

# Economic Crime and Corporate Transparency Act 2023

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Failure to Prevent Fraud - Guidance and Policy Document

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## Overview of the Offence

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Section 199 of the Economic Crime and Corporate Transparency Act 2023 creates a new offence that will hold Hyndburn Borough Council to account for fraud committed by their employees, agents, subsidiaries or other associated persons who provide services for or on behalf of the Council, where the fraud was committed with the intention of benefiting the Council or its clients. It does not need to be demonstrated that the organisation's Directors or Senior Managers ordered or knew about the fraud. It does not need to be proven there was any benefit for the Council. The offender can simply say that was their intention in the fraud they carried out.

The offence will not extend to individual liability for persons within the Council for failing to prevent the fraudulent behaviour. However, this does not preclude Hyndburn Borough Council being corporately prosecuted for failing to prevent it.

## Aims of the Legislation and Background

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New offences are created by the Economic Crime and Corporate Transparency Act 2023. The legislation is applicable from 1<sup>st</sup> September 2025.

Under the Act, Hyndburn Borough Council may be criminally liable if it did not have reasonable fraud prevention procedures in place. It does not need to be demonstrated that Directors or Senior Managers ordered or knew about the fraud.

The offence sits alongside existing law. For example, the person who committed the fraud may be prosecuted individually for that fraud, while Hyndburn Borough Council may be prosecuted for failing to prevent it.

The Act makes it easier to hold Hyndburn Borough Council to account for fraud committed by employees, its agents, or other associated persons working on behalf of the Council, which may benefit the Council, or, in certain circumstances, its clients. The offence is designed to encourage more organisations to implement or improve prevention procedures, driving a major shift in corporate culture to help prevent fraud.

The Economic Crime and Corporate Transparency Act 2023 introduces the offence of Failure to Prevent Fraud, which applies to a wide range of organisations. Hyndburn Borough Council falls within the scope of this offence as a "large organisation", as defined by the Act. An organisation is considered large if it meets two out of the following three criteria:

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

Currently, small and medium sized enterprises (SMEs) are exempt from this offence, but this exemption may be subject to change in the future.

The offence applies to large organisations only and applies across the UK.

The key defence to the offence is for the Council to prove it had reasonable fraud prevention procedures in place (or that it was unreasonable to expect it to have such procedures). In accordance with established case law, the standard of proof is the balance of probabilities. Ultimately only the courts can determine whether a relevant body has reasonable prevention procedures in place to prevent fraud in the context of a particular case, considering the facts and circumstances of that case.

## **Types of Fraud Covered by the Offence**

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- Fraud offences including:
  - Fraud by false representation
  - Fraud by failing to disclose information
  - Fraud by abuse of position
- Participation in a fraudulent business
- Obtaining services dishonestly
- Cheating the public revenue
- False accounting
- False statements by company directors
- Fraudulent trading.

## **Who commits the base fraud and in what circumstances?**

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An officer, director, employee, agent or subsidiary of an organisation, or a person who otherwise performs services for or on behalf of the organisation

The corporate offences can only take place if the person commits a base fraud whilst acting in the capacity of a person associated.

A subsidiary undertaking of a large organisation is an associated person for the purposes of this offence. This means that it is possible for a parent company to be prosecuted for failure to prevent fraud where the base fraud offence is committed corporately by a subsidiary and where the beneficiary is the parent organisation, or its clients to whom the subsidiary provides services for or on behalf of the parent organisation.

The parent organisation is not responsible for unrelated activities by subsidiaries.

## Investigation Penalties and Sanctions

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The Serious Fraud Office have the jurisdiction to investigate this offence. In a recent speech the SFO Director emphasised that the SFO is looking prosecute for the offence, and noted that organisations should ensure their procedures are in place by September 2025.

The potential results of an investigation include:

- Criminal Prosecutions with an Unlimited fine
- Long investigations that require time and resource
- Reputational damage
- Private prosecutions can be brought.

