ENVIRONMENTAL OFFENCES:
THE PANEL'S ADVICE TO THE COURT OF APPEAL

FOREWORD BY THE CHAIRMAN

I am pleased to present the Sentencing Advisory Panel's first advice to the Court of Appeal. In response to the Home Secretary's direction of 29 July 1999, under section 81(3) of the Crime and Disorder Act 1998, the Panel now proposes to the Court of Appeal that the Court should frame a sentencing guideline on environmental offences. The specific offences referred to the Panel by the Home Secretary are listed at Annex A to this paper.

The context of the Home Secretary's direction to the Panel is a growing public awareness of the threat to the environment from pollution and the inappropriate disposal of waste. There is a particular concern that companies may fail to comply with their environmental responsibilities if it costs them less to pay the penalty for breaking the law than it would to install proper safeguards.

The Panel's overall aim is to promote fairness and consistency in sentencing. So far as environmental offences are concerned, there are two main barriers to this. First, judges and magistrates often have little experience of these offences, because most breaches of environmental regulations are dealt with through administrative intervention by the appropriate authority, without recourse to prosecution. Secondly, the range of defendants – from individuals and one-person firms to multi-national companies – makes it more than usually difficult to ensure that they are all treated fairly.

The Panel believes that sentencing guidelines from the Court of Appeal, along the lines we propose, would make an important contribution to achieving consistency of sentencing in this area. In our proposal we have attempted to:

- clarify the sentencing principles for these offences,

- help the courts to achieve consistency in assessing the seriousness of a particular offence, by identifying the relevant aggravating and mitigating factors, and

- provide guidance on the choice of sentence and on setting the appropriate level of fine.

Before advising the Court of Appeal on any category of offences, the Panel is required, by section 81(4) of the 1998 Act, to consult the 28 organizations nominated for this purpose by the Lord Chancellor. Additionally, in this case, we consulted a wide range of individuals and organizations with a particular interest in environmental regulation. Those who responded to our published consultation paper are listed at Annex C to the proposal, and the Panel is grateful to all of them for their contributions.

Professor Martin Wasik
Chairman of the Sentencing Advisory Panel

INTRODUCTION

1. The Home Secretary has directed the Sentencing Advisory Panel, under section 81(3) of the Crime and Disorder Act 1998, to propose to the Court of Appeal that it should frame a sentencing guideline on environmental offences. The specific offences covered by the Home Secretary's direction involve air or water pollution; the illegal deposit, recovery or disposal of waste (including fly-tipping); the illegal abstraction of water; and failure to meet packaging, recycling and recovery obligations. All these offences, which are described in more detail at Annex A to this paper, affect the general quality of life. They despoil the environment, and may harm human health, flora and fauna. Pollution and contamination of land or of watercourses has an immediate environmental impact. The effects of the pollutant may also be continuing, and may carry risks to human or animal health which materialise at some future date. Particular instances of pollution may be very expensive and time-consuming to clean up.

2. We approached the task by, first, examining some statistical information on the sentencing of these offences which was provided by the Home Office and the Environment Agency. Next, we published a consultation paper setting out the Panel's provisional views on the relevant aggravating and mitigating factors and on the choice of sentence. Our conclusions on these matters, taking account of the responses we received to the consultation document, are set out below. Statistical information about the sentencing of these offences is at Annex B. Annex C gives further details of the Panel's consultation process, including a list of respondents.

3. In the course of the consultation exercise some additional points arose which, although relevant to the sentencing of environmental offences, are not within the Panel's remit and could not appropriately be the subject of sentencing guidelines from the Court of Appeal. These points are mentioned in the advice below, and will be the subject of separate recommendations from the Panel to Ministers.

THE PANEL'S PROPOSAL

4. The Home Secretary referred this category of offences to the Panel because of a perception that the overall level of fines imposed by the courts had been too low. Many of the respondents to our consultation paper shared this perception, and some of them saw a link with the fact that environmental offences come before the courts comparatively rarely. The fact that individual magistrates and judges often have little experience of dealing with these offences, and are unfamiliar with the particular issues they raise, underlines the desirability of guidelines from the Court of Appeal. It also highlights the responsibility of the prosecution and the defence to ensure that all relevant factors relating to the gravity of the offence, the circumstances of the offender (including the financial position of the defendant) and the possibility of a compensation order, are brought to the attention of the court. It has been put to us by some of those involved in the daily work of the courts that standards of presentation in environmental cases need to improve. It is

not acceptable for the prosecuting authorities simply to rely on a general assertion that sentencing should be more severe because it is only the more serious breaches which are prosecuted. The appropriate sentence should be based on the particular circumstances of each case.

