

Public Authorities (Fraud, Error and Recovery) Bill

Briefing Two – Clarifying “reasonable grounds” for suspicion

Committee Stage, House of Lords

9 June 2025

Summary

1. **JUSTICE urges Peers to support amendments [75A](#) and [79A](#)** . They provide essential clarification as to how the DWP and PFSA may interpret the legal threshold for most of the investigative powers in the Bill, i.e. the requirement to have “reasonable grounds” of suspicion of fraud.
2. **The amendments are inspired by PACE Code A and the clarification of “reasonable grounds” already in place for police when using their stop and search powers**, aimed at preventing discrimination by harmful stereotypes and generalisations being used as grounds for using investigative powers.
3. **The amendments are more necessary than ever given what we know about DWP’s investments in machine learning to date and the harm done in other jurisdictions by machine learning algorithms used in fraud investigations**, resulting in whole groups being stereotyped as posing a fraud risk, for example those of dual nationality or low income. Devastating consequences on innocent people have been seen in the Netherlands, where thousands were pursued for fraud they did not commit.
4. **The impact will not be to stymie legitimate fraud investigations – far from it.** The only investigations the amendments stop are those purely based on generalisation and stereotype. The amendments will instead ensure suspicion must be based on evidence about *the individual*, not just their membership of a social group (i.e. we are searching your house based solely on your nationality, income, gender, etc. because they are the kind of person who commits fraud.)
5. **These amendments should not be contentious.** In essence, they simply seek to do what PACE Code A seeks to do in relation to stop and search: guard against discriminatory and lazy justifications for using invasive powers based solely on stereotypes and generalisations, thereby protecting human rights and upholding the rule of law.

Introduction

6. [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.
7. 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 – Clarifying "reasonable grounds" for suspicion**
 - (c) Briefing Three – Part 2 and the Department for Work and Pensions
8. This is the second of these briefings. It focuses on amendments [75A](#) and [79A](#) in the names of Lord Vaux of Harrowden, Baroness Bennett of Manor Castle, and Baroness Fox of Buckley:

75A *Clause 70, page 37, line 32, at end insert—*

"“reasonable grounds” do not include generalisations or stereotypes of certain categories of people, for example that members of a particular social group are more likely to be involved in fraudulent activity than others, irrespective of whether they are made through entirely automated, partially automated, or non-automated processes;”

79A *Clause 72, page 42, line 10, at end insert—*

“(6) In section 191 (interpretation) after the definition of “prescribe” insert-

“reasonable grounds” do not include generalisations or stereotypes of certain categories of people, for example that members of a particular social group who [sic.] are more likely to be involved in fraudulent activity than others, irrespective of whether they are made through entirely automated, partially automated, or non-automated processes;”

Explanatory statement: These amendments clarify that people cannot be investigated for fraud based on stereotypes and generalisations, be this through the use of algorithms, human assessment, or a combination.

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

Background

9. The Bill gives the Public Sector Fraud Authority (“**PSFA**”) and the Department for Work and Pensions (“**DWP**”) substantial powers to investigate fraud. These powers include police powers to enter private premises, search them, and seize property, as well as powers to demand information. These powers will inevitably interfere with the rights of individuals, including the right to privacy, home and correspondence, and their right to the peaceful enjoyment of their property.²
10. 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.
 - (c) there must be effective safeguards and oversight mechanisms, not just to incentivise necessary and proportionate use, but also to ensure accountability and redress when things go wrong.⁴
11. If over-broad powers are included within the Bill 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.
12. 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.

“Reasonable grounds”

13. The investigatory powers in the Bill are exercisable only when there are “reasonable grounds” for suspicion, for example that fraud has been committed, or there are “reasonable grounds” for believing evidence is located at a particular property.⁵ This requirement for “reasonable grounds” is a well-known legal requirement of state investigations, including the DWP’s existing powers⁶ and the police’s investigative and arresting powers. It is a safeguard to protect individuals from baseless state interference and fishing expeditions. It thereby upholds the rule of law, by preventing arbitrary state power.

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

⁵ This threshold is absent for the “eligibility verification” powers at Clause 74 and Schedule 3. These eligibility verification powers are considered separately in JUSTICE’s third briefing on Part 2 of the Bill.

⁶ And can be seen in the DWP’s current information powers in section 109B of the Social Security Administration Act 1992 (“**SSAA 1992**”), and its current powers of entry under section 109C SSAA 1992.

