

MIAA – Failure to Prevent Fraud FAQs

14th November 2025

Below are the questions & subsequent answers arising from the three recent MIAA webinars held in respect of the new corporate offence of Failure to Prevent Fraud. While we have summarised the answers / advice given during the webinars, it is ultimately the organisation's responsibility to obtain appropriate legal advice (as per the Home Office / NHSCFA advice) to any specific concerns or queries. The following responses should not be viewed as legal advice.

Q – Though effective 1st September can the fraudulent activity before this date be considered?

A – No, there is no retrospective element to this offence. Only actions from the 1st September 2025 onwards would be considered for prosecution. However, any ongoing fraudulent activity which transcends 1st September may presumably be considered.

Q – I would like to understand how NHS Professionals sit with this and their responsibilities with their systems and processes - slightly different than the example given in the webinar presentation.

A – MIAA put this question to NHSCFA via their portal. Their response is as follows: “We do consider NHS Professionals to be conducting services for and on behalf of NHS organisations. Please refer to the section on ‘associates of a large organisation’ in NHSCFA’s guidance on ‘failure to prevent fraud’ for further guidance and information on this. An organisation will fall within scope if they meet the requirements of the Economic Crime and Corporate Transparency Act 2023 as either large organisations, subsidiaries of large organisations or associated persons of large organisations. Where an organisation is in doubt as to whether it is in scope of offence of failure to prevent fraud under ECCTA, they should take legal advice.”

Q – Noting the point on suppliers, are there implications for contractual arrangements between Trusts who are delivering services jointly?

A – Both Trusts will need to comply with the FTPF requirements at a corporate level. Unless there is another third party involved in the delivery of a service, who could also be deemed an ‘associated person’, there should probably be no additional contractual requirements needed.

However, if there is a non-Trust third party involved, they may need to comply with the FTPF requirements anyway due to their own size as a ‘large organisation’; otherwise, they will need to be aware of the NHS expectations and have had suitable due diligence checks undertaken to ensure they don’t put the health bodies at risk of breaching the offence due to their conduct, along with adequate ongoing management and scrutiny of them.

Q – How will this impact upon the internal view of accounting adjustments at year end - valuation of assets, assessment of bad debts, accruals etc. will it change the audit processes?

A – External audit colleagues have advised that they see no real impact on their audit approach as the risk of fraud is considered each year as part of their formal risk assessment.

If they identify or become aware of any potential fraud, then there will be an additional consideration as to breach of laws and regulations.

Q - Failure to disclose in registers of interests pecuniary and non-pecuniary interests?

A – This question appears to relate to whether a non-disclosed interest (whether pecuniary or otherwise) could trigger the offence.

Non-disclosure of interests in accordance with a health body's disclosure policy would not normally be a base offence in of itself. However, failure to disclose an interest 'when under a legal obligation to do so' is a potential offence under s.3 of the Fraud Act 2006. For the FTPF offence to be triggered, it would generally require the legal obligation 'to declare' to be clearly set out in health body legal / contractual documentation and, there would have to be some identifiable benefit (even if the benefit did not materialise) to the individual and to the health body arising from the non-disclosure. It would also likely need to be established that the non-disclosure was intentionally dishonest, as opposed to a genuine oversight or error. Robust declarations of interest arrangements and controls, ensuring non-compliances are promptly identified and followed up, and that obligations to declare interests are clearly documented in application forms, contracts of employments and policies/ procedures, which form the basis for employment terms and conditions, would help constitute 'reasonable procedures'.

Q - Could exaggerated business plans and delivery promises that may result in funding streams that end up unjustifiable; or, in other sectors, funders giving loans etc, trigger the offence. Also, in the context of greater collaborative working across sectors.

A – Consideration of whether the corporate offence is triggered would need to assess whether the business plans and forecasts were knowingly exaggerated or simply overly optimistic. The difference between the two would largely be down to determining whether there was 'dishonest intent' in submitting inaccurate or unsubstantiated data. The 'reasonable procedures' here would include effective scrutiny and oversight of how the data was compiled, how figures were verified as accurate or reasonable in terms of independent checks, and whether forecasts were in line with past performances and trends (or when compared with other, similar organisations). That scrutiny and challenge should be robust and separate from those who put the business plans together and undertaken by suitably experienced and knowledgeable individuals.

Q - For corporate fraud, is the prosecution against the organisation or the person?

A – The organisation would be prosecuted. If found to have breached the offence, it could be subject to a potentially unlimited fine.