5. It is particularly difficult to achieve consistency of sentencing in a category of offences involving such a wide range of differently situated defendants. Some offences are committed by individuals or small-scale commercial operations, while others involve large organisations, or multinational companies with multi-million pound assets. Our aim has been to devise, so far as possible, an approach to sentencing which can be applied equally to all these types of defendants. That is relatively straightforward in relation to aggravating and mitigating factors, but somewhat more problematic when it comes to the choice of sentence and to setting the appropriate level of fine.

Aggravating factors

6. Any of the following factors may be taken to enhance the *culpability* of a defendant, whether an individual or a company, and thereby to *aggravate the seriousness* of any of the 5 offences on which we were asked to advise:

   (a) the offence is shown to have been a deliberate or reckless breach of the law, rather than the result of carelessness;

   (b) the defendant has acted from a financial motive, whether of profit or of cost-saving, for example by neglecting to put in place the appropriate preventative measures or by avoiding payment for the relevant licence;

   (c) the defendant has failed to respond to advice/caution/warning from the relevant regulatory authority;

   (d) the defendant has ignored relevant concerns voiced by employees or others;

   (e) the defendant is shown to have had knowledge of the specific risks involved, e.g. when he has knowingly dumped "special" waste;

   (f) the defendant's attitude towards the environment authorities was dismissive or obstructive.

7. The following factors, which relate to the actual or potential *extent of thedamage*, may also be taken to *aggravate the seriousness* of the offence:

   (a) the pollutant was noxious, widespread or pervasive, or liable to spread widely or have long-lasting effects;

(b) human health, animal health, or flora were adversely affected, especially where a protected species was affected, or where a site designated for nature conservation was affected;

(c) extensive clean-up, site restoration or animal rehabilitation operations were required;

(d) other lawful activities were prevented or significantly interfered with.

8. If the defendant has previous convictions for similar offences, or has failed to respond to previous sentences, this should be treated as a factor that *increases the sentence*, but not to an extent that would be disproportionate to the facts of the case.

9. The factors listed above apply to *all* the offences covered by the Home Secretary's reference. In addition, there are specific factors which should be taken into account in relation to fly-tipping and to illegal water abstraction.

Offences of fly-tipping may also be aggravated by:

(a) tipping waste of a dangerous or offensive nature, such as hazardous chemicals or sharp objects;

(b) tipping near housing, children's play areas or schools, livestock, or environmentally sensitive sites;

(c) any escape of waste to streams or the atmosphere.

10. The following may be treated as further aggravating features in offences of illegal water abstraction:

(a) over-abstraction of large quantities;

(b) failure to fit a meter, where required;

(c) environmental harm due to diminished water resources;

(d) prevention of other lawful abstractions.

Mitigating factors

11. Among the factors that may be taken to *reduce the seriousness* of any of the offences under consideration are:

(a) the fact that the individual defendant played a relatively minor role in the commission of the offence, or had relatively little personal responsibility for it;

(b) the fact that the defendant genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged;

(c) the fact that the offence was an isolated lapse.

12. Before arriving at the sentence, the court should take account of *personal mitigating factors*, including:

(a) the defendant's prompt reporting of the offence and ready co-operation with the enforcement authorities;

(b) the defendant's good environmental record;

(c) the fact that the defendant took steps to remedy the problem as soon as possible; and

(d) a timely plea of guilty.

13. It is, of course, the responsibility of the prosecution and defence to ensure that any relevant aggravating or mitigating factors are brought to the attention of the court.

The choice of sentence

14. We begin our consideration of the choice of sentence with the fine, which should be the starting point for the sentencing of both *persons* and *companies* for environmental offences. The fine is generally the appropriate sentence for these offences because:

(a) the offences are non-violent and carry no immediate physical threat to the person, and

(b) the offences are generally committed in situations where the defendant has failed to devote proper resources to preventing a breach of the law.

The level of fine

15. The level of the fine should be fixed in accordance with the normal principles in the Criminal Justice Act 1991, s.18 and attendant case-law, taking account of the seriousness of the offence and the financial circumstances of the individual defendant.

