

Public Law Project – Written Evidence

Public Authorities (Fraud, Error and Recovery) Bill Committee

- The proposed **Eligibility Verification Measure (EVM)** risks:
 - Disproportionately infringing individual's right to privacy,
 - Causing significant harm if individuals are incorrectly identified as having received an overpayment,
 - Disproportionately impacting individuals with certain protected characteristics, including disabled people.
- Changes that have been made to the EVM since the Data Protection and Digital Information Bill (DPDI) do not adequately address these concerns.
- To ensure proper Parliamentary scrutiny of the risks posed by the EVM, Government should urgently publish its updated Equalities Impact Assessment.
- In **2023/24 686,756** of the new Universal Credit (UC) overpayments recorded on DWP's debt manager system were caused not by fraud or claimant error but by Government mistakes (**Official Error overpayments**)¹. PLP's research and casework experience has found that recovery of these overpayments carry a particular risk of harm and injustice, with individuals finding themselves unexpectedly in debt through no fault of their own, and often despite claimant's attempts to flag potential errors to the DWP.
- The current Bill is an opportunity to legislate to address this harm, uphold the principles of trust and fairness and demonstrate that the DWP is taking its responsibilities seriously by getting it right first time.
- While this evidence submission focusses on the EVM and official error overpayments, we note that many of the concerns raised may also apply to the other measures contained in the Bill.

Public Law Project recommends:

- **Clause 74 and Schedule 3 (the Eligibility Verification Measure) stand part from the Bill**
- **A new clause be inserted that amends section 71ZB Social Security Administration Act 1992 to include a new subsection bringing the test for recovery of Universal Credit overpayments caused by official error into line with the test applied for recovery of Housing Benefit overpayments.**

¹ Response to Freedom of Information Act Response from Andy Mitchell, 30 October 2024 FOI Ref: FOI2024/84172

Clause 74 and Schedule 3: Eligibility Verification Measure (EVM)

1. Under existing legislation, the Secretary of State for Work and Pensions (SSWP) has the power to require banks to share account information provided they have reasonable grounds to believe that an identified person has committed, or intends to commit, a benefit offence. This means that the DWP can only undertake fraud checks on a claimant's account where there is already a suspicion of fraud.
2. Clause 74 and Schedule 3 of the Bill extends the SSWP power by permitting requests for information relating to claimants' accounts regardless of whether there is any suspicion of fraud or error, to identify cases that merit further consideration.

Article 8 - Right to Privacy

3. Article 8 of the European Convention of Human Rights provides that 'everyone has the right to respect for his private and family life his home and his correspondence'.
4. The Government's human rights memorandum for the Bill acknowledges that Article 8 is engaged by the EVM². To be lawful, this interference must be (1) in accordance with the law, (2) pursuant to a legitimate aim, and (3) necessary in a democratic society³. To be considered 'necessary' the measure must be proportionate to the aim being pursued⁴.
5. Concerns were raised about the necessity and proportionality, and therefore the lawfulness, of the predecessor to the EVM in the DPDI, including by the Equality and Human Rights Commission (EHRC)⁵ and the Information Commissioner's Office (ICO)⁶.
6. Government has made several changes to the proposed measures and drafting to try to address these concerns. The ICO's updated comment notes that these have mitigated **some**, but not all, of the concerns they had previously raised⁷. As

² page 18 and para 72, European Convention on Human Rights Memorandum (22 January 2025) available here: [ECHR Memo.pdf](#)

³ S. and Marper v. the United Kingdom, application nos. 30562/04 and 30566/04 (2008), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-90051%22%5D%7D>}, paras. 101-2; Catt v. the United Kingdom, application no. 43514/15 (2019), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-189424%22%5D%7D>}, para. 109

⁴ Ibid

⁵ para 2.1 bullet 4 and paras 8.1 and 8.3 of EHRC, DPDI Bill: House of Lords – Second Reading Briefing (15 December 2023), available here: [Data Protection and Digital Information Bill, House of Lords Second Reading \(15 December 2023\).docx](#)

⁶ pages 3 –6 ICO's further response to the DPDI Bill (December 2023): [Microsoft Word - 20231218 DPDI Commissioner further response Final for upload](#)

⁷ ICO, Eligibility Verification Measure in the Public Authorities Bill - Information Commissioner's response, <https://ico.org.uk/about-the-ico/what-we-do/ico-policy-views/eligibility-verification-measure-in-the-public-authorities-bill-information-commissioners-response/>

noted in the ICO's comments on the DPDI 'ultimately it is for Parliament to satisfy itself that this measure is necessary and proportionate as part of the legislative scrutiny process'⁸.

