

AS SAFE AS HOUSES



Because getting it right matters

For housing associations, fraud is not just about loss of money. The waste and misuse of that money takes away from the very purpose that drives the sector - providing affordable housing. We are a disputes and compliance law firm working closely with Housing Associations specialising in fraud and financial crime. Every six months we will be combining our expertise and insights in a newsletter, offering practical steps to support your fraud prevention strategy, reduce exposure to fraud and helping you meet regulatory objectives. We hope you enjoy the first issue and if you have any questions or feedback please [get in touch](#).

OVERVIEW OF THE REGULATORY FRAMEWORK

Housing Associations have a regulatory obligation to report fraud to the Regulator of Social Housing, but what practical issues need to be considered and how can you improve your control framework for fraud to impress the Regulator?

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Holding your supply chain to account



Money laundering - the conflict with right to buy



METHOD OF TACKLING FRAUD

The Regulator of Social Housing holds Housing Associations to account by measuring them against various sector standards encompassing economic and consumer standards.

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THE KEY TO AN ANTI-FRAUD CULTURE

No system, policy or person alone can prevent fraud. It all starts from the top.

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CONTRACT TERMS FOR FRAUD PREVENTION

In supply chain disputes (especially where fraud is suspected) often a lot of direct and circumstantial evidence is needed to demonstrate dishonesty to the level required at Court or to persuade a counter party that they are at risk of being held liable for fraud.

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Fraud Prevention Training



Overview of the Regulatory Framework

Housing Associations have a regulatory obligation to report fraud to the Regulator of Social Housing, but what practical issues need to be considered and how can you improve your control framework for fraud to impress the Regulator?

The Objectives

The Regulator of Social Housing (the “RSH”) has two principal objectives:

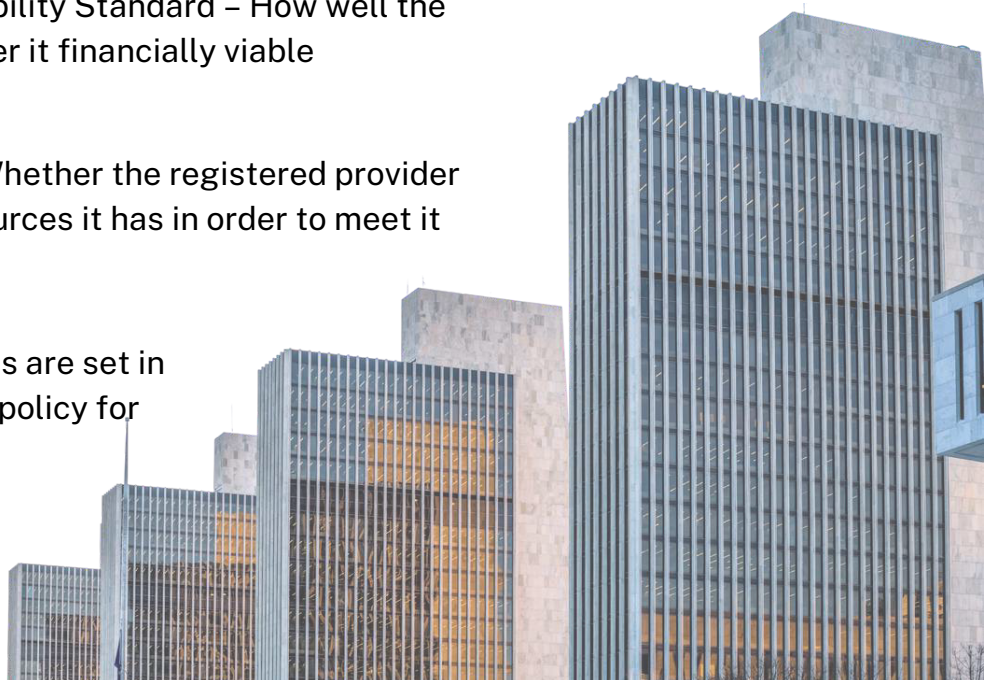
- An ‘*economic objective*’ which includes:
 - Ensuring that registered providers (landlords) are financially viable and properly managed
 - Guarding against the misuse of public funds
- A ‘*consumer objective*’ which ensures that tenants get quality accommodation, have choice and protection, and can hold their landlords to account.

These objectives are accompanied by a set of regulatory standards which registered providers must comply with. In this article, we will focus on the economic objective; in particular, the Governance and Financial Viability Standard.

The Economic Standards

All registered providers (apart from local authorities) must demonstrate that they are meeting the Economic Standards set by the RSH, who actively assess their performance.

- Governance and Financial Viability Standard – How well the organisation is run and whether it financially viable
- Value for Money Standard – Whether the registered provider make the best use of the resources it has in order to meet it objectives
- Rent Standard – Whether rents are set in accordance with Government policy for social housing rents



The Governance and Financial Viability Standard

The Governance and Financial Viability Standard includes a specific requirement for registered providers to communicate with the RSH in an “accurate and timely way”. Registered providers must certify their compliance with the Standard in their annual accounts and communicate with the RSH on material issues that relate to non-compliance or potential non-compliance.

Registered providers with 1000 or more social housing units must supply annual data returns via NROSH+, including financial forecasts, financial statements and a report on fraud losses. Providers with fewer than 1000 social housing units are subject to a different level of regulatory engagement but must still be compliant with the Economic Standards.

Registered providers receive a grading based on Governance (G1-4) and Viability (V1-4), 1 being ‘compliant’ and 4 being ‘non-compliant/subject to regulatory intervention or enforcement action’; and these are published on the website.

