



Response to the Government's Consultation Paper

Fraud Review: Final Report

October 2006

1. INTRODUCTION

- 1.1 The Fraud Advisory Panel (the “Panel”) is an independent body of volunteers drawn from the public and private sectors. The Panel’s role is to raise awareness of the immense social and economic damage that is caused by fraud and to help both the public and private sectors, and the public at large, to fight back.
- 1.2 Members of the Panel include representatives from the law 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.
- 1.3 The Panel was established in 1998 through a public-spirited initiative by the Institute of Chartered Accountants in England Wales. Today, it is a registered charity and company limited by guarantee. The Panel is funded by subscription, donation and sponsorship.
- 1.4 The Fraud Advisory Panel has long advocated a comprehensive response from Government to the devastating and growing harm caused by fraud and financial crime.
- 1.5 The Panel welcomes the opportunity to respond to the Government Fraud Review consultation paper which gives a clear indication that the problem of fraud is now at last being taken seriously. Our concern is that the results must now be followed up by meaningful action and appropriate public policy.
- 1.6 This response has been prepared on behalf of the Fraud Advisory Panel by a subgroup comprising of members from the Investigation, Prosecution and Law Reform Working Group.

2. MEASURING FRAUD (Review Recommendations 1 - 2)

Establishing a Measurement Unit

2.1 The Panel supports the establishment of a measurement unit within a National Fraud Strategic Authority (NFSA) to conduct exercises better to measure the extent of fraud across the economy.

2.2 However we believe that the requirement for the unit to undertake four measurement exercises in its first year of operation may be too ambitious. The unit should concentrate on successfully completing one measurement exercise before conducting additional exercises in the public and private sector.

Establishing a Programme to Measure the National Extent of Fraud

2.3 The Fraud Advisory Panel has advocated the need for official and authoritative statistics on fraud, and a regular and comprehensive national fraud loss study, since 2000¹.

2.4 The absence of adequate official statistics has allowed fraud to be politically marginalised². The Fraud Bill will for the first time create a new criminal definition of fraud and should facilitate more accurate recording of reported fraud in official crime statistics, subject to the very important element of the police's accepting fraud reports. Other recommendations proposed by the Fraud Review, namely the establishment of a National Fraud Reporting Centre (NFRC) to receive fraud reports, will also contribute to improving official statistics on fraud. However these need to be supplemented by other measurement exercises (such as the changes to the Home Office Counting Rules in respect plastic card fraud) to obtain a better estimate of unreported fraud.

2.5 The standardisation of fraud statistics is important. Statistics collected by various organisations and sectors should, wherever possible, be measured and reported on a comparable basis in order to enable a more complete picture both of fraud, and

¹ See Fraud Advisory Panel. *Second Annual Report 1999 – 2000 and subsequent years*.

² Fraud Advisory Panel. *Fourth Annual Report 2001 – 2002*.

the effectiveness of deterrence and prevention measures, to be established over the longer-term.

- 2.6 The Fraud Review concentrates much of its discussion on the economic cost of fraud, and the harm it causes to the economy as a whole. Consideration must also be given to the different categories of cost resulting from the impact of fraud on the individual, business or organisation, and industry. For example, costs from increased access to state-provided healthcare or counselling by individual victims or increased state benefits claimed by employees working for businesses that are unable to recover from the losses suffered from fraud and collapse.
- 2.7 The Panel therefore recommends that more comprehensive and systematic work is needed to obtain a more accurate picture of the financial, psychological, social and physical impact of fraud on individuals and how this may affect particularly vulnerable or isolated groups of people (e.g. elderly, poor, self-employed)³.
- 2.8 Fraud should be included in the British Crime Survey (BCS) which measures the public's actual experience of crime, and to better assess the harm done to different sectors, for instance in inhibiting the growth of e-business. The 2002 – 2003 BCS found that 75% of respondents were worried about the security of using a credit card online, and subsequent studies have found that fear of fraud prevents at least 6 million people from using internet business services. The Panel first recommended the inclusion of fraud in the BCS in 1999.
- 2.9 Although the development of a more robust and consistent measurement of fraud will enable a more accurate picture to be established over time, we disagree with the Fraud Review's claim that "without decent measurement a strategic response to fraud is impossible"⁴. This is a dramatic overstatement. Statistics should be used to inform a strategic response to fraud but should not be a precondition of its development. Available statistics already demonstrate that fraud is a wide-spread and significant problem which permeates all society, and have proved sufficient for a number of effective major anti-fraud initiatives.
- 2.10 It is equally difficult to know the exact extent of danger from, for example terrorism or the number of serious sexual offences, but no one disputes that we are right to

³ Fraud Advisory Panel. *Victims of Fraud: Occasional paper 01/06*. May 2006.