## Defence of reasonable fraud prevention procedures

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Hyndburn Borough Council will have a defence if it has reasonable procedures in place to prevent fraud, or if Hyndburn Borough Council can demonstrate to the satisfaction of the court that it was not reasonable in all the circumstances to expect the Council to have any prevention procedures in place.

The question of whether Hyndburn Borough Council had reasonable procedures in place to prevent fraud in the context of a particular prosecution is matter that can be resolved by the courts, considering the particular facts and circumstances of the case. If a case comes to court, the onus will be on Hyndburn Borough Council to prove it had reasonable procedures in place to prevent fraud at the time the fraud was committed. In accordance with established case law, the standard of proof in this case is the balance of probabilities.

The Home Office have been working with a number of local authorities for the past two years, leading to publishing official guidance on what constitutes reasonable fraud prevention procedures. Departure from the suggested procedures will not automatically mean that Hyndburn Borough Council did not have reasonable fraud prevention procedures in place.

The reasonableness of procedures should take account of the level of control, proximity and supervision Hyndburn Borough Council is able to exercise over a particular person acting on its behalf. For example, where a supply chain involves several entities or a project is to be performed by a prime contractor with a series of subcontractors, the Council is likely to only exercise control over its relationship with its contractual counterparty.

## What constitutes reasonable fraud prevention procedures?

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The legislation requires Hyndburn Borough Council to put a fraud prevention framework in place informed by the following six principles:

- 1.) Top level commitment
- 2.) Risk assessment
- 3.) Proportionate risk-based prevention procedures
- 4.) Due diligence
- 5.) Communication (including training)
- 6.) Monitoring and review

These principles are intended to be flexible and outcome-focussed, allowing for the huge variety of circumstances that relevant bodies find themselves in. As set out in more detail below, procedures to prevent fraud should be proportionate to the risk.

### Top Level Commitment

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Hyndburn Borough Council's senior management have an important leadership role in relation to fraud prevention.

This legislation effectively places responsibility for the prevention and detection of fraud with all those charges with governance of the organisation. The board of directors, partners and senior management of a relevant body should be committed to preventing persons from committing fraud. They should foster a culture within the organisation in which fraud is never acceptable.

The level and nature of senior management involvement will vary depending on the size and structure of an organisation, but as a basic requirement they are expected to:

- Communicate and endorse Hyndburn Borough Council's stance on preventing fraud, including mission statements
- Ensure that there is clear governance across the council in respect of the fraud prevention framework.
- Commit to fraud training and resourcing
- Lead by example by fostering an open culture, where staff feel empowered to speak up if they encounter fraudulent practices.

## **Communication and endorsement of Hyndburn Borough Council's stance on preventing fraud**

Hyndburn Borough Council has a zero tolerance to fraud.

The legislation requires regular and effective formal statements and communication from senior management to demonstrate the commitment to tackle fraud and promote this position, including:

- A commitment to reject fraud
- Articulation of the business benefits of rejecting fraud (reputational, customer and business partner confidence)
- Signposting key individuals and / or departments involved in the development and implementation of the organisation's fraud prevention procedures. In Hyndburn Borough Council this is primarily by Internal Audit.
- Articulation of the consequences for those committing fraud or breaching the policies relating to fraud.

## **Ensuring that there is a clear governance across Hyndburn Borough Council in respect of the fraud prevention framework**

In Hyndburn Borough Council responsibility for the financial crime prevention framework is primarily overseen by Internal Audit with the support of Corporate Management Team.

Home office guidance states it is best practice for the fraud prevention framework to include:

- Horizon scanning for new fraud risks
- Conducting continuous assessment of fraud risk
- Developing and implementing fraud detection measures
- Developing, implementing and testing fraud prevention measures
- Ensuring that appropriate management information is collected and shared to enable senior managers to understand the risks and the effectiveness of fraud prevention procedures
- Zero tolerance approach to fraud, ensuring consistent appropriate disciplinary outcomes and publication of outcomes to prevent fraud
- Effective Whistleblowing arrangements in place to report concerns
- Ensure all suspected concerns relating to fraud are impartially and thoroughly investigated
- Continuous monitoring and review of the framework
- Ensuring that those tasked with delivering the framework have direct access to the Board or CEO as they think necessary. At Hyndburn Borough Council this is through the Audit Committee and if necessary direct contact with the Monitoring Officer and CEO
- Reporting to the Board as appropriate

