



# Introduction of the Failure to Prevent Fraud Offence – What It Means in Practice

16 MARCH 2026

THIS WEBINAR WILL  
COMMENCE SHORTLY .....

# *Introduction*

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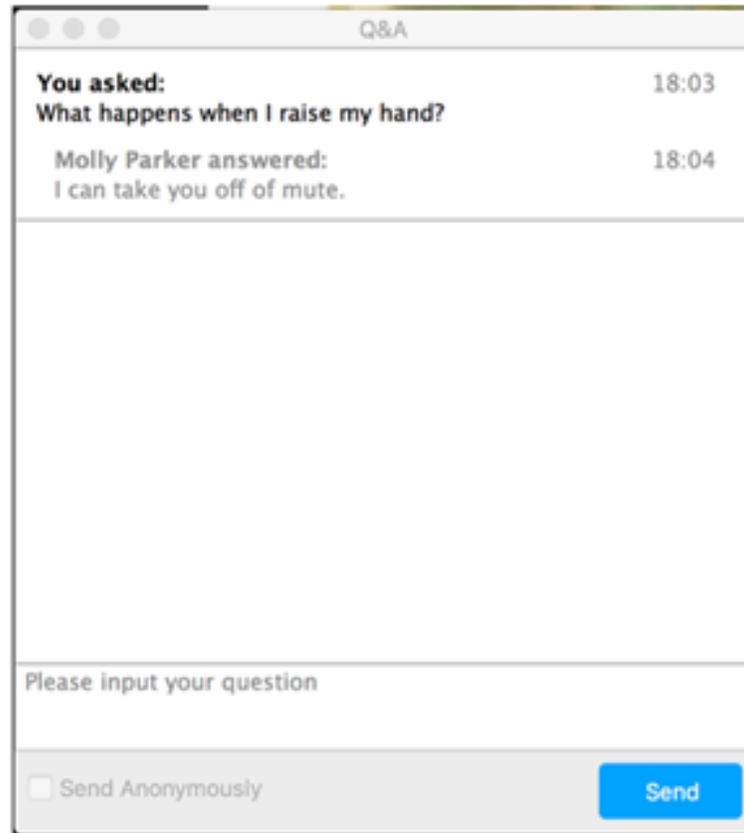
# *Today's presenters*

Penny Dunbabin  
Home Office

Colin Pickard  
MLRO and Risk Management Director  
(Financial Crime)

Mike Miller  
Economic Crime Manager  
ICAEW

# Ask a question



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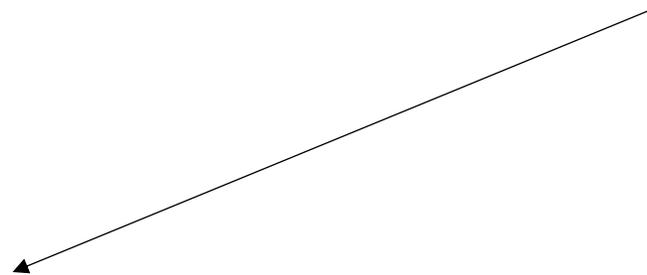
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Type in your question and press **send**.





Home Office

## **Guidance for the offence of “failure to prevent fraud”: Presentation to ICAEW 16/03/2026**

Penny Dunbabin, Senior policy lead, tackling fraud against business

# Background to the offence

1. Significant concern from the SFO and CPS that existing corporate criminal liability law did not allow them to hold corporates to account for economic crime.
2. The SFO presented written evidence to a House of Commons Treasury Select Committee report in 2019, recommending changes to the identification principle and the introduction of an offence of failure to prevent fraud.
3. In 2020, the Government commissioned the Law Commission to examine various options for changes to corporate criminal liability.
4. The Law Commission consulted on various options.
5. Government took forward the suggested amendments to the identification principle and the new offence of failure to prevent fraud in the Economic Crime and Corporate Transparency Act 2023.

