Introduction

1. The Consortium welcomes the opportunity to respond to this document and the introduction of Restorative Justice into this context.

2. Restorative justice (RJ) is perhaps more known for its application in the Criminal Justice context, specifically within the Youth Justice System (YJS). RJ has been around in this context and others since the 1980s in England and Wales, when it was used primarily as a response to the needs of victims of serious crimes. It has been and is currently carried out by some highly skilled and resilient practitioners with powerful outcomes for participants, although it does not receive the same profile perhaps as work carried out in the YJS. Evidence shows that RJ can have the most impact where the most harm has been caused, rather than with more minor crimes and conflicts where it has been more commonly implemented in the last few years.

3. The potential for meeting the needs of all stakeholders by introducing RJ in the area of regulation is immense but it will require a culture change for most bodies. Those harmed by the breach of regulations have not always been treated as stakeholders or fully consulted when a solution has been looked for, or a sanction decided, and to truly engage with them will be a significant change in ethos. RJ also requires giving some power over to the participants for them to decide on solutions; experience has taught us that organisations who have sanctioning powers can find this difficult and, unless RJ principles are reinforced, can drift back into old ways.

4. Lessons should be learnt from how RJ has been implemented (and how, in a number of areas, it has not) within the Youth Justice System. As regards adults, the document mentions using Conditional Cautions, but these have yet to be implemented properly, or researched and evaluated adequately, in this country. There have been criticisms that they have become so legally complex that they have stifled any restorative outcomes for participants or encouragement for the CPS to implement them in areas other than the two pilot sites. Therefore, consideration needs to be given to maintaining the flexibility of the process to meet individual needs. It is also important to consider who carries out this highly skilled role.

It should be noted at this point that within the criminal justice context (where most research has taken place) agreements are more than 20% more likely to be complied with following a restorative process than any court enforced agreements.
5. Research carried out in both the CJS and schools suggests that victims feel satisfied with a restorative process (typically 80-100%), would recommend it to others, and as a result, feel more confident in the system. It can reduce fear and encourage the growth of social capital. For offenders, it is seen as a fair process. They are satisfied with the way they have been treated and feel they have put right some of the harm caused. It can also help to reintegrate the person or company back into the community and restore the public’s confidence.

6. For the regulatory bodies, as the discussion document rightly shows, a restorative approach could reduce the need for recourse to the court and the need for re-sanctioning. It shows the public, and in particular the victims, that bodies are public organisations and are accountable, and it can increase understanding and education about its role.

7. We fully endorse the principle that the object of regulation is compliance and that to achieve this it is often not necessary to resort to criminal prosecution with its damaging side effects and high cost. We agree that a restorative approach will be the most effective way of securing compliance in many, or even most, cases. The two main points which we would wish to add to these proposals are (1) greater opportunities for victims of regulatory offences to be involved in dealing with them and, (2) greater involvement of the managers and directors of organizations, not just the corporate entities. Of course the ideal, as the document says, is for the regulatory intervention to be preventive and take place before there are any victims, but where there are, they should be able to participate.

8. ‘Compliance advice’ is mentioned. We would add that in some cases, for example companies which have breached the regulations through inefficiency rather than greed, they may need help as well as advice and this should be made available as part of the enforcement policy.

9. We believe that regulation should start from the assumption that people want to do the best they can. Deliberate malfeasance should not be assumed unless there is clear evidence of it.

10. One of the criticisms of the regulatory system as it stands is that the person sanctioned is not always the true offender and there is ‘scapegoating’. RJ facilitators, as part of the preparation for any direct or indirect communication, would find out who were the actual offenders (who was responsible) and who is the victim (who has suffered the most direct harm). If the person responsible has left the company then the process could still go ahead but the victim would be made aware of these circumstances and could decide whether to take part based on that information. This ensures that the process, and therefore any agreement or sanctions, are likely to be more meaningful and complied with. Where a company is responsible for compensation (or reparation such as clearing up the results of pollution), it is appropriate that the cost should be met by all those who caused, or allowed, the offence to take place, namely from directors’ salaries and bonuses, and shareholders’ dividends, before drawing on company reserves (It should not be possible for some to avoid the consequences by putting the blame on one person, as in the practice of having a ‘scapegoat’ or ‘vice-president responsible for going to jail’, as described by Professor Braithwaite (2002: 108)). If the amount is more than can be paid in one year the company should be encouraged to continue trading until it has paid the total amount. If it cannot do this, or there is evidence of
deliberate poor performance in order to evade paying, the company should not be forced to cease trading but taken into administration so that payments can continue if at all possible.

