

# **Written evidence submitted by Child Poverty Action Group (PAB06)**

## **Public Authorities (Fraud, Error and Recovery) Bill – Public Bill Committee**

### **About Child Poverty Action Group and our sources of evidence**

Child Poverty Action Group works on behalf of the more than one in four children in the UK growing up in poverty. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

We have particular expertise in the functioning of the social security system, through our welfare rights, training and policy work. This submission draws on evidence from CPAG's Early Warning System, which collects case study evidence from welfare rights advisers across the UK on the impacts of changes in the social security system, and has collected thousands of cases to date.

### **About this submission and how we can help**

This submission highlights key areas of concern regarding the Public Authorities (Fraud, Error and Recovery) Bill (PAFER Bill), with a focus on the proposed powers for the government to:

1. Compel banks and financial institutions to provide information for the purpose of verifying eligibility for benefits.
2. Deduct overpayment debt directly from individuals' bank accounts and disqualify individuals with overpayment debts from holding a driving licence.

CPAG has a wealth of evidence and expertise on the impacts of changes to the social security system on claimants. The evidence outlined here represents some of our key concerns with the PAFER Bill, however if the Committee is interested in a particular line of inquiry, please don't hesitate to contact us as we may have additional evidence we can share.

## **Introduction**

CPAG has serious concerns about the PAFER Bill's proposals for the eligibility verification measure, direct deduction orders and driving licence disqualifications.

Our concerns arise from the fact that many children and families living in poverty could be adversely affected by the Bill's measures. 7.5 million people claim universal credit,<sup>1</sup> and by the time it is fully rolled out more than half of all children in the UK will live in a household

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<sup>1</sup> <https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-9-january-2025/universal-credit-statistics-29-april-2013-to-9-january-2025#people-on-universal-credit>

receiving universal credit.<sup>2</sup> These numbers illustrate the potential impact of any changes to UC, and how important it is to get it right. Measures in the Bill make it more likely that families will face fraud and error investigations – and evidence from our work shows that these investigations can often result in lengthy benefit suspensions or incorrect decisions to reduce or terminate benefits. This can cause more hardship for families with children who are already struggling financially.

We are also concerned about the procedural fairness of the measures, and the lack of transparency around how they will work in practice. The Department for Work and Pensions' fraud and error processes are already difficult for external organisations to scrutinise due to their lack of transparency, and the measures we are concerned about in the PAFER Bill perpetuate that issue. As tabled, the Bill fails to provide crucial details about its operation that are needed to assess the seriousness and scale of risk its measures pose to low-income families – for example, how existing appeal rights interact with some of the proposed powers.

Furthermore, the eligibility verification measure would mean people face more suspicionless surveillance and intrusion into their privacy simply by virtue of being benefit recipients. We believe it is fundamentally unfair and potentially unlawful to subject these families to surveillance that the rest of the population does not face, simply because they are on a low income.

Unless additional assurances can be provided to ensure families will not be pushed into hardship or face unfairness in the implementation of the measures referenced in this submission, we propose that the Bill Committee should amend the Bill to remove them.

## **Benefit eligibility verification powers**

The PAFER Bill proposes to enable the DWP to issue speculative 'eligibility verification notices' to financial institutions like banks, which will compel them to provide information to help verify a claimant's entitlements to universal credit, pension credit, or employment and support allowance.

These notices will set out 'eligibility indicators', which are the criteria for information that the DWP will use to decide whether to investigate a claim. Under the proposed powers, on receipt of a notice banks will have to first identify accounts receiving a DWP payment and then assess those accounts against the eligibility indicators specified in the notice. Where an account or linked accounts match this search criteria, banks will then pass on information about the account and account holder to the DWP so that it can decide whether to investigate.

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<sup>2</sup> Based on CPAG analysis.

Under these powers, all claimants of the specified benefits will be subject to their accounts, or accounts associated with their benefit claim, being checked by financial institutions for indicators of ineligibility – without any prior suspicion of fraud or error. The DWP has not, to our knowledge, indicated that it is intending to limit the use of this power to any particular group of claimants' accounts.

### **CPAG's concerns**

- 1. The eligibility verification powers will mean more families with children being caught up in fraud investigations, and in cases where benefits are suspended, incorrectly reduced or terminated, this risks causing hardship and destitution.**

Our primary concern with the eligibility verification measure is that it is likely to lead to increased hardship for a greater number of families who have done nothing wrong. Under the proposed powers, and in contrast to the current situation, all claimants of the relevant benefits, whether under prior suspicion or not, will be in scope for eligibility-related surveillance. This means that every claimant of universal credit, pension credit and employment and support allowance will face the possibility that information relating to their bank accounts triggers a fraud and error investigation. By casting the 'net' so wide, this feature of the PAFER Bill vastly increases the likelihood that low-income families with children will be caught up in investigations.

