



# Public Authorities (Fraud, Error and Recovery) Bill

## House of Commons, Committee Stage

3 March 2025

1. JUSTICE is a cross-party law reform and human rights organisation working to make the justice system fairer for all. Our vision is of fair, accessible, and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This briefing addresses the Public Authorities (Fraud, Error and Recovery) Bill ("**the Bill**") at Committee Stage in the House of Commons.

## Summary

3. The Bill establishes the Public Sector Fraud Authority ("**PSFA**") as a body corporate and seeks to give it substantial powers to investigate and recover fraud from within the Cabinet Office, including powers to enter private premises, search them, and seize property, and powers to recover money and impose civil penalties. Similarly, the Bill seeks to give the Department for Work and Pensions ("**DWP**") entry, search and seizure powers, to extend its information gathering and recovery powers, and give it new powers to check benefit recipients' bank accounts to verify eligibility.
4. All the measures in the Bill are undoubtedly in pursuance of a legitimate aim: to prevent crime and to protect the economic wellbeing of the country. However, whenever new state powers over the individual are created, they must be subject to significant scrutiny to ensure:
  - (a) the powers themselves are tightly drawn, to prevent arbitrariness; and
  - (b) there are adequate safeguards in place, both to prevent unfair and/or irresponsible use of the powers, and to ensure there is accountability when mistakes do take place.
5. If over-broad powers are included within the Bill which lack adequate safeguards, the Bill risks undermining the rule of law and breaching the human rights of individuals targeted by its measures.
6. Ensuring the above does not undermine the policy objective of tackling fraud; it supports it by ensuring that fraud is tackled in a lawful and proportionate way in a democratic society.

7. In summary, JUSTICE highlights the following problems and makes the following recommendations:

- (a) **Eligibility verification measures should be treated with extreme caution** – they are bulk financial data gathering powers which would interfere with millions of individuals’ right to privacy, and which pose a risk of indirect discrimination of people with disabilities. The powers as currently drafted do not provide adequate safeguards to be sure that such interference is necessary and proportionate.

**JUSTICE therefore recommends that Clause 74 and Schedule 3 do not stand part of the Bill as currently drafted.**

Measures that could better equip Parliament to be sure that the measures are necessary and proportionate, include:

- (i) sharing the draft code of practice in advance of passing the Bill,
  - (ii) requiring the DWP to use the power “fairly and proportionately, with due regard to the code of practice”, and
  - (iii) strengthening the role and powers of the Independent Reviewer.
- (b) **The safeguard of requiring “reasonable grounds of suspicion” should be strengthened** to protect individuals from being subject to investigatory powers as a result of unfair and discriminatory suspicion, particularly in light of increasing use of bulk data analytics and machine learning. The Bill should on its face require meaningful human intervention in decision making, and state that generalisations and stereotypes do not constitute “reasonable” suspicion.
- (c) **Oversight of wider investigatory powers should be strengthened** – The Bill significantly widens the powers of the DWP and PSFA. In particular, the power to enter and search private premises and seize property are to be newly given to DWP and PSFA officers when they have previously been restricted to the police. Oversight of these powers should be strengthened to ensure they are and used fairly and proportionately. This should include
- (i) strengthening review and appeal rights for information notices,
  - (ii) ensuring the Independent Office for Police Conduct (“**IOPC**”), is properly resourced to be able to provide the necessary oversight of entry, search and seizure powers, and
  - (iii) strengthening the role and powers of Independent Reviewers.

## Introduction

8. Most of the investigatory powers in the Bill are exercisable only when there are “reasonable grounds” for suspicion, for example that fraud has been committed, or there are “reasonable grounds” for believing evidence is located at a particular property. This 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. It thereby upholds the rule of law, by preventing arbitrary state power.
9. The requirement for “reasonable grounds” for suspicion is however absent for the “eligibility verification” powers at Clause 74 and Schedule 3.
10. Therefore, this briefing first considers the eligibility verification powers at Clause 74 and Schedule 3 separately, and thereafter considers the “reasonable grounds” powers in Part 1 Chapter 1 and Part 2 Chapters 1 and 2 separately.

