

BIG BROTHER WATCH

**Written evidence submitted by
Big Brother Watch on the Public
Authorities (Fraud, Error and
Recovery) Bill for Committee
Stage in the House of Commons
(PAB13)**

February 2025

About Big Brother Watch

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

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

Table of Contents

SUMMARY.....	4
RECOMMENDATIONS	5
INTRODUCTION.....	6
FINANCIAL SURVEILLANCE	8
DIRECT DEDUCTION ORDERS	26
DISQUALIFICATION FROM DRIVING	32

SUMMARY

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

MASS BANK SPYING POWERS: The Bill would introduce new powers to force banks to monitor all bank accounts to find welfare recipients and people linked to those payments, potentially including landlords, and report anyone who triggers potential fraud indicators (such as frequent travel or savings over a certain amount) to the Department for Work and Pensions (DWP). The powers disproportionately target some of the poorest and most in need of support in our society, expose us to suspicionless surveillance and needless investigations arising from algorithmic error and undermine the presumption of innocence.

DIRECT DEDUCTION ORDERS: The Bill empowers the DWP to deduct funds directly from a welfare recipients' bank account where they have been overpaid as the result of fraud, oversight or error. The measure lacks judicial scrutiny and appropriate safeguards and expands financial surveillance by requiring banks to hand over private financial information about debtors – without their knowledge – in order to determine whether they can afford to repay the recoverable amount.

DRIVING LICENCE DISQUALIFICATIONS: The Bill allows DWP to apply to a court to have a debtor disqualified from driving. Given that the measure is proposed as a last resort, this measure represents what is in effect a poverty penalty, with only those with limited or exhausted funds being penalised with a decision that could have a significant effect on their lives.

RECOMMENDATIONS

We urge MPs to support amendments which:

- **Reject the mass bank spying powers and oppose Clause 74 and Schedule 3:** This will prevent the government from being able to compel banks to scan the accounts of their customers and hand over the personal information of benefits claimants who appear to have been overpaid for further investigation. This amendment is supported by Age UK, All Together in Dignity – Fourth World, Amnesty International UK, Campaign for Disability Justice, Child Poverty Action Group, Defend Digital Me, Difference North East, Disability Rights UK, Gingerbread, Greater Manchester Coalition of Disabled People (GMCDP), Inclusion Barnet, JUSTICE, Migrants’ Rights Network, National Survivor User Network, One Parent Families Scotland, OPAAL, Privacy International, Public Law Project, Richmond Aid, Single Parent Rights, Silver Voices, WECIL, Women’s Budget Group.
- **Restrict the power of the DWP to issue direct deduction orders under clause 89 and Schedule 5** to cases where the liable person agrees, or there has been a final determination by a court or tribunal, that the recoverable amount is owed. This will prevent the legal bar for removing money from an individual’s bank account from being lowered.
- **Remove Sch 5, paragraph 3, which requires banks to provide information for the exercise of direct deduction powers:** This will prevent the DWP from being able to compel banks to secretly disclose the bank statements of benefits recipients to decide whether to issue a direct deduction powers, which constitutes intrusive invasion of privacy.
- **Remove the driving disqualification powers at clause 89 and Schedule 6:** This will prevent the Secretary of State from being able to apply to the court to disqualify a benefits recipient who has been overpaid – whether through fraud, misstatement or oversight – from holding a driving licence.

INTRODUCTION

1. Big Brother Watch welcomes the opportunity to provide a written briefing for Members of Parliament on the Public Authorities (Fraud, Error and Recovery) (PAFER) Bill ahead of Committee Stage in the House of Commons on Tuesday, 25th February 2025. Big Brother Watch is concerned that the PAFER Bill would introduce an unprecedented system of mass financial surveillance; create a second-tier justice system for people on the poverty line; undermine the presumption of innocence; result in serious mistakes risking the freedoms and funds of our country's elderly, disabled and poor; and turn Britain's once-fair welfare system into a digital surveillance system.
2. The Bill affects millions of people and represents the most sweeping expansion of financial surveillance in recent history. Yet despite its potential widespread effects, it has not received the scrutiny it deserves. The Secretary of State for Work and Pensions, Liz Kendall MP, introduced the 116-page Bill on Wednesday 22nd January 2025. Less than a week later, Second Reading was scheduled for Monday 3rd February, leaving MPs and civil society with only seven working days to scrutinise this highly consequential, and complex legislation. We hope the committee will use all of the time available to subject this worrying piece of legislation to the level of scrutiny it deserves.
3. The Bill endows the Public Sector Fraud Authority (PSFA) and DWP with expansive new powers. In a liberal democracy, the number of governmental bodies who are bestowed with policing powers to search homes and seize items should be limited. The Bill does the opposite, by granting DWP and PSFA officials powers to enter the homes of those suspected of benefit fraud.

4. The PAFER Bill also shortsightedly conflates fraud and error, meaning that welfare recipients who have been overpaid through no-fault of their own – or even as a result of the government’s own errors – will be subjected to intrusive surveillance and policing powers. These powers are made even more concerning given that the Government already has many powers with which it can investigate and prosecute welfare fraud.
5. The Bill creates a new regime of financial surveillance that would turn most of the financial institutions we rely on into de facto government inspectors, scouring our financial records – reversing the presumption of innocence by subjecting us to surveillance absent any suspicion. We are also concerned about the powers to seize funds directly from bank accounts without judicial scrutiny and disqualify driving licences from those who have made administrative errors and oversights. These punitive measures will disproportionately effect disabled people, the elderly, carers, those looking for work and the poorest in society.
6. The legislation engages equality rights provided in the Equality Act (2010), and privacy and equality rights enshrined in Article 8 and 14 of the European Convention on Human Rights (ECHR). Any interference with these rights is only lawful when there is a legal basis and it is necessary and proportionate.¹ The presumption must rest in favour of protecting these rights.
7. The proposed safeguards on the Bill are largely ineffective and insufficient. The appointment of Independent Persons to oversee the various powers in the Bill operate after the fact, meaning that they will be ineffective in preventing harm as soon as the legislation comes into force in Autumn 2025. The government should not defer vital legal protections and safeguards, which should be enshrined in legislation, to promised but, as of yet, unseen Codes of Practice.

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

8. Big Brother Watch believes that the PAFER Bill is not fit for purpose. In order to protect the individual and collective privacy rights of the British public, safeguard the rule of law and uphold key rights to equality and non-discrimination, Part II of the Bill must be majorly revised in the course of its passage through parliament. This briefing seeks to draw attention to key threats to privacy and data protection, equality, and other human rights raised throughout the Bill.

FINANCIAL SURVEILLANCE

Clause 74 and Schedule 3 – Eligibility Verification

Amendment 1:

MPs should give notice of their intention to oppose the question that clause 74 and Schedule 3 stand part.

Effect of the amendments:

Rejecting the bank spying clauses would prevent DWP from mandating mass suspicionless algorithmic surveillance which would disproportionately target disabled people, the elderly, carers, and the poorest in our society; expose us to the risks of algorithmic error leading to unwarranted investigations and burdensome appeals and undermine the presumption of innocence.