16. As a general principle, individuals and companies should not profit from their offences. It is important that the sentence takes full account of any economic gain achieved by the offender by failure to take the appropriate precautions; it should not be cheaper to offend than to prevent the commission of an offence. Conversely, the

expense of any remedial action already taken by the defendant might lead the court to reduce the level of the fine it would otherwise have imposed.

17. The level of the fine should reflect how far below the relevant statutory environmental standard the defendant's behaviour actually fell. The assessment of seriousness requires that the court should consider the *culpability of the defendant* in bringing about, or risking, the relevant environmental harm. This needs to be balanced against *the extent of the damage which has actually occurred or has been risked*. The level of the fine should be high where the defendant's culpability was high, even if a smaller amount of environmental damage has resulted from the defendant's actions than might reasonably have been expected. Such a case might arise where damage (or more extensive damage) has been avoided through prompt action by the authorities, or through some fortuitous element, such as helpful weather conditions. Conversely, in a case where much more damage has occurred than could reasonably have been expected, the sentence, while giving weight to the environmental impact, should primarily reflect the culpability of the offender.

18. The fine which is imposed should reflect the means of the individual or company concerned. In the case of a large company the fine should be substantial enough to have a real economic impact which, together with the attendant bad publicity resulting from prosecution, will create sufficient pressure on management and shareholders to tighten regulatory compliance and change company policy. It should be recognised that where pollution on a substantial scale has been occasioned by a large company, it is only the company itself (rather than individual directors) which will have the financial means to meet a fine proportionate to the degree of damage which has occurred.

19. For smaller companies, the courts should bear in mind that a very large fine may have a considerable adverse impact. A crippling fine may close down the company altogether, with employees being thrown out of work, and with repercussions on the local economy. Alternatively, a large fine may make it even more difficult for the company to improve its procedures in order to comply with the law. Similar considerations apply to non-profit-making organizations, which do not have shareholders. In such cases the court may reduce the level of the fine and/or spread the payment of the fine over a longer period of time. As the Court of Appeal established in *Rollco Screw & Rivet Co Ltd* [1999] 2 Cr App R (S) 436, in the case of a corporate defendant, fine installments may be required to be paid over a substantially longer period of time than the 12 months which is the normal maximum for an individual defendant.

20. Companies can be adversely affected by the bad publicity arising from a prosecution or conviction. This can result in a reduction of morale in the workforce, loss of confidence among customers or loss of confidence by neighbours or other stakeholders. The Panel recognizes this 'non-tangible' damage, but we do not accept that it should affect the penalty imposed by the court.

21. The court should be reminded of its power to make a deprivation order under section 43 of the Powers of Criminal Courts Act 1973, having regard to the totality of the financial burden on the offender if a fine is also imposed. When vehicles, plant or equipment are used in the commission of environmental offences, confiscation of such assets might be an appropriate response.

Determining the company's ability to pay

22. As a general principle, consistency in sentencing requires that fines should be devised to have an equal economic impact on companies of different sizes. In the consultation paper the Panel expressed the view that this might be possible to achieve through the establishing of a more settled formula to determine the level of fine in cases involving corporations. While recognising that the great diversity in the scale and nature of companies would make it difficult to find a simple measure of fine which would be applicable across this range, we suggested that it might be possible to express the fine as a percentage of one or more of the following measures:

(a) turnover (the sales revenue of the company over, say, the last three years);

(b) profitability (the scale of net profits before tax and dividends over the last three years) and

(c) liquidity (the value of current short-term assets set against short-term liabilities).

23. At first sight, turnover appears to be a fairer measure, because well managed companies would be penalized by the calculation of fines as a percentage of profitability. We have, nevertheless, concluded that there is no single measure that would be appropriate in all circumstances.

24. We also invited respondents' views on whether sentencers would benefit from expert accountancy advice to assist in determining a company's ability to pay; and, if so, who should bear the cost of providing that advice. There was little support for this idea except in the more complex cases, which would be heard in the Crown Court rather than a magistrates' court.

25. Both of these issues, in any event, go beyond the Panel's specific remit on the sentencing of environmental offences, but we believe that the general problem of achieving consistency in the sentencing of companies, including the use of non-financial penalties, merits further examination. We therefore intend to bring this matter to the attention of Ministers. In the meantime, the courts should be reminded of the Court of Appeal's remarks in *Howe and Sons (Engineers)* [1999] 2 Cr App R (S) 37 about the fining of corporate defendants, in particular the point that, where accounts or other financial information are deliberately not supplied by the

defendant, the court will be entitled to assume that the company is in a position to pay any financial penalty the court is minded to impose.