11. With reference to the proposed system of sanctions proposed in Box E1 (p. 7-8), we agree with the proposed levels of response – restorative justice, statutory notices of enforcement, administrative penalties and criminal proceedings – with the proviso that restorative procedures need not be used for minor, victimless infringements, which do not justify the work entailed. For these, conditional cautions, fixed monetary reparation (see Questions 16-18), and publicity orders would be suitable.

12. Before criminal prosecution is resorted to, there should be a final attempt to resolve the matter restoratively. If the case led to a conviction, any sanctions imposed by the court should themselves be focused on repairing harm or making some equivalent contribution to the community, and/or making payments towards the cost of enforcement. The latter would amount to a fine, or at least an order to pay costs, but could include more than the actual costs of prosecution.

13. As regards the penalties in Box E2 (p. 8), in a system based on reparation we prefer the word ‘sanctions’ which does not have such strong punitive overtones. We agree with the principles (changing behaviour, removing any financial benefit, being responsive to the particular case, being proportionate, restoring the harm caused, and deterring future non-compliance). We have only three reservations: (1) It is not always possible to achieve exact correspondence between an offence and a sanction (see Q 3d); (2) Rather than refer to deterrence in Principle #6, we would prefer to put this principle positively: *Sanctions should aim to show the offender that future compliance is in the interests of all concerned;* (3) Victims, if any, or a small group representing them, should take part in deciding on appropriate reparation, and the offender’s participation in this process should be regarded as part of the reparation.

14. We will respond to the specific questions, as listed by Professor Macrory.

**My Vision for Contemporary Sanctioning Regimes**

1. Do you agree that criminal prosecution and the criminal courts should be reserved for the truly egregious offenders or where regulatory breach leads to severe actual or potential external consequences?
   *Yes, if compliance and restoration can be achieved by restorative means, which we believe is usually the case.*

2. Do you agree with the vision that is laid out in Figure 1.3 of a contemporary regulatory enforcement toolkit?
   *Yes, with the proviso that when there is a successful prosecution the sanctions should still be restorative.*
3. Do you agree or disagree with the ‘Penalties Principles’ proposed in chapter one? If you disagree with one or all of the Principles listed below, please elaborate?

a. Principle #1 – Sanctions should change the behaviour of the offender to prevent regulatory non-compliance
Yes, if this includes not just the imposition of the sanction but the dialogue that accompanies it so that the offender understands the reason for the regulation.

b. Principle #2 – Sanctions should eliminate any financial benefit or benefit which was the result of regulatory non-compliance
Yes, but there needs to be something more. If there are victims and they so wish, there should be an opportunity for them to meet the offender(s); there could also be payments, for suffering or inconvenience of victims or towards the costs of enforcement.

c. Principle # 3 – Sanctions should be responsive and take into account what is appropriate for the particular offender and the particular regulatory issue
Yes. If there is no tangible damage, or the damage is irreparable, the sanction should involve creating an amenity of a different kind, for example by reclaiming wasteland or refurbishing a sports ground.

d. Principle #4 – Sanctions should be proportionate to the nature of the offence and the harm caused
Yes, although this is difficult to quantify (see Wright, Restoring respect for justice, 1999, Ch. 6). In some cases it may be possible to do it in financial terms. Although there is also the question about who decides what is proportionate, if the victim(s) have requested a sanction/reparation, the offender agrees to this, then there is the argument in some cases for saying that that should be sufficient unless it is so serious a breach of sanction that further sanctions are necessary.

e. Principle #5 – Sanctions should include an element of ensuring that the harm caused by regulatory non-compliance is put right.
Yes, this should be a central principle.

f. Principle #6 – Sanctions should aim to deter future non-compliance.
We would prefer to put the emphasis on inducing future compliance; the word ‘deter’ has punitive overtones, although we concede that there is an element of deterrence in our reply to Principle #2.