7. In PLP's view the changes do not adequately address concerns. In particular:
 - a. The scope of information that can be requested through the EVM, although now more narrowly drafted than under the DPDI, remains broad (see paras 8 – 11 below),
 - b. The assurances that a human will always be involved in the final decision a) is not reflected in the drafting, b) does not address concerns about interim decisions to suspend benefits pending investigation, and c) cannot be viewed as a panacea for concerns (see paras 12 – 17 below),
 - c. While the Bill currently limits the application of the measures to Universal Credit, Employment Support Allowance and Pensions Credit, the Secretary of State can add further benefits by way of secondary legislation (see paras 18 – 20 below).

Scope of the information that can be requested

8. Banks and building society's who receive an Eligibility Verification Notice will be required to provide details of:
 - a. the account (e.g. sort code and account number)
 - b. the account holders (e.g. their names and dates of birth)
 - c. how the account meets **eligibility indicators**⁹.
9. This can't include transaction information¹⁰ or special category data¹¹.
10. **Eligibility indicators** are defined as 'criteria which indicate that the specified relevant benefit may have been, or may be, incorrectly paid'.
11. The range of information that this includes is broad and goes far beyond the examples of capital and 'abroad fraud' which have been cited by government. It has the potential to include criteria relating to whether you are living with someone else as a couple, the number of children living with you, whether one of your children has stopped education or training if they are aged 16 to 19, changes in rent, earnings and health conditions¹².

Human in the loop

⁸ page 3, n6

⁹ para 1(3) Schedule 3B, lines 32 p.73 to 4 p. 74 of the Bill

¹⁰ 'information that may enable the identification of the subject matter or the amount of a transaction completed through the account, or may enable the identification of a party to such a transaction who is not a holder of the account', para 22 Schedule 3B, rows 37 to 45 page 86 of the Bill

¹¹ para 1(4) Schedule 3B, lines 5 – 10 page 74.

¹² See for example Universal Credit, Report a Change of Circumstances
<https://www.gov.uk/universal-credit/changes-of-circumstances>

12. The Impact Assessment (IA) for the Bill¹³, Human Rights Memorandum and statements from the Secretary of State¹⁴ and Minister for Transformation at Second Reading¹⁵ state that a final decision on benefit eligibility 'will always involve a human agent'.

13. However, this is not reflected in the legislation itself.

14. The new provisions instead provide that information can be used 'for the purposes of identifying' incorrect payments, in addition to simply 'assisting in identifying them'¹⁶.

15. This is a change from the measures included in the DPDI which were limited to 'assisting' the identification of incorrect payments.

16. Further, the inclusion of a human within the decision-making process should not be viewed as a panacea for the risks associated with the EVM:

- a. The way in which humans interact with algorithms in administrative decision making is not well understood and may be impacted by:
 - i. **Automation Bias:** where decision makers put too much, or inappropriate trust in computers, when exercising their own judgment¹⁷,
 - ii. **Anchor Bias:** the tendency to over-rely on a piece of information initially received and to adjust final judgment based on that starting point¹⁸.
- b. The effectiveness of that check is likely to be impacted by the authority, competence and capacity of the individual, the way in which the information is presented to them as well as the nature of the check they are undertaking – limited information has been provided to date about this by Government, raising concerns that these checks will be ineffectual.

Example: as part of the Robodebt scandal in Australia, employees in the Compliance team reviewed debts raised by the system. However, they were told that their job was

¹³ 'no automatic decisions will be based on this data alone. Further checks will be needed using the data as a prompt for this and a final decision will always involve a human agent' p. 37 Impact Assessment <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>

¹⁴ 'decisions will be made by a human being in the final stages', col 587, [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)

¹⁵ 'a flag would be passed to a human to establish benefit eligibility', col 630 [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)

¹⁶ Row 17 of p. 73, para 1(1) Schedule 3B and row 31 of p. 76, para 5 Schedule 3B of the Bill

¹⁷ Kazim, T., & Tomlinson, J. (2023). Automation Bias and the Principles of Judicial Review. *Judicial Review*, 28(1), 9–16. <https://doi.org/10.1080/10854681.2023.2189405>

¹⁸ Agudo, U., Liberal, K.G., Arrese, M. *et al.* The impact of AI errors in a human-in-the-loop process. *Cogn. Research* 9, 1 (2024). <https://doi.org/10.1186/s41235-023-00529-3>

just to check that the debt as presented by the system was calculated correctly – not whether the system had correctly identified that there was in fact a debt. As a result, flaws in the system were not identified or addressed.

