

Public Authorities (Fraud, Error and Recovery) Bill

Briefing One – Part 1 and the Public Sector Fraud Authority

Committee Stage, House of Lords

4 June 2025

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the UK justice system. It is the UK section of the International Commission of Jurists. 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. JUSTICE has given oral and written evidence to the House of Commons during the passage of the Public Authorities (Fraud, Error and Recovery) Bill ("**the Bill**").¹ For Committee Stage in the House of Lords, it is producing three briefings:
 - (a) Briefing One: Part 1 and the Public Sector Fraud Authority;
 - (b) Briefing Two: "Reasonable" grounds and suspicion-by-stereotype: protecting individuals from fraud investigation based on stereotypes and generalisations (Crosscutting issue); and
 - (c) Briefing Three: Part 2 and the Department for Work and Pensions.
3. This is the first of these briefings and focuses on **Part 1 of the Bill only**.

Summary

4. JUSTICE highlights the following concerns with Part 1, and supports the following amendments:

- (a) **Clauses 3-4:** information notices should be subject to fair processes and independent review. JUSTICE supports **amendments 13 and 14** which improve procedural safeguards for individuals, and encourages consideration of an appeal to the First tier Tribunal.
- (b) **Clauses 7-9:** entry search and seizure powers are coercive police powers to be extended cautiously to other bodies. JUSTICE supports **amendment 17**, which would clarify the

¹ See our written evidence, submitted at Committee Stage in the House of Commons, on the Bill page [here](#).

standards of appointment of officers exercising these powers. JUSTICE encourages support for **Clause 7 not to stand part**, to question the need for the powers to be extended beyond the police, and ask if further funding for the IOPC to oversee complaints is available, given its already strained capacity. JUSTICE also seeks support from a Peer to table an amendment limiting the Henry VIII power in Clause 9.

- (c) **Clauses 17-49:** it is right that direct deduction orders and deduction from earnings orders must not cause hardship, and that they are reviewable. But the procedures of review must be fair, transparent and independent to ensure vulnerable people are effectively protected from the harm of hardship in practice. JUSTICE supports **amendments 50, 56, 57, 58, and 59**, which require reasons to be given when an application to vary is rejected, and require an independent person or body conducts the review of direct deduction orders.
- (d) **Clauses 64-65:** JUSTICE supports the independent reviewer role. However, the extent of the reviewer's duties should be improved. JUSTICE seeks support from Peers to table amendments which explicitly require the reviewer to report on equality impact, the impact on vulnerable people, and the PFSA's competence to exercise their powers proportionately. The powers of the independent reviewer are also insufficient: JUSTICE seeks support from Peers to table amendments which enable the reviewer to compel access to information they need from the Minister; and which compel the Government to respond to a report's recommendations, providing reasons for those they reject.
- (e) JUSTICE also supports **amendments 67 and 68** which ensure further accountability to Parliament through annual reports.

Introduction

- 5. Part 1 of 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 through the Minister for the Cabinet Office.
- 6. These powers include police powers to enter private premises, search them, and seize property, as well as powers to demand information, recover money and impose civil penalties. These are significant and coercive powers in the hands of the state which will inevitably interfere with the rights of individuals, including their right to privacy, home and correspondence, and their right to the peaceful enjoyment of

their property.²

7. These powers are undoubtedly in pursuit 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 which will interfere with their rights, a legitimate aim is just the starting point. In addition:
 - (a) the legislation itself which creates such new powers must be tightly drawn to guard against arbitrariness;³
 - (b) the exercise of the powers must be limited to what is necessary and proportionate; and
 - (c) there must be effective safeguards and oversight mechanisms, not just to incentivise such necessary and proportionate use, but also to ensure accountability and redress when things go wrong.⁴
8. If over-broad powers are included within the Bill, and/or the Bill lacks adequate safeguards, the Bill risks undermining the rule of law and breaching the human rights of individuals targeted by its measures.
9. Making sure these protections are in place does not undermine the policy objective of tackling fraud; it supports it by ensuring that fraud is tackled lawfully in a democratic society.

Clauses 3 & 4 – PSFA Information notices

10. Clause 3 establishes a power for the PSFA to issue information notices. Recipients can request a Ministerial review of an information notice, however such request must be made within 7 days (Clause 4(2)).
11. This is unnecessarily short, especially given the recipient may want to take independent 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.
12. JUSTICE therefore supports amendment 13, tabled by Baroness Finn and Viscount Younger of Leckie, which would change the Clause 4 time limit to 28 days.

² Article 8 and Article 1 Protocol 1 of the European Convention of Human Rights, respectively.

