

## Audit Committee

**30 October 2025**

### **Failure to Prevent Fraud**

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#### **Summary**

This report informs Members of the new failure to prevent fraud duty, the results of a self-assessment against Home Office guidance relating to the offence of Failure to Prevent Fraud, and the actions that have been proposed to provide the Council with assurance.

#### **1. Recommendations**

1.1. The Committee is recommended to note the outcomes of the self-assessment and proposed actions.

#### **2. Budget and policy framework**

2.1. Council delegates responsibility for the oversight and monitoring of the effectiveness of Counter Fraud to the Audit Committee.

#### **3. Background**

3.1. Fraud is now the most common form of crime and has seen a surge in recent years. It costs the economy many billions of pounds annually and affects all areas of society. Central Government is determined to hold organisations to account where they do not take reasonable steps to prevent fraud.

3.2. The Economic Crime and Corporate Transparency Act (ECCT) 2023 introduced several measures to tackle economic crime and improve transparency. A key provision is the new corporate offence of 'Failure to Prevent Fraud', which applies to large organisations that profit, or attempt to profit, from fraudulent activity.

3.3. This offence is designed to promote an anti-fraud culture by encouraging organisations to implement reasonable prevention measures. It forms part of the Government's broader strategy to reduce fraud and protect victims.

3.4. The offence came into force on 1 September 2025 and applies to organisations that meet at least two of the following criteria:

- The organisation has 250 or more employees.
- Turnover exceeds £36m.
- Total assets exceed £18m.

3.5. The Council meets all three of these criteria and is therefore in scope.

- 3.6. Organisations within scope must demonstrate that, at the time a fraud was committed, they had reasonable fraud prevention measures in place. While the test of reasonableness is subjective, the Home Office guidance outlines general principles for developing and enhancing such procedures. Courts will consider adherence to these principles when assessing compliance.
- 3.7. Accordingly, a review has been undertaken to assess the Council's current fraud prevention practices against the requirements in the guidance.

#### 4. Key Points from Home Office Guidance

- 4.1. Under the new offence, an organisation may be criminally liable if an employee, agent, subsidiary, or other "associated person" commits a fraud intending to benefit the organisation, and the organisation did not have reasonable prevention procedures in place.
- 4.2. In some cases, liability may also arise where the fraud was intended to benefit a client of the organisation. Importantly, it is not necessary to prove that directors or senior managers were aware of or involved in the fraud.
- 4.3. This offence complements existing legislation. For example, the individual who committed the fraud may be prosecuted separately, while the organisation may face charges for failing to prevent it.
- 4.4. The offence is intended to make it easier to hold organisations accountable for fraud committed by associated persons and to drive a cultural shift toward proactive fraud prevention.
- 4.5. To be liable, there must be an intent to benefit the organisation or its client, although this need not be the sole or dominant motive. Organisations are not liable if they are the victim or intended victim of a fraud committed to benefit their clients.

#### 5. Implications for the Council and its Associated Entities.

- 5.1. While the number of scenarios in which the Council could be held liable under the Failure to Prevent Fraud offence may be limited, the risk does exist. The likelihood of such an event occurring is considered low, particularly given the Council's existing controls and oversight mechanisms. However, the potential impact is high.
- 5.2. A successful prosecution under this offence could result in:
  - Substantial financial penalties;
  - Significant reputational damage;
  - Increased scrutiny from regulators and the public.
- 5.3. As noted, liability may extend to associated persons, including Local Authority Trading Companies (LATCos) and contractors delivering services on behalf of the Council. This means that smaller organisations, which may not meet the size criteria themselves, could still fall within scope due to their association with the Council. This includes:
  - Kyndi
  - Medway Development Company (MDC)

- Medway Norse

5.4. This reinforces the importance of ensuring that reasonable fraud prevention measures are not only in place but are regularly reviewed and tested for effectiveness. It also highlights the need for ongoing vigilance across all areas of the Council and its associated entities.

5.5. While our review considers fraud risks in contracted services, it does not assess the fraud prevention measures within the LATCos. As separate legal entities, these companies must independently evaluate their procedures against the Home Office guidance and determine whether they meet the required standards.

## 6. Review of Fraud Prevention Framework against Home Office Guidance.

6.1. The guidance outlines six principles behind 'reasonable measures' for fraud prevention. These are:

- Top Level Commitment
- Risk Assessment
- Proportionate Risk Based Prevention Procedures
- Due Diligence
- Communication (including training)
- Monitoring & Review

6.2. Sitting within these principles are 26 areas for consideration, along with examples and questions that an organisation may wish to consider when assessing their fraud prevention measures.

