THE FRAUD
LAWYERS ASSOCIATION

1. On the 27th of June 2013 a consultation on the draft guidelines on bribery, fraud and money laundering offences was published by the Sentencing Council. Responses to this consultation were required by the 4 October 2013.

2. This response is filed by the Fraud Lawyers Association, an organisation established in 2012 to educate and train its members in all matters relating to their practice as fraud lawyers. Its membership consists of 346 solicitors and barristers who practise mainly in the area of criminal fraud.

GENERAL

3. The Association notes that in section 1 of the Consultation paper, the approach of the draft guidelines aims "to regularise practice rather than substantially alter it". Whilst we welcome this approach, given the extremely diverse range of fraudulent conduct, and that experience has shown that sentencing in this area is very fact specific, we question whether there is a risk of a "one size fits all" approach in the designated categories. There is, we believe, likely to be a risk that sentencers will stick rigidly to the bands, safe in the knowledge that they are unlikely to be criticised if they do so. We would like to see more stress put on flexibility, since there is a real prospect that following the new guidelines may increase the general level of sentences for fraud, particularly in relation to money laundering at the lower of the scale of offending.

4. The need for flexibility is perhaps best illustrated by the approach to determining the offence category, which consists of two elements, "culpability and harm". Included in the harm assessment is "victim impact" ("Harm b"). At page 19 of section three the commentary states:-

"If the offence has caused a high impact to the victim or others, the court is directed to give consideration as to whether it warrants the sentence being moved up to the corresponding starting point in the next category. If the offence already falls into the

highest category due to the financial harm caused, the court is to consider whether to move the sentence further up the range".

This appears to make the moving up of a category a matter of discretion for the court. However we note in Annex C, which sets out the sentencing guideline for offences of fraud, at page 85 under the heading "Harm b – Victim impact demonstrated by one or more of the following":

"High Impact – move up a category; if in category 1 move up the range"

Taken at face value this appears to be a prescriptive direction, and therefore is inconsistent with the text at page 19. If a sentencer simply looked at the guidelines at page 85 it would lead to a lack of flexibility in approach. We would prefer it if the text at page 85 read "consider moving up a category; if in category 1 consider moving up the range". This would apply to all the relevant offences.

5. We approve of the object of the guidelines, as set out in Annex B, namely that the intention of the guideline is:-

"for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they have a better understanding of how a sentence has been reached" (p 81)

However we wonder whether members of the public might be puzzled by the fact that none of the category ranges in the respective offences incorporates the maximum sentence for offences falling into the most serious category. Whilst we understand that this is to allow "headroom" for the most serious offences, perhaps this point could be made explicitly in the text.

6. Finally under this heading we note that step 6 "confiscation, compensation and ancillary orders" of the sentencing approach (p 12) of the guideline seems somewhat sparse in detail when compared to the Sentencing Council Definitive Guidelines. We consider this

step should be expanded perhaps as in pages 13 to 15 of the SGC "Sentencing for Fraud – Statutory Offences".

SECTION THREE – FRAUD

Question 1

7. Given the very diverse nature of frauds charged under section 1 of the Fraud Act, which is recognised in the Press Release as "extremely varied", we believe that some flexibility must be built into the guidelines. Subject to that point we are in broad agreement with a single guideline for fraud.

Questions 2 and 3

8. It is plain from the text that the culpability factors are "exhaustive" (see page 11), except in the case of corporate offences. The Association is not clear on the justification for this, given that in, for example, the drugs guidelines the culpability factors are said to be "non-exhaustive". As the Consultation paper acknowledges frauds are very diverse and may cover many different factual situations. Consequently we suggest there should be built in at the culpability stage reference to "any other material factor which the Court considers reduces or increases culpability".

9. Whilst we understand that other relevant aggravating or mitigating circumstances can be taken into account at Step Two, they will generally only affect the range of sentence within the category, rather than moving the case into a different category of culpability or harm. Perhaps it could be made clear if the guidelines are in this format that other material factors may justify moving the case from its initial category. This point applies generally.

Question 4

10. Subject to the above, we believe the two stage approach is the correct approach. In relation to "has caused or intended" in "HARM A", perhaps it would also be relevant to

consider the issue of "gain or intended gain" since loss may not be the mirror image of gain or intended gain.

