

Response to a call for evidence on the Public Authorities (Fraud, Error and Recovery) Bill from the Public Bills Committee.

Citizens Advice across Warwickshire
February 26, 2025.

Introduction

This response comes from the experiences and perspectives of front line advisers across three local Citizens Advice offices - Citizens Advice South Warwickshire, North Warwickshire Citizens Advice, and Bedworth, Rugby and Nuneaton CA (BRANCAB).

Between the three organisations we see thousands of clients with tens of thousands of issues each year. Many of our clients have personal experiences of dealing with the Department for Works and Pensions, as well as other government departments, and some of those experiences involve the recovery of overpayments due to either fraud or error.

Though we believe, in general terms, that the government has a right to take responsible action to recover overpayments driven by fraud in the benefits system where it can be proven to have occurred, we strongly believe that claiming welfare benefits - benefits Parliament has decided should be made available to those who meet entitlement requirements - does not end a claimant's human rights to privacy.

That, and a strong collective belief that the government should not have a claim to recover anything less than substantial overpayments caused by official error, is why we are responding to this 'call'.

Response

Article 8 of the UK Human Rights Act gives citizens of the UK the 'right to respect for private and family life'. More specifically, as the devil is always in the detail, it clarifies this general statement with two more detailed statements. They are quoted below:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This is our starting point; not that there is an unqualified and unlimited 'right to privacy' but that the principled right to privacy should be abrogated only in particular circumstances for particular reasons.

While agreeing with many of the "good intentions" behind this Bill, we believe that several new powers proposed do not correspond to a justification for abrogating the broader principle.

We are not lawyers and will not be arguing the law. The majority of our clients deal continuously with 'the State', in the form of departments that dispense financial support to them, almost always to address financial hardship. They provide information continuously, deal with requests for personal information continuously, and find themselves on the end of administrative error often.

They are also, as a collective, often 'guilty' of providing supporting evidence which isn't deemed sufficient to support a benefit claim, make an inadvertent mistake on a long and /or complicated application or renewal form, or take a little longer than is requested to notify the powers that be of a material change in their circumstances.

The result is 'fraud and error'. 'Fraud and error' costs the government, and by extension the taxpayer (that is all of us), money. Fraud and error is not good and should be minimised but, and this is where our collective view starts to diverge from that of the government reflected in this Bill, the scale of fraud and error is not so large as to justify the proposed infringement on the human rights of vulnerable welfare benefit claimants (and they are all vulnerable).

Firstly, we believe the obvious - that 'fraud' and 'error' are two different things. Fraud, the deliberate intention to obtain money illegally through misinformation and related activities, can be 'official' fraud (ie carried out internally by staff and/or commissioned service providers) and claimant fraud.

The former is assumed to be subject to internal audit, investigation and criminal prosecution if and where it occurs; though it is interesting to note that such fraud never makes it to the public media, at least in the same way claimant fraud does.

Claimant fraud, again obviously, requires investigation and prosecution, and post-conviction recovery action if proven. More on this below.

'Error', the accidental introduction of mistaken information into the decision-making system, can similarly be divided into 'administrative error' and 'claimant error'. Administrative error, in relation to claimants, can lead to underpayments or overpayments of benefits and other financial support. It can also lead to inaccurate decision-making around entitlement decisions which, themselves can lead to under or overpayments to claimants.

Where underpayments occur the government should be obliged to compensate the claimant for the mistake. We believe that where overpayments occur, at least where amounts do not represent clear and obvious overpayments, the government should not have the right to recovery; especially where recovery would cause severe hardship to claimants. Where the sums are large but recovery would not generate severe hardship to claimants, we believe rates and methods should still exhibit a high degree of sympathy for the likely impact on claimant finances.

That said, the core of this Bill focuses on identifying, investigating and effectively / efficiently recovering overpayments due to claimant fraud; ie deliberate and proven actions to deceive public authorities.

Here the Bill claims new powers on several fronts. Below is our collective feedback on some of those proposals.

The Bill proposes to set in statute the core functions of the PSFA (currently under the authority of the Minister for the Cabinet Office), set it up outside the Cabinet Office as a separate body, and extend those powers to other departments. According to our reading of the Bill, though the PSFA would be a separate body to the Cabinet Office, the Cabinet Office could still delegate certain tasks to it.

