

Client Briefing: Preparing for the New Corporate Criminal Offence of ‘Failure to Prevent Fraud’ – Guidance for NHS Senior Leaders

The new fraud offence - what you need to know

This MIAA Client Briefing, produced by MIAA’s Anti-Fraud Service, is for information and awareness. The intended audience are senior officers, Non-Executive Directors, governing body members and other key stakeholders.

The briefing covers a new corporate criminal offence which comes into effect on 1st September 2025 and sets out the proposed actions which MIAA, as your anti-fraud provider, will undertake to ensure organisational compliance with the requirements and provide you with the appropriate assurances.

Given the long-established anti-fraud and corruption culture that’s been embedded in the NHS over the past 25+ years, it’s not anticipated that there will be many prosecutions brought under this offence; however, NHS organisations would be prudent in ensuring the necessary controls are in place and are operating effectively.

What is it called?

The legislation is the Economic Crime and Corporate Transparency Act 2023 (ECCTA).

This legislation covers several areas, including changes to how Companies House operates, and is designed to strengthen corporate accountability and improve transparency over UK businesses and other legal entities. It also seeks to strengthen the UK business environment, support national security and disrupt economic crime.

Specifically, for the purposes of this briefing, it also strengthens fraud prevention arrangements by holding large organisations criminally liable where ‘associated persons’ commit fraud intending to benefit the organisation, and the organisation fails to have reasonable fraud prevention procedures in place.

The NHS Counter Fraud Authority has provided (as of June 2025) specific guidance on how they view this legislation and the associated criminal offence being applied in the NHS. MIAA’s Anti-Fraud Service has compiled a summary of that guidance below – a link to the full guidance is also provided.

What is the offence?

ECCTA contains a corporate offence of “*Failure to Prevent Fraud*”. The offence comes into force on 1st September 2025.

What does that mean?

It means that organisations have a responsibility to prevent an ‘associated person’ from committing a fraud offence, on their behalf, that benefits the organisation.

The new offence presents a significant shift in organisational accountability. NHS bodies must move swiftly to ensure:

- Legal compliance
- Operational resilience
- Protection of public funds

The Audit Committee plays a central role in overseeing strategy, holding leadership accountable, and monitoring progress. Ongoing governance, regular audits, and cultural change are essential to meet the new legal standard and uphold the integrity of NHS services.

Who counts as an 'associated person'?

It includes employees and volunteers, but also contractors, subsidiaries, agents and other service providers.

This definition is broad and includes any party performing a service for or on behalf of the organisation. Fraud by these individuals/parties - if intended to benefit the organisation - can trigger prosecution, even if senior management were unaware of the actions being taken to commit fraud. This reinforces the need for organisations to ensure effective anti-fraud controls are in place across the entire supply and delivery chain.

Is 'benefit' defined in the Act?

No, but it means more than just an obvious financial benefit and applies regardless of whether the organisation actually received a benefit, as long as a benefit was intended.

When does it apply?

It goes "live" on Monday 1st September 2025.

Are you expecting lots of referrals?

No, we are not, but it is important those with stewardship of the organisation are aware of the Act.

Does it apply to all organisations?

No, two of these three conditions need to apply (covering both private and public organisations):

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

However, it will apply to all NHS Trusts, ICBs and

other NHS bodies (as well as any subsidiary companies or associated charities).

Will Directors go to prison?

No, but the organisation could be subject to an unlimited fine.

In addition, there could be other consequences:

- Reputational risk: Public scrutiny could damage patient trust, funding relationships, and regulatory confidence.
- Operational disruption: Non-compliance could lead to internal reviews, legal actions, and resource reallocation to manage fallout.
- Board accountability: Leadership may be called to account for failures in oversight, controls, and training.

How can we avoid this applying to us?

By demonstrating that you have 'reasonable procedures' in place for the prevention of fraud. What is 'reasonable' depends on the size, structure, and nature of the organisation. These are explained in the act under six headings:

1. Top level commitment

Active involvement and leadership from senior management, with a clear anti-fraud culture endorsed from the top

2. Risk assessment

Regular identification and evaluation of fraud risks across all levels of the organisation, including third-party and supply chain risks

3. Proportionate risk-based prevention procedures

Tailored fraud controls that are suitable for the organisation's specific fraud risk exposure and complexity

4. Due diligence

Assessing the background, integrity, and reliability of individuals or entities performing services for or on behalf of the organisation

5. Communication (including training)

Ensuring staff, contractors, and associates understand fraud policies through regular awareness training

6. Monitoring and review

Continual evaluation of the effectiveness of fraud prevention measures, with regular updates based on new risks or incidents.

In NHS bodies, these principles should be aligned with the Government Functional Standard GovS, 013 and the NHSCFA framework. Procedures should extend to all associated persons, including subcontractors, and must be documented, enforced, and regularly reviewed.

However, ECCTA raises the bar further. NHS organisations must:

- Review current anti-fraud frameworks
- Address gaps related to subcontractors and subsidiaries
- Align fraud controls with the six principles above
- Ensure procedures are auditable and robust.

Aren't the compliance requirements for this offence similar to those under the Bribery Act 2010?

Yes, pretty much.

We already employ MIAA to provide fraud services, isn't that enough?

It is certainly an excellent starting place to have commissioned the counter fraud services that MIAA provide.

However, to make sure organisations are ready to comply with the new legislation, MIAA anti-fraud work plans for 2025/26 include a Local Proactive

Exercise (LPE) to conduct a gap analysis of existing controls against the requirements of the new legislation. Priority can then be given to any necessary tasks required, identifying task 'owners' and completion timescales. Consequently, we will provide a report to the Audit Committee and Board to update on baseline compliance and future progress in implementing agreed actions.

We will discuss any immediate or pressing priorities with the Executive Lead for Counter Fraud and update our 25/26 work plan, if necessary.

We will also ensure that this offence is adequately reflected in our fraud risk assessment toolkit. We plan to deliver a number of webinars and/or presentations on this topic, including to NHS Executive and Non-Executive Directors, as well as update our general fraud awareness presentations for all staff with material about the new offence.

We will also update the Anti-Fraud, Bribery and Corruption Policy to reflect the new legislation, and ensure all partners and suppliers are made aware of the new offence and the part they are expected to play in complying with the requirements as a consequence of their relationship with the NHS.

Will you still investigate the individuals who have committed the fraud offence that benefits the organisation?

Yes, we will, unless there are requirements to involve the NHSCFA due to the nature of the allegations. This is no different to our current approach.

If you wish to read about the new legislation in more detail, the NHS Counter Fraud Authority have [provided detailed guidance](#).

If you have any questions about this legislation, the new offence, the NHSCFA requirements or MIAA's proposed actions, please contact your Anti-Fraud Specialist in the first instance who will ensure your questions are addressed.