Editorial

Bar Council & Fraud Trials

Back to the problem of complex fraud trials, the subject of earlier editorial comment in this Review. The latest thinking on the subject comes from the Bar Council's working party, chaired by Jeremy Roberts QC, which reported at the end of January.

The central issue addressed in the report is how to make such trials shorter, cheaper and – above all – more manageable. Manageability means that (to quote from an article by the working party's chairman, in *The Times*, 26 January): "they must not be so long and complex that they impose an unreasonable burden on the tribunal of fact, or create a risk of a miscarriage of justice arising from the sheer volume and complexity of the issues." A situation must never arise where fraudsters feel confident that they can escape conviction and punishment merely by making their crimes so large and complicated that the trial process breaks down under the strain.

However, by a majority, the working group rejects proposals for ending of trial by jury in fraud cases: juries, it says, are an important constitutional safeguard, ensuring that trials are not "wholly determined by the executive and/or the judiciary." We do not dispute this conclusion, though one does wonder whether arguments, based essentially and tautologically on the supposedly self-evident constitutional sanctity of jury trial, require rather more critical analysis. The report sensibly recommends ways of facilitating the task of juries in digesting complex evidence, for instance by giving them brief summaries of statements and uncontested evidence. The report says that there should be earlier disclosure of the defendant's case, and an early opportunity for defence counsel to address the jury.

Even more sensibly, it looks for ways of avoiding trials altogther. It calls for more use of plea bargaining, to encourage defendants to plead guilty. It says that the option of fines offered by the prosecuting authorities in lieu of trial should be explored.

The report notes, as one means of reducing the number of cases brought to trial, the possible extended use of professional disciplinary proceedings by the self-regulatory bodies: however, we must repeat our previous warning ((1992) 13 BLR 222, October 1992) that the manifest weaknesses of the bodies concerned needs to be addressed before they are asked to shoulder extra burdens arising from the equally manifest shortcomings of the criminal trial system.

This caveat apart, we commend the Roberts Report as an important step in the right direction. A consensus on this important issue is at last beginning to emerge.