4. Are there any principles that should be added to this list? If yes, please provide details including supporting comments and evidence.
Where there are victims, they (or their representative) should be given the opportunity to take part in a dialogue with those responsible for the harm caused. This could include discussing the form, which reparative sanctions should take, but we accept that it would not be appropriate for victims to influence punitive sanctions, where they are necessary.
5. Do you agree that a regulator must ensure the following characteristics to be present in order for a sanctioning regime to be most effective?

a. The regulator should have a published enforcement policy
Yes. It should include some form of restorative process at an early stage, before resort to a Regulatory Tribunal. This implies that facilitators should be available, preferably accredited by a recognised NGO.

b. The regulator should attempt to measure regulatory outcomes (such as compliance rates) and as well as outputs (such as the number of enforcement actions taken)
Yes, the basic data should be monitored, though not in more detail than necessary. The outcomes should also measure not just the more punitive sanctions but also where restorative interventions were used and their outcomes not just for the offenders but also outcomes for victims who have participated.

c. The regulator should be able to justify the enforcement actions they take
Yes, in line with the stated principles.

d. The regulator should follow up enforcement actions
Yes; before a sanction is imposed for non-compliance, there should be an interview to establish whether it is wilful or, for example, due to changed circumstances. Where an agreement was made in a restorative intervention and a breach takes place, it should not automatically go to a punitive sanction but back to a restorative intervention to resolve if possible.

e. The regulator should be transparent in the enforcement actions it takes
Yes, it should normally publish statements about its actions, unless this would affect the offender’s ability to pay compensation or make reparation.

f. The regulator should be transparent in the methodology it uses for setting and calculating monetary administrative penalties
Yes, although this may not always be possible when the reparative sanction is agreed between victims and offenders.

6. How should regulators be required to report their performance and progress against their enforcement strategies?
In an annual report, which should also monitor performance to uncover any bias, for example in favour of large companies or against companies operated by members of ethnic minorities. They should also issue press statements in cases where the sanction was substantially higher or lower than might have been expected, explaining the reasons.

7. Should regulators make a more focused effort to communicate their strategy for targeting businesses that are deliberately non-compliant? If yes, how should they approach this?
A short, easy-to-read handbook should be published explaining the principles. It would include a few relevant questions, which would have to be satisfactorily answered in each company’s annual report submitted to its shareholders and Companies House.
8. What can be done to capture the rogue elements within industries?

The normal restorative process should be applied first, because we are confident that even with these individuals it stands a better chance of securing compliance than routine punishment. Where there was evidence of wilful non-compliance, resources should be targeted on strict enforcement.

9. Is there need for increased investigative powers to be afforded to regulators to better deal with rogue businesses?

Yes, but, in addition, encouragement (and improved protection) should be given to whistleblowers. In some cases bodies such as trade unions, the Consumers’ Association, and environmental groups would be able to help.

10. Should due diligence defences be included in all areas of criminal offences involving regulatory breach?

Since the emphasis is not on blame but on putting right the harm, due diligence is irrelevant. They should put right the harm whether they have been diligent or not.

11. Would more training be appropriate for judges in the area of regulatory non-compliance and appropriate sentencing?

Yes, with special reference to the reparative nature of sentencing.

12. Should sentencing guidance be prepared for areas of regulatory non-compliance?

Yes. The primary aim should be putting right any harm done to the actual victim, and follow the victim’s wishes, which sometimes include work of public benefit. Before the new system is introduced into each area, the area should be required to demonstrate that it has arrangements in place for finding work of public benefit and arranging for its supervision, as proposed in Question 3, Principle #3. The Probation Service or an NGO should be entrusted with this work, and provided with the necessary extra resources.

