



22 January 2025

Dear Sir Geoffrey

PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL

We wanted to update you on the Government's plans to address fraud, error and debt across the public sector. Today we introduced the Public Authorities (Fraud, Error and Recovery) Bill to the House of Commons. We know that this Bill will be of interest to your Committee, and we welcome your ongoing engagement as the Bill proceeds through Parliament.

This Government's manifesto outlined that it will not tolerate fraud or waste anywhere in public services and this administration is committed to ensuring that every pound of taxpayers' money is spent responsibly and effectively. This Bill delivers on that commitment and is estimated to deliver benefits of £1.5bn over the next five years, as scored by the independent Office for Budget Responsibility (OBR).

Fraud against the public sector is a significant and constantly evolving challenge that requires a robust and resolute response. This is not a victimless crime. It is our vital public services that suffer, and the taxpayer who loses out. These losses are unacceptable, and waste enormous sums of public money which could be put to good use.

In the past, the focus on stopping fraud and error has been on the areas with the biggest known losses – such as the tax and social security systems. This means many parts of government have limited powers and resources to act on fraud and error and as a result at least £3bn is being lost to fraud and error per year, outside of tax and social security. The NAO has reported on the “increasing propensity for fraud in society” and the need for public sector organisations to be agile and change their approach.

However, addressing fraud and error in the social security system remains a priority. In the social security system, overpayments from fraud and error currently cost the taxpayer around £10bn a year. Since the pandemic, a total of £35bn of taxpayers' money has been incorrectly paid to those not entitled. This level of overpayment is unacceptable, and we must go further in preventing and detecting fraudulent activity; stopping debts from accruing; and recovering monies owed.

Therefore, the Bill will be a cross-government Bill comprising two main parts. Part 1 of the Bill will introduce new powers to enable the Public Sector Fraud Authority (“PSFA”) within the Cabinet Office to investigate public sector fraud outside of tax and social security and

to recover losses that have arisen through fraud or suspected fraud, using its expertise to act on behalf of other parts of government. Part 2 introduces powers to enable the Department for Work and Pensions (DWP) to better detect and prevent overpayments, more effectively investigate suspected fraud and recover more debts owed to the taxpayer.

The PSFA measures in Part 1 of the Bill will address a gap in the public sector response to fraud against the public sector, where Departments often rely on the Police force to pursue cases on their behalf. This Part contains provisions in four key areas – new Information Gathering powers; new powers of Entry, Search and Seizure; new rights and powers to recover debt; and a new framework of Civil Penalties. The measures will reduce the burden on the civil and criminal justice systems and serve as an important deterrent against fraud in the public sector. These powers are based on similar powers held by the Ministers of other government departments, specifically HM Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP). The PSFA measures will also be strictly limited to specific Authorised Officers and Authorised Investigators within the PSFA.

Importantly, these measures will also enable the government to tackle Covid fraud, including by allowing 12 years for claims to be made to get defrauded money back through civil means, so we have more time to take action. It will prepare us better for any future emergency by having powers and a capability in place that can be targeted and upscaled to take early and efficient action to protect taxpayers' money at times of national need.

The DWP measures in part 2 of the Bill consists of provisions in five key areas – new Information Gathering powers; new powers of Entry, Search and Seizure; the Eligibility Verification Measure; new powers to improve the DWP's recovery of debt and changes to the Administrative Penalty regime. The powers in this Bill will help us prevent, detect and stop fraud, help to protect claimants by preventing those who have made genuine mistakes from building up debt while also bringing greater fairness to debt recovery by giving DWP new powers to recover debt from those who are not on benefits or PAYE, who can pay but deliberately avoid doing so. As is the case now, any decision taken about someone's benefit entitlement will always be made by a human being. New independent oversight will provide transparency and accountability on DWP's use of the new powers to ensure that they are used proportionately and effectively.

This new legislation, alongside new investment in counter-fraud staff and preventative measures in DWP, demonstrates this Government's commitment to addressing overpayments in the social security system. The Department has committed to further fraud, error and debt measures at Autumn Budget 2024; these will deliver an additional £7.1bn OBR scored savings over the next 5 years.

The Bill includes new and important safeguards, including review mechanisms and independent oversight on the face of the Bill, to give greater confidence to claimants and the public that the powers are being used proportionately and effectively. In doing so, this Bill will provide confidence to taxpayers that the Government is taking every step to protect public services and stop those who exploit the system.

We have provided some further information on each of these below and welcome continued discussion.

Yours sincerely,

Handwritten signature of Liz Kendall in black ink.

RT HON LIZ KENDALL MP
Secretary of State for Work
and Pensions

Handwritten signature of Georgia Gould in black ink.

