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Briefing Doc

Failure to Prevent Fraud -

UK Economic Crime and

Corporate Transparency Act

2023



Detailed Briefing Document

Failure to Prevent Fraud - UK Economic Crime and Corporate Transparency Act 2023

Introduction:

This briefing document summarises the key themes, ideas, and facts presented in the provided excerpt of the "Guidance to organisations on the offence of failure to prevent fraud," published in November 2024 under the UK Economic Crime and Corporate Transparency Act 2023. This legislation introduces a new corporate offence: failure to prevent fraud. This document aims to clarify the scope of the offence, the organisations affected, the types of fraud covered, the defence's available, and practical steps organisations can take to mitigate their risk.

For added convenience, we offer the option to acquire template policies directly from us. Notably, we have a readily available [Failure to Prevent Fraud Policy Template](#) which can be appended or annexed into your existing Anti-Fraud Policy.

Key Themes:

1. **Broadening Corporate Liability:** The Act significantly expands corporate liability for fraud committed by associated persons acting to benefit the organisation or its clients.
2. **Proactive Fraud Prevention:** The emphasis is on proactive implementation of reasonable fraud prevention procedures tailored to each organisation's specific risks and operational context.
3. **Emphasis on 'Reasonableness':** The defence hinges on demonstrating that "reasonable procedures" were in place. What constitutes "reasonable" will be determined on a case-by-case

basis, considering factors such as the organisation's size, complexity, sector, and the specific nature of the fraud risk.

4. **Importance of Risk Assessment:** Conducting a thorough and documented risk assessment forms the foundation of any robust fraud prevention framework.

Key Ideas and Facts:

1. Scope of the Offence:

- **Relevant Organisations:** "Large organisations" are in scope. This includes incorporated bodies and partnerships with a global turnover of £7.5 million or more and 250 or more employees.
- **Subsidiaries:** Subsidiaries of large organisations can be prosecuted independently if an employee commits fraud intending to benefit the subsidiary. Parent companies can be held liable for fraud by a subsidiary's employee intended to benefit the parent.
- **Associated Persons:** The Act broadly defines "associated persons" as employees, agents, subsidiaries acting corporately, and individuals providing services for or on behalf of the organisation.
- **Quote:** "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." (Section 199(9))
- **Types of Fraud:** The offence covers various fraud offences listed in Schedule 13 of the Act, including fraud by false representation, failing to disclose information, abuse of position, obtaining services dishonestly, cheating the public revenue, false accounting, and fraudulent trading.

- **Intention to Benefit:** The fraud must be committed with the intention of benefiting the organisation or a client for whom the associated person is providing services.
- **Quote:** "The associated person does not need to intend to cause loss to another person. It would be sufficient if they acted with the intention of making a gain for themselves, or another."
(Section 2.4)
- **Territoriality:** The offence applies when the fraud, or part of it, takes place in the UK, or when the gain or loss from the fraud occurs in the UK.

2. Defence of Reasonable Fraud Prevention Procedures:

- **Demonstrating Reasonableness:** Organisations can avoid liability by demonstrating that they had "reasonable procedures" in place to prevent the fraud. This requires a risk-based approach considering:
 - Top-level commitment to fraud prevention.
 - Comprehensive risk assessment.
 - Proportionate and tailored preventative procedures.
 - Due diligence procedures.
 - Effective communication and training.
 - Robust monitoring and review mechanisms.

3. Practical Steps for Organisations:

- **Establish Top-Level Commitment:** Clearly communicate a zero-tolerance policy towards fraud, driven by senior management.
- **Conduct Thorough Risk Assessment:** Identify potential fraud risks considering the "fraud triangle" (opportunity, motive, rationalisation) and specific roles, departments, and business activities.

- **Implement Proportionate Procedures:** Develop and implement tailored procedures based on the identified risks. These may include:
 - Clear policies and procedures.
 - Robust financial controls.
 - Whistleblowing mechanisms.
 - Due diligence processes.
 - Regular training for staff and associated persons.
- **Monitor and Review:** Continuously evaluate the effectiveness of procedures, making adjustments based on experience, emerging risks, and industry best practices.

Why Compliance Consultant?

Our Services

1. **FCA Authorisation Application Support:** Streamline VOPs and related processes.
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 - Risk Evaluation
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3. **Continuous Compliance Monitoring:** Align with FCA's vigilant oversight.
4. **Dynamic Regulatory Change Management:** Stay at the forefront of compliance.
5. **In-Depth Compliance Training and Education:** Build a culture of compliance.
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