- Reviewing the fraud prevention framework and its implementation
- Minute decisions and actions

### **Commitment to training and resource**

Home office guidance says best practice includes:

- Senior managers should commit to allocating a reasonable and proportionate budget specifically for the leadership, staffing and implementation of the fraud prevention plan, including training. This budget could encompass not only personnel costs but also funding for technology that may include third party due diligence, platforms and relating due diligence tools.
- Senior managers commit to resourcing the fraud prevention plan over the long term
- Senior managers commit to sustaining anti-fraud practices when key members of staff are on annual leave, or off work with illness, or when they leave the organisation.

### **Leading by example and fostering an open culture**

Early action can prevent fraudulent practices from taking hold. Senior managers have a leadership role in fostering an open culture where staff are encouraged to speak up early if they have any ethical concerns, no matter how minor.

Fraudsters often rationalise fraud by a variety of techniques:

- Focus on responsibility (“it was a group decision”, “it’s the auditors’ job to catch this”, “everyone does it”)
- Focus on the consequences of the act (“it is not material”, “I am levelling the field”)
- Focus on the victim (“fraud is a victimless crime”, “it’s their duty to exercise proper due diligence”)

Senior managers should show leadership by challenging these arguments proactively, pointing out the effects of fraud on the business, other colleagues, the sector and public trust. This position may be codified in the organisation’s code of ethics or other ethical policies.

The whistleblowing arrangements should be regularly publicised and training be provided to develop a “speak up” culture.

## Risk Assessment

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Hyndburn Borough Council is required to complete an extensive fraud risk assessment across the entirety of the organisation. This risk assessment should identify sources of information about potential risks including:

- Data analytics
- Previous audit (which may have flagged potential fraud risks)
- Sector specific information, best practice advice or toolkits from relevant professional or trade bodies or regulators
- Regulator enforcement actions

In some limited circumstances, it may be deemed reasonable not to introduce measures in response to a particular risk. However, it will rarely be considered reasonable not to have conducted a risk assessment. 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.

The risk assessment should be kept under review. The frequency of review is a matter for Hyndburn Borough Council. However, if the risk assessment has not been reviewed recently enough, a court may determine that it was not fit for purpose and therefore that “reasonable procedures” were not in place at the time of the fraud.

The legislation requires a comprehensive and wide-ranging risk assessment to be conducted over Hyndburn Borough Council and any subsidiary entities that may exist at any future point.

## Proportionate risk-based fraud prevention procedures

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Hyndburn Borough Council operates its fraud prevention framework based on the 4 pillars of the Fighting Fraud and Corruption Locally (FFCL) Strategy (pictured below) and these thematically align with the legislative requirements.





Compliance with FFCL will automatically align with large parts of what the legislation determines as reasonable fraud prevention, although the legislation places significant additional requirements on the council.

The legislation requires that:

- Hyndburn Borough Council 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 Hyndburn Borough Council's activities. They must also be clear, practical, accessible, effectively implemented and enforced.
- Hyndburn Borough Council is required to 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 Hyndburn Borough Council is able to exercise over a particular person acting on its behalf and the relevant body's proximity to that person. For example, Hyndburn Borough Council 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.

It is not necessary or desirable for Hyndburn Borough Council to duplicate existing work. Equally, it would not be a suitable defence to state that because Hyndburn Borough Council is a public authority, 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, Hyndburn Borough Council needs to assess whether its existing regulatory compliance mechanisms, financial reporting controls and fraud prevention measures would be sufficient to prevent each of the fraud risks identified in the risk assessment. Where existing mechanisms appear to be insufficient, Hyndburn Borough Council is required to develop appropriate measures to prevent fraud.

