

BIG BROTHER WATCH

**Big Brother Watch
Briefing on the Public
Authorities (Fraud, Error
and Recovery) Bill for
Report Stage in the
House of Lords**

October 2025

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

Contact

Jasleen Chaggar

Legal and Policy Officer

Direct line: 07935 926492

Email: jasleen.chaggar@bigbrotherwatch.org.uk

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SUMMARY

Big Brother Watch is concerned that the Public Authorities (Fraud, Error and Recovery) (PAFER) Bill threatens to usher in an unprecedented system of mass financial surveillance; create a second-tier justice system for people on the poverty line; undermine the presumption of innocence; result in serious mistakes risking the freedoms and funds of our country's elderly, disabled and poor; and turn Britain's once-fair welfare system into a digital surveillance system.

- **MASS BANK SPYING POWERS:** The Bill would introduce new powers to force banks to monitor all bank accounts to find welfare recipients and people linked to those payments, potentially including appointees and landlords, and report anyone who triggers potential fraud indicators (such as frequent travel or savings over a certain amount) to the Department for Work and Pensions (DWP). The powers disproportionately target some of the poorest and most in need of support in our society, expose us to suspicionless surveillance and needless investigations arising from algorithmic error and undermine the presumption of innocence. They are also likely to be ineffective in tackling serious fraud, meaning it is most likely those who have made administrative errors that will be caught up by these surveillance powers.
- **DIRECT DEDUCTION ORDERS:** The Bill empowers the DWP to deduct funds directly from a welfare debtor's bank account where they have been overpaid as the result of fraud, oversight or error. The measure lacks judicial scrutiny and expands financial surveillance by requiring banks to hand over private financial information about debtors – without their knowledge – in order to determine whether they can afford to repay the recoverable amount.
- **DRIVING LICENCE DISQUALIFICATIONS:** The Bill allows DWP to apply to a court to have a debtor disqualified from driving. Given that the measure is proposed as a last resort, this measure represents what is in effect a poverty penalty, with only those with limited or exhausted funds being penalised with a decision that could have a significant effect on their lives.

RECOMMENDATIONS

We urge Peers to:

Eligibility Verification Notice

- **Support amendments 44 and 65 in the name of Baroness Kramer's, rejecting the mass bank spying powers and opposing Clause 75 and Schedule 3:** This recommendation is supported by Age UK, All Together in Dignity – Fourth World, Amnesty International UK, Campaign for Disability Justice, Child Poverty Action Group, Defend Digital Me, Difference North East, Disability Rights UK, Gingerbread, Greater Manchester Coalition of Disabled People (GMCDP), Inclusion Barnet, JUSTICE, Migrants' Rights Network, National Survivor User Network, One Parent Families Scotland, Older People's Advocacy Alliance (OPAAL), Privacy International, Public Law Project, Richmond Aid, Single Parent Rights, Silver Voices, West of England Centre for Inclusive Living (WECIL), Women's Budget Group.
- **Support amendment 50 in the name of Baroness Fox ensuring that anyone identified by an EVN is informed that they have been flagged:** This recommendation is supported by Citizens Advice South Warwickshire (CASW), Disability Rights UK, Disabled People Against Cuts (DPAC), Public Law Project, JUSTICE, OPAAL, Silver Voices and WECIL.
- **Support amendment 52 in the name of Lord Vaux to ensure that a flag does not constitute grounds for suspicion and any flagged accounts must be reviewed by a human being (i.e., not automated) with the appropriate seniority and experience:** This recommendation is supported by CASW, Disability Rights UK, DPAC, Public Law Project, JUSTICE, OPAAL, Silver Voices and WECIL.
- **Support amendment 62 in the name of Baroness Fox ensuring that the Code of Practice contains provisions for the scrutiny of algorithms used by banks and the effectiveness of the EVN measure:** This recommendation is supported by CASW, Disability Rights UK, DPAC, Public Law Project, JUSTICE, OPAAL, Silver Voices and WECIL.

Debt Recovery Powers

- **Support amendment 92 in the name of Baroness Kramer, which would prevent the DWP from being able to compel banks to provide sensitive financial information for the exercise of direct deduction powers:** This will prevent the DWP from being able to compel banks to secretly disclose the

bank statements of benefits recipients to decide whether to issue a direct deduction powers, which constitutes an intrusive invasion of privacy.

- **Lay an amendment which would remove the driving disqualification powers at clause 89 and Schedule 6:** This will prevent the Secretary of State from being able to apply to the court to disqualify a benefits recipient who has been overpaid – whether through fraud, misstatement or oversight – from holding a driving licence.

INTRODUCTION

1. Big Brother Watch welcomes the opportunity to provide a written briefing for Members of Parliament on the Public Authorities (Fraud, Error and Recovery) (PAFER) Bill ahead of Report Stage in the House of Lords on Wednesday, 15th October 2025. Big Brother Watch is concerned that the PAFER Bill would introduce an unprecedented system of mass financial surveillance; create a second-tier justice system for people on the poverty line; undermine the presumption of innocence; result in serious mistakes risking the freedoms and funds of our country's elderly, disabled and poor; and turn Britain's welfare system into a digital surveillance system.
2. The Bill affects millions of people and represents the most sweeping expansion of financial surveillance in recent history. The Bill endows the Public Sector Fraud Authority (PSFA) and DWP with expansive new powers. In a liberal democracy, the number of governmental bodies who are bestowed with policing powers to search homes and seize items should be limited. The Bill does the opposite, by granting DWP and PSFA officials powers to enter the homes of those suspected of benefit fraud.
3. The PAFER Bill also shortsightedly conflates fraud and error, meaning that welfare recipients who have been overpaid through no-fault of their own – or even as a result of the government's own errors – will be subjected to intrusive surveillance and policing powers. These powers are made even more concerning given that the Government already has many powers with which it can investigate and prosecute welfare fraud.
4. The Bill creates a new regime of financial surveillance that would turn most of the financial institutions we rely on into de facto government inspectors, scouring our financial records – reversing the presumption of innocence by subjecting us to surveillance absent any suspicion. These punitive measures will disproportionately effect disabled people, the elderly, carers, those looking for work and the poorest in society. We are also concerned about the powers to seize funds directly from bank accounts without judicial scrutiny and disqualify driving licences from those who have made administrative errors and oversights.
5. The legislation engages equality rights provided in the Equality Act (2010), and privacy and equality rights enshrined in Article 8 and 14 of the

European Convention on Human Rights (ECHR). Any interference with these rights is only lawful when there is a legal basis and it is necessary and proportionate.¹ The presumption must rest in favour of protecting these rights.

6. The proposed safeguards on the Bill are largely ineffective and insufficient. The appointment of Independent Persons to oversee the various powers in the Bill operate after the fact, meaning that they will be ineffective in preventing harm as soon as the legislation comes into force in Autumn 2025. The government should not defer vital legal protections and safeguards, which should be enshrined in legislation, to promised but, as of yet, unseen Codes of Practice.
7. Big Brother Watch believes that the PAFER Bill is not fit for purpose. In order to protect the individual and collective privacy rights of the British public, safeguard the rule of law and uphold key rights to equality and non-discrimination, Part II of the Bill must be majorly revised in the course of its passage through parliament. This briefing seeks to draw attention to key threats to privacy and data protection, equality, and other human rights raised throughout the Bill.

¹ The Human Rights Act, EHRC: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>.

FINANCIAL SURVEILLANCE

Clause 75 and Schedule 3 – Eligibility Verification

We urge Peers to:

- **Support amendments 44 and 65 in the name of Baroness Kramer’s, rejecting the mass bank spying powers and oppose Clause 75 and Schedule 3:** This recommendation is supported by Age UK, All Together in Dignity – Fourth World, Amnesty International UK, Campaign for Disability Justice, Child Poverty Action Group, Defend Digital Me, Difference North East, Disability Rights UK, Gingerbread, Greater Manchester Coalition of Disabled People (GMCDP), Inclusion Barnet, JUSTICE, Migrants’ Rights Network, National Survivor User Network, One Parent Families Scotland, OPAAL, Privacy International, Public Law Project, Richmond Aid, Single Parent Rights, Silver Voices, WECIL, Women’s Budget Group.
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Briefing: Key issues

EXISTING POWERS

1. **The Government has existing powers to investigate the accounts of fraud suspects.** It is right that fraudulent uses of public money are robustly dealt

with and the Government already has significant powers to review the bank statements of welfare fraud suspects under the Social Security Fraud Act 2001 and the Social Security Administration Act 1992 (SSAA). Under current rules, the Department for Work and Pensions (DWP) is able to request bank account holders' bank transaction details on a case-by-case basis if there are reasonable grounds to suspect fraud. On DWP's admission:

*"DWP currently has the power to compel prescribed information holders to share data on individuals if fraudulent activity is suspected but does not have the power to compel Third Parties to share data that is signalling potential signs of fraud and error on 'persons unknown' at scale."*²

Such a vague and intrusive surveillance project has not been enabled thus far for very good reason.