When an investigation takes place, before any determination has been made about whether fraud or error has occurred, claimants may be subject to benefit suspensions, in order to prevent further potential overpayment debt from accruing. Families' payments are reduced or stopped for the duration of the investigation, taking already-low household incomes to levels that can cause significant hardship and even destitution while an investigation is carried out. In some cases, families have all or part of their award terminated, and experience months without payment before it is found after a mandatory reconsideration or appeal that the decision to terminate was incorrect. During investigations, or in mandatory reconsiderations after a decision is made, claimants can face procedural issues that further extend the time spent without payment, including issues with uploading documents as evidence and the DWP failing to respond to requests for information.

CPAG has evidence that 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. The impact of this can be dire for families already struggling. The following case studies from our Early Warning System (EWS) highlights examples of claimants' experiences of benefit suspensions and incorrect reductions or terminations.

#### Case study 1

*A man in receipt of UC had travelled abroad to visit his unwell father, who later passed away, on two separate occasions spanning several months across 2023*

*and 2024. His UC award was suspended pending investigation, because he erroneously did not inform the DWP of his travel. Despite it being understood by the claimant that he was not entitled to UC for the periods he spent abroad, delays in the DWP concluding their investigation meant his benefits remained suspended even once he was back in the UK and entitled to UC again. Repeated attempts were made to get a decision from the DWP, but these were unsuccessful. At the time of CPAG receiving the case in May 2024, he had received no income for 7 months and had become street homeless.*

### *Case study 2*

*A lone parent with terminal cancer had her UC award suspended in March 2024 due to suspicion she was not in the country. The claimant was, however, in the UK and had not been abroad at the time in question. The claimant complied with multiple requests for information but struggled to comply further due to a language barrier. She continued to engage and asked numerous times why her award was still suspended. A decision was made in May 2024 that the claimant was not entitled from December 2023 and an overpayment debt was issued. This was despite known vulnerabilities; the claimant had informed the DWP of her late-stage cancer as early as September 2023 and the department was seemingly aware of the claimant's language barrier, having provided interpreters for her in the past.*

### *Case study 3*

*A couple with children had their full UC award suspended for 7 months, before being told by the DWP that they were not entitled to the child element or childcare costs that they had been claiming and had an overpayment of tens of thousands of pounds. It took a further 7 weeks for the couple to be told that this was because the DWP did not believe that their children were living with them. The couple requested a document upload link be added to their UC digital account so they could send a mandatory reconsideration request with evidence challenging the overpayment. Their requests for an upload link were ignored. A follow-up letter was sent by post a few weeks later explaining that the family were facing financial hardship having not had UC payments for over 9 months by that point. The family's adviser sent a pre-action judicial review letter to the department, and following this the wrongful removal of their child element was finally reversed, the overpayment was cancelled and their UC payments with the child elements included put back into payment. The family are still awaiting a tribunal hearing date after the childcare costs overpayment decision was upheld by the DWP on mandatory reconsideration. It is expected that it will have been over 18 months since their childcare payments were stopped before their appeal*

*is heard by the tribunal. In the meantime, DWP is recovering the purported overpayment of childcare costs from the family's UC award.*

With more claimants pulled into the pool for potential fraud and error investigations, the eligibility verification powers proposed in the PAFER Bill will make it more likely that families and children will experience these kinds of challenges. Because of the indiscriminate nature of the eligibility verification process – all claimants will be in scope – eligibility indicators could flag any claimant for further investigation, when currently this is not the case.

Neither the Bill nor the associated published documentation specify precisely what the government plans to include as eligibility indicators. This means we have no way of knowing the level and nature of suspicion that will have to be demonstrated by the checks in order to trigger an investigation. It is similarly unclear how criteria applied to bank accounts on a mass scale can appropriately reflect the different circumstances of families' entitlements. Based on the provisions included in the Bill, the threshold for investigation – and, therefore, suspension and potential termination of benefit payments – could be much lower than is presently the case.

We recommend that the Bill Committee requests further details on the eligibility indicators in order to provide for more effective scrutiny of the likely consequences of the eligibility verification measure, and the degree of suspicion required to trigger a fraud and error investigation. Given the intrusiveness of the powers, it is inappropriate for no definitions of eligibility criteria to be included within legislation.

