

The logo for Weightmans, featuring the name in white text on a dark teal rectangular background with a wavy top edge.

Weightmans

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The Economic Crime and Corporate Transparency Act 2023 –
Economic crime risk for transport and logistics companies

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A decorative graphic at the bottom of the slide consisting of several overlapping, wavy teal lines that create a sense of movement and depth.

About Weightmans...

- Top 40 UK law firm
- 9 offices across UK
- 1,500+ people
- Key sectors include:
 - Transport and Logistics
 - Built Environment
 - Energy & Utilities
 - Insurance
 - Manufacturing
 - Local Government



Corporate Risk – Economic Crime and Fraud

FRAUD

The collage consists of 12 individual graphics:

- Top Left:** A hand interacting with a digital interface showing a network of nodes and the word "FRAUD".
- Top Middle-Left:** "HOW CAN YOU PROTECT YOURSELF FROM THE RISK OF PROPERTY FRAUD?" with three numbered steps: 1. REGISTER YOUR PROPERTY, 2. PROPERTY ALERT SERVICE, 3. KEEP CONTACT DETAILS UP-TO-DATE.
- Top Middle-Right:** "Insurance fraud in numbers" with statistics: £1.2 billion in claims, £1.1 billion in losses, £1.1 billion in costs, £1.1 billion in costs, £1.1 billion in costs.
- Top Right:** "COMMERCIAL FRAUD" featuring logos for GRAYDON and CIFAS.
- Middle Left:** "Over £63m was lost by victims of investment fraud who made reference to a social media platform in their report." with logos for ACCENTURE and Axiom Fraud.
- Middle Middle-Left:** "CORPORATE FRAUD & CORRUPTION" with the FINANCIAL logo.
- Middle Middle-Right:** "Who can commit insider fraud?" with categories: Current and former employees, Privileged access, Insider, and Future.
- Middle Right:** "A Case for FRAML: Why Fraud and AML Teams Should Join Forces" with the Unit21 logo.
- Bottom Left:** "RECRUITMENT FRAUD NOTICE" with the text "WARNING: BEWARE THE RECRUITMENT FRAUD".
- Bottom Middle-Left:** "Fraud Taxonomy" flowchart showing "Procurement Fraud" branching into "Procurement Fraud" and "Procurement Fraud", which further branches into "Procurement Fraud", "Procurement Fraud", and "Procurement Fraud".
- Bottom Middle-Right:** "Data Fraud" with the text "Stop data fraud that take advantage of the free data offered".
- Bottom Right:** "GET THE FACTS ON CYBER FRAUD" with the A logo.

Economic Crime and Fraud – why it matters

- Fraud is an ever-present risk, heightened by the current economic climate. Recent figures suggest that fraud accounts for over 40% of all reported crime within the UK.

PWC Global Economic Crime Survey 2022 – UK Findings

- In the UK, 64% of businesses have experienced fraud, corruption or other economic/financial crime within the past 24 months, a substantial increase compared to 56% in 2020, and 50% in 2018. This is higher than the global rate of 46%, and second only to the rates seen in South Africa.

Does Fraud Really Affect my Business?

- The below highlights the breath of potential fraud risks within an organisation



Economic Crime & Corporate Transparency Act 2023

- Tackling economic crime and fraud is a Government priority evidenced with the passing into law of the Economic Crime & Corporate Transparency Act 2023 (“ECCTA”).
- The ECCTA has introduced (and continues to introduce) fundamental changes in combatting financial crime:
 - More onerous obligations in incorporating companies, enhanced reporting obligations and more robust Companies House powers to promote better corporate governance and transparency.
 - Changes the doctrine of corporate criminal liability, i.e. how limited companies, public companies, LLPs and other body corporates can be held criminally liable for actions / omissions performed by its senior management.
 - Introduction of specific company offence of failing to prevent fraud.

Change 1 – Corporate Governance and Transparency

1. New identity verification requirements for all directors, persons with significant control (PSCs) and those delivering documents to Registrar.
2. New powers to the Registrar of Companies (Companies House) including power to reject documents filed, power to query documents filed and power to remove information from the register.
3. Further obligations on directors when incorporating companies including enhanced information required at company set up.

Change 2 – Corporate Criminal Liability

- A company is treated as a ‘legal person’ in law, and therefore capable of being prosecuted.
- Prior to the 26 December 2023, there were only limited circumstances where a company could be prosecuted. It would only be where a person attributable to the company is shown as the ‘*directing mind and will*’ and has committed the wrongdoing.
- Difficulties with large organisations where there are complex operational, management and corporate governance arrangements.

Change 2 – Corporate Criminal Liability (continued)

- The ECCTA now has shifted corporate criminal liability to make it easier to prosecute companies for economic crime offences.
- Now a company can be prosecuted for the acts arising from a senior manager.
- A "senior manager" is defined as someone who plays a significant role in managing or organising, or making decisions about the management or organisation of, a substantial part of the organisation's activities.

