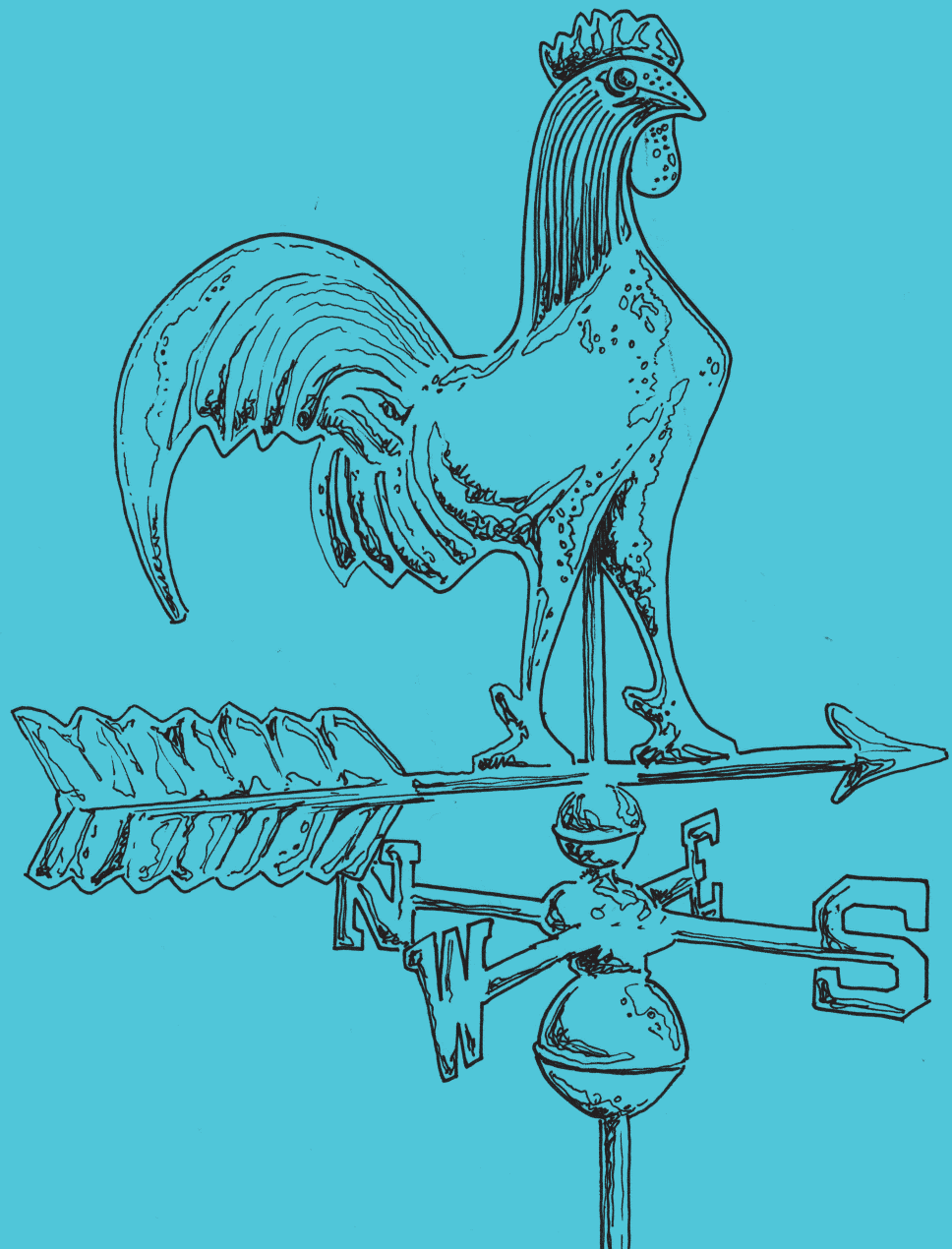
The Review proposes that a National Fraud Reporting Centre (NFRC) should take all reports, find ways to increase reporting of known offences and expose undiscovered fraud. It would allocate cases to police forces, analysing reports in order to provide strategic, tactical and other assessments to police and partner organisations. A measurement unit should also be established within a national authority (see next chapter) to better measure the extent of the problem.

The Panel supports these proposals. It has been calling for a regular and comprehensive national fraud loss study since 2000.

The Panel also enters four significant caveats, designed to increase public confidence in the scheme.

