

THE SECRET INGREDIENT

IMPROVING YOUR **FRAUD PREVENTION** PLANNING

Welcome to the latest edition of our quarterly newsletter, specifically focused on fraud prevention within the food sector.

We provide insights and recommendations that focus on protecting your brand's integrity, enhancing quality control, and strengthening your fraud prevention strategies from a legal perspective. In this edition, we share our expertise and sector experiences, highlighting current challenges faced by our clients in your market.

BECAUSE GETTING IT RIGHT MATTERS

A TASTE OF WHAT'S INSIDE:

Click each topic to read the full article



 [How APP fraud can infiltrate international supply chains...](#)

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 [Anchoring disputes in England & Wales](#)

 [Risk management in the food sector](#)



HOW APP FRAUD CAN INFILTRATE INTERNATIONAL SUPPLY CHAINS...



Authorised Push Payment (“APP”) fraud is where the victim is tricked into making large bank transfers to an account of a fraudster posing as a legitimate payee. APP fraud has been prominent in the UK, but by no means is it restricted to the UK. Globalisation through technology means that online fraud is not hampered or restricted by physical or geographic boundaries. Globally, APP fraud represents 75% of all digital banking fraud in dollar value. According to a report produced by ACI Worldwide, and Global Data, the losses in the US, UK, and India are expected to double over the next four years, reaching \$5.25bn by 2026.

WHAT IS APP FRAUD?

APP fraud occurs when someone unwittingly transfers money from their own bank account to one belonging to a fraudster. Fraudsters use social engineering techniques to gather information about an individual and may contact the victim by telephone, text message, social media or email in order to set up the fraudulent transaction.

A common example of this type of fraud relates to property transactions where the fraudster intercepts email threads regarding the payment of a deposit or completion monies intended to be sent to the purchaser’s solicitor. The fraudster will seek to compromise a legitimate email account (such as the property solicitor acting for the purchaser), which allows them to set up a rule forwarding all emails to a separate account controlled by the fraudster. The fraudster will register a fake domain name, which looks very similar to a genuine domain name enabling the fraudster to create a fake email address which they can use to intercept legitimate email threads. For example, they could suddenly appear in a thread between a solicitor and a client, having changed one character of an email address (for example, by changing John.Smith@tenetlaw.co.uk to John.Smith@tenetlaw.co.uk), so that the change of sender is not spotted.

The fraudster will then usually write to the buyer explaining that the firm has changed their account details, or the seller requires the completion monies to be paid into an alternative account. The fraudster then provides their own account details and extracts the funds before the fraud is detected.

Fraudsters are always looking for opportunities to cash in and therefore do not restrict themselves to certain types of transaction (such as property transactions). Fraudsters are attracted to payments that are high in value, and to circumstances which easily lend themselves to email chains discussing payment, where a fake email changing account details would not necessarily look out of place. The food industry with its international supply chains and high value transactions is an enticing target.

CASE STUDY: “THE ONE WITH THE FISHY ACCOUNT DETAILS...”

A Sri Lankan seafood producer found itself caught up in an APP fraud which saw a longstanding customer send a sizeable, six figure payment to a fraudulent account instead of the Sri Lankan supplier’s account. The Sri Lankan producer chose to honour the contract with its customer and sought to unravel the fraud itself.

The bank details provided by the fraudsters were for a UK bank account, and that led the producer to seek Tenet’s assistance to uncover the perpetrators.

With Tenet’s advice and assistance, the producer issued a Court application for a **Norwich Pharmacal Order (“NPO”)** against the account holding bank. This application was granted by the Court and revealed that the fraudsters were not linked to the producer or the customer, i.e. not an inside job. The account transactions showed how the account had been operated likely by an organised crime gang that removed the money quickly to a location in Africa.









The detail we obtained allowed us to trace payments out and it was discovered that payments had been made to a number of student accounts (no doubt acting as money mules in a wider conspiracy run by the organised crime gang). Some recovery was possible, but not all.

On this basis, the producer decided not to pursue the funds further but made a report to law enforcement. However, Tenet had enabled the opportunity for the Sri Lankan company to be assured this had not been organised by a party linked to it or its customer and had enabled it to trace the funds and recover some of its losses.



