Appendix 1

Veritau

Failure to Prevent Fraud (FtPF) Briefing Note

Status: In force from 1 September 2025

---

1) What the offence is in plain terms

Under **Economic Crime and Corporate Transparency Act 2023 (ECCTA)**, a large incorporated organisation (including public bodies incorporated by statute) commits a corporate offence if a person "associated" with it (e.g. employee, agent, subsidiary, or anyone performing services for or on its behalf) commits a listed fraud offence intending to benefit the organisation or, in certain circumstances, its clients/service-users—unless the organisation had reasonable procedures to prevent such fraud. Individual liability is unchanged; this is a corporate offence.

Who counts as "associated"? Employees and agents; persons performing services for or on behalf of the body; subsidiaries can also be associated persons if acting corporately. Companies in your supply chain are **not** associated merely by being in the chain—only when providing services for or on your behalf.

Public sector in scope: The guidance expressly contemplates bodies incorporated by statute (e.g. NHS trusts) and frames "clients" to include tenants (for local authorities). It also directs public sector organisations to follow Public Sector Fraud Authority (PSFA) standards when classifying risk—clear indicators that councils meeting the size test are in scope.

---

2) Who it applies to (size test)

The offence applies only to "large organisations", defined as meeting **two out of three** criteria in the preceding financial year:

- **>250 employees**;
- **>£36m turnover**;
- **>£18m total assets** (aggregated with subsidiaries).

Most local authorities will meet the employee and asset thresholds.

---

3) What frauds are covered (England & Wales)

The offence attaches to specific "base fraud" offences listed in ECCTA Schedule 13, including:

- **Fraud Act 2006 s1** (by false representation; failing to disclose; abuse of position);
- **Obtaining services dishonestly** (Fraud Act 2006 s11);
- **Participation in a fraudulent business** (Fraud Act 2006 s9);
- **False accounting** (Theft Act 1968 s17); **false statements by company directors** (s19);
- **Fraudulent trading** (Companies Act 2006 s993);
- **Cheating the public revenue** (common law).

Intention to benefit can be **direct or indirect** and can be aimed at the organisation's clients/service-users (e.g. residents/tenants) to whom services are provided on the authority's behalf. The organisation need not actually receive a benefit; intended benefit suffices.

---

4) Defence and enforcement

Defence: It is a defence to show the organisation had reasonable fraud prevention procedures (or that it was not reasonable to have any). What is reasonable is fact-specific and for the court to decide.

Enforcement: Proceedings may be brought by CPS and SFO. Deferred Prosecution Agreements (DPAs) are available in England & Wales. If convicted, the penalty is a fine set by the court under sentencing guidelines (courts must consider the impact on public/charitable functions when fining public bodies).

---

5) Government's recommended approach

The Home Office guidance sets out **six principles** a fraud-prevention framework should be built around:

1. **Top-level commitment** – Senior managers set the tone, allocate proportionate budget, resource and oversight; foster an open culture and support employees to speak-up.
2. **Risk assessment** – Dynamic, documented, regularly reviewed; consider associated persons, high-risk roles (e.g. procurement, commissioning, grants, revenues), and emergency scenarios. Councils should align with PSFA standards.

3. **Proportionate, risk-based procedures** – Clear, practical controls aligned to your risks and level of control over associates (e.g. stronger over employees than over outsourced workers; use contracts to strengthen control).
4. **Due diligence** – On people and entities who perform services for you (suppliers, agents, delivery partners, ALMOs/companies); include screening, contract clauses (compliance/termination), and M&A/group oversight.
5. **Communication & training** – Embed policies; train staff and associates proportionately; ensure middle management reinforces the message.
6. **Monitoring & review** – Track control effectiveness, training uptake, contract updates; review after incidents and as risks change. External review may be appropriate.

Supply chain and partners: Small organisations may be **associated persons** while providing services; large bodies may impose contractual requirements and flow-down obligations.

---

6) Priority actions for councils (practical checklist)

Now (implementation period):

- **Appoint senior ownership** (e.g. SIRO/S151 sponsor; Monitoring Officer oversight) and establish governance for the fraud-prevention framework.
- **Scope "associated persons"** across the council and group: employees, agency staff, consultants, ALMOs, trading companies, joint ventures, framework suppliers and prime contractors delivering council services. Map where they interact with clients/service-users (residents/tenants), given the offence can bite where fraud benefits clients.
- **Undertake and document a risk assessment** tailored to FtPF (not just general fraud), covering high-risk areas for councils: procurement/commissioning and contract management; grants administration; revenues & benefits; social care/direct payments; housing & tenancy; payroll/expenses; recruitment/agency hiring; school-related spend; supplier bank-detail changes. Incorporate emergency scenarios (e.g. surge-funding schemes). Align classification with PSFA standards.
- **Design/refresh proportionate controls** and record a Fraud Prevention Plan:
    - Pre-award due diligence for grants and suppliers; enhanced checks for higher-risk contracts and intermediaries.
    - Standard contract clauses: compliance with fraud-prevention obligations; audit/inspection rights; breach/termination provisions.
    - Clear approval and segregation of duties; data-analytics triggers for anomalies; conflict-of-interest declarations; strengthened oversight of subsidiaries/ALMOs.

- **Targeted training & comms** (risk-based): commissioning/procurement teams, grants officers, housing, revenues/benefits, social care payments, finance, and managers in high-risk roles; tailored briefings for key suppliers/partners delivering council services.
- **Monitoring & assurance**: define KPIs/MI (training coverage, control testing results, supplier due-diligence completion), schedule periodic reviews, and plan for investigation/response to suspected offences that may benefit the council or its clients.

Ongoing:

- Keep your risk assessment current; courts may treat stale assessments as not fit for purpose.
- Maintain evidence of how procedures operate in practice; update contracts and training as risks evolve; consider external review where appropriate.

---

7) Governance and assurance

- Ensure Audit & Governance Committees and Corporate Management Teams receive documented assurance over the FtPF framework (risk assessment, procedures, testing, issues log).
- Confirm arrangements across the group (subsidiaries/ALMOs)—the parent can be liable where a subsidiary's fraud intends to benefit the parent or its clients.
- Be clear on **self-reporting** routes (e.g. SFO/CPS) and co-operation expectations; DPAs may be available in England and Wales.

---

8) Key dates & guidance

- **In-force date: 1 September 2025**
- **Key guidance:** Home Office, Guidance to organisations on the offence of failure to prevent fraud.