- **Statistics aren't everything.** The Review's claim that “without decent measurement a strategic response to fraud is impossible” is a dramatic overstatement. There is no doubt that better information will improve the fight against fraud but this should not become an excuse for not taking action now. As the current Director of the Serious Fraud Office (SFO) puts it “Whilst we don't actually know how much fraud costs us in this country we can see its effect”. It is equally difficult to know the exact extent of danger from terrorism, or the number of serious sexual offences but no one disputes that we are right to deploy significant resources against both. SOCA was created, and given a first year budget of over 450 million, despite a lack of exact understanding of the extent, methods and nature of organised crime. It has been given no numerical targets, rather its mission is to reduce the “underlying harms caused by organised crime”.
- **Police must accept fraud reports.** The Review proposes that fraud reports should not be accepted at police stations; victims should instead be directed to inform the NFRC. The Panel believes that it is totally unacceptable for the police to refuse a crime report. Such a policy would diminish public confidence, distress many victims and could well lead to less reporting. It would also lead to widespread cynicism about the Government's fraud strategy. It should be clearly stated that victims can either report fraud to their local police station or to the NFRC.
- **Make rapid use of crime reports.** It is vital to respond quickly to information about ongoing frauds. The NFRC must swiftly identify relevant reports and create a fast track response mechanism to brief the police at the earliest opportunity.

- **Use the near-term.** It will take some time, perhaps several years, to agree, plan and establish the NFRC. We must improve our knowledge of fraud in the meantime, for instance by ensuring that the British Crime Survey (which measures the public's actual experience of crime) finally includes fraud – a policy urged by the Panel since 1999. It is also important to better assess the harm done to the economy by fraud, for instance in inhibiting the growth of e business. The 2002–2003 British Crime Survey found 75% of respondents were worried about the security of using a credit card online. Subsequent studies have found that fear of fraud stops six million people from using internet business services.



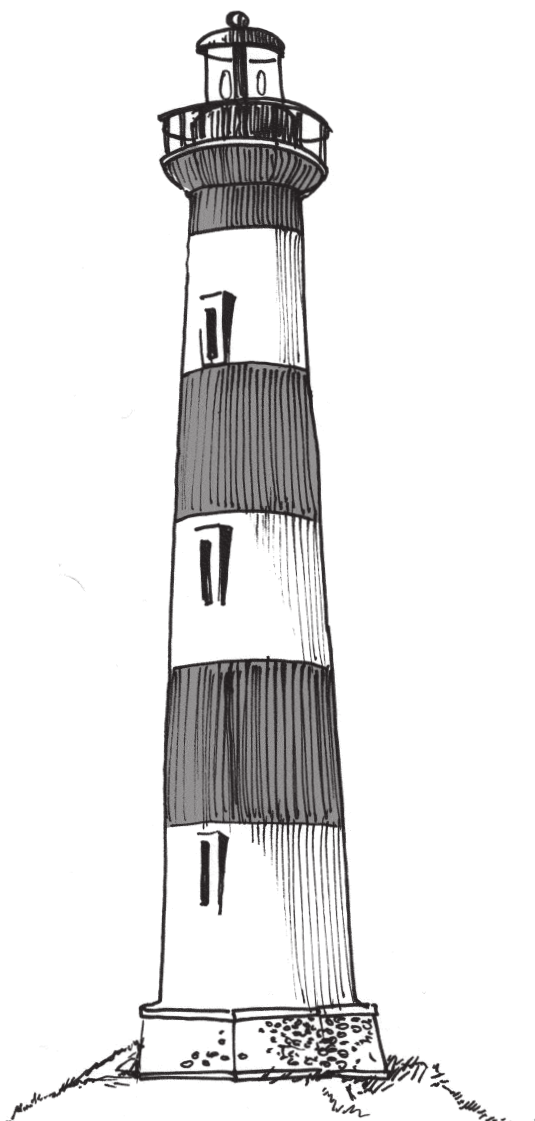
Developing a National Fraud Strategy

The Panel's 2000 annual review highlighted "a fragmentation of policy and perspectives which allows fraud to grow". It recommended the creation of a National Economic Crime Commission "dedicated to the holistic, long term view of the problem that is so badly required".

