

## **Fraud prevention and response survey:**

A unique insight into corporate attitudes and readiness

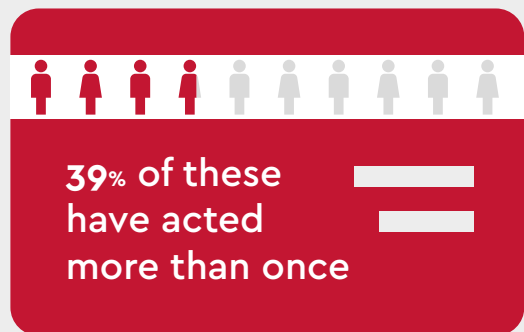


## **Corporate Attribution and Failure to Prevent Fraud offences**

# The missing voice of business

We surveyed 1,000 senior managers across the UK about fraud and the Economic Crime & Corporate Transparency Bill. Here is what they said...

**45%** of businesses have had to act due to fraud caused by an employee or contractor in the last 12 months



## Companies are willing to act



**76%** agree that companies should bear some responsibility for fraud prevention

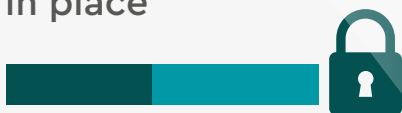
## But confidence is lacking



Just **32%** are very confident they understand their legal obligations and **39%** are not aware of the forthcoming 'failure to prevent fraud' offence

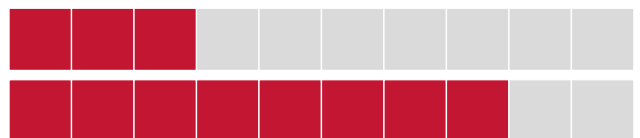
## Current fraud prevention measures are low

Only **47%** have anti-fraud policies in place



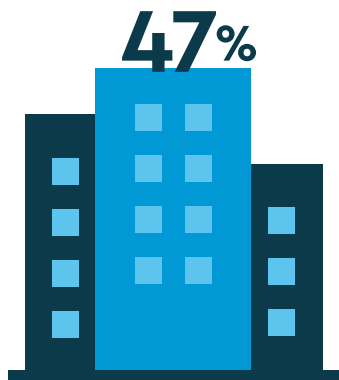
## There is a gap in knowledge about the fraud risks faced

Only **31%** of senior managers believe their sector is vulnerable to fraud

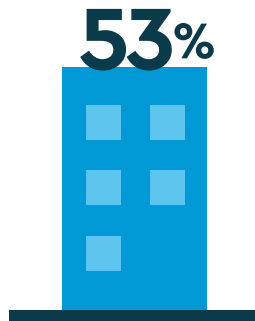


yet **80%** worry that their own business is at risk

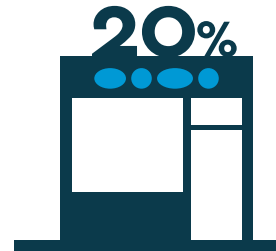
Businesses of all sizes are vulnerable



of large organisations  
(250 people plus)



of companies with  
50-249 employees



of small companies  
(1-9 employees)

have had to act on fraud in the last year

## It's arrived... The Economic Crime & Corporate Transparency Act

Organisations are aware of the risk of fraud but have disjointed prevention and response strategies.



**Corporates need support to prepare for the new law  
and improve their response to fraud.**

### How can you tackle fraud and prepare for the new law?

Undertake a fraud risk assessment as a basis for a proportionate fraud prevention and response strategy. Your policy and procedures should be tailored to apply to the real world dynamics that your business and sector faces.



# The expert voice



**Matthew Field**  
Head of Fraud  
Advisory Panel

"This report, which the Fraud Advisory Panel welcomes, demonstrates how fraud affects businesses of all sizes and the importance of a robust prevention strategy.

The Economic Crime & Corporate Transparency Act presents an opportunity for companies to take a proactive stance against economic crime and to adopt policies and procedures that will enhance their resilience to the threats.

Whilst the Act will only apply to "large" organisations, fraud is a crime that all are exposed to regardless of the number of employees, turnover or assets. Without taking steps to counter it, vulnerability increases.

Counter fraud measures should not be presented as an additional burden. The threat remains and the harm caused is significant, so taking preventative measures is the best defence available.

