

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are set against a bright blue sky with scattered white clouds. The perspective creates a sense of height and scale. A large red circle is overlaid on the left side of the image, containing the title text.

Unwrapping the Economic Crime and Corporate Transparency Act 2023

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1

The Law

- Corporate Criminal Liability Key Reforms
- Applications

2

Risks

- Potential Impacts to the Business

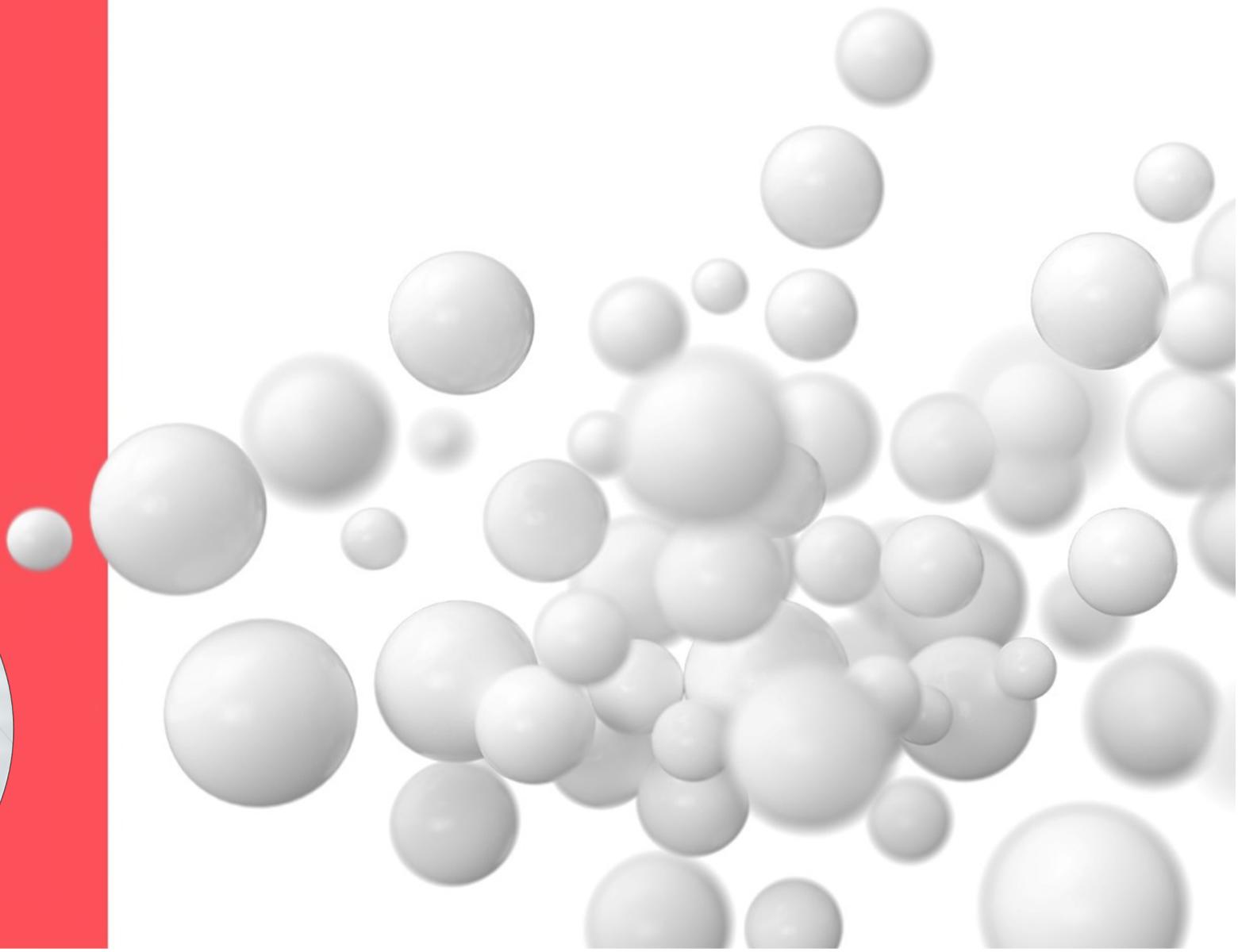
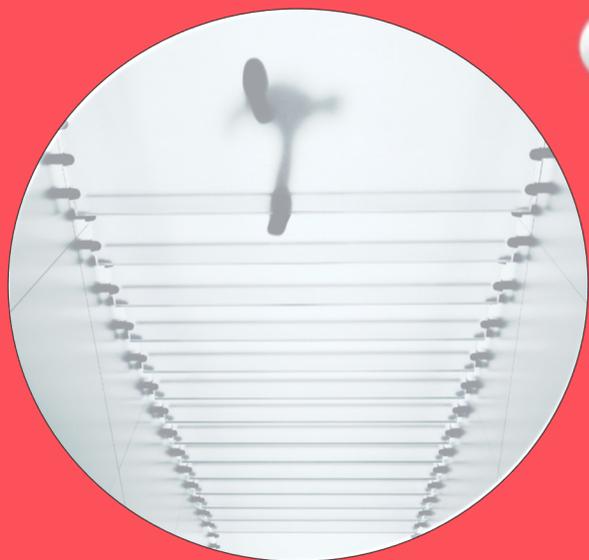
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Considerations