GEORGIA GOULD MP
Parliamentary Secretary at the
Cabinet Office

Bill Measures

Cabinet Office (PSFA) Measures

Independent oversight and statutory body provision

The Bill includes provisions for independent oversight of the powers to ensure they are used fairly, proportionately and effectively, with the Minister being able to appoint an “independent person” to carry out reviews of the functions under Part 1.

The Bill also includes provisions for the PSFA to become a statutory body and the ability for the Minister for the Cabinet Office to transfer functions in the Bill to be exercised by the PSFA.

Information sharing and gathering powers

The Bill gives Authorised Officers (AOs) within the PSFA (i.e. officials of sufficient grade, required to comply with relevant required training and qualifications and subject to both internal and external oversight) information sharing and information gathering powers. This includes powers to compel the production of information and the power to issue a financial civil penalty for failure to comply with the request for information. They will be able to receive information from public authorities, as well as the ability to share onward relevant information to any other person within the scope of the Bill – similar to the models used by the National Crime Agency and Serious Fraud Office. The Bill includes adding the Cabinet Office to Schedule 4 of the Investigatory Powers Act 2016 to give the Cabinet Office lawful authority to collect communications data (subject to obtaining authorisation in the course of criminal investigations from the Investigatory Powers Commissioner) which is an essential tool for investigations and routinely used as evidence.

Powers of entry, search and seizure

The Bill will enable Authorised Investigators (AIs) within the PSFA to apply to a court for warrants to enter premises, search for and seize evidence in offences of fraud against a public authority. The Bill also makes provisions to obtain evidence through a court production order and for the retention and disposal of seized evidence.

Rights and powers to recover

The Bill contains rights and provisions for Authorised Officers (AOs) within the PSFA, acting on behalf of another public authority, to recover: recoverable losses, civil penalties (including any late payment interest), and relevant costs incurred by the PSFA in exercising the recovery powers. The AOs will be able to seek recovery of the recoverable loss either with the agreement of the liable person that the amount is recoverable or through a final determination from a court or tribunal that the amount is recoverable. In the case of civil penalties they may only recover where the time for appealing the penalty has passed or an appeal against a penalty has been abandoned or finally determined.

Once the right to recover has been established, AOs will be able to recover directly from an individual’s earnings via a Deduction from Earnings Order and directly from bank

accounts via Lump Sum Direct Deduction Orders for specified amounts or Regular Direct Deduction Orders for regular deductions. The powers relate only to civil investigations to recover debt that has arisen through fraud or suspected fraud identified through PSFA investigation, or from an application of a penalty on behalf of Government departments. This will improve fairness in the Government's ability to recover public money that has been overpaid from those who currently can repay but refuse to.

A new civil penalties regime

The Bill introduces a framework of civil penalties that Authorised Officers (AOs) within the PSFA can impose for fraud against public authorities. This will act as an alternative mechanism to dealing with fraud cases via criminal prosecution, whilst serving as an important deterrent against fraud in the public sector.

DWP Measures

Independent oversight

As DWP introduces additional powers it is necessary that there is appropriate oversight to ensure the powers are used proportionately and effectively. The Bill introduces new and important independent oversight so that this is the case.

An independent body will be appointed by the Secretary of State to inspect on the use of DWP's investigations powers, carry out reviews and to report on whether the powers are effective. The Secretary of State will publish this report and lay it in Parliament.

Separately, an independent person will be appointed to oversee the use of the new EVM. This person will assess whether the powers are being delivered in line with the legislation, any codes of practice and other relevant documents, and whether they are effective in identifying incorrect payments. Their report will also be published and laid before Parliament by the Secretary of State.

Finally, the Bill also makes provision to enable the IOPC to carry out the handling of the most serious of complaints against DWP in relation to activities under the new powers of entry, search and seizure. DWP will continue to provide routes for the mandatory reconsideration and routes of appeal to the courts for overpayment and debt recovery decisions. Final decisions will always be taken by a human.

Information gathering powers

Currently during investigations DWP can request information from a limited number of third parties and is unable to compel evidence for investigations into fraud on wider payments such as grants. With little ability to enforce an electronic response, this often leaves the Department using outdated communication methods. Fraud has become more sophisticated and without reform DWP cannot properly keep pace with its changing nature. The Bill provisions will align DWP with other government departments and public bodies in the way it gathers information to prove or disprove suspected fraud. It creates a single approach for gathering information from all information holders, with clear exemptions and allows for requests and responses to be received digitally by default. The provisions also allow for these powers to be extended to any payment, credit, or grant, that is administered and investigated by DWP where fraud is suspected. This measure will help DWP keep pace with offenders who exploit the social security system by improving our information gathering powers to investigate suspected fraud and making it clearer for organisations to respond.