2. **There are already multiple powers and processes by which DWP exchanges data with third parties.** For example, HMRC shares banking data with DWP on an annual basis and the Proceeds of Crime Act 2002 requires banks and building societies to notify law enforcement of suspicious activity.³ The Carers' Allowance scandal exposed that the DWP already has internal tools capable of detecting overpayments in real-time, yet consistently failed to act on them – leaving carers unknowingly accumulating debt.⁴ The Government must reduce benefit fraud and error – but there are more effective and proportionate means, including the proper use of existing powers, of doing so. Indeed, this was reflected by Paula Barker MP during Second Reading of the PAFER Bill, who emphasised that the Government "already have the powers, under existing legislation, to investigate those who are suspected of fraud. That raises the question of why the Bill is needed. It feels like a hammer to crack a nut."⁵

² Department for Work and Pensions, Third Party Data Gathering Impact Assessment (IA) (September 2023), https://assets.publishing.service.gov.uk/media/6564bab01524e6000da10168/DWP_third_party_data_impact_assessment_november_2023.pdf, 10.

³ Ibid.

⁴ BBC, Extra staff to check Carers' Allowance overpayments, 15 April 2025, <https://www.bbc.co.uk/news/articles/czrv653pv0po>.

⁵ HC Deb, 3 February 2025 vol. 761, col.621: [https://hansard.parliament.uk/commons/2025-02-03/debates/77054A7F-DE22-4477-9E06-2E33B6125D5C/PublicAuthorities\(FraudErrorAndRecovery\) Bill](https://hansard.parliament.uk/commons/2025-02-03/debates/77054A7F-DE22-4477-9E06-2E33B6125D5C/PublicAuthorities(FraudErrorAndRecovery) Bill)

EFFECTIVENESS

3. **This extraordinary power is entirely disproportionate to the revenue the Government expects to raise via its use.** The Government's own analysis shows that, if it works as hoped, this unprecedented bank intrusion is expected to generate approximately £133m net annual revenue over the next five years – this would mean recovering less than 1/73rd or less than 1.4% of the estimated annual loss to fraud and error.⁶ During Report Stage in the House of Commons, John Milne MP questioned whether the “alleged rewards of this legislation [will] ever match the scale of the imposition on our civil liberties.”⁷ Helena Wood, Director of Public Policy and Strategic engagement at Cifas, a non-profit with expertise in eliminating fraud and financial crime, questioned the effectiveness of the EVN measures during her evidence session before the PAFER Bill Committee:

“Individuals now have masses of bank accounts across five, six, seven and up to 10 or 20 institutions. By targeting one institution, are you really going to get a full picture anyway? If this is to be proportionate, we have to be clear that intrusion is proportionate and is going to be effective in practice. I am yet to see the evidence that it is, if it is used in a scattergun way.”⁸

Minister for Transformation, Andrew Western MP, who led the Bill in the House of Commons, conceded that the DWP “will not have full sight of somebody’s accounts if they bank with more than one institution.”⁹ In other words, the expansive financial surveillance powers will only be effective to the extent that a benefits recipient retains all their capital savings with one financial institution. Of course, serious fraudsters and criminals are unlikely to operate in this way – creating an obvious loophole that they will no doubt exploit.

4. **It must also be recognised that DWP is currently responsible for record underpayments.** In comparison, benefits underpaid by the Government were a record £4.2bn in 2023-4 leading to criticism from the Public

⁶ DWP, Public Authorities (Fraud, Error and Recovery) Bill: Impact Assessment, 21 January 2025, p16, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>; The £133m net annual revenue figure is calculated by taking the DWP’s expected savings (£900 million over 5y divided by 5 to give a total of £180 million) and deducting the expected costs (£420 million over 9yrs divided by 9, to give a total of £46.6m pa). The 2024 estimated loss to fraud and error is £9.7bn (p.8, para. 18 of the Impact Assessment). £133m is 1.37% of £9.7bn.

⁷ HC Deb, (n.4), col 257.

⁸ Public Bill Committee (First Sitting), 25 February 2025, (n.3), col 17.

⁹ Ibid, col 237.

Accounts Committee.¹⁰ However, DWP is only seeking to use the proposed power to “to highlight where someone may not be meeting specific eligibility rules for the benefits they are being paid”¹¹ – not to pay the billions of pounds underpaid and owed to citizens. Whilst both overpayments and fraud are important, fraud costs the public purse whereas underpayment errors can cost lives. In any event, neither of these complex issues justifies or can be appropriately addressed by mass financial surveillance.

MASS SUSPICIONLESS SURVEILLANCE

5. **This power would force banks and building societies to trawl all customers' accounts in search of people connected to benefits payments.** The proposed measure forces third party organisations to trawl all customers' accounts to “verify a claimant’s entitlements to benefits.”¹² This new power would amend the Social Security Administration Act 1992 (‘SSAA’) to allow DWP to access the personal data of welfare recipients by requiring the third party served with an eligibility verification notice (EVN) – such as a bank, building society or credit unions – to conduct mass monitoring without suspicion of fraudulent activity. Once issued, an EVN requires the receiver to give the Secretary of State “specified details” about the account holder, account, and “how the account meets the eligibility criteria.”¹³ The extent of such personal details is not specified on the face of the Bill.

In order to conduct this highly complex monitoring and provide such extensive customer information to DWP, the bank will have to process the data of all bank account holders and run automated surveillance scanning according to unknown search criteria supplied by DWP. During the Second Reading debate of the Conservative Government’s failed Data Protection and Digital Information (‘DPDI’) Bill, Lord Vaux warned that the proposal for almost identical mass bank spying powers “constitutes a worrying level of creep towards a surveillance society.”¹⁴ John McDonnell MP reiterated a

¹⁰ Committee of Public Accounts, DWP Customer Service and Accounts, 2023–2024, Sixth Report of Session 2024–2025, 31 January 2025, p1, <https://publications.parliament.uk/pa/cm5901/cmselect/cmpubacc/354/report.html>.

¹¹ Public Authorities (Fraud, Error and Recovery) Bill Impact Assessment, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, 8.

¹² Explanatory Notes: Public Authorities (Fraud Error and Recovery) Bill, para 41, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

¹³ At newly inserted Sch. 3B(1)(3) of PAFER.

¹⁴ HL Deb 19 December 2023 vol. 834, col.2185: <https://hansard.parliament.uk/lords/2023-12-%2019/debates/2960AC9B-D86E-4EA1-8E4E->

similar point during Second Reading of the PAFER Bill, calling the powers a “mass surveillance exercise,”¹⁵ and during Report Stage, Jon Trickett MP emphasised that “millions of innocent people whose behaviour has attracted no suspicion at all will be subject to intrusion into their bank accounts.”¹⁶ Several witnesses also highlighted the untargeted nature of the measure whilst giving oral evidence to the Public Bill Committee. Helena Wood, Director of Public Policy and Strategic Engagement at Cifas, emphasised, “this is very much at risk of being a blanket, phishing-style power without any recourse to the limitations and the bars that others have to reach to use other powers that would be either a civil or criminal investigation.”¹⁷ In a similar vein, Rick Burgess, representing the Greater Manchester Coalition of Disabled People (GMCDP) stated, “when you enter a trawling operation, you are not targeting it in any way; you are simply looking at everyone.”¹⁸

6. **This is a mass data trawling power targeted at recipients of Universal Credit, Employment and Support Allowance and Pensions Credit.** Schedule 3 of PAFER would add new Schedule 3B to the SSAA; paragraph 1(2)(b)(i) states that a “relevant account” that can be flagged to the government includes any account into which any specified relevant benefit is paid, and the other accounts of that account holder (Sch. 3B(1)(7)). Approximately 9.4 million people are in receipt of a benefit currently specified by the Bill – which amounts to 1 in 8 people in the UK.¹⁹ Whilst the range of benefits to which these powers apply is already broad, sub-paragraph 19(2) of the proposed Schedule 3B of the SSA would permit additional types of benefits administered by the DWP to be added to the definition. This leaves the door open to even more benefits recipients being affected by these powers.