# The Economic Crime and Corporate Transparency Act 2023 introduces two changes to corporate criminal liability

1. Amendment to the identification principle, making it easier to hold corporates to account for economic crimes committed by senior managers (sections 196-198).  
Factsheet: [Factsheet: identification principle for economic crime offences - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/factsheet-identification-principle-for-economic-crime-offences)
2. Introduction of a new corporate criminal offence of failure to prevent fraud (sections 199-206 and Schedule 13). The guidance for this offence was published on 6<sup>th</sup> November: [Offence of 'failure to prevent fraud' introduced by ECCTA - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/offence-of-failure-to-prevent-fraud-introduced-by-eccta).
3. **The offence of failure to prevent fraud came into effect on 1<sup>st</sup> September 2025.**
4. The main aim of the offence is to encourage organisations to implement or improve fraud prevention procedures.

# What is new about the offence?

1. Schedule 13 of the Economic Crime and Corporate Transparency Act 2023 lists the fraud offences in scope.
2. **What is new is that under the offence of failure to prevent fraud, a corporation can be prosecuted if an associated person commits a fraud that is intended to benefit the organisation (or in some circumstances, its clients). The organisation will have a defence in court if it can demonstrate that it had reasonable procedures in place to prevent this (or if it was not reasonable in all the circumstances to have any procedures in place).**
3. The offence of failure to prevent fraud came into effect on 1<sup>st</sup> September 2025.

# Process of writing the guidance

Informal consultation Jan-March 2024:

- Over 50 Govt departments, regulators, arms lengths bodies
- Over 100 private sector organisations across the economy, including 38 trade bodies and a number of professional bodies.

42 written responses to the consultation. Main points raised:

- a) Implementation time (we have increased this to 9 months).
- b) Overall table setting out how the offence can be committed (Annex).
- c) Correction on subsidiaries.
- d) Greater clarity on UK nexus, supply chains.
- e) More detail on due diligence.
- f) Glossary.
- g) Reinforcing the message of proportionality.

# Understand the offence and take legal advice on how it applies to your company

The offence can be committed in a number of ways:

Who commits the base fraud?	Who is intended to benefit?	Legal reference	Who could be prosecuted?
An associated person	The relevant organisation	199(1)(a)	The relevant organisation
	The clients of the organisation to whom the associated person provides services for or on behalf of the relevant organisation	199(1)(b)	The relevant organisation <b>except</b>
	The clients of the organisation, where the associated person provides services to the subsidiaries of those clients.	199(1)(b)	<b>where it is the victim or intended victim of the base fraud</b> (section 199(3))
The <u>employee</u> of a subsidiary of a parent company which is a relevant organisation	The subsidiary	199(2)	The subsidiary
	The parent company	199(8)	The parent company

An organisation has a defence in court if it can demonstrate that it had reasonable fraud prevention measures in place when the fraud was committed or that it was not reasonable in all the circumstances to have any fraud prevention measures in place.

# UK Nexus

- The offence will only apply where the associated person commits a base fraud offence under the law of part of the UK. This requires a UK nexus. By UK nexus, we mean that one of the acts which was part of the underlying fraud took place in the UK, or that that the gain or loss occurred in the UK.
- **If a UK-based employee commits fraud, the employing organisation could be prosecuted, wherever it is based.**
- **If an employee or associated person of an overseas-based organisation commits fraud in the UK, or targeting victims in the UK, the organisation could be prosecuted.**
- The offence will not apply to UK organisations whose overseas employees or subsidiaries commit fraud abroad with no UK nexus. This would be a matter for law enforcement in the country concerned.