This report outlines how companies are prepared to take steps in combatting fraud, and the conditions placed within legislation are not a barrier to supporting all with those efforts.

The Fraud Advisory Panel advocate education and collaboration as two of the key drivers in a counter fraud approach and we will be working alongside Foot Anstey to support businesses with their prevention strategies, guided by the results and insight from this report."



**Andrew Bird KC**  
Barrister  
5 St Andrew's Hill  
Chambers

"Make no mistake. What Parliament wants to do is to make it easier to prosecute companies, convict and fine them, and extract more money from them by way of confiscation and compensation. Parliament wants to provide the means for a Court to destroy the company if that is appropriate. Thus, the new Economic Crime and Corporate Transparency Act will do two important things. Firstly, it creates a new offence (strict liability subject to statutory defences) of failing to prevent fraud, which in effect imposes a positive burden to have policies and procedures in place which are not merely box-ticking or window-dressing, but actually effective.

Secondly (and quite separately) it changes the established rules about the persons for whose acts a company will find itself criminally liable. As one who has seen the sharp end, in the Crown Court, of the effect of the failing to prevent bribery offence, with not only multi-million-pound fines but also multi-million-pound confiscation orders on top, I can heartily recommend the common sense of getting these matters addressed, and sooner rather than later.

The effect of a conviction can be devastating not only on a company's immediate finances, but also on its ability to do business abroad, or to seek investment. In the event of a conviction there is also a lot of explaining to do – to shareholders, banks, regulators, employees, creditors and customers. It is crucial that all companies who will be affected by the new legislation take positive steps to ensure that they are not an early target for prosecution."



**Dr Samantha Bourton**  
Senior Lecturer in Law  
University of the West  
of England

"The prevalence of fraud is increasing annually and it is now the most common crime in the United Kingdom (UK). Indeed, the UK Fraud Strategy highlights that, in 2022, one in fifteen adults were a victim of fraud and, by 2020, one in five businesses were a victim of fraud in the past three years. Aside from causing significant financial losses, it is also important to recognise that fraud creates substantial non-monetary costs with the proceeds of fraud often used to fund organised crime and terrorism. Accordingly, the Government has recently introduced a series of initiatives designed to respond to this growing threat.

This includes the Economic Crime and Corporate Transparency Act, which is designed to reform the methods used to attribute criminal liability to companies that facilitate, or fail to prevent, fraud offences. With the imminent enactment of the Bill, this important research by Foot Anstey provides a much-needed insight into the perspective of businesses on fraud risks and measures taken to prevent them.

In revealing that 39% of senior managers are currently unaware of the new failure to prevent fraud offence, this report also provides a vital contribution to businesses by explaining the scope of the offence and its likely impact, as well as an insight into how organisations can protect themselves against the significant costs of fraud and criminal liability."



**"Despite a widely held view that fraud is prevalent across many industries, there is a distinct lack of awareness of what constitutes fraud and how to prevent, deter and detect it."**

Robert Brooker  
PKF GM



**Daniel White**  
Barrister  
Citadel Chambers

"Successive Governments have pledged to tackle the pandemic that is fraud for decades. The much-debated Economic Crime and Corporate Transparency Act and its "failure to prevent offence", represents a large step forward in the fight, by putting larger Corporations, whose employees or agents commit fraud, within the cross hairs of prosecutors.

It's surprising that an average loss of 5% of turnover to fraud within these organisations wasn't enough to trigger a more widespread response to this threat previously. Hopefully this legislation will enhance the fraud prevention and detection strategies within companies of all sizes, through the implementation of better policies and using the latest anti-fraud technologies available."



**Robert Brooker**  
Head of Forensics  
and Fraud  
PKF GM

"The findings contained in this report are enlightening, if not unsurprising. It reflects that, despite a widely held view that fraud is prevalent across many industries, there is a distinct lack of awareness of what constitutes fraud and how to prevent, deter and detect it.

In particular, the number of businesses needing to act more than once during the past 12 months, demonstrates that despite previous incidents, adequate preventative measures were not put in place, or they were not implemented across the organisation.