During Second Reading in the House of Commons, David Chadwick MP emphasised that the measure,

“risks creating a two-tier society where certain groups are subjected to intrusive financial monitoring by the state while others

[F3198BEE702F/DataProtectionAndDigitalInformationBill](#)

¹⁵ HC Deb, (n.8), col.618.

¹⁶ HC Deb (n.10), col 251.

¹⁷ Public Bill Committee (First Sitting), 25 February 2025, (n.12), col 15.

¹⁸ Ibid, col 68.

¹⁹ Gov.uk, DWP Benefits Statistics, August 2024, <https://www.gov.uk/government/statistics/dwpbenefits-statistics-august-2024/dwp-benefits-statistics-august-2024>.

*are not, which would undermine the principles of equality and fairness that our society is built on.”*²⁰

Further, because in some circumstances benefits can be paid into a third party’s bank account, such as a parent, partner, other appointed person, joint account, or landlord (where claimants opt for landlords to receive the housing costs element of their Universal Credit directly), according to Sch. 3B paragraph 1(2)(b)(i) all of these people’s accounts will also be targeted for surveillance and eligibility verification, despite the fact they are not themselves benefits claimants, meaning serious errors are likely.

7. **This would be a precedent-setting power that enables intrusive generalised financial surveillance across the population – not restricted to serious crime, or even crime – but permissible in relation to general administration.** Sub-paragraph 1(1) of proposed new Schedule 3B of the SSAA imposes only one purpose limitation: that the Secretary of State may exercise their power to issue an EVN “for the purposes of identifying, or assisting in identifying, incorrect payments of a relevant benefit.” This is unlike any other surveillance legislation – there is no crime threshold to merit the financial privacy intrusion at all. The Government has been explicit that the power is designed to target error in addition to potential fraud, which accounts for almost a quarter of the cost of overpayments,²¹ and includes DWP’s own error. It would be wholly inappropriate, and set a disturbing precedent, to use mass financial surveillance powers to administrate a government department’s errors. Gill German MP raised this point during Second Reading of the Bill, stating that the lack of differentiation between fraud and error means that “there is a risk of penalising individuals who have simply struggled to navigate the system.”²² During Committee Stage, Sian Berry MP echoed these concerns, explaining that the powers would be used, “at scale to monitor the private bank accounts of people who need the support of society and have done absolutely nothing to arouse suspicion.”²³

²⁰ HC Deb (n.18), col.605.

²¹ Fraud and error in the benefit system, Financial Year Ending (FYE) 2024, 16 May 2024, DWP: <https://www.gov.uk/government/statistics/fraud-and-error-in-the-benefit-system-financial-year-2023-to-2024-estimates/fraud-and-error-in-the-benefit-system-financial-year-ending-fye-2024#total-estimates-of-fraud-and-error-across-all-benefit-expenditure:~:text=all%20benefit%20expenditure.-,Overpayments,-The%20total%20rate>

²² HC Deb, (n.19), col.600.

²³ Public Bill Committee (Eighth Sitting), 25 February 2025, (n.21), col 233.

8. **Even in the context of crime, this suspicionless surveillance power would be an assault on the presumption of innocence.** Big Brother Watch finds it wholly inappropriate for the Government to order private banks, building societies and any other investment account to conduct mass, algorithmic, suspicionless surveillance. These unprecedented powers were accurately described by Lord Vaux as “draconian”²⁴ and by Baroness Young as a “Big Brother mechanism”²⁵ under the DPDI Bill. The government should not intrude on the privacy of anyone’s bank account without very good reason and a strong legal justification, whether a person is receiving benefits or not. In written evidence to the Public Bill Committee, cross-party law reform and human rights organisation, JUSTICE, emphasised that the “requirement for reasonable grounds is a well-known legal requirement in the context of state investigations: it is a safeguard to protect individuals from baseless state interference and fishing expeditions.”²⁶ During Report Stage in the House of Commons, Neil Duncan-Jordan MP, expressed his view that “it is not the purpose of banks to act as an arm of the state, and compelling them to do so sets a very dangerous precedent that we in this House need to be aware of.”²⁷
9. **These proposals do away with the long-standing democratic principle in Britain that intrusive state surveillance should follow suspicion rather than vice versa – as such, the power undermines the presumption of innocence.** Kirsty Blackman MP raised this point during the Bill’s Second Reading, stating that the legislation will “treat people as guilty rather than begin from the point of view that they are innocent.”²⁸ People who are disabled, sick, carers, looking for work, or indeed linked to any of those people should not be treated like criminals by default.

ARTICLE 8 PRIVACY AND DATA PROTECTION ISSUES

10. **The proposed powers are disproportionate and may be an unlawful breach of individuals’ right to privacy protected by the Human Rights Act.** Legal advice produced by privacy experts Dan Squires KC and Aidan Wills of

²⁴ HL Deb 19 December 2023 vol. 834, col. 2184-2185:
<https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/%20DataProtectionAndDigitalInformationBill>

²⁵ Ibid, col. 2179-2180.

²⁶ JUSTICE, Written Evidence to Public Bill Committee: Public Authorities (Fraud, Error and Recovery) Bill, House of Commons, Committee Stage, 3 March 2025, para 8,
<https://bills.parliament.uk/publications/59503/documents/6151>.

²⁷ HC Deb, (no. 19), col 252.

²⁸ HC Deb (n.26), col.609.

Matrix Chambers in relation to the previous iteration of the mass bank spying measures in the DPDI Bill warned that the powers could breach privacy rights as well as individuals' rights to freedom of expression, association and assembly, and protection from discrimination.²⁹ This legal opinion was widely cited in the parliamentary debates on the mass bank spying powers. Whilst we cannot of course apply this legal opinion to the redrafted powers, the substantial issues are the same and the advice remains instructive on the human rights issues invoked by such suspicionless mass financial surveillance. In Big Brother Watch's view, the powers are disproportionate and in fact privacy-altering.

11. The proposed powers may involve the processing and exchange of sensitive personal data and transaction data. Although the new powers ostensibly contain a prohibition on (i) the Secretary of State requiring and (ii) the banks giving special category data or transaction information, this does not prevent DWP from requesting that special category or transaction information, under its existing powers, once it receives the name and account number from a bank. In other words, this is an ineffective safeguard, because it can be easily overridden by a cyclical process in which a bank gives DWP a flagged individual's name, then uses that information to request more personal data from the bank. Such bank intrusion powers are highly vulnerable to mission creep/being repurposed for further policy functions.

12. The proposed power contains insufficient oversight, including of the unspecified "eligibility" search criteria or algorithms involved. Although the explanatory notes offer search criteria examples of capital holdings or the legal limit for abroad stays,³⁰ there are no provisions to limit the criteria or provide transparency of them. During Committee Stage in the House of Lords, Baroness Fox tabled an amendment that would require publication of the eligibility indicators, arguing that transparency was essential, "for them to be accountable".³¹ In response, Baroness Sherlock declined, suggesting that publishing the indicators could "help those who want to commit fraud to circumvent the measure."³² However, since these indicators simply reflect pre-existing eligibility criteria for receiving

²⁹ Legal Opinion: Financial Surveillance Provisions Under the Data Protection and Digital Information Bill – Dan Squires KC and Aidan Wills, Matrix Chambers, 11 April 2024: <https://bigbrotherwatch.org.uk/wp-content/uploads/2024/04/DPBIB-Financial-Surveillance-MatrixLegal-Advice-for-Big-Brother-Watch.pdf>.

³⁰ Explanatory Notes, (n.15), para 598.

³¹ HC Deb, (no. 19), 364GC, 372GC.

³² Ibid, 371GC.

benefits, they ought to be publicly accessible already. Given the complexity of benefits eligibility, individuals' varied circumstances and the population's financial accounts and joint accounts, it is unclear and un evidenced that banks will be better placed than DWP to conduct these complex assessments via secret, unconsented and automated bank spying. Alex Rothwell, Chief Executive of the NHS Counter Fraud Authority acknowledged this reality in the context of the welfare system during his evidence session before the Public Bill Committee, "People have complex lives—perhaps it is not as straightforward as how much capital is in a bank account at a particular time. I think the powers need to be exercised very carefully."³³ The Bill in fact permits very broad search criteria, given that the broad purpose of the regime is "to support further inquiry into a potential overpayment if needed."³⁴ The lack of accountability means that the scope of eligibility criteria could change at any time. In any event, banks will be required to process highly personal transactional data in ways their customers neither expect nor consent to.