Question 5

11. The consultation paper states at page 18 in the case of risked loss that "…..the guideline therefore directs the court to move these offences into the next lower category of harm". The draft guideline at page 85 does not quite reflect this, but appears to provide a wider option:-

"Where the offence has caused risked loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high".

Although the risk of loss or the extent might be particularly high, nonetheless the fact that there was no or reduced loss, should be reflected in the assessment of harm and the guideline therefore should make it clear that this is so. Subject to this we agree with question 5.

Question 6

12. This is inevitably a matter of opinion. Some commentators consider that a financial category 1 of "£500,000 or more" is compressing too many bands into one. However the Association has no objection to the five categories.

Questions 7 and 8

13. As stated earlier, the list of factors set out is exhaustive (except in the case of corporate offences). We believe that the guidelines should make it clear that other factors relating to harm can be taken into account at step 2 under "other aggravating factors", so that something which may be particularly important to a victim can be properly reflected.

14. This step in the assessment of the starting point for the sentence inevitably brings into focus "victim impact statements". This may bring its own problems in terms of an assessment based on evidence that is properly admissible.

15. In relation to the three categories of harm ("High impact, medium impact and lesser impact") the use of another persons' identity is classified as "medium impact". Given the prevalence of identity theft and its impact on the individual (emotional stress, loss of reputation and damage to personal relations) we consider that it may be appropriate to reflect this factor as "high impact" harm. In the case of "lesser impact", we also take the view that consideration should be given to a category of "any other relevant factor reducing the impact on the victim". It is assumed reference to "victim" is to the person(s) or institution(s) directly impacted and not society at large.

16. Subject to these points we agree with the assessment of harm (B) approach and the factors set out in the three categories.

Question 9

17. Given that these factors are non-exhaustive we have no observations on this proposal.

Question 10

18. Having considered this in some detail the Association believes that if properly applied by sentencers there is a minimal risk of "double counting". We can see the distinction between an offender who, on legal advice, makes no comment in interview, yet pleads guilty at the first reasonable opportunity and the offender who actively assists the police investigation by, for instance, enabling the police to recover victims' property through information given in interview and also pleads guilty at an early stage. Given the complexity of and the cost involved in fraud cases, we believe this factor is justifiable on policy grounds.

Question 11

19. The only additional factor might be to make specific allowance for the situation where the offender has voluntarily ceased his offending, because the current factors do not appear to reflect this.

Question 12

20. No observation on the level of sentence.

Question 13

21. This can lead to a proportionate sentence, but we would re-iterate the point set out in paragraph 4 of this response, namely that there should be discretion as to whether to move up a category because of victim impact.

Question 14

22. We note the difference between the Sentencing Council Guideline and the proposed new guideline as set out in scenario A. Whilst the proposed sentence marks an increase, many members of the public would consider it to be justified in view of the characteristics of the victim. That said the new proposed guidelines may lead to an increase in the prison population and consequent pressure on prison resources if applied mechanically.

Question 15

23. We believe it does, but would note that in this type of case there may be a complicating factor, in that the offender may have been entitled to a legitimate mortgage advance in any event, so that when harm is assessed by reference to financial categories, the "less caused or intended" figure may be the difference between what he was legitimately entitled and the advance obtained by the inflation, rather than the whole of the advance.

SECTION FOUR – POSSESSING, MAKING OR SUPPLYING ARTICLES FOR USE IN FRAUDS

Questions 16 and 17

24. Please see observations under questions 2 and 3, set out earlier.

Question 18

25. No observations

Question 19

26. We consider that an additional harm factor might be "potential to significantly undermine confidence in the financial system". This is a direct result of computer viruses etc which lead to a fear of using facilities such as internet banking. Given the prevalence of this type of fraudulent activity the Association believes it should be reflected in the assessment of harm, rather than as an aggravating factor.

Question 20

27. Given that the aggravating and mitigating factors are non-exhaustive, subject to the answer at question 19 above, we have no observations.

Question 21

28. In relation to scenario D, which identifies a starting point of four and a half years custody (and a range of three to seven years) we consider that a broad comparison with sentences in this range for violent and sexual offences suggests that this sentence is severe in comparison, although this may be inevitable.