All registered providers should seek to achieve a G1/V1 rating. on-compliance could result in regulatory action being taken, such as enforcement notices to remedy a specific problem, financial penalties, and intervention in the management and constitution of a provider. There are potentially wider consequences with lenders and the cost of insurance (such as fidelity and crime policy coverage).

The Annual Report on Fraud Losses

The Annual Report on Fraud losses must be provided by all registered providers that own 1000 or more social housing units, within 6 months of the end of the financial year. However, in view of the communication requirements in the Governance and Financial Viability Standard to communicate in a timely way, arguably material frauds ought to be notified to the RSH immediately.

There is limited guidance in the NROSH+ Fraud Reporting Guidance for Registered Providers document on what might be considered to be ‘material’: it might include for example, a fraud that impacts significantly on a registered provider’s ability to meet the Governance and Financial Viability Standard; or where there is a reputational risk to the sector where serious fraud is reported on publicly. In a sector that is rife with fraud risk relating to tenancies - be that unlawful subletting of part of a property, key selling, right to buy fraud etc. – we expect most providers will report fraud at some stage.

A fraud reporting template is available on NROSH+ and it includes information such as the nature of the fraud, the level of loss before any recovery, how the fraud was identified, whether it was reported to the police, whether a recovery was made, and action taken.

The inevitable concern for registered providers is that reporting fraud may indicate to the RSH that they have failed to meet the Governance and Financial Viability Standard – e.g. because there must have been a weakness in their internal controls in order for the fraud to be perpetrated. In that event, it could impact the registered provider’s ratings and result in regulatory action being taken.

How should Housing Associations approach fraud, given the regulatory landscape?

The RSH is clear in that fraud must be reported at least annually. Inevitably, a report of fraud might cause the RSH to downgrade that particular provider. However, a provider burying its head in the sand and not looking for fraud so it doesn't have to report it is not an option either, since this will ultimately damage the financial viability of the business and also the integrity of the sector.

Ironically such an approach may lead to a provider finding itself more susceptible to fraud if perpetrators think their actions will be undetected. This in turn would cause significant damage to the sector, cause lenders/investors to become nervous, and result in wider business continuity issues and litigation to recover losses.

Fraud prevention strategies and benefits

The key to this is corporate maturity from the Board: preventing fraud for the benefit of everybody rather than preventing fraud to avoid regulatory action. In our experience, effective fraud prevention strategies include:

- Ensuring that internal policies and procedures address the financial crime risks faced by the front line of the organisation; have evolved with the organisation's technology, resources and infrastructure; and are accessible and easily understood by the current workforce.
- Ensuring that the controls to mitigate the risks of financial crime are actually followed in practice.
- Considering the internal and external economic challenges, and how they might make the organisation a target for fraud.
- Increasing engagement, education and motivation around fraud risk so that team members buy into the organisation and care for its success.
- Training staff on current and emerging fraud typologies and how to report fraud without self-concern.
- Embedding a supportive and trusting workplace culture, since the wrong culture can be a key factor in dishonest behaviour or a reluctance by honest employees to raise concerns.
- Having a robust fraud response plan that can be put into action as soon as a fraud is suspected.

Aside from avoiding the regulatory, financial and reputational issues mentioned above, a proactive counter-fraud policy will improve an organisation's risk profile to external stakeholders, such as insurers and investors; as well as reassure customers and suppliers; and potentially help to attract and retain talented employees.

Conclusion

Housing Associations cannot get around the requirement to report fraud to the RSH, and this can have consequences for their annual rating. Deliberately not detecting fraud so that it does not have to be reported has other, more serious consequences longer term. The best strategy is to prioritise fraud prevention so that the chances of fraud being perpetrated is minimised and the prospect of being downgraded is reduced.

We are here to help if you are updating or implementing your counter-fraud strategies or need guidance on investigation and recovery of losses caused by fraud. Please do feel free to get in touch.



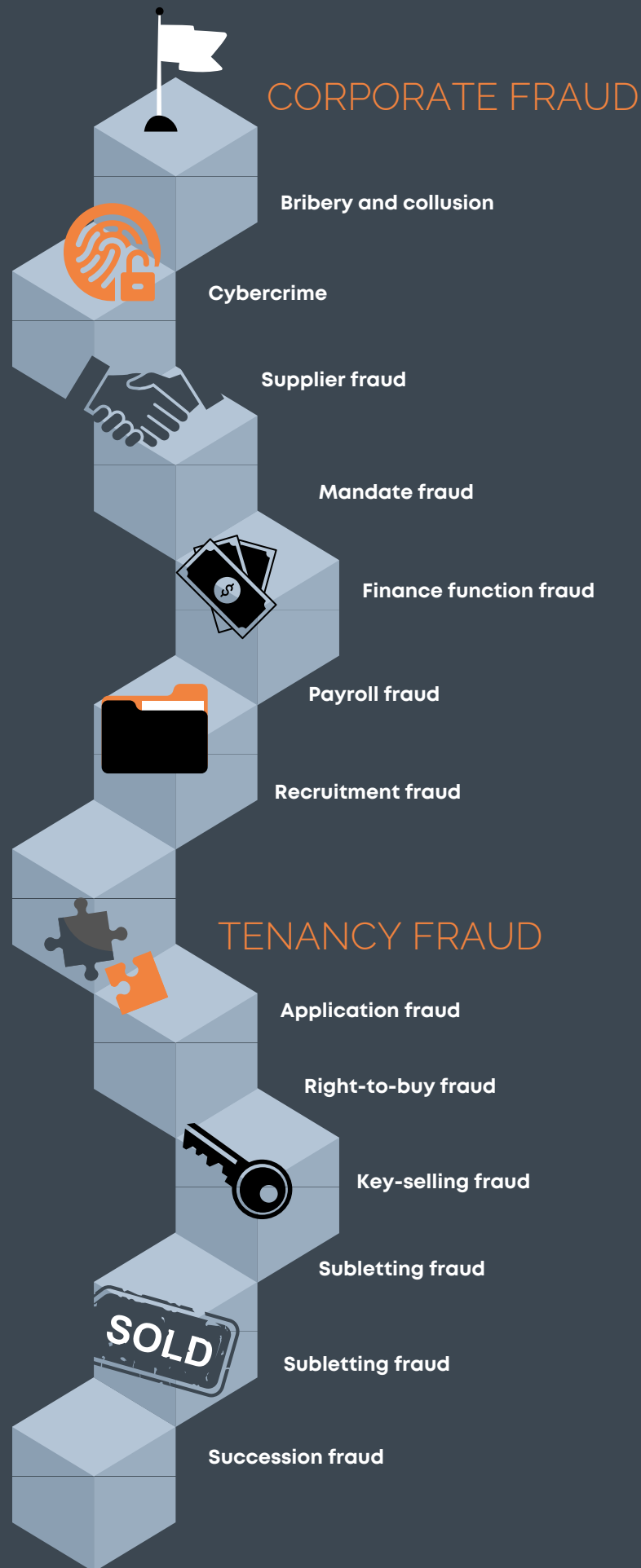
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SOME COMMON TYPES OF FRAUD IN THE HOUSING ASSOCIATION SECTOR





