

## **Report to Audit Committee**

# **Failure to Prevent Fraud Duty – Briefing Note**

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### **Reason for Report**

This report provides Members with a briefing on the requirements of The Economic Crime and Corporate Transparency Act 2023 in relation to the new offence of Failure to Prevent Fraud

### **Executive Summary**

The Economic Crime and Corporate Transparency Act 2023 came into effect on 1 September 2025 and introduced a new corporate offence of Failure to Prevent Fraud. Large organisations will risk facing criminal prosecution and unlimited fines if they fail to prevent fraud.

The offence applies to all large bodies, corporate entities, subsidiaries and partnerships. This means that in addition to businesses, large not-for-profit organisations such as charities are also in scope, as well as incorporated public bodies.

The only defence available to an organisation will be that reasonable counter fraud defences and procedures are in place at the time the fraud offence was committed. Relevant organisations will have a defence if they have reasonable procedures in place to prevent fraud, or if they can demonstrate to the satisfaction of the court that it was not reasonable in all the circumstances to expect the organisation to have any prevention procedures in place.

This briefing sets out the scope and requirements of the Act, an evaluation of the risks the Council faces, and a summary of the actions taken and planned to further reduce the Council's exposure in this area.

### **Recommendation**

Members are requested to consider the contents of this briefing.

**Failure to Prevent Fraud Duty – Briefing Note****1. Background and scope of the offence**

- 1.1 The Economic Crime and Corporate Transparency Act 2023 came into effect on 1 September 2025 and introduced a new corporate offence of Failure to Prevent Fraud. Large organisations will risk facing criminal prosecution and unlimited fines if they fail to prevent fraud.
- 1.2 The offence applies to all sectors. However, to ensure burdens on business are proportionate, only 'large organisations' are in scope – defined (using the standard Companies Act 2006 definition) as organisations meeting two out of three of the following criteria:
- more than 250 employees
  - more than £36 million turnover
  - more than £18 million in total assets.
- 1.3 If resources held across a parent company and its subsidiaries cumulatively meet the size threshold, that group of companies will be in scope of the failure to prevent fraud offence.
- 1.4 Liability can be attached to whichever individual entity within the group was directly responsible for failing to prevent the fraud.
- 1.5 Liability can alternatively be attached to the parent company, if a fraud was committed by a subsidiary employee, for the benefit of the parent company, and the parent company did not take reasonable steps to prevent it.

**2. What types of fraud does this capture?**

- 2.1 The offence applies to the fraud and false accounting offences which the government considers are most likely to be relevant to large corporations. These are:
- fraud by false representation (Section 2, Fraud Act 2006)
  - fraud by failing to disclose information (Section 3, Fraud Act 2006)
  - fraud by abuse of position (Section 4, Fraud Act 2006)
  - obtaining services dishonestly (Section 11, Fraud Act 2006)
  - participation in a fraudulent business (Section 9, Fraud Act 2006)
  - false statements by company directors (Section 19, Theft Act 1968)
  - false accounting (Section 17, Theft Act 1968)
  - fraudulent trading (Section 993, Companies Act 2006)
  - cheating the public revenue (common law)
- 2.2 The offence will hold organisations to account for fraud committed by their employees, agents, subsidiaries or other "associated persons" who provide services for or on behalf of the organisation, **where the fraud was committed with the intention of benefiting the organisation or their clients**. It does not need to be demonstrated that the organisation's senior managers or directors ordered or knew about the fraud
- 2.3 In order for an organisation to be prosecuted for Failure to Prevent Fraud a "base" fraud offence (as listed above) would need to be committed which is **intended to benefit**, either directly or indirectly, the organisation or its clients.
- 2.4 **The relevant organisation is not liable if it is a victim or intended victim of a fraud that was intended to benefit the organisation's clients**. The term "victim" is not defined in the Act but, in this case, would apply if the loss caused, or intended to be caused, by the fraud would be borne by the organisation, or the fraud was committed with intent to harm the

organisation. However, an organisation would not be a “victim” only because it suffered indirect harm as a result of the fraud by an associated person (for instance, because revelation of the fraud damaged the organisation’s reputation). For the avoidance of doubt, an organisation cannot claim that the consequences of being charged with the offence of failure to prevent fraud constitute being a victim of the fraud.