## Eligibility verification powers

11. Clause 74 and Schedule 3 create a new third party data gathering power for the DWP, which will enable it to require information from banks and financial institutions about accounts linked to the receipt of benefits for the purpose of checking eligibility criteria. These provisions had been added late to the DPDI Bill, at the third reading of the House of Commons, therefore this is the House’s first opportunity to consider the nature of this power in detail.
12. The eligibility verification measures enable bulk data gathering by DWP from individuals’ bank accounts. Unlike the DWP’s existing information gathering powers in ss. 109B-109BA Social Security Administration Act 1992, the eligibility verification powers do not require a threshold of “reasonable grounds” for suspecting fraud or error.

## Privacy concerns

13. These powers interfere with millions of individuals’ right to privacy (Article 8 ECHR).<sup>1</sup> To be compliant with human rights law, the powers must not only be in pursuit of a legitimate aim – the economic wellbeing of the country and the prevention of crime – but they also have to be a necessary and proportionate means of achieving that aim in a democratic society. Proportionality requires considering whether the measures are rationally connected to the objective, whether less intrusive measures could

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<sup>1</sup> Information retrieved from an individual’s banking documents constitutes personal data, whether it is sensitive private information on information on the data subject’s professional dealings. The copying of banking data and the subsequent storage by the authorities of such data, acts which fall under the notion of both “private life” and “correspondence”, amount to interference for the purposes of Article 8 (*M.N. and Others v. San Marino*, App no. 28005/12 7 July 2015, § 51-55).

be adopted without unacceptably compromising the objective, and whether a fair balance has been struck between the rights of the individual and the interests of the community.<sup>2</sup> JUSTICE is not persuaded by the DWP's analysis that the measures are proportionate to the privacy infringement they entail.

14. **The powers are excessively broad:** Millions of individuals in receipt of benefits could be impacted. Although the initial benefits in scope are specified (universal credit; employment and support allowance; state pension credit)<sup>3</sup> the Bill incorporates a Henry VIII power to amend these benefits,<sup>4</sup> with the only type of benefit excluded from the remit of the powers in the future being state pension.<sup>5</sup> Also in scope are linked accounts, for example those of appointees, and joint accounts. The measure will therefore impact several million known benefits recipients, in addition to unknown numbers of linked or joint account holders.
15. **Other less intrusive measures are available – requiring reasonable suspicion of fraud:** There is no legal requirement that the Secretary of State have a reasonable suspicion or any other “reasonable grounds” to suspect fraud or error in order to exercise the power. Indeed, existing legislation already permits the DWP to request information from third parties, such as banks, on an individual basis where there is an existing suspicion of welfare fraud.<sup>6</sup>
16. Thresholds and tests, often requiring “reasonable suspicion” or “reasonable grounds to believe” an activity has taken place are commonplace legal requirements for good reason: they provide a safeguard to the individual against the arbitrary exercise of state power. The Social Bill recognises this with respect to the entry, search and seizure powers, where the requirement for “reasonable grounds” is being preserved.
17. Invasive state powers should be drafted narrowly to restrict the potential for arbitrariness and abuse and protect people's rights by law; they should not be drawn broadly, and leave proportionality and rights protection to the discretion and self-restraint of the executive. Indeed, to do so leaves the door wide open for future holders of those executive offices to easily exercise powers arbitrarily.
18. The Constitution Committee raised these concerns about the same powers that were included in Data Protection and Digital Information (“**DPDI**”) Bill and recommended that the power “should be limited to circumstances in which the Secretary of State has reasonable grounds for inquiry.”<sup>7</sup> JUSTICE agrees.

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<sup>2</sup> *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39 Lord Reed at §74.

<sup>3</sup> Draft Schedule 3B para 19(1) of the Social Security Administration Act 10 1992, to be inserted by Schedule 3 of the Bill

<sup>4</sup> *Ibid*, para 19(2)

<sup>5</sup> *Ibid*, para 22

<sup>6</sup> DWP, [Fighting Fraud in the Welfare System](#), Policy Paper May 2022 at §40.