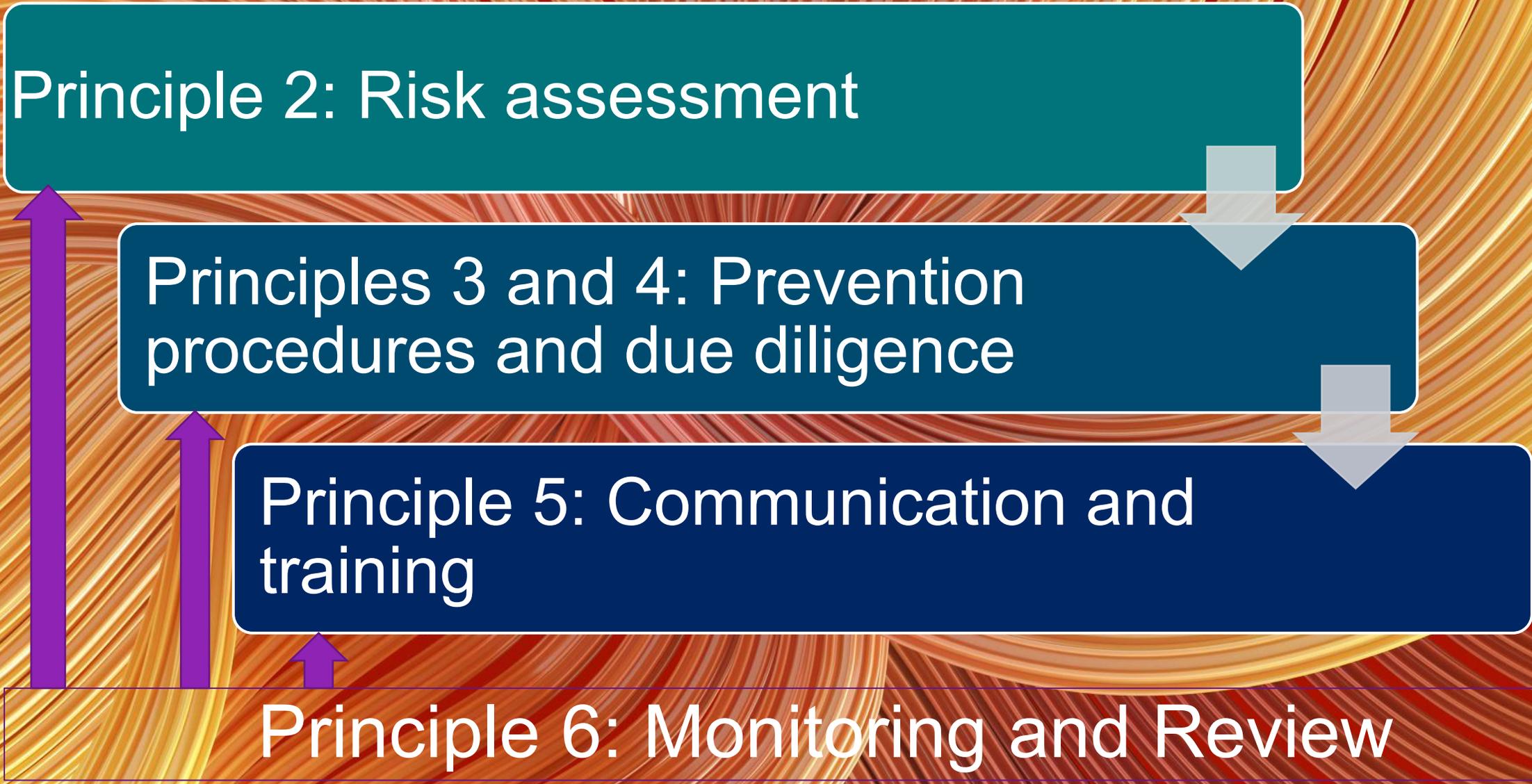
# Principle 1: Top level commitment

Principle 2: Risk assessment

Principles 3 and 4: Prevention procedures and due diligence

Principle 5: Communication and training

Principle 6: Monitoring and Review



# Top Level Commitment

- Set out a framework for Governance
- Consider who to communicate to and how.
- Commit to training and resourcing.
- Set the culture from the top.

# Risk Assessment:

***Before conducting the risk assessment, work with your legal team to identify associated persons.***

The definition of associated person is wide, and includes:

- employees
- partners
- agents
- subsidiaries
- other persons providing services for or on behalf of the organisation, who may be under contract or may not (section 199(9)).

Carry out a risk assessment in respect of the associated person committing fraud in scope of the offence (bearing in mind the UK nexus).

Include some consideration of fraud risk in potential emergency scenarios: “events that pose a risk of widespread loss of life or damage to property or significant financial instability, that require ameliorating action by public authorities”.