The report states only 20% of organisations employ a dedicated fraud prevention specialist and only 24% employ 3rd party consultants to undertake these duties, this reflects a widespread weakness in fraud prevention capability. The Economic Crime and Corporate Transparency Act requirements may determine that all organisations that fall within the relevant criteria, should have this resource as a minimum. Additionally, for those that fall outside of the criteria it is clearly "best practice" and will only help to reduce the threat of fraud and its devastating impact

Further, many foresee the SFO's newly appointed Director, with his extensive background in policing, adopting a more proactive approach, to investigations and prosecution, to complement the anticipated increase in cases that the new legislation may bring."

# A unique insight into business' fraud risk and preparedness

As a response to the growth of fraud and economic crime, the Government is placing greater emphasis on corporate responsibility to combat fraud through measures contained in the Economic Crime and Corporate Transparency Act. In our view, the 'corporate voice' has been missing from the debate as the Bill progressed through Parliament, with our survey giving a snapshot of senior managers' views and business' preparedness to fight fraud.

## Based on our data, this report:

- Identifies the most prevalent sources of fraud risks perceived by businesses in your sector
- Outlines companies' awareness of the new regimes
- Summarises the Failure to Prevent fraud and Corporate Attribution offences, including how it might impact your organisation
- Helps you to benchmark against other organisations' current fraud strategies
- Gives you practical actions to protect against fraud and prepare for change

## Methodology

1,000 senior managers across the UK were surveyed in July 2023. Respondents worked at companies ranging in size from SMEs to £500m plus businesses in the following sectors:

- Retail & Consumer
- Energy
- Banking/Financial Services
- Construction/Development
- IT
- HR
- Legal
- Manufacturing & Utilities



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This report was produced in collaboration with the market research companies Censuswide and Flare Insight.





# Foreword

**James Gliddon**  
Partner  
Head of Banking & Lender Disputes

**The threat of fraud has never been greater for UK companies. The UK has recently been described as fertile ground for fraudsters, and the regulatory gaze is widening to detect and reduce economic crime. The focus is moving towards requiring 'the corporate citizen' to play their part.**

A key pillar in this fight is the introduction of a new responsibility for businesses to prevent fraud as part of the Economic Crime and Corporate Transparency Act. Foot Anstey have closely monitored the Bill as it progressed through Parliament, considering at each stage its implications for organisations. With the Bill now receiving Royal Assent, companies in scope need to act now to assess their exposure and revise their policies and procedures.

Given this urgency, we have decided to take stock of companies and their senior managers':

- awareness of the new law
- willingness to act against fraud
- strategies to prevent fraud and recover assets once crimes have been committed

We have interviewed 1,000 UK senior managers as part of this research.

**Our findings suggest that companies are ready and willing to act, but that there is a lack of understanding about what to do and who to notify. Help is clearly needed to tackle fraud, introduce internal controls, and prepare for the new law.**

The UK's reputation as a good place to do business and invest is tethered to the issue of reducing fraud and economic crime. Addressing the challenge is firmly on the Government's agenda, though recently unveiled fraud prevention measures have been criticised as too weak to tackle soaring economic crime rates.<sup>1</sup>

We expect that the Act is just the start point for increased corporate responsibility to act, and it makes good sense to do so, both ethically and commercially. To protect themselves and society, organisations must ensure that they are prepared for the new law as well as examine their wider fraud prevention attitude and response to any incident.

<sup>1</sup> Financial Times, UK's new fraud strategy too weak to tackle soaring crime, say experts, May 3rd 2023

# Tackling fraud

## – we must all play our part

**Fraud is the most pervasive crime in the UK, accounting for 41% of all crime in the year ending September 2022.<sup>2</sup> This source of crime affects individuals, businesses and the public sector, with the volume growing exponentially over the last decade.**

Organisations are increasingly vulnerable to fraud, from both external sources and internal (i.e. their own employees and contractors). Recent estimates put the cost to private companies at £222bn, representing an average loss of 5% of turnover.<sup>3</sup>

The Government has introduced a series of measures and plans to tackle fraud. Over the last year, these have included:

- Reclassifying fraud as a national security threat
- Launching a national fraud strategy, with the objective to reduce fraud by 10% on 2019 levels by December 2024
- Introducing the Economic Crime & Corporate Transparency Bill, which increases corporate liability for fraud through measures including the 'Failure to Prevent' offence
- Other legislative vehicles including the Online Safety Bill and the Financial Services and Markets Act 2023

Policy is moving towards encouraging corporate vigilance through regulation, and now potential prosecution.