Absolute or conditional discharge

26. In our consultation paper we drew attention to the relatively high proportion of cases involving an individual defendant which result in an absolute or conditional discharge by the court rather than a fine. We have discovered no clear evidence as to the reasons for this, although there is some suggestion that it might be attributable to the courts' alleged lack of awareness of the seriousness of environmental offences. The appropriate sentence may, in any event, be a discharge rather than a fine in cases where one or more of the following factors are present:

    (a) the defendant's culpability was very low; *or*

    (b) there was little or no actual or potential environmental damage; *or*

    (c) the damage has been completely or substantially remedied through steps taken by the defendant; *or*

    (d) there is strong personal mitigation in the case; *or*

    (e) the defendant's financial means are limited, and the court decides that priority ought to be given to compensation and/or costs.

Community sentences

27. In cases of greater seriousness involving an individual offender, the court should consider whether there may be merit in imposing a community sentence rather than a fine. Since it contains a requirement of reparation to the community, a community service order may be the most appropriate community sentence, although of course such an order is only available where the offence is imprisonable.

Custodial sentences

28. Where the defendant is an individual, it is open to the court to impose a custodial sentence for any of the first three of the offences referred to the Panel (integrated pollution control and air pollution control; illegal depositing, recovery or disposal of controlled waste; and polluting controlled waters). The other two offences (abstracting water illegally and failing to meet packaging, recycling and recovery obligations) are not imprisonable.

29. A minority of environmental crimes committed by individual defendants is so serious that only a custodial sentence can be justified. To cross the custody threshold, a case would need to combine serious damage, or the risk of serious damage, with a very high degree of culpability on the part of the offender. Thus, custody should be considered where:

(a) the offence is shown to have been a deliberate or reckless breach of the law, or the defendant acted from a financial motive, whether of profit, or of cost-saving; *and either*

(b) (i) human health has been damaged or put at risk; *or*

(ii) the pollutant was noxious, widespread or pervasive, or liable to spread widely or have long-lasting effects.

Compensation

30. It appears from the available statistics that compensation orders are rarely used in this category of cases. In the Panel's view, where there is a specific victim (such as a landowner who has incurred expense in cleaning up their property, or in re-stocking a watercourse polluted by the defendant's actions) the court should always consider making a compensation order. It should give reasons if it decides not to do so. The court should fix the level of the fine first, and then consider the issue of compensation. If the total sum exceeds the defendant's means, section 35 of the Powers of Criminal Courts Act 1973 provides that the fine should be reduced, rather than the order for compensation.

31. Although the maximum summary fine for three of the environmental offences being considered by the Panel is £20,000, the maximum level of compensation which may be ordered by a magistrates' court is £5,000**.** A consistent approach would require a higher level of compensation to be available in the magistrates' courts, in line with the enhanced maximum fine. That is not a matter for the Panel or the Court of Appeal, but the Panel will bring it to the attention of Ministers. In the meantime, the prosecution should always consider the scope for compensation and put the matter before the court in appropriate cases.

Costs

32. A court should normally make an order for costs in favour of the prosecuting agency. Such an order will reflect the costs of the investigation, together with file preparation and presentation costs, and should not exceed the sum which the prosecutor has actually and reasonably incurred. The relevant principles are set out by the Court of Appeal in *Associated Octel Ltd* [1997] 1 Cr App R (S) 435, and have been reviewed recently in *Northallerton Magistrates' Court, ex parte Dove* [2000] 1 Cr App R (S) 136. According to the latter case, the order for costs ordinarily should not be disproportionate to the level of the fine imposed. The court should fix the level of the fine first, then consider awarding compensation, and then determine the costs. If the total sum exceeds the defendant's means, the order for costs should be reduced rather than the fine. Compensation should take priority over both the fine and costs.

Disqualification

33. In an appropriate case the court may wish to exercise its power to make an order disqualifying the defendant from acting as a company director for a specified period.

ANNEX A

THE OFFENCES

The five offences on which the Panel was directed to advise are as follows.