This amendments is supported by Big Brother Watch, Age UK, All Together in Dignity – Fourth World, Amnesty International UK, Defend Digital Me, Disability Rights UK, Greater Manchester Coalition of Disabled People (GMCDP), Migrants’ Rights Network, National Survivor User Network, Privacy International, Public Law Project, Silver Voices.

29 KEY ISSUES WITH THE FINANCIAL SPYING POWERS

RUSHED PROCESS

- 1. This rushed power has had inadequate scrutiny as there were only 7 working days between First and Second Readings. The Secretary of State for Work and Pensions, Liz Kendall MP, introduced the 116-page Bill on Wednesday 22nd January 2025. Less than a week later, Second Reading was scheduled for Monday 3rd February, leaving MPs and civil society with only seven working days to scrutinise this highly consequential, and complex legislation. The rushing of this Bill is unacceptable. The Bill affects millions of people and represents the most sweeping expansion of financial surveillance in recent history.**

EXISTING POWERS

2. The Government has existing powers to investigate the accounts of fraud suspects.

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

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

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

There are already multiple powers and processes by which DWP exchanges data with third parties. For example, HMRC shares banking data with DWP on an annual basis; the Proceeds of Crime Act 2002 requires banks and building societies to notify law enforcement of suspicious activity; open banking enables consumers to give third parties access to their financial accounts; private companies that administer the UK's banking infrastructure can see transactional data; and Credit Reference Agencies can view credit histories.³

The Government must reduce benefit fraud and error – but there are more effective and proportionate means, including the proper use of existing powers, of doing so. Indeed, this was reflected by Paula Barker MP during Second Reading of the PAFER

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

³ Ibid.

Bill, who emphasised that the Government “already have the powers, under existing legislation, to investigate those who are suspected of fraud. That raises the question of why the Bill is needed. It feels like a hammer to crack a nut.”⁴

3. **This extraordinary power is entirely disproportionate to the revenue the Government expects to raise via its use.** The Government's own analysis shows that, if it works as hoped, this unprecedented bank intrusion is expected to generate approx. £133m net annual revenue over the next five years – this would be mean recovering less than 1/73rd or less than 1.4% of the estimated annual loss to fraud and error.⁵
4. **It must also be recognised that DWP is currently responsible for record underpayments.** In comparison, benefits underpaid by the Government were a record £4.2bn in 2023-4 leading to criticism from the Public Accounts Committee.⁶ However, DWP is only seeking to use the proposed power to “to highlight where someone may not be meeting specific eligibility rules for the benefits they are being paid”⁷ – not to pay the billions of pounds underpaid and owed to citizens. Whilst both overpayments and fraud are important, fraud costs the public purse whereas underpayment errors can cost lives. In any event, neither of these complex issues justifies or can be appropriately addressed by mass financial surveillance.

MASS SURVEILLANCE

5. **This power would force banks and building societies to trawl all customers’ accounts in search of people connected to benefits payments.** The proposed measure forces third party organisations to trawl all customers' accounts to “verify a claimant’s

⁴ HC Deb 3 February 2025 vol. 761, col.621: [https://hansard.parliament.uk/commons/2025-02-03/debates/77054A7F-DE22-4477-9E06-2E33B6125D5C/PublicAuthorities\(FraudErrorAndRecovery\)Bill](https://hansard.parliament.uk/commons/2025-02-03/debates/77054A7F-DE22-4477-9E06-2E33B6125D5C/PublicAuthorities(FraudErrorAndRecovery)Bill)

⁵ DWP, Public Authorities (Fraud, Error and Recovery) Bill: Impact Assessment, 21 January 2025, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, p.16; The £133m net annual revenue figure is calculated by taking the DWP’s expected savings (£900 million over 5y divided by 5 to give a total of £180 million) and deducting the expected costs (£420 million over 9yrs divided by 9, to give a total of £46.6m pa). The 2024 estimated loss to fraud and error is £9.7bn (p.8, para. 18 of the Impact Assessment). £133m is 1.37% of £9.7bn.

⁶ Committee of Public Accounts, DWP Customer Service and Accounts, 2023-2024, Sixth Report of Session 2024-2025, 31 January 2025, <https://publications.parliament.uk/pa/cm5901/cmselect/cmpubacc/354/report.html>

⁷ Public Authorities (Fraud, Error and Recovery) Bill Impact Assessment, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, 8

entitlements to benefits.”⁸ This new power would amend the Social Security Administration Act 1992 (‘SSAA’) to allow DWP to access the personal data of welfare recipients by requiring the third party served with an eligibility verification notice (EVN) – such as a bank, building society or credit unions – to conduct mass monitoring without suspicion of fraudulent activity. Once issued, an EVN requires the receiver to give the Secretary of State “specified details” about the account holder, account, and “how the account meets the eligibility criteria.”⁹ The extent of such personal details are not specified on the face of the Bill. In order to conduct this highly complex monitoring and provide such extensive customer information to DWP, the bank will have to process the data of all bank account holders and run automated surveillance scanning according to unknown search criteria supplied by DWP. During the Second Reading debate of the Conservative Government’s failed Data Protection and Digital Information (‘DPDI’) Bill, Lord Vaux warned that the proposal for almost identical mass bank spying powers “constitutes a worrying level of creep towards a surveillance society.”¹⁰ John McDonnell MP reiterated a similar point during Second Reading of the PAFER Bill, calling the powers a “mass surveillance exercise.”¹¹

6. **This is a mass data trawling power targeted at recipients of Universal Credit, Employment and Support Allowance and Pensions Credit.** Schedule 3 of PAFER would add new Schedule 3B to the SSAA; paragraph 1(2)(b)(i) states that a “relevant account” that can be flagged to the government includes any account into which any specified relevant benefit is paid, and the other accounts of that account holder (Sch. 3B(1)(7)). Approximately 9.4 million people are in receipt of a benefit currently specified by the Bill – which amounts to 1 in 8 people in the UK.¹² Whilst the range of benefits to which these powers apply is already broad, sub-paragraph 19(2) of the proposed Schedule 3B of the SSA would permit additional types of benefits administered by the DWP to

⁸ Explanatory Notes: Public Authorities (Fraud Error and Recovery) Bill, para 41, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

⁹ At newly inserted Sch. 3B(1)(3) of PAFER.

¹⁰ HL Deb 19 December 2023 vol. 834, col.2185: <https://hansard.parliament.uk/lords/2023-12-%2019/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/DataProtectionAndDigitalInformationBill>

¹¹ HC Deb 3 February 2025 vol. 761, col.618: [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)

¹² Gov.uk, DWP Benefits Statistics, August 2024, <https://www.gov.uk/government/statistics/dwpbenefits-statistics-august-2024/dwp-benefits-statistics-august-2024>

be added to the definition. This leaves the door open to even more benefits recipients being affected by these powers.