⁴ Fraud Review. *Fraud Review: Final Report*. July 2006. p 42.

deploy significant resources against both. The Serious Organised Crime Agency (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”. While fraud is a less dramatic and eye-catching category of crime, its extent and the damage it causes has been sufficiently demonstrated to justify urgent action, without the need for further measurement.

3. FRAUD STRATEGY (Review Recommendations 3 – 7)

Establishing a National Fraud Strategic Authority

- 3.1 The Panel has previously highlighted the “fragmentation of policy and perspectives which allows fraud to grow”, and in 2000 recommended the creation of a National Economic Crime Commission “dedicated to the holistic, long-term view”⁵.
- 3.2 The Panel strongly supports the establishment of a new National Fraud Strategic Authority (NFSA) with responsibility for formulating a national strategy for fraud, but has a number of significant concerns about the model proposed by the Review, particularly in relation to its role, governance, independence, and political support.
- 3.3 Although ultimately accountable to ministers and Parliament, the independence of the NFSA to research, formulate and publicise its recommendations must be paramount. The NFSA Board must not be dominated by stakeholders since the Authority must be free to monitor and comment on stakeholder activities. Primary legislation will be needed to provide the NFSA with a firm legal basis to ensure its independence.
- 3.4 Whilst the specific tasks proposed for the NFSA seem logical, the principal aim should be to create a permanent, powerful and public advocate for robust anti-fraud policies.
- 3.5 The NFSA must be transparent and accountable. Public and political support will be vital if the national fraud strategy is to work. Therefore the NFSA should submit its

⁵ Fraud Advisory Panel. *Third Annual Report 2000 - 2001*. Also see Fraud Advisory Panel. *Second Annual Report 1999 – 2000*.

annual report to Parliament, and its work, together with fraud policy in general, should be monitored by a Joint Committee of both Houses. This would enable MPs to be joined by peers with experience of law enforcement and business. In addition, Ministers, officials and public bodies should be required to give periodic evidence to the Committee.

- 3.6 A Cabinet Committee should also be established and chaired (as in the case with that on serious and organised crime and drugs) by the Prime Minister.
- 3.7 There is a risk that the NFSA may be saddled with excessive expectations. The Fraud Review states 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 NFSA would not be able to direct the various bodies involved in combating fraud.
- 3.8 Although the Panel agrees that the proposed model is preferable to a distinct central body giving orders to front-line organisations, there is a fear that the current proposals could create an organisation with a remit which is too broad and ambitious to fulfil; that of “ensuring” common action across a wide-range of organisations. This could result in confused accountability, frustration and severe delay.
- 3.9 It is also important that the NFSA does not divert responsibility for public policy from ministers of the Crown; it is the ultimate responsibility of government to introduce legislation, provide funding, implement administrative reforms, and direct compliance by public bodies.

Establishing a Stakeholder Group

- 3.10 The model proposed by the Fraud Review includes a governing body representing the main public and private sector stakeholders which would consider key issues. The Panel believes that the correct relationship between the Stakeholders’ Group and the NFSA would be a consultative one. Any other relationship would compromise the NFSA’s operational independence.
- 3.11 The Panel believes that the NFSA should act as advisor and secretariat to the Stakeholders’ Group. The NFSA would need to review and advise on questions of

broad public policy, legislation and resourcing, in addition to technical matters. It must be clear that responsibility for actually agreeing a national operational strategy lies with the stakeholders but that the ultimate power to ensure top-level change would continue to lie with government of the day.