- 2.5 The “base” fraud offence is committed by a “**person associated with the relevant body**”. An employee, an agent or a subsidiary of the relevant body is automatically an “associated person” for the purposes of this offence.
- 2.6 A person who provides services for or on behalf of the relevant body is also an associated person while they are providing those services. The corporate offences can only take place if the person commits a base fraud whilst acting in the capacity of a person associated with the relevant body (for example, an employee acting in the capacity of an employee, or an agent acting in the capacity of an agent). Fraud that takes place outside this capacity, for example in the person’s private life, does not give rise to corporate liability.
- 2.7 The term ‘agent’ is governed by domestic law and typically includes anyone with authority to enter into contracts on behalf of the relevant body in question. The agent will only be an associated person for a relevant body where the agent is acting in their capacity as an agent for that body. For example, an agent who acts on behalf of multiple entities will only be an associated person of the Council whilst acting as agent of the Council, and not for any activities they conduct on behalf of other companies.
- 2.8 The term “providing services” does not include providing goods. It is also important to note that “providing services for or on behalf of the relevant body” does not include providing services to the relevant body. Thus, persons providing services to the Council (for example, external lawyers, valuers, accountants or engineers) are not acting “for or on behalf” of the organisation. This means they would not be associated persons for the purposes of the offence.
- 2.9 Section 199(9) states that “Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.” This means that an associated person may or may not be under contract to the relevant body.
- 2.10 Small organisations should be aware that they may be “associated persons” while they provide services for or on behalf of the Council. In these circumstances, small organisations may be subject to contractual or other requirements imposed by the large organisations in respect of the offence of failure to prevent fraud.
- 2.11 Annex 1 of the Home Office Publication on the Economic Crime and Corporate Transparency Act 2023: Guidance to organisations on the offence of failure to prevent fraud, provides a summary of those potentially liable to prosecution under the Act, and in which circumstances. The table from the Annex is reproduced below:

Who commits the base fraud? <sup>1</sup>	Who is intended to benefit?	Who could be prosecuted for failure to prevent base fraud?	Legal reference
An associated person	The relevant organisation	The relevant organisation	199(1)(a)
	The clients of the relevant organisation, to whom the associated person provides services for or on behalf of the relevant organisation.	The relevant organisation, except where it is the victim or intended victim of the base fraud (section 199(3)).	199(1)(b)
	The clients of the relevant organisation, where the services to subsidiaries <sup>2</sup> of those clients for or on behalf of the relevant organisation.		199(1)(b)
The <b>employee</b> of a subsidiary of a large parent organisation.	The subsidiary	The subsidiary	199(2)
	The parent organisation	The parent organisation	199(8)

### 3 Available defences against prosecution for Failure to Prevent Fraud

#### 3.1 From Annex 1 of the Home Office Publication on the Economic Crime and Corporate Transparency Act 2023: Guidance to organisations on the offence of failure to prevent fraud:

*As set out in sections 199(4) and (5), relevant organisations will have a defence if they have reasonable procedures in place to prevent fraud, or if they can demonstrate to the satisfaction of the court that it was not reasonable in all the circumstances to expect the organisation to have any prevention procedures in place.*

*The question of whether a relevant organisation had reasonable procedures in place to prevent fraud in the context of a particular prosecution is a matter that can only be resolved by the courts, taking into account the particular facts and circumstances of the case. If a case comes to court, the onus will be on the organisation to prove that it had reasonable procedures in place to prevent fraud at the time that the fraud was committed. In accordance with established case law, the standard of proof in this case is the balance of probabilities. Departure from the suggested procedures contained within the guidance will not automatically mean that the organisation did not have reasonable fraud prevention procedures in place.*