HOLDING YOUR SUPPLY CHAIN TO ACCOUNT

A great deal of time and effort goes into the onboarding of new suppliers. However, in the majority of our fraud investigations concerning suppliers, the issues of dishonesty arise after the supplier has been well and truly embedded into the fabric of an organisation. This often leads to overlooking whether a framework agreement is being followed correctly or can see the ignoring of red flags.

Procurement fraud typically sees intended deception to influence any stage of the procurement process from onboarding to ongoing work awards to aid the wrongdoing party to make a financial gain or cause a loss. It can be committed by those external or internal to a housing association or through a supplier and your people colluding.

There are often red flags, including an increase in customer complaints or an unexplained increase in stock or change seeking asset write offs. On the supplier side, having payments chased, spending more than usual with a supplier over a short period or seeing a contractor know for one area of work diversifying into another are all signs that should not be ignored.

Any generous gifts; urgent requests for amendment of banking details or contact details of a supplier; or the apparent avoidance of thresholds which trigger scrutiny; should all be met with caution and be reason to undertake further diligence with the supplier.



WHAT CAN YOU DO TO PROTECT YOUR BUSINESS FROM SUPPLY CHAIN DISRUPTION?

Firstly it is important to carry out a risk assessment of your own supply chains. Most organisations in the affordable housing sector will utilise procurement teams and onboarding checks to identify risks at that stage of engagement with a supplier.

These checks often do help identify possible risks such as conflicts of interest or performance by reference to publicly filed accounts not matching the representations about the work said to have been undertaken by a supplier. Checks should not be limited to onboarding but looked at with a view to spot checking suppliers from time to time after they have been onboarded.

Carrying out due diligence on your suppliers cannot be overstated. This may feel difficult if it is an established relationship but any supplier should not be resistant to ongoing due diligence if they understand why you need to do it.

If you have not already done so it is important to carry out a thorough due diligence process (for example, checks on a supplier's financial and trading history, the experience of those running the supplier business etc.) so you can be sure that you and your supplier are aligned in terms of ethics and probity issues.

And finally, ensure your supply contracts contain warranties and indemnities designed to protect your business in the event that a supplier misleads your organisation. These clauses allow for easier claims in litigation to be pursued but also demonstrate to the Regulator of Social Housing the steps you are taking to maximise your efforts with suppliers to ensure controls are in place and fraud risk is minimised.

Supply chain disruption: What are the pitfalls?

Like all sectors, the affordable housing sector is currently feeling the effects of global supply chain disruption. There are a number of reasons for the interference with supply chains, however COVID-19 continues to have an impact and the Ukraine crisis is only causing supply issues to remain at the top of the list.

The principle knock on effect of these global crises in particular impacts on the pressure facing suppliers, be that to source raw materials for property maintenance work or find suitably qualified employees. These challenges directly hit the suppliers profit margin. This is particularly difficult where contractors have tendered at a certain price for works for a housing association, with costs relatively fixed for a period of time ahead. Their margins are then squeezed and they themselves have pressure to make ends meet. That means there is pressure on them to make more money which could be them trying to cut margins with substandard materials, for example, which in turn causes risk to tenants in your homes.

Similarly, the lengthening of supplier delivery times during the pandemic, the rising cost of transportation and the sheer disruption felt in international shipping and logistics as a result of lockdowns and border closures, reduced capacity, containers left in the wrong destinations and congestion has resulted in 20% longer transit times than before the pandemic. Add to that the delays caused by Brexit, and more and more regular extreme weather occurrences affecting production of materials, and we have a serious supply chain issue.

Supply chain difficulties may also lead to companies seeking to circumvent procurement processes, thereby avoiding taxes. The risk posed is the desperation to secure work means other methods can be used to win that work. For example, suppliers may be more likely to resort to bribery and collusion, exposing not only themselves to prosecution under the Bribery Act 2010, but potentially the housing association that contracts with them as a result of s.7 of the Bribery Act 2010 (under this section it is an offence if the company did not have adequate procedures in place to prevent bribery). It is worth remembering, bribery does not need to be about money, it could be a contractor offering a job to a relative of one of your employees.





HOW CAN I AVOID THE PITFALLS?

