

Criminal Finances Act 2017 Procedure	
Enabling Policy Statement; Executive Owner; Approval Route:	Our Operations - Chief Operating Officer - Operations Committee
Is the Procedure for internal use only (Non-disclosable) ?	Disclosable
Associated Policy Statements:	N/A
Authorised Owner:	Chief Finance Officer
Authorised Co-ordinator:	EA to CFO
Effective date:	1 st November 2024
Due date for full review:	1 st November 2027
Sub documentation:	N/A

Approval History

Version	Reason for review	Approval Route	Date
1.0	Scheduled review – and update to Procedure template	Operations Committee	15/10/24

1. Introduction

1.1 Purpose

This Procedure exists because the University is required to publish a public procedure relating to its response to the requirements of the Criminal Finance Act 2017 (“CFA”). CFA came into force on 30 September 2017. Part 3 of the Act introduces a new corporate criminal offence of ‘failure to prevent the facilitation of tax evasion’. The legislation applies to all businesses (including universities) and all taxes (including VAT, Income Tax, Corporation Tax, and customs duties). This particular offence is not about the University itself avoiding, evading or underpaying tax, but about the University taking steps to make sure its associated “persons” (which means staff, agents, partners, or sub-contractors) do not help third parties to evade tax.

There are two corporate offences - a domestic tax fraud offence and an overseas fraud offence. A UK incorporated body can be prosecuted for either offence. While the overseas offence is slightly narrower in scope, it still essentially means that universities need to consider the potential for overseas tax evasion as well as UK tax evasion.

The UK Offence requires three stages:

- The criminal tax evasion by a taxpayer under existing law
- The criminal facilitation of the tax evasion by an ‘associated person’ of the ‘relevant body’ who is acting in that capacity, as defined by the Accessories and Abettors Act 1861
- The relevant body failed to prevent its representative from committing the criminal facilities action (legislation from 30 September 2017).

The Overseas Offence requires the same three stages, but there are additional questions to consider determining whether it is an offence under CFA (shown as Stage a and Stage b below):

- The criminal tax evasion by a taxpayer (either an individual or legal entity) under existing law
- The criminal facilitation of the tax evasion by an associated person of the relevant body who is acting in that capacity, as defined by the Accessories and Abettors Act 1861

- Stage a - Would this be a crime if carried out in the UK?
- Stage b - Does the overseas jurisdiction have the equivalent laws at stage 1&2?
- The relevant body failed to prevent its representative from committing the criminal facilities act.

A successful prosecution could lead to:

- An unlimited fine
- A public record of conviction
- Significant reputation damage and adverse publicity.

There is a defence of having reasonable prevention procedures in place.

2. Scope and Exceptions to the Procedure

2.1 Scope

This procedure applies to all members of the University community including subsidiary companies and associated persons. 'University community' includes employees and independent members of the University's Senate, Executive Board, Council and committees.

Any exceptions to this procedure require approval from the Chief Financial Officer.

3. Definitions and Terminology

3.1. Definitions

"Relevant Body" means an incorporated body or partnership.

"Associated Person" means an employee, agent or other person who performs services for or on behalf of the relevant body. This may include, for example, agents, subsidiaries, contractors and subcontractors, recipients of grants, joint venture partners, collaborators of any kind and sources of funding, professional or other services to the University

4. Procedure

4.1. Key principles

Appendix 1 identifies those types of situations when a university employee or associated person could act in a manner to cause the University to breach the Criminal Finance Act 2017. Training and awareness sessions should be completed by Finance staff, Pre-award and post award staff, as staff working at the University who are involved in these processes or activities as part of their role.

The University will maintain a register of possible risks of the facilitation of tax evasion by its staff and associates including agents, contractors, suppliers and intermediaries, as well as listing controls to mitigate those risks, and any actions required to improve these controls. The register will be regularly reviewed and updated (as and when required) in relation to the nature of the specific risks.

The University will assess its risks and review its associated processes and procedures to ensure all steps are taken to prevent facilitation of tax evasion.

The University will regularly review guidance and legislation in relation to the CFA to ensure it is maintaining an appropriate CFA procedure.

Appropriate due diligence will be undertaken on customers of, and suppliers to, the University and its subsidiary companies. This due diligence will be proportionate to the level of perceived risk of the interaction being used to engage in the criminal facilitation of tax evasion.

4.2 Roles and Responsibilities

The University does not condone, and has a zero-tolerance approach to, the facilitation of tax evasion.

The Executive Board is ultimately responsible for:

- Adopting and approving a formal procedure and response plan for alleged breaches
- Ensuring that an adequate and effective control environment is in place
- Ensuring that adequate audit arrangements are in place to investigate suspected concerns.

Line managers are responsible for implementing this procedure. In particular, this involves ensuring that the zero-tolerance approach to the facilitation of tax evasion is adhered to in their team. The practical requirements of line managers are to:

- Have an understanding of the potential risks in their areas and to consider whether processes under their control might be at risk
- Ensure that agents and associated persons are aware of their responsibilities under CFA
- Have adequate processes and controls in place to prevent, deter and detect breaches of procedure
- Be diligent in their responsibilities as managers
- Deal effectively with issues and concerns raised by staff including taking appropriate action to deal with reported or suspected breaches
- Report suspected breaches in accordance with Section 2.2.7 of the Ethical Conduct Policy
- Provide support / resource as required to investigations.