- Immediate Action Plan
- Toolkit
- Timeline



The Law



THE LAW:

Economic Crime and Corporate Transparency Act 2023

Reform 1. Now in force



A new “Senior Manager” Attribution Test for corporates

Adds to the existing “directing mind and will” identification test to include a “senior manager” as defined in the Act, acting within the scope of their authority

Reform 2. Expected Q3 2024



A new corporate offence of Failure to Prevent Fraud

Introduces corporate criminal liability for fraud offences by an “associate”, if intended to benefit the organisation or its clients – unless reasonable fraud prevention procedures in place



Application

Extra-territoriality of the underlying offences applies to both reforms

Reform 1. “Senior Manager” Attribution Test



Offence applies to “senior manager” in all corporations: An individual who plays a significant role in decision-making about, or the managing or organising of, the whole or substantial part of the activities of the organisation

Reform 2. Failure to Prevent Fraud



- UK and non-UK entities can be liable
- Offence applies to entities with 2+ of the following:



250+
employees



£36m+
in turnover



£18m+
in assets

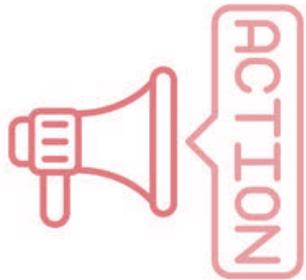


Reform 1: New “Senior Manager” Attribution Test



Why this matters?

- ECCTA is significantly broadening the category of individuals whose criminality can now be attributed to their employer



Immediate Actions Required



1. Identify senior managers and plan of action to mitigate risks
2. Identify risks that could occur within “the scope of their authority”
3. Provide Senior manager training

Case study:

**PÂTISSERIE
VALERIE**
Est. 1926

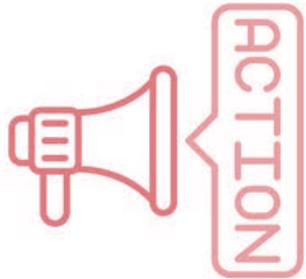


Reform 2. Failure to Prevent Fraud Offence



Why this matters?

- ECCTA is increasing risk of corporates being criminally liable for actions of their employees, agents, subsidiaries and other contracted entities
- Reasonable procedures must meet the risks to the business to be a defence