SECTION FIVE – REVENUE FRAUD

Questions 22, 23 and 24

29. These cases present a potential difficulty for sentencers, because the same underlying conduct may be reflected in offences with differing maximum sentences. This point may be illustrated by reference to an offence under s 144 of the Finance Act 2000, fraudulent evasion of income tax which attracts a maximum penalty of seven years imprisonment. If the circumstances justified the offence falling into category 4, with high culpability, then based on a £1 million amount/relief obtained or intended to be obtained, the starting point is five years imprisonment with a range of four to six and a half years (see for example page 41). However, this offence is frequently characterised by false representations as to the true income of an individual, and hence could also be charged under section 1 of the Fraud Act 2006 (false representation as to income). Based on the same categories (category 4, high culpability) the starting point is six years custody, twelve months more than for the Finance Act offence, with a higher range of five to eight years imprisonment. This point does not appear to be addressed in the consultation paper. It could lead to inconsistencies in sentencing for the same conduct, depending on the choice of charge by the prosecution. This is not satisfactory to our mind as the aim is to promote consistency in sentencing.

30. Subject to the general point we have made in paragraph 4 of the response, the culpability and harm factors appear to be appropriate in relation to this type of offence.

Question 25

31. The seven listed categories containing the relevant financial bands appear to be appropriate, especially given the large sums of tax that can be involved in MTIC cases. We note, however that these bands do not correspond with the financial bands used for the assessment of harm in money laundering cases (see page 53).

Question 26

32. We note that the aggravating and mitigating factors are non-exhaustive such that other relevant matters can be taken into account. Two factors that reduce the seriousness of the offence might be: (a) not only there is a lack of personal gain to the offender, but also that the offence was committed to keep a business afloat for the benefit of its employees; and (b) the situation where the offender is not a principal in terms of culpability and has made little or no financial gain, although the overall loss to the Revenue arising from the activity of those in a leading role may be high. We recognise, of course, that each case is likely to depend on its own facts.

Questions 27 and 28

33. This sentencing example illustrates the problem we identified in our response to Questions 22, 23 and 24 with reference to the role of Z; had he been convicted in the main conspiracy of category 3 harm (the lowest category) with culpability B, the starting point would be five years custody with a category range of three years six months to seven years. However because the sentence levels for the statutory offence are lower, the actual sentence may not reflect his true role. The Association recognises that in this event the sentences may not be proportionate. A similar issue could arise if a single conspiracy to defraud at common law were charged instead of conspiracy to cheat.

34. The proposed sentence levels appear to be broadly in line with existing authorities (see for example R v RANDHAWA & Others [2012] EWCA 1, where sentences of 15 years and 14 years imprisonment were upheld after a trial, based on VAT claims totalling £18.9 million, with £7.8 million repaid; this suggests sentences towards the 17 year end of the range would be passed for X and Y).

SECTION SIX – BENEFIT FRAUD

Questions 29 and 30

35. We note the same problem can arise with benefit frauds as highlighted above in answer to questions 22, 23 and 24 in relation to Revenue fraud. Whilst the recent charging guidelines from the DPP suggest that the Fraud Act 2006 should only be used in cases where it is anticipated a sentence of imprisonment will exceed seven years, it is not clear to the Association how this can be effectively policed. In addition the charging guidance refers in cases of "organised fraud" to possible offences under sections 327-329 of the Proceeds of Crime Act 2002, which carries a sentence of up to 14 years imprisonment, or conspiracy to defraud, which has a maximum sentence of up to 10 years imprisonment.

36. Subject to these points we have no further observations in relation to the Questions.

Questions 31 and 32

37. Given the amounts of money commonly obtained in benefit frauds, we consider the approach to the assessment of harm and the financial ranges used to be correct.

Question 33

38. No observations, given that the list is non-exhaustive.

Questions 34 and 35

39. We agree with the mitigating factors; in any event we would have expected a sentencing tribunal to take into account significant financial hardship or pressure due to exceptional circumstances as a mitigating factor. We welcome its specific inclusion.

Question 36

40. We believe that adjustment for aggravating and mitigating factors would produce a just result in these examples, given the sentencing range of high level community order to eighteen months imprisonment. However they do highlight one feature of this type of

case, which is the prevalence of single mothers committing benefit offences. Whilst we acknowledge the Court of Appeal guidance in R v PETHERICK [2012] EWCA Crim 2214, the impact of a mother's imprisonment on dependent children can result in a sentence that is disproportionate, even though it may reflect a serious offence.