- 3.12 The Stakeholders' Group should include representatives of Whitehall departments, particularly the Home Office, Department of Trade and Industry (including the Office of Fair Trading), HM Treasury, Law Officers, and Department for Constitutional Affairs as well as the Scottish and Welsh Executives. Such official representatives should be engaged in debate with other Group members if agreement is to be reached on an effective anti-fraud strategy.
- 3.13 The Panel envisages that the NFSA will maintain a facilitating and monitoring role. It would provide information, make recommendations to members of the Stakeholders Group and ministers, and review their activities in order to assess how they are contributing to the overall struggle against fraud.

Establishing a Multi-Agency Co-Ordination Group

- 3.14 The Panel supports the establishment of a Multi-Agency Co-ordination Group (MACG) in principle pending further information on its remit, resourcing and composition.

4. REPORTING FRAUD (Review Recommendations 8 – 15)

Establishing a National Fraud Reporting Centre

- 4.1 The Fraud Advisory Panel supports the establishment of a National Fraud Reporting Centre (NFRC) in England, Wales and Northern Ireland. However, we are very concerned by the proposal that this body should assume sole responsibility for receiving and accepting fraud reports.
- 4.2 The Panel believes that it is totally unacceptable for the police to refuse a crime report from a victim of fraud. To give this widespread current practice official sanction would not only reinforce the perception that fraud is not as serious as other types of crime it would also diminish public confidence, distress many victims and

potentially lead to less reporting. It is also likely to generate widespread cynicism about the Government's fraud strategy.

- 4.3 The Panel believes that victims should be given the option to report fraud either to their local police station or to the NFRC. For instances where fraud is reported to a local police station, the police should be responsible for submitting the report to the NFRC on behalf of the victim.
- 4.4 Victims need to know that their concerns are taken seriously. However, victims are often confused about how and where to report allegations of fraud⁶. Under the proposed structure other reporting mechanisms, such as regulatory authorities, government departments, the Office of Fair Trading (OFT) and Trading Standards, and financial institutions, would remain unchanged.
- 4.5 In order therefore to establish the NFRC's credibility with the public it will be important to introduce an ongoing education programme for victims and potential victims covering whom to make a report to, how to make a report, and to what use will the information supplied be put to (intelligence vs. investigation).
- 4.6 In addition sensible procedures for bulk-reporting by the private and public sectors must be adequately addressed; otherwise it is likely that organisations will simply choose not to report fraud. Issues include who will be responsible for reporting fraud (e.g. in the case of credit card fraud will it be the financial institution or the individual?), increased costs to business in submitting reports, the role of the NFSA and NFRC, and the relationship between the NFRC and other fraud reporting mechanisms.

Prioritising Fraud Cases

- 4.7 The NFRC must be able to make rapid use of crime reports where necessary (e.g. ongoing frauds). The NFRC should swiftly identify relevant reports and create a fast-track response mechanism to brief the police or other relevant body.

⁶ Fraud Advisory Panel. *Victims of Fraud: Occasional paper 01/06*. May 2006.

5. DATA-SHARING (Review Recommendations 16 – 22)

Information Sharing

- 5.1 The Fraud Advisory Panel agrees that the responsible and proportionate sharing of data held by public bodies in order to detect, investigate and prosecute fraud is a legitimate objective. The private sector also has an important role to play in combating fraud and increased data-sharing between the public and private sectors is an effective way of doing so, subject to the requirement that such sharing is carried out in a manner which is compatible with the Data Protection Act 1998 (DPA), and with appropriate safeguards to protect an individual's personal information, and other sensitive information held by the private sector, from misuse or abuse.
- 5.2 The Panel also agrees that a more consistent approach to fraud prevention across the public sector will result in a more effective response to fraud and financial crime and significant long-term cost savings. The potential for the latter has already been demonstrated by the Audit Commission's National Fraud Initiative (NFI) which cost £1 million and saved £111 million in 2004/05⁷.
- 5.3 The debate about data-sharing between public and private sectors is in its infancy (see "New Powers Against Organised & Financial Crime" Cm 6875 and "Information Sharing Vision Statement" DCA 47/06). The Panel takes the view that discussion of specific proposals should be left until the Government has published detailed consultation documents.
- 5.4 There is a strong case that the current maximum penalty of £5,000 in the Magistrates' Court or unlimited fine in the Crown Court under section 55 of the DPA, is not sufficient deterrent to the "hard core" dealers of illegally obtained personal information. An increase in the maximum penalty to six months imprisonment in the Magistrates' or two years imprisonment on indictment, as advocated by the Information Commissioner (see "What Price Privacy" HC1056), is a welcome proposal. However, such a development runs the risk of reinforcing ill-informed prejudices against data-sharing, based upon a flawed understanding of the DPA (c.f.