The scope of the 'Failure to Prevent Fraud' offence has evolved as the Bill made its passage through Parliament.



An organisation is now at risk of prosecution where specified fraudulent activity is committed by an employee or agent intending to benefit the organisation. This is regardless of whether senior managers knew about the offence, with reasonable fraud prevention procedures being a defence against prosecution.

**Only those organisations who meet two of the following criteria are in scope of the new offence:**

- more than 250 employees;
- more than £36 million turnover; and
- more than £18 million in total assets

The Act also brings in a new 'Corporate Attribution' offence whereby an organisation (of any size) will also be guilty if a senior manager (acting with the actual or apparent scope of their authority) commits or attempts to commit a specified offence.

**Now that the Bill has been passed, the new offence could make companies liable for fraud (regardless of their sector) through the 'Failure to Prevent' offence.**

<sup>2</sup> Government policy paper, Factsheet: failure to prevent fraud offence, Updated 20 June 2023

<sup>3</sup> The Association of Certified Fraud Examiners estimate the typical organisation loss at 5 % of turnover (ACFE, 2022), which is £224 billion/year based on the aggregate £4.5 trillion turnover of all organisations (BEIS, 2022).



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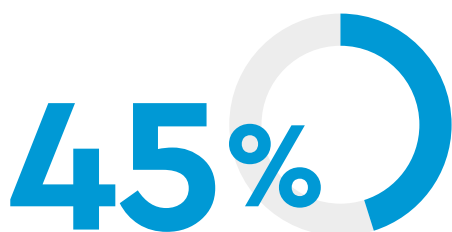
Though smaller organisations are currently out of scope, the impact of the offence will be kept under review and the threshold at which companies are excluded may be amended in future. As our survey highlights, smaller businesses are also vulnerable (particularly as there is a risk that fraud could increasingly be focussed on businesses that do not meet the thresholds to be in scope) and should have a fraud prevention strategy in place.

James Gliddon, Partner,  
Head of Banking & Lender Disputes



# Fraud is endemic

The types of fraud occurring due to employees or contractors are wide ranging. It is clear that companies are exposed: both to the financial and reputational risks of fraud; and the potential threat of prosecution.



Our survey indicates that in the last year alone, 45% of businesses have taken action relating to a fraud incident<sup>1</sup>, with nearly half this total taking action more than once.

## Are you aware? Failure to Prevent Fraud is now an offence.

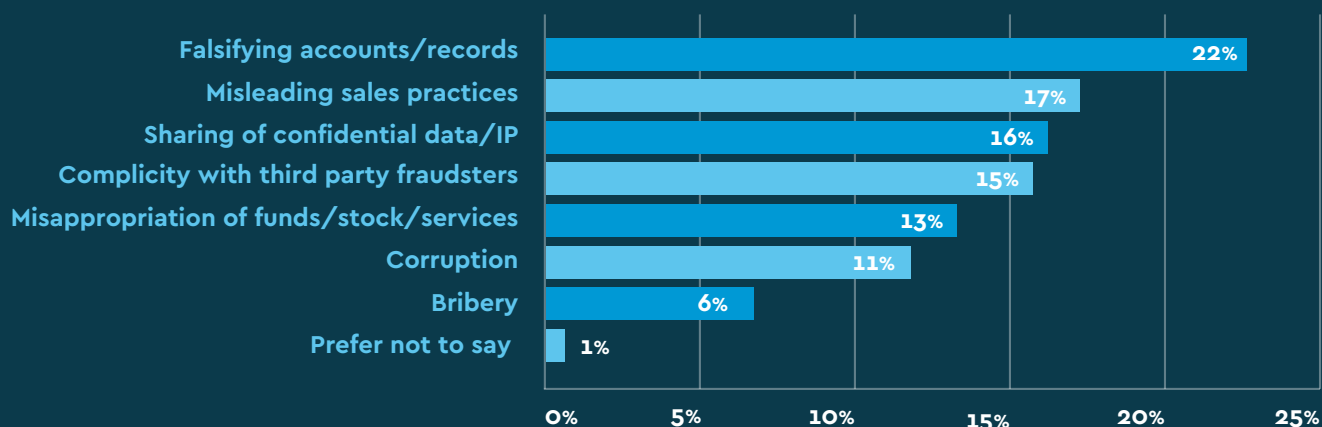
### Which offences are in scope?