- **Fraud Prevention measures**
- Organisations may already have extensive procedures in place to protect themselves against fraud or to comply with existing regulations. **There is no need to duplicate work, but organisations should assess whether these procedures will be sufficient to address the risks of fraud in scope of the offence.** Where they are not, new procedures or strengthened procedures will be required.
- If a decision is taken not to implement procedures to address a specific risk, that decision should be minuted with the name and job title of the person who took the decision. The decision should be kept under review.
- **Training and communication:**
- Training should be proportionate to the risk faced.
- Consideration should be given to the specific training needs of those in the highest risk posts.
- Training should cover the nature of the offence as well as the procedures to address it (including whistleblowing procedures).
- **Monitoring and Review:**
- Consider how fraud is detected.
- What triggers an investigation?
- How does the organisation learn from investigations?

# Implementation

- The offence came into effect on 01/09/2025, giving organisations time to prepare their fraud prevention measures.
- There is no obligation to submit fraud prevention plans to a regulator.
- We strongly advise that organisations consult their lawyers to determine how the offence affects them.
- Some sectors will want to develop sector-specific guidance. There is no mechanism under the Act for this, and therefore any such guidance will be advisory only. In the event of a discrepancy between sector-specific guidance and the Home Office guidance, the Home Office guidance will take priority.

# Enforcement

The offence can be prosecuted by the Crown Prosecution Service (England and Wales), the Crown Office and Procurator Fiscal Service (Scotland), Public Prosecution Service of Northern Ireland, the Serious Fraud Office and the Financial Conduct Authority. It can also be prosecuted privately.

Prosecutors have updated the corporate prosecution guidance to take account of the offence. [Corporate Prosecutions | The Crown Prosecution Service](#).

In England and Wales, section 125 of the Sentencing Code sets out the overarching principles for sentencing corporates.

Deferred prosecution arrangements are available in England and Wales but not in Scotland and NI.

# First steps

- Take legal advice on how the offence affects your organisation
- Put governance in place for the risk assessment, fraud prevention measures, due diligence, training and communication and monitoring and review.
- Use typologies of associated person to develop your risk assessment.
- The aim is not to duplicate existing fraud prevention measures but to identify gaps where existing fraud prevention measures are not suitable for this offence and to address them.

Confidential

# The Corporate Offence of Failure to Prevent Fraud

Private and Confidential  
March 2025

# Agenda

**01**

How smaller firms are captured

**02**

The corporate offence

**03**

The Risk Assessment  
– how to assess risk

**04**

Holistic governance

**05**

Continuing  
evolution

# 01

## How smaller firms are captured



# Who does the new offence apply to?

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The offence of failure to prevent fraud applies only to **large organisations**. A “large organisation” is defined in section 201 as meeting two or three out of the following criteria:

- More than 250 employees
- More than £36 million turnover
- More than £18 million in total assets.

So **why** should **you** be attending this webinar...?

# How smaller firms are captured

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You **may** be captured because you are an **associated person**...

*Under the new offence, an organisation will be liable where a specified fraud offence is committed by an **associated person**, for the organisation's direct or in-direct benefit, and the organisation did not have reasonable fraud prevention procedures in place.*

*A person who is associated with an organisation is an employee, third party, or subsidiary of the organisation,*

***or the person otherwise performs services for or on behalf of the organisation.***

Small organisations should be aware that they may be **“associated persons”** while they provide services for or on behalf of large organisations. In these circumstances, small organisations may be subject to contractual or other requirements imposed by the large organisations in respect of the offence of failure to prevent fraud.

# 02

## The Corporate Offence



# The Corporate Offence of Failure to Prevent Fraud

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- ▶ Any company that fails to prevent fraud by an associated person will have committed an offence.
- ▶ The definition of fraud is very broad, but as a rule of thumb, any fraud “by” or “in” the organisation from which it benefits is sufficient to complete the offence.
- ▶ The penalty on criminal prosecution maybe an unlimited fine; there is no individual liability for failure to prevent.

## Associated person

- ▶ When working for a large organisation, a smaller firm will be an associated person.
- ▶ As a result, the large organisation’s process to ensure fraud does not occur, will have to cover the smaller firm.

