

| Economic Crime & Corporate Transparency Act 2023 – Failure to Prevent Fraud | | | |
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| Reasonable Fraud Prevention Procedures | | | |
| 3.1 Top Level Commitment <i>Responsibility for the prevention and detection of fraud rests with those charged with the governance of the organisation. The board of directors, partners and senior management of a relevant body should be committed to preventing associated persons from committing fraud. They should foster a culture within the organisation in which fraud is never acceptable and should reject profit based on, or assisted by, fraud.</i> | | | |
| <p>Senior management have a leadership role in relation to fraud prevention. The level and nature of their involvement will vary depending on the size and structure of the relevant body, but their role is likely to include:</p> <ul style="list-style-type: none"> • Communication and endorsement of the organisation's stance on preventing fraud, including mission statements. • Ensuring that there is clear governance across the organisation in respect of the fraud prevention framework. • Commitment to training and resourcing. • Leading by example and fostering an open culture, where staff feel empowered to speak up if they encounter fraudulent practices. | | | |
| Ref | Area of Guidance | Rating | Suggested Action(s) |
| 3.1.1 | Communication and endorsement of the organisation's stance on preventing fraud | Green | <ol style="list-style-type: none"> 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. 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. 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. 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. 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. |
| 3.1.2 | Ensuring that there is a clear governance across the organisation in respect of the fraud prevention framework | Green | |
| 3.1.3 | Commitment to training and resource | Amber | |
| 3.1.4 | Leading by example and fostering an open culture | Green | |

3.2 Risk Assessment

The organisation assesses the nature and extent of its exposure to the risk of employees, agents and other associated persons committing fraud in scope of the offence. The risk assessment is dynamic, documented and kept under regular review.

Relevant organisations may already undertake a range of risk assessments relating to fraud and other economic crime. In this case, organisations may find it most effective to extend their existing risk assessments to include the risk of frauds in scope of this offence.

Since the definition of an associated person is wide, organisations may wish to start by identifying typologies of associated persons. For example: agents, contractors providing a particular service for or on behalf of the organisation, or staff in specific sensitive roles.

Using these typologies, nominated risk owners in the organisation may then consider a wide range of circumstances under which associated persons could attempt a fraud in scope of the offence³³. Different associated persons may present different fraud risks. For example, fraud by false representation can be committed by a range of associated persons, while frauds by failure to disclose information, false accounting or abuse of position are more likely to be committed by those in certain roles. It is not possible to anticipate all potential fraud risks. We suggest that the nominated risk owners develop typologies of risks by considering the three elements of the fraud triangle:

- Opportunity
- Motive
- Rationalisation

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| 3.2.1 | Opportunity | Amber | <p>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.</p> <p>7. Fraud risk assessments should be updated to include consideration of the following factors:</p> <ul style="list-style-type: none"> • Failure to prevent fraud, • Potential changes to process as a result of emergency situations. <p>Also see recommendation four.</p> |
| 3.2.2 | Motive | Green | |
| 3.2.3 | Rationalisation | Green | |
| 3.2.4 | Sources of information about potential risks | Green | |
| 3.2.5 | Emergency Scenarios | Amber | |
| 3.2.6 | Classification of risks | Green | |
| 3.2.7 | Review | Green | |

3.3 Proportionate Risk Based Prevention Procedures

An organisation's procedures to prevent fraud by persons associated with it are proportionate to the fraud risks it faces and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

The relevant body should draw up a fraud prevention plan, with procedures to prevent fraud being proportionate to the risk identified in the risk assessment. It is a key principle that the fraud prevention plan should be proportionate to the risk and the potential impact. The level of prevention procedures considered to be reasonable should take account of the level of control and supervision the organisation is able to exercise over a particular person acting on its behalf and the relevant body's proximity to that person. For example, a relevant body is likely to have greater control over the conduct of an employee than that of an outsourced worker performing services on its behalf. Nonetheless, appropriate controls should be implemented via the relevant contract. In some limited circumstances, it may be deemed reasonable not to introduce measures in response to a particular risk. Any decision made not to implement procedures to prevent a specific risk should be documented, together with the name and position of the person who authorised that decision and reviewed as appropriate. Since the offence extends across organisations in all sectors of the economy, many of these businesses will also be subject to other regulations, for example, regulations concerning financial reporting, environmental, health and safety or competition matters. Processes for compliance with these regulations may address certain potential frauds (for example, robust processes for compliance with specific environmental regulations might reasonably be expected to prevent fraud by misrepresentation on the relevant environmental statements). It is not necessary or desirable for organisations to duplicate existing work. Equally, it would not be a suitable defence to state that because the organisation is regulated its compliance processes under existing regulations would automatically qualify as "reasonable procedures" under the Economic Crime and Corporate Transparency Act. To avoid duplication of work, organisations are advised to assess whether their existing regulatory compliance mechanisms, financial reporting controls³⁸ and fraud prevention measures would be sufficient to prevent each of the fraud risks identified in the risk assessment (as described in 3.2). Where existing mechanisms appear to be insufficient, organisations should develop appropriate measures to prevent fraud.

