

BIG BROTHER WATCH

**Big Brother Watch Briefing on
the Public Authorities (Fraud,
Error and Recovery) Bill for
Second Reading in the House
of Commons**

January 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.

Contact

Silkie Carlo

Director

Direct line: 020 8075 8478

Email: silkie.carlo@bigbrotherwatch.org.uk

Jasleen Chaggar

Legal & Policy Officer

Direct line: 07935926492

Email: jasleen.chaggar@bigbrotherwatch.org.uk

CONTENTS

INTRODUCTION.....	4
RECOMMENDATION.....	5
SUMMARY: 29 KEY ISSUES WITH THE FINANCIAL SPYING POWERS.....	6
IN DETAIL: 29 KEY ISSUES WITH THE FINANCIAL SPYING POWERS.....	9
RUSHED PROCESS.....	9
EXISTING POWERS.....	9
MASS SURVEILLANCE.....	11
ARTICLE 8 PRIVACY AND DATA PROTECTION ISSUES.....	14
RISKS OF AUTOMATED DECISIONS AND 'HORIZON-STYLE' ERRORS.....	17
EQUALITY IMPACT.....	21
IMPACT ON HOUSING CRISIS.....	24
COMPLIANCE CHALLENGES FOR AFFECTED THIRD PARTY ORGANISATIONS.....	24
CODE OF PRACTICE.....	26
OPPOSITION TO DPDI BILL.....	26

INTRODUCTION

Big Brother Watch welcomes the opportunity to provide a written briefing for Members of Parliament on the Public Authorities (Fraud, Error and Recovery) Bill ahead of its Second Reading in the House of Commons on Monday 3rd February 2025.

Due to the rushed scheduling of the Second Reading of this complex and lengthy Bill, this briefing is focussed only on the extraordinary **mass bank spying powers** in the Bill (cl. 74 and Schedule 3).

However, we have serious concerns with several similarly transformative powers in the Bill. Big Brother Watch is concerned that the Public Authorities (Fraud, Error and Recovery) 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.

We will send Members of Parliament a comprehensive briefing about our key areas of concern ahead of Committee Stage.

RECOMMENDATION: We urge MPs to reject the mass bank spying powers and oppose Clause 74 and Schedule 3 of the Public Authority (Fraud, Error and Recovery) Bill.

This recommendation 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.

SUMMARY: 29 KEY ISSUES WITH THE FINANCIAL SPYING POWERS

RUSHED PROCESS

1. This rushed power has had inadequate scrutiny as there have only been 7 working days between First and Second Readings.

EXISTING POWERS

2. The Government has existing powers to investigate the accounts of those suspected of welfare fraud.
3. This extraordinary power is ineffective and entirely disproportionate to the revenue the Government expects to raise via its use – the government's own estimate is that it will raise less than 1.4% of the estimated annual loss to fraud and error.¹
4. The DWP is currently responsible for record underpayments.

MASS SURVEILLANCE

5. This power would force banks and building societies to trawl all customers' accounts in search of people connected to benefits payments.
6. This is a mass data trawling power targeted at recipients of a sweeping range of benefits, including recipients of the Universal Credit, Pension Credit and Employment and Support Allowance – affecting approximately 1 in 8 people in the UK.
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 in relation to general administration.
8. Even in the context of crime, this suspicionless surveillance power would be an assault on the presumption of innocence.

¹ <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, 16

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.
10. The proposed powers may involve the processing and exchange of sensitive personal data and transaction data.
11. The proposed power contains insufficient oversight, including of the unspecified "eligibility" search criteria or algorithms involved.
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.
13. The proposals could impact EU adequacy.
14. The power could create data security risks.

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.
16. There are no provisions for algorithmic transparency and accountability.
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.
18. Financial institutions' 'Suspicious Activity Reports' already have a very high false hit rate.
19. Related trials indicate that this extraordinary power is unlikely to be an effective measure.
20. The Government must learn lessons from the Horizon scandal.

21. The Public Accounts Committee raised concerns about DWP's lack of algorithmic transparency.

EQUALITY IMPACT

22. Errors resulting from the proposed surveillance power are likely to have particularly serious negative consequences for welfare recipients and very vulnerable individuals.

