

# Economic Crime and Corporate Transparency Act 2023:

New Failure to Prevent Fraud offence

Implications for Insurers

# New Failure to Prevent Fraud offence: implications for Insurers

On 6 November 2024, guidance was published by UK Government providing organisations with important advice on the new corporate criminal offence of Failure to Prevent Fraud (FTPF) under the Economic Crime and Corporate Transparency Act (ECCTA) 2023.

**The new FTPF offence has a significant impact on underwriting and claims.**

## The FTPF offence – in summary

From **1 September 2025**, the new FTPF offence makes qualifying organisations, across all sectors and industries, criminally liable where an employee, agent, or other associated person commits fraud intending to benefit the organisation, and where the organisation did not have reasonable fraud prevention procedures in place.

For those who get it wrong, there are significant financial risks.

The FTPF offence applies to organisations that meet two out of the three following criteria:

- 250+ staff
- £36 million annual turnover
- £18 million held assets.

## Which policies are impacted by the FTPF offence?

From reviewing the guidance issued by the Government, we understand that the new corporate offence may give rise to certain exposures which could impact the following types of policies:

- Directors & Officers/Management Liability
- Financial Institutions
- Bankers Blanket Bond
- Professional Indemnity
- Officials Indemnity
- General Liability/Public Liability.

We have focused solely on Directors & Officers/Management Liability (D&O/ML) insurance in this flyer, but we would be happy to discuss wider policy implications across the other classes of business above.

## D&O/ML policies

### How these policies respond to the FTPF offence and the ECCTA more generally

Insurers need to determine whether policies will cover claims that arise from the ECCTA and/or whether any limitations need to be placed on the nature and scope of any cover provided.

If it is decided that such cover will not be provided, Insurers need to ensure that it is either clearly identified as being outside the scope of the Insuring Clause(s) or Insurers should consider including a specific exclusion.

#### To consider



If Insurers are providing cover, the following may need to be considered:

1. Whether sufficient information in the proposal form has been sought to allow underwriters to understand fully the nature and scope of the risk.
2. The nature and scope of the cover Insurers are prepared to offer, ensuring that any limitations on cover are clearly and comprehensively detailed in the policies.

## Things to think about

### In respect of (1) above:

- Does the proposal form sufficiently probe a prospective Insured about their own internal review and assessment of the potential implications of the ECCTA and the FTPF offence on their business?
- Do underwriters need to conduct an assessment of potential ECCTA related risks as part of their usual review process, or do Insurers want this aspect of the risk to be considered by a select group and/or seniors within the underwriting team to ensure that a consistent approach to these risks is adopted?
- Has the prospective Insured considered if the level of cover sought is appropriate and provides sufficient cover for defence costs relating to any investigation and subsequent prosecution under the ECCTA?

## Things to think about (continued...)

### In respect of (2) above:

- Consider the policy definition of an “Insured Person” – does the definition remain suitable now that a business can be held accountable for acts committed by a wide class of employees/agents?
- Assess how the term “Investigations” is defined in the policy and determine whether it will cover investigations that proceed under the ECCTA.
- Examine whether any specific sub-limits of indemnity should be applied to claims arising from liabilities under the ECCTA.
- Consider the wide reach of the FTPF offence – for example, it may lead to the investigation of fraudulent statements included in directors’ reports about the business, and such reports may relate to a range of subject matters including ESG, EDI, AI and modern slavery. Insurers should consider any sections of their policies which address these subject matters to ensure that a consistent and coherent approach is adopted in respect of the level of cover provided.
- Recognise that the ECCTA is more than just the FTPF offence – it ushers in new requirements relating to the ID verification of directors. It also grants Companies House powers to ensure the accuracy of information submitted to them and the requirements to deliver certain documents. These new requirements and powers could lead to new claims against directors, officers and management teams, for which an indemnity may be sought.
- Ensure that the policy’s exclusion for fines is sufficiently broad to cover any penalties emanating from the ECCTA.
- Consider MI to ensure that it identifies claims pursued under the ECCTA and can therefore capture crucial data which will help monitor the impact such claims have on Insurers’ exposure and bottom line.

## Why Weightmans

### You’re in safe hands – our coverage and D&O insurance solicitors are ready and able to help

Our track record is proven over many years, having supported a range of clients – from Insurers and Reinsurers through to companies and intermediaries – on D&O issues.

### D&O/ML – how we can help

- Assess whether current policy terms align with Insurers’ risk appetite and/or stress-test the scope of cover provided under current policies for claims pursued under the ECCTA.
- Review underwriting proposal forms to advise whether the questions raised will identify risks.
- Evaluate underwriting guides to assist underwriters when considering new risks/renewals and to identify any red flags that might warrant further investigations prior to agreeing terms.
- Provide training:
  - To your Insureds – to help identify potential areas of risk
  - To underwriting and claims teams – on what the ECCTA and FTPF offence means for Insureds and what impact it could have on underwriting or claims.
- Advise on and handle any coverage claims and/or defend any claims pursued under the ECCTA.

For further information on the ECCTA in relation to underwriting and claims and how we can help, please reach out to our team below:



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