The Fraud Review echoes this, reporting that "there is no mechanism for pulling together the various elements of anti fraud work, for ensuring resources are deployed where they are most needed, or for considering the effectiveness of the overall response to fraud...each service is held accountable only for achieving its own targets...few organisational strategies address underlying systemic weaknesses in operational, legal or policy processes which could be used to prevent future fraud in the first place".

The Review proposes a National Fraud Strategic Authority NFSA . It would have no operational responsibilities but would concentrate on measurement; ownership and development of a national anti fraud strategy; problem solving, including resolving overlaps and conflicts between organisations; monitoring performance; and disseminating advice and best practice to agencies, business and the public. Individual organisations would prepare their own strategies within the national framework. A multi agency group would coordinate operational work in priority areas designated by the Authority.

The Panel strongly supports the idea of a national anti-fraud body but also has a number of significant concerns about the model proposed by the Review.



Responsibility Without Power?

The NFSA risks being saddled with excessive expectations. The Review says that “an oversight body must have the authority to act to fulfil its functions...ensuring that operational agencies implement” its strategy. Yet it also makes clear that the Authority will not be able to direct the various bodies involved in combating fraud.

The Panel agrees that this is preferable to a distant central body giving orders to front line organisations, a course fraught with so many practical difficulties that the Review had no hesitation in rejecting it. Unfortunately the current proposals could create an organisation with a responsibility too broad to fulfil, that of “ensuring” common action across a wide range of organisations. This is a recipe for confused accountability, frustration and severe delay.

An organisation with a wide, if sometimes unfulfillable, brief and a grand title could in turn divert responsibility for public policy from where it ultimately belongs – ministers of the Crown. Only government – with parliamentary approval where necessary – can introduce legislation, provide funding, direct administrative reforms and bring uncooperative public bodies into line.

Tasking and Supporting a National Authority

The specific tasks – as opposed to the directive function – allocated to the NFSA by the Review make sense but it is important to be more precise about its role, governance, independence and political support. The principal aim should be to create a permanent, powerful and public voice reminding the powers that be of the need for robust anti fraud policies.

- **Clear division of labour.** The Authority should serve as advisor and secretariat to a Stakeholders’ Forum where relevant organisations would seek both to agree strategy and co ordinate their activities. It must be clear that responsibility for agreeing a national operational strategy lies with the stakeholders; and that the ultimate power to ensure top level change lies with the government of the day.

- **A facilitating and monitoring role.** The Authority would provide information, make recommendations to Forum members and ministers, and review their activities in order to assess how they are contributing to the overall struggle against fraud.
- **Ensuring independence.** The Authority, while ultimately accountable to ministers and Parliament, must be given maximum independence. It follows that its Board must not be dominated by stakeholders since their operations must be subject to monitoring by the Authority. An Act of Parliament will be needed to provide the Authority with a firm legal basis.
- **Making Whitehall accountable.** The Forum must include representatives of Whitehall departments (particularly the Home Office, DTI, Treasury, law officers, Constitutional Affairs) and the Scottish and Welsh executives. Their decisions are crucial; their actions must be studied and their representatives engaged in debate with other Forum members. The Authority would need to review questions of broad public policy, legislation and resourcing as well as technical matters.
- **Building public and political support.** This will be vital if the national fraud strategy is to work. The NFSA should submit its annual report to Parliament; its work, and fraud policy in general, should be monitored by a Joint Committee of both Houses which would enable MPs to be joined by peers with experience of the judiciary, police and business. Ministers, officials and public bodies would give periodic evidence to the Committee.
- **Cabinet-level coordination.** Given the number of government departments involved a national strategy can only succeed if they are encouraged actively to support it. A Cabinet Committee should be established, chaired – as is the case with that on serious and organised crime and drugs – by the Prime Minister.

Policing Fraud

The Review rightly highlights police resources as the central issue of the fight against fraud.

Strengthening the Police Response

The Fraud Review echoes a concern the Panel has raised for several years: “police investigative resources are small and declining and often diverted to other tasks”. The number of officers in all fraud squads/economic crime departments not including the special case of the City of London fell from 869 in 1995 to only 404 in 2004 and “even that is under threat”.

Fraud is not a priority under the National Policing Plan. As a result 22 out of the 36 forces in England and Wales do not mention fraud in their own plans. Only two, the City of London and South Wales, have fraud reduction targets.

The Fraud Review has made a series of proposals to help remedy the situation.