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

#### Reducing the opportunities for fraud

- Does Hyndburn Borough Council undertake pre-employment and vetting checks?
- For high-risk roles, does it carry out ongoing vetting checks?
- Do those in high-risk roles receive regular anti-fraud training and how vigorously is compliance with training evaluated or monitored?
- Does Hyndburn Borough Council assess emerging risks systematically?
- If new services or associated persons present a fraud risk, is a fraud impact assessment made? What countermeasures can Hyndburn Borough Council put in place?
- Are fraud risks managed equally well throughout the procurement process (pre-tender, tender, contract management, during project delivery and project extension)? Do contracts include appropriate terms for associated persons and are these reviewed?
- Does Hyndburn Borough Council use best practice with regard to financial reporting, for example, segregation of duties, reconciliation of accounts, suitable sign-off arrangements?
- Have any internal or external audits raised any fraud concerns that have not been acted upon?
- Do procedures for avoiding conflicts of interest need to be bolstered, are they regularly reviewed for compliance and what action is taken when they are not?
- What are the arrangements for limiting access to sensitive or commercial data? Are they kept up to date?
- What is the best practice on reducing fraud risks in the sector?

#### Reducing the motive for fraud

- What can be done to prevent time pressures encouraging staff to cut corners, potentially fraudulently?
- Does the organisation collect information on potential conflicts of interest and keep such information under review?

#### Putting in place consequences for committing fraud

- What are the internal disciplinary procedures for those found to be committing fraud?

- Are the outcomes of fraud-related investigations communicated to staff and other associated persons to prevent others committing offences?

### Reducing the rationalisation of fraudulent behaviour

Over time “one off” frauds may become normalised as people rationalise certain fraudulent behaviours, with arguments such as “other businesses do it”. This phenomenon is known as “ethical fading”.

Hyndburn Borough Council needs to encourage proactive challenge of these views as part of communication and training programmes, and in the code of ethics, by pointing out the impact of fraud on colleagues, on the business, on the sector and on public trust.

Hyndburn Borough Council needs to stress that the prevention of fraud is the responsibility of everyone in the organisation. For example, incorporating a reminder about the organisation’s code of ethics into performance evaluation.

### Emergency scenarios

Public sector organisation in scope should follow specific guidance on fraud prevention in emergency scenarios or relevant information from counter-fraud authorities.

It is recognised that not all emergencies are foreseeable and the defence that under the circumstances it was reasonable not to have any fraud prevention procedures in place may apply. One example is when a public authority uses its legal powers to take action to resolve a crisis in the public interest. However, this situation should be time limited. The necessary procedures to prevent fraud should be put in place as quickly as reasonably possible following the crisis and this process should be documented.

## **Due Diligence**

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The legislation requires Hyndburn Borough Council to apply 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 Hyndburn Borough Council, in order to mitigate identified fraud risks.

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.

Hyndburn Borough Council should conduct due diligence on associated persons (including new partners). Examples of best practice include:

- Using appropriate technology, for example, third-party risk management tools, screening tools, internet searches, checking trading history or professional or regulated status if relevant, or vetting checks if appropriate.
- Reviewing contracts with those providing services, to include appropriate obligations requiring compliance and ability to terminate in the event of a breach where appropriate
- Reviewing contracts for agents
- Monitoring of well-being of staff and agents to identify persons who may be more likely to commit fraud because of stress, targets or workload.

Hyndburn Borough Council should conduct due diligence in relation to mergers or acquisitions. Examples of best practice include:

- Using third party merger and acquisition tools.
- Assessment of any relevant criminal or regulatory charges
- Assessment of tax documentation
- Assessment of the firm's exposure to risk
- Assessment of the firm's fraud detection and prevention measures (bearing in mind that if the firm being acquired does not qualify as a "large organisation" as set out in section 201 of the Economic Crime and Corporate Transparency Act 2023, it may not have any procedures that directly address the offence of failure to prevent fraud)
- Integration of fraud prevention measures post-acquisition.

Hyndburn Borough Council 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.