³ i.e. not be “so wide or indefinite as to permit interference with [rights] on an arbitrary or abusive basis.” R (Catt) v Commissioner of Police of the Metropolis [2015] UKSC 9 [11] *per* Lord Sumption

⁴ See the right to an effective remedy Article 13 of the European Convention of Human Rights

13. These information notices are only reviewable internally, by the Cabinet Office Minister, which JUSTICE understands in practice will be a review conducted by another authorised officer in the PSFA. There is no *independent* oversight, therefore, but rather the Cabinet Office/PFSA is marking its own homework.
14. 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.
 - (c) The Direct Deduction Orders available to the PFSA (in this Bill at Clauses 17 to 37) are subject to both Ministerial review *and* appeal to the First Tier Tribunal.
15. JUSTICE therefore calls for consideration of an appeal mechanism against information notices to the First Tier Tribunal.
16. When a Clause 4 review has taken place, the applicant is only entitled to know “the outcome of the review”. There is no explicit requirement to provide reasoning behind the outcome. Therefore, not only is the Cabinet Office marking its own homework, but it need not give any justification for rejecting a review. This falls short of basic standards of good administrative decision-making, and does not ensure adequate accountability. If there will be no appeal to the First Tier Tribunal, then it is all the more important that reasons are required from a Clause 4 review, to ensure that single stage of review is as fair and transparent as possible.
17. JUSTICE therefore supports Amendment 14, tabled by Baroness Finn and Viscount Younger of Leckie, which would compel the reasoning behind a decision taken after a review to be set out to the person in question, in addition to the outcome of the review.

Clauses 7, 8 & 9 – PFSA entry, search and seizure powers

18. Powers of entry, search and seizure are traditionally powers which sit with the police and other law enforcement agencies. They are significant and coercive state powers which directly interfere with the human rights of affected individuals.
19. JUSTICE therefore supports the notice that Clause 7 does not stand part of the Bill from Baroness Finn and Viscount Younger of Leckie, in seeking further information as to why such significant powers need be granted in the first place.
20. JUSTICE also observes that those officers exercising such powers will be making human rights decisions

every day, assessing the facts of each case and considering the necessity and proportionality of the use of such powers in individual cases. They must be appropriately skilled to make such decisions well.

21. JUSTICE therefore supports amendment 17, tabled by Baroness Finn and Viscount Younger of Leckie, which would make clear what process is used to appoint authorised investigators in statutory guidance.
22. Furthermore, to ensure good practice, accountability for individuals, and to protect public trust, there must be adequate oversight of those exercising powers, as there is with police currently exercising these powers. Clause 9 establishes that the Independent Office of Police Conduct (“IOPC”) will handle complaints and misconduct in relation to the search, entry and seizure powers which are being extended to PSFA investigators.⁵
23. 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.⁶ Such delegated powers make it difficult for Parliament to be clear about the adequacy of the oversight which will be secured by the IOPC. Specifically, there is nothing to prevent the IOPC’s oversight being significantly reduced through such regulations.
24. The practicality of the IOPC taking on a wider remit is also of significant concern. Only in December 2023, an independent review of the IOPC found it was facing significant (and growing) financial pressures, resulting in an ever-increasing number of complaints in fact resulting in fewer and fewer investigations actually being carried out. The review had notice of the proposed extension of the IOPC’s oversight to DWP and PSFA officers. It cautioned that “The Home Office should carefully consider 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.”⁷
25. JUSTICE therefore calls for assurances from the Government that the IOPC will receive increased financial support.
26. JUSTICE also seeks support from a Peer to table the below amendment, which would restrict the Henry VIII power so it cannot be used to reduce protections for individuals.

Clause 9, page 7, line 2, at end insert

(2A) Regulations under this section may not modify the functions of the Director General so as to

⁵ Clause 82 does the same with respect to the powers being extended to DWP investigators in Part 2 of the Bill – see JUSTICE’s briefing on Part 2 of the Bill to follow.

⁶ 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.

⁷ Dr Gillian Fairfield, [*Independent review of the Independent Office for Police Conduct*](#) (December 2023)

provide less oversight of public sector fraud investigators than would apply to police officers exercising corresponding Police and Criminal Evidence Act 1984 powers.