13. The provision of an Independent Person is an insufficient safeguard.

Clause 75 of the Bill requires the Secretary of State to appoint an independent person to review the exercise of their functions under the new Sch. 3B of the SSAA 1992 and publish an annual report. However, the review is limited to the compliance of the Secretary of State and affected banks etc. with the powers in Sch. 3B and the effectiveness of the powers. There is no information about the appointment of the independent person, what qualifications they may require, or what resources they will be given. During Report Stage, Steve Darling MP emphasised, "We welcome the independent reviewer of the Bill, but the Secretary of State will be able to appoint their own independent reviewer; we do not welcome the Secretary of State effectively marking their own homework by making the appointment themselves."³⁵

In reviewing compliance with very broad powers – the lowest threshold for conduct and indeed a legal necessity – the role functions more towards enforcement of these disturbing powers than accountability of them. A finding that the powers have been ineffective in "assisting in identifying incorrect payments of relevant benefits" (s121DC(6)(c) of the SSAA as

³³ Public Bill Committee (First Sitting), 25 February 2025, (n.27), col 23.

³⁴ Explanatory Notes, (n.35), para 44.

³⁵ HC Deb, (n.31), col 250.

inserted by clause 75(6) of PAFER) will not necessarily lead to an abandonment of the powers, but rather increased pressure on banks to intensify their algorithms. There is also a question over what information the independent person would receive to assess the extent to which the actions taken by banks complied with the requirements under Sch 3B. of the new SSAA 1992. It is possible that this could lead to even more sharing of private financial data.

14. The proposals could effect the EU GDPR data adequacy decision. Enacting a disproportionate and intrusive mass surveillance law would move the UK significantly away from existing data protection legislation, which is based upon EU regulations. As Lord Allan observed in relation to the EU adequacy decision: "Bulk digital surveillance has been a point of particular concern from an EU-perspective – and bulk surveillance on a "suspicionless" basis is likely to raise significant questions."³⁶ David Chadwick MP reiterated this point during Second Reading of the PAFER Bill, explaining that the Bill "implicates treaties that we have already signed, such as the data adequacy agreement we have the European Union."³⁷

15. The power could create data security risks. Frequent searches and exchanges of masses of sensitive personal financial data within numerous third-party organisations would incur security risks such as leaks, loss, theft and hacking.

RISKS OF AUTOMATED DECISIONS AND 'HORIZON-STYLE' ERRORS

16. Thousands of decisions regarding the collection and reviewing of private financial information of people receiving benefits will be at least de facto automated. This is a high-risk way to make decisions, particularly in sensitive cases. Banks will not be able to conduct benefits "eligibility" checks of all of their customers without an automated algorithmic system. Regarding how people's data will be assessed, the explanatory notes state that "a human will always be involved in any further inquiries and any decision taken afterwards that might affect eligibility or benefit awards."³⁸ However, with many thousands of accounts being flagged to DWP under the proposed system, it is not clear what the scale and nature of such

³⁶ Ibid.

³⁷ HC Deb (n.38), col.605.

³⁸ Explanatory Notes, (n.37), para 46.

human involvement would be or if it would be genuinely meaningful. Indeed, the Impact Assessment for the Bill acknowledges that the “DWP may have to slow the volume of data requests to manage potential volumes.”³⁹ If a human decision-maker does not have enough time to properly review a decision – as may well be the case with the deluge of data the DWP can expect to receive from banks – their input cannot properly be regarded as meaningful.

Kirsten Jones, formerly Serious Fraud Office and Crown Prosecution Office, stated in her evidence to the PAFER Bill Committee,

“I think it is important that when you interfere with the rights of the individual, decisions are taken at a sufficiently high level by people with sufficient experience.”⁴⁰

Helena Wood, Director of CIFAS also highlighted that “there is a national shortage of financial investigators across the country.” If the individuals who are tasked with interpreting the information received from the banks do not have sufficient training this is also likely to increase the likelihood of errors.

Although the Government has promised that a human will always be involved in processing the data received from banks, Minister for the Bill, Andrew Western stated, “I hope that by embracing new technology and through data sharing and other mechanisms, we can gradually reduce that number [of fraud staff in the DWP] over time.”⁴¹ This is an extremely concerning admission that the Government views the expansion of the use of AI to assist in identifying fraud as a step towards reducing human involvement in the process of investigating overpayments.

17. There are no provisions for algorithmic transparency and accountability.

There is no information specifying who is responsible for supplying the algorithms required for this mass surveillance power. There are two options: either DWP will provide third party organisations with existing methods, or third parties will be responsible for developing and deploying their own. This could incur a financial and operational burden on banks and

³⁹ Impact Assessment, (n.14), p37

⁴⁰ Public Bill Committee, (First Sitting), 25 February 2025, (n.36) col 20.

⁴¹ Public Bill Committee, (Second Sitting), 25 February 2025, (n.44), col 80.

other affected third party organisations. In both cases, there are serious questions around algorithmic transparency and accountability. During the Second Reading Debate on the PAFER Bill, Helen Whately MP raised the need to probe how the powers will be “put into practice,” asking, “how much testing has been done of the systems that [the banks] intend to use?”⁴² Ellen Lefley, Senior Lawyer at JUSTICE also emphasised the lack of redress and the legal barriers to challenging semi-automated decisions under the data protection framework: “if algorithms are assisting a human decision-making process, there is no right to be notified, let alone to complain.”⁴³ It is very likely that if an individual is investigated following an EVN flag by their bank, they would have no knowledge of the algorithm that identified them, nor any recourse to challenge its logic.

18. With the constant scanning of tens of millions of accounts in relation to often complex claims, false positive matches for fraud or error are highly likely. As a result, significant numbers of ‘false positives’ will lead to account-holders’ personal details being wrongly flagged for further investigation to the Government, which may incur further privacy intrusion and in some cases have more serious ramifications. When scanning 10+ million accounts, even a remarkably low error rate of 1% would lead to at least 100,000 people’s accounts being wrongly flagged to DWP.

19. Financial institutions’ ‘Suspicious Activity Reports’ already have a very high false hit rate. The requirement upon banks and other third parties to monitor and report on the accounts of benefits claimants is somewhat reminiscent of a bank's use of “Suspicious Activity Reports” (SARs) to combat money laundering. In 2017, a study found that a sample of the largest banks reviewed approximately 16 million alerts, filed over 640,000 SARs, and showed that only 4% of those SARs resulted in law enforcement involvement.⁴⁴ Ultimately, this means that at least 90-95% of the individuals that banks reported on were innocent. The important difference between the NCA investigating financial crime and DWP investigating suspected benefits fraud and error is that the former is working to a criminal level of suspicion whereas DWP is not. Without that standard threshold, it is even more likely that this power will see an aggressive approach against people who are not suspected of any

⁴² HC Deb, (n.41), col.591-592.

⁴³ Public Bill Committee (Second Sitting), 25 February 2025, (n.46), col 57.

⁴⁴ Bank Policy Institute, “The Truth About Suspicious Activity Reports” (22 September 2020): <https://bpi.com/the-truth-about-suspicious-activity-reports/>

wrongdoing, resulting in a vast number of accounts being flagged incorrectly.

20.A related trial indicated that this extraordinary power is unlikely to be an effective measure. DWP has trialled similar measures through Proof of Concept (PoC) trials.⁴⁵ The government ran a small-scale PoC in 2017, in which a bank identified 549 accounts that received benefits payments and matched certain risk criteria (i.e., capital above benefits threshold), for review. The sample of cases were not randomly selected – instead, they were derived from suspicious activity reports (SARs). This means that the 'success' rate is significantly higher than what would be expected under these proposals.⁴⁶ Of this biased sample, half were deemed suitable for investigation, and subsequent action was needed to remedy either fraud or error in 62% of cases that were investigated. The government reported this as a success, but this means that fewer than 1 in 3 of the 549 SAR flagged accounts were actionable.⁴⁷ This is a high rate of false positives, particularly in a context where being incorrectly flagged could have a serious impact on someone and even disrupt a person's ability to receive essential payments.

Another pilot introduced by the DWP, the Housing Benefit Accuracy Award Initiative, was used to produce a risk score for Housing Benefits claimants, which was then used as the basis for review by local councils.⁴⁸ The algorithm flagged approximately 400,000 cases a year, identifying most of those as "high risk" cases. Councils were required to conduct full case reviews of those flagged, which involved invasive checks of bank statements, payslips and rent, and they suspended benefits where claimants were not compliant or able to produce evidence to support their claim. Data obtained from DWP by Big Brother Watch found that only 1 in 3 people on Housing Benefit who were subjected to review were, in fact, being paid the wrong amount. As a result, 200,000 people were placed

⁴⁵ Department for Work and Pensions, Third Party Data Gathering Impact Assessment (September 2023), p13, https://assets.publishing.service.gov.uk/media/6564bab01524e6000da10168/DWP_third_party_data_impact_assessment_november_2023.pdf.