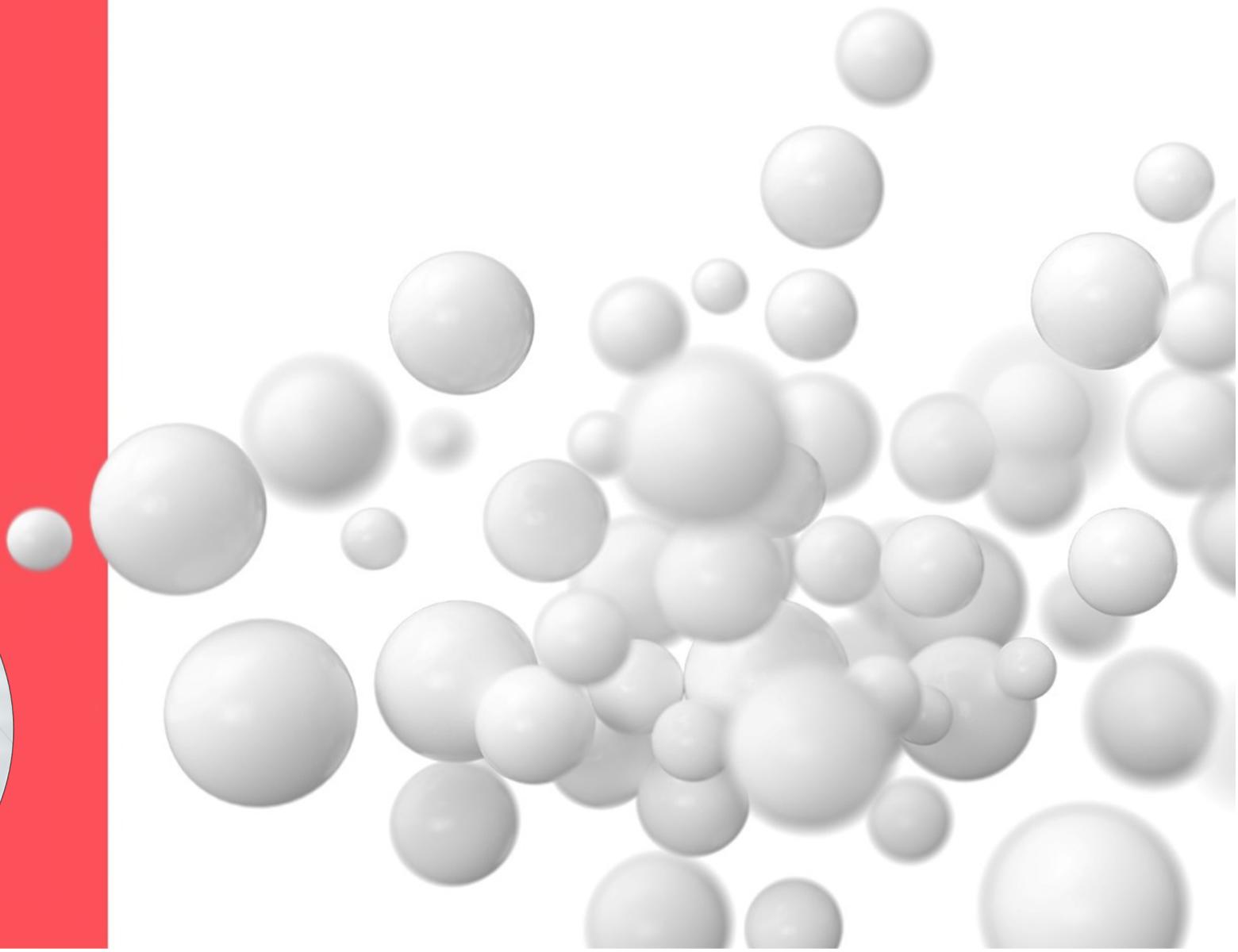
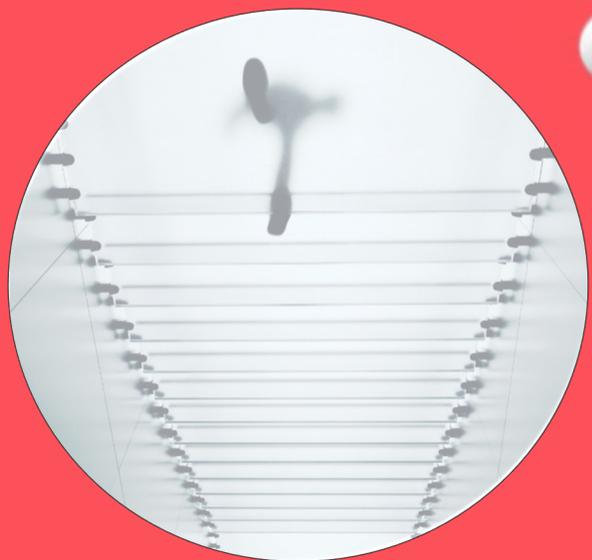
Immediate Actions Required



1. Assess all processes where internal fraud risk could occur
2. Conduct a risk-based assessment
3. Review existing fraud controls and enhance policies and procedures



Risks



Potential Impacts to the Business



Understand how the offence could occur in your business to determine what 'reasonable procedures' look like



Potential risks from Failure to Prevent Fraud:

