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Fraud Investigation and Prosecution Frustrated by “Bad Law” Says Expert Group

Investigation and prosecution of a rising tide of serious fraud is being hampered by “bad law which frustrates the needs of justice”. A set of urgent reforms are being proposed to stop unmanageably long trials, soaring legal aid bills, and the ever-present threat of miscarriages of justice, whether involving acquittal of the guilty or conviction of the innocent.

That’s the verdict of *Bringing to Book* a report from a group of experts from the law, police, forensic accountancy and academia, convened by the Fraud Advisory Panel, the independent watchdog on economic crime. “Recent measures or proposals from government and the judiciary are insufficient to tackle deep-seated problems in the investigation and prosecution of serious fraud” said Jonathan Fisher QC, who chaired the group which produced the report. “More radical solutions are required. *Bringing to Book* is an urgent plea for action from the front line.”

The report identifies four symptoms of systemic crisis:

- **Lengthy investigations:** in 2002–5 the average time between the Serious Fraud Office (SFO) accepting a case for investigation and transferring it to the Crown Court was just over 33 months.
- **Burdensome trials:** in 30 cases during 2003–4, the average trial took 67 working days and had an average of six defendants and 114 prosecution witnesses.
- **Low conviction rates:** just over 66% of defendants were found guilty in all serious fraud cases between 2002 and 2005.
- **Soaring costs:** in 2003–4 fraud trials consumed nearly £100 million in legal aid alone. The Department of Constitutional Affairs has identified lengthy fraud cases as one of the biggest calls on the legal aid budget.

The report urges radical changes to the obligations imposed by the Code of Practice created by the Criminal Procedure and Investigation Act 1996 (CPIA). Mr Fisher said that “parts of the Code are quite simply bad law which frustrates the needs of justice”.

Restore the right of investigators to direct their own enquiries. The Act forces investigators to pursue “all reasonable lines of enquiry”, whether or not they establish the guilt of the defendant. 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. Relying on investigators to find evidence on the defendant’s behalf distracts them from their fundamental task.

Release prosecutors from the obligation to sift and analyse all material in their possession for the benefit of the defence, another CIPA obligation. Impropriety may lead to the quashing of a conviction even where there has been a guilty plea. These tasks call for extensive funding and trained manpower, both of which are already in short supply. In 2005 PricewaterhouseCoopers reported that the average prosecution now involves analysis of more than 5,000 e-mails and electronic documents. In some major cases the majority of legal aid costs have gone on meeting disclosure requirements which also drag out trials.

The expert group calls for a transparent and effective system of pre-trial plea and charge bargaining, enhanced support for the judiciary and the appointment of a cadre of around ten specialist fraud judges to try the most serious and complex cases.

Jonathan Fisher added that “these reforms would reassure the public that the law will deal robustly with white-collar fraudsters. And considerable savings would be made through more focused investigations, reduced disclosure of unused material and shorter trials. At worst the impact would be cost neutral.”

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Notes to Editors

1. A full copy of the report can be obtained at www.fraudadvisorypanel.org.

2. The report's authors are as follows:
 - **Jonathan Fisher QC** (Special Project Group Chair) is a barrister specialising in financial crime and regulatory cases.
 - **Robin Booth** is a partner at BCL Burton Copeland and a former Head of the Fraud Division at the Crown Prosecution Service.
 - **Ken Farrow** is Head of the Group Financial Crime Unit at Lloyds TSB and a former Head of the City of London Police Economic Crime Department.
 - **Will Kenyon** is a Chartered Accountant and a Partner in PricewaterhouseCoopers' Forensic Services Group.
 - **David Ormerod** is Professor of Criminal Law at the University of Leeds and lectures regularly to the judiciary.
 - **Rosalind Wright CB** is the Chairman of the Fraud Advisory Panel and a former Director of the Serious Fraud Office.

3. The Fraud Advisory Panel is a registered charity which raises awareness of the immense social and economic damage caused by fraud and helps private and public sectors, as well as the public at large, to fight back. It was established in 1998 by the Institute of Chartered Accountants in England and Wales (ICAEW) which continues to provide valuable support. Since its foundation the Panel has:
 - Raised the profile of fraud in Whitehall, helping to push the issue up the legislative and policy making agendas
 - Developed major proposals for the reform of policing, prosecution and the law
 - Worked to improve business and professional education and training
 - Commissioned important new research, for instance on the extent of fraud, cybercrime and the risk to SMEs
 - Raised awareness through conferences, seminars and the media.

For Further Information

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