Who may it apply to in your organisation?

Change 3 – The failure to prevent fraud offence

- Another way to prosecute an organisation!
- Applies to large organisations
- Offence is introduced on 1 September 2025.
- The offence:
 - An *organisation* and its *subsidiaries* can be held criminally liable where an *associated person* commit fraud intended to *benefit* the organisation, and where *reasonable fraud prevention procedures* are not in place.

Failure to prevent fraud offence – components

- Organisation = large bodies corporate, subsidiaries and partnerships. This means that in addition to businesses, large not-for-profit organisations such as charities are also in scope, as well as incorporated public bodies.
- Associated person = employee, agent, subsidiary or anyone that provides services (non-exhaustive).
- Benefit =
 - Intention and not actual benefit
 - Intention to benefit organisation does not have to be sole purpose.
 - Does not have to be pecuniary benefit

Extraterritorial jurisdiction

- Applies to international operations and this will be critical to some T&L providers.
- Corporate entities can be held criminally liable for an offence that took place outside the UK, if the offence would constitute an offence in the location where it took place.

Case Study – Liable Logistics

1. Liable Logistics is a logistics company, headquartered in the UK but with significant international operations. It has 251 employees in the UK and £38m in revenue in latest audited accounts.
2. It has a significant French subsidiary, and a lot of the business development / sales function is run out of its Paris operations.
3. One of the business development managers in Paris seeks to artificially inflate standard pricing terms to a new client to inflate his commission.

Case Study – Liable Logistics (contd)

- Large company under the ECCTA – >250 employees and >£36m.
- Associated person – employee or contractor.
- Intending to benefit – Primarily to benefit himself, but this would benefit LL.
- Offence under the French Penal Code so likely to apply.
- Result – Liable Logistics will be liable to criminal prosecution for failure to prevent fraud.

The Solution – Reasonable Procedures

- The only defence is to have reasonable procedures in place to prevent fraud.
- This is similar to the defences available for other failure to prevent offences – including the failure to prevent bribery and the failure to prevent the facilitation of tax evasion.
- The implementation of appropriate anti-fraud systems, policies and procedures should be considered as a priority for businesses ahead of 1 September 2025

The Reasonable Procedures

- The fraud prevention framework put in place by relevant organisations should be informed by the following six principles:
 - top level commitment
 - risk assessment
 - proportionate risk-based prevention procedures
 - due diligence
 - communication (including training)
 - monitoring and review
- These principles are intended to be flexible and outcome-focussed and the procedures to prevent fraud should be proportionate to the risk.

Reasonable Procedures – The First Three Principles

- **Top level commitment:**
 - Responsibility for the prevention and detection of fraud rests with those charged with the governance of the organisation.
- **Risk assessment:**
 - Undertake a range of risk assessments relating to fraud and other economic crime that you may be susceptible to.
- **Proportionate risk-based prevention procedures:**
 - Procedures to be built after risk assessment. Clear, accessible and easily enforced.

Reasonable Procedures – The Second Three Principles

- **Due diligence**
 - Due diligence procedures applied to persons who perform or will perform services for or on behalf of the organisation to mitigate against identified fraud risks.
- **Communication (including training)**
 - Prevention policies and procedures are communicated and understood. Fraud specific training.
- **Monitoring and review**
 - Detecting fraud and attempted fraud within the organisation, investigations and monitoring the effectiveness of fraud prevention measures.

Criminal Enforcement in the UK for Economic Crime Offences

- Multiple investigatory / prosecutorial agencies involved in investigating fraud offences:
 - Police
 - HMRC
 - Serious Fraud Office (SFO)
 - National Crime Agency (NCA).
 - Crown Prosecution Service (CPS).
- Investigatory Powers:
 - Arrest
 - Compelled interviews
 - Dawn raids

Prosecutorial Outcomes

- For failure to prevent offences, an unlimited fine for companies is the maximum sentence.
- No prosecutions yet, because its new law, but some comparable fines from other failure to prevent offences:
 - Airbus SE – Failure to prevent bribery
 - €990,963,712 total financial penalty in UK (€3.5bn globally)
 - Rolls Royce (Aerospace Division) – Failure to prevent bribery
 - £500,000,000 total financial penalty in UK.

Other considerations with corporate prosecution

- Prosecution costs
- Defence costs
- Reporting to stakeholders (shareholders, clients and wider market in some circumstances)
- Reputational damage to your business
- Criminal record

- What about individuals involved? They could also be prosecuted

How Weightmans can help?

- Assisting with the implementation of reasonable procedures:
 - Preparation of fraud prevention policies and procedures
 - Implementation of fraud specific risk assessments
 - Undertaking training on ECCTA;
 - Conducting LPP investigations where there a business suspects fraudulent wrongdoing
 - Advising and representing you if subject to criminal prosecution (or your associated person!)

Questions?

and legal disclaimer...



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