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FAILURE TO PREVENT FRAUD: WHAT IS "FRAUD"?

Under the Economic Crime and Corporate Transparency Act 2003, from 1 September 2025, large organisations can be criminally liable for failing to prevent fraud committed by employees, agents, subsidiaries or other "associated persons" (subject to certain conditions), unless they can demonstrate that they had reasonable fraud prevention procedures in place at the time of the offence.

Government guidance regarding "reasonable fraud prevention procedures" stresses the importance of organisations conducting a dynamic risk assessment to assess where their greatest fraud risks lie. For these purposes, "fraud" is any one of a number of specified "base fraud offences".

Beyond listing what those offences are, the government guidance does not provide any additional detail on what those offences comprise.

Therefore, to assist organisations within the scope of the new corporate offence in adopting relevant fraud prevention procedures, we have provided a high-level reference guide to the base fraud offences – what they comprise, how they can be committed and examples of conduct that would be within scope of the offences in a corporate context. We recommend that these matters are factored into the design of any tailored risk assessment.

While the particulars of each base fraud offence differ, most involve some form of dishonest act or omission, performed by someone with a view to them or someone else gaining as a result, or someone else suffering a loss or risk of loss as a result.

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Base fraud offence[1]	How is the offence committed?[2]	Examples of conduct covered by the offence
Fraud by false representation (section 2 Fraud Act 2006)	By a person dishonestly making a false representation, with an intention to make a gain for themselves or another, or to cause loss to another or expose another to a risk of loss.	A salesperson for a company dishonestly promoting the company's products using misleading claims about their environmental sustainability or other credentials. A company is seeking investment. The company's directors knowingly present financial statements to potential investors that significantly overstate the company's revenues and profits. These financial statements are designed to mislead investors into believing the company is more profitable and stable than it actually is.
Fraud by failing to disclose information (section 3 Fraud Act 2006)	By a person dishonestly failing to disclose to another person information which they are under a legal duty to disclose, with an intention to make a gain for themselves or another, or to cause loss to another or expose another to a risk of loss.	A company employee dishonestly failing to disclose information that that they are under a legal duty to disclose when applying for a business insurance policy on behalf of the company. A company director is legally required to disclose certain financial liabilities in the company's annual report. The director knowingly omits these liabilities to present a more favourable financial position to shareholders or potential investors and does so with the intent of securing investment or maintaining the share price.
Fraud by abuse of position (section 4 Fraud Act 2006)	By a person who occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person, who dishonestly abuses that position, with an intention to make a gain for themselves or another, or to cause loss to another or expose another to a risk of loss.	A financial advisor dishonestly (e.g., knowingly) advising a client to invest in a fraudulent investment scheme established by the financial advisor.
Participation in a fraudulent business carried on by a sole trader etc. (section 9, Fraud Act 2006)	By a person who is knowingly a party to the carrying on of a business, which is carried on by a person who is outside of the reach of the fraudulent trading offence under s993 of the Companies Act 2006 (see further below), and with the intent to defraud creditors of any person or for any other fraudulent purpose.	A sole trader operates a business ostensibly selling goods or services but, in reality, is engaging in fraudulent activities such as taking payments without delivering products. If another person, such as an employee or associate, is aware of these fraudulent activities and assists in running the business—perhaps by handling transactions or customer communications – they can be liable for participating in a fraudulent business.

1 Aiding, abetting, counselling or procuring the commission of one of the listed offences will also constitute a base fraud offence.
2 The following descriptions are summaries of how the offence may be committed and do not detail each individual component of the offence or details of any applicable defences. For full details, reference should be made to the relevant legislation

Base fraud offence[1]	How is the offence committed?[2]	Examples of conduct covered by the offence
Obtaining services dishonestly (section 11 Fraud Act 2006)	By a person who obtains services for themselves or another by a dishonest act, where the services are made available on the basis that they have been/will be paid for.	A company employee gaining unauthorised access to an industry conference without paying for a ticket. A company obtains software services from a vendor under a subscription model, where payment is required on a monthly basis in arrears. The company, provides false financial information to the vendor to secure the services, and uses the software, fully aware that it is expected to pay for these services, yet it has no intention of making the necessary payments.
Cheating the public revenue (common law)	By a person who deliberately prejudices, or takes the risk of prejudicing, the revenue's right to tax, knowing that they have no right to do so.	A member of the company's finance team deliberately under-reporting the company's earnings in an official tax declaration to HMRC. This could be done through falsifying financial records, creating fictitious transactions, or using offshore accounts to hide income.
False accounting (section 17 Theft Act 1968)	By a person who, with a view to gain for themselves or another or with the intent to cause loss to another, destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose, or who makes use of any account, or any such record or document as previously referenced, which to their knowledge is or may be misleading, false or deceptive in a material particular.	A manager of a retail business premises providing falsified turnover figures for the business to the landlord of its premises, where the rent payable is determined in whole or in part by the turnover of the business. A company's financial officer intentionally alters the company's accounting records to inflate profits. This could be done by creating fictitious sales entries, delaying the recording of expenses, or manipulating inventory records. The purpose of these actions might be to present a healthier financial position to investors, secure loans, or achieve performance targets linked to bonuses.
False statements by company directors (section 19 Theft Act 1968)	By an officer of a body corporate or unincorporated association (or person purporting to act as such) when, with an intent to deceive members or creditors of the body corporate or association about its affairs, they publish or concur in the publishing of a written statement or account which to their knowledge is or may be misleading, false or deceptive in a material particular.	A company director authorising the publication of the company's accounts, knowing that they are materially inaccurate in order to maintain investor confidence, secure additional financing, or inflate the company's share price.
Fraudulent trading (section 993 Companies Act 2006)	By a person who is knowingly a party to the carrying on of the business of a company, where the business is carried on with an intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose.	A senior manager seeking invoice financing for the business from finance providers, using fictitious invoices that the manager knows do not relate to goods or services actually rendered. A company continues to incur debts and accept payments from customers while the directors know that the company is insolvent and unable to fulfil its obligations.

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