RED FLAGS

There are several things you can do to protect your business against APP fraud. For example, it is imperative to keep IT security up to date. However, by far the most effective defence is through staff training and awareness. The following red flags are signs that the email you have received is not genuine:

-  **Misspelled email address**
-  **Absence of the sender's email footer or changes in the email footer**
-  **Spelling or grammatical errors in the body of the email**
-  **Abrupt or odd language**
-  **Sudden change of requirements**
-  **Sudden change of account details**
-  **Request to click on a link or enter confidential information**
-  **Urgency to make the payment**

What to do if you suspect APP fraud?

If you suspect that an email, telephone call or message you have received may not be genuine, do not respond using that contact method. Make independent enquiries of the company with which you are dealing – by telephone preferably – using contact details obtained from the organisation's genuine website or that are already known to you. Where possible, speak to someone at the company you have spoken to before where you recognise their voice. If anyone emails you notifying you of a change of account details prior to you making a payment, it is always worth contacting the intended recipient via alternative methods (i.e. not by email) to check that the request is genuine.

Another way to protect against making a payment to a fraudster's account is to complete an initial test payment of £1 and check with the intended recipient (a person known to you) that they received the payment before making a larger payment. Account details ideally should be communicated in person, by letter or by telephone rather than by email. It is also prudent to include a statement on your email footer that you would never communicate a change of account details by email.

What action can be taken if you fall victim to APP fraud?

It is vital to act quickly; if you have already transferred funds, it is imperative that you inform your bank as soon as possible.

In the UK, there is now a scheme in place known as the Contingent Reimbursement Model ("CRM") Code. This is a UK payments industry initiative designed to compensate victims of APP fraud. Although it is currently a voluntary scheme, the Payment Systems Regulator ("PSR") has recently announced that reimbursement will be made mandatory by virtue of changes made by the Financial Services and Markets Act 2023 which received Royal Assent on 29 June 2023. As a result of its recent consultations, the PSR has proposed an implementation date of 7 October 2024 for mandatory reimbursement. This date will be finalised and set in December 2023.

This step will be welcomed by many but note the CRM Code does not extend to large businesses and currently only covers payments made by consumers, micro-businesses and small charities. Furthermore, CHAPS (Automated Payment System) and international payments are also not covered by the scheme, leaving a large gap in the protection against APP fraud.

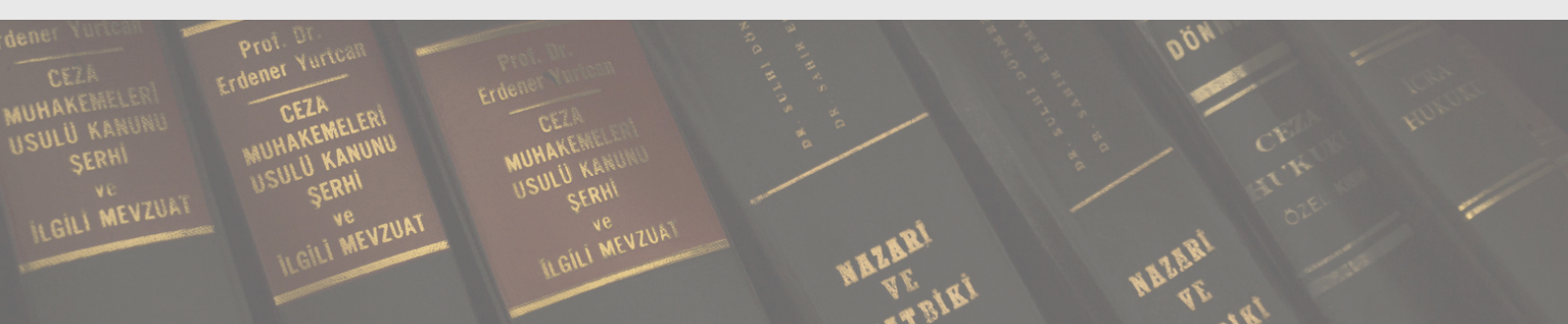
If you cannot get refunded through the CRM Code, then you can seek to discover the perpetrators and trace the funds by making an application for a Norwich Pharmacal Order ("NPO") against the account holding bank, to learn more about this read our article in [issue 5](#). A new Court rule (known as a jurisdictional gateway) now enables such applications to be served outside of the jurisdiction, so for example, on a foreign bank. It remains to be seen whether foreign institutions will seek to comply with any such order, but this is certainly a positive development for claimants pursuing cross-border fraud claims.

ANCHORING DISPUTES IN ENGLAND & WALES

In the food and beverage sector, perhaps more than any, there is a dependence on suppliers from numerous countries. Where your business has a number of contracts with suppliers from around the world, it is important to have consistency for your own peace of mind on what would happen if a problem arose between your business and your supplier. Key is knowing that the contract you form is governed by a Court and laws you are used to operating with and are, ideally, your own.