17. The information included in the IA and at second reading debate refers to the ‘final decision’, it does not make clear whether this will apply in relation to interim decisions that may have serious implications for individuals, for example, if a decision is taken to suspend benefits pending further investigation.

Example: *evidence provided by the Director General to the Work and Pensions Committee suggests that at one stage the DWP was applying a policy of suspending all cases referred to a fraud investigation team by a machine learning predictive model¹⁹. During the operation of that policy, PLP was aware of reports of people whose benefits, often their only source of income, being indefinitely suspended pending investigation, without being provided with a clear explanation of what they needed to prove or disprove for the benefit to be reinstated, nor how to seek redress for any incorrect suspension or hardship caused.*

Benefits within scope

18. The provisions now state on the face of the Bill that the measures will apply to Universal Credit, Employment and Support Allowance and the state Pension Credit²⁰.
19. However, with the exception of the State Pension, the Bill also gives the Secretary of State the power to include further benefits by statutory instrument²¹.
20. There has been significant concern in recent years about increasing use of secondary legislation (and so called Henry VIII powers) to make significant policy changes, resulting in far less robust scrutiny than measures contained in primary legislation.²² As of June 2022, only 16 statutory instruments have been rejected since 1950, and none have been rejected by the House of Commons since 1979²³.

Effectiveness of the measure

¹⁹ Q26, Work and Pensions Committee Oral evidence: DWP’s Annual Report and Accounts 2022-23, HC 417 committees.parliament.uk/oralevidence/14052/pdf/

²⁰ para 19 of Schedule 3B, rows 8 – 12 of page 84

²¹ para 19(2) Schedule 3B, at rows 13 – 14 page 84 of the Bill

²² para 18, Secondary Legislation Scrutiny Committee, “Government by Diktat: a Call to Return Power to Parliament” (November 2021):

<https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/105/105.pdf> (November 2021):

<https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/105/105.pdf>

²³ Hansard Society, available here: <https://www.hansardsociety.org.uk/publications/guides/delegated-legislation-frequently-asked-questions>

21. Automated systems can and do go wrong. Examples of where automated systems designed to detect social security fraud and error have gone wrong, causing significant harm to individuals and the public purse include:
- a. The **Australian Robodebt scheme** which used automation to ‘crack down’ on welfare fraud and overpayment, but there was a flaw in their system. An incorrect method for conducting income-averaging calculations led to AU\$750m being wrongly recovered from almost 400,000 people, who were also accused of fraud. This had a cataclysmic impact on many lives and the Royal Commission reported financial suffering, mental health struggles, and “severe and long-lasting effects.”
 - b. The **Dutch childcare benefit scandal** (System Risk Identification (SyRI)) which was exposed in 2019 when it was revealed that the Dutch tax authority had used a self-learning algorithm to detect childcare benefit fraud. Tens of thousands of parents and caregivers were falsely accused of fraud, which led to debt, allowances being taken away, and children being removed from their homes.
22. In relation to the current measure, in 2017, the DWP carried out a small-scale Proof of Concept with a bank to test the use of data to identify possible capital and abroad fraud and error led to the identification of fraud or error in less than a third of cases identified by the measure²⁴.