The problem – discriminatory algorithms

14. JUSTICE considers what is “reasonable” requires clarification in the context of this Bill, in light of the role technology will play in casting suspicion on individuals and organisations in the future.
15. Investment in data analytics and emerging technologies in fraud risk detection is increasing. The Government has signaled its intention to “turbocharge” AI and “mainline AI into the veins of the nation”,⁷ including the public sector. The Government is concurrently passing the Data (Use and Access) Bill, which would repeal the current ban on automated decision-making and profiling of individuals.
16. However there are real concerns about the inaccuracy of algorithms, particularly when such inaccuracy is discriminatory, i.e. when mistakes disproportionately impact a certain group of people.
17. **It is well evidenced by now that machine learning algorithms can *learn* to discriminate in a way that no democratic society would wish to incorporate into any reasonable decision-making process about individuals.** They do so by picking up on latent biases within training data and by making harmful connections between data points, which are inaccurate, arbitrary, and at worst are dehumanising and breach individuals’ human rights.

Examples across different use contexts:

Amazon previously used a machine learning artificial intelligence tool to make recruitment decisions. The tool was supposed to be gender neutral and did not collect or process the sex of the applicant as a discrete data point. Despite this, it began discriminating on the basis of sex using proxy data points, perpetuating an existing disparity in the workforce, which was majority male.⁸

In the US criminal courts, an automated tool called COMPAS gives a score of “risk” of reoffending to inform bail sentencing. An independent investigation found racial discrimination in the tool: Black defendants were more likely to receive a “false positive” from the tool, i.e. be incorrectly judged to be at a higher risk of recidivism, while white defendants were more likely to receive a false negative, i.e. be incorrectly flagged as low risk.⁹

Racial discrimination is also shockingly prominent in image classification tools which learn to associate words with images based on large amounts of data. For example, Google Image search results for healthy skin that show only light-skinned women, or ImageNet-trained models that label

⁷ Press release, [Prime Minister sets out blueprint to turbocharge AI](#), 12 January 2025

⁸ See original Reuters report as archived by the Irish Times: Jeffrey Dastin, “[Amazon scraps secret AI recruiting tool that showed bias against women](#)”. (Reuters, 2018)

⁹ See Julia Angwin, Jeff Larson, Surya Mattu and Lauren Kirchner, ‘[Machine Bias](#)’ and ‘[How we analysed the COMPAS recidivism algorithm](#)’, *ProPublica* (23 May 2016).

*Black individuals as a bad person, a drug addict, or a failure.*¹⁰

18. DWP has invested billions in artificial intelligence, widening its scope last year to include use of a machine learning tool to identify fraud in Universal Credit advances applications, and intends to develop further models.¹¹ This is despite a warning from the auditor general in 2023 of “*an inherent risk that the algorithms are biased towards selecting claims for review from certain vulnerable people or groups with protected characteristics*”.¹² The DWP admitted its “*ability to test for unfair impacts across protected characteristics is currently limited*”.¹³
19. The poor quality and discriminatory outputs of such technology in DWP fraud investigations have since been revealed, despite a lack of transparency:
- (a) last year, two-thirds of the claims flagged by a DWP algorithm as potentially high risk were in fact legitimate.¹⁴
 - (b) An internal DWP “fairness analysis” of the Universal Credit payments algorithm – only published due to a Freedom Of Information Request – has revealed a “statistically significant outcome disparity” according to according to people’s age, disability, marital status and nationality. However, it is unclear what ages, or what kind of outcome disparity for disabled people, since those sections of the report were redacted by DWP.¹⁵
20. Against this background, it is important to look at other jurisdictions in which machine learning algorithms have been deployed to help investigate welfare fraud. Two jurisdictions – the Netherlands and more recently in Sweden – demonstrate the harmful consequences on individuals who have been profiled and discriminated against by algorithmic fraud investigations.

¹⁰ Raji, D. (2020) [How our Data Encodes Systematic Racism](#), *MIT Technology Review*, December 10.

¹¹ DWP, ‘[Annual Report and Accounts 2022-23](#)’, p102.

¹² Rober Booth, [AI use widened to assess universal credit applications and tackle fraud](#) (*The Guardian*, 11 July 2023)

¹³ *ibid*

¹⁴ Robert Booth, ‘[DWP algorithm wrongly flags 200,000 people for possible fraud and error](#)’ (*The Guardian*, 23 June 2024)

¹⁵ Robert Booth, ‘[Revealed: bias found in AI system used to detect UK benefits fraud](#)’ (*The Guardian*, 6 December 2024)

In the Netherlands: Machine learning algorithms used in the Netherlands child tax credit scandal "learned" to profile those with dual nationality and low income as being suspicious of fraud. From 2015 to 2019, authorities penalized families over suspicion of fraud based on the system's risk indicators. Tens of thousands of families — often with lower incomes or belonging to ethnic minorities — were pushed into poverty. Some victims committed suicide. More than a thousand children were taken into foster care.¹⁶ The Dutch Parliamentary Inquiry into the scandal named it "Unprecedented injustice" and "a serious breach of the rule-of-law".¹⁷ The scandal also caused PM Mark Rutte's resignation. It has been heralded as a warning for all of Europe of the dangers of over-using algorithms in the context of fraud investigation of the most vulnerable in society.¹⁸