23. In addition to landlords, some banks and other third party organisations may choose not to accept individuals in receipt of benefits, or treat them less favourably.

24. The DWP has not done enough to assess the risks of the proposed policy discriminating against protected groups.

IMPACT ON HOUSING CRISIS

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

COMPLIANCE CHALLENGES FOR AFFECTED THIRD PARTY ORGANISATIONS

26. Third parties face fines for failures to comply.

27. The proposed power will create a significant resource burden for affected third parties.

28. The Government cannot offer Parliament or the public reassurance by deferring vital legal protections in favour of guidance in a possible future Code of Practice.

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.

IN DETAIL: 29 KEY ISSUES WITH THE FINANCIAL SPYING POWERS

RUSHED PROCESS

1. **This rushed power has had inadequate scrutiny as there have only been 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, 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 – for example, under the Social Security Fraud Act 2001 and the Social Security Administration Act 1992. 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 is 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.

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.

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.

3. **This extraordinary power is ineffective and 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 1/34th or less than 1.4% of the estimated annual loss to fraud and error.⁴
4. **It must also be recognised that DWP is currently responsible for record underpayments.** In comparison, benefits underpaid by the Government were a record £3.3bn in 2022-3 leading to criticism from the National Audit Office.⁵ 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”⁶ – not to pay the billions of pounds underpaid and owed to citizens. Whilst both 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.

3 Ibid

4 <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf>, 16

5 Benefits claimants in UK were underpaid by record £3.3bn last year – Rupert Jones, the Guardian, 6 July 2023: <https://www.theguardian.com/society/2023/jul/06/benefits-claimants-in-uk-were-underpaid-by-record-33bn-last-year>

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

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 entitlements to benefits.”⁷ 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” (at newly inserted Sch. 3B(1)(3)). 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”.⁸

6. **This is a mass data trawling power targeted at recipients of Universal Credit, Employment and Support Allowance and Pensions Credit.** Schedule 3 of the Public Authorities (Fraud, Error and Recovery ('PA(FER)') Bill 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 PA(FER) – which

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

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

amounts to 1 in 8 people in the UK.⁹ 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 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 inevitable. Lord Sikka highlighted the alarming reach of the almost identical proposals during Second Reading (HL):

"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?"¹⁰

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 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

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

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

fraud, which accounts for almost a quarter of the cost of overpayments,¹¹ 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. 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."¹² The proposed powers in this Bill do exactly the same.

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 UK 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"¹³ and by Baroness Young as a "Big Brother mechanism"¹⁴ under the DPDI Bill. The government should not intrude on the privacy of anyone's bank account in this country without very good reason and a strong legal justification, whether a person is receiving benefits or not. 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.

¹¹ 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>

¹² 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/>

¹³ HL Deb 19 December 2023 vol. 834, col. 2184-2185: <https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/DataProtectionAndDigitalInformationBill>

¹⁴ HL Deb 19 December 2023 vol. 834, col. 2179-2180: <https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/DataProtectionAndDigitalInformationBill>

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.¹⁵ 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 special category or transaction information, under its existing powers, once it receives the name and account number from the 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.** While the explanatory notes offer search criteria examples of capital holdings or the legal limit for abroad stays,¹⁶ there are no provisions to limit the criteria or

¹⁵ 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-Matrix-Legal-Advice-for-Big-Brother-Watch.pdf>

¹⁶ Explanatory Notes: Public Authorities (Fraud Error and Recovery) Bill, para 598, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

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 unevidenced 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."¹⁷ 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 74 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 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" 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)

¹⁷ Explanatory Notes: Public Authorities (Fraud Error and Recovery) Bill, para 44, <https://publications.parliament.uk/pa/bills/cbill/59-01/0167/en/240167en.pdf>

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.”¹⁸

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 impact EU adequacy. 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.”¹⁹

14. The power could create data security risks. Frequent searches and exchanges of masses of sensitive personal financial data within numerous

¹⁸ 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>

¹⁹ Ibid.