Mis-selling

Greenwashing

Misleading statements
in investor-facing
documents



Misleading information
in applications for
Government funding/
rebates

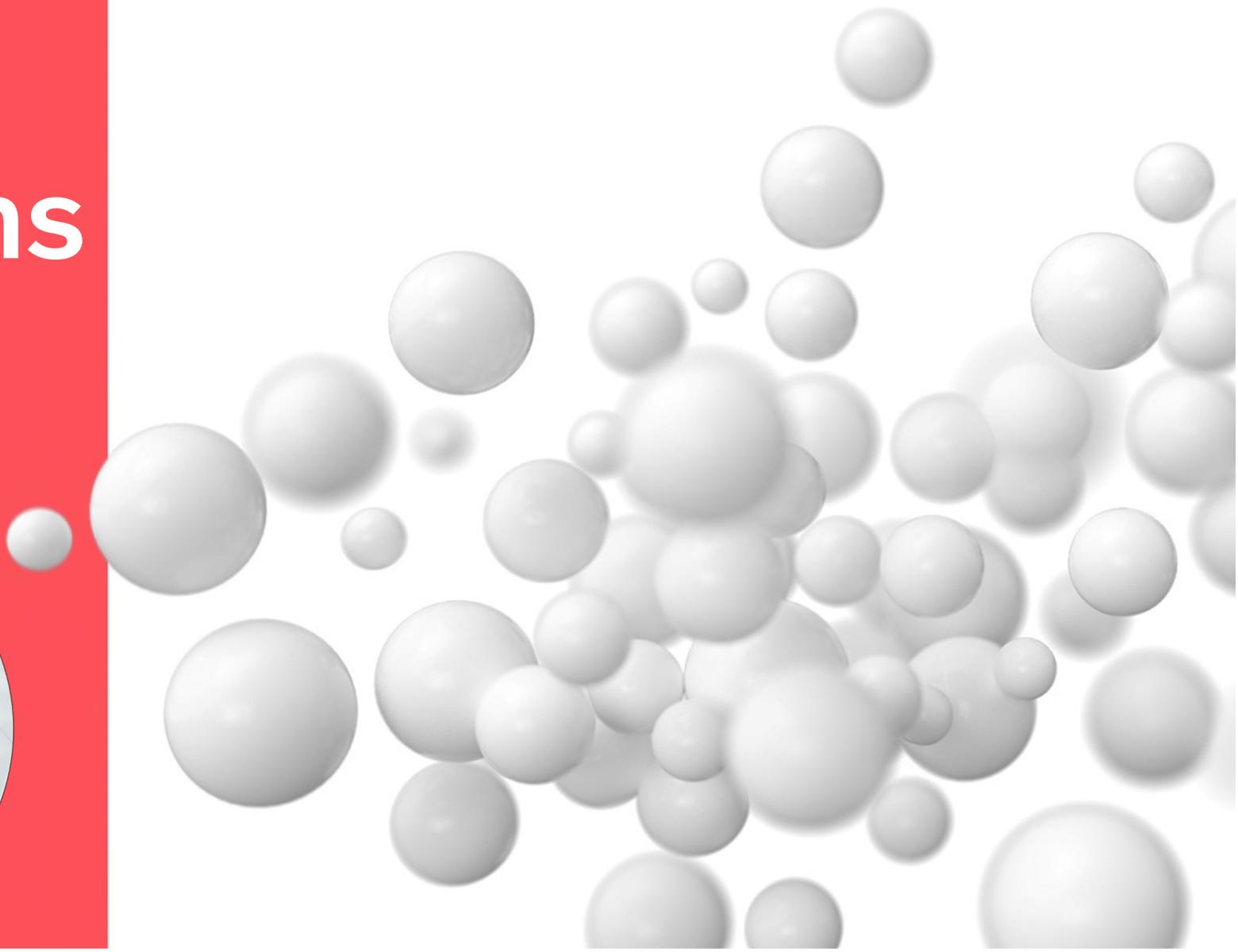
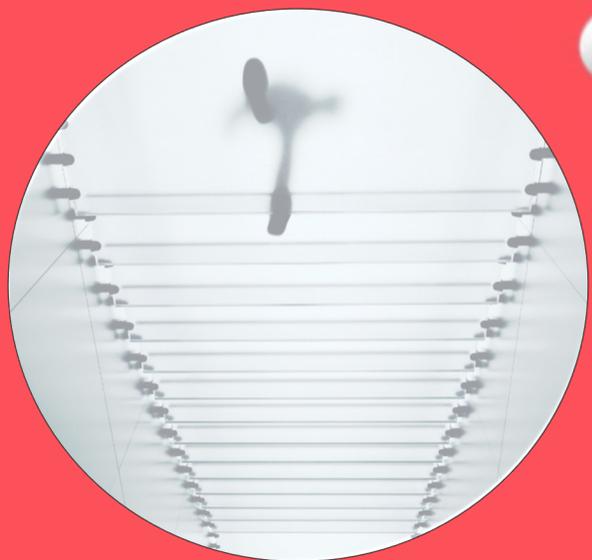
Diesel-gate

Manipulating
forecasts/ targets/
accounts

LIBOR



Considerations



Immediate Action Plan



- Create **multi-functional task force** to respond
- Engage the **Board** on ECCTA changes
- Identify **senior manager risk** and provide training
- Project manage the **response to failure to prevent**



Simmons & Simmons Toolkit



The toolkit is critical to the immediate action plan and future timeline

Senior managers:



- *Senior manager* briefing
- *Senior manager* scoping tool
- Training module for *senior managers*

Failure to Prevent Fraud:



- Board briefing
- *Failure to Prevent Fraud* scoping tool
- Guidance on key legal and compliance risks to be managed by the firm
- Risk assessment / risk register
- Training module
- Policy wording & standard contractual clauses



Timeline



Dec 2023
Senior Manager
Test in-force

15 March
Immediate Action
Plan completed

16 Feb 2024
Toolkit
released

June 2024
Statutory Guidelines
published ?



31 July

- Fraud risk assessment scoped across the business
- Compliance review conducted



31 October

- Fraud compliance enhancements implemented
- Training modules provided for all staff

November onward
Monitoring ongoing





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