13. Should the fine maxima in criminal courts be abolished? Should a cap be set?

The sanctions should be based on making good the loss or damage, with no maximum (Principle #5). If the amount is more than can be paid in one year, the company should be encouraged to continue trading until it has paid the total amount. If it cannot do this, or there is evidence of deliberate poor performance in order to evade paying, the company should not be forced to cease trading but taken into administration so that payments can continue if at all possible.

14. Should the cap follow the principles laid out in the Competition Act 1998, which provides that administrative penalties may not exceed ten percent of the relevant turnover of the undertaking concerned?

No (see answer to Q. 13).

15. Should profits gained from non-compliance be subject to a separate profits order, which is intended to remove any economic gains from non-compliance as well as a separate fine element?

We would propose that the sanction should be based on reparation and elimination of financial benefit (Principle #2), plus an element of payment towards enforcement costs.
Monetary Administrative Penalties (MAPs)

16. In general, do you agree that regulators should have Monetary Administrative Penalties available to them as an additional sanction option in their enforcement toolkits? If no, then please elaborate on your views.

Yes, but we would prefer to call them Public Reparative Sanctions, to emphasise that they were means of making up for the harm that had been caused. They should not be used until victims, if any, had been fully compensated.

If there are victims, they (or a small group acting as spokespersons) should have the opportunity to meet those in the offending organization who are responsible for the acts or omissions that caused the harm, to express their feelings, ask questions and discuss what action they want the organization to take by way of reparation. This might for example include monetary compensation, but also preventive action, improved training of staff, giving safety a higher priority than profit, or making a contribution to the local community for example by creating a playground or nature reserve. The scale of this would depend on the seriousness of the offence (see Q 20), but exact correspondence is obviously not attainable (see answer to Q 3d, Principle #4).

There should be the alternative of reparation in kind except for minor infringements, which do not justify the work of organizing it.

17. Do you prefer Model #1 (paragraphs 3.40 – 3.44), Model #2 (paragraphs 3.45 – 3.47) or Model #3 (paragraphs 3.48 – 3.51). Please explain why you would prefer one particular model?

We agree with the recommendation of Model #3, for the reasons stated.

18. Should regulators have FMAPs available to them? For what types of offences (either in general or giving specific examples) would they be appropriate? What level of financial penalty would be appropriate for FMAPs?

We agree with FMAPs for minor, victimless infringements. Although small penalties can be shrugged off by large companies, they have some nuisance and bad-publicity value; and being fixed, they do not require time to be spent on assessment.

19. Should regulators have VMAPs available to them? For what types of offences (either in general or giving specific examples) would they be appropriate?

VMAPs should be used for more serious offences, especially those that have the potential to cause harm to people, or have actually done so. Victims should be invited to be involved (see answer to Q 16).

20. Should the level of VMAPs be determined with regard to one or more of the following aggravating or mitigating factors:

- Financial gain made by the offender
- Offender’s past record of compliance
- Annual turnover of the offender
- The co-operation of the offender
- The timely and accurate reporting of the issue
- Timeliness of corrective action
• Please provide other relevant factors, which you feel, should be included
  Yes. All of the above factors are relevant, but perhaps the co-operation of the
  offender is more a matter of enforcement than of determining the level?

21. Should the level of VMAP be unlimited?
   Yes, subject to the above.

22. Should the maximum level of VMAPs set out in legislation be capped to never
    exceed ten percent of the relevant annual turnover as per the details of the
    Competition Act 1998?
    It should be the maximum necessary to put right the harm caused, subject to what is
    necessary to keep the organization in business so that it can continue to make the
    payments.

23. Should there be provision to supersede the cap if the financial benefit is greater
    than the capped amount?
    N/A if proposal in answer to Q 22 is adopted.

24. Should there be an option for settlement as an alternative to a MAP? In what
    sort of cases should this be considered?
    Yes, in any cases where there are victims.

Enforcement Notices

25. Should regulators follow-up statutory notices such as Enforcement or
    Improvement Notices on a risk-adjusted basis?
    No comment.

26. If a statutory notice is not complied with, should regulators be able to apply a
    Monetary Administrative Penalty for non-compliance with an Enforcement Notice?
    Yes, subject to the above comments.