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 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”.²⁰

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.²¹ 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.”²² 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.

20 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-s-response-to-the-data-protection-and-digital-information-bill/information-commissioner-s-view-on-the-dpdi-bill/>

21 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-the-Data-Use-and-Access-Bill-House-of-Lords-Committee-Stage_.pdf

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

- 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.
- 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 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, etc. 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.²³ 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 and error, is that the former are 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 incorrectly flagged.

²³ Bank Policy Institute, "The Truth About Suspicious Activity Reports" (22 September 2020): <https://bpi.com/the-truth-about-suspicious-activity-reports/>

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.²⁴ 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.²⁵ 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.²⁶ 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, 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.²⁷ The algorithm flagged approximately 400,000 cases a year, identifying most of those as "high risk" cases. Councils were 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

24 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

25 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.

26 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>

27 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-algorithm-wandsworth-council-b2609811.html>

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 using data from faulty software - resulting in wrongful imprisonment, financial ruin, and suicide.²⁸ 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.²⁹ 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, people who are vulnerable, sick or disabled or who care for vulnerable, sick or disabled people, people with mental health problems, and elderly people among others. The risks are incredibly 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 customers.³⁰ 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.

28 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>

29 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/>

30 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

EQUALITY IMPACT

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.³¹ In a recent example, DWP falsely accused a single mother of owing £12,000 when, in actual fact, DWP owed her money.³²

Errors would disproportionately impact 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.³³ Such a high inaccuracy rate would also undermine the argument that the powers are a proportionate interference with individuals' Article 8 right to privacy.

Some of the poorest in our society, people with disabilities or long term illnesses, carers, and elderly people will be subject to their private financial data being pre-emptively intruded on by banks and other private companies they engage with, 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

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

32 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-benefits-universal-credit-money-owed-penny-davis/>

33 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-create-trap-for-claimants-with-social-care-accounts/>

on parliament to reject the powers entirely, as the privacy intrusion and risks of other consequential harms would have the greatest impact on those in receipt of benefits, many of whom are in receipt of benefits due to a protected characteristic such as disability or age.³⁴ 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'.³⁵

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".³⁶

23. In addition to landlords, some banks and other third party organisations 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, 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 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

34 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/data-protection-and-digital-information-bill-house-2>

35 Ibid.

36 HL Deb 22 April 2024 vol. 837, col 466GC: <https://hansard.parliament.uk/lords/2024-04-22/debates/B0FACBA7-F69A-4D92-9C2A-6DA5FBCC8385/DataProtectionAndDigitalInformationBill>

characteristics. This may be due to unforeseen bias in the input data or the design of the model itself.”³⁷ The NAO also stated that DWP “should be able to provide assurance that it is not unfairly treating any group of customers”.³⁸

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”.³⁹ 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 that DWP is unable to test conclusively for potential discrimination due to limited demographic data about claimants.⁴⁰

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”.⁴¹

37 DWP Annual Report and Accounts 2022-3, 6 July 2023, para. 5.10, p.309:

<https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-report-accounts-2022-23-web-ready.pdf>

38 Ibid, para 5.11

39 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/>

40 DWP Annual Report and Accounts 2022-3, 6 July 2023, para. 5.12, p.309:

<https://assets.publishing.service.gov.uk/media/64a576d47a4c230013bba1e7/annual-report-accounts-2022-23-web-ready.pdf>

41 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.

IMPACT ON HOUSING CRISIS

25. **This power could decimate the private rental market for recipients of benefits.** Already, there are 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.⁴² 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.⁴³ 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, as per the Bill. Affected landlords will also be at heightened risk of DWP errors and wrongful investigations arising from the surveillance.

Such an intrusive regime could decimate 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.

COMPLIANCE CHALLENGES FOR AFFECTED THIRD PARTY ORGANISATIONS

26. **Third parties face fines for failures to comply.** The proposals allow for 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

42 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>

43 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-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector>

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.⁴⁴

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.”⁴⁵

Under the PA(FER) 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 (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 affect 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.

44 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>

45 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/>

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 PA(FER) 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.”⁴⁶ 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

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

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.