- The Home Secretary should consider making fraud a priority within the National Community Safety Policing Plan; law enforcement agencies should be encouraged to develop plans which include local performance targets for fraud.
- As a minimum the existing capacity of fraud squads should be maintained and these resources should be ring fenced as far as possible. There should be appropriate capacity and capability to deal with Level 1 strictly local frauds.
- “One option” for improving support for forces would be to create Regional Support Centres with a range of specialist resources such as surveillance.

- A National Lead Force should be established to create, develop and manage the NFRC and its analytical unit; disseminate intelligence and analysis; act as a centre of excellence advising on complex enquiries, and assisting with or directing the most complex investigations. The Lead Force should be based around the existing City Of London Police Fraud Squad.

The Panel believes that these measures are essential indeed the minimum required. It is unfortunate that some of the proposals are not firmer; the question of financing fraud investigations has been debated in Whitehall since at least 1999, in which time the problem has become notably, if unsurprisingly, worse. Vague injunctions to chief constables about ‘ring fencing’ existing fraud squads will prove useless unless the Home Office makes clear that fraud is a police priority. Moreover some forces do not have fraud squads. There should be a review of anti fraud capacity which could then be used to plan a build up of resources.

It will be important for chief constables to be sure of public support for a new focus on economic crime. The Panel has recommended the establishment of local Police and Community Fraud Liaison Groups, with members drawn from chambers of commerce, professional associations, local authorities and other interested parties. Such fora would also ensure that information and concerns are fed through to local police command units.

Supplementing, not Replacing

The Review also notes that employing civilian investigators in fraud squads could be 10 to 15% cheaper than employing police officers. It argues for increasing the non-police role as a means of adding resources and sharing expertise.

The Panel agrees that involving civilian investigators in police work can be of great benefit. Its concern is that civilians are used to add to the total resource; they should supplement, rather than replace, police officers. We should also bear in mind that police officers have a unique training and ethos, the benefits of which cannot be costed but are nonetheless real.

The Panel supports the Review's proposal that the NFSA should design a system for the nationwide accreditation of fraud investigators. It would provide more comfort for the police, and save considerable time and expense, if financial investigators and compliance specialists were qualified to present them with properly 'packaged cases', that is evidence admissible in a court of law.

Safeguards for Police Private Sector Partnerships

Recent years have seen a number of instances of private business paying for police investigatory services. The Review describes these projects as "partnerships" and wishes to see more of them. They have arisen because the businesses concerned felt more resources were needed to tackle the very extensive and persistent frauds from which they and their customers suffer. Some arrangements have arisen at the invitation of the Home Office.

The Review reports that "in all these cases, the sponsor finances the unit or officer and so has a guarantee that crimes where it is the victim will be investigated by a dedicated resource that cannot be diverted to other duties". Such initiatives could have a significant long-term impact on public confidence in the police. The Panel makes three proposals for their better regulation.

- The terms of any police private sector partnership must be closely defined and open to public scrutiny. The Association of Chief Police Officers should, in consultation with other relevant bodies, urgently draw up a model agreement and code of practice governing issues of implementation.
- Chief constables should be obliged to demonstrate that the allocation of officers (and other resources) does not undermine their force's response to any other class of investigation or duty.
- All such partnerships should be monitored, and if necessary modified, by an independent public body charged with taking into account best practice, public perception and wider law enforcement issues.

More Effective Investigations, Prosecutions and Trials

Serious fraud trials are increasingly long, complex and expensive. Though representing only 0.2% of 2003-2004's Crown Court cases they consumed 16% of the entire legal aid budget, around £95 million.

The Panel has campaigned for reform since its inception in 1998. It supports the Review's main proposals to speed up fraud trials; that a panel of judges should be created from those with relevant expertise to handle complex cases with a financial or commercial element; for improved case management training for judges hearing serious fraud cases; and for the introduction of an English plea bargaining system.

Justice Frustrated

The Review does not go far enough in addressing the crucial issue of the Code of Practice created by the Criminal Procedure and Investigation Act 1996 (CPIA). The process of investigation is crucial to the conduct of a prosecution and the Code damages both. It effectively dictates how an investigation must be conducted by requiring investigators to pursue "all reasonable lines of enquiry", whether or not they establish the guilt of a suspect. This compels them to widen the scope of an investigation well beyond what is necessary to make a case. It is essential that an investigating authority has the right to close down an unpromising line of enquiry and to refrain from pursuing secondary issues which may unnecessarily complicate and lengthen an investigation.