While we welcome the provision of independent oversight and annual reviews of the DWP's use of the eligibility verification powers, we are concerned that these safeguards hinge on the contents of an as-yet unpublished code of practice and inevitably are not robust enough to prevent the measure increasing in real-time the level of hardship experienced by families receiving social security. The Committee may wish to assess the extent to which DWP measures will adequately protect family income during investigations. We are also concerned that the person appointed to independently review the functioning of the eligibility verification measure does not have powers set out in the Bill, and that the DWP is ultimately able to determine what the person has the means to investigate. There is risk here that this independent oversight is undermined in practice, and we therefore recommend that the Bill Committee takes steps to ensure that the Bill provides for genuinely effective oversight.

**2. Low-income families claiming social security benefits will be subject to surveillance that the rest of the population is not subject to, which undermines equality and fairness.**

CPAG is additionally concerned with the potentially discriminatory nature of these eligibility verification proposals. The Bill will introduce mass checking of bank accounts, catching in its net all claimants of the specified benefits. Individuals will be subject to this surveillance by virtue of being a recipient of a benefit, rather than because of any suspicion of criminality,

wrongdoing or error. In the cases of universal credit and pension credit, this effectively means that having a low income will entail surveillance of bank accounts by financial institutions. In the case of employment and support allowance, claiming a benefit that is intended to replace income lost due to ill health or a disability will entail surveillance. And, because the Bill gives the government the power to amend the specified benefits to add others without new primary legislation, additional groups which include children could easily be made to be subject to surveillance simply because of their status as benefit claimants.

This also has significant equalities implications. Recipients of the specified benefits are more likely to belong to groups with protected characteristics. For example, women are more likely to receive universal credit than men,<sup>3</sup> and disabled people will account for a higher proportion of UC and ESA claimants than the general population. The DWP has not published an equality impact assessment for the Bill, so as a first step we would urge the department to do this in order to clarify whether the measures will have any disproportionate effects on people with protected characteristics.

There is a shared interest in ensuring that social security claims are lawful and correct. But introducing wide, suspicionless and intrusive powers that risk triggering investigations with dire and prolonged consequences for families seems certain to do more harm than good. There are countless other ways in which DWP decision-making and communication with claimants could be improved to secure more accurate entitlement outcomes. As a result of the concerns set out above, CPAG recommends that the Bill Committee proposes an amendment to remove the eligibility verification measure from the PAFER Bill.

## **Direct deduction orders and driving licence disqualification powers**

Overpayment debt recovery powers will be expanded to enable the DWP to recover debt directly from individuals' bank accounts either via a lump sum deduction or through regular deductions. Currently, the DWP has to apply to a court if it wants to do this.

This will give the DWP the means to more easily recover overpayments where they cannot be recovered via benefit deductions (because the individual is no longer receiving benefits) or via PAYE deductions (because they are not in PAYE employment). It will be used in cases where the individual is deemed to have the ability to pay, because they have other income or capital, but supposedly chooses not to. The DWP will conduct affordability checks before making direct deductions, including through assessing individuals' bank statements, though the Bill does not specify what criteria will be used to determine affordability thresholds.

In addition, the PAFER Bill will enable the DWP to apply to the court to disqualify individuals owing overpayment debt of at least £1,000 from holding a driving licence. The DWP claims

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<sup>3</sup> <https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-9-january-2025/universal-credit-statistics-29-april-2013-to-9-january-2025#people-on-universal-credit>

that this power will only be used as a last resort, when all other attempts at recovery have failed – i.e. where the individual owing overpayment debt has repeatedly refused to repay, and direct bank account deductions are not possible because the individual is frustrating the DWP's attempts at recovery.

### **CPAG's concerns**

#### **3. Direct deduction orders do not come with sufficient safeguards, meaning more risk of hardship and unfairness for families.**

We are concerned that the power for the DWP to take debt repayments directly from bank accounts comes with insufficient safeguards, risking plunging families into further hardship. While the Bill provides for an 'affordability assessment' to be made before recoveries take place, the wording does not clarify what conditions would need to be met for the DWP to be satisfied that direct deductions would be affordable for families. The affordability assessment would need to be robust to protect families with children from being pushed into deeper hardship, and the details of this assessment should be set out ahead of report stage of the Bill.