⁴⁶ Department for Work and Pensions, Third Party Data Gathering Impact Assessment (IA) (September 2023): https://assets.publishing.service.gov.uk/media/6564bab01524e6000da10168/DWP_third_party_data_impact_assessment_november_2023.pdf, 69.

⁴⁷ Department for Work and Pensions, Fighting Fraud in the Welfare System (26 May 2022): <https://www.gov.uk/government/publications/fighting-fraud-in-the-welfare-system/fighting-fraud-in-the-welfare-system-2#fn:1>

⁴⁸ The Independent, Council threatens to evict woman after wrongly axing housing benefit 'due to DWP algorithm', 14 September 2024, <https://www.independent.co.uk/news/uk/home-news/housing-benefit-dwp-algorithmwandsworth-council-b2609811.html>

under suspicion at the hands of the algorithm – despite having done nothing wrong. Similar algorithmic risks could be amplified under the proposed bank spying powers.

21. The Government must learn lessons from the Horizon scandal. Using algorithms in this high-risk context is uncomfortably reminiscent of the Horizon scandal, where hundreds of people were wrongfully prosecuted on the basis of data from faulty software – resulting in wrongful imprisonment, financial ruin, and suicide.⁴⁹ Indeed, the same legal standards that saw people wrongfully convicted in relation to Horizon still apply. During the PAFER Bill Committee evidence session, Helena Wood, Director of Public Policy and Strategic Engagement at Cifas, acknowledged the possibility of wrongful flags: “if the banks are only giving a minimum amount of information back into the DWP, how do we know that that is an absolute specific match on the individuals they have on their system?”⁵⁰

Courts are currently required to presume that computer systems operate correctly, placing the onus upon defendants to provide evidence that the system they are implicated by is flawed.⁵¹ Zarah Sultana MP emphasised that “the Bill risks repeating [the Horizon Scandal] injustice on an unprecedented scale.”⁵² However, unlike the Horizon scandal, the individuals affected worst by this bank spying will not be small business owners but people already suffering on the poverty line and people who are vulnerable, sick or disabled, or people with mental health problems, and elderly people among others. The risks are very high.

22. The Public Accounts Committee raised concerns about DWP’s lack of algorithmic transparency. In December 2023, the Public Accounts Committee noted that the DWP has not been clear as to what proportion of benefit claims have been subject to this algorithmic surveillance, nor has it published any assessment of the impact on customers.⁵³ Big Brother Watch shares the Committee’s concerns about the lack of transparency surrounding

⁴⁹ Kevin Peachey, Michael Race, and Vishala Sri-Pathma, 'Post Office scandal explained: What the Horizon saga is all about' (10 January 2023): <https://www.bbc.co.uk/news/business-56718036>

⁵⁰ Public Bill Committee (First Sitting), 25 February 2025, (n.48), col 16.

⁵¹ David Allen Green, “Computer says guilty” – an introduction to the evidential presumption that computers are operating correctly' (30 September 2023): <https://davidallengreen.com/2023/09/computer-says-guilty-anintroduction-to-the-evidential-presumption-that-computers-are-operating-correctly/>

⁵² HC Deb, (n.47), col.611.

⁵³ House of Commons Committee of Public Accounts, The Department for Work and Pensions Annual Report and Accounts 2022-2023 (6 December 2023), p7, <https://committees.parliament.uk/publications/42434/documents/210942/default/>.

these tools and the lack of consideration of claimants who may be vulnerable or from protected groups. DWP has not sufficiently addressed these problems.

EFFECT ON EQUALITY

23. Errors resulting from the proposed surveillance power are likely to have particularly serious negative consequences for welfare recipients and very vulnerable individuals. Wrongful benefits investigations can lead to burdensome documentation demands which, if not complied with accurately and in time, can lead to the suspension of benefits. In such cases, innocent and often vulnerable people may be unable to afford basic necessities such as food, medicine, or heating bills. In submitted written evidence to the PAFER Public Bill Committee, Child Poverty Action Group cited case studies where “claimants caught up in fraud and error investigations can see their benefits suspended or terminated for many months before it is ultimately decided whether fraud or error has occurred.”⁵⁴ Further, there are numerous documented cases, such as those identified in a BBC investigation, of vulnerable people dying following alleged negative actions by DWP including the wrongful suspension of benefits.⁵⁵ In a recent example, DWP falsely accused a single mother of owing £12,000 when in actual fact DWP owed her money.⁵⁶ Rick Burgess, who represented the Greater Manchester Coalition of Disabled People at the Bill Committee evidence session, highlighted the risks to “people living with mental distress, particularly those with diagnoses of paranoia, schizophrenia, depression or anxiety” as the EVN measure, “adds to the feeling of being monitored, followed and surveilled, because you literally are being surveilled by your bank on behalf of the Government.”⁵⁷ During Report Stage of the House of Commons, Richard Burdon MP stated, that the measure “moves us towards a hostile environment for benefit claimants, particularly disabled benefit claimants. We will end up treating them as suspects automatically.”⁵⁸

⁵⁴ Child Poverty Action Group, Written Evidence to PAFER Public Bill Committee, House of Commons Committee Stage, p3, <https://bills.parliament.uk/publications/59398/documents/6105>.

⁵⁵ Deaths of people on benefits prompt inquiry call – Alex Homer, BBC News, 10 May 2021: <https://www.bbc.co.uk/news/uk-56819727>

⁵⁶ Isabella McRae, 'DWP falsely accuses single mum of owing £12,000 – when they actually owe her money' (16 January 2024): <https://www.bigissue.com/news/social-justice/dwp-benefitsuniversal-credit-money-owed-penny-davis/>

⁵⁷ Public Bill Committee (Second Sitting), 25 February 2025, (n.49), col 68.

⁵⁸ HC Deb, (n.38) col 252.

24. Errors would disproportionately affect very vulnerable individuals – for example, disabled people on direct payments who must have care accounts, which may hold thousands of pounds, set up in their name to accept local funding. An automated system may wrongly and repeatedly identify these accounts as fraudulent, thereby putting disabled people at far higher risk of wrongful fraud investigations.⁵⁹ Such a high inaccuracy rate would also undermine the argument that the powers are a proportionate interference with individuals' Article 8 right to privacy.

25. Some of the poorest in our society, people with disabilities or long-term illnesses, carers, and elderly people will be subject to banks and other private companies they engage with pre-emptively intruding on their private financial data, potentially examined by the government without their knowledge, and at risk of consequential harms as a result of that characteristic. During Report Stage in the House of Commons, Neil Duncan-Jordan MP emphasised that, "the very poorest, including disabled people on PIP, older people on pension credit, carers and those on universal credit, will effectively have fewer rights to privacy than everyone else."⁶⁰

26. In addition to landlords, some banks and other third parties may choose not to accept individuals in receipt of benefits, or treat them less favourably. It is possible that third parties could make the decision not to accept customers on benefits, or to treat customers in receipt of benefits differently, in order to mitigate the potential costs and liabilities associated with processing their data for DWP or the financial penalty alternative. Indeed, this Bill will force banks and others to create datasets of people linked to benefits payments as well as datasets of people with vague suspicion attributed to them.

27. DWP acknowledges the potential for indirect discrimination against protected groups resulting from the measure. The Equality Analysis report, published through a Freedom of Information request, found that the EVN measure could "potentially have a greater impact on people with disabilities than without," and "could arguably have a differential impact on individuals based on ethnicity."⁶¹ The analysis also suggests that older people

⁵⁹ John Pring, 'DWP's bank snooping laws "would create trap" for claimants with social care accounts' (22 February 2024): <https://www.disabilitynewsservice.com/dwps-bank-snooping-laws-would-createtrap-for-claimants-with-social-care-accounts/2>

⁶⁰ HC Deb, (n.63), col 251.