To fulfil their legal obligations in serious fraud cases, investigators seize extremely large volumes of material. Prosecutors must disclose all relevant material to defence counsel. It is not enough to invite the defence to examine material in the prosecution's possession; everything must be sifted, analysed and listed, tasks that call for extensive funding and trained manpower, both of which are already in short supply.

The previous Lord Chief Justice pointed out that suspects in a fraud case will often be best placed themselves to identify favourable evidence. He recognised that problems of disclosure "have the potential to disrupt the entire trial process". Failure to disclose material, even if inadvertently, can give rise to a legitimate ground of appeal. Indeed, non-disclosure may lead to the quashing of a conviction even where there has been a guilty plea.

The Code drags out investigations and trials, causing problems for both sides as witnesses often find difficulty recalling details because of the lapse of time. Some cases have been stopped for this very reason.

The Fraud Review illustrates the problems graphically.

- One case brought by the SFO in 2005 involved 6,000 prosecution man hours (250 complete days) dealing with disclosure issues. The defence spent 2,643 hours reading the material disclosed to them.
- "It is clear that this figure is likely to be dwarfed by the time spent on disclosure in other cases...there have been occasions where entire investigation branches at HMRC have been closed down... so that Investigators can give their full attention to disclosure on a given case."
- "It has been suggested to the Fraud Review Team that up to 80% of investigators' and prosecutors' time can be spent on dealing with unused material in serious fraud cases."
- "The problem is set to become even more acute" with the growth of electronic data storage and transmission.

Unfortunately the Fraud Review only recommends that "in appropriate cases" the prosecuting authorities should have early access to the trial judge to argue that they be excused from examining a category of material, where to do so would be unduly onerous. This does not address the CPIA Code's impact on investigators, and still places heavy obligations on prosecutors. The Review recommended that further official consideration of these issues be shelved until 2008.

The Panel believes that it is essential to change the Code's provisions as soon as possible.

- An investigating authority should be permitted to select a confined and discrete area for investigation, subject to approval from a Crown Court judge. A suspect, or defendant, should in turn be given the right to apply for an order requiring the investigating authority to explore a line of enquiry, or to obtain and/or disclose unused material.
- The prosecuting authority should be permitted to present the judge with a schedule of unused material and seek a ruling on whether it is relevant to the issues likely to arise in the case. It should be for the defence to satisfy the court that further disclosure should be made. It is much better placed than the prosecuting authority to know whether any unused material is relevant.

Plea Bargaining

At present there is no provision for pre trial discussions between the parties in a fraud case where a defendant can make admissions without these counting as evidence against him. This greatly reduces any incentive to 'come clean' on certain offences, or to turn Queen's evidence. It also makes trials longer and more complex.

The Review proposes changing the law for serious and complex fraud cases. This would allow the prosecuting authority to provide a case statement to a suspect and his legal representative. The suspect could then respond with a statement setting out the extent of his criminality and allow both sides to negotiate an agreed position. All this would be without prejudice to future proceedings. The next step would be to go before a judge to seek approval of an agreed plea and sentencing 'package'. Alternatively the defence could seek an early indication of sentence 'sentence canvassing' in order to help guide a subsequent plea. There would be pre trial legal aid to allow all suspects proper representation during negotiations.

The Panel has long argued for an English plea bargaining system and welcomes the recommendations. It believes that clear and strong safeguards must be built in; for instance against prosecutors pressuring suspects; and by ensuring that no conviction would be permitted solely on the basis of uncorroborated evidence. It should also be borne in mind that the proposals would sometimes result in lower prison sentences for serious fraudsters. Reform is more likely to be accepted if its advocates admit that plea bargaining will sometimes involve swallowing what one senior fraud lawyer has described as "some bitter moral pills".

Resourcing the Prosecution

The Review makes no reference to the funding of the SFO, which prosecutes cases worth over £1 million, or to the Crown Prosecution Service (CPS). The SFO can only investigate 60-70 cases at one time. The Fraud Prosecution Service of the CPS has few staff. A new emphasis on fighting fraud will demand additional prosecutorial resources.