1. Due diligence

Due diligence is key. If seeking alternative or additional suppliers in good time is a necessity (for example due to a demand to deal with void properties), your organisation needs to have a set procedure for expedited due diligence to onboard new suppliers quickly. The time to get to know your suppliers is essential but is not always possible.

2. Use local suppliers

The affordable sector is great at sourcing suppliers locally. However, we should not take that for granted. Continue to support local suppliers as it is also easier for due diligence as your employees may have information about individuals at suppliers that helps understand if they are right for you. This translates to less disruption to your supply chain and reduce the risk of fraud.

3. Self-insure

Self-insure against the risk of disrupted supply chains and business continuity damage by seeking to have in place a pre-ratified sub panel of alternative or additional suppliers. Often alternative suppliers at short notice are needed but there is not enough time for due diligence. Alternatively you could look into reaching an agreement with other housing associations to look at sub-contracting from one of their suppliers.

4. Watch out for pre-contract assurances

Keep on guard for what pre-contract assurances you are given regarding the ability to supply, the depth of experience and their pricing. Ensure these assurances are written into the contract when you do sign up to work with these contractors, then at least you may have some financial remedy in the event of a failure to supply.

5. Check policies

Check if your suppliers have policies and procedures around bribery, fraud and conflicts of interest. Ensure staff of your suppliers are aware of those policies and staff training is up to date. Consider asking suppliers if they have a whistleblowing policy in place.



CYBERCRIME: WORKING WITH SUPPLIERS TO BUILD RESILIENCE

You take a call from one of your key suppliers.

They tell you they have been the victim of a cyberattack.

The confidential pricing data they hold belonging to your company and a list of your tenants' data that the supplier holds has been compromised. To make matters worse, your supplier cannot undertake the work they were scheduled for this week, leaving you needing an alternative supplier.

You stand back and think about risk.

Who has our confidential information? Can we get it back? Did our supplier have cyber insurance? Can they afford to cover the losses we are going to suffer from the inevitable business interruption? Will our insurance cover us?

We see stories about cybercrime almost daily. It may be about consumers or industry but is it any wonder given that cybercrime and fraud account for approximately 40% of all crime in the UK.

The affordable housing sector is alert to the issues Red Kite had losing approximately £1m when tricked to make payment to a fraudster posing as a supplier. The risk is wider than your employees being duped, it is clear that hackers could take advantage of weaknesses with ransomware attacks or simply embedding malicious malware through unassuming employees of companies to then gain access.

There is no doubt that it is commonplace to talk about cyber resilience for our own business (for example educating our people to be a 'human firewall' for us) but how much do we think about the ramifications of suppliers being impacted?

It was not that long ago when it was almost accusatory to ask what your suppliers did about preventing fraud, often to be met with an almost standard response of either we do not have those types of risks or that a pile of 'off the shelf' policies are produced that do not reflect the reality of risks of your supplier.

Times have changed. If your business is dependent on another, you have to work together to protect what is in reality, always a joint commercial enterprise of supplier and customer. These are your assets and putting trust in the hands of others means you and your suppliers need to start talking about cyber risk as a regular agenda item.

What is the best way to go about this?

We see that sharing information about risk and having parties engage in the “what if this were to happen” hypothetical discussion always helps. That conversation can start by suggesting a planned update on trading terms to include a request for a warranty (i.e. a promise) from your supplier that they have or are working towards some form of cyber assurance such as Cyber Essentials, which is a Government-backed, industry-supported scheme to help organisations protect themselves against common online threats.

Help your suppliers see the importance of guarding their business but also yours. Ask them what is their response plan like? Do they have all their data backed up? Do they have cyber insurance? Do they invest in ethical hacking and penetration testing? Do they understand the concept of the ‘human firewall’? Obviously we have to be proportionate with our suppliers. The smaller suppliers are less of a risk, but for larger suppliers, these are necessary conversation to be had.

Raising these points in a discussion with your supplier, working as a team to work against the threat together, is the ideal. Help each other serve your common purpose of a seamless supply and longstanding relationship. These discussions can help minimise the risk of the aftermath; of reacting after the event and having to have some difficult conversations and make some difficult decisions.

It is an old phrase but a good one, namely that ‘a problem shared is a problem halved’. In this case, anticipating the problem together may not just halve the problem, it may just help get rid of it entirely.

If your organisation would like to discuss contractual clauses about fraud and cybercrime to help protect you and minimise the costs of disputes after the event, please do get in touch.



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Learn more about the work we do with Housing Associations



DOING NOTHING IS NOT AN OPTION. . .

The Regulator of Social Housing holds Housing Associations to account by measuring them against various sector standards encompassing economic and consumer standards. The economic standards include:

Governance and financial viability

Value for money

Rent

Governance and financial viability standards are concerned with ensuring that the organisation is well-run and financially fit.

Fraud prevention has a significant part to play in this.

Additionally, the government is currently consulting on plans to create a “failure to prevent fraud” corporate offence. The suggestion is that this would mirror the corporate offence under the Bribery Act 2010, which can be defended if the organisation can demonstrate that it had adequate procedures in place to prevent bribery.

Therefore, there are many reasons for Housing Associations to push fraud prevention to the top of their agenda for 2023. What is it that organisations operating within social housing need to do to tackle the issue?

1. ADOPT A DEFINITION OF FRAUD

Does your organisation have a definition of fraud? Do your employees understand what fraud is and what to look out for? Having a definition of fraud means that the whole organisation is on the same page when it comes to this issue; it also highlights the importance of the issue to your business.

2. EDUCATION IS KEY

Your employees are your eyes and ears on the ground and therefore, educating them about common types of fraud and how it can affect your business is vital. Employees should be aware of the various ways in which fraud can be perpetrated (e.g. a rogue employee or supplier) so that if they witness something unusual or untoward they will be alive to the issue and will hopefully act accordingly.