⁶¹ Equality Analysis Report, pp14-15, https://www.whatdotheyknow.com/request/public_authorities_fraud_error_a/response/2958456/

receiving Pension Credit may be more likely to be flagged by the measure, as “they are likely to have more savings/capital accumulation.”⁶² In the Accountability Section of its Annual Report, the National Audit Office (NAO) acknowledged that: “When using machine learning to prioritise reviews there is an inherent risk that the algorithms are biased towards selecting claims for review from certain vulnerable people or groups with protected characteristics. This may be due to unforeseen bias in the input data or the design of the model itself.”⁶³ The NAO also stated that DWP “should be able to provide assurance that it is not unfairly treating any group of customers”.⁶⁴

In response to the Public Accounts Committee’s report on benefits fraud and error in 2022, DWP committed to report annually to Parliament on the impact of data analytics on protected groups – however, ex post facto equality impact analysis may not satisfy the public sector equality duty, which must be fulfilled before and at the time when a policy is being considered.

Relatedly, the NAO reported that DWP performed a pre-launch ‘fairness’ analysis of its existing data analytics products currently in use to test for disproportionate impacts on people with the protected characteristics of age, gender and pregnancy. Reportedly, the results were largely “inconclusive” but did identify age bias towards older claimants. According to the Public Accounts Committee, DWP’s position is reportedly that “some level of algorithmic bias is to be expected because of how benefit payments work.”⁶⁵ This position does not necessarily conform with DWP’s legal obligations under the Equality Act, Human Rights Act and Data Protection Act. The NAO also acknowledged that DWP is unable to test conclusively for potential discrimination due to limited demographic data about claimants.⁶⁶

[attach/3/Eligibility%20Verification%20Measure%20EA%20redacted.pdf?cookie_passthrough=1.](#)

⁶² Ibid, p13.

⁶³ DWP Annual Report and Accounts 2022-3, 6 July 2023, para. 5.10, p.309:

<https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-reportaccounts-2022-23-web-ready.pdf>

⁶⁴ Ibid, para 5.11.

⁶⁵ Committee of Public Accounts, The Department for Work and Pensions Annual Report and Accounts 2022-2023 (6 December 2023), p18,

[https://committees.parliament.uk/publications/42434/documents/210942/default/.](https://committees.parliament.uk/publications/42434/documents/210942/default/)

⁶⁶ DWP Annual Report and Accounts 2022-3, 6 July 2023, para. 5.12, p.309:

[https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-reportaccounts-2022-23-web-ready.pdf.](https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-reportaccounts-2022-23-web-ready.pdf)

The Public Accounts Committee concluded that “DWP has not done enough to understand the impact of machine learning on customers to provide them with confidence that it will not result in unfair treatment.”⁶⁷

EFFECT ON HOUSING CRISIS

28. This power could devastate the private rental market for recipients of benefits. There are already well-documented issues with recipients of benefits being accepted as tenants by private landlords and benefits recipients are at risk of unlawful discrimination in the rental market.⁶⁸ A recent government survey found that 1 in 10 private renters – around 109,000 households – said they had been refused a tenancy in the past 12 months alone because they received benefits.⁶⁹ This is a precarious situation: due to the housing crisis, many people in receipt of benefits must rent from private landlords in order to secure housing. The unintended consequence of the financial surveillance powers in this Bill will add a major new deterrent to landlords receiving rent via tenants’ housing benefit, as they will be subjected to financial surveillance across not only that bank account but all their personal financial accounts. Affected landlords will also be at heightened risk of DWP errors and wrongful investigations arising from the surveillance. Such an intrusive regime could devastate the private rental market for recipients of benefits by making them less desirable tenants and significantly exacerbate the housing crisis for Britain’s most vulnerable people. This risk was reiterated by Eric Leenders, Managing Director, Retail Finance, UK Finance:

“There might be a risk, from a wider perspective, that potentially attorneys and landlords might no longer want to receive benefits directly because of the potential admin burdens through this Bill.”⁷⁰

COMPLIANCE CHALLENGES FOR AFFECTED THIRD PARTY ORGANISATIONS

29. Third parties who do not comply with EVNs will be levied with financial penalties if the Secretary of State considers that the person who has been

⁶⁷ Committee of Public Accounts, The Department for Work and Pensions Annual Report and Accounts 2022-2023 (6 December 2023), p7, <https://committees.parliament.uk/publications/42434/documents/210942/default/>.

⁶⁸ Can private landlords refuse to let to benefit claimants and people with children? – House of Commons Library, October 2023: <https://researchbriefings.files.parliament.uk/documents/SN07008/SN07008.pdf>

⁶⁹ English Housing Survey 2021 to 2022: private rented sector – DLUHC, July 2023: <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rentedsector/english-housing-survey-2021-to-2022-private-rented-sector>

⁷⁰ Public Bill Committee (Second Sitting), 25 February 2025, (n.57), col 51.

given an EVN has failed to comply with it (Sch. 3B, Part 2). These penalties are increasingly punitive with the Secretary of State able to issue a fixed fine of £1,000 for initial non-compliance, escalating to a rate of £1,000 per day for continued non-compliance. These measures will have the effect of forcing banks to comply with EVNs. Incurring penalties would be a public matter and would risk reputational damage.

30. The proposed power will create a significant resource burden for affected third parties. To perform the required mass surveillance and prevent inadvertent disclosure of personal data from customers with similar names or frequently changing addresses, banks must conduct thorough data matching exercises and checks. Banks, financial service providers and other affected third parties will therefore face heightened financial and resource demands due to these requirements.⁷¹ The DWP have yet to publish the Equivalent Annual Net Direct Cost to Business for the EVN measure, which has been described as “disappointing” by the Regulatory Policy Committee.⁷²

31. The financial sector opposed the cumbersome obligations introduced by the previous proposals under the DPD Bill. Daniel Cichocki, Director of Economic Crime Policy and Strategy at UK Finance, which represents over 300 firms across the banking and finance industry, explained that the powers would present “quite a strong draw on resources [...] that we think would be better placed on serious fraud and organised criminal gangs.”⁷³ During the evidence session before the PAFER Bill Committee, Cichocki reiterated that banks already share information with law enforcement and that “from an industry perspective, as a broad principle, we would see it as appropriate and desirable for much of that resource to be focused on serious and organised crime.”⁷⁴

Under the Bill, this burden is heightened given the powers that the Secretary of State has to impose an ‘inaccurate information penalty’ where an institution has provided inaccurate information without reasonable

⁷¹ David Naylor and Michael Dowden, ‘Government access to personal data in bank accounts: a compliance challenge for banks, and a threat to EU adequacy?’ (17 January 2024):

<https://www.lexology.com/library/detail.aspx?g=3a4671d4-a37e-4785-80cc-36f8d3a13e75>

⁷² Regulatory Policy Committee, Public Authorities (Fraud, Error and Recovery) Bill, 17 January 2025, p4, https://assets.publishing.service.gov.uk/media/67922a1623c34b0ef8fad5da/RPC-DWP-24014-IA_1_Public_Authorities_Fraud_and_Recovery_Bill.pdf.

⁷³ Eleanor Myers, ‘Don’t turn us into social security cops, banks tell UK government’ (12 March 2024): <https://www.politico.eu/article/rishi-sunak-social-security-cops-uk-government/>

⁷⁴ Public Bill Committee, (Second Sitting), 25 February 2025, (n.78), col 52.

excuse – whether the inaccuracy is deliberate, due to a failure to take reasonable care or due to a failure to inform the Secretary of State of its inaccuracy, at the time of its discovery or thereafter (paragraph 10 of the proposed Sch. 3B of the SSAA 1992). This penalty has the effect of pushing the blame for error on the banks; however, it is unlikely that it will have any material affect in improving the accuracy of algorithms. Notably, there are no provisions in the Bill for quality assurance checks or periodic reviews of the automated systems used to comply with EVNs; inaccurate information will be inevitable.

CODE OF PRACTICE

32.The Government cannot offer Parliament or the public reassurance by deferring vital legal protections in favour of guidance in a code of practice.

Schedule 3B, Part 5 states that the Secretary of State must issue a code of practice and DWP may view many of the legislative gaps and serious challenges associated with this power as issues that can be addressed by this code, after the enactment of the Bill. Whilst useful for providing guidelines to those using and affected by the powers, a code of practice is not enforceable and a failure to act in accordance with any future code does not make an individual liable to legal proceedings. MPs did not have the Codes of Practice before them to scrutinise how the powers and safeguards will be operationalised.

33.During the evidence session before the Bill Committee, several witnesses emphasised that, without having the Codes of Practice before them, it was not possible for them to comment on the proportionality of the measures.

Ellen Lefley, Senior Lawyer at JUSTICE explained, "It would be far easier for...Parliament, to be assured of the proportionality of any human rights infringement if that code of practice were before us."⁷⁵ Offering the perspective of the banking industry, Daniel Cichocki, Director of Economic Crime Policy and Strategy at UK Finance, expressed the hope that the Code of Practice would include "details of the specific criteria against which the Government will mandate banks to perform checks under the measure."⁷⁶ In answer to a question on whether the Bill, as currently drafted, strikes the balance between effectiveness and proportionality, Kristen Jones, formerly Serious Fraud Office and Crown Prosecution

⁷⁵ Ibid, col 56.