⁷ Fraud Review. *Fraud Review: Final Report*. July 2006. Also see Audit Commission. *National Fraud Initiative 2004/05*. May 2006.

the Richard Inquiry Report HC653). The Panel welcomes the recognition by the Fraud Review of the potential conflict.

- 5.5 It is therefore important that the introduction of an increased penalty is accompanied by a clear message that only the illegal obtaining of information without consent (of the data controller) remains an offence. The Panel agrees that the Information Commissioner should issue guidance to assist both the public and private sector on the acceptable scope of data-sharing. Recent research suggests that a lack of proper understanding of the provisions of the DPA may be leading to a presumption of non-disclosure of data.⁸

Data Matching/Mining

- 5.6 Mining of public and private sector databases to detect and prevent criminal activity is clearly a more contentious activity than the sharing of information.
- 5.7 The Panel recommends that more analysis is undertaken to identify priority areas for data-mining and the appropriate parameters for such exercises. Data-mining exercises must be targeted and proportionate to both the harm they are seeking to prevent and to the effort required by law enforcement.

Scope of the National Fraud Initiative

- 5.8 The Panel agrees that the scope of the Audit Commission's National Fraud Initiative (NFI) should be expanded and placed on a statutory footing in order to increase its capacity to detect fraud within the public sector.

Information on Deceased Persons

- 5.9 The Panel believes that there are likely to be benefits in preventing and detecting fraud, particularly identity fraud, from sharing information about deceased persons.

⁸ Fraud Advisory Panel. *Perceptions on the Impact of Data Protection Legislation on the Successful Private Sector Investigation of Fraud: A preliminary study*. March 2006.

- 5.10 Recent research commissioned by the Panel recommended that information relating to deceased persons should be made available to appropriate persons or bodies, subject to adequate safeguards⁹.

6. PREVENTING FRAUD (Review Recommendations 23 – 25)

- 6.1 Preventative measures, including fraud awareness campaigns, should be an integral part of any national anti-fraud strategy. Greater education of individual consumers, SMEs, corporates and the public sector is likely to reduce the opportunities for fraud as people become more alert to the warning signs. However such initiatives must be coordinated to minimise the risk of confusing or conflicting messages. It seems logical that the NFSA should have a consultative and coordinating role in the development, coordination and delivery of such initiatives. Organisations should also be encouraged to continue their own awareness programmes.
- 6.2 The commencement of public anti-fraud campaigns and warnings should not be dependent upon the establishment of the NFSA. Existing fraud awareness initiatives could be enhanced to provide an interim solution.
- 6.3 Many private sector organisations, particularly those within the regulated sector and listed companies, have an obligation to ensure adequate anti-fraud controls and mechanisms are in place. Public bodies should be required to adhere to similar standards and be audited on the strength of their anti-fraud controls.
- 6.4 Although consumer education is important in preventing fraud it should not divert attention from the vital role of improved enforcement and prosecution. All three are essential to an effective anti-fraud strategy.

⁹ Fraud Advisory Panel. *Perceptions on the Impact of Data Protection Legislation on the Successful Private Sector Investigation of Fraud: A preliminary study*. March 2006.