For the Corporate Attribution offence, a corporate of any size will be liable if its senior managers, within their actual or apparent scope of their authority, commit a listed offence.

Further, larger organisations will be liable for the Failure to Prevent offence if their employees (or agents), the subsidiaries or someone performing services on their behalf, commits a listed offence intending to benefit them (whether directly or not) or persons they provide services to.

The listed offences differ but capture the fraud, theft and false accounting offences most likely to be relevant to corporations.

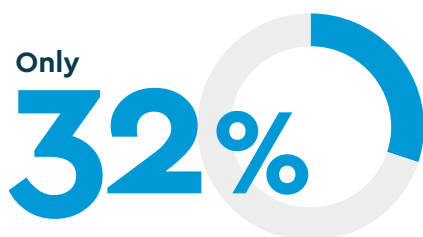
### What types of fraud have you been subject to in the last 5 years\*



\*Those who have had to take action within the last 5 years as the result of an employee's (or contractor's) involvement (or suspected involvement) in fraud

The offence list can be updated through secondary legislation in future, although for the Failure to Prevent Offence, any new offences added would be limited to dishonesty or economic crime.

Money laundering offences are not currently included. This is because relevant organisations are already required by law to have anti money laundering procedures in place, with regulatory and criminal sanctions available to prosecutors/regulators.



**of senior managers surveyed are very confident in their legal responsibilities with regards to fraud and 39% are not aware of the forthcoming 'Failure to Prevent fraud offence'.**



**The fact that over a third of senior managers surveyed are not aware of their new obligations is worrying. The Act is going to change companies' risk profiles, where corporates will be held liable if an employee or agent has committed an offence.**

Ben Hay, Managing Associate, Dispute Resolution

## **Avoid infamy – act now**

Historically, companies have rarely been prosecuted for the wrongful acts of rogue employees or agents.

However, whilst the objective of the Act is an enhanced anti-fraud culture rather than numerous prosecutions; drawing a parallel to cases relating to The Bribery Act, we believe that the Serious Fraud Office and other prosecutors will look to demonstrate their commitment to ensuring businesses take the offence seriously. Liability will be placed on the company rather than the directors or other individuals who may already find themselves liable in certain circumstances. Crucially – a parent company can also be held accountable for the actions of subsidiaries or employees/agents – wherever they are.



**Fraud compliance should be a board issue and requires senior-level commitment to ensure that employees and contractors take the threat seriously. The reputational and financial cost of fraud can put a company out of business. The unlimited fines from prosecution should leave no-one in any doubt that this is the case.**

James Gliddon, Partner,  
Head of Banking & Lender Disputes

# There are gaps in fraud response strategies

**Corporate responses to fraud vary significantly. Nearly three quarters (73%) of respondents state that their company would or does take cost effective action against fraud, however, there are inconsistencies in their reactions and missed opportunities to develop a comprehensive fraud strategy.**

Our data shows that businesses want to help in the fight against fraud and economic crime, with reporting to law enforcement the top action for senior managers surveyed. We would always encourage this – it is best practice and helps to underpin good governance. In our experience however, there is a mismatch in companies' expectations from reporting fraud.