<sup>7</sup> Select Committee on the Constitution, '[Data Protection and Digital Information Bill](#)', 2<sup>nd</sup> Report of Session 2023-2024, HL Paper 53 at §18.

19. **The intrusion to individuals risks being disproportionate to the benefits to the community:** according to the government’s own analysis, if the powers work as estimated, they are expected to generate approximately £2 billion in net revenue over 10 years, equating to £200 million in net annual revenue per year.<sup>8</sup> This amount is just 2% of the estimated annual loss to fraud and error of £10 billion, and is a quarter of that lost to the DWP’s own official error, £780 million (even putting to one side the National Audit Office’s criticisms of the way in which DWP under records its own errors<sup>9</sup>).
20. JUSTICE therefore is concerned that the infringement on the privacy of millions of individuals is disproportionate to the benefit to be gained by the community, even if taken at its highest estimation.
21. JUSTICE further observes that the DWP often presumes “fraud” when there is a lack of engagement from the Claimant, rather than there being any clear evidence of dishonest intent which would amount to criminal fraud.<sup>10</sup> It admits that “the Department holds very little evidence of their current circumstances and their reasons for failing to engage.”<sup>11</sup> While the ideal scenario may be the recuperation of all overpayments of public sector funds, with limited resources available JUSTICE observes there being a greater benefit to the community at large of focussing on the most culpable, that is those committing criminal fraud in organised crime, rather than targeting individuals *en masse* who may have varying reasons for failure to engage, including various vulnerability factors.

## Equality concerns

22. With respect to the Equality Act 2010, the most obvious concern is that the population of benefits recipients disproportionately includes people with disabilities,<sup>12</sup> a protected characteristic in the Equality Act 2010,<sup>13</sup> however of course other protected characteristics may also be relevant, such as age, sex and ethnicity.
23. The Government has failed to publish an equality impact assessment with the Bill. JUSTICE is therefore extremely concerned that insufficient analysis has been undertaken to understand whether the provisions will discriminate against those with protected characteristics under the Equality Act 2010 – the proactive consideration of which is required by the Public Sector Equality Duty.<sup>14</sup> If this analysis has

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<sup>8</sup> DWP, *Public Authorities (Fraud, Error and Recovery) Bill Impact Assessment Summary of Impacts*, (2025) p.37

<sup>9</sup> NAO, *Report on Accounts: Department for Work and Pensions (Session 2024-25)* para 15

<sup>10</sup> NAO, *Report on Accounts: Department for Work and Pensions (Session 2024-25)* para 17

<sup>11</sup> DWP, *Background Information: Fraud and error in the benefit system statistics, 2023 to 2024 estimates* (2024)

<sup>12</sup> See the Equality Impact Assessment released alongside the DPDI Bill which stated that 50% of the benefit population was disabled compared to 28% of the adult UK population. Available on at: <https://www.parkinsons.org.uk/sites/default/files/2024-05/Clean%20copy%20of%2020231130%20DWP%20Third%20Party%20Data%20EA%20v2%20%28redacted%29.pdf>

<sup>13</sup> Section 6 of the Equality Act 2010, listing disability as a protected characteristic.

<sup>14</sup> Section 149 of the Equality Act 2010.

been undertaken, it should be made publicly available for Parliament and wider society to scrutinise.

24. JUSTICE notes that insufficient equality and discrimination data is a recurring theme in its work. In our 2021 report, *Reforming Benefits Decision-Making*,<sup>15</sup> JUSTICE and the AJC joined the National Audit Office,<sup>16</sup> Social Security Advisory Committee<sup>17</sup> and the Work and Pensions Select Committee<sup>18</sup> in calling for the DWP to improve its data collection and evaluation. Our report specifically highlighted the need for data on protected characteristics.
25. If those with protected characteristics will be put at a particular disadvantage by the powers when compared with persons without those characteristics, this will amount to indirect discrimination under both the Equality Act 2010 and Article 8 taken with Article 14 ECHR. The only way this can be lawful is if the discrimination is justified by being a proportionate means of achieving a legitimate aim.<sup>19</sup> For all the above reasons, JUSTICE has outstanding concerns with the proportionality of the measure.
26. We further note that banks and financial institutions – not the benefits receiving community or bank account holders – are the focus of the Bill’s impact assessment. There has been no apparent attempt to engage or consult proactively with those in receipt of benefits about these proposed measures. Such an exercise would be of great assistance to Parliament in its scrutinising role, to understand the impact that the eligibility verification measures may have those people, for example their feeling stigmatised, presumptively distrusted, and the impact that may have on their trust and confidence in the Government.

