

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PUBLIC AUTHORITIES (FRAUD, ERROR AND RECOVERY) BILL

Fourth Sitting

Thursday 27 February 2025

(Afternoon)

CONTENTS

CLAUSES 5 to 7 agreed to, one with an amendment.
SCHEDULE 1 agreed to.
CLAUSES 8 to 12 agreed to.
Adjourned till Tuesday 4 March at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 3 March 2025

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The Committee consisted of the following Members:

Chairs: † MRS EMMA LEWELL-BUCK, SIR DESMOND SWAYNE, MATT WESTERN, SIR JEREMY WRIGHT

† Baxter, Johanna (*Paisley and Renfrewshire South*)
(Lab)
† Berry, Siân (*Brighton Pavilion*) (Green)
† Coyle, Neil (*Bermondsey and Old Southwark*) (Lab)
Darling, Steve (*Torbay*) (LD)
† Dewhurst, Charlie (*Bridlington and The Wolds*)
(Con)
† Egan, Damien (*Bristol North East*) (Lab)
German, Gill (*Clwyd North*) (Lab)
† Gould, Georgia (*Parliamentary Secretary, Cabinet
Office*)
† Jameson, Sally (*Doncaster Central*) (Lab/Co-op)
† Jones, Gerald (*Merthyr Tydfil and Aberdare*) (Lab)

† McKee, Gordon (*Glasgow South*) (Lab)
† Milne, John (*Horsham*) (LD)
† Payne, Michael (*Gedling*) (Lab)
† Smith, Rebecca (*South West Devon*) (Con)
† Welsh, Michelle (*Sherwood Forest*) (Lab)
† Western, Andrew (*Parliamentary Under-Secretary of
State for Work and Pensions*)
† Wood, Mike (*Kingswinford and South Staffordshire*)
(Con)

Kevin Maddison, Simon Armitage, Dominic
Stockbridge, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Thursday 27 February 2025

(Afternoon)

[MRS EMMA LEWELL-BUCK *in the Chair*]

Public Authorities (Fraud, Error and Recovery) Bill

Clause 5

INFORMATION SHARING

2 pm

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Work and Pensions (Andrew Western): It is a pleasure to serve under your chairship, Mrs Lewell-Buck. Clause 5 is an explanation of the principles related to information sharing that pertain to the Public Sector Fraud Authority and the Cabinet Office. It sets out how the disclosure of information would work for the purpose of facilitating the Minister's exercise of the core functions. It refers to how the Minister may use information disclosed under subsection (1); the specific purposes for which it may be disclosed; and what the Minister may not use information for. Information must not be used for any purpose other than the purpose for which it was disclosed and may not be disclosed to any other person without the consent of the Minister. I commend the clause to the Committee.

Mike Wood (Kingswinford and South Staffordshire) (Con): Clause 5 will give the Minister enormous powers to request and share information for the purpose of facilitating the Minister's exercise of the core functions under the Bill. Given that the Minister's core functions are to decide whether to investigate and take enforcement action, we are concerned that almost any information could be shared to facilitate the making of those decisions.

Likewise, the Minister may share information onward. If they give consent, the information may go further yet. Again, this is a case of the Minister marking their own homework. They get to decide who knows what and whether it gets shared onwards, without any external oversight from an impartial third party. I would be grateful if the Minister explained what sort of information the Government envisage being requested, under what circumstances, and what safeguards will apply to the sharing of that information.

Andrew Western: I thank the shadow Minister for his question. I would not want to second-guess the specifics of what may be required in the sharing of information on a case-by-case basis; clearly that sort of speculation may restrict us unnecessarily. What I would say, however, is that the independent oversight powers laid out for the execution of the PSFA's work would be in place to ensure that if anybody, up to and including the Minister, were considered to have overstretched their powers, it would be able to comment and investigate as necessary.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

AMENDMENT OF THE INVESTIGATORY POWERS ACT 2016

Andrew Western: I beg to move amendment 1, in clause 6, page 4, line 28, in column 1, after "Office" insert

“, so far as relating to the Public Sector Fraud Authority”.

This amendment limits the designation of the Cabinet Office as a relevant public authority for the purposes of Part 3 of the Investigatory Powers Act 2016 so that it is designated only so far as relating to the Public Sector Fraud Authority.

The Chair: With this it will be convenient to discuss clause stand part.

Andrew Western: I am sure that colleagues will agree that the amendment is straightforward. It will limit the designation of the Cabinet Office as a relevant public authority for the purposes of part 3 of the Investigatory Powers Act 2016, so that it is designated only in so far as it relates to the Public Sector Fraud Authority.

Clause 6 sets out the purposes of the amendment to the 2016 Act and is straightforward in its terms. It will make a small tweak before the entry for the Common Services Agency for the Scottish Health Service to insert "Cabinet Office" and the relevant provision.

Mike Wood: As the Minister says, the clause will add the Cabinet Office to the Investigatory Powers Act 2016. The Act governs the powers available to the state to obtain communications and communication data, provides statutory safeguards and clarifies what powers different public authorities can use and for what purpose. This legislation will give the Cabinet Office further and greater investigatory powers.

Government amendment 1 seeks to clarify that this applies not to the whole of the Cabinet Office, but to the Public Sector Fraud Authority only. I am glad that the amendment will rectify that fairly major drafting error. Obviously, the Opposition support the amendment.

The Parliamentary Secretary, Cabinet Office (Georgia Gould): I am sorry to have arrived late. Clause 6 will provide essential powers to obtain communications data from telecommunications providers, as and when necessary, as part of an investigation into fraud against the public sector. As a result of the clause, the PSFA will be listed under column 1 of schedule 4 to the Investigatory Powers Act 2016 and will thereby be granted the power to request communications data—the how, where, what and when, as opposed to the content, of communications—for the purposes of investigating suspected fraud against the public sector. The clause will not give the PSFA surveillance and covert human intelligence powers.

The precise listing of the PSFA in schedule 4 will not permit self-authorisation to use the relevant powers; a request for communications data in the course of a criminal investigation must be approved by the independent Office for Communications Data Authorisations. The powers also come with extra oversight from the Investigatory Powers Commissioner's Office, which will inspect the designated communications data single point of contact

that facilitates the lawful acquisition of communications data and effective co-operation between the IPCO and public authorities that have these powers.

I welcome the Opposition's support for Government amendment 1, which is necessary to align us with the Home Office's new approach to restrict powers to specific teams in other Departments within the same schedule. The amendment will change the way the Department appears in schedule 4 to the Investigatory Powers Act, as it will restrict the use of the powers to the Public Sector Fraud Authority only, not the Cabinet