The Court system in England and Wales is by no means perfect, but we do have a lot to be proud of, particularly when compared with other jurisdictions worldwide – an independent judiciary, compliance with the rule of law, a historic common law system based on precedent, mutual recognition and enforcement of English judgments. Wherever it takes place, litigation is stressful, but some of that stress can be managed by undertaking litigation in a jurisdiction that is familiar, and where you can be assured that the legal system is both fair and independent. **How can you ensure that any contractual disputes are determined in England & Wales?**





JURISDICTION AND GOVERNING LAW

Legal advisors can often refer to such terms without fully explaining their meaning. Forming part of the boilerplate clauses in any contract, these matters can sometimes be overlooked or left until the last minute. However, that would be a mistake – particularly in circumstances where your contract includes a cross-border element.

- *Jurisdiction: the country whose courts will have jurisdiction to determine any dispute that arises under the contract.*
- *Governing law: the law that will govern the contract, and which will be applied by the chosen court in any subsequent proceedings.*

Often confused, jurisdiction and governing law are two separate issues. When negotiating a contract, the parties are generally free to nominate whatever jurisdiction and governing law they choose. However, these are not decisions that should be made lightly as they can have lasting consequences for the parties.

JURISDICTION

It is important to carefully consider which jurisdiction would be most suitable for hearing any disputes arising out of the contract. By choosing a suitable and favourable jurisdiction, parties can eliminate uncertainties about the venue, costs, and procedure of future litigation between them.

There are different types of jurisdiction clause:

- *Exclusive – which means that the parties cannot legitimately bring proceedings anywhere other than the jurisdiction stipulated in the contract.*
- *Non-exclusive – which means that the parties can elect to bring proceedings either in the chosen jurisdiction, or in any other country which has jurisdiction over the dispute.*
- *One way – which means that one party will be restricted to a specific jurisdiction, whereas the other party will be free to choose any appropriate jurisdiction.*

A failure to specify a jurisdiction in a contract can lead to delay, confusion and increased costs as the correct forum will need to be determined before the substantive proceedings can be heard. Such determination will be based on the rules of private international law including any international conventions or treaties. Note, the governing law chosen will determine the interpretation and scope of a jurisdiction clause.

CHOICE OF LAW

Where a transaction is purely domestic i.e. the parties are domiciled / operating in the same country and the supply of goods or services takes place there, the applicable law in the absence of choice is likely to be the law of that country. However, it is better to include a choice of law to avoid any uncertainty down the line. A different governing law can result in the contract being interpreted differently.

Where the parties are domiciled in different jurisdictions and the performance of the contract is to take place elsewhere, choice of law becomes even more important. Most jurisdictions recognise the parties' right to choose a different law to govern their contract. In these circumstances, the relevant court will determine the dispute with the assistance of an expert witness on the applicable foreign law. This obviously adds an added layer of complexity and cost to proceedings, and so careful consideration should be given where the jurisdiction and governing law are to be different.

If the parties fail to choose their own governing law, the court hearing the dispute will apply its own conflict of law rules to determine the governing law. This runs the risk of increased costs and satellite litigation on the issue. Essentially, failure to identify the governing law of your contract can lead to confusion, delay and increased costs.

UK

If you want to ensure that any disputes are determined in the UK, then you will need to elect English law as your governing law and England (or England and Wales) as your jurisdiction (unless the contract is specific to Scotland or Northern Ireland). However, if neither the parties nor the contract has any connection to England and Wales, then you may face a challenge should the other contracting party decide another law/jurisdiction is more appropriate.

