

## Editorial News

### Fraud Advisory Panel's Response to Lord Justice Auld's Review of the Criminal Courts

On 25 January, the Fraud Advisory Panel submitted its Response to Lord Justice Auld's *Review of the Criminal Courts*, welcoming the extensive procedural changes recommended—foreshadowed by the Panel in its earlier paper on procedural reform in serious fraud cases.

The Fraud Advisory Panel is an independent watchdog, founded and supported by the Institute of Chartered Accountants in England & Wales (ICAEW). The Panel is a body of volunteers drawn from the law and accountancy, banking, insurance, commerce, regulators, the police, government departments and public agencies. The Institute of Chartered Accountants in England & Wales (ICAEW) set up the Panel in 1998 and continues to support its work. The Panel's role is to alert the nation to the immense social and economic damage caused by fraud and help both public and private sectors to fight back via policy proposals, educational initiatives and research. It is dedicated to a holistic approach and the long view.

Jonathan Fisher, a barrister at 18 Red Lion Court and co-author of the Response, said that this is real progress for the Fraud Advisory Panel and a feather in its cap. The Panel is delighted that Lord Justice Auld has adopted all or most of the Panel's recommendations.

The Fraud Advisory Panel did not put forward any recommendation on Lord Justice Auld's proposal to abolish jury trial in serious fraud cases. The co-authors of the response oppose abolition, but there is no consensus amongst the members of the Panel on this point.

#### Overview

The Panel opposes Lord Justice Auld's recommendation to transfer financial and market infringements from the criminal justice process to the regulatory and disciplinary process. The Panel believes the regulation of the financial markets is not morally neutral and the abandonment of the criminal sanction would give the wrong message in terms of the importance of the current financial regulation.

The Panel is also not in favour of parallel proceedings combining criminal justice and regulatory processes in fraud and financial misconduct cases because it believes that the maintenance of a professional's integrity is exclusively a matter for the exercise of a professional body's discretion and judgement.

In addition, the Panel called for the system of independent counsel reviewing material in respect of which a claim for legal professional privilege is placed on a statutory footing.

In particular the Panel welcomes Lord Justice Auld's proposals that:

- (1) Adequate time should be given to trial judges to

enable them to manage and prepare cases assigned to them, and that they should be given suitable training as well as secretarial, administrative and technological assistance to meet their needs;

- (2) There should be introduced, by way of a judicial sentencing guideline, a system of sentencing discounts graduated so that the earlier the tender of plea of guilty the higher the discount for it;
- (3) The judge should be entitled formally to indicate the maximum sentence in the event of a plea of guilty at that stage and the possible sentence on conviction following a trial;
- (4) More effective use of defence statements should be facilitated by general improvements to the system for preparation for trial, and encouraged throughout professional conduct rules, training, and in the rare cases where it might be appropriate, discipline, to inculcate in criminal defence practitioners the propriety of and need for compliance with the requirements.

The Panel believes that Lord Justice Auld ought to have placed greater emphasis in his report on the more extensive use of admissions, agreed schedules and flow charts in serious fraud cases where there are a large number of documents. Evidence establishing extensive movements of monies, goods and/or invoicing trails can be easily presented in this way. Admissions could also be drafted in relation to the production of documents, chronologies, and interviews. The sanction for failure by any party to co-operate ought to be a wasted costs order. The Panel repeats its decision that Rules of Court should be introduced to provide a comprehensive statutory framework to this effect.

Although there is no consensus in the Panel, the authors of the Response (Jonathan Fisher and Monty Raphael) express concern about the recommendation made by Lord Justice Auld that jury trial should be abolished in cases of serious or complex fraud, for the following reasons:

- (1) No compelling case for change has been made out in the Review.
- (2) Lord Justice Auld is inconsistent in his approach between lengthy and complex trials in non-fraud cases, where abolition of jury trial is not recommended, and lengthy and complex trials in fraud cases, where trial by Judge and lay assessors is recommended. No justification for the distinction between the two types of case is made out.
- (3) It is impossible to reach an informed conclusion on the abolition of jury trial until further research is conducted on the performance of juries in long and complex cases. This research should be conducted after the extensive procedural changes recommended by Lord Justice Auld have been introduced.

The Auld Report can be viewed in full at:

[www.criminal-courts-review.org.uk](http://www.criminal-courts-review.org.uk) or at:

[www.lcd.gov.uk](http://www.lcd.gov.uk)

Additional copies of the Response can be obtained from Helen Fay at the Panel on 020 7920 8721; e-mail [fap@icaew.co.uk](mailto:fap@icaew.co.uk)