27. If a regulatory appeals tribunal exists, should appeals for statutory notices be
    heard in this venue?
    Yes, subject to paragraph 6 above.

Enforceable Undertakings and Undertakings Plus

28. Do you think Enforceable Undertakings are a good alternative sanction to have
    available to regulators?
    Yes.

29. Does the described model suggest the correct key elements for introducing
    Enforceable Undertakings in the UK?
    Yes, subject to scope for negotiation and victim involvement, as above.

30. Should business be able to apply to the regulator to enter an Enforceable
    Undertaking or should it be solely at the discretion of the regulator to suggest an
    Enforceable Undertaking?
If the aim is to increase acceptance of responsibility, there should be the possibility for businesses to take the initiative.

31. Should Enforceable Undertakings be disclosed publicly? Should regulators follow-up Enforceable Undertakings?
Yes to both. It is right that businesses should make undertakings, but the public should both know what went wrong and be able to give credit for putting it right.

32. Would Enforceable Undertakings in principle be appropriate for all types of offences, or are they more appropriate for particular types of offences (please provide details of types of offence or specific offences)?
Whatever has been done wrong (or omitted), there should be scope for an undertaking to put it right, with the involvement of victims where appropriate.

33. Should enforceable undertakings be accompanied by a Monetary Administrative Penalty in order to effectively sanction serious offences?
Yes, by Public Reparative Sanctions (see Q 16).

34. What sort of conditions on a business should an Enforceable Undertakings seek to impose?
Repairing harm and taking steps to prevent it from occurring again.

Restorative Justice

35. Do you agree that Restorative Justice is something that can be applied to the area of regulatory non-compliance? Please elaborate on your views.
Yes, we believe that the proposals hold the promise of improving compliance more effectively. The main substantial addition we would make is the involvement of victims in the process, both because of the likely benefit of the process itself, and in order to give them a say in a restorative outcome.

36. For what types of offences would it be appropriate?
It would be appropriate in all but the most minor breaches of rules. It can be used in cases where there are identifiable victims or where there are not. Where there are not, sanctions should also be restorative (making good the harm or compensating for it in another way). For minor regulatory offences with no immediate victims or potential victims, a fixed financial sanction would be appropriate, but this too should be regarded as making reparation (to the community, for the cost of enforcement).

37. Do you agree with Option #1 (paragraphs 5.27 – 5.29) of RJ as a pre-court diversion? If you disagree, please elaborate on your views.
Bearing in mind that the object is to secure compliance and to repair any harm to the greatest feasible extent, pre-court diversion should be used as a means of ensuring this wherever possible.

38. In what cases or for what offences would the use of RJ as a pre-court diversion be appropriate?
Whenever victims and offenders are willing to communicate with one another, and can reach an agreement that they and the regulatory body find acceptable. For offences with no identifiable victim(s), where there is a willingness to repair the
harm caused perhaps to a community, and where it would be in the public interest to resolve outside of the court system.

39. Should RJ be an alternative to administrative penalties as set out in Option #2 (paragraph 5.30 - 5.31)? In what cases or for what offences would it be appropriate?  
Restorative justice should not be seen as an alternative to administrative sanctions, or public reparative sanctions as we would prefer to call them, but as a means of determining them (see Q 16).

40. Do you agree with Option #3 (paragraph 5.32) of RJ having a role within the criminal justice system when dealing with regulatory non-compliance? Please elaborate on your views.

a. Could it be used at the pre-sentence stage?
Yes, unless there was good reason to the contrary, the outcome of the process should not affect the sentence, it should be the sentence; or if sentence were deferred, the sentence would be nominal if full reparation had been made.

b. Could judges include an RJ element as part of a sentence?
Yes, we support this proposal or, preferably, that the restorative justice agreement would be the sentence. It needs to be made clear that victims are not forced to take part and if they do not wish to or in the case of unidentified victims, then community reparation could be done. This also needs to be done following the RJ principles for restorative outcomes to be achieved.