## Recommendations

27. JUSTICE does not consider that Parliament can be sure that the powers are human rights compliant. **JUSTICE therefore supports that Clause 74 and Schedule 3 do not stand part of the Bill as currently drafted.**
- 27.1 JUSTICE recommends such a power should require the Secretary of State to have reasonable grounds to suspect fraud or error.
- 27.2 In the alternative, further measures that could better equip Parliament to be sure that the powers are necessary and proportionate are as follows:

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<sup>15</sup> JUSTICE and AJC, [Reforming Benefits Decision-Making](#) (2021) p42.

<sup>16</sup> National Audit Office, [Supporting disabled people to work](#) (HC 1991, 2019) §25; National Audit Office, [Universal Credit: getting to first payment](#) (HC 376, 2020) §26.

<sup>17</sup> Social Security Advisory Committee, [The effectiveness of the claimant commitment in Universal Credit: Occasional Paper 21](#) (2019) p34 (Recommendation 4).

<sup>18</sup> Work and Pensions Committee, [Benefits Sanctions](#), 19<sup>th</sup> Report of Session 2017-2019 (2018) §52.

<sup>19</sup> Section 19(2)(d) Equality Act 2010.

- (a) The code of practice is a key document to understand what these powers actually look like on the ground, as acknowledged by the human rights memorandum to the Bill :

*... [it will] seek to limit the intrusiveness of the measures, protect against its arbitrary use and aid foreseeability and transparency (without compromising the measure's effectiveness) by detailing and clarifying the exercise of the powers of the Secretary of State, Banks and other key stakeholders, such as the ICO. **The Code of Practice is an important aspect of the measure's accountability framework targeted at guarding against the measure's arbitrary use.** [emphasis added]<sup>20</sup>*

**JUSTICE therefore considers the draft code of practice should be shared**, to assist Parliament and key stakeholders to understand how these powers will be used, specifying such details as training of authorised officers, frequency of use, and scale of use.

- (b) The Bill should require the Secretary of State to have due regard to the code of practice when exercising the power.
- (c) JUSTICE supports the role of the Independent Reviewer included in the Bill at Clause 75, which did not feature in the DPDI Bill. However, the following would strengthen the role:
- (i) **Reporting duties:** requiring the independent to report on specified areas of impact which are at risk under the powers, such as the equality of the impact of the powers, or their impact on vulnerable people.
  - (ii) **Access to information:** a power to require information from the DWP in the exercise of the independent review would ensure full transparency and therefore effectiveness of the review, rather than relying on the DWP's voluntary provision of relevant information on which the independent reviewer will conduct their review.
  - (iii) **Accountability:** the DWP is not accountable to the observations or oversight of the independent review as currently drafted. A legal requirement that the Government provide a response to the review within a specified time (for example 3-6 months) – and provide reasons why any recommendations are rejected – would improve accountability.

## Clarifying “reasonable grounds for suspicion” powers

28. As explained above, “reasonable grounds” of suspicion of fraudulent or criminal activity is a well-established threshold for information seeking and investigation. However, JUSTICE considers what is

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<sup>20</sup> Public Authorities (Fraud, Error and Recovery) Bill [European Convention on Human Rights Memorandum](#), para 79.

“reasonable” requires clarification in the context of this Bill, in light of the role technology will play in casting “suspicion” on individuals and organisations in the future.