When considering the proportionality of reasonable prevention procedures, some suggested risk factors to consider may include the following.

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| 3.3.1 | Reducing the opportunities for fraud | Amber | 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. 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. 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. 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. 12. Internal Audit should consider specific control reviews in areas associated with potential risks around failure to prevent fraud. Also see recommendation five. |
| 3.3.2 | Reducing the motive for fraud | Green | |
| 3.3.3 | Putting in place consequences for committing fraud | Green | |
| 3.3.4 | Reducing the rationalisation of fraudulent behaviour | Green | |
| 3.3.5 | Sources of information for developing fraud prevention measures | Green | |
| 3.3.6 | Emergency scenarios | Green | |
| 3.3.7 | Testing the fraud prevention measures | Amber | |

3.4 Due Diligence

The organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified fraud risks.

Relevant organisations in the sectors facing the greatest fraud risks may already undertake a wide variety of due diligence procedures, both mandatory and in response to risks associated with specific transactions or customers.

However, it should be noted that merely applying existing procedures tailored to a different type of risk will not necessarily be an adequate response to tackle the risk of fraud. Those with exposure to the greatest risk may choose to clearly articulate their due diligence procedures specifically in relation to the corporate offence.

Relevant organisations may choose to conduct their due diligence internally, or externally, for example by consultants. The due diligence procedures put in place should be proportionate to the identified risk and kept under review as necessary

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| 3.4.1 | Relevant organisations should conduct due diligence on associated persons (including new partners). | Amber | See recommendations four and eight. |
| 3.4.2 | Relevant organisations should conduct due diligence in relation to mergers or acquisitions. | | |

3.5 Communication

The organisation seeks to ensure that its prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication. Training and maintaining training are key.

A clear articulation and endorsement of an organisation's policy against fraud deters those providing services for or on behalf of the relevant body from engaging in such activities. Communication should be from all levels within an organisation. It is not enough for the senior management to say that staff should not commit fraud, if middle management then actively ignore this and encourage junior members to circumvent the relevant body's fraud prevention procedures.

It is important that the relevant body ensures awareness and understanding of its policies amongst those who provide services for or on its behalf. The organisation may feel that it is necessary to require its representatives to undertake fraud-specific training, depending on the risks it is exposed to. This would be to ensure that they have the skills needed to identify when they and those around them might be at risk of engaging in an illegal act and what whistle-blowing procedures should be followed if this occurs.

It may be helpful to integrate fraud messaging into existing policies and procedures. For instance, policies related to sales targets or customer interactions could include a brief statement addressing fraud rationalisation and the potential consequences of committing fraud.

Organisations may also choose to publicise within the organisation the outcome of investigations, particularly the sanctions imposed.

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| 3.5.1 | Training | Amber | 13. The council's Speak Up (whistleblowing) policy should be disseminated to all staff via Metacompliance to ensure all staff have seen/read it. |
| 3.5.2 | Whistleblowing | Green | Also see recommendation five. |

3.6 Monitoring & Review

The organisation monitors and reviews its fraud detection and prevention procedures and makes improvements where necessary. This includes learning from investigations and whistleblowing incidents and reviewing information from its own sector.

3.6.1 Monitoring

Monitoring includes three elements: detection of fraud and attempted fraud, investigations and monitoring the effectiveness of fraud prevention measures.

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|---------|---|--------|--------------------------|
| 3.6.1.1 | Detection of attempted fraud | Green | See recommendation five. |
| 3.6.1.2 | Investigation of suspected fraud | Green | |
| 3.6.1.3 | Monitoring of fraud prevention measures | Amber | |

3.6.2 Review

The nature of the risks faced by an organisation will change and evolve over time. This may be as a natural result of external developments, the failure to prevent a fraud by an associated person, or as a result of changes in the organisation's activities. The organisation will therefore need to adapt its fraud detection and prevention procedures in response to the changes in the risks that it faces. The frequency of review is a matter for the relevant organisation, but risk assessments are typically conducted at consistent intervals (annually or bi-annually). Relevant organisations should also consider whether various external factors should trigger an earlier review or a partial review.

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| 3.6.2.1 | An organisation may wish to have its review conducted by an external party or may choose to conduct its review internally. | Green | |