Question 37

41. We believe the proposed guidance is clear, although despite the CPS charging standards in relation to charging fraud, we note in cases where the value of the fraud is £500,000 to £2 million, the sentence range is 5-8 years for high culpability and category 4 harm. This suggests that fraud charges ought to be justified only in the most serious cases.

Question 38

42. Whilst "benefit cheats" have been demonised in the Press, the Association would hope that the overall level of sentences is not in fact increased by the guidance. This is because many offences, especially where housing benefit has been illicitly obtained, will fall within category 2 and medium culpability, leading to a risk of an increased number of custodial sentences. If, as the Court of Appeal has observed, many cases of benefit fraud are "perpetrated against a background of hardship in order to make modest improvements to a frugal lifestyle" (see R v LYLE TURNER [2010] EWCA Crim 2897), it is difficult to see how increasing the severity of the sentences will act as a deterrent.

SECTION SEVEN – MONEY LAUNDERING

Questions 39, 40 and 41

43. We note that in previous years the Court of Appeal (Criminal) Division have declined to lay down sentencing guidelines for this type of offence; see for example R v MONFRIES [2004] 2 Cr App R (s) 3, paragraph 7 of the judgment:-

"The relevant considerations that apply in this type of case include the following:

(1) The circumstances of assisting another person to retain the benefit of drug trafficking and/or criminal conduct vary so widely that this Court has not to date provided detailed guidelines"

Consequently we have some concerns that attempting to set out guidelines may overlook this point. In addition in terms of culpability we note from MONFRIES that also regarded as significant was "the extent of the launderer's knowledge of the antecedent offence", and from the case of R v FAY [2012] EWCA Crim 367 "how close to, or how far removed from that criminal conduct the defendant is". These factors do not appear specifically in the "culpability" factors, which are common to other offences, nor indeed are they reflected in the two stage harm test set out in page 53. The earlier cases seem to concentrate on the knowledge of and distance from the antecedent offence. The fact that the antecedent offence involves serious criminality is in our view not in itself a determinative factor justifying moving up a category, or within the range in category one. Nor indeed is the amount of money involved. We believe that the guideline should state "consider moving up a category, or if in category 1 consider a move up the range".

44. Sentencing for this type of offence does, in the Associations view, raise a difficult issue. The offences in sections 327 – 329 of the Proceeds of Crime Act 2002 require as essential element "knowledge or suspicion" that the relevant property is criminal property. "Suspicion" invariably is insufficient to found liability for other offences (eg conspiracy to defraud). In the circumstances of money laundering cases we consider that the culpability of those who knew that they are dealing in criminal property is very different from those who merely 'suspect'. In the latter case the person concerned no doubt hopes that the property is not criminal property, but is prepared to take the risk that it is. By contrast those who know are directly and deliberately providing encouragement and assistance to those involved in the antecedent offence. We consider that this distinction ought to be specifically recognised in the assessment of culpability. If it is not, the effect is likely to be to increase the length of sentences for this type of offence.

45. Unlike the other offences canvassed in the consultation paper the consultees' views are not sought on the aggravating and mitigating features set out at Step 2. This is perhaps unfortunate, given that the specific factors identified are not necessarily apt to money laundering offences.

46. By way of example, the standard aggravating factor "steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution" appears to be unlikely to be a relevant factor, since laundering invariably takes place some distance from the source of the antecedent crime. We are not sure in any event that those who purchase drugs are "victims" in this sense. "Attempts to conceal or dispose of the evidence" are part and parcel of laundering (eg failure to enter financial transactions in records) and fall directly within the elements of the offence in section 327. In the case of bureaux de change criminal property is "converted" (ie changed from sterling to Euros). We are not sure whether "offence committed across borders" is meant to reflect an aggravating feature of what is an element of the offence; in addition does this element depend on knowledge that the offence is committed across borders?

47. Whilst the factors in step two are non-exhaustive, it is a feature of money laundering offences that people who become involved can be family members (eg as employees in a bureau de change, as wives being asked to allow their bank account to be used as a conduit by the husband). The extra emotional pressure exerted on people in such a position is not specifically recognised in the factors reducing seriousness, particularly where suspicion is sufficient to found criminal liability.