(1) Integrated pollution control and air pollution control - carrying on a prescribed process without, or in breach of, authorisation (Environmental Protection Act 1990, s.23)

Integrated pollution control covers the more complicated processes, which often have the greatest potential for pollution. They are generally, but not always, carried out in larger factories. These offences are prosecuted by the Environment Agency. Offences relating to air pollution control, which are prosecuted by local authorities, are concerned with significant local air polluting industrial processes, including processes with a potential for serious nuisance impacts (especially odour).

The maximum penalty for these offences is £20,000 and/or 3 months imprisonment on summary conviction, and an unlimited fine and/or 2 years imprisonment on indictment.

(2) Depositing, recovering or disposing of controlled waste without a site licence or in breach of its conditions (Environmental Protection Act 1990, s.33)

The deposit and recovery of waste must be carried out under a site licence and in accordance with its conditions. It must also be carried out in a manner not likely to cause pollution to the environment or harm to human health. Risks associated with waste which is not properly disposed of or recovered include ground and surface water pollution and soil contamination.

The maximum penalty is £20,000 and/or 6 months on summary conviction, and an unlimited fine and/or 2 years imprisonment on indictment. Where this offence is committed in relation to waste which is "special waste" (broadly, any controlled waste which is classified as toxic, very toxic, harmful, corrosive, irritant or carcinogenic) the maximum term on indictment rises to 5 years imprisonment.

It should be noted that so-called "fly tipping" is not a separate offence. It is charged under s.33.

(3) Polluting controlled waters (Water Resources Act 1991, s.85)

Controlled waters are coastal and territorial waters; and any streams or rivers, and lakes or ponds attached to them. Polluting controlled waters can have a devastating effect on flora and fauna, and on the quality of water abstracted for drinking and other purposes.

The maximum penalty is £20,000 and/or 3 months imprisonment on summary conviction and an unlimited fine and/or 2 years imprisonment on indictment.

(4) Abstracting water illegally (Water Resources Act 1991, s.24)

Water abstraction is governed by a licensing system which ensures that only sustainable amounts are used. Over-abstraction can seriously harm the environment, and the flora and fauna dependent on it. Those who take water beyond their licensed quantity may put the public drinking water supply and other lawful users at risk. A reduction in the flow of streams may lead to an unacceptable concentration of pollutants from legitimate discharges, such as sewage treatment works.

The maximum penalty is £5,000 on summary conviction and an unlimited fine on indictment. This offence is not imprisonable.

(5) Failing to meet packaging, recycling and recovery obligations, or to register or to provide information (Environment Act 1995, s.93 and Producer Responsibility Obligations (Packaging Waste) Regulations 1997)

This legislation requires businesses to achieve minimum levels of recycling and recovery of an equivalent amount of packaging waste in relation to the packaging or packed goods they sell. The environmental objective is to use waste more productively and reduce the use of landfill.

The maximum penalty is £5,000 on summary conviction and an unlimited fine on indictment. The offence is not imprisonable.

Note

Maximum fines for the offences (1) to (3) when tried summarily were raised to the level of £20,000 by the Environmental Protection Act 1990 and the Water Resources Act 1991. Before those statutes came into effect the fine level was at the normal statutory maximum for summary trial (now £5,000). There is no limit on the level of the fine which may be imposed in the Crown Court. Power to impose a custodial sentence for the offence under s.23, of up to three months in the magistrates' courts, was introduced by the Environment Act 1995.

ANNEX B

THE SENTENCING PROFILE

B1 Home Office statistics for 1997 and 1998 show the sentencing profiles for the *first three* of the five offences listed at Annex A above (EPA 1990, s.23 and s.33, and WRA 1991, s.85). It should be noted that the figures do not distinguish between cases of air pollution and other kinds of pollution under EPA 1990, s.23. The statistics also include sentencing figures for those dealt with for failure to comply with a Prohibition Notice under EPA 1990, s.23.

B2 Taking 1997 and 1998 together, the magistrates' courts sentenced 189 persons and 72 companies for these offences, and the Crown Court sentenced 22 persons and 8 companies. The fourth and fifth offences listed at Annex A above are not included in the statistics. Very few prosecutions are recorded for the offence under WRA 1991, s.24. Home Office and Environment Agency figures for the offence under EA 1995, s.93 indicate that there have been only a handful of prosecutions.

B3. In summary, the sentencing figures indicate that, where persons (rather than companies) are being sentenced for these offences,

* 71% are fined,

* 23% are discharged,

* 2% receive a community sentence, and

* 4% receive a custodial sentence.

B4. When companies are sentenced,

* 96% are fined, and

* 4% are discharged.