## Communication

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The legislation requires:

Hyndburn Borough Council 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 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 Hyndburn Borough Council ensures awareness and understanding of its policies amongst those who provide services for or on its behalf. Hyndburn Borough Council 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 engagement 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 customer interactions could include a brief statement addressing fraud rationalisation and the potential consequences of committing fraud.

Hyndburn Borough Council should publicise internally the outcome of investigations, particularly when sanctions have been imposed.

### Training

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.

Hyndburn Borough Council will need to introduce bespoke training to address specific fraud risks. Training should include ensuring that staff and other associated persons are familiar with whistleblowing policies. Since whistleblowing is something that staff or other associated persons are likely to do infrequently, it requires regular reminders of the procedures in internal communications.

It is good practice to monitor the effectiveness of training programmes and to ensure that they are kept up to date, particularly as staff move.

### Whistleblowing

Transparency International states that "whistleblowing is one of the most effective ways to uncover corruption, fraud, mismanagement and other wrongdoing". To help prevent fraud, organisations should have appropriate whistleblowing arrangements.

Hyndburn Borough Council has strong whistleblowing arrangements in place, however improvements around the following areas is required:

- Training staff to ensure that they are aware of how to access whistleblowing arrangements and managers on how to respond when whistleblowing concerns are raised

- Conducting victimisation risk assessments and protecting whistle-blowers from potential victimisation
- Better learning mechanisms from the issues raised by whistle-blowers.

## Monitoring and Review

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The legislation requires Hyndburn Borough Council to monitor and review 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.

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

### Review

Hyndburn Borough Council is expected 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 Hyndburn Borough Council, but risk assessments are conducted at consistent intervals (annually or bi-annually).

Hyndburn Borough Council should review its fraud detection and prevention procedures by:

- Seeking internal feedback from staff members
- Reviewing fraud detection analysis
- Examining any investigations or relevant whistleblowing cases and the subsequent action taken
- Examining other financial crime prevention procedures
- Conducting formalised periodic review with documented findings
- Following advice from professional organisations (for example accountancy or legal bodies)
- Examining any relevant prosecutions or deferred prosecution agreements
- Collating and verifying management information on the effectiveness of the fraud prevention measures and flagging to the board.

This is not an exhaustive list, and it is expected that organisations will choose the approach most suited to their needs.

## Raising Concerns

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If you believe a fraud may have been committed the first thing you must do is to inform one of the key individuals detailed below.

In addition, do **NOT** attempt to investigate the matter yourself and do not discuss your concerns with others as this could alert those involved in the fraud that they have been discovered.

Failing to report an issue you are aware of could result in the Council taking action against you if it is later proven that your actions impacted the fraud, its implications or created implications against the Council.

In the first instance you should contact:

<b>Mark Beard</b>	Head of Audit & Investigation	01254 380634 Internal Ext. 2634 <a href="mailto:mark.beard@hyndburnbc.gov.uk">mark.beard@hyndburnbc.gov.uk</a>
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Alternatively you can report it to any of the following:

<b>David Welsby</b>	Chief Executive	01254 380110 Internal Ext. 2110 <a href="mailto:dave.welsby@hyndburnbc.gov.uk">dave.welsby@hyndburnbc.gov.uk</a>
<b>Jane Ellis</b>	Executive Director (Legal & Democratic Services) & Monitoring Officer	01254 380146 Internal Ext. 2146 <a href="mailto:jane.ellis@hyndburnbc.gov.uk">jane.ellis@hyndburnbc.gov.uk</a>
<b>Martin Dyson</b>	Executive Director (Resources) & s151 Officer	01254 380973 Internal Ext. 2973 <a href="mailto:martin.dyson@hyndburnbc.gov.uk">martin.dyson@hyndburnbc.gov.uk</a>

All concerns raised will be treated in confidence, properly investigated and dealt with.

The Council's Whistleblowing policy also gives further guidance on how to raise concerns and it gives details about the support and safeguards that are available to those that do raise concerns.

### Internal Audit Awareness of all Concerns Raised

Following a concern being raised, Internal Audit **MUST** be made aware of the issue if this was not made to the Head of Audit & Investigation in the first instance.