48. So far as the financial categories set out in relation to the assessment of harm are concerned, we note that they do not follow the seven categories used for the similar exercise in relation to Revenue Fraud; for the sake of consistency we can see no reason why they should not match each other (see page 36 for Revenue Fraud categories).

Questions 42 and 43

49. Scenario H illustrates the difficulties of sentencing in this area. J's conduct is assessed as involving culpability A, harm category 3. The example then states:-

"The amount laundered (£1.2 million) would place him at around the starting point of seven years, but the source of the money (drugs) could justify raising the sentence towards the top of the range" (ie closer to 8 years)

However the two-stage assessment of harm set out on page 53 would seem to suggest he should be moved into category 2 (Starting point 8 years, range six to nine years). No distinction appears to be drawn either between knowledge or suspicion.

50. This is also a factor in K's case, where he banked the money "suspecting" it was not legitimate; despite the fact that the source of the money was drugs, there is no suggestion that K's sentence should be moved up a category. This suggests that it is knowledge of the source that increases the harm factor. That apart, however, we have real doubts as to whether this sentence is proportionate. In our view it fails to reflect the difficulty of his position, particularly in an economic recession where jobs are scarce. Whilst no one would argue that professional money launderers should not be dealt with severely, there is a real danger that sentences may in fact increase for those in K's position.

51. Insofar as the actual sentences are concerned for J, based on the facts, a sentence of seven to eight years appears to be in line with existing authorities. However given that the range for category 1 Harm A is eight to thirteen years custody, we wonder if the starting point is too high. For K those considering the response regarded eighteen months to three years custody as on the heavy side, bearing in mind the circumstances.

SECTION EIGHT – BRIBERY

Question 44

52. We note the assimilation of bribery with the fraud guidelines and have no comment on this. However we are concerned by the statement in relation to the "High Culpability" category that:

"The intention is that the offence contrary to section 6 Bribery Act 2010 (bribery foreign officials) would almost always fall into category A".

There are two reasons for our concern. Firstly it is within the knowledge of members of the Association that some foreign public officials in high risk countries deliberately misuse their position for gain; what they indulge in is close to economic extortion – ie if you do not make a payment there will be no contract. This, in our view, is very different from seeking out and targeting an otherwise blameless public official who yields to the overwhelming temptation of money to favour the provider of the bribe.

53. Secondly, at a much more basic level, many minor officials, in particular border officials, misuse their position by detaining goods in transit on some technicality and demand a relatively modest sum of money to release these goods; similarly customs officials misuse their position to demand extra "dues". We would be reluctant to see this categorised in category A, given both cases are akin to extortion. We believe the culpability factors should reflect the two scenarios set out above.

54. The other factors set out in the guidelines appear to be appropriate so far as culpability is concerned.

Question 45

55. The harm factors appear to be suitably adapted to offences of bribery.

Question 46

56. As with other offences, these factors are non-exhaustive and so relevant factors not mentioned on the lists can be taken into account. However the Association is conscious that the structure of the guidelines may promote inflexibility. This is because of the mandatory terms of section 125(1) of the Coroners and Justice Act 2009, which requires a court to follow the guidelines "unless it would be contrary to the interests of justice to do so". We would welcome a reminder that mitigating circumstances can justify a departure from the guidelines in the right case.

Question 47

57. On the basis of a ten year maximum for the offence, the category range of five to eight years seems appropriate.

SECTION NINE – CORPORATE OFFENDERS

58. We note that the guidance in this area creates a broad parallel with US sentencing practice. This appears to reflect what Thomas LJ said in the context of bribery of public officials in R v INNOSPEC Ltd:-

"As fines in cases of corruption of foreign government officials must be effective, proportionate and the be dissuasive in the sense of having a deterrent element, I approach sentencing on the basis in this case that a fine comparable to that imposed in the US would have been the starting point...."

Given the paucity of existing sentencing case law in this area, the Guidelines will no doubt be welcomed by those advising corporate entities on likely penalties, especially in the context of Deferred Prosecution Agreements (DPA's).

Question 48

59. Whilst we agree that compensation should be considered at the first stage, we have two reservations. The first is that compensation in the criminal courts is suitable only for

straightforward cases, and so in, for example, tender rigging cases compensation for loss suffered by a rival bidder is unlikely to be awarded given the complexities in proving the loss. Secondly compensation should not be used as a means of avoiding a suitable fine. These points could perhaps be emphasised in the guidelines, especially as there is an established body of case law setting out the relevant principles to be applied to compensation orders. A summary of these principles would assist corporates to better assess their overall likely financial exposure in the event of a corporate offence.