B5. The statistics contain separate entries for the offence under EPA 1990, s.33, when committed in relation to

(i) "special waste" and

(ii) other controlled waste which is not special waste.

B6. Where "special waste" is involved, the sentencing profile is different, at least in the Crown Court. In 1997 and 1998 the Crown Court passed immediate custodial sentences on four of the ten defendants convicted of that offence, although magistrates' courts imposed custodial sentences on just two of the 38 persons convicted.

B7. These figures are drawn from Home Office records, and it is recognised that they may significantly under-report the sentencing outcomes of non-police prosecutions. There is, however, no reason to think that the *sentencing spread* in the official records is untypical. A comparison between Home Office figures and Environment Agency records of prosecutions for the offence under WRA 1991, s.85 reveals a very similar sentencing pattern.

ANNEX C

THE CONSULTATION EXERCISE

C1. Before making a proposal to the Court of Appeal on the framing or revision of a sentencing guideline for a particular category of offences, the Sentencing Advisory Panel is required, by section 81(4)(a) of the Crime and Disorder Act 1998, to 'obtain and consider the views on the matters in issue of such persons or bodies as may be determined . . . by the Lord Chancellor'. In accordance with this provision a list of 28 organizations has been drawn up which the Panel is required to consult. The Panel may, in addition, consult any other individual or organization at its discretion.

C2. The Panel accordingly issued a consultation paper, on 6 October 1999, setting out its provisional views on the sentencing of these offences, and inviting comments on any relevant matters which the Panel should take into account. Copies of the consultation paper were sent to some 40 individuals and organizations with a particular interest in environmental issues, as well as to the organizations which the Panel is required to consult. The paper was also published on the Panel's website. Responses were received from those listed below.

1. Association of Chief Officers of Probation
2. Association of Chief Police Officers
3. John Barber, Centre of Construction Law and Management, Kings College London
4. British Ports Association
5. British Secondary Metals Association
6. HH Judge Bryant
7. Mr M. J. Cape JP
8. Centre for Corporate Accountability
9. Chemical Manufacture and Refining Ltd.
10. Chief Metropolitan Stipendiary Magistrate
11. Confederation of British Industry
12. Denton Hall (solicitors)
13. Department of the Environment, Transport and the Regions
14. Environment Agency
15. Environmental Services Association
16. Anthony T Evans, Chairman, Legal Committee, Joint Council of HM Stipendiary Magistrates
17. Friends of the Earth
18. General Council of the Bar
19. Health and Safety Executive
20. Institute of Directors
21. Justices' Clerks' Society
22. Magistrates' Association
23. Ministry of Agriculture, Fisheries and Food
24. National Association for the Care and Resettlement of Offenders
25. Mr D. N. Odling

26. Patricia D Park JP, Chair, Law Research Centre, Southampton Institute
27. Partnership for Action against Wildlife Crime
28. Pembrokeshire County Council
29. Planning and Environment Bar Association
30. Police Superintendents' Association
31. Probation Managers' Association
32. Royal Society for the Protection of Birds
33. Royal Town Planning Institute
34. Society of Stipendiary Magistrates for England and Wales
35. UK Environmental Law Association
36. UK Major Ports Group Ltd
37. UK Petroleum Industry Association
38. Professor Andrew von Hirsch, University of Cambridge Institute of Criminology
39. HH Judge Wood

The Sentencing Advisory Panel is constituted under sections 80 and 81 of the Crime and Disorder Act 1998, which came into force on 1 July 1999. It is an independent advisory and consultative body set up to provide fully researched, objective advice to the Court of Appeal, to assist the Court when it frames or revises sentencing guidelines. The aim of the Panel is to promote greater consistency in sentencing.

Whether to frame any guideline and, if so, in what terms, remains a matter for the Court of Appeal in any case where the sentence is not fixed by law.

The Lord Chancellor has appointed the following members to the Panel:

Professor Martin Wasik (Chairman)
Professor Andrew Ashworth QC
Ms Pamela Brown
Dr Michael Chan MBE
His Honour Judge Sir Rhys Davies QC*
Mrs Anne Fuller JP OBE
Ms Heather Harker
Professor Frances Heidensohn
Peter Jones Esq
David Mallen Esq CBE
His Honour Judge Michael Mettyear
Sir Richard Tilt
Ms Joan Webster QPM*

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Secretary to the Panel: Miss Brenda Griffith-Williams