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

“Now comes snooping and 24/7 surveillance of the bank, building society and other accounts of the sick, disabled, poor, elderly and unfortunate, all without a court order [...] Can the Minister explain why people not receiving any social security benefits are to be snooped upon?”¹³

David Chadwick MP echoed this point during Second Reading of the PAFER Bill, suggesting that it:

“risks creating a two-tier society where certain groups are subjected to intrusive financial monitoring by the state while others are not, which would undermine the principles of equality and fairness that our society is built on.”¹⁴

- 7. This would be a precedent-setting power that enables intrusive generalised financial surveillance across the population – not restricted to serious crime, or even crime - but permissible in relation to general administration.** Sub-paragraph 1(1) of proposed new Schedule 3B of the SSAA imposes only one purpose limitation: that the

¹³ HL Deb 19 December 2023 vol. 834, col.2193: <https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/DataProtectionAndDigitalInformationBill>

¹⁴ HC Deb 3 February 2025 vol. 761, col.605: [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)

Secretary of State may exercise their power to issue an EVN “for the purposes of identifying, or assisting in identifying, incorrect payments of a relevant benefit.” This is unlike any other surveillance legislation – there is no crime threshold to merit the financial privacy intrusion at all. The Government has been explicit that the power is designed to target error in addition to potential fraud, which accounts for almost a quarter of the cost of overpayments,¹⁵ and includes DWP’s own error. It would be wholly inappropriate, and set a disturbing precedent, to use mass financial surveillance powers to administrate a government department’s errors. Gill German MP raised this point during Second Reading of the Bill, stating that the lack of differentiation between fraud and error means that “there is a risk of penalising individuals who have simply struggled to navigate the system.”¹⁶

8. **Even in the context of crime, this suspicionless surveillance power would be an assault on the presumption of innocence.** Big Brother Watch finds it wholly inappropriate for the Government to order private banks, building societies and any other investment account to conduct mass, algorithmic, suspicionless surveillance. These unprecedented powers were accurately described by Lord Vaux as “draconian”¹⁷ and by Baroness Young as a “Big Brother mechanism”¹⁸ under the DPDI Bill. The government should not intrude on the privacy of anyone’s bank account without very good reason and a strong legal justification, whether a person is receiving benefits or not. When the Sunak government introduced these powers under the DPDI Bill, the Constitution Committee reported that it was “concerned by the breadth of these provisions, which empower the Government to demand access to individual bank accounts without grounds for suspicion.”¹⁹ The proposed powers in this Bill do

¹⁵ Fraud and error in the benefit system, Financial Year Ending (FYE) 2024, 16 May 2024, DWP: <https://www.gov.uk/government/statistics/fraud-and-error-in-the-benefit-system-financial-year-2023-to-2024-estimates/fraud-and-error-in-the-benefit-system-financial-year-ending-fye-2024#total-estimates-of-fraud-and-error-across-all-benefit-expenditure~:text=all%20benefit%20expenditure.-,Overpayments,-The%20total%20rate>

¹⁶ HC Deb 3 February 2025 vol. 761, col.600: [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)

¹⁷ HL Deb 19 December 2023 vol. 834, col. 2184-2185: <https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/%20DataProtectionAndDigitalInformationBill>

¹⁸ HL Deb 19 December 2023 vol. 834, col. 2179-2180: <https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/%20DataProtectionAndDigitalInformationBill>

¹⁹ Data Protection and Digital Information Bill – Select Committee on the Constitution, 2nd Report of Session 2023-4, 25 January 2024, para. 18: <https://committees.parliament.uk/publications/43076/documents/214262/default/>

exactly the same. Kirsty Blackman MP echoed this point, stated the legislation will “treat people as guilty rather than begin from the point of view that they are innocent.”²⁰ People who are disabled, sick, carers, looking for work, or indeed linked to any of those people should not be treated like criminals by default.

These proposals do away with the long-standing democratic principle in Britain that intrusive state surveillance should follow suspicion rather than vice versa – as such, the power undermines the presumption of innocence.

ARTICLE 8 PRIVACY AND DATA PROTECTION ISSUES

9. **The proposed powers are disproportionate and may be an unlawful breach of individuals’ right to privacy protected by the Human Rights Act.** Legal advice produced by privacy experts Dan Squires KC and Aidan Wills of Matrix Chambers in relation to the previous iteration of the mass bank spying measures in the DPDI Bill warned that the powers could breach privacy rights as well as individuals’ rights to freedom of expression, association and assembly, and protection from discrimination.²¹ This legal opinion was widely cited in the parliamentary debates on the mass bank spying powers. Whilst we cannot of course apply this legal opinion to the redrafted powers, the substantial issues are the same and the advice remains instructive on the human rights issues invoked by such suspicionless mass financial surveillance. In Big Brother Watch's view, the powers are disproportionate and in fact privacy-altering.

10. **The proposed powers may involve the processing and exchange of sensitive personal data and transaction data.** Although the new powers ostensibly contain a prohibition on the Secretary of State requiring or the banks giving special category data or transaction information, this does not prevent DWP from requesting that

²⁰ HC Deb 3 February 2025 vol. 761, col.609: [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)

²¹ Legal Opinion: FINANCIAL SURVEILLANCE PROVISIONS UNDER THE DATA PROTECTION AND DIGITAL INFORMATION BILL – Dan Squires KC and Aidan Wills, Matrix Chambers, 11 April 2024: <https://bigbrotherwatch.org.uk/wp-content/uploads/2024/04/DPBIB-Financial-Surveillance-MatrixLegal-Advice-for-Big-Brother-Watch.pdf>

special category or transaction information, under its existing powers, once it receives the name and account number from a bank. In other words, this is an ineffective safeguard, because it can be easily overridden by a cyclical process in which a bank gives DWP a flagged individual's name, then uses that information to request more personal data from the bank. Such bank intrusion powers are highly vulnerable to mission creep/being repurposed for further policy functions.

11. **The proposed power contains insufficient oversight, including of the unspecified “eligibility” search criteria or algorithms involved.** Although the explanatory notes offer search criteria examples of capital holdings or the legal limit for abroad stays,²² there are no provisions to limit the criteria or provide transparency of them. Given the complexity of benefits eligibility, individuals' varied circumstances and the population's financial accounts and joint accounts, it is unclear and un evidenced that banks will be better placed than DWP to conduct these complex assessments via secret, unconsented and automated bank spying. The Bill in fact permits very broad search criteria, given that the broad purpose of the regime is “to support further inquiry into a potential overpayment if needed.”²³ The lack of accountability means that the scope of eligibility criteria could change at any time. In any event, banks will be required to process highly personal transactional data in ways their customers neither expect nor consent to.

Clause 75 of the Bill requires the Secretary of State to appoint an independent person to review the exercise of their functions under the new Sch. 3B of the SSAA 1992 and publish an annual report. However, the review is limited to the compliance of the Secretary of State and affected banks etc. with the powers in Sch. 3B and the effectiveness of the powers. There is no information about the appointment of the independent person, what qualifications they may require, or what resources they may be given. In reviewing compliance with very broad powers – the lowest threshold for conduct and indeed a legal necessity – the role functions more towards

²² Explanatory Notes: Public Authorities (Fraud Error and Recovery) Bill, para 598, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

²³ Explanatory Notes: Public Authorities (Fraud Error and Recovery) Bill, para 44, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

enforcement of these disturbing powers than accountability of them. A finding that the powers have been ineffective in “identifying or assisting in identifying incorrect payments of relevant benefits” (s121DC(6)(c) of the SSAA as inserted by clause 75(6) of PAFER) will not necessarily lead to an abandonment of the powers, but rather increased pressure on banks to intensify their algorithms. There is also a question over what information the independent person would receive to assess the extent to which the actions taken by banks complied with the requirements under Sch 3B. of the new SSAA 1992. It is possible that this could lead to even more sharing of private financial data.