Question 49

60. It is to be welcomed that the list of culpability factors is non-exhaustive because it allows flexibility. However we are not clear as to why in the case of individuals they are exhaustive. Whilst we note the explanation, namely that this is because "the guideline has been devised without the benefit of a body of case law on which to base culpability factors and the Council recognises that cases could come before the courts with features that are not contemplated by the draft guidance", the existence of previous case law in itself does not justify the culpability factors being exclusive, given the importance of these factors in deciding the category into which the sentence is directed. We are conscious that in the case of individuals other factors can be taken into account at Step Two; however we would welcome an explicit statement that in the right circumstances these factors may justify a departure from the offence category and not simply affect the range within the category. If the structure of the proposed exhaustive factors is carried through into the definitive guidelines we believe the explicit statement should be contained within them.

Question 50

61. Given the object of achieving certainty, the methods used to assess harm by reference to the amount obtained or intended to be obtained (or loss avoided or intended to be avoided) appear to be generally appropriate, especially as they are not prescriptive. That said there will obviously be areas of uncertainty:-

a) As to the calculation of gross profit from the contract obtained in bribery cases;

b) Whether the "likely cost avoided" will be calculated by reference to the time at which the relevant precautions ought to have been put in place, but were not; there may be a significant difference between this date and the date of the offence;

c) The guidelines state that where the actual or intended gain cannot be established "the appropriate measure will be the amount that was likely to be achieved in all the circumstances". This leaves room for considerable argument, especially as the default position is "10% of the worldwide revenue derived from the product or business area to which the offence relates for the period of offending".

Whilst there may be a period of uncertainty in the absence of further guidance, we anticipate that these difficulties will be resolved in due course.

Question 51

62. Given the need for certainty and consistency, this method allows a corporate and its advisers to calculate the likely figure with some clarity.

Question 52

63. Given these factors are non-exhaustive they appear to be suitably adapted for corporate offenders. Whilst an offence committed across borders or jurisdictions is plainly a matter increasing seriousness, any financial penalties imposed by other authorities may be relevant at step four in adjusting the fine.

64. The heading "victims voluntarily reimbursed/compensated" in factors reducing seriousness is plainly appropriate; however there may be cases where a corporate offender embarks on genuine attempts to do so, but is prevented by the intervention of insolvency or the cessation of trading as a result of the investigation. Genuine attempts to reimburse which fail for this reason ought to be taken into account.

Question 53

65. The Association would question the statement made in the document that:-

"The Council intends that any fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law" (pg 71)

In small private companies it may be that the directors and shareholders are virtually one and the same, and so the latter are in a position to dictate the conduct and policy of the corporate. The reality in a publicly listed company is very different with shareholders ranging from private individuals to pension funds. They have no say in the day to day running of the company and no access to internal company documentation. The most they are likely to see are what the company chooses to put into the public domain. Any fine imposed on the company will inevitably affect their financial interests, even although they may be entirely blameless. Consequently in this case we find the emphasis on bringing home to shareholders the need to operate within the law inappropriate.

66. The other feature we have misgivings about is listed in the factors to consider as "fine fulfils the objectives of punishment, deterrence and removal of gain". Given that a formula has been used through multipliers to reflect the harm element in the offence it is axiomatic that this has been viewed as the means of reflecting punishment and deterrence in the fine. It is not clear, therefore, how this factor comes into play in the sentencing equation. Any certainty would be reduced if a judge simply increased a fine by an arbitrary level simply because he or she did not regard applying the formula in steps two and three as producing a satisfactory fine.

67. Whilst we acknowledge that step four may impact on being able to predict with certainty the financial outcome for a corporate, and so whether a DPA may be in its interest, we regard the flexibility it gives on a case by case basis as desirable.

Questions 54 and 55

68. Since the purpose of the guideline is to allow greater certainty for corporate and those advising them, it may be appropriate for the range of possible ancillary orders to be spelled out in step seven in more detail – perhaps akin to the SGC's summary of ancillary orders in Definitive Guidance for Corporate Manslaughter and Health and Safety Offences Concerning Death.