## Extraterritorial reach

- ▶ If an associated person commits fraud under UK law or targeting UK victims, the larger organisation could be prosecuted – even if they are based overseas.



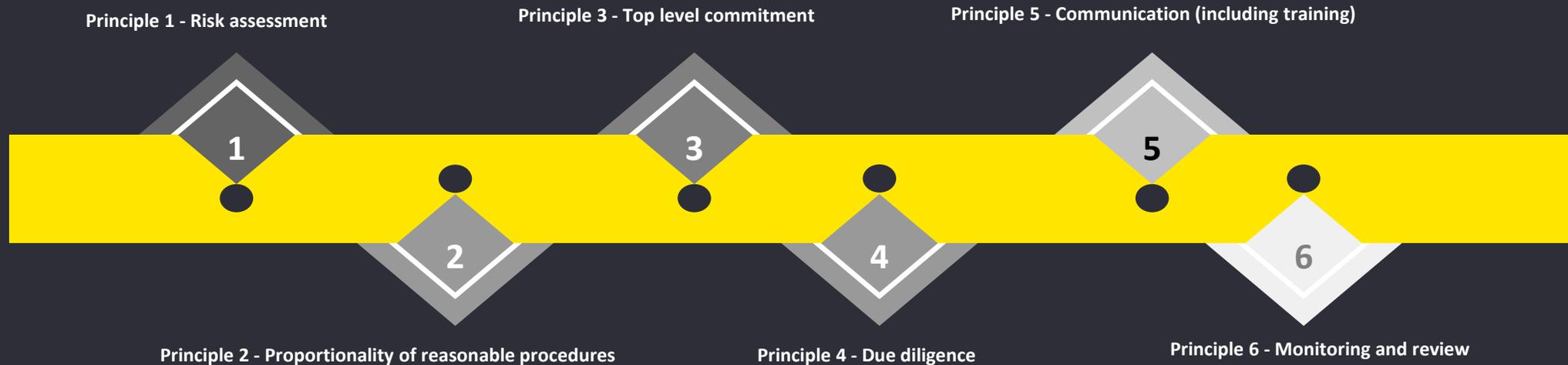
# Reasonable procedures defence

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- ▶ S. 199(4): it is a defence for the relevant body to prove that, at the time the fraud offence was committed—
  - (a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or
  - (b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.
- ▶ There is a very similar defence available for the offences of failure to prevent bribery (s. 7 Bribery Act 2010) and failure to prevent the facilitation of tax evasion (ss. 45 – 46 Criminal Finances Act 2017).
- ▶ Fraud prevention measures should be designed with the relevant body's structure, business operations and location (territoriality) in mind. Examples might include:
  - ❑ Group-level policies
  - ❑ Fraud risk assessment
  - ❑ Risk-based due diligence procedures/tools
  - ❑ Fraud prevention terms and conditions
  - ❑ Training

# Reasonable Prevention Procedures

- ▶ The only permissible defence: that the company had reasonable procedures in place to prevent fraud.
- ▶ Reasonable prevention procedures should cover six key principles:



**Although the offence of failure to prevent fraud applies only to large organisations, the principles outlined in this guidance represent good practice and may be helpful for smaller organisations.**

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

# Applying reasonable procedures



# 03

## The Risk Assessment – how to assess risk



# The Risk Assessment – how to assess risk

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Do you have a **risk assessment** in place?

Does that risk assessment:

- Identify potential issues that may arise?
- Analyse how they may arise and the possible impact?
- Decide how serious the risk is by combining its likelihood and impact?
- Evaluate what controls you have in place to mitigate the risk of those issues arising?
- Plan actions to reduce, manage or accept the risk?
- Monitor your risk and the effectiveness of your actions over time?