GOVERNING LAW & JURISDICTION : 5 TOP TIPS



1. Be specific where a country has multiple legal systems such as the US or UK.



2. Ensure the governing law and jurisdiction will provide fairness and certainty.



3. Obtain local advice as to how certain provisions may be interpreted by the chosen law.



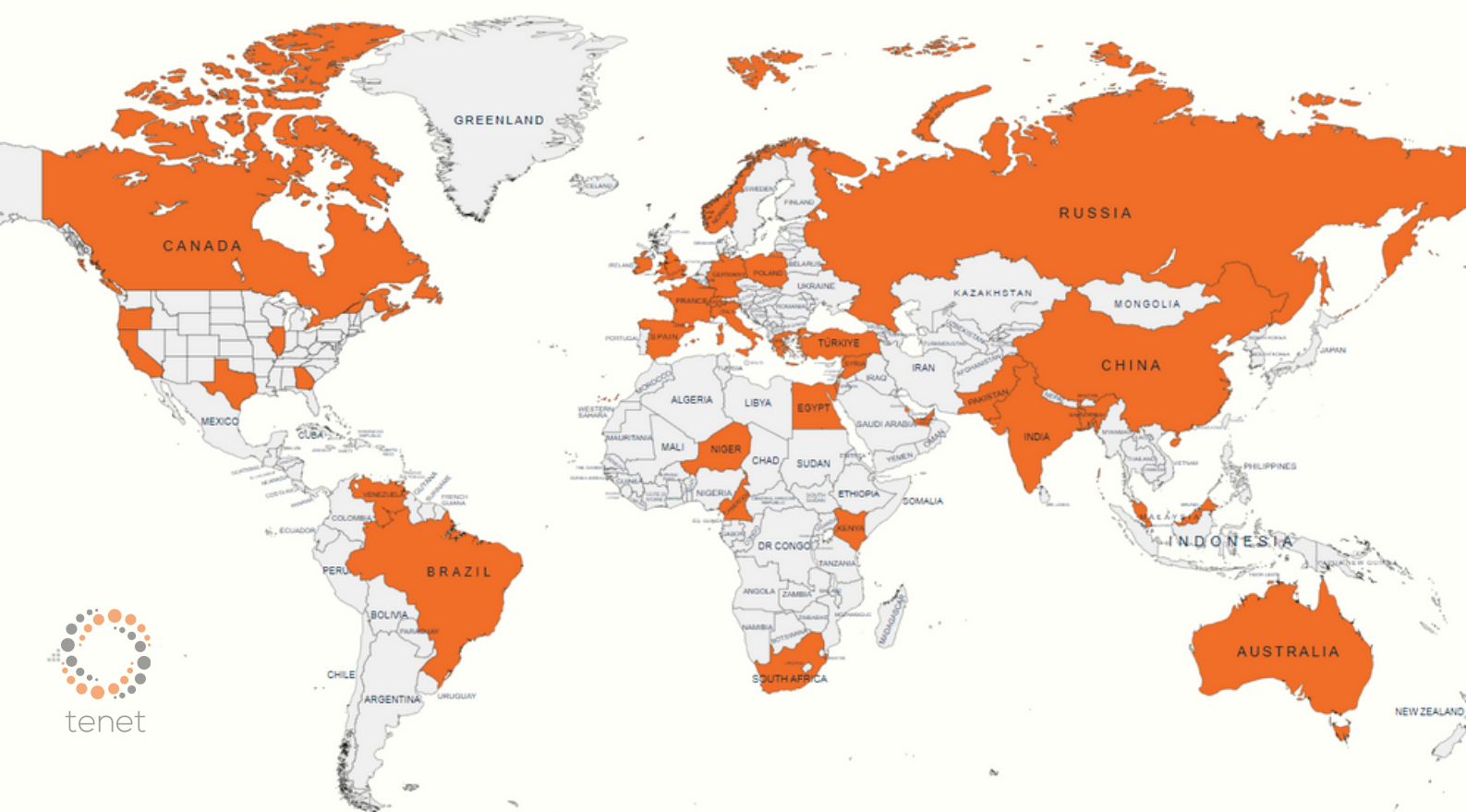
4. Ensure local advice is accessible.



5. Check whether the jurisdiction has any known issue with applying your chosen law.

INTERNATIONAL EXPERTISE

Tenet is an award-winning law firm, specialising in fraud and financial crime advice on an international scale. Our team of lawyers bring experience from cases and clients across the globe, having worked on a diverse range of cases worldwide. Our success is rooted in our strong client relationships, and our ability to offer tailored strategic guidance for cross-border fraud and financial crime matters.



Having the expertise and knowledge when navigating international borders makes us a valuable partner to our broad range of international clients from FTSE 100 clients, PLC's through to SME's. Our in-depth understanding of how fraud causes risk to certain sectors helps our clients prevent and respond to fraud with greater confidence. We tailor our service to the needs of our clients and guide them to make the best possible choices within the market that they operate in.

Our Team

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We have been impressed with Tenet's ability to handle the complexities of the case and understand the cultural differences of the international parties involved.

UK Head of Legal

RISK MANAGEMENT IN THE FOOD SECTOR

Deloitte publishes an economic crime blog which can be found [here](#):

Earlier this year, the spotlight was on food fraud, where Deloitte asked: “What does good food fraud risk management look like?”