7. INVESTIGATING FRAUD (Review Recommendations 26 – 46)

The Police Response to Fraud

- 7.1 The Fraud Review makes a number of recommendations to address the declining number, scale and resources of police fraud squads. The Panel believes that these measures are essential, and the very minimum required by current fraud levels.
- 7.2 The Panel agrees that fraud should be made 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; the existing capacity of fraud squads should be maintained and these resources ring-fenced; Regional Support Centres should be created; a National Lead Force established; and a thematic inspection conducted.
- 7.3 However, we believe some of the Review's proposals could go very much further and be bolder :
- a) The financing of fraud investigations has been debated in Whitehall since at least 1999 during which time the problem has become notably worse.
 - b) Some police forces no longer have fraud squads. If, as proposed, existing resources are ring-fenced, some forces will have no capacity to investigate fraud thus maintaining the existing and inadequate response. Vague injunctions to chief constables about 'ring fencing' existing fraud squads will be redundant if the Home Office does not make fraud a police priority.
- 7.4 A comprehensive review of existing anti-fraud capacity should be conducted and used as a basis to plan and establish an appropriate and necessary level of policing.
- 7.5 It will be important for chief constables to be sure of public support for a new focus on fraud and financial crime. The Panel has previously recommended that establishment of local Police and Community Fraud Liaison Groups comprising of representatives from chambers of commerce, professional associations, local

authorities and other interested parties¹⁰. Such fora would also ensure that information and concerns are fed through to local police command units.

Civilianisation of Investigations and Public/Private Partnerships

- 7.6 The Panel agrees that the involvement of civilian investigators in fraud investigation can be very beneficial. Civilian investigators with financial backgrounds (e.g. forensic accountants) could provide additional resource and specialist skills to aid investigations.
- 7.7 The Panel believes that civilians should supplement, not replace, police officers whose unique training and ethos, coupled with their powers of arrest, makes their continuing involvement essential to the larger effort of preventing, investigating and prosecuting fraud.
- 7.8 In recent years there have been a number of policing initiatives funded either solely or partially by the private sector. These have predominantly arisen from concern that more resources and specialist skills were needed to tackle the extensive and persistent fraud from which many businesses and their customers suffer. Some arrangements have arisen at the invitation of the Home Office.
- 7.9 The Panel believes that such arrangements may be interpreted as “private policing” and have a significant and long-term impact on public confidence in the police. The Panel makes three recommendations for improved regulation:
- a) The terms of any police-private sector partnership must be closely defined and open to public scrutiny. The Association of Chief Police Officers (ACPO) should, in consultation with other relevant bodies, urgently draw up a model agreement and code of practice governing issues of implementation;
 - b) 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; and

¹⁰ Fraud Advisory Panel. *The Human Cost of Fraud: Seventh annual review 2004 – 2005*.

- c) 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.

Accreditation of Investigators

- 7.10 The Panel supports the Review's proposal that the NFSA should design a system for the nationwide accreditation of fraud investigators based on the certification of current training courses, identifying any gaps. Accreditation would enable the police to have greater confidence in the cases they receive. It would also save considerable time and expense if financial investigators and compliance specialists were qualified to present them with properly "packaged" cases containing evidence admissible in a court of law.

8. PENALISING FRAUD (Review Recommendations 47 – 50)

- 8.1 The Fraud Advisory Panel notes that the Fraud Review makes no reference to the funding of the Serious Fraud Office (SFO) and Crown Prosecution Service (CPS). A new emphasis on fighting fraud will demand additional prosecutorial resources.
- 8.2 The 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. It has been reported that such cases are regularly turned down for not being "in the public interest"¹¹

Non-Custodial Sentences

- 8.3 Under existing arrangements penalising fraud can be a protracted and inconsistent process. The wide variety of tribunals that can be involved in the process, including the courts, regulators such as the FSA and professional bodies, inevitably leads to duplication and delay in many instances.

¹¹ Association of British Insurers. *Submission to the Fraud Review*. April 2006. p4.

8.4 The Panel supports the Review's proposal to increase the range of non-custodial sentences available to the Crown Court following conviction for fraud offences. These would include winding up companies, awarding compensation to all victims of a fraud offence (regardless of whether their loss is the subject of a specific offence), and preventing an offender from working in certain types of business. The Panel believes that justice would be swifter for all concerned. In addition, the expense of multiple litigations would be avoided, leaving greater resources available for victim compensation and asset confiscation.

Financial Court Jurisdiction

8.5 The Panel believes that the establishment of a Financial Court jurisdiction in the High Court may be too ambitious and could be likely to lead to unduly complicated and lengthy proceedings.