Clauses 17-49 – PSFA Direct Deduction Orders and Deduction from Earnings Orders

27. Clause 17 allows the Minister (in practice the PFSA)⁸ to deduct recoverable amounts directly from a liable person's bank accounts. Clause 38 does so with respect to direct deductions from earnings. These powers are exercisable only if the liable person agrees, or there has been a final determination by a court, *per* Clause 12.
28. Clauses 22 and 41 further stipulate that the Minister may not order an amount which would cause the liable person⁹ "to suffer hardship in meeting [essential / ordinary] living expenses".¹⁰ The amount must also be "otherwise fair in all the circumstances". These safeguards are vital to protect vulnerable people from harm and poverty by the measures.
29. Clauses 28 and 45 allow those affected to apply to vary the order. They secure them the right to make representations and compel the Minister to notify them of the decision. However, they only have a right to know the decision, not the reasons behind it. As discussed above, this falls short of basic standards of good administrative decision-making, and does not ensure adequate accountability.
30. JUSTICE therefore supports amendment 50, which would compel the reasoning behind a decision on an application to vary a direct deduction order under Clause 28.
31. JUSTICE also suggests further similar amendments should be considered for:
 - (a) Clause 34(7) which only entitles those applying for a review of a direct deduction order to the outcome of the review, not the reasons behind it;
 - (b) Clause 45(2), which allows individuals to apply to vary deduction from earnings orders, but again does not entitle the applicant to reasons, just notification of the decision; and
 - (c) Clause 48(7), which only secures notification of the outcome, and not reasons, of a review of deduction from earnings orders.
32. Finally, JUSTICE further observes that the direct deduction order scheme and the deduction from earnings scheme create several steps in which the Cabinet Office is marking its own homework. Orders

⁸ See Clause 66 of the Bill

⁹ Or another account holder, a person they live with or someone financially dependent on them.

¹⁰ "essential" for direct deduction orders at Clause 22; "ordinary" for earnings orders at Clause 41.

are made by the Minister, applications to vary are considered by the Minister, and furthermore reviews go to the same Minister. While JUSTICE acknowledges the existence of an appeal to the First Tier Tribunal in both schemes, this is only after applications to vary and/or reviews have been exhausted. JUSTICE thinks there is considerable merit in incorporating an independent review of decision-making at an earlier stage, and sparing those seeking oversight of a review from an arduous and stressful experience of multiple challenges which lack independence.

33. JUSTICE therefore supports amendments 56, 57, 58 and 59 tabled by Baroness Finn and Viscount Younger of Leckie, which ensure an independent person or body conducts the review of direct deduction orders under Clause 34.

Clauses 64–65 – The independent reviewer of functions

34. The role of an independent reviewer is established by Clause 64 to review the exercise of the Minister’s functions, that is their investigatory, recovery and penalty powers, under Part 1 of the Bill.
35. As explained above, the powers in Part 1 are significant and coercive state powers, which require adequate oversight. While individual case oversight through redress is important – by way of reviews and appeals - overarching oversight is also vital if the systemic impact of the measures is going to be understood. Therefore JUSTICE fully supports the creation of an Independent Reviewer role in principle as an important safeguard.
36. However, the current provisions lack clarity as to the role of the independent reviewer, their powers and the level of scrutiny they will actually be able to provide in practice. Without these details, JUSTICE does not consider Parliament can be assured that the independent reviewer role provides adequate scrutiny.
37. JUSTICE suggests the following additional requirements:
- (a) **Reporting duties:** the reviews must consider compliance with the requirements of Part 1, and the core functions of the Minister at Clause 1 of the Bill. However, there are no further areas of enquiry stipulated. JUSTICE considers Clause 64 would be improved with explicit requirements for the independent reviewer to report on specified areas of impact including the equality impact, the impact on vulnerable people, and the competence of the PFSA to exercise their powers proportionately.
 - (b) **Power to access to information:** Clause 65(2) provides that the Minister “may” disclose information to the independent person for the review. JUSTICE is not clear why this is “may” and not “must”. A power to require information from the Minister in the exercise of the independent review would ensure full transparency and therefore effectiveness of the review, rather than

relying on the Minister (in practice the PFSA) to voluntarily provide relevant information. JUSTICE therefore seeks support from a Peer to table the following amendment:

At Clause 65, page 35, line 3, delete “may” and replace with “must”.

- (c) **Accountability:** Clause 64 stipulates the independent reviewer’s report must contain recommendations, however it is silent as to what the Government must do in receipt of them. To ensure the Minister and PFSA are accountable to the oversight of the independent review, JUSTICE seeks support from a Peer to table an amendment as follows:

At Clause 64, page 34, line 32, at end insert –

(6) Within [3 months] of having received a report, the Minister must:

(a) publish a response to the report;

(b) provide reasons in the response for why any recommendations are being rejected; and

(c) lay a copy of the response before Parliament.

38. As a further accountability measure, JUSTICE also supports amendments 67 and 68 tabled by Baroness Finn and Viscount Younger of Leckie, which would compel the Minister to provide Parliament with annual reports on the use of powers and the extent of public sector fraud as internally estimated by the Government.

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For more information, please contact:

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JUSTICE | 4 June 2025