The need for more assurance on the strength of the affordability test is necessary in part because it is hard to know how many low-income families will be affected by direct deduction orders. While this measure will apply only to former claimants, when overpayments cannot be recovered via benefit deductions, it would be wrong to assume that this will be affordable for families by virtue of the fact that they are not benefit recipients. A household that is not in receipt of benefits may still be in poverty or struggling – for example because they are on a low income but not aware of the benefits they are eligible for, or because they have had a benefit award terminated, or because they once were but are no longer eligible for a given benefit (e.g. EU nationals with pre-settled status who previously had a right-to-reside, claimants who become full-time students) . This measure risks dragging these families into further hardship and even destitution by giving the DWP more capacity to deduct from a bank account whatever income or capital they do have. The scale of this problem is unclear at this time because the number of families who will fall within its scope is unknown, but many could potentially face harm from the measure.

In addition, there is a lack of clarity about how various aspects of direct deduction orders would work in practice. For instance, it is unclear what the interaction will be between direct deduction orders and the process and outcomes of mandatory reconsideration (MR) and appeals made in respect to the underlying benefits decision that has given rise to the overpayment that is being recovered. The Bill Committee should seek answers to the question of whether a direct deduction can still be made when an individual still has the option to request a MR or appeal a benefit overpayment decision at a tribunal, and when waiting for the outcome of a MR or appeal. The Committee should also seek to understand

whether a regular direct deduction would be immediately stopped and repaid if the benefit decision that gave rise to the overpayment is revised on appeal (i.e. where it is found that there never was an overpayment because the DWP made an incorrect decision).

Finally, we are concerned about the processes that will be used to contact individuals to verify that they are in fact refusing to engage with the DWP or repay overpayment debt. It is possible that the DWP will have old addresses or contact details, since there is no obligation for former claimants to update the department if they are no longer receiving benefits. The Bill Committee should probe how the DWP will know if their letters have been received or if the former claimant is even aware of the debt if the overpayment arose from a revision after they stopped receiving benefit.

If it is not possible to obtain certainty of a robust affordability assessment and other safeguards to protect families from hardship and unfair procedures, we would recommend that the Bill Committee proposes that the direct deduction order powers are removed from the Bill via an amendment. This recommendation is made in the context of the DWP already having the power to deduct overpayment debt from individuals' accounts with appropriate safeguards, by applying to do so via the courts.

#### **4. Driving licence disqualifications are disproportionate and carry the risk of unfairness for claimants.**

Disqualifying people who owe overpayment debt from holding driving licences will in many cases be a disproportionate and unfair course of action under the terms laid out in the PAFER Bill. The £1,000 threshold is low in the context of the value of benefit payments – the average monthly UC payment amount in November 2024 was £1,000<sup>4</sup> – and so it will not take a particularly serious instance of overpayment to meet this threshold. In addition, driving licence disqualifications will be able to be used for *all* overpayments types – not just fraud, but overpayment debt accrued because of claimant or DWP error too.

Evidence shared with CPAG suggests the DWP can make incorrect or unfair judgements that do not reasonably account for claimants' circumstances and their barriers to engaging with the department. In light of this, a clear risk with the driving licence disqualification measure is that a claimant is deemed to have refused to engage or frustrated the process of overpayment debt recovery, when in fact some other problem relating to their circumstances has prevented repayment. Language barriers are one such potential barrier to engagement. The EWS case study below highlights how a lack of English language skills can result in grave consequences for a claimant.

*After 4 years on UC, a single parent had her award suspended and then terminated for failing to provide proof of ID as part of a review. The claimant*

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<sup>4</sup> <https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-9-january-2025/universal-credit-statistics-29-april-2013-to-9-january-2025#households-on-universal-credit>



*does not speak English and was unable to engage with the letter from the DWP requesting the proof. The claimant had a telephone only claim and no decision letter regarding the termination was issued; a welfare rights adviser was informed of the termination reason via an email from the DWP.*

We are concerned that, in the absence of the DWP systematically resolving problems of this nature, the driving licence disqualification measure risks being used as punishment in cases where an individual is not purposefully refusing to repay debt.

It is important that the measure adheres to procedural fairness in other ways, too. As with direct deduction orders, the process through which the DWP applies for driving licence disqualifications must interact fairly with the processes for MR and appeals. The Bill Committee should therefore try to determine whether the MR and appeals process for benefit decisions that have given rise to overpayments must be completed before a driving licence disqualification can be applied for – and also whether a disqualification will cease to have effect if it is found that that there should never have been an overpayment because the DWP made an incorrect decision.

Also similar to our concerns around direct deduction orders, it is possible that the DWP could have old addresses or contact details, since there is no obligation for former claimants to update the department if they are no longer receiving benefits. The Committee should attempt to determine whether the DVLA will share addresses with the DWP to send out notice of the driving licence disqualification application.

Because of the concerns outlined, and in the absence of satisfactory answers to these questions, we would recommend that the Bill is amended to remove the driving licence disqualification measure.

*February 2025*