- 12. The power would create data protection conflicts for banks and other affected third parties, requiring them to breach their duty of confidence to customers.** Although paragraph 6 of proposed Schedule 3B to the SSAA 1992 ostensibly exonerates banks from breaches of confidence that arise from complying with an EVN, it is framed in a circular way. Paragraph 6(1) expressly states that the power to issue an EVN does not authorise any “processing of information that contravenes the data protection legislation” – but also stipulates that “the powers conferred, and the requirements imposed, by the Schedule are to be taken into account in determining whether the processing of information would contravene data protection legislation” (para. 6(2)). In relation to the previous bank spying powers, which contained the same provision, David Naylor and Malcolm Dowden of law firm Squire Patton Boggs assessed the legal uncertainty under UK GDPR arising from this as follows:

“While that provision appears to mean that a bank could not rely on Article 6(1)(c)(“processing is necessary for compliance with a legal obligation to which the controller is subject”), it would potentially be able to rely on Article 6(1)(f) (“legitimate interests”) as its lawful basis for disclosure. That position would be somewhat uncomfortable for the bank as it would be open to individuals to object to the bank’s reliance on legitimate interests, requiring a potentially

costly and time-consuming balancing exercise in response to each objection received.”²⁴

A “legitimate interest” requires a purpose, necessity and balancing test – we believe the plan would fail to meet these tests. A reliance on “legitimate interests” to justify this extraordinary surveillance power is another way in which it is likely to be vulnerable to legal challenges.

13. The proposals could effect the EU GDPR data adequacy decision. Enacting a disproportionate and intrusive mass surveillance law would move the UK significantly away from existing data protection legislation, which is based upon EU regulations. As Lord Allan observed in relation to the EU adequacy decision: “Bulk digital surveillance has been a point of particular concern from an EU-perspective – and bulk surveillance on a “suspicionless” basis is likely to raise significant questions.”²⁵ David Chadwick MP reiterated this point during Second Reading of the PAFER Bill, explaining that the Bill “implicates treaties that we have already signed, such as the data adequacy agreement we have the European Union.”²⁶

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

RISKS OF AUTOMATED DECISIONS AND ‘HORIZON-STYLE’ ERRORS

15. Thousands of decisions regarding the collection and reviewing of private financial information of people receiving benefits will be at least de facto automated. This is a high-risk way to make decisions, particularly in sensitive cases. In relation to the

²⁴ David Naylor and Michael Dowden, 'Government access to personal data in bank accounts: a compliance challenge for banks, and a threat to EU adequacy?' (17 January 2024): <https://www.lexology.com/library/detail.aspx?g=3a4671d4-a37e-4785-80cc-36f8d3a13e75>

²⁵ Ibid.

²⁶ HC Deb 3 February 2025 vol. 761, col.605: [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)

previous powers proposed under the DPDI Bill, the Information Commissioner warned that the power is highly likely to involve automated decision-making as:

*“the risk remains that processing could eventually move into this territory, particularly given the limits of the measure in identifying relevant individuals with multiple accounts”.*²⁷

The same logic applies under the new Bill. Banks will not be able to conduct benefits “eligibility” checks of all of their customers without an automated algorithmic system. Big Brother Watch has previously expressed serious concern over disrespect for individuals’ legal rights regarding automated decision-making - particularly in relation to how the Data (Use and Access) Bill currently going through Parliament stands to further weaken people’s rights in this respect.²⁸ Regarding how people's data will be assessed, the explanatory notes state that “a human will always be involved in any further inquiries and any decision taken afterwards that might affect eligibility or benefit awards.”²⁹ However, with many thousands of accounts being flagged to DWP under the proposed system, it is not clear what the scale and nature of such human involvement would be or if it would be genuinely meaningful. Indeed, the Impact Assessment for the Bill acknowledges that the “DWP may have to slow the volume of data requests to manage potential volumes.”³⁰ If a human decision-maker does not have enough time to properly review a decision – as may well be the case with the deluge of data the DWP can expect to receive from banks – their input cannot properly be regarded as meaningful.

²⁷ Information Commissioner’s view on the Data Protection and Digital Information Bill (DPDI Bill) – Lords Committee stage (March 2023): <https://ico.org.uk/about-the-ico/information-commissioner-sresponse-tothe-data-protection-and-digital-information-bill/information-commissioner-s-view-on-the-dpdi-bill/>

²⁸ Big Brother Watch, Big Brother Watch Briefing on the Data (Use and Access) Bill for Committee Stage in the the House of Lords, December 2024 https://bigbrotherwatch.org.uk/wp-content/uploads/2024/12/Big-Brother-Watches-Briefing-on-theData-Use-and-Access-Bill-House-of-Lords-Committee-Stage_.pdf

²⁹ Explanatory Notes: Public Authorities (Fraud, Error and Recovery) Bill, para 46, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

³⁰ DWP, Public Authorities (Fraud, Error & Recovery): Impact Assessment, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, p37

16. **There are no provisions for algorithmic transparency and accountability.** There is no information specifying who is responsible for supplying the algorithms required for this mass surveillance power. There are two options: either DWP will provide third party organisations with existing methods, or third parties will be responsible for developing and deploying their own. This could incur a financial and operational burden on banks and other affected third party organisations. In both cases, there are serious questions around algorithmic transparency and accountability. During the Second Reading Debate on the PAFER Bill, Helen Whately MP raised the need to probe how the powers will be “put into practice,” asking, “how much testing has been done of the systems that [the banks] intend to use?”³¹
17. **With the constant scanning of tens of millions of accounts in relation to often complex claims, false positive matches for fraud or error are highly likely.** As a result, significant numbers of ‘false positives’ will lead to account-holders’ personal details being wrongly flagged for further investigation to the Government, which may incur further privacy intrusion and in some cases have more serious ramifications. When scanning 20+ million accounts, even a remarkably low error rate of 1% would lead to at least 200,000 people’s accounts being wrongly flagged to DWP.
18. **Financial institutions’ ‘Suspicious Activity Reports’ already have a very high false hit rate.** The requirement upon banks and other third parties to monitor and report on the accounts of benefits claimants is somewhat reminiscent of a bank’s use of “Suspicious Activity Reports” (SARs) to combat money laundering. In 2017, a study found that a sample of the largest banks reviewed approximately 16 million alerts, filed over 640,000 SARs, and showed that only 4% of those SARs resulted in law enforcement involvement.³² Ultimately, this means that at least 90-95% of the individuals that banks reported on were innocent. The important difference between the NCA investigating financial crime and DWP investigating suspected benefits fraud

³¹ HC Deb 3 February 2025 vol. 761, col.591-592: [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)

³² Bank Policy Institute, “The Truth About Suspicious Activity Reports” (22 September 2020): <https://bpi.com/the-truth-about-suspicious-activity-reports/>

and error is that the former is working to a criminal level of suspicion whereas DWP is not. Without that standard threshold, it is even more likely that this power will see an aggressive approach, resulting in a vast number of accounts being flagged incorrectly

19. A related trial indicated that this extraordinary power is unlikely to be an effective measure. DWP has trialled similar measures through Proof of Concept (PoC) trials.³³ The government ran a small-scale PoC in 2017, in which a bank identified 549 accounts that received benefits payments and matched certain risk criteria (i.e., capital above benefits threshold), for review. The sample of cases were not randomly selected – instead, they were derived from suspicious activity reports (SARs). This means that the 'success' rate is significantly higher than what would be expected under these proposals.³⁴ Of this biased sample, half were deemed suitable for investigation, and subsequent action was needed to remedy either fraud or error in 62% of cases that were investigated. The government reported this as a success, but this means that fewer than 1 in 3 of the 549 SAR flagged accounts were actionable.³⁵ This is a high rate of false positives, particularly in a context where being incorrectly flagged could have a serious impact on someone and even disrupt a person's ability to receive essential payments.