The Panel supports the ABI's view that CPS Legal Guidance on fraud needs updating. It should outline the public interest in prosecuting frauds where members of the public are placed at risk of physical harm – for example through arson or staged motor accidents, or in cases of suspected organised fraud. At the moment, the ABI reports, such cases are regularly turned down for being 'not in the public interest'.

Training for Judges and Lawyers

Discussion of trial management techniques for judges usually omits one attribute essential for those called to hear complex and lengthy fraud cases. It should emphasise the strength of character required if a judge is not to be intimidated by the reputation and skills of leading counsel. It is apparent that a few Crown Court judges are cowed by the latter's 'force of arms' and do not manage trials in as firm a manner as they should.

Prosecuting counsel and defence solicitors also need more case management training. Defence solicitors do not need to demonstrate such skills to undertake serious fraud cases. This should be made mandatory and the Legal Services Commission required to provide appropriate courses.

Punishing Fraud

The Review gives extensive consideration, not only to the means of punishing fraudsters but also to how to facilitate the wider needs of justice and public protection.

Sentencing Policy

Custodial sentences for fraud are relatively low. Just over half of those convicted for fraud and forgery in the Crown Court in 2004 went to prison. The average sentence in cases brought by the SFO which handles those worth at least 1 million was 31.7 months. The average sentence in 2005 for frauds worth over 5 million was 3 years, down from 4.2 years in 2003. Even convictions involving breach of trust by professional advisors often avoid custodial sentences.

The Review argues that “the high prevalence of fraud...suggests that current fraud sentences...are not viewed as a deterrent” and that “protecting the public from future fraud is an important aspect of sentencing which has hitherto received insufficient attention”.

The Panel agrees that “low sentences are insulting to victims”. It supports the Review’s recommendations that new sentencing guidelines are urgently needed; that the maximum sentence for the most serious (and/or repeat) fraud offences should be restored to at least 10 years.

Expediting Justice

As the law stands obtaining justice against fraudsters is often a protracted and inconsistent business because a variety of tribunals – the courts, regulatory bodies such as the FSA and professional bodies – have responsibility for

dealing with different aspects of the affair. This leads inevitably to duplication and delay since the same issues are litigated in different arenas. The Panel therefore supports the Review’s proposal to increase the range of non custodial sentences available to the Crown Court following conviction for a fraud offence. These would include winding up companies, awarding compensation to all victims of a fraud offence - whether their loss is the subject of a specific offence or not - and stopping an offender from working in certain types of business. Justice would be swifter for all concerned. In addition, the expense of multiple litigation would be avoided, leaving greater resources available for victim compensation and asset confiscation.

The Review proposes what it calls “a more radical option”, a Financial Court jurisdiction in the High Court to deal with any civil or criminal matter arising from a fraud; all issues would usually be heard by the same judge. The Panel regards this as too ambitious and likely to lead to unduly complicated and lengthy proceedings. It has made another proposal which, in conjunction with increased powers of non custodial sentencing, would address most aspects of a fraud and prove simpler to implement, cheaper and more flexible. This would entail the establishment of a small cadre of about ten specialist judges who would try the most serious and complex fraud cases. They would sit as required at five regional centres throughout England and Wales and also be available to deal with non fraud cases. The Lord Chief Justice should consider drawing some members of the cadre from commercial and civil judges used to complex financial cases, as well as those experienced in hearing criminal trials.



Fraudsters are Dangerous

The Review makes the unwise assumption that that “fraud offenders are inevitably low risk and well behaved”. It cites the case of an offender who abused the trust of 14 of his clients by stealing £204,000. “At first the FSA initially accepted his undertakings not to accept further deposits but he breached this; so the FSA obtained a civil injunction that also froze his assets. The FSA also obtained a Bankruptcy Order and finally prosecuted him. In June 2005 he was sentenced to 18 months imprisonment.” The Panel submits that this episode, supported by a wealth of other cases, indicates that fraudsters are not “inevitably low risk and well behaved.” The harm such people do, in catastrophic trail of bankrupt businesses, laid off workers, lost pensions, impoverished families and wrecked health, must be seen to be believed. Recent examples of the human cost of fraud may be found in the Panel’s 2004 2005 annual review.

The Panel is therefore opposed to suggestions that serious fraudsters be given conditional cautions. It is also wary of the Review’s view that greater use should be made of regulatory and civil court proceedings as an alternative to criminal trials. English law has treated fraud as a criminal act since the 16th century and for the soundest of reasons.

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