6.3. A self-assessment has been undertaken to determine the Council's current position in relation to these principles/areas, with the outcome shown in a RAG rating:

- Green – Appropriate processes/procedures are in place to demonstrate reasonable measures.
- Amber - Improvements to existing processes/procedures needed to demonstrate reasonable measures.
- Red – Nothing in place to demonstrate reasonable measures.

6.4. As the Council is opposed to all forms of fraud, the losses from which pose a threat to the Council's finances and delivery of public services; the evaluation results take into consideration the council's approach to all fraud risks, not just those that may fall under the scope of the failure to prevent offence. However, it has not tested how well these measures are currently working in practice.

6.5. The outcomes of the assessment can be found in Appendix 1; however, the 13 suggested actions that have been identified are listed below.

- **Action 1** - The refreshed Counter Fraud & Corruption Strategy should be disseminated to all staff via Metacompliance once it has been through the appropriate approval process, as well as published on the council website. This will give a mechanism for ensuring that all staff are aware of the council's stance on preventing fraud.

- **Action 2** - More formal communications from senior leaders on the Council's commitment to reject fraud should be introduced. For example, something in support of international fraud awareness week, encouraging people to report their suspicions.
- **Action 3** - A parallel sanctions policy outlining how the council may pursue multiple enforcement routes, for example criminal and disciplinary, in the case of fraud and other matters, should be introduced.
- **Action 4** - Contracts with third parties for delivery of services on behalf of the council should be reviewed for consideration of clauses regarding breaching council policies on fraud and fraud prevention and also ensure that there are appropriate terms relating to their responsibilities as an associated party under the ECCTA, to prevent fraud.
- **Action 5** - The Council should make fraud awareness training mandatory and invest in digital tools to ensure coverage across all employees and contractors and enable monitoring of completion.
- **Action 6** - As part of the risk assessment process conducted by Counter Fraud, services should be reminded of the fact that they are the risk owners and have responsibility for ensuring prevention controls are in place and applied at all times.
- **Action 7** - Fraud risk assessments should be updated to include consideration of the following factors:
  - Failure to prevent fraud,
  - Potential changes to process as a result of emergency situations
- **Action 8** - Additional fraud prevention tools, such as membership of the CIFAS Insider Threat Database, should be considered for enhanced fraud prevention in areas such as recruitment.
- **Action 9** – Service Managers should be provided with renewed information relating to the corporate membership of the National Anti-Fraud Network and services encouraged to use the available services available for enhanced fraud prevention.
- **Action 10** - Declarations of interest should be introduced for staff, particularly those in roles with decision making authority where conflicts of interest are more likely to arise.
- **Action 11** - The outcomes of fraud related investigations, including those involving members of staff, should be appropriately publicised both internally, including with associated parties, and externally.
- **Action 12** – Internal Audit should consider specific control reviews in areas associated with potential risks around failure to prevent fraud.
- **Action 13** - The council's Speak Up (whistleblowing) policy should be disseminated to all staff via Metacompliance to ensure all staff have seen/read it

6.6. These actions are necessary to ensure that the Council is in the best possible position to demonstrate that all reasonable fraud prevention measures are in place, should there ever be a need to defend itself in relation to a failure to report fraud offence.

## 7. Risk management

7.1. The likelihood of a fraud offence that could subsequently lead to the council being prosecuted for an offence of failing to prevent fraud is low but the potential

associated financial (unlimited fine) and reputational risks are significant.

7.2. Our assessment suggests that the current risk rating is CI. Implementation of the suggested actions would see this reduce to DI.

## 8. Climate change implications

8.1. There are no climate change implications in this report.

## 9. Financial implications

9.1. The overall impact of fraud on the Council can be very significant in financial terms, with lost monies impacting on service delivery.

9.2. The majority of the actions suggested in this report can be completed within existing resources. Actions that suggest investment in additional digital tools would be subject to a business case assessment but are not expected to be significant cost.

9.3. The impact of being found to not have reasonable fraud prevention measures in place when prosecuted is likely to result in the organisation facing a substantial fine as the penalties for the offence include an unlimited fine.

## 10. Legal implications

10.1. The Economic Crime and Corporate Transparency Act (ECCT) 2023 contains the failure to prevent fraud duty that came into force on 1 September 2025. The actions recommended in this report are intended to ensure that the council can demonstrate that it had reasonable measures in place in the event that it had to defend itself against prosecution.

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## Appendices

### Appendix 1 – Self-Assessment Against Home Office Guidance

## Background papers

- Economic Crime & Corporate Transparency Act 2023.
- Economic Crime and Corporate Transparency Act 2023: Home Office Guidance to organisations on the offence of failure to prevent fraud