Eligibility Verification Measure (EVM)

Benefit claimants have a responsibility to inform DWP of changes in their circumstances that may affect their eligibility for benefit or their level of entitlement. However, for some rules around capital limits (savings) or time spent abroad, DWP is not able to independently verify whether these criteria are being met. This measure will help us support claimants by identifying errors earlier and prevent those who have made genuine mistakes from building up debt. It will harness new sources of data.

This measure will provide DWP with the power to require that banks and other financial institutions provide information to help verify claimant's entitlements through the issuing of

“Eligibility Verification Notices”, which will set out relevant criteria. Banks and financial institutions will look at the data they hold against specific eligibility notices and highlight if these criteria have been met. Direct access will not be given to any accounts, minimal information will be shared and only used to support further enquiry into a potential overpayment if needed.

DWP initially wants to apply the power to Universal Credit, Pension Credit, Employment and Support Allowance, Passported Housing Benefit and has made provision for further benefits to be added, with the express exemption of State Pension, which is excluded.

This power will help identify incorrect payments so claimants are paid accurately, individual debt is minimised, and potential fraud can be identified and investigated. The Bill provides limitations on the use of data, safeguards and provision for independent oversight. An independent person will be appointed by the Secretary of State to carry out reviews and report to Parliament on DWP’s use of the power in line with the legislation, code of practice and other relevant documents.

Entry, Search and Seizure Measure

At present, DWP leads all aspects of fraud investigations until the Police undertake the entry, search of the premises, and seizure of any items that may support the investigation at DWP’s request. As a result, DWP is reliant on the Police for key aspects of activity.

The Bill contains provisions to help DWP take greater control of investigations into serious crimes which often involve criminal gangs defrauding the taxpayer. It will enable DWP investigators, once professionally trained to industry standards (including those set by the College of Policing), to apply to a court for warrants to enter, search for and seize items in the most serious of cases of economic and serious organised fraud. The Bill also makes provisions to obtain evidence through a court production order and for the retention and disposal of seized evidence.

Modernising these powers will align DWP with other government departments. Police will continue to carry out arrests of suspects and deal with any other criminal activity unrelated to DWP fraud found at a premises. Independent inspection and a complaints provision are also included with the complaints provision provided for by the Independent Office for Police Conduct (IOPC) and the Police Investigations and Review Commissioner (PIRC) in Scotland.

Debt recovery

At present, where an individual does not repay their debt voluntarily, DWP can only recover debts from individuals in receipt of benefits, or from individuals enrolled in PAYE employment. Where an individual is no longer in receipt of benefit or in PAYE employment but has other income or capital, the DWP is unable to recover debt or undertake enforcement activity without court action if the individual refuses to pay voluntarily. This means that some individuals who can pay deliberately choose not to. This measure will bring greater fairness to the recovery of debt.

The provision includes power to recover debt directly from an individual’s bank accounts via Lump Sum Direct Deduction Orders (“LSDDO”) for specified amounts, and Regular Direct Deduction Orders (“RDDO”) for regular deductions, without having to apply via the courts. These direct recoveries will only happen once affordability and vulnerability checks

have been carried out. Provision in the Bill will also enable the DWP to apply to the court for a Suspended Driving Disqualification Order to disqualify a debtor from holding a driving licence. Where a conditional disqualification does occur, it is temporary, and the debtor can have it suspended again by making the repayments. These powers will be used as a last resort, and are a proportionate response to deliberate, sustained evasion of debt repayment.

At any time, the customer can contact DWP to arrange a reasonable, affordable and voluntary repayment plan and the application of the power would cease. Application of the powers will be governed by a public code of practice. This will bring DWP's debt recovery powers broadly in line with other government departments.

Administrative Penalties

Currently, the Administrative Penalty is confined to use in cases of benefit fraud only. This means that those individuals who commit fraud through non-benefit payments, such as grants, cannot be offered an Administrative Penalty. This Bill makes provision to extend the Administrative Penalty to non-benefit payments so that can be investigated and recovered through the same framework as benefit payments. It ensures that no one found to have committed fraud against the social security system avoids punishment.

An Administrative Penalty can be offered as an alternative to prosecution in cases of benefit fraud where there is clear evidence of criminality, and the pursuit of court prosecution may not be cost or time effective. If the Administrative Penalty is not accepted DWP will pursue a prosecution through the courts.

In addition, DWP are removing the additional four-week loss of benefit (LOB) where a claimant accepts an Administrative Penalty. Currently some can find themselves facing a financial penalty and a LOB sanction alongside repaying the overpayment that may put them at risk of hardship. Therefore, the LOB will be reserved for the most serious cases of fraud and crime taken to prosecution.