8.6 The Panel suggests an alternative model which, in conjunction with increased powers of non-custodial sentencing, would offer a simpler, cheaper and more flexible option for judicial proceedings. This is outlined in the next chapter on Fraud Trials.

Alternatives to Criminal Proceedings

8.7 The Panel is opposed to serious fraudsters receiving conditional cautions, and is concerned about proposals to increase the use of regulatory and civil proceedings as an alternative to criminal proceedings for some fraud offences.

8.8 Fraud offenders are not "inevitably low risk and well-behaved"¹² as evidenced in a number of cases. Fraud offenders cause significant harm to individuals, communities and society as a whole through a trail of bankrupt businesses, laid-off workers, lost pensions, impoverished families, and damaged health. Wider harms include reputational loss for a sector and public loss of confidence in the regulatory and judicial system. The human cost of fraud was highlighted in a number of case studies included in the Panel's Annual Review 2004 - 2005¹³.

¹² Fraud Review. *Fraud Review: Final report*. July 2006. p181.

¹³ Fraud Advisory Panel. *The Human Cost of Fraud: Seventh annual Review 2004 – 2005*.

- 8.9 Convicted fraudsters should, without exception, be subjected to thorough and vigorous confiscation proceedings. The seizure of the fraudster's gain or the imposition of additional imprisonment in default will spread the message that "fraud doesn't pay".
- 8.10 English law has treated fraud as a criminal act since the 16th century and for the soundest of reasons the threat fraud poses to health and welfare of the individual, and by extension of business and the state.

9. FRAUD TRIALS (Review Recommendations 51 – 57)

Establishing a Panel of Judges

- 9.1 The Fraud Advisory Panel agrees with the establishment of a national judicial co-ordinating mechanism for serious fraud cases.
- 9.2 We also support the establishment of a panel of judges. In our recent report on improving the investigation and prosecution of serious fraud, we recommend the establishment of a small cadre of approximately ten specialist judges, with similar status to the judges in the mercantile, technology and construction courts, to try the most serious and complex fraud cases¹⁴. These judges would also be available to hear non-fraud cases. There should be five regional centres in England and Wales equipped with the technology to enable up-to-date electronic presentation of evidence (EPE) to be used where major fraud trials would be heard.
- 9.3 Although many members of the judiciary possess financial and commercial expertise and experience, very few are chosen to try complex criminal fraud cases in the Crown Court. We believe that the Lord Chief Justice should consider assigning experienced commercial and civil judges from the Chancery and Queen's Bench Divisions to try complex fraud cases¹⁵.

¹⁴ Fraud Advisory Panel. *Bringing to Book: Tackling the crisis in the investigation and prosecution of serious fraud*. May 2006.

¹⁵ Fraud Advisory Panel. *Improving the Investigation and Prosecution of Serious Fraud*. May 2006.

Training for Judges

- 9.4 The Fraud Advisory Panel agrees that specialist training should be provided to judges. This should emphasise the strength of character required by a trial judge to avoid being intimidated by the reputation and skills of leading counsel. The Judicial Studies Board should institute an appropriate trial management course, based on the Lord Chief Justice's Protocol, for Crown Court judges¹⁶.
- 9.5 Furthermore the Panel believes that there is also a need for both prosecution and defence to receive case management skills training¹⁷. Training should be provided by the Legal Services Commission and be mandatory for those involved in serious fraud cases.

Criminal Procedure and Investigations Act (CPIA)

- 9.6 The Panel's position in respect of the Criminal Procedure and Investigations Act 1996 (CPIA) is outlined in *Bringing to Book: Tackling the crisis in the investigation and prosecution of serious fraud* published in May 2006.
- 9.7 The Panel believes that the Fraud Review does not go far enough in addressing the crucial issue of the Code of Practice created by the CPIA.
- 9.8 We believe that the Code has a detrimental effect on both the investigation and prosecution by requiring investigators to pursue all reasonable lines of enquiry regardless of whether they establish the guilt or otherwise of the defendant. In order to fulfil this obligation in serious fraud cases, investigators are obliged to seize extremely large volumes of material, and the prosecutors must disclose all relevant material to the defence.
- 9.9 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.