3. WHISTLEBLOWING POLICY

Does your organisation have a whistleblowing policy? Employees should feel secure enough to report anything suspicious without fear of reprisal against them and understand how the process works. They need to know what they may spot that can help the organisation investigate concerns. Work with them to understand how whistleblowing works for you.

4. POLICIES AND PROCEDURES

Do you have policies and procedures that have fraud as their focus? In order to tackle the problem of fraud it should have dedicated policies and procedures distinguished from general financial policies and measures. For example, a fraud response plan for all types of fraud be that employee fraud in a safeguarding scheme to contractor fraud, or cybercrime to asset theft. Knowing what you would do based on each type of fraud can speed up the process for a response and recovery.

5. CONTRACTUAL PROTECTION

Do your contracts contain relevant provisions to protect against unwanted behaviour? Contracts and standard terms of purchase ought to contain provisions aimed at preventing “prohibited acts” (such as bribery, tax offences, conflicts of interest and fraud) and breaches of any sector specific legislation. Setting your ethical standards in contracts provides for easier routes to terminate contracts rather than having to prove fraud outright. Take a read of our more detail article on this subject in this publication.

6. INVEST IN TECHNOLOGY

Technology moves on at a rapid rate. There are new technologies that can help to detect and protect against fraud within a variety of business settings. For example, block chain technology is increasingly being used to ensure the transparency and traceability of supply chains. Use digital learning such as that from Meritec as referenced in this publication.

7. KNOW YOUR SUPPLIERS

This cannot be reiterated enough. It is essential that you carry out full due diligence on any new supplier and regular audits of existing suppliers. This should include those organisations further down the supply chain to ensure the integrity of supply. Keep an eye on your suppliers after you contract with them, make sure what they assured you of when they tendered is true (experience and resources) as well as monitor that they stay in line with contract pricing you have agreed.

As they say, prevention is better than cure. It is much better to get ahead of the issue with some of the above practical suggestions than to wait for a problem to occur. That could result in huge remedial costs, not to mention the risk of loss of reputation.



tenet



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CONTRACT TERMS FOR FRAUD PREVENTION

In supply chain disputes (especially where fraud is suspected) often a lot of direct and circumstantial evidence is needed to demonstrate dishonesty to the level required at Court or to persuade a counter party that they are at risk of being held liable for fraud. What if your organisation could ease the challenge in a dispute where you suspect fraud? That would save time, money and resources.

Making claims against suppliers easier, even with allegations of fraud, can be achieved by bolstering your contractual terms to anticipate dishonest conduct. Breach of these terms can bring easier claims to terminate a supplier relationship and claim damages.

Due diligence

It is important to ensure that your organisation knows the suppliers and other businesses with which it has contractual relationships. Due diligence should be carried out whenever a new supplier or other contractor is introduced. Senior personnel or those who will be carrying out contractual duties or obligations should be included in such due diligence as well as the owners of a business, not just its directors.

As part of this process, it is prudent to request the completion of a due diligence questionnaire covering key details of the company, including its operations and personnel. At the same time, it would be appropriate to include copies of your organisation's policies relating to fraud prevention, financial crime, bribery and corruption, cybercrime prevention and other ethical topics relevant to your industry. By doing this, your organisation makes clear its stance on such issues and sets expectations for behaviours from the outset of the relationship.

Contract terms

To go one step further, and afford your organisation contractual protection against unwanted behaviour, you will need to ensure that certain terms are included in your standard supply contracts.

1. PROHIBITED ACTS

It is prudent to have a main clause setting out "prohibited acts" such as offences i) under the Bribery Act 2010; ii) under the Criminal Finances Act 2017; iii) under legislation or common law concerning fraudulent acts; iv) of defrauding, attempting to defraud or conspiring to defraud your organisation; v) specific to the housing sector such as failure to declare a conflict of interest such as a relationship with an employee of your organisation. The clause should include a positive obligation not to commit a "prohibited act" (as defined), or to place your organisation in a position of committing any "prohibited acts" or in breach of any relevant legislation. Further, if a supplier is aware of a prohibited act, they are under a positive obligation to declare that to you.

2. REPRESENTATIONS AND WARRANTIES

To go one step further, include a clause whereby the supplier represents and warrants (i.e. promises) that it has not committed a “prohibited act” and that it is not or has not been the subject of any relevant investigation or inquiry. The warranties can also be extended to include all directors, officers, employees, other workers, agents, consultants, contractors or sub-contractors. This may be resisted by suppliers, but the aim is to encourage your suppliers to carry out due diligence on those with whom they have a contractual relationship and ensure that they themselves consider fraud risk.

3. MAINTENANCE OF POLICIES AND PROCEDURES

There ought to be a positive obligation on any supplier to maintain its own policies and procedures to prevent the occurrence of a “prohibited act” and to ensure compliance with any relevant legislation such as the Bribery Act 2010, the Criminal Finances Act 2017, fraud related activity and any sector specific legislation.

4. TERMINATION ON DEFAULT

It is important to retain the right to terminate the contract in circumstances where the supplier is in breach of the clauses relating to “prohibited acts”.

5. PROVISION OF INFORMATION

There should be obligations upon the supplier to notify your organisation if it becomes aware of any commission of a “prohibited act” or breach of relevant legislation by it or any of those with whom it has a contractual relationship. It would also be useful to include a standard clause placing a positive obligation on a supplier to report any change to a shareholding and / or company officer of a supplier, with such information to be provided within 14 days of the event taking place (such that your organisation can then undertake updated due diligence and conflict checks on names and addresses as against its own employees). It is also sometimes expected that larger suppliers will accept a right to ‘audit’ their files if your organisation suspects fraud, in other words, your organisation can pre-empt gaining access to documents held by a supplier in order to investigate fraud.

