

New failure to prevent fraud offence



What is the new offence?

When the Economic Crime and Corporate Transparency Act (the Act) received Royal Assent in November 2023, a new corporate offence was introduced: the failure to prevent fraud (s199). The offence came into force on 1 September 2025.

Under this legislation, an organisation can be prosecuted if it fails to prevent a fraud being committed by the organisation against others. It must be the intention that the organisation, or a person to whom services are provided on behalf of the organisation, will benefit from the fraud for the offence to be triggered.

Crucially, the Act exposes organisations to liability for the actions of a wide range of potential fraud perpetrators associated with the organisation, including employees, agents, subsidiary undertakings, and any person who otherwise performs services for or on behalf of the organisation.

The intention in introducing the new offence is to protect victims and drive improvements in corporate culture in relation to the prevention of fraud. The penalty on a guilty conviction for the new offence could be an unlimited fine, as well as serious reputational damage.

No offence under the Act will have been committed if the organisation itself was, or was intended to be, a victim of the fraud offence.

What are the defined fraud offences?

The list of fraud offences is set out in Schedule 13 to the Act and includes, amongst others: an offence of dishonesty, false accounting, false statements by company directors, fraudulent trading and relevant money laundering offences. An organisation may also be guilty of an offence for aiding, abetting, counselling or procuring the commission of a listed offence. It does not need to be demonstrated that the directors knew about or ordered the offence.

Examples include dishonest sales practices, concealing important information from consumers or investors, or dishonest conduct in financial markets. The offence is intended to ensure that organisations take proactive steps to prevent fraud.

Who does this apply to?

The failure to prevent fraud offence applies to 'large organisations' meaning, in the financial year preceding the year in which the fraud offence occurred, *two or more* of the following criteria were met:

1. turnover exceeding £36 million
2. balance sheet total exceeding £18 million
3. more than 250 employees.

Is there a defence?

s199(4) of the Act includes a defence of 'reasonable procedures' to prevent fraud. Government guidance detailing what 'reasonable procedures' means has been published to guide companies as they develop and implement appropriate anti-fraud measures, assess fraud risks and implement or enhance fraud compliance programmes.

What are the underlying principles for establishing reasonable procedures?

Government published guidance outlines six principles to help organisations establish reasonable procedures and evidence they were in place to prevent fraud at the time the offence was committed:

1. **top-level commitment:** leadership, including the board, must actively promote a culture of fraud prevention and be able to produce evidence of their support and involvement
2. **risk assessment:** organisations must regularly assess fraud risks and maintain documented evidence of how those risks are identified and evaluated
3. **proportionate procedures:** businesses must implement and document fraud prevention measures that are proportionate to the risks and size of the organisation
4. **due diligence:** those responsible for engaging associated persons must carry out and record appropriate due diligence to demonstrate risk-aware decision-making
5. **communication & training:** employers must provide clear communication and fraud training and retain evidence of attendance and materials used
6. **monitoring & review:** senior leaders must regularly review procedures and keep records showing how updates and improvements are made over time.

What do directors need to do now?

As a minimum, risk registers should be refreshed, policies updated, and a programme of employee training and awareness put into place. Consideration should be given to whether current fraud risk frameworks cover fraud perpetrated to benefit the organisation – many will traditionally just have focussed on inward fraud attacks, which are not relevant in this context. Organisations are not expected to duplicate existing financial crime controls, however, conducting a dedicated fraud-specific risk assessment that incorporates the underlying principles outlined above is essential to ensure proper compliance.

Directors should have a thorough understanding of the fraud risks that are relevant to their business and should expect to be supported by management, including the provision of reports at board and committee meetings that set out the organisation's fraud risks and mitigations, including anti-fraud policies, processes and controls. The board's annual training programme could also be reviewed, with opportunities for further training on fraud risks scheduled into the diary for 2025 and in the future.

If you would like Indigo's support and additional resource to help you and your board with these next steps, please contact one of our directors please contact our Chief Executive:

bernadette.young@indigogovernance.com