¹⁶ Fraud Advisory Panel. *Improving the Investigation and Prosecution of Serious Fraud*. May 2006.

¹⁷ Fraud Advisory Panel. *Improving the Investigation and Prosecution of Serious Fraud*. May 2006.

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

- a) 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 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.
- b) 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.

Electronic Preparation and Presentation of Evidence

9.11 The Panel agrees strongly that the wider use of electronic preparation and presentation of evidence in fraud cases, particularly those which are serious or complicated, may make evidence more accessible to witnesses, counsel, judge and jury alike. Many judges are reluctant to take advantage of the assistance that electronic presentation of evidence (EPE) offers and should be encouraged to use it and given training in its use by the Judicial Studies Board.

9.12 Therefore the Panel agrees that a cost benefit analysis should be commissioned into (EPE) to provide more rigorous evidence of any savings in time and resources.

10. SENTENCING FRAUD (Review Recommendations 58 – 60)

10.1 Custodial sentences for fraud are relatively low. The Panel agrees with the Fraud Review's observation that "low sentences are insulting to victims and send out a message that stealing money through deception is somehow more acceptable than stealing in other ways"¹⁸.

¹⁸ Fraud Review. *Fraud Review: Final report*. July 2006. p12.

- 10.2 Realistic sentences, commensurate with the seriousness of the offence and amount of harm caused, must be set for fraud.
- 10.3 The Panel agrees that the Sentencing Guidelines Council should urgently publish specific guidelines for fraud offences covered by the Fraud Bill and other associated legislation, including the Public Bodies Corrupt Practices Act 1889, Prevention of Corruption Act 1906, Theft Act 1968, Companies Act 1985, Criminal Justice Act 1993, Financial Service and Markets Act 2002, Proceeds of Crime Act 2002, and Enterprise Act 2002.
- 10.4 Furthermore, we believe that the maximum sentence for the most serious and/or repeat fraud offences should be restored to a minimum of ten years. We recommend that research is commissioned to determine which forms of punishment act as the most effective deterrent for the different types of fraud.

11. PLEA-BARGAINING & OTHER NON-COURT OPTIONS (Review Recommendations 61 – 62)

Plea-Bargaining

- 11.1 The Panel has long argued for a plea-bargaining system to be introduced in England and Wales and welcomes the Fraud Review's recommendations on this issue, subject to appropriate safeguards to preserve the principles of fairness to defendants and victims and the general public interest. Safeguards should include mechanisms to prevent prosecutors from pressuring suspects, and ensuring that no conviction is permitted solely on the basis of uncorroborated evidence.
- 11.2 The introduction of a pre-charge plea-bargaining framework, along similar lines to the US system, could have a dramatic effect upon the investigation and prosecution of serious fraud cases in England and Wales and result in significant savings in time and cost.

11.3 The Panel believes that a statutory framework needs to be established for serious fraud cases. This should:

- a) Following a request from a suspect in an investigation, require the investigating authority to give an early statement and disclosure of the nature of the investigation and its perception of the suspect's role in the fraud.
- b) Make provision for contracts between the prosecuting authority and representatives of the defence at a very early stage in the investigation so that the defence can tender a "pre-offer statement" which would include proposals for confiscation of the proceeds of criminal conduct and for victim compensation (where this is an issue).
- c) Make clear provision for defence legal costs to be covered, albeit arising at a very early stage in the investigation and pre-charge.
- d) Establish a conduit by which a proposed pre-charge bargain can be brought before the sentencing court, so that a clear and binding indication of sentence can be given before a suspect enters into a pre-charge plea bargain.

12. COSTINGS

12.1 The maximum cost of implementing the measures recommended by the Fraud Review is estimated to be approximately £27 million per year. Savings of public expenditure are estimated at between £23 and £37 million.

12.2 The Fraud Advisory Panel believes that the sum sought by the Fraud Review is little compared to total public expenditure which runs to several hundred billion pounds per year. The financial investment made by Government now is likely to result in significant future benefits and cost savings. The Fraud Review itself highlights a number of organisations and initiatives which have achieved remarkable value for money in combating fraud.

12.3 The role of Government in the fight against fraud is not only to protect public money from fraudsters but to also protect consumers and businesses against fraud.