6. LIMITATION OF LIABILITY

Most contracts will include a limitation of liability clause. Such clauses are ineffective in limiting liability for fraud; however, it is worth making this clear by stating that such clause does not extend to any liability which cannot legally be limited such as death or personal injury caused by negligence, and fraud or fraudulent misrepresentation.

7. CONFLICTS OF INTEREST

It would be sensible to include a standalone section dealing with conflicts of interest setting out what that means and the expectation of suppliers to confirm they are not aware of any conflict of interest as between themselves and your organisation.

How can we help?

The team here at Tenet can assist with reviewing and revising your organisation’s policies and procedures for fraud prevention. We are also able to help review standard terms and conditions or supply contracts from the perspective of bolstering your organisation’s contractual protections in respect of fraud and financial crime.

If your documentation is in need of a refresh, then please do not hesitate to get in touch with one of the team who will be happy to help.



MONEY LAUNDERING

Almost £6 billion has been given out in discounts through the Right to Buy (RTB) scheme since the size of the discount was increased in 2012, analysis by the Local Government Association revealed in the middle of 2022.

The level of discounts will be increased in April 2023. The annual increase to the maximum right to buy discount, in line with the Consumer Price Index (CPI), is £127,940. This discount will apply to applications that are served on the landlord by the tenant on or after 6 April 2023.

The message is clear from the government. They want more people owning their own home, be that through right to buy, right to acquire or the right to shared ownership. This is a message that all affordable housing providers will want to embrace, but it comes at an increasing cost and risk to fraud.

Much has been said about right to buy / right to acquire fraud. People misleading affordable housing providers on their rights to make an application and it being a primary residence for the qualifying period, civil partners alleging they have also been in occupancy amongst but two of the frequent fraud risks the sector is alert to. However, a cloud over all of these issues needs to be cleared up by government. The cloud is simply this, does a statutory right to buy / right to acquire trump a decision to not allow an application to proceed due to money laundering suspicion on the source of funds to purchase?

The Housing Act 1985 sets out clear statutory rights for a qualifying tenant. They submit their RTB1 and if there is no RTB2 sent in response within 4 weeks, that is a breach of the Housing Act 1985. However, for a number of housing associations, they do not treat an application to have commenced if an RTB1 is submitted and the tenant is not co-operating on revealing at an early stage key information about who is supporting an application financially and in particular, the source of the funds being used to purchase the property.

There are three principal concerns for housing associations in these transactions, firstly the source of the gifted funds, secondly the source of wealth, i.e., the provenance of the funds being used for the purchase and thirdly, safeguarding i.e., is a tenant being influenced by others to exercise their right to buy / right to acquire by family members or others without having a full understanding of the consequences of giving up tenancy such as having to meet the costs of repairs, utilities, financial management etc.

So, when it comes to source of wealth / funds, which law trumps the other? Is it the Housing Act or the The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the MLRs")? Is it correct to suspend a right to buy / right to acquire application if you have suspicion of fraud and concerns about the provenance of the source of funds?

The MLRs contain legal obligations which apply to organisations in various sectors, including housing associations. We have seen how the MLRs at times conflict with the Data Protection Act when it comes to how long an organisation can retain personal data.

THE CONFLICT WITH STATUTORY RIGHTS OF RIGHT TO BUY / RIGHT TO ACQUIRE

In these circumstances when looking at the source of funds for a right to buy / right to acquire application, identity documents will be required from the tenant and those funding the purchase if gifting or lending money to the tenant.

Regulation 40 of the MLRs says that copies of documents and information obtained in order to satisfy client due diligence requirements (e.g. a copy of a passport, driving licence or utility bill) must be kept for 5 years from the date on which the transaction has completed or the business relationship has come to an end. This is actually in contrast to the Data Protection Act where data should only be held for as long as reasonably necessary.

However, what appears to be clear is that a very sensitive piece of legislation being the Data Protection Act (and the General Data Protection Regulations) are trumped by the MLRs. In other words, the MLRs are paramount. Preventing fraud and economic crime trump other statutory obligations.

Although the answer is not clear-cut and this argument has not been tested at Court (i.e., do the MLRs and their obligations trump the statutory rights prescribed by the Housing Act), in our view, where an organisation is subject to the MLRs, they will be permitted to not progress a right to buy / right to acquire application if they have legitimate concerns about the source of wealth of those funding the property transaction.

In order to be best placed on managing the risks around gifted funds, source of wealth and safeguarding risks with right to buy / right to acquire, in our next blog we will provide our top tips on best practice for building fraud and anti-money laundering controls into your processes and procedures.

If you have any concerns about any right to buy / right to acquire applications where you suspect fraud or if you want to look how to improve your fraud resilience in this area, please do get in touch.

Case Study

[Click to learn more about the work we do with Housing associations](#)



The one with diverted property purchase monies...

WHAT WE KNOW IS TOO IMPORTANT NOT TO SHARE

65% of companies experienced fraud in the past 24 months and the COVID-19 pandemic will lead to the uncovering of more historic fraud. The world is changing, home working is driving a change of behaviours. The volume of emails and pace people operate is contributing to the increase in cybercrime, mistakes and concealment. Fraud and employee fraud are not black and white concepts and dishonest actions are becoming increasingly easier to justify.

Having policies and procedures in place is important, but employee “buy in” is key. Employees are the first line of defence. They ensure effective surveillance on the frontline. Therefore they need to be equipped with the knowledge and skills to protect themselves and the business your organisation from sophisticated attacks that are becoming increasingly common, yet more difficult to detect. They also need to be your eyes and ears to the ever widening threat of fraud.