⁷⁶ Ibid, col 47.

Service, responded, "until we see the codes of practice, and the operational guidance, it is difficult to tell."⁷⁷ The codes of practice have not been made publicly available to civil society for scrutiny.

OPPOSITION TO DPDI BILL

34. Very similar powers previously proposed under the DPDI Bill received cross-party criticism – including from parliamentarians who are now Labour ministers. Baroness Kidron, Lord Anderson, Baroness Chakrabarti, Lord Clement-Jones and Lord Kamall gave notice of their opposition to the question that the powers stand part of the Bill at Committee Stage of the DPDI Bill. They were joined by peers from across the House, including Baroness Sherlock – now a DWP minister – Baroness Lister, Lord Vaux, Lord Sikka and Lord Davies of Brixton, in expressing deep concerns over the unnecessary and disproportionate nature of these powers and the detrimental impact on people's privacy. Sir Stephen Timms MP, who is currently a Minister for the Department sponsoring the PAFER Bill, eloquently expressed that, "the proposal in the [DPDI] Bill is for surveillance where there is absolutely no suspicion at all, which is a substantial expansion the state's power to intrude."⁷⁸ He rightly emphasised, that "it shouldn't be that people have fewer rights, including to privacy, than everyone else in the UK simply because they are on benefits."

We agree with this assessment and emphasise that the currently proposed powers do not offer any substantial divergence from those proposed under the previous DPDI Bill. The powers cross a red line in respect of our privacy rights and have no place in a fair and democratic society.

DEBT RECOVERY POWERS

Clause 92 and Schedule 5 – Direct Deduction Orders

We urge Peers to:

- **Support amendment 92 in the name of Baroness Kramer, which would prevent the DWP from being able to compel banks to provide sensitive financial information for the exercise of direct deduction powers: This will**

⁷⁷ Ibid, col 20.

⁷⁸ House of Commons Deb, 29 November 2023 vol 741, col 899, <https://hansard.parliament.uk/commons/2023-11-29/debates/46EF0AA6-C729-4751-A3DA-6A3683EB8B87/DataProtectionAndDigitalInformationBill>.

prevent the DWP from being able to compel banks to secretly disclose the bank statements of benefits recipients to decide whether to issue a direct deduction powers, which constitutes an intrusive invasion of privacy.

Briefing:

35. Clause 92 introduces the power for DWP to recover funds from a person's bank account without a court warrant. Under Sch 3ZA of SSAA, inserted by Sch 5 of PAFER, the Secretary of State may make a 'direct deduction order' (DDO) in respect of a recoverable amount, where the debtor is no longer on benefits and is not employed within the PAYE system. The powers will apply to all benefits under sections 71 to 78 of the SSAA, in relation to overpayments arising from a misrepresentation or a failure to disclose a material fact – whether fraudulently or otherwise (as per clause 89(2(2)) of PAFER). This means that these powers will apply not only in relation to overpayments caused by deliberately fraudulent behaviour, but also negligent oversight, incorrect statements and failure to disclose information. A DDO may relate to the account of the liable person, or a joint account, if they have no other account (Sch 5, para 2 of PAFER).

36. It is worrying that these powers could apply to welfare recipients who have been flagged to DWP and had their benefits suspended during the investigation process. Where an individual is suspected of benefit fraud, which may occur as a consequence of a false EVN flag, they may have their benefit stopped whilst under investigation.⁷⁹ In this scenario, the claimant will be left with no money to live on and, as they are no longer receiving benefits, nor in PAYE employment, could have any funds in their bank account deducted by way of DDO.

37. Currently, where an overpayment of benefits has been made, the DWP can recover this sum by directly deducting from the debtor's benefits or direct deductions from their earnings. Where the debtor is no longer on benefits and not in PAYE employment, the DWP can only recover overpayments through County Court enforcement proceedings.⁸⁰ The DWP argues that the County Court method of enforcement is "slow" and "resource intensive," however we maintain that there should be judicial processes in

⁷⁹ Gov.uk, Benefit Fraud, <https://www.gov.uk/benefit-fraud#:~:text=Your%20benefit%20may%20be%20stopped,an%20'interview%20under%20caution.>

⁸⁰ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p68; Impact Assessment, (n.37), p71

place before the government can take money directly from individual's bank accounts.⁸¹

Unjustifiable expansion of Ministerial power

38. Before the Secretary of State can make a DDO, they must submit an 'account information notice' (AIN) to the bank with whom the debtor has an account, requesting copies of the debtor's bank statements covering a period of at least three months prior to the notice (Sch 5, paragraphs 3(1) and (2) of PAFER). The intended purpose of this disclosure is for the Secretary of State to consider "the affordability of recovery," (i.e., whether the debtor can afford to have the funds deducted).⁸² The bank must not inform the debtor or other joint account holders if it receives an AIN. Ostensibly, this is so that the individuals cannot remove money from the account before an order has been made and thereby, "frustrate the operation of the direct deduction order."⁸³ However, the secretiveness of this surveillance will create an environment of fear, anxiety and suspicion for benefits claimants. During Second Reading of the PAFER Bill, John McDonnell MP noted that there is already a "climate of fear" that pervades the lives of benefits claimants.⁸⁴

39. These powers to request granular information from banks about their customers, without their knowledge, to decide whether an individual can afford to pay back an overpayment are both intrusive and paternalistic. Bank statements are capable of revealing sensitive and private information about an individual's movements, associations, political opinions, religious beliefs, sex life, sexual orientation, and trade union membership. Since an AIN can also apply to joint accounts, individuals who are not themselves benefits recipients can have their private financial information disclosed to DWP. The Secretary of State already has powers to request this type of transaction data from banks, where an individual is suspected of fraud. By contrast, the proposals for DDOs create an unwarranted power for the state to covertly demand the financial records of benefits recipients, without suspicion of any criminal offence having been committed. It should be emphasised that these intrusive powers will affect individuals who have been overpaid as a result of making a mistake

⁸¹ Ibid.

⁸² Explanatory Notes, (n.42), para 722.

⁸³ Ibid, para 728.

⁸⁴ HC Deb, (n.85), col.618.

when filling out notoriously complex benefit claims forms or failing to update a change in their circumstances.

40. DWP maintains that the power is similar to those used by HMRC and the Child Maintenance Service.⁸⁵ However this is a false comparison. Child Maintenance is money owed by one parent to ensure the provision of their dependent who does not live with them. This differs greatly from an individual claiming money from the social security system who has been overpaid – potentially through no fault of their own. Further, HMRC powers to deduct money directly from bank accounts under Schedule 8 of the Finance (No. 2) Act 2015 are subject to statutory safeguards, including the requirement for HMRC to retain £5,000 in the debtor's accounts and guidance as to who should, to the best of HMRC's knowledge, be deemed "at a particular disadvantage" when engaging with the department.⁸⁶ HMRC must also conduct an in-person visit before exercising these powers.⁸⁷ This is a far cry from the current proposals under the PAFER Bill to leave these protections to DWP's discretion on the basis of a debtor's representations and covertly obtained bank statements. In any event, we maintain that government bodies should not be empowered to infringe upon the privately held accounts of citizens to retrieve overpayments arising from administrative error.

41. DWP envisages that it will use the powers as a deterrent, "primarily to encourage repayment."⁸⁸ Indeed, its Impact Assessment acknowledges that similar HMRC powers to deduct money from bank accounts were only used in 19 out of 22,667 cases evaluated.⁸⁹ However, in the case of the proposed DWP DDO powers, the debtor and any joint account holders will have had their bank statements disclosed by their bank to the DWP before any measurable deterrent effect could be said to apply. It is wholly disproportionate that the PAFER Bill gives the government the power to look through sensitive financial information in circumstances where the underlying power is hardly ever expected to be invoked and before the purported deterrent can even be said to have taken effect. Even if the

⁸⁵ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, p69, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>.

⁸⁶ Finance (No. 2) Act 2015, Schedule 8, <https://www.legislation.gov.uk/ukpga/2015/33/schedule/8>

⁸⁷ BBC Morning Live, 'Does HMRC have new powers to raid people's bank accounts?' 6 October 2025, <https://www.bbc.co.uk/articles/c1l8104321mo>.

⁸⁸ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p69.

