

25 February 2009

Dear

Sentencing for statutory offences of fraud – Consultation guideline

Today the Council has published for consultation a draft guideline on sentencing for statutory offences of fraud. The consultation guideline was developed following advice from the Sentencing Advisory Panel which was also published today. All documents can be found on the Council's website: www.sentencing-guidelines.gov.uk

This is the second major guideline project relating to economic crimes, following publication of a definitive guideline for offences of *Theft and Burglary of a building other than a dwelling* in December 2008. Several other offences of dishonesty were also included in the *Magistrates' Court Sentencing Guidelines* published in May 2008.

The consultation guideline applies to sentencing for statutory offences of fraud. It does not cover the common law offence of cheating the public revenue which is generally reserved for the most serious and unusual offences. Sentences are therefore likely to exceed the statutory maximum for other offences. Neither does the guideline apply to sentencing of offenders convicted of conspiracy to defraud. In either type of case, judges will continue to refer to guidance from the Court of Appeal (Criminal Division).

The consultation guideline relates to the generic offence of fraud under section 1 of the Fraud Act 2006. It includes other offences in the Fraud Act covering various forms of fraudulent activity and fraud offences in other statutes which are closely related to those in the 2006 Act.

Many of the offences are broadly defined and encapsulate a wide range of fraudulent behaviour. Rather than dealing with each offence individually, the guideline proposes an approach based primarily on the nature of the fraudulent activity.

There are two specific points on which the Council would particularly welcome your comments:

1. Under the approach outlined above, offending is categorised on the basis of the nature of the fraudulent activity. This has resulted in the Council using the same approach for sentencing offences against the public purse (such as benefit and revenue fraud) as for fraud against a commercial enterprise such as a bank or insurance company. Whilst these forms of fraud are presented in three separate guideline tables (see pages 23, 26 and 29), no distinction is made in the suggested categories of seriousness or in the proposed starting points or sentencing ranges. In all such cases, the assessment of culpability is based on the extent of the fraudulent activity and the assessment of harm is based on the financial loss caused or likely to be caused.
2. In developing these guidelines, the Panel and the Council have evaluated the approach to the assessment of seriousness of the wide range of fraudulent activity. In particular, consideration has been given to guidance from the Court of Appeal (Criminal Division), changes to the sentencing framework and changes in the approach to sentencing economic crimes. For first time offenders convicted of the least serious forms of fraud in each behaviour category, non-custodial starting points are proposed.

In accordance with section 170(8)(b) of the Criminal Justice Act 2003, the Council is seeking your views on the consultation guideline which it will consider before issuing a definitive guideline. Your response (to the above address) is requested by **Friday 15 May 2009**.

The names of those who respond will be listed in a summary of responses. Whilst full responses are not routinely published, on request the Council may be required to release copies in accordance with the Freedom of Information Act 2000. **If anonymity is required, please make that clear in your response.**

Chairman