# 88%

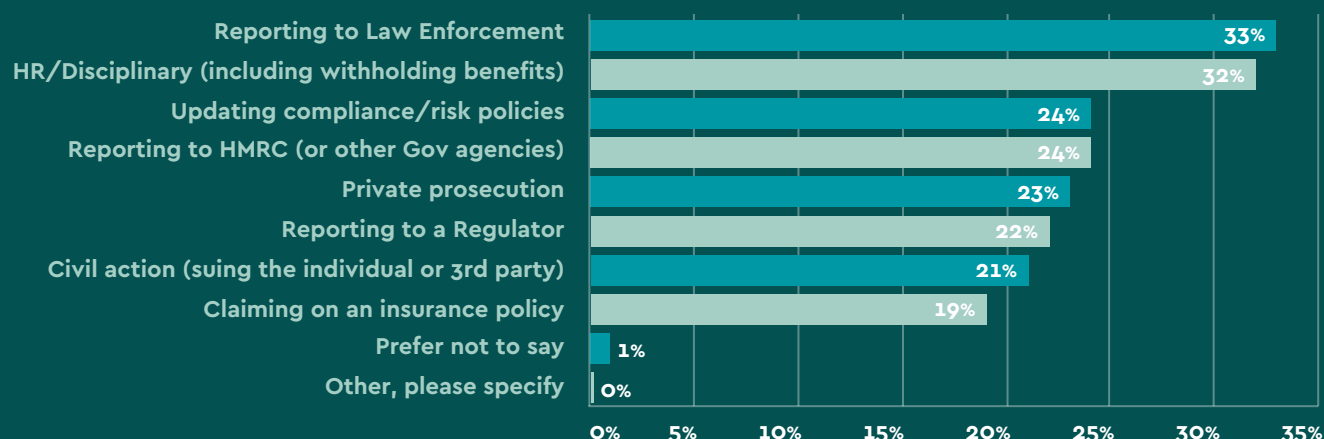
of large businesses fear they're at risk of fraud, yet

- 53% don't have protection in place in the form of an anti-fraud policy.
- Only 20% have a dedicated fraud prevention role

Action Fraud is the 'portal' through which all fraud should be reported, yet its effectiveness has been questioned and its purpose often misunderstood. The reporting service is due to be replaced in 2024, with a recent House of Commons Committee Special Report stating that the service had been 'ineffective in progressing cases to a swift resolution'<sup>4</sup>. The same report highlighted that individual police forces do not have the resources to manage the volume of fraud reports made.

Senior managers often think that it is the responsibility of the authorities to stop fraud and recover assets, however, it is also the business' responsibility to close down risk. There are viable commercial avenues to respond to fraud incidents, which assist in limiting reputational and financial damage. These include civil action and private prosecution.

## What action did you take after experiencing a fraud incident?\*



\*Those who have had to take action within the last 5 years as the result of an employee's (or contractor's) involvement (or suspected involvement) in fraud

<sup>4</sup> House of Commons Committee Special Report, Fraud and the Justice System: Government Response to the Committee's Fourth Report of Session 2022–23, published 11th January 2023



# Prevention efforts need tightening

The Government has not yet published guidelines as to what fraud prevention measures organisations should undertake. However, a complete fraud strategy should consider all of the measures and ensure they work in concert. The approach should not be static and must be revised regularly to adapt to the changing threat of economic crime.

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Given the potential short timeline between the law having been passed and Government guidance being issued, I would urge companies in scope to vet current procedures and identify gaps now. Making a start, knowing your risk, ahead of what might be a lengthy roll out of updated policies.

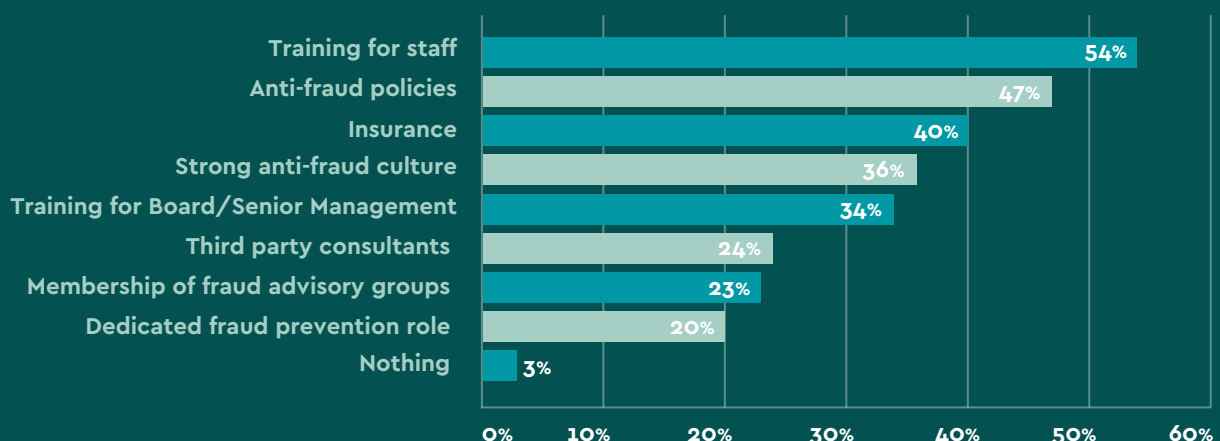
James Gliddon, Partner,  
Head of Banking & Lender Disputes