Training is essential to raise awareness of fraud within your business, the risks are too high to ignore and the advantages are too important to not get right. Education is the best fraud prevention.

Our goal is fraud prevention and minimising the risks through education and training. Our approach to education is almost unique. We bring into discussion cases we have worked on in the affordable housing sector to bring training to life. Why? Simply put, reading about a fraud event and living through one is very different for all involved.

With 10 years of experience of fraud investigations and disputes for housing associations coupled with our counter fraud and compliance experience for housing

associations (such as helping the National Housing Federation at conferences and on their counter fraud book), we can bring training to life for your organisation, like the many we have delivered training for so far.

This helps ensure behaviours are shifted and mindset is changed to help recognise potential threats and promote a positive culture of looking after each other together. Being empowered by knowledge of what fraud looks like, smells like and sounds like will help embed a more positive and balanced culture ensuring employees can focus on the business.

We will share our insight into the reality of fraud, financial crime and regulatory risk. Helping housing associations to identify red flags for commercial type frauds (supplier and employee fraud), prevent, detect and respond should issues arise. Sessions are designed to be interactive and engaging.

We combine our real-life experience, together with stories that have made the news, to bring topics to life and discuss “horror stories”. We talk about employees' moral compass, bringing to life whether everyone thinks the same when it comes to ethical behaviour.

Having specific knowledge and experience of a sector, especially where the financial crime and compliance law is complex and regulatory requirements change frequently, helps us fully understand the business and the risks they face.

We service a number of housing associations who we deliver training to. Examples include:

- Corporate fraud risks for social housing providers
- Money laundering issues for housing associations
- Cybercrime and prevention for housing associations
- Investigating employee fraud for housing associations
- Why people break the rules, looking at culture and risk
- Fraud management for housing association boards
- Right to Buy / Right to Acquire best practice and AML issues

Our sessions are tailored towards the audience. Some of our sessions are delivered to senior management and the board, others are aimed at all staff. The aim is to have our sessions recorded if by Teams so that your learning and development teams can use the recording to re-train and reinforce messages.



Feedback from our training

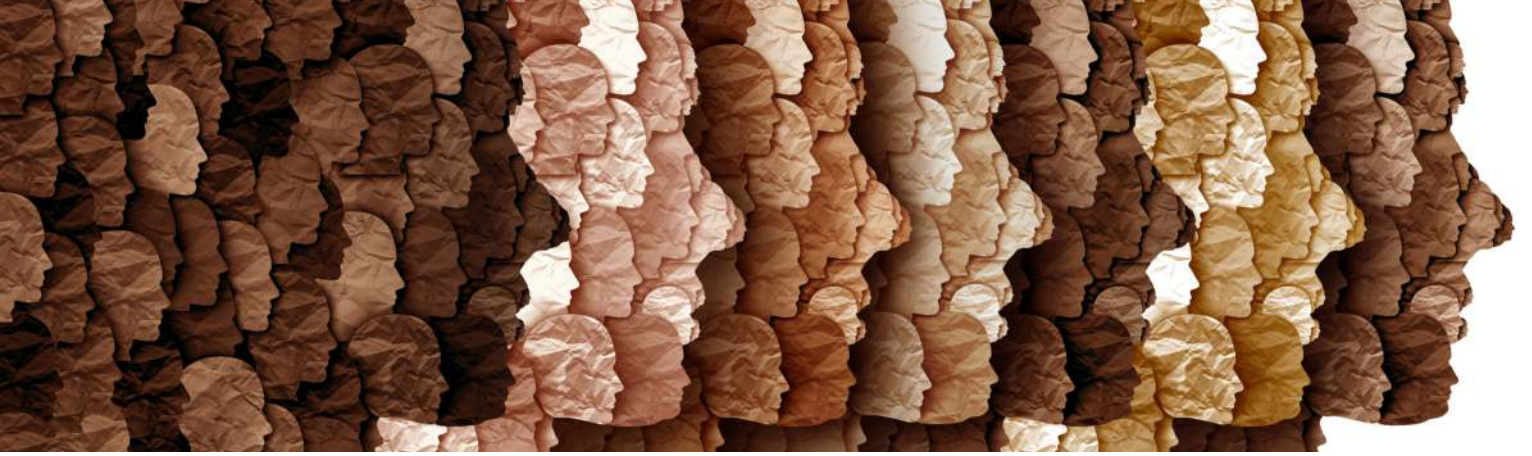
The session has been really well received, lots of people have said they learned things they didn't know before and it really made them think. The case studies and examples you gave were particularly useful.

Nicky Hallam - Cornerstone Housing

It was a really interesting session with lots to think about. Just to share that I found the training really interesting and informative. Lots to reflect on! Would have been nice to go through more examples, but I think the training time was about right!

HR and Operations Advisor - Housing Association Client

If you would like to get ahead of these challenges please get in touch for a chat. Every organisation will require varying levels of support and advice, so our team of experienced lawyers will work with you to deliver exactly what you need to suit your business and your budget.



FRAUD AWARENESS | THE KEY TO AN ANTI-FRAUD CULTURE

Every organisation is at risk of becoming the victim of fraud. Unfortunately, housing associations are no exception to this. The risk may be external, internal or even a combination of the two. We see the stories all the time on the news and in the media.

The last UK-specific annual fraud indicator was compiled in conjunction with Portsmouth University and released in 2017. It estimated that the UK lost a total of £190 billion to fraud each year. To put that into context, it works out at approximately £2,760 per person in the UK today. It is thought that £1.8 billion of this figure can be attributed to housing tenancy fraud alone.