We agree with the need to separate the PSFA from the Cabinet Office and to extend its existing powers to investigate activities in other departments, but are concerned that the Cabinet Office will retain some control over its activities. We think this still constitutes an overconcentration of investigatory power within a very difficult to hold accountable and rarely transparent Executive.

'Enhanced investigatory powers' are also proposed primary among which, according to our reading of the Bill, is the power to expand the range of third parties about whom the government can compel to share personal information, and to simultaneously expand the types of financial disbursements that come under this jurisdiction. While we agree with the latter expansion we disagree with the former.

We specifically disagree with the power to gather information on benefit recipients not suspected of any fraud. "Potential fraud" isn't proven fraud. There may not even be an allegation of fraud. We believe this is a direct and unjustifiable breach of the 'right to privacy' referenced above. And we believe government assurances, such as the proposal within the Bill to consult on a statutory code of conduct (with no guarantees on whether this code would effectively protect claimants' inherent rights), are not enough to assuage our concerns.

In the same way as it would be grossly unfair to assume every benefit claimant is a potential fraudster it would also be naive to assume every government in a position

to use these new powers will be a benign one. Politically motivated 'fishing expeditions' are not what this new Bill should be about.

In terms of new powers over 'entry, search and seizure', our reading of the Bill suggests that, in effect, DWP investigators will be given Police-equivalent powers when investigating potential crimes. Also that, "obstructing DWP officers exercising their powers" will constitute a new criminal offence.

We believe law enforcement should be left to the Police where lines of accountability are relatively clear and comparatively transparent. The argument for these proposals, that they will take the 'load off' Police resources is a bad argument, and disingenuous at best. If the Police don't have the resources to carry out investigations into serious crime then funds should be provided. Law enforcement should not, in effect, be outsourced to non-Police personnel. If allowed here, there is a "thin end of the wedge" feel about potential future developments not included in this Bill.

Finally, with respect to new powers over debt recovery and enforcement, our collective view is to have a great deal of sympathy for those given the task of recouping fraudulently acquired public money in difficult circumstances. However, we come back to the original and primary need to balance justifiable new recovery powers with the inherent right of individuals to privacy, and fair treatment.

According to our reading of the Bill, the DWP (and presumably other Departments through the PSFA) will have the power to recover debts from individuals not claiming welfare benefits, or receiving wages through the PAYE system, directly from their bank accounts "without going to court".

Separately, "the Minister could impose a civil penalty for fraud provided that, on a balance of probability, a person has carried out fraud or conspired to do so".

Separately again, the Department for Work and Pensions (DWP) will be able to apply to a court to suspend the driving licence of someone convicted of fraud, provided the recoverable debt is £1,000 or over and "frequent requests to repay the debt have been ignored".

The safeguards suggested in the Bill to prevent the misuse or abuse of power in any of these instances is a requirement within the Bill for the Secretary of State "to appoint an independent person" to inspect and report; ie someone chosen by the head of the organisation being inspected and reported about.

Our collective concerns with all three new proposed powers should be clear. In our view, allowing money to be taken directly out of personal bank accounts, with no sense of the potential impacts of such withdrawals on those affected, and without

recourse to court review, seems like unfair treatment likely to push those affected further into the difficult to track 'cash economy'.

Equally, accusing, "convicting", and issuing a penalty on vulnerable benefit claimants "on the balance of probability" - though common in civil action elsewhere - does not seem like fair treatment in this space.

Thirdly, moving to suspend someone's driving licence - seemingly without a proper review of the reasons for not responding to "repayment requests" or identifying the likely impacts, for example on the ability of the person in question to earn money to repay debts or to access essential services if living in a rural or semi-rural area, seems like unfair treatment.

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.

In the broader sweep of this Bill, our front line staff have sympathy for the evident frustrations around claimant fraud and related matters. However, witnessing the daily experiences of countless vulnerable welfare benefit recipients in their dealings with the State, they believe this Bill is a good faith attempt to address the serious challenges of organised crime but in a way that will unfairly impact the innocent, the vulnerable, the sometimes careless, those with the least financial or psychological resilience, and those living uncertain lives on low incomes. And the proposed safeguards are insufficient to moderate that collective view.

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