## The principles of basic fraud prevention are universal:

- Better education and awareness training: to identify it and the nature of the risk
- Incentivisation: to deter and design-out potential facilitation
- Cultural approach: to speak-up and not turn away
- Consequences: to pursue and prosecute

## What do you currently have in place to combat fraud?





# Smaller companies – the threat of fraud looms large

**53% of companies with 50–249 employees have had to act on insider fraud in the last year, compared to 45% overall. Smaller companies (those with 1–9 employees) have a much lower incidence rate at 20%.**

Currently, only large organisations are within the scope of the Failure to Prevent offence, leaving small and medium-sized enterprises (SMEs) not similarly being encouraged to adopt reasonable fraud prevention policies. Or worse, they will become an easy target for more fraud activity. This prompts concerns that the UK's new Fraud Strategy is not as strong as it could be and, instead, could result in a patchwork quilt of policy measures.

In early drafts of the Bill, SMEs below specific financial or employee-related thresholds were included, which would have provided for a uniform and consistent approach – leaving no room for doubt as to what was required. However, on 25th August 2023, the Government firmly committed to the original drafting. As such the Offence only applies to 'Large Organisations' who meet at least two of the following criteria: more than 250 employees, more than £36 million turnover and/or more than £18 million in total assets.

This leaves swathes of organisations uncertain as to what they should be doing to contribute to the fight against fraud, and how they can avoid being caught by this new criminal offence or falling below best practice. Whilst SMEs may fall outside the scope of the Failure to Prevent offence, all responsible organisations need clarity on the expected steps to take to prevent and respond to fraud.

**Our figures suggest that medium-sized companies are squeezed into a tight spot where risk is high, but their fraud prevention measures are weak (and in some cases non-existent).**

**Smaller companies find it easier to control fraud given fewer employees and simpler structures.**









# No sector is immune to fraud

The Act is designed to target all sectors, yet according to our data the level of awareness of the new law varies. The types of fraud risks and responsive actions also differ markedly sector by sector.

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Companies should undertake a fraud risk assessment that considers their operating environment and set a proportionate fraud prevention strategy that drives a collective responsibility.

James Gliddon, Partner,  
Head of Banking & Lender Disputes

## Fraud threats and responses vary by sector

Who had the highest fraud incidence rate in the last year?

Energy, Banking & Financial Services and IT companies

What was the number one employee/contractor related fraud in the last 5 years?

Falsifying accounts or records

Which sector is least aware of the 'Failure to Prevent' offence?

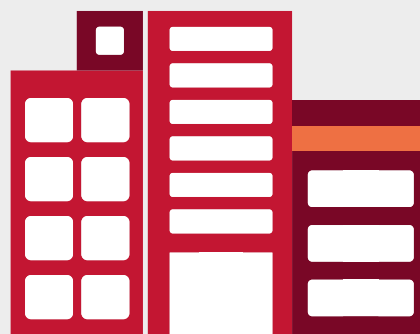
Retailers: 40% of respondents are aware compared to 61% overall. This sector is also the least likely to have fraud prevention procedures in place.

Which companies are most likely to have fraud related training and anti-fraud policies in place?

Manufacturing



of respondents believe that their sector is vulnerable to fraud, yet 80% worry that their own business is at risk.



We can provide you with survey data specific to your sector, allowing you to evaluate the most relevant risks to your business.

## Tailor your fraud prevention strategy to close down risk

Before the Failure to Prevent offence bites, the Government is required to publish guidance to assist organisations to understand their responsibilities. Whilst this will be helpful, it is unlikely to be anything other than broad and non-sector specific. Our survey points to a lack of clarity or consistency as to how fraud prevention and response measures (i.e. those the Act expects organisations to adopt) are being adopted already.