Another pilot introduced by the DWP, the Housing Benefit Accuracy Award Initiative, was used to produce a risk score for Housing Benefits claimants, which was then used as the basis for review by local councils.³⁶ The algorithm flagged approximately 400,000 cases a year, identifying most of those as “high risk” cases. Councils were

³³ Department for Work and Pensions, Third Party Data Gathering Impact Assessment (September 2023): https://assets.publishing.service.gov.uk/media/6564bab01524e6000da10168/DWP_third_party_data_impact_assessment_november_2023.pdf, 13

³⁴ Department for Work and Pensions, Third Party Data Gathering Impact Assessment (IA) (September 2023): https://assets.publishing.service.gov.uk/media/6564bab01524e6000da10168/DWP_third_party_data_impact_assessment_november_2023.pdf, 69.

³⁵ Department for Work and Pensions, Fighting Fraud in the Welfare System (26 May 2022): <https://www.gov.uk/government/publications/fighting-fraud-in-the-welfare-system/fighting-fraud-in-the-welfare-system-2#fn:1>

³⁶ The Independent, Council threatens to evict woman after wrongly axing housing benefit 'due to DWP algorithm', 14 September 2024, <https://www.independent.co.uk/news/uk/home-news/housing-benefit-dwp-algorithmwandsworth-council-b2609811.html>

required to conduct full case reviews of those flagged, which involved invasive checks of bank statements, payslips and rent, and they suspended benefits where claimants were not compliant or able to produce evidence to support their claim. Data obtained from DWP by Big Brother Watch found that only 1 in 3 people on Housing Benefit who were subjected to review were, in fact, being paid the wrong amount. As a result, 200,000 people were placed under suspicion at the hands of the algorithm – despite having done nothing wrong. Similar algorithmic risks could be amplified under the proposed bank spying powers.

20. The Government must learn lessons from the Horizon scandal. Using algorithms in this high-risk context is uncomfortably reminiscent of the Horizon scandal, where hundreds of people were wrongfully prosecuted on the basis of data from faulty software - resulting in wrongful imprisonment, financial ruin, and suicide.³⁷ Indeed, the same legal standards that saw people wrongfully convicted in relation to Horizon still apply. Courts are currently required to presume that computer systems operate correctly, placing the onus upon defendants to provide evidence that the system they are implicated by is flawed.³⁸ Zarah Sultana MP emphasised that “the Bill risks repeating [the Horizon Scandal] injustice on an unprecedented scale.”³⁹ However, unlike the Horizon scandal, the individuals affected worst by this bank spying will not be small business owners but people already suffering on the poverty line and people who are vulnerable, sick or disabled, or people with mental health problems, and elderly people among others. The risks are very high.

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

³⁷ Kevin Peachey, Michael Race, and Vishala Sri-Pathma, 'Post Office scandal explained: What the Horizon saga is all about' (10 January 2023): <https://www.bbc.co.uk/news/business-56718036>

³⁸ David Allen Green, "'Computer says guilty' - an introduction to the evidential presumption that computers are operating correctly' (30 September 2023): <https://davidallengreen.com/2023/09/computer-says-guilty-anintroduction-to-the-evidential-presumption-that-computers-are-operating-correctly/>

³⁹ HC Deb 3 February 2025 vol. 761, col.611: [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)

customers.⁴⁰ Big Brother Watch shares the Committee’s concerns about the lack of transparency surrounding these tools and the lack of consideration of claimants who may be vulnerable or from protected groups. DWP has not sufficiently addressed these problems.

EFFECT ON EQUALITY

22. Errors resulting from the proposed surveillance power are likely to have particularly serious negative consequences for welfare recipients and very vulnerable individuals. Wrongful benefits investigations can lead to burdensome documentation demands which, if not complied with accurately and in time, can lead to the suspension of benefits. In such cases, innocent and often vulnerable people may be unable to afford basic necessities such as food, medicine, or heating bills. Further, there are numerous documented cases, such as those identified in a BBC investigation, of vulnerable people dying following alleged negative actions by DWP including the wrongful suspension of benefits.⁴¹ In a recent example, DWP falsely accused a single mother of owing £12,000 when in actual fact DWP owed her money.⁴²

Errors would disproportionately affect very vulnerable individuals – for example, disabled people on direct payments who must have care accounts, which may hold thousands of pounds, set up in their name to accept local funding. An automated system may wrongly and repeatedly identify these accounts as fraudulent, thereby putting disabled people at far higher risk of wrongful fraud investigations.⁴³ Such a high inaccuracy rate would also undermine the argument that the powers are a proportionate interference with individuals’ Article 8 right to privacy.

⁴⁰ House of Commons Committee of Public Accounts, The Department for Work and Pensions Annual Report and Accounts 2022-2023 (6 December 2023): <https://committees.parliament.uk/publications/42434/documents/210942/default/>, p7

⁴¹ Deaths of people on benefits prompt inquiry call – Alex Homer, BBC News, 10 May 2021: <https://www.bbc.co.uk/news/uk-56819727>

⁴² Isabella McRae, 'DWP falsely accuses single mum of owing £12,000 – when they actually owe her money' (16 January 2024): <https://www.bigissue.com/news/social-justice/dwp-benefitsuniversal-credit-money-owed-penny-davis/>

⁴³ John Pring, 'DWP’s bank snooping laws “would create trap” for claimants with social care accounts’ (22 February 2024): <https://www.disabilitynewsservice.com/dwps-bank-snooping-laws-would-createtrap-for-claimants-with-social-care-accounts/2>

Some of the poorest in our society, people with disabilities or long term illnesses, carers, and elderly people will be subject to banks and other private companies they engage with pre-emptively intruding on their private financial data, potentially examined by the government without their knowledge, and at risk of consequential harms as a result of that characteristic. In relation to the previously proposed DPDI Bill bank spying powers, the Equality and Human Rights Commission (EHRC) called on parliament to reject the powers entirely, as the privacy intrusion and risks of other consequential harms would have the greatest effect on those in receipt of benefits, many of whom are in receipt of benefits due to a protected characteristic such as disability or age.⁴⁴ The EHRC also warned of the ‘significant risk that the intrusive nature of this proposal breaches Article 8 (right to privacy) and Article 14 (freedom from discrimination) of the ECHR’.⁴⁵