# 04

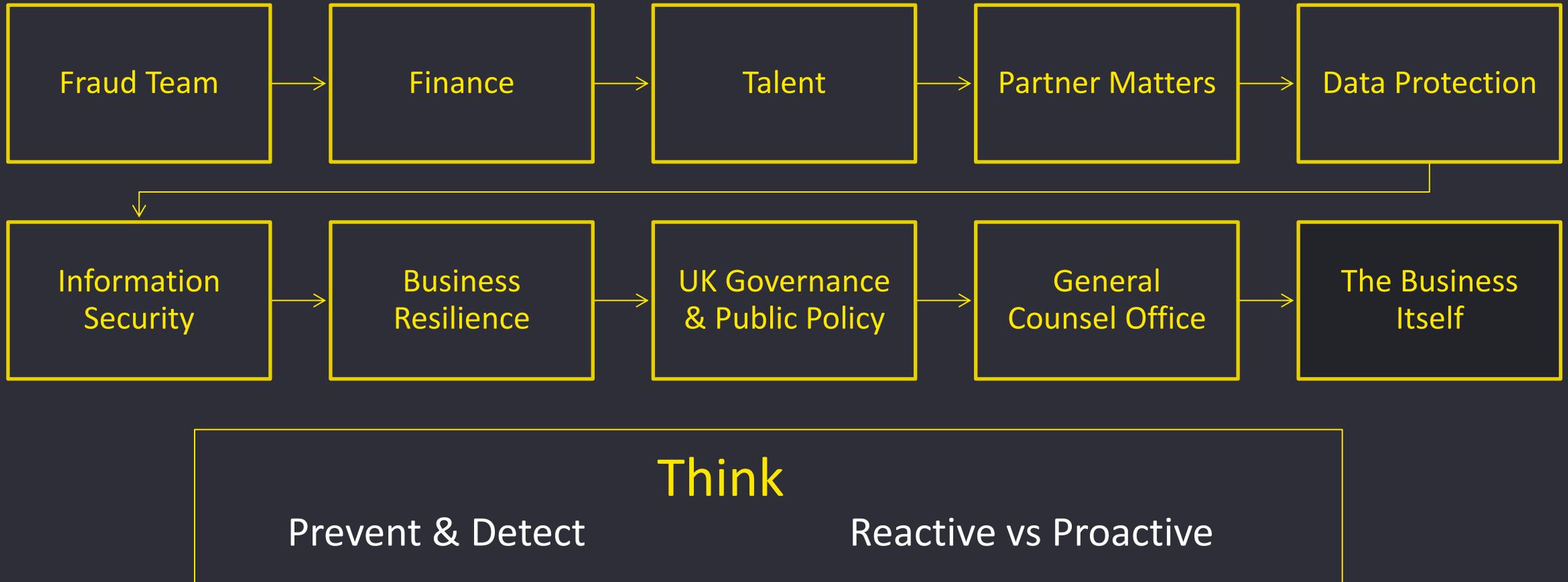
## Holistic governance



# Holistic Governance

The challenge to all organisations is to ensure all relevant departments understand and are alive to the risk of fraud.

For example, a firm may consider a Fraud Forum including representatives across the business.



# 05

## Continuing evolution



# Continuing Evolution

The guidance confirms the need for any framework to be continuously monitored and reviewed.  
It may be useful to think about it as the following subjects:



## Compliance Framework

Strong set of processes, policies and structures to reduce risk of fraud



## Policy and guidance

Sets out responsibilities in relation to the reporting of fraud



## Protect & detect internal controls

Strong internal controls designed to prevent and detect fraud



## Roles and responsibilities across 3 LoD

Clear fraud roles and responsibilities - 3 Lines of Defence model



## Regular Risk Assessments

Regular risk assessments for acute awareness of fraud risk



## Training & Monitoring

Continuous monitoring to detect irregularities



## Reporting

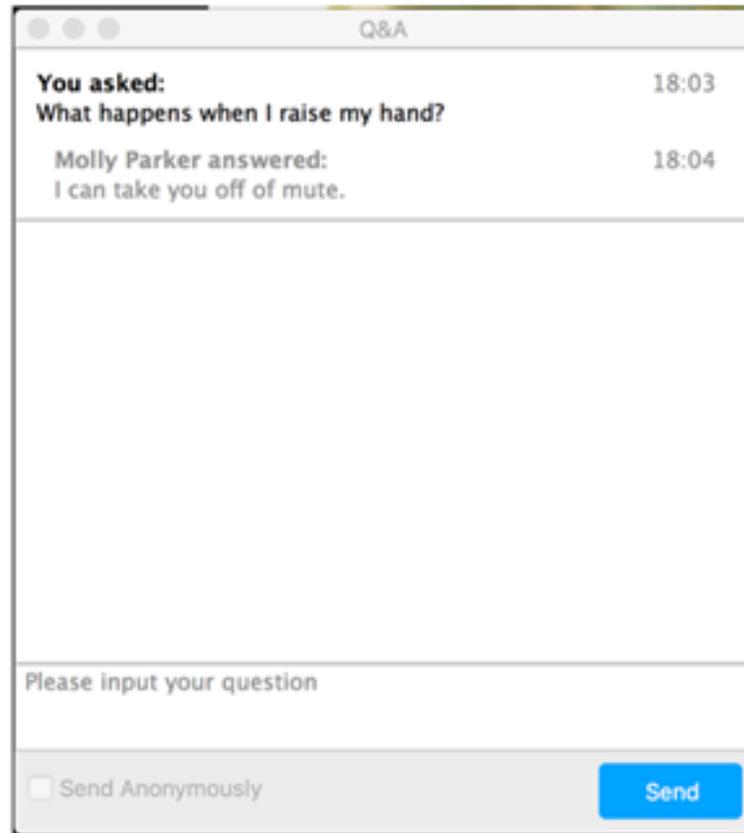
Regular reporting to stakeholders



## Record Keeping

Documented in accordance with applicable requirements

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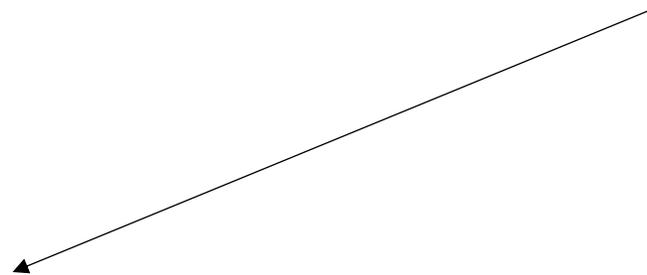
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# Did you know?

ICAEW's Continuing Professional Development (CPD) Regulations have changed. Members are now required to do a minimum number of CPD hours per year.

This webinar could contribute to up to 1 hour of verifiable CPD, so long as you can demonstrate that the content is relevant to your role.





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If you are watching this webinar **on demand** via ICAEW.com, click on “verify your CPD” on the webinar webpage to add this to your CPD record.



## ***Useful resources***

- [Offence of 'failure to prevent fraud' introduced by ECCTA - GOV.UK](#)
- [Guidance on the failure to prevent fraud offence \(ECCTA 2023\) | Policy and Guidance | UK Finance](#) (financial sector-specific guidance)
- [Failure to prevent fraud offence | NHS Counter Fraud Authority](#) (NHS sector specific)
- [Fraud Strategy 2026 to 2029 - GOV.UK](#)
- [ICAEW FTPF guidance](#)

# ***Questions***

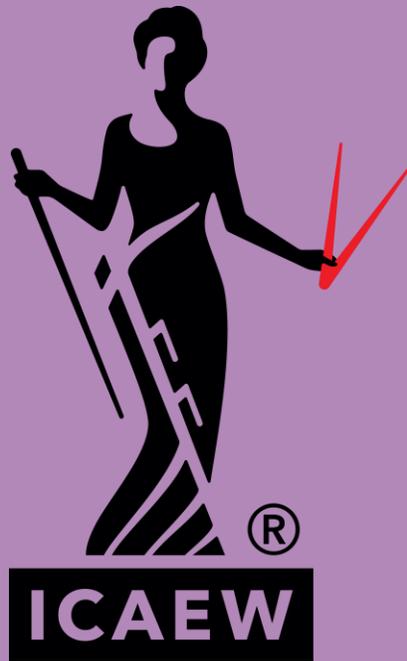
# ***Thank you for attending***



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