In Sweden, a strikingly similar scandal is emerging. In November 2024, an investigation¹⁹ found that the machine learning system being used by Försäkringskassan, Sweden's Social Insurance Agency, is disproportionately flagging certain groups for further investigation over social benefits fraud, including women, individuals with "foreign" backgrounds, low-income earners and people without university degrees. Once cases are flagged, fraud investigators have the power to trawl through a person's social media accounts, obtain data from institutions, and even interview an individual's neighbours as part of their investigations. Those incorrectly flagged by the social security system have complained they then end up facing delays and legal hurdles in accessing their welfare entitlement.²⁰

Solution

21. There is a need to clarify on the face of the Bill that "reasonable grounds" of suspicion do not mean generalisations or stereotypes of individuals, to prevent such discriminatory and harmful outcomes.

¹⁶ Gijs Herderscheê, "More than 1,100 children of victims of the benefits scandal were removed from their homes" (original Dutch : "[Ruim 1.100 kinderen van gedupeerden toeslagenaffaire werden uit huis geplaatst](#)") (de Volkskrant, 19 October 2021)

¹⁷ Childcare Allowance Parliamentary Inquiry Committee, [Unprecedented injustice](#), presented to Speaker of the House of Representatives of the States General, the Hague, 17 December 2020.

¹⁸ Melissa Heikkilä, "[Dutch scandal serves as a warning for Europe over risks of using algorithms](#)" (Politico, 29 March 2022)

¹⁹ By Lighthouse Reports and Svenska Dagbladet (SvB), available in Swedish and behind paywall [here](#), however see Computer Weekly article for summary (footnote 20).

²⁰ Sebastian Klovig Skelton, "[Swedish authorities urged to discontinue AI welfare system](#)" (Computer Weekly, 29 November 2024)

22. **A clear precedent can be found from another area of state power which is particularly liable to discrimination: police stop and search powers.** Code A of PACE 1984 states that the following “never support reasonable grounds for suspicion”:²¹

any of the ‘relevant protected characteristics’ set out in the Equality Act 2010, section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation,

And

*Generalisations or stereotyp[es] that certain groups or categories of people are more likely to be involved in criminal activity.*²²

23. **JUSTICE therefore supports amendments 75A and 79A** which use this precedent and apply it to the current context. The amendments add the following clarification to interpretation provisions for the PFSA and the DWP powers respectively:

“reasonable grounds” do not include generalisations or stereotypes of certain categories of people, for example that members of a particular social group are more likely to be involved in fraudulent activity than others, irrespective of whether they are made through entirely automated, partially automated, or non-automated processes.

24. The amendments are necessary because:

- (a) **Assurances that a human will be involved in all decision-making in PFSA and DWP are not an adequate safeguard alone**, due to the well-known issue of automation bias, meaning human deference to algorithmic outputs typified in attitudes such as “the data does not lie”. Explicitly requiring that generalisations and stereotypes do not form part of justifications for the use of powers requires decision-makers to be proactive and clear that they are not exercising their powers on such illegitimate bases, rather than performing a deferential and insufficient check of the algorithmic recommendation.
- (b) **There is a lack of transparency** into the quality of algorithms used by DWP, and a clear imbalance of power between the DWP and the PFSA and those who they will be investigating. Protections therefore must stop harmful and discriminatory decision-making *in the first place*, rather than

²¹ [Code A of PACE 1984](#) para 2.2B. Note, the code of practice is for police stop and search powers, which are not being extended to DWP or PSFA officers in the Bill. Therefore it is not one of the PACE Codes of Practice which will apply to such officers.

²² Original text as it relates to stop and search powers is “stereotypical images”.

relying on vulnerable individuals, or civil society and the media, to challenge the reasonableness of investigations after the fact, at which point some harm will already have been incurred.

- (c) **Generalisations and stereotypes can be made which go outside the remit of the Equality Act 2010**, for example low income is not a protected characteristic, and nationality is widely exempted for acts of the executive.²³ It is therefore wrong to say that the Equality Act provides adequate protection.
- (d) **The impact will not be to stymie legitimate fraud investigations – far from it.** The only investigations the amendments stop are those purely based on generalisation and stereotype. The amendments will instead ensure suspicion must be based on evidence about *the individual*, not just their membership of a social group (i.e. we are searching your house based solely on your nationality, income, gender, etc. because they are the kind of person who commits fraud.)
- (e) **These amendments should not be contentious.** In essence, they simply seek to do what PACE Code A seeks to do in relation to stop and search: guard against discriminatory and lazy justifications for using invasive powers based solely on stereotypes and generalisations, thereby protecting human rights and upholding the rule of law.

25. JUSTICE therefore urges Peers to support the amendments.

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JUSTICE | 9 June 2025

²³ Schedule 23, Para 1, Equality Act 2010