As Baroness Sherlock – now a DWP minister – pointed out regarding mass bank spying powers when in opposition: “ That benefits often engage protected characteristics is in the nature of social security.”⁴⁶

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

24. DWP has not done enough to assess the risks of the proposed policy discriminating against protected groups. At the time of writing, the Government has

⁴⁴ Equality and Human Rights Commission, ‘Data Protection and Digital Information Bill House of Lords Committee Stage’ (24 April 2024): <https://www.equalityhumanrights.com/our-work/advising-parliament-and-governments/dataprotection-and-digital-information-bill-house-2>

⁴⁵ Ibid

⁴⁶ HL Deb 22 April 2024 vol. 837, col 466GC: <https://hansard.parliament.uk/lords/2024-04-22/debates/B0FACBA7-F69A-4D92-9C2A6DA5FBCC8385/DataProtectionAndDigitalInformationBill>

yet to publish an Equality Impact Assessment addressing the potential impact of this unprecedented financial surveillance on people with protected characteristics, who may be disproportionately affected due to disability, age, sex and pregnancy/maternity. In the Accountability Section of its Annual Report, the National Audit Office (NAO) acknowledged that: “When using machine learning to prioritise reviews there is an inherent risk that the algorithms are biased towards selecting claims for review from certain vulnerable people or groups with protected characteristics. This may be due to unforeseen bias in the input data or the design of the model itself.”⁴⁷ The NAO also stated that DWP “should be able to provide assurance that it is not unfairly treating any group of customers”.⁴⁸

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

Relatedly, the NAO reported that DWP performed a pre-launch ‘fairness’ analysis of its existing data analytics products currently in use to test for disproportionate impacts on people with the protected characteristics of age, gender and pregnancy. Reportedly, the results were largely “inconclusive” but did identify age bias towards older claimants. According to the Public Accounts Committee, DWP’s position is reportedly that “some level of algorithmic bias is to be expected because of how benefit payments work.”⁴⁹ This position does not necessarily conform with DWP’s legal obligations under the Equality Act, Human Rights Act and Data Protection Act. The NAO also acknowledged

⁴⁷ DWP Annual Report and Accounts 2022-3, 6 July 2023, para. 5.10, p.309: <https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-reportaccounts-2022-23-web-ready.pdf>

⁴⁸ Ibid, para 5.11

⁴⁹ Committee of Public Accounts, The Department for Work and Pensions Annual Report and Accounts 2022-2023 (6 December 2023), p.18: <https://committees.parliament.uk/publications/42434/documents/210942/default/>

that DWP is unable to test conclusively for potential discrimination due to limited demographic data about claimants.⁵⁰

The Public Accounts Committee concluded that “DWP has not done enough to understand the impact of machine learning on customers to provide them with confidence that it will not result in unfair treatment.”⁵¹

EFFECT ON HOUSING CRISIS

25. This power could devastate the private rental market for recipients of benefits.

There are already well-documented issues with recipients of benefits being accepted as tenants by private landlords and benefits recipients are at risk of unlawful discrimination in the rental market.⁵² A recent government survey found that 1 in 10 private renters – around 109,000 households – said they had been refused a tenancy in the past 12 months alone because they received benefits.⁵³ This is a precarious situation: due to the housing crisis, many people in receipt of benefits must rent from private landlords in order to secure housing. The unintended consequence of the rushed financial surveillance powers in this Bill will add a major new deterrent to landlords receiving rent via tenants’ housing benefit, as they will be subjected to financial surveillance across not only that bank account but all their personal financial accounts. Affected landlords will also be at heightened risk of DWP errors and wrongful investigations arising from the surveillance. Such an intrusive regime could devastate the private rental market for recipients of benefits by making them less desirable tenants and significantly exacerbate the housing crisis for Britain’s most vulnerable people.

⁵⁰ DWP Annual Report and Accounts 2022-3, 6 July 2023, para. 5.12, p.309: <https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-reportaccounts-2022-23-web-ready.pdf>

⁵¹ Committee of Public Accounts, The Department for Work and Pensions Annual Report and Accounts 2022-2023 (6 December 2023): <https://committees.parliament.uk/publications/42434/documents/210942/default/>, 7.

⁵² Can private landlords refuse to let to benefit claimants and people with children? - House of Commons Library, October 2023: <https://researchbriefings.files.parliament.uk/documents/SN07008/SN07008.pdf>

⁵³ English Housing Survey 2021 to 2022: private rented sector – DLUHC, July 2023: <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rentedsector/english-housing-survey-2021-to-2022-private-rented-sector>

COMPLIANCE CHALLENGES FOR AFFECTED THIRD PARTY ORGANISATIONS

26. **Third parties who do not comply with EVNs to be levied with financial penalties if the Secretary of State considers that the person who has been given an EVN has failed to comply with it (Sch. 3B, Part 2).** These penalties are increasingly punitive with the Secretary of State able to issue a fixed fine of £1,000 for initial non-compliance, escalating to a rate of £1,000 per day for continued non-compliance. These measures will have the effect of forcing banks to comply with EVNs. Incurring penalties would be a public matter and would risk reputational damage.
27. **The proposed power will create a significant resource burden for affected third parties.** To perform the required mass surveillance and prevent inadvertent disclosure of personal data from customers with similar names or frequently changing addresses, banks must conduct thorough data matching exercises and checks. Banks, financial service providers and other affected third parties will therefore face heightened financial and resource demands due to these requirements.⁵⁴

The financial sector opposed the cumbersome obligations introduced by the previous proposals under the DPDI Bill. The Director of Economic Crime Policy and Strategy at UK Finance, which represents over 300 firms across the banking and finance industry, explained that the powers would present “quite a strong draw on resources [...] that we think would be better placed on serious fraud and organised criminal gangs.”⁵⁵

Under the Bill, this burden is heightened given the powers that the Secretary of State has to impose an ‘inaccurate information penalty’ where an institution has provided inaccurate information without reasonable excuse – whether the inaccuracy is deliberate, due to a failure to take reasonable care or due to a failure to inform the Secretary of State of its inaccuracy, at the time of its discovery or thereafter

⁵⁴ David Naylor and Michael Dowden, ‘Government access to personal data in bank accounts: a compliance challenge for banks, and a threat to EU adequacy?’ (17 January 2024): <https://www.lexology.com/library/detail.aspx?g=3a4671d4-a37e-4785-80cc-36f8d3a13e75>

⁵⁵ Eleanor Myers, ‘Don’t turn us into social security cops, banks tell UK government’ (12 March 2024): <https://www.politico.eu/article/rishi-sunak-social-security-cops-uk-government/>

(paragraph 10 of the proposed Sch. 3B of the SSAA 1992). This penalty has the effect of pushing the blame for error on the banks; however, it is unlikely that it will have any material effect in improving the accuracy of algorithms. Notably, there are no provisions in the Bill for quality assurance checks or periodic reviews of the automated systems used to comply with EVNs. Inaccurate information is inevitable.

CODE OF PRACTICE

28. The Government cannot offer Parliament or the public reassurance by deferring vital legal protections in favour of guidance in a code of practice. Schedule 3B, Part 5 states that the Secretary of State must issue a code of practice and DWP may view many of the legislative gaps and serious challenges associated with this power as issues that can be addressed by this code, after the enactment of the Bill. Whilst useful for providing guidelines to those using and affected by the powers, a code of practice is not enforceable and a failure to act in accordance with any future code does not make an individual liable to legal proceedings.