The University expects **all employees** to be responsible for:

- Adhering to the procedures of the University including having a zero- tolerance approach to the facilitation of tax evasion
- Alerting management and / or other contacts should they have concerns or suspect that the possibility of a breach exists
- Being aware of the University policies and procedures to the extent they are applicable to their role.

4.2.1 Responsibility of staff to respond to a suspected facilitation of tax evasion

Members of staff are key to ensuring that the University's stance on facilitation of tax evasion is effective.

All staff members are required to notify immediately the University Secretary General Counsel ("USGC") of any reasonable suspicion of tax evasion. Such notifications should be made in writing (in strict confidence) and should include a brief description of the concern, the estimated scale or scope for loss, any evidence supporting the concern, and details of the suspected perpetrator/s.

Reports made to the USGC under the above procedures will be considered for treatment as a disclosure under the University's Public Interest Disclosure (Whistleblowing) Procedure, where made by an employee or worker of the University.

5. Governance Requirements

5.1. Implementation: Communication Plan

The procedure will be available on the policies page of the University website.

5.2 Implementation: Training Plan

The training will be available from the British Universities Finance Directors Group (BUFDG)

The relevant staff (Finance staff, Pre-Award and post-award staff) will be requested to complete the training and Executive Assistant to the Chief Financial Officer will provide support in monitoring completion.

5.3 Review

This Procedure will be reviewed triennially.

In between, minor changes such as a change of a role or other titles or name which do not change the meaning of the procedure may be made by the Authorised Owner.

Major changes which alter the meaning of the procedure will be submitted via the full approval route.

5.4. Legislatives Context and Higher Education Sector Guidance or Requirements

This procedure has been prepared in accordance with the Criminal Finance Act 2017 (“CFA”).

5.5 Sustainability

This Procedure has no impact on carbon emissions or on energy consumption.

6. Stakeholder Engagement and Equality Impact Assessment

6.1. An Equality Impact Assessment was completed on 01/10/2024 and is held by the Authorised Co-ordinator.

6.2. Stakeholder Consultation was completed, as follows:

Stakeholder	Nature of Engagement	Request EB Approval (Y/N)	Date	Name of Contact
Governance	Review of drafted Procedure	N	07/10/2024	Kelley Padley, Governance Officer
H&S	Review of drafted Procedure	N	01/10/2024	Matthew Purcell, Governance & Risk Assurance
Sustainability	Review of drafted Procedure	N	08/10/2024	Martin Wiles, Head of Sustainability Estates & Facilities Services
Academic Freedom of Speech	Review of drafted Procedure	N	08/10/2024	Abi Bradbeer, AFFE Project Manager

Appendix 1 – Examples of possible tax fraud / evasion

The following are examples of situations when a University employee or associated person would act in a manner to cause the University to breach of the Criminal Finance Act 2017.

1. Deliberate mis-categorisation of an individual as a self – employed contractor rather than employed.

When an employment status tool is completed, i.e. CEST, it is important that this is completed according to the true nature of the relationship with the University. Falsely and deliberately manipulating the answers on the tool so that a response of 'self-employed' is achieved will result in HM Revenue and Customs (HMRC) collecting less National Insurance and potentially lower income tax.

2. Collusion with an overseas agent so that the payment is made to bank account which is not in the name of the agent or company or to a jurisdiction where the agent does not live or work

Collusion could allow the overseas agent to reduce or avoid payment of tax. Supplier inconsistencies need to be queried during the supplier set up process and internally escalated to the Head of Financial Transactions as appropriate.

3. Payment to one third party entity knowing that the goods/services have been provided by another entity with the primary purpose of evading tax

Payments to third parties who have not provided the service, other than factoring arrangements, should be queried and internally escalated to the Head of Financial Transactions as appropriate.

4. Approving a VAT invoice for payment when it is known that the supplier is not VAT registered.

If the supplier is not VAT registered, then the University should not be paying VAT on invoices.

5. Collusion with a third party to deliberately mis-describe a supply of goods or services as a grant rather than a supply of goods or services

This would result in VAT not being charged on the supply resulting in lower VAT being remitted to HMRC. Care must be taken to ensure that grants are genuine and not supplies of goods and services – queries should be raised with the Research Pre-Award team.

6. Collusion with an overseas education establishment to misdescribe the services provided by the University to the overseas establishment so that the overseas establishment avoids having to pay local withholding tax

The overseas establishment advises a University member of staff that by misdescribing the 'teaching services' provided by the University, the overseas establishment can avoid paying overseas withholding tax.

7. Falsely completing zero rating certificates for medical research when the research is not of a medical nature

The University can obtain zero rating on the purchase of certain goods and drugs when undertaking grant funded medical research. Deliberately miscategorising the nature of the goods/services being provided, or the use to which they are to be put, would be a breach.

8. Colluding with an individual so that a payment for goods /services is described as a donation so that the donor can claim tax relief

To be classed as a donation the funds must have been freely given with no obligation on the University to provide goods or services to the donor.

9. Entering into barter arrangements with third parties

A University member of staff arranges for an academic, not employed by Surrey, to undertake work at the University and in return offers the academic free use of University facilities or to pay for attendance at conferences. Barter arrangements need to be avoided as they result in Benefit-in-Kind and VAT liabilities.

10. Using a third party to pay in-country workers on your behalf, where you know that there is a withholding obligation, and that the third party will not comply with that obligation

This would expose the University to the payment of penalties and interests if not complying with withholding obligations. Training expected to be done by: Legal staff.