Q – It was mentioned about an update to Fit and Proper Persons policies - please can you say a little more about this - and Conflicts of Interest?

A – The Conflicts/Declarations of Interest question was addressed above. In terms of Fit and Proper Persons, at this stage we anticipate that this will mainly need reference to the new legislation (Economic Crime & Corporate Transparency Act 2023) and a link to the relevant Home Office guidance so that individuals can familiarise themselves with the FTPF requirements and how the corporate offence might be triggered by an individual's actions. The legislation and (Home Office guidance) makes clear references to 'senior managers' and the 'identification doctrine', where the actions and decisions of certain senior personnel

and seen as being indistinct from the conduct of the organisation itself. The term 'senior managers', however, is not defined in the legislation.

Regarding 'reasonable procedures', there may be existing reference to the Bribery Act 2010, which contains similar provisions, so it may simply involve some additional wording and guidance being added / updated to the policy and declaration for FTF. The documentation can vary from organisation to organisation, so the Anti-Fraud Specialist should review the existing documentation and advise on any revisions needed.

There does not need to be any specific reference to NHS employees ensuring they do not commit a Bribery or FTF offence as there is a blanket expectation / obligation that all NHS employees do not commit criminal offences while undertaking their NHS duties.

Q - You have mentioned changes to performance or financial data as examples. Might changes to Quality and Safety related data (for example in the event of a serious incident which might open a Trust up to a claim) be in scope?

A – Yes, potentially. One of the examples given in the presentation relates to data manipulation. This doesn't just need to relate to performance or financial data, it can relate to other forms of data submitted to third parties or regulators which, for example, might benefit the organisation by avoiding the payment of a penalty fine or other corporate sanction. The benefit does not have to involve the organisation making a positive gain, it might be that the benefit involves avoiding some other liability, loss or adverse action.

Q – Who will be responsible for investigating this fraud, or making a referral?

A – Anyone can make a referral to either the Anti-Fraud Specialist, the Executive Lead for Counter Fraud (usually the Director of Finance or Chief Finance Officer), or to NHSCFA directly via their fraud and corruption reporting line.

Currently, NHSCFA guidance states: "As this is a new offence, we are making further enquiries into this and will publish further guidance accordingly."

Q – Is it likely that the new Procurement Regulations will need to be updated as a result of this offence?

A – No. It's not currently anticipated that any existing or new Procurement Regulations will need updating. This is based on the latest guidance issued by NHSCFA which advises that most suppliers who provide goods and/or services directly to the NHS are unlikely to fall under the remit of the legislation. However, those suppliers who meet the criteria as a 'large' organisation will need to put in place appropriate measures themselves to meet the requirements of the Act.

Q – Given that the ICB includes clinical professionals, can you advise on the impact to primary care and how this could be reflected in the context of the guidance, particularly as GPs are independent providers.

N.B. (This was a question that was put to NHSCFA by the ICB anti-fraud sub-group recently, but is not currently captured on NHSCFA's own FAQs, so has been added here.)

A – "Given the large range of legal structures for organisations in the health sector, we cannot provide details on exactly how the criteria apply in each case. Where an entity is a body corporate or partnership and where they meet the criteria for a 'large organisation',

they will be within the scope of the failure to prevent fraud offence.

GPs are independent contractors within the NHS. They have contractual agreements with the NHS which outline the services they must provide. It is the responsibility of the individual organisation to determine whether any party with which it has a relationship is an 'associated person' for the purposes of the offence.

Independent contractors may fall within scope of the Economic Crime and Corporate Transparency Act (ECCTA) as an 'associated person'. In these circumstances, they may also be subject to contractual or other requirements imposed by the 'large organisation' requirements in respect to the offence of failure to prevent fraud.

Organisations will need to use the ECCTA legislation and the Home Office Guidance to identify whether they fall within scope of the act. Where an organisation is in doubt as to whether it is in scope of the act, they should take legal advice."

This advice and consideration should also apply to all other primary care contractors.

Q – If Senior Management / the Board were not aware of any base offence which triggered the corporate offence, would this negate any potential prosecution?

A – No. Just as it the legislation doesn't require Senior Management / Board be complicit in approving any fraudulent action or intent, the legislation does not permit their ignorance of any fraud to be a defence against prosecution. Indeed, it's more likely to increase the chance of prosecution as the procedures in place could be deemed as being unreasonable and insufficient to promptly bring knowledge of any fraud to the Board's attention.