Equalities Impacts

23. The previous Government undertook an Equalities Analysis of the predecessor measures to the EVM included in the DPDI. This found that the two groups that were most likely to be adversely affected by the proposals were older people and disabled people²⁵.
24. The above Equalities Analysis was not initially published by the Government, who instead pointed to the distinct Bill Impact Assessment. The Equalities Analysis was published following an internal review of a Freedom of Information Act request submitted by Parkinson’s UK, with input from the Public Law Project.
25. Our understanding from a recent further PLP Freedom of Information Act request is that the Government has produced an equivalent updated Equalities Analysis for the current Bill which has not yet been published.²⁶

²⁴ para 41, DWP, Fighting Fraud in the Welfare System (May 2022):

<https://assets.publishing.service.gov.uk/media/6285e76dd3bf7f1f41a08e1a/fighting-fraud-in-the-welfare-system.pdf>

²⁵ [https://www.parkinsons.org.uk/sites/default/files/2024-](https://www.parkinsons.org.uk/sites/default/files/2024-05/Clean%20copy%20of%2020231130%20DWP%20Third%20Party%20Data%20EA%20v2%20(red%20acted).pdf)

[05/Clean%20copy%20of%2020231130%20DWP%20Third%20Party%20Data%20EA%20v2%20\(red acted\).pdf](https://www.parkinsons.org.uk/sites/default/files/2024-05/Clean%20copy%20of%2020231130%20DWP%20Third%20Party%20Data%20EA%20v2%20(red%20acted).pdf)

²⁶ Response to FOIA request by Joseph Summers of 18 October 2024, FOI Ref FOI2024/83760:

https://www.whatdotheyknow.com/request/equality_analysis_for_fraud_err#incoming-2905473

New Clause: Official Error Overpayments

The problem

26. The power for the DWP to recover UC overpayments caused by the DWP's own mistakes was introduced as part of the Welfare Reform Act 2012²⁸. This represented a significant change to the position that had previously applied to most benefits, where overpayment debts could only be recovered where they were caused by the claimant's misrepresentation or failure to disclose information²⁹. Now, in the case of UC, all overpayments are recoverable, regardless of their cause. UC is the principal benefit for working-age adults on a low income in the UK. As of October 2024, it was claimed by 7.2 million people³⁰.
27. While UC Official Error overpayments are estimated to represent a relatively small proportion of DWP's benefit expenditure (0.7% of UC expenditure, and 0.14% of total benefit expenditure, in FYE 2024)³¹, a significant number of claimants are negatively impacted by them. According to DWP data, in 23/24, 686,756 new UC Official Error overpayment debts were entered on DWP's Debt Manager system.³²
28. When these powers were first introduced, the then Minister for Employment provided assurances to the relevant Bill Committee that 'the DWP do not have to recover money from people where Official Error has been made, and we do not intend, in many cases, to recover money where official error has been made'³³. PLP's research suggests that the DWP's default approach is to recover all Official Error overpayments with relief dependent on individuals

²⁸ S71ZB Social Security Administration Act 1992

²⁹ S71(1) Social Security Administration Act 1992

³⁰ Universal Credit statistics, 29 April 2013 to 10 October 2024
<https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-10-october-2024/universal-credit-statistics-29-april-2013-to-10-october-2024>

³¹ DWP, Fraud and error in the benefit system, Financial Year Ending (FYE) 2024
<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>

³² Response to Freedom of Information Act Response from Andy Mitchell, 30 October 2024 FOI Ref: FOI2024/84172

³³ Col 1019, Welfare Reform Bill: Public Bill Committee (19 May 2011) available here:
<https://publications.parliament.uk/pa/cm201011/cmpublic/welfare/110519/am/110519s01.htm>

navigating a difficult and inaccessible process to request waiver. In 2022 only 26 waiver requests were granted³⁴.

29. As reflected in PLP's recent ³⁵, the impact of overpayment debt recovery on individual claimants can be severe. The research found that recovery of official error overpayments was associated with a particular sense of injustice, with individuals finding themselves unexpectedly in debt through no fault of their own. The case study below highlights the significant impact these errors have on individuals who relied on them:

C was overpaid UC due to the DWP failing to take into account income from her Widow's Pension. She had informed the DWP that she received this and had been assured that it would not affect her claim. She relied on that assurance and spent the money on daily living expenses. Four years later the DWP told her that they would be recovering the resulting overpayment of £7258.08.