29. Investment in data analytics and emerging technologies in fraud risk detection is increasing. The Government has signaled its intention to “turbocharge” AI and “mainline AI into the veins of the nation”,<sup>21</sup> including the public sector. DWP is already using machine learning to predict risk with Universal Credit advances applications and intends to develop further models,<sup>22</sup> and the Government is concurrently passing the Data (Use and Access) Bill, which would repeal the current ban on automated decision-making and profiling of individuals.
30. There are real concerns about the accuracy of algorithms currently in use in the fraud context, and therefore the “reasonableness” of recommendations coming out of them. For example, last year it was revealed that two-thirds of the claims flagged by a DWP automated system as potentially high risk were in fact legitimate.<sup>23</sup> Furthermore, an internal DWP “fairness analysis” has revealed bias according to according to people’s age, disability, marital status and nationality, leading to a “statistically significant outcome disparity”.<sup>24</sup>
31. International examples, such as the childcare tax credit scandal in the Netherlands, further demonstrate the risks of profiling in a fraud detection context. Machine learning algorithms profiled families, inferring fraud risk along lines of families’ nationalities. The results were catastrophic for many dual nationality families who then were – wrongly – accused of fraud. The impacts on families were not only homelessness and destitution, but also the avoidable removal of over 1000 children into foster care.<sup>25</sup>

## Recommendations

32. **There is a need to clarify on the face of the Bill the term “reasonable grounds of [suspicion/belief]” as it relates to all the relevant powers of the PSFA and the DWP.**
33. In order to maintain the necessary flexibility, rather than propose a definitive list of what reasonable grounds *can be*, JUSTICE considers that the Bill should expressly state what reasonable grounds *are not*, namely it is not reasonable to base suspicion, and thereafter state interference, on the basis of generalisations and stereotyping.

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<sup>21</sup> Press release, [Prime Minister sets out blueprint to turbocharge AI](#), 12 January 2025

<sup>22</sup> DWP, '[Annual Report and Accounts 2022-23](#)', p102.

<sup>23</sup> Robert Booth, '[DWP algorithm wrongly flags 200,000 people for possible fraud and error](#)' (*The Guardian*, 23 June 2024)

<sup>24</sup> Robert Booth, '[Revealed: bias found in AI system used to detect UK benefits fraud](#)' (*The Guardian*, 6 December 2024)

<sup>25</sup> House of Representatives of the Netherlands, [Unprecedented Injustice](#) (2020)



34. Code A of PACE 1984 is a useful reference,<sup>26</sup> which states that the following can never be reasonable grounds, on their own or in combination with another factor:

*any of the ‘relevant protected characteristics’ set out in the Equality Act 2010, section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, or the fact that the person is known to have a previous conviction*

And

*Generalisations or stereotyp[es] that certain groups or categories of people are more likely to be involved in criminal activity.<sup>27</sup>*

35. **JUSTICE recommends amendments using the wording above.** would ensure that the current Bill is future proof, and that the threshold of “reasonable grounds” does not become a gateway for generalisations and mass profiling of the population along arbitrary lines of nationality, or indeed protected characteristics such a race or disability.
36. **The Bill should also be amended to secure human involvement in the assessment of “reasonableness”.** DWP officials have suggested that the decision to exercise a power in this Bill will always be made by a human. However that is not reflected on the face of the Bill, nor will it be a legal requirement if the Data (Use and Access) Bill proceeds as currently drafted.

A further safeguard would therefore be an amendment as follows:

*In the assessment of “reasonable grounds” for belief or suspicion, meaningful human involvement is required which considers the reasonableness of any information or intelligence is the result of an automated process.*

## Improving oversight mechanisms

### Information notices

#### PSFA information notices

37. Clause 3 establishes a power for the PSFA to issue information notices.
38. **7-day time limit for review:** recipients can request a review of a Clause 3 information notice by the Minister, however such request must be made within 7 days. This is unnecessarily short, especially given

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<sup>26</sup> [Code A of PACE 1984](#) in fact sets out a code of practice for police stop and search powers, which are not being extended to DWP or PSFA officers in the Bill. Therefore it is not one of the PACE Codes of Practice which will apply to such officers.

<sup>27</sup> Original text as it relates to stop and search powers is “stereotypical images”.

the recipient may want to take advice on the various external constraints which may apply to the information sought, such as data protection, legal professional privilege, and any “excluded” material including journalistic material. JUSTICE considers 28 days or one month and would be more appropriate.