⁸⁹ Impact Assessment, (n.81), p71

deterrent functioned effectively before any privacy infringement, the DDO powers would still be a disproportionate measure, by targeting individuals for non-fraudulent overpayments.

42. The PAFER Bill also allows for further provisions about DDOs to be made by regulation. The scope of these broad and non-exhaustive regulations include how notices and orders are to be given by the Secretary of State; the calculation of amounts (including deciding whether a person will suffer hardship); duties of banks and the costs that banks costs may recover (Sch 5, para 25). The power to amend the provisions relating to DDOs gives even greater discretion to the Secretary of State to alter the circumstances in which sums can be recovered from the accounts of benefits recipients who have been overpaid.

Effect on Equality

43. Before issuing a DDO, the Secretary of State must give the debtor and any joint account holder notice of the proposed order and invite them to make representations (Sch 5, paras 5(1) and (2) of PAFER). On the basis of those representations, the Secretary of State will decide whether, and on what terms, to make a DDO based on the representations and may only do so if satisfied from the bank statements and representations that the order is fair in all the circumstances and that the liable person/account holders (and those who are dependent on or live with them) will not "suffer hardship in meeting essential living expenses," (Sch 5, paras 5(5) and 6). This hands an extraordinary amount of discretion to the Secretary of State, as there is no threshold to determine what constitutes "hardship" or what would be "fair in all the circumstances." It is also unclear what will happen if the liable person or affected account holders do not submit representations at all; it is possible that the Secretary of State could be satisfied that they will not suffer hardship on the basis of their bank statements alone.
44. In a particularly cynical addition, the DDO may include provision for the bank to deduct a fee from the debtor's account to meet its reasonable costs for complying with the order (Sch 5, para 8). This amounts to a state-backed removal of funds directly from the bank accounts of its private customers for dealing with the administrative retrieval of overpayments.

The maximum amount that may be charged by banks will be set by the Secretary of State via regulations (paragraph 25(g)).

45. Though DDOs are touted as powers of last resort, it is not inconceivable that benefits recipients will be unable to engage with the DWP due to incapacity or illness. Indeed, Kirsty Blackman MP made this point during the Second Reading Debate on the PAFER Bill:

*“For people with mental health problems, opening letters can be really difficult. People might not engage with the DWP through no fault of their own.”*⁹⁰

The powers to issue DDOs have the potential to subject the most vulnerable in our society to intrusive financial surveillance for administrative errors and oversights. Gill German MP acknowledged this reality during Second Reading of the PAFER Bill, explaining that this complexity “causes significant stress and it exemplifies the risks of penalising individuals who may simply have been unable to navigate the system, further entrenching the fear of making a mistake.”⁹¹ To some extent, the draconian measures are intended to induce such anxiety among debtors to encourage repayment. The Regulatory Policy Committee noted that the Impact Assessment for the Bill, “does not discuss the potential impact on the poorest members of society of reclaiming overpayments due to error, or the potential displacement of fraudulent activity to other areas.”⁹²

Implications for banks

46. Banks are required to comply with account information and general information notices and will be liable to a penalty, if they fail to comply (Sch 5, para 3(7) and 3(8) of PAFER Bill). UK Finance, an organisation representing the banking and finance industry, expressed concerns that the direct deduction orders could conflict with banks’ regulatory and legal obligations by creating risks for vulnerable customers.⁹³ Jon Trickett MP emphasised these concerns during the Second Reading Debate of the

⁹⁰ HC Deb, (n.92), col.610.

⁹¹ Ibid, col 600.

⁹² Regulatory Policy Committee, (n.72), p5.

⁹³ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p70

PAFER Bill, explaining, “the banks have said there is a contradiction between the contents of this Bill and the obligations that fall on them and their duty to treat people who are vulnerable in a proper way.”⁹⁴

Insufficient safeguards

47. The DWP characterise DDOs as a power of ‘last resort’ which can only be exercised where the Secretary of State has given the debtor a reasonable opportunity to settle the debt and notified them of the possible use of and nature of the powers (clause 89(2(5)) of the Bill). However, there are no definitions or safeguards in relation to this ‘reasonable opportunity’ threshold contained within the bill.

48. The provisions allowing an affected account holder to have the decision reviewed by the Secretary of State or appeal to the First Tier Tribunal do not insulate the damaging effects of the bill. As Citizens Advice across Warwickshire explained in written evidence to the PAFER Bill Committee:

*“That some of these decisions may be challengeable does not make them more palatable nor likely to prevent abuse, but merely to shift a responsibility to the benefit claimant to have to prove their innocence rather than the public authority needing to prove their guilt.”*⁹⁵

Despite these routes of challenge, a debtor and any joint account holder will still have had their private financial information disclosed without their knowledge or consent, before they even become aware of the possibility. The provision also assumes that the debtor has been deliberately not engaging and that the threat of punitive deductions from their bank account will compel them to engage with the DWP. However, if an individual has not been engaging with the DWP prior to receiving the letter for reasons of incapacity, illness or other genuine reasons, it is not immediately clear that receiving this letter will make any difference and therefore is not an effective safeguard.

Clause 93 and Schedule 6 – Disqualification from driving powers

⁹⁴ HC Deb, (n. 98), col.602.

⁹⁵ Citizens Advice across Warwickshire, 26 February 2025, <https://bills.parliament.uk/publications/59400/documents/6106>.

We urge Peers to:

- **Lay an amendment which would remove the driving disqualification powers at clause 89 and Schedule 6:** This will prevent the Secretary of State from being able to apply to the court to disqualify a benefits recipient who has been overpaid – whether through fraud, misstatement or oversight – from holding a driving licence.

Briefing:

49. Where all other methods of debt recovery have failed, including the DDO measures outlined above, the DWP may apply to the court to have the debtor disqualified from driving. The court must make a suspended DWP qualification order if it is satisfied, on the balance of probabilities, that the liable person has, without reasonable excuse, not paid the recoverable amount (Sch 6(1(4)) of PAFER). The court may disqualify a liable person from holding/obtaining a driving licence for such period the court considers likely to result in the person paying the recoverable amount (Sch 6(2(2))) which must not exceed 2 years and must make an immediate DWP disqualification order where the debtor has failed to comply with the terms of repayment under a suspended DWP disqualification order. Therefore, although the DWP must apply to the court for the disqualification order, the Court does not have discretion to refuse where certain aforementioned conditions are met, unless the debtor needs a driving licence to earn a living or has another essential need for a driving licence.

50. The power is exercisable in response to both fraud and error. The court must be satisfied that the person has not paid the recoverable amount without reasonable excuse. It is unclear the extent to which this will protect vulnerable benefits claimants who have not engaged with the DWP due to incapacity, illness, depression and anxiety and whether these reasons will be deemed 'reasonable'. As Minister for Transformation, Andrew Western MP explained, "the criteria for its use is not how the overpayment came about, but whether the person has engaged to pay it back." The Secretary of State and the debtor must have an *opportunity* to be heard by the Court, however if the debtor has failed to engage with the DWP until this point, it is not certain that they would be able to take up this opportunity (Sch 6(1(9))). It is unclear how the court would ascertain whether the debtor needs a driving licence without hearing from the debtor.

51. Notably this power would only be exercised after the DWP has already searched through an individual's bank statements to decide whether to issue a direct deduction order. The same concerns about excessive and unwarranted privacy intrusions as discussed above apply in relation to the driving disqualification powers. The Secretary of State may not exercise the powers under Sch 3ZB unless satisfied "it is not reasonably possible to recover the amount by way of deductions from benefit, deductions from earnings, an adjustment of benefit or deductions from the person's bank account" (clause 91(7) of the PAFER Bill). This is therefore, in essence, a poverty penalty, which seeks to punish those who do not have the means to return what they have been overpaid.

52. Given that these powers would only be used where a debtor cannot physically pay back what they owe, the driving disqualification powers serve no other purpose than to deter debtors from failing to engage with the DWP to arrange terms of repayment. But this misdiagnoses the problem. Benefits claimants often make mistakes or fail to disclose information through oversight and their failure to engage with the DWP thereafter can be due to genuine incapacity and health issues. As Sian Berry MP put it during Second Reading of the Bill: the powers "would remove driving licences from people who are having difficulty paying back to the DWP overpaid money due to what may simply be human error at a difficult time in their lives, not fraud at all."⁹⁶ Introducing punitive measures for unavoidable mistakes will not necessarily create the conditions in which debtors are able to engage with the DWP, but will create dire consequences for those who are most reliant on the welfare system and least able to afford repayments.

⁹⁶ HC Deb, (n.101), col.602.