OPPOSITION TO DPDI BILL

29. Very similar powers previously proposed under the DPDI Bill received cross-party criticism – including from parliamentarians who are now Labour ministers. Baroness Kidron, Lord Anderson, Baroness Chakrabarti, Lord Clement-Jones and Lord Kamall gave notice of their opposition to the question that the powers stand part of the Bill at Committee Stage. They were joined by peers from across the House, including Baroness Sherlock – now a DWP minister - Baroness Lister, Lord Vaux, Lord Sikka and Lord Davies of Brixton, in expressing deep concerns over the unnecessary and disproportionate nature of these powers and the detrimental impact on people’s privacy. Sir Stephen Timms MP, who is currently a Minister for the Department sponsoring the PAFER Bill, eloquently expressed that, “the proposal in the [DPDI] Bill is for surveillance where there is absolutely no suspicion at all, which is a substantial

expansion the state’s power to intrude.”⁵⁶ He rightly emphasised, that “it shouldn’t be that people have fewer rights, including to privacy, than everyone else in the UK simply because they are on benefits.”

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

DIRECT DEDUCTION ORDERS

Clause 89 and Schedule 5 – Recovery from bank accounts

Amendment 2:

Clause 89, page 55, line 4, leave out sub-section (5)

Clause 89, page 55, line 3, at end insert—

(5) The Secretary of State may not exercise a power under Schedule 3ZA for the purpose of recovering an amount from a liable person unless —

- (a) the liable person agrees, or**
- (b) there has been a final determination by a court or tribunal that it is necessary and proportionate exercise a power under Schedule 3ZA.**

Amendment 3:

Schedule 5, page 98, line 10, leave out paragraph (3)

Effect of the amendments:

Restricting the availability of direct deduction order powers to cases where the debt is accepted – either by the debtor or by judicial determination – would prevent the DWP from lowering the legal threshold by which funds can be removed directly from an individual’s

⁵⁶ House of Commons Deb, 29 November 2023 vol 74, cc898-900

bank account. Removing the powers which require banks to hand over the bank statements and account information of their customers will prevent direct deduction orders from being decided on the basis of covert financial surveillance for administrative errors and oversights. Where an overpayment has been found to be owing by a court or tribunal, DWP will only be able to verify the affordability of the measure and assess the vulnerability of the debtor on the basis of the debtor's representations – not by scouring their private financial information.

Briefing:

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

31. It is worrying that these powers could apply to welfare recipients who have been flagged to DWP and had their benefits suspended during the investigation process. In this scenario, the claimant will be left with no money to live on and, as they are no longer receiving benefits, nor in PAYE employment, could have any funds in their bank account deducted by way of DDO.

32. Currently, where an overpayment of benefits has been made, the DWP can recover this sum by directly deducting from the debtor's benefits or direct deductions from their earnings. Where the debtor is no longer on benefits and not in PAYE

employment, the DWP can only recover overpayments through County Court enforcement proceedings.⁵⁷ The DWP argues that the County Court method of enforcement is “slow” and “resource intensive,” however we maintain that there should be judicial processes in place before the government can take money directly from individual’s bank accounts.⁵⁸

Unjustifiable expansion of Ministerial power

33. Before the Secretary of State can make a DDO, they must submit an ‘account information notice’ (AIN) to the bank with whom the debtor has an account, requesting copies of the debtor’s bank statements covering a period of at least three months prior to the notice (Sch 5, paragraphs 3(1) and (2) of PAFER). The intended purpose of this disclosure is for the Secretary of State to consider “the affordability of recovery,” (i.e., whether the debtor can afford to have the funds deducted).⁵⁹ The bank must not inform the debtor or other joint account holders if it receives an AIN. Ostensibly, this is so that the individuals cannot remove money from the account before an order has been made and thereby, “frustrate the operation of the direct deduction order.”⁶⁰ However, the secretiveness of this surveillance will create an environment of fear, anxiety and suspicion for benefits claimants. During Second Reading of the PAFER Bill, John McDonnell MP noted that there is already a “climate of fear” that pervades the lives of benefits claimants.⁶¹

34. These powers to request granular information from banks about their customers, without their knowledge, to decide whether an individual can afford to pay back an overpayment are both intrusive and paternalistic. Bank statements are capable of revealing sensitive and private information about an individual’s movements,

⁵⁷ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p68; DWP, Public Authorities (Fraud, Error and Recovery) Bill: Impact Assessment, 21 January 2025, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, p71

⁵⁸ DWP, Public Authorities (Fraud, Error and Recovery) Bill: Impact Assessment, 21 January 2025, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, p71

⁵⁹ Explanatory Notes, para 722.

⁶⁰ Explanatory Notes, para 728.

⁶¹ Col 618.

associations, political opinions, religious beliefs, sex life, sexual orientation, and trade union membership. Since an AIN can also apply to joint accounts, individuals who are not themselves benefits recipients can have their private financial information disclosed to DWP. The Secretary of State already has powers to request this type of transaction data from banks, where an individual is suspected of fraud. By contrast, the proposals for DDOs create an unwarranted power for the state to covertly demand the financial records of benefits recipients, without suspicion of any criminal offence having been committed. It should be emphasised that these intrusive powers will affect individuals who have been overpaid as a result of making a mistake when filling out notoriously complex benefit claims forms or failing to update a change in their circumstances.

35. DWP maintains that the power is similar to those used by HMRC and the Child Maintenance Service.⁶² However this is a false comparison. Child Maintenance is money owed by one parent to ensure the provision of their dependent who does not live with them. This differs greatly from an individual claiming money from the social security system who has been overpaid – potentially through no fault of their own. Further, HMRC powers to deduct money directly from bank accounts under Schedule 8 of the Finance (No. 2) Act 2015 are subject to statutory safeguards, including the requirement for HMRC to retain £5,000 in the debtor’s accounts and guidance as to who should, to the best of HMRC’s knowledge, be deemed “at a particular disadvantage” when engaging with the department.⁶³ During the consultation stage of that The Finance Act 2015, HMRC committed for all debtors considered for this measure to “ first receive a face-to-face visit from an HMRC agent.”⁶⁴ This is a far cry from the current proposals under the PAFER Bill to leave these protections to DWP’s discretion on the basis of a debtor’s representations and covertly obtained bank statements. In any event, we

⁶² House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p69.

⁶³ Finance (No. 2) Act 2015, Schedule 8, <https://www.legislation.gov.uk/ukpga/2015/33/schedule/8>

⁶⁴ HMRC, Direct recovery of debts due to HMRC from debtors’ bank and building society accounts, https://assets.publishing.service.gov.uk/media/5a7cfd9e5274a33be64846a/ENFORCEMENT_BY_DEDUCTION_FROM_ACCOUNTS.pdf

maintain that government bodies should not be empowered to infringe upon the privately held accounts of citizens to retrieve overpayments arising from administrative error.