These are staggering figures as they stand but consider that it is highly likely that the rates of fraud have increased since then. Fraud is now the most common crime in England and Wales, accounting for almost 40% of all crime reported.

Financial pressures often lead people to focus on their monetary situation and to rationalise behaviour which, in normal times, they would never normally consider. The current ongoing economic situation will see more people do whatever they deem necessary to protect their income and assets.

In other words, there is the potential that absolutely anyone may find themselves in a position where they see no alternative but to consider fraudulent activity as a means to resolve their financial problems.

It's also worth bearing in mind that it's not just the initial financial loss as a result of the fraud that will impact your organisation but also the reputational damage, decreased staff morale and potentially increased insurance premiums. On this basis, it makes complete sense for all organisations, in the public, private and charity sectors, to look to build and develop an anti-fraud culture across their business/service.

Having an anti-fraud culture means:

- Fraud is an issue to be discussed openly rather than being 'brushed under the carpet' and pretending it 'couldn't happen here'
- The zero-tolerance towards fraud attitude is set from the top down
- Potential fraudsters are likely to be deterred from attempts, especially if they are one-off opportunists
- Encouraging employee 'buy-in' to combat fraud
- Enabling the reporting of suspicions easily and in confidence, knowing they will be treated seriously.

Creating an anti-fraud culture takes time and will not happen overnight but a great starting point is an effective programme of fraud awareness. This alone will help to mitigate the risks of fraud, save your organisation thousands of pounds and stop the fraudsters in their tracks.

A programme such as this will:

- Provide all employees with a clear understanding of the scope of fraud, the different fraud types in the housing sector and the risks they present
- Direct employees to the correct place to report their concerns
- Demonstrate that the organisation is ethical and serious about tackling fraud
- Have a 'deterrent effect' which, although not measurable, is vital for any organisation
- Build a strong foundation on which to develop an anti-fraud culture

But don't just leave it at fraud awareness training. The most effective way to reduce fraud risk is to embed good practice throughout the culture of the whole organisation, starting from the top.

Remember: No system, policy or person alone can prevent fraud!

If you are serious about preventing fraud, please contact Meritec or visit the website to learn more.

Meritec support Tenet's face to face learning with an ongoing bespoke digital learning package that will enable your organisation to deliver quality fraud awareness learning to the entire workforce in a timely and extremely cost-effective manner.

Our digital learning is highly effective to help your organisation educate new starters or maintain fraud awareness.

Paul Bicknell, Fraud Solutions Manager



Focus on Fraud Awareness for Housing Associations

The annual national cost to the taxpayer per detected tenancy fraud is £42,000 Source: Tenancy Fraud Forum 2021

How strong are your fraud defences?



Tenancy fraud not only denies homes to those most in need but it also comes at a significant cost. Even back in 2017, the Annual Fraud Indicator estimated total losses each year from Housing Tenancy Fraud were a massive £1.8 billion.

Today's economic climate is further increasing the risk of fraud. It is resulting in more (unscrupulous) individuals turning to fraud to boost depleted incomes whilst career criminals seek every opportunity to defraud the unprepared. Resulting losses can significantly damage a housing association's budget, its reputation and its ability to deliver effective services.

Fraud awareness training for all employees can help to manage these risks and stop fraudsters in their tracks.

How can we help?

Meritec's 'Focus on' portfolio of digital learning courses covers a range of topics including fraud, cybercrime and risk management. These courses are widely used and are proven in many organisations across the UK. They can also provide your staff with the essential knowledge that they need to protect your organisation against external and internal threats.

Focus on Fraud Awareness for Housing Associations:

Provides all employees with a clear understanding of:

- the scope of fraud and the key risks that result
- the actions they must take to minimise these risks
- what to report and how to report it.

Enables Housing Associations to:

- communicate quality learning to the entire workforce in a timely and cost effective manner
- reduce the significant losses that could result from fraudulent activity.

Features



Customisable

Tailored content for individual organisations



Engaging

Up-to-date, interactive content to aid learner understanding



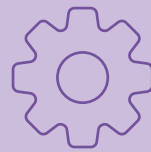
Convenient

24/7 access from anywhere, anytime on any device



Effortless

Easy to set up, roll out and monitor



Manageable

Dashboard of learner usage and feedback

Benefits



Reallocate homes to those in most need

Staff awareness can facilitate the rapid identification and removal of fraudulent tenants



Minimise fraud losses

Early identification of suspected fraud can prevent losses and reduce the related costs of recovery



Rapid return on investment

Subscription costs are quickly recovered from savings made



Reduce training costs

By the timely delivery of quality learning to large numbers of individuals

Our proof

Raising fraud awareness for all staff is vital to minimise the risk of internal and external frauds. Meritec's Focus on Fraud Awareness delivers high value information to employees in a user-friendly format. This increased awareness will reduce financial losses from fraud and ensure that our homes are only available to those in genuine need".

- Jon Dickin, Head of Neighbourhoods, Aspire Housing



Get in touch now!

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Email us: digitallearning@meritec.co.uk

Explore more online: www.meritec.co.uk/fofa-ha

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Fighting Fraud for Housing Associations

What makes Tenet different is that we are a specialist compliance, investigations and litigation law firm.

We focus on responding to fraud and financial crime compliance for our clients across the UK and overseas.

Our experience in the sector is demonstrated by those who trust us. We have represented housing associations throughout the country from those in the G15 to large providers in the north of England. We bring our financial crime and fraud knowledge from a wide range of sectors to offer best practice to housing associations.

If you have any questions or would like more information about the articles in this newsletter or about the work we do, please get in touch, we would be happy to help.

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