It is not surprising that awareness of the measures contained within the Act is highest amongst the heavily regulated banking and financial services respondents: at 72%. We expect any guidance to be issued will need to ensure integration with existing financial crime and AML processes.

Given the findings of our research, we believe that the voice of other sectors is missing. Non-regulated companies need to be able to evaluate their own risk profile relative to their sector and adapt their counter-fraud measures accordingly.



**Any guidance that is prepared by the Government will only be generic and senior managers should invest in advice specific to their organisation and industry. This should not just be a compliance tick box – but should pay for itself in fraud and risk mitigation.**

James Gliddon, Partner,  
Head of Banking & Lender Disputes

## Conclusion

**Together with the imposition of corporate responsibility for senior managers and the Failure to Prevent fraud offence, the Economic Crime and Corporate Transparency Act marks a significant step in the corporate liability regime.**

**However, one thing is clear, the Failure to Prevent offence falls short of the wholesale culture shift that some had hoped and called for.**

Our objective for the survey was to provide a voice for business with regards to imminent policy changes and the specific fraud threats that they are facing.

The research shows that corporate fraud prevalence is high, yet there is low awareness of the Failure to Prevent offence, and large inconsistency in how businesses react to and protect against fraud right now. Businesses are committed to reducing the number and severity of cases, but clear and practical guidelines are needed from the Government to ensure that companies can reduce fraud risk.

Our data also highlights that all organisations, regardless of size, should use the forthcoming law as a catalyst to consider their fraud prevention and response policies and procedures. This should always consider their specific risks and operating environment.

**James Gliddon, Partner,  
Head of Banking & Lender Disputes**

# How we can help

Foot Anstey have monitored the Economic Crime and Corporate Transparency Bill's progression through Parliament. We will continue to monitor and input into the guidance that is to be produced in support of implementation of the offences within the Act. We can also provide you with survey data specific to your sector, allowing you to evaluate the most relevant risks to your business.

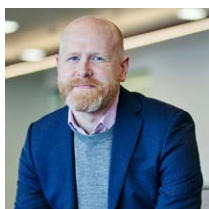


For further information and regular updates please visit our dedicated hub.

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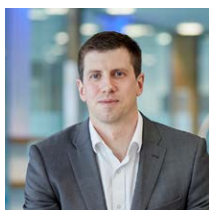
## Key contacts

If you'd like to speak to one of our experts, please get in touch:



### James Gliddon

Partner and Head of Banking  
& Lender Disputes  
james.gliddon@footanstey.com  
+44 (0)117 915 4641



### Ben Hay

Managing Associate  
ben.hay@footanstey.com  
+44 (0)175 267 5517



# Why choose Foot Anstey

**Whether you face external or internal threats, we'll always be ready to act if you are the victim of fraud.**

As fraud lawyers, we understand the disruptive nature of fraud. We know from experience how emotive it can be for you too, especially as many serious frauds are perpetrated by trusted employees or business partners.

We also know that there are different stages where you might need support from a fraud lawyer and come to us for help. We break those stages down into Prevent, Respond and Cure.

**Prevent:** At the Prevent stage we work with you to make sure your business is as protected as it can be. We can advise you on how to adapt to the requirements of the fast-changing economic crime regulatory landscape. We spot the gaps in your policies, systems and training, and help you plug them before they become a problem.

**Respond:** We Respond to live fraud situations by focusing on the need to stop or limit any damage being suffered by your business, using our knowledge of the relevant financial and legal systems to your advantage.

**Cure:** When it comes to Cure, our goal is to restore your business to its rightful position, whether through the courts or through robust negotiation with the perpetrators.

We will always weigh up the costs, risks and merits before advising you on the best strategy.

## Key services include:

- Anti-fraud policies & training
- Asset tracing
- Civil and criminal fraud claims
- Confidentiality breaches
- Contempt of court actions
- Cyber fraud (including authorised push payment/phishing scams)
- Deceit and fraudulent misrepresentation
- Dishonest director/employee claims
- Fraudulent insurance claims
- Injunctive relief and asset tracing
- Insolvency claims – including wrongful/fraudulent trading and transactions to defraud creditors
- Internal investigations
- Money laundering/proceeds of crime advice
- Private prosecutions
- Regulatory and other investigations (eg FCA, SFO, CMA)
- Reputation management



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