39. **Tribunal oversight:** Clause 3 information notices are only subject to an internal review to the minister, which in practice will be conducted by the PSFA. This is effectively the Cabinet Office marking its own homework – there is no independent oversight from a tribunal, either by way of tribunal oversight *before* notices are made, and/or access to an appeal to afterwards. This contrasts with other similar provisions in analogous schemes:

- (a) Schedule 36 Finance Act 2008 (information notices from HMRC) require Tribunal permission for third party notices when the taxpayer themselves is not given notice;
- (b) Sections 162-63 of the DPA 2018 (information notices from the ICO) secure a right of appeal against information notices to the tribunal.

**JUSTICE recommends either a permission stage to the tribunal beforehand or an appeal mechanism afterwards.**

#### DWP information notices

- 40. Clause 70 establishes an additional information notice power for DWP, in addition to their existing powers at ss. 109B – 109BA Social Security Administration Act 1992.
- 41. Neither of these powers is subject to a review mechanism, nor any access to an independent appeal. **JUSTICE recommends both, but in particular cannot see a justification for there being no review mechanism, given the inclusion of a review mechanism for the equivalent power under the PSFA, under Clause 3.**

#### **Entry, search and seizure powers (DWP and PSFA)**

- 42. **Independent Office of Police Conduct (“IOPC”):** Clause 9 and Clause 82 establish that the IOPC will handle complaints and misconduct in relation to the search, entry and seizure powers which are being extended to PSFA investigators and DWP investigators respectively.
- 43. The extent of this oversight is delegated to regulations, including Henry VIII powers to modify how the IOPC duties and oversight provisions in PACE will apply.<sup>28</sup> Such delegated powers make it difficult for Parliament to be clear about the adequacy of the oversight which will be secured by the IOPC.

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<sup>28</sup> See Clause 9(3) and 82(3). Similar provisions have extended the IOPC to the National Food Crime Unit and the National Crime Agency, so these delegated powers are not unprecedented.

Specifically, there is nothing to prevent the IOPC's oversight being significantly reduced through such regulations when compared with the oversight of police officers exercising equivalent powers.

44. The practicality of the IOPC taking on a wider remit is also of concern. Only 2 years ago the then-Home Secretary commissioned an Independent Review of the IOPC, which found in December 2023 that the IOPC was facing financial pressure and a vastly increased workload year on year. Aware of the proposed extension of the IOPC's oversight to DWP and PSFA officers, following the DWP's policy paper *Fighting Fraud* (May 2022), the Lead reviewer, Dr Gillian Fairfield, recommended careful consideration of "the merits and drawbacks involved before extending the IOPC's remit to cover an ever-wider range of organisations, in particular if its remit is extended without additional resource."<sup>29</sup>
45. **JUSTICE recommends the following improvements:**
- (a) **Assurances from the Government that the IOPC will receive increased financial support;**
  - (b) **An amendment restricting the Henry VIII power, for example**  
  
*Regulations made under section 26G of the Police Reform Act 2002 must not modify the functions of the Director General so as to provide less oversight of public fraud investigators/ DWP investigators] than would apply to police officers exercising corresponding powers.*
46. **Independent reviews:** In addition to the independent review provided for eligibility verification, independent reviews are also established, for:
- (a) The PSFA meeting its functions; and
  - (b) DWP investigatory powers.
47. **We repeat our recommendations in relation to these independent reviews; they would be stronger safeguards if each independent review were to have: i) specified duties to report on equality, vulnerability, and the overall fairness and proportionality of how the powers are exercised; ii) powers to require information from the respective ministers or departments; and iii) require the Government to explain why it is not adopting recommendations for improvement made in any independent review report.**

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<sup>29</sup> Dr Gillian Fairfield, [\*Independent review of the Independent Office for Police Conduct\*](#) (December 2023)

**For more information, please contact:**

Ellen Lefley, JUSTICE – [elefley@justice.org.uk](mailto:elefley@justice.org.uk)

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