41. In what cases or what types of offences would the use of RJ as part of a criminal proceeding be appropriate?
Whenever victims and offenders are willing to communicate with one another, and for offences with no identifiable victim, where it might be possible to make reparation to a community and where it is so serious that it is deemed necessary to go through criminal proceedings. Pre-court the company may not have been willing to accept responsibility or victim unwilling to engage, however this situation can change at any time and therefore RJ should remain a possibility at any point.

42. Should regulators undertake pilots to explore the potential of Restorative Justice to improve outcomes for victims, offenders, and communities in business regulation?
Yes; and the results of research should be awaited before the new system is rolled out more widely. Research should take account of the quality of the restorative process, and of the support given to offenders in complying, where this is needed (see paragraph 3 above). What is measured for that research should adequately reflect restorative outcomes. Evaluation and research should focus on satisfaction for victims and offenders with the process and results. Any legislation should be regularly revised and amended in the light of research findings. The pilot must ensure that the highest quality RJ is practiced to ensure what is measured is a fair picture of what can be achieved.
43. Who should contribute to the cost of the RJ process?
The regulatory bodies in the first instant need to provide the resources as they will potentially be making the savings should the breach be resolved satisfactorily. However, the restorative intervention can raise the issue of costs to the offenders including directors and shareholders (see paragraph 5 above), but only after any reparation, and subject to ability to pay (Q 13).

44. What safeguards are necessary in the RJ process?
A complaints procedure (including the possibility of RJ at an early stage) should be put in place. All participants to be made aware of the existence of the procedure and give informed consent. Training of facilitators is important, with support, supervision and continued professional development. The Principles (including confidentiality, voluntariness, fairness etc.), Code of Practice (National Occupational Standards due out shortly) and training should be planned in conjunction with specialist NGOs and academics. The ideal is for facilitators to work in pairs, so that they can evaluate their own and each other’s performance. This of course would increase the cost, and the use of a trained volunteer as the co-mediator could be considered. This would have the further advantage of providing more community involvement.

45. Does Restorative Justice have a role to play in remedying regulatory breaches where no identifiable individual victim(s) exists such as in cases of environmental damage?
Yes, there may still be some people or a group who have been affected or a relevant specialist NGO could represent the public interest in agreeing a reparative outcome. It should be noted though that using a group or individual or a regular basis as a proxy victim does not provide a positive outcome. Best outcomes come when the victim or representative have actually been affected in some direct way.

46. RJ is a voluntary process, so should it ever be suggested by a judge or a regulator as an alternative to a more formal sanction?
Suggested, yes: ‘there’s no harm in asking’. But no pressure should be placed on the victim to take part. As regards the offender, there is a debate about how voluntary a process is when the alternative is a punitive or court based sanction, however it is still a choice and this should be maintained. There is the possibility of causing further harm to the victim if the offender is forced to take part. You may also lose the good outcomes on the successful completion of agreement should the process be forced on the offender. However making the restorative process a more attractive proposition for the offender may make it more likely for them to want to participate. Informed consent is critical for both parties.

47. Will corporate or business offenders be under pressure to accept an offer to enter into an RJ process because it is seen as a lesser or softer alternative?
There are suggestions from experience in the criminal justice system that even though offenders are persuaded to take part, or agree to do so in the hope of a more lenient outcome, the process is so powerful that in many cases it wins their cooperation and the potentially more lenient outcome is not a priority.
48. What should happen if a company does not adhere to the agreed upon outcomes of an RJ process?
Firstly, the situation should be investigated, to see whether, for example, the offenders’ circumstances have changed, or the agreement was too onerous, or they have not received enough support, in which case it can be re-negotiated within a restorative process. In the case of wilful refusal, the company should be taken into administration, so that it can be made to comply.

Alternative Sentencing in Criminal Courts

49. Are financial penalties or imprisonment adequate sanctions for addressing regulatory non-compliance in a criminal setting?
Financial sanctions should only be used where the breach of rules is very minor and victimless, and the financial sanction should be regarded as making amends to the community for the cost of enforcement.

50. Why do judges not use other legislative provisions for alternative sentences such as compensation orders?
We speculate that it is at least partly because their training and traditions lead them to assume that the consequence of wrongdoing should be punishment, rather than aiding victims and making good the harm.