## 4 Where are the risk areas?

- 4.1 As noted at Section 2 above, in order to be prosecuted the Council, or its clients, would have to be deemed, either directly or indirectly, to have been a beneficiary of the “base” fraud activity.
- 4.2 Initial thoughts on potential risk areas for Local Council’s tend to centre around falsification of financial or performance data, e.g.:
- Falsified performance figures are sent to Central Government in return for fewer inspections or increased Subsidies.
  - Understating of assets for reduced insurance premiums.
  - Overstating Disabled Facility Grants needs in order to access more resources from the Better Care Fund.
  - The Council deliberately lies to an IT software provider on the number of active licences used by the Council.
- 4.3 Further examples of potential risk areas are contained within the Home Office Guidance on the offence of Failure to Prevent Fraud, see link below:

<https://www.gov.uk/government/publications/offence-of-failure-to-prevent-fraud-introduced-by-eccta>

## 5 What does the Council need to do?

- 5.1 The Government considers that prevention procedures put in place by relevant bodies to prevent fraud, bribery, corruption and tax evasion from being committed on their behalf should be informed by the following six principles:

- **Risk Assessment**

The Council maintains and updates its Fraud Risk Assessment and is presented to members elsewhere on this agenda.

- **Proportionality**

The Council maintains a comprehensive suite of Anti-Fraud and Corruption Policies, Strategies and Response Plans, presented to the Audit Committee elsewhere on this agenda. These policies, alongside the Council’s systems of governance and internal control, consider proportionality both in the prevention, investigation and prosecution of fraud.

The Council also regularly reviews its Counter Fraud arrangements against the Fighting Fraud and Corruption Locally (FFCL) self-assessment questionnaire and compiles an action plan to address any areas of non-compliance with best practice. The Council’s latest self-assessment, and action plan, is presented elsewhere on this agenda.

- **Top Level Commitment**

The Council takes a zero-tolerance attitude towards fraud and corruption, as set out in the Council’s Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan.

- **Due Diligence**

The Council conducts due diligence on all third parties working with the Council. If there are any material changes to the third party business or relationship then due diligence should be reevaluated. This will ascertain if the relationship, and its risk level, has changed.

- **Communication (including training)**

The Council communicates with staff and senior leaders on its anti-fraud and corruption policies and procedures in a variety of ways including corporate communications, briefings to senior management, and reporting to the Council's Audit Committee. Online training is available and actions are in train to make this training mandatory for all staff.

- **Monitor and Review**

All of the Council's anti-fraud policies are regularly reviewed and are included for Members' consideration elsewhere on this agenda.

## **6 Options/Alternatives**

6.1 The Audit Committee can either:

- a) choose to accept and note the contents of this report,
- b) decline to accept and note the contents of this report and suggest an alternative approach.

## **7 Preferred Option**

7.1 The preferred option is that the Audit Committee accepts and notes the contents of this report.

## **8 Consultation**

8.1 N/A.

## **9 Financial Implications**

9.1 N/A.

## **10 Legal Services Comments**

10.1 N/A.

## **11 Co-operative Agenda**

11.1 N/A.

## **12 Human Resources Comments**

12.1 N/A.

## **13 Risk Assessments**

13.1 The risk assessment for the Council is set out in the body of this report. (John Miller)

## **14 IT Implications**

14.1 N/A.

## **15 Property Implications**

15.1 N/A.

## **16 Procurement Implications**

16.1 N/A.

**17 Environmental and Health & Safety Implications**

17.1 N/A.

**18 Equity, Community Cohesion and Crime Implication**

18.1 N/A.

**19 Equality Impact Assessment Completed**

19.1 No.

**20 Forward Plan Reference**

20.1 N/A.

**21 Key Decision**

21.1 No.

**22 Background Papers**

22.1 N/A

**23 Appendices**

23.1 N/A