For those of you who find yourselves part of an in-house legal team, you will be all too familiar with the phrase “risk management”. Indeed, supporting and understanding your company’s risk tolerance is a priority for in-house counsel. Unfortunately, there is no “one size fits all” approach. **Businesses within the food and drink sector may share common issues but have completely different degrees of risk tolerance.**

That being said, Deloitte and McCormick have worked together to identify six key areas that are “*fundamental to sound food fraud risk management*”. There are two overarching themes to their food fraud risk management approach, namely i) due diligence and ii) ethics and governance.

The six key areas are as follows:

🌀 ETHICS & GOVERNANCE

1. Governance, leadership & “tone from the top”
2. Policies & procedures
3. Training & communication

🌀 DUE DILIGENCE

4. Vulnerability assessment & supply chain illumination
5. Monitoring & horizon scanning – risk sensing & dupe killer
6. Food testing, supplier inspections & deeper dives

Further details of each of these key areas can be found [here](#).



Here at Tenet, we have long advocated for a “top down” approach. In 2020, Tenet chaired a discussion of twelve industry experts who met to discuss leadership’s influence in creating a workplace culture which creates high-risk of internal fraud. It became clear many of the prevalent risks are influenced by an organisation’s leadership team.

The discussion was not about governance but about the impact the wrong culture can have on increasing exposure to financial crime risk. The result was a white paper entitled “**Leading to loss – Leaders, culture and fraud**” which explores the key risks arising from the tone and manner in which an organisation is led.

A copy of the white paper can be downloaded [here](#):

The relationship between Leaders, Culture and Fraud

Leading to loss
Leaders, culture and fraud



Exploring the key risks arising from the tone and manner in which an organisation is led.

SECTOR EXPERTISE JUST ONE CLICK AWAY

Our mission is simple yet powerful: focus on solving your problems, providing clear, actionable advice in a way you can be confident of the solution and clear on the process.

In order to achieve this we hire exceptional lawyers who share our values and motivation. Learn more about the work we do across the food sector on the [Tenet Fraud Hub](#) or read previous issues of this newsletter [here](#).

The Fraud Hub shares our knowledge and experience, through articles, case studies and executive summaries. You can also find details of our latest events, speaking opportunities and media/TV appearances.

www.tenetlaw.co.uk



*Our commitment to excellence has been recognised
by multiple national awards*





Fighting Fraud for the Food Sector

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 and sole focus is our expertise of dealing with a range of financial crime and fraud issues and applying that detailed and experienced knowledge to certain sectors, including food.

Our approach has been recognised in our speaking at Food Fraud conferences and commentating in publications such as New Food and Food Science & Technology.

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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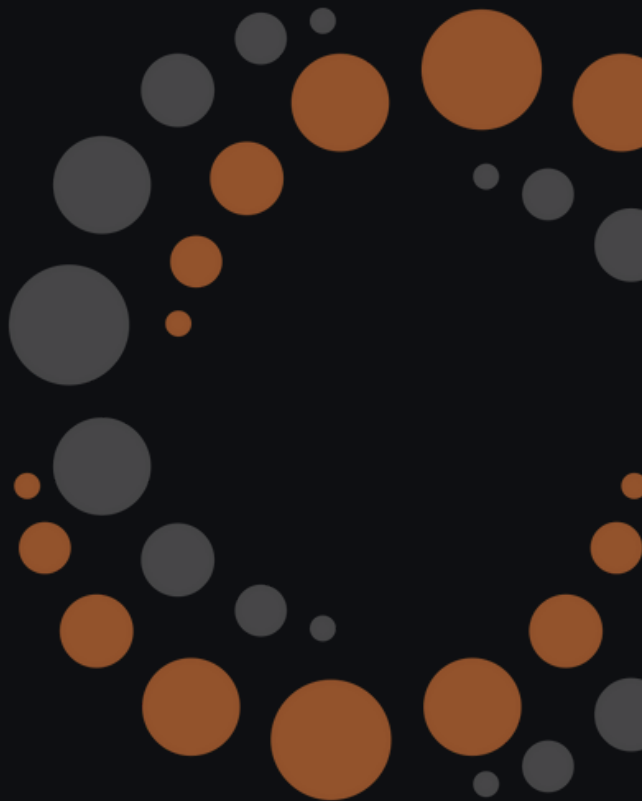


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it simple . . .



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