51. Should judges be afforded a broader range of sentencing options to deal with companies and individuals who have not met their regulatory obligations?
Yes, and these should focus firstly on meeting these obligations, and showing why they are in everyone’s interest (This assumes, of course, that they are indeed beneficial; if they are being ignored because they are not fit for purpose, a restorative process, sometimes referred to as a deliberative process, could bring this to light and show the need for change). The ultimate sanction would be disqualification from holding such positions (for individuals) and being taken into administration (for companies).

52. Are financial penalties alone sufficient to deter companies from not complying with regulatory obligations?
No, and in any case the emphasis should not be on deterrence (fear of imposed consequences) but on the public interest and enlightened self-interest, and the natural consequences of gaining a reputation for being untrustworthy. See answer to Q 3f, Principle #6.

53. Should regulators and government departments look to amend their legislative provisions to extend the sanctioning options available to judges?
Yes: see answer to Q 51.

54. Would the following potential extended sanctioning options be appropriate for sentencing in cases of regulatory non-compliance?

a. Publicity Orders
Yes, but we would resist the sound-bite notion of ‘naming and shaming’. We would prefer the publicity to say that a company had admitted (or been convicted of) a certain offence, with certain actual or potential consequences, and had undertaken to
make reparation to the victims or the community in certain ways, including action to prevent a recurrence. This in itself would provide strong pressure towards compliance.

b. Corporate Rehabilitation Orders
Yes, reparative and preventive action would be fully in accordance with the restorative principle. Preference should however be given to voluntary agreement to do these things, following discussion with victims.

c. Corporate Probation Orders
Yes. They should operate in a spirit of enabling compliance rather than looking for breaches and dragging people back to court (see paragraphs 3 and 4 above). The Probation Officers should be seen not so much as traffic wardens giving out parking tickets, and more like H M Inspectors of Schools in the 1960s and 1970s, whose role was to improve standards primarily by giving advice, and on occasion sending in experienced advisory teachers to help a teacher out of her difficulties, although of course they could take tough action when necessary.

d. Mandatory Audits
Yes; similarly, the emphasis should be on recommending improvements rather than on ‘catching out’ non-compliers, but here too, strong action could be required in cases of persistent failure.

e. Community Service Orders
Yes, especially for victimless offences and those where victims asked for little or no reparation; public credit should be given when they were satisfactorily completed.

f. Remediation Orders
This word is not in the SOED, but assuming it means remedial action, it appears to fit well with the other proposals.

55. Which offences would be appropriate for alternative sanctions?
See answer to Q 41.

56. Which firms would be considered appropriate for alternative sanctions?
For remedial sanctions (making reparation to victims and taking preventive action for the future) any and all. Possibly very small firms would not have the resources to perform community service in addition.

57. Do you have any suggestions for other types of sanctions that should be considered, not mentioned on the above list?
We think that the above list is quite comprehensive, and if well used, it should help to bring about what many victims want: that some good may come out of the harm they have suffered.

58. Should judges seek to remove all of the financial benefit obtained as a result of regulatory non-compliance in their sentencing through a profits order plus a fine?
Yes; see answer to Q 3b, Principle #2.
About the Restorative Justice Consortium

The Restorative Justice Consortium was formed in 1997. It is the independent body for those with an interest in restorative justice. These include organizations, policy makers, practitioners, academics etc from many different contexts and from across the world.

The objects for which the Consortium is established are:

"To promote restorative justice for the public benefit as a means of resolving conflict and promoting reconciliation by:

(i) Promoting the use of restorative justice in the criminal justice system, in schools, in the workplace and elsewhere in the community in situations where conflict may arise;
(ii) Developing and promoting agreed standards and principles for evaluating and guiding restorative practice;
(iii) Advancing education and research on restorative justice and the publication of the useful results of that research"

We do this by producing publications, holding meetings, conferences and seminars, disseminating information, carrying out small pieces of research, providing an umbrella for other RJ groups, providing a website and providing a link between Government departments and its members.

In June 2003, the Consortium was granted charitable status.