30. Recovery of these official error overpayments can often put individuals who have relied in good faith on these payments, in financially precarious situations. Research by the Joseph Rowntree Foundation found that the current standard UC allowance is not sufficient to cover the cost of essentials.³⁶ Households repaying overpayment debt can lose up to 25% of their standard allowance each month, meaning people who are already experiencing severe financial hardship are forced to make difficult choices about sacrificing essentials. An official error UC overpayment can also have a knock-on effect in relation to a claimant's entitlement to other support such as Council Tax reduction.
31. Furthermore, claimants often base key life decisions, such as whether to enrol in further education, in reliance upon information provided to them by DWP officials about their entitlement to UC. When this information turns out to be incorrect, claimants can find themselves having to choose between abandoning their studies or living without any regular income. The stress and anxiety around repaying these debt payments, which they have received unexpectedly having relied on DWP's assurances, cannot be overstated.
32. Moreover, the unfairness of recovering official error overpayments has also been raised by the Independent Case Examiner in her 2023/24 Annual Report. She commented that "particularly where customers are vulnerable, the

³⁴ Page 21, Public Law Project, From Pillar to Post: Barriers to Dealing with Deductions From Universal Credit (September 2024): <https://assets.publishing.service.gov.uk/media/6285e76dd3bf7f1f41a08e1a/fighting-fraud-in-the-welfare-system.pdf>

³⁵ N. 33, in particular Annex 3 – Case studies

³⁶ Joseph Rowntree Foundation, Guarantee our Essentials: Reforming Universal Credit to ensure we can all afford the essentials in hard times: <https://www.jrf.org.uk/social-security/guarantee-our-essentials-reforming-universal-credit-to-ensure-we-can-all-afford-the>

recovery of debt can be stressful and worrying.”³⁷ PLP’s casework has evidenced that a seemingly ‘minor’ mistake from the DWP can have major repercussions for the individuals impacted.

The solution

33. The Labour frontbench previously raised concerns about allowing the DWP to recover UC official error overpayments during the passage of the Welfare Reform Bill in 2011, and at that time proposed amendments that would instead have protected claimants from such recovery³⁸.
34. The PAFER Bill represents a rare opportunity to right this wrong and correct unfairness by implementing similar legislative changes now. We believe this would help send a clear message about fairness, respect and the balance of rights and responsibilities.

We recommend the following amendment to the PAFER Bill: Amending section 71ZB Social Security Administration Act 1992 to include the following subsection:

(1A) The amount referred to in subsection (1) shall not include overpayments that arose in consequence of an official error where the claimants or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

35. The amendment would also insert “Subject to subsection (1A),” at the start of subsection (1).
36. This would be in line with the Reg 100(2) Housing Benefit Regulations 2006, which restricts the recovery of official error overpayments specifically in Housing Benefit. It would also echo Labour’s proposed 2011 amendment to the Welfare Reform Bill.
37. Moreover, it is similar to the legitimate expectation defence to official error overpayment recovery, already established in public law following a case brought by a PLP client³⁹. With this amendment DWP officials would themselves consider the fairness of recovering an official error overpayment before any recovery was initiated, rather than the onus being on claimants to

³⁷ page 5, Independent Case Examiner’s Annual Report 1 April 2023 - 31 March 2024:

<https://www.gov.uk/government/publications/dwp-complaints-annual-report-by-the-independent-case-examiner-2023-to-2024>

³⁸ House of Commons, Public Bill Committee Amendments, Welfare Reform Bill, Thursday 19 May 2011

³⁹ R (on the application of K) v SSWP [2023] EWHC 233 (Admin), see [DWP unlawfully sought recovery of client’s 8k debt caused by Department error - Public Law Project](#) and CPAG [Welfare Rights | Overpayments and ‘legitimate expectation’](#)

ask the DWP to waive recovery or challenge it via judicial review. It would therefore simply provide improved access to justice in line with a judgment which the Government has already accepted.

38. In addition, increasing protections against the recovery of official error overpayments would create a strong incentive for reducing the rate of DWP errors in the first instance- contributing to a more accurate and better functioning Welfare system from the outset.

39. The Bill provides an opportunity for the Government to address a significant source of unfairness affecting hundreds of thousands of claimants each year, easing the financial burden of debt on claimants who have done nothing wrong and encouraging the DWP to make the correct payments the first time.

About PLP

Public Law Project is an independent national legal charity.

We are researchers, lawyers, trainers, and public law policy experts.

Our aim is to make sure state decision-making is fair and lawful and that anyone can hold the state to account.

For over 30 years we have represented and supported people marginalised through poverty, discrimination, or disadvantage when they have been affected by unlawful state decision-making.

Public Law Project's research and publications are available at:
www.publiclawproject.org.uk/resources-search/