36. DWP envisages that it will use the powers as a deterrent, “primarily to encourage repayment.”⁶⁵ Indeed, its Impact Assessment acknowledges that similar HMRC powers to deduct money from bank accounts were only used in 19 out of 22,667 cases evaluated.⁶⁶ However, in the case of the proposed DWP DDO powers, the debtor and any joint account holders will have had their bank statements disclosed by their bank to the DWP before any measurable deterrent effect could be said to apply. It is wholly disproportionate that the PAFER Bill gives the government the power to look through sensitive financial information in circumstances where the underlying power is hardly ever expected to be invoked and before the purported deterrent can even be said to have taken effect. Even if the deterrent functioned effectively before any privacy infringement, the DDO powers would still be a disproportionate measure, by targeting individuals for non-fraudulent overpayments.

37. The PAFER Bill also allows for further provisions about DDOs to be made by regulation. The scope of these broad and non-exhaustive regulations include how notices and orders are to be given by the Secretary of State; the calculation of amounts (including deciding whether a person will suffer hardship); duties of banks and the costs that banks costs may recover (Sch 5, para 24). The power to amend the provisions relating to DDOs gives even greater discretion to the Secretary of State to alter the circumstances in which sums can be recovered from the accounts of benefits recipients who have been overpaid.

Effect on Equality

⁶⁵ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p69.

⁶⁶DWP, Public Authorities (Fraud, Error and Recovery) Bill: Impact Assessment, 21 January 2025, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, p71

38. Before issuing a DDO, the Secretary of State must give the debtor and any joint account holder notice of the proposed order and invite them to make representations (Sch 5, paras 5(1) and (2) of PAFER). On the basis of those representations, the Secretary of State will decide whether, and on what terms, to make a DDO based on the representations and may only do so if satisfied from the bank statements and representations that the order is fair in all the circumstances and that the liable person/account holders (and those who are dependent on or live with them) will not “suffer hardship in meeting essential living expenses,” (Sch 5, paras 5(5) and 6). This hands an extraordinary amount of discretion to the Secretary of State, as there is no threshold to determine what constitutes “hardship” or what would be “fair in all the circumstances.” It is also unclear what will happen if the liable person or affected account holders do not submit representations at all; it is possible that the Secretary of State could be satisfied that they will not suffer hardship on the basis of their bank statements alone.

39. In a particularly cynical addition, the DDO may include provision for the bank to deduct a fee from the debtor’s account to meet its reasonable costs for complying with the order (Sch 5, para 8). This amounts to a state-backed removal of funds directly from the bank accounts of its private customers for dealing with the administrative retrieval of overpayments.

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

“For people with mental health problems, opening letters can be really difficult. People might not engage with the DWP through no fault of their own.”⁶⁷

⁶⁷ Col 610.

The powers to issue DDOs have the potential to subject the most vulnerable in our society to intrusive financial surveillance for administrative errors and oversights. Gill German MP acknowledged this reality during Second Reading of the PAFER Bill, explaining that this complexity “causes significant stress and it exemplifies the risks of penalising individuals who may simply have been unable to navigate the system, further entrenching the fear of making a mistake.” To some extent, the draconian measures are intended to induce such anxiety among debtors to encourage repayment.

Implications for banks

41. Banks are required to comply with account information and general information notices and will be liable to a penalty, if they fail to comply (Sch 5, para 3(7) and 3(8) of PAFER Bill). UK Finance, an organisation representing the banking and finance industry, expressed concerns that the direct deduction orders could conflict with banks’ regulatory and legal obligations by creating risks for vulnerable customers.⁶⁸ Jon Trickett MP emphasised these concerns during the Second Reading Debate of the PAFER Bill, explaining, “the banks have said there is a contradiction between the contents of this Bill and the obligations that fall on them and their duty to treat people who are vulnerable in a proper way.”⁶⁹

Insufficient safeguards

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

⁶⁸ House of Commons Library, Research Briefing: Public Authorities (Fraud, Error & Recovery) Bill, 30 January 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-10183/CBP-10183.pdf>, p70

⁶⁹ HC Deb 3 February 2025 vol. 761, col.602: [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)

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

DISQUALIFICATION FROM DRIVING

Clause 89 and Schedule 6 – Disqualification from Driving

Amendment 4:

MPs should give notice of their intention to oppose the question that Clause 89 and Schedule 6 stand part.

Effect of the amendments:

This will prevent the Secretary of State from being able to apply to the court to disqualify a benefits recipient who has been overpaid – whether through fraud, misstatement or oversight – from holding a driving licence.

Briefing:

44. Where all other methods of debt recovery have failed, including the DDO measures outlined above, the DWP may apply to the court to have the debtor disqualified from driving. The court must make a suspended DWP qualification order if it is satisfied, on the balance of probabilities, that the liable person has, without reasonable excuse, not paid the recoverable amount (Sch 6(1(4)) of PAFER). The court may disqualify a liable

person from holding/obtaining a driving licence for such period the court considers likely to result in the person paying the recoverable amount (Sch 6(2(2))) which must not exceed 2 years and must make an immediate DWP disqualification order where the debtor has failed to comply with the terms of repayment under a suspended DWP disqualification order. Therefore, although the DWP must apply to the court for the disqualification order, the Court does not have discretion to refuse where certain aforementioned conditions are met, unless the debtor needs a driving licence to earn a living or has another essential need for a driving licence.

45. The court must be satisfied that the person has not paid the recoverable amount without reasonable excuse. It is unclear the extent to which this will protect vulnerable benefits claimants who have not engaged with the DWP due to incapacity, illness, depression and anxiety and whether these reasons will be deemed 'reasonable'. The Secretary of State and the debtor must have an *opportunity* to be heard by the Court, however if the debtor has failed to engage with the DWP until this point, it is not certain that they would be able to take up this opportunity (Sch 6(1(9))). It is unclear how the court would ascertain whether the debtor needs a driving licence without hearing from the debtor.

46. Notably this power would only be exercised after the DWP has already searched through an individual's bank statements to decide whether to issue a direct deduction order. The same concerns about excessive and unwarranted privacy intrusions as discussed above apply in relation to the driving disqualification powers. The Secretary of State may not exercise the powers under Sch 3ZB unless satisfied "it is not reasonably possible to recover the amount by way of deductions from benefit, deductions from earnings, an adjustment of benefit or deductions from the person's bank account" (clause 89(7) of the PAFER Bill). This is therefore, in essence, a poverty penalty, which seeks to punish those who do not have the means to return what they have been overpaid.

47. Given that these powers would only be used where a debtor cannot physically pay back what they owe, the driving disqualification powers serve no other purpose than

to deter debtors from failing to engage with the DWP to arrange terms of repayment. But this misdiagnoses the problem. Benefits claimants often make mistakes or fail to disclose information through oversight and their failure to engage with the DWP thereafter can be due to genuine incapacity and health issues. As Sian Berry MP put it during Second Reading of the Bill: the powers “would remove driving licences from people who are having difficulty paying back to the DWP overpaid money due to what may simply be human error at a difficult time in their lives, not fraud at all.”⁷⁰ Introducing punitive measures for unavoidable mistakes will not necessarily create the conditions in which debtors are able to engage with the DWP, but will create dire consequences for those who are most reliant on the welfare system and least able to afford repayments.

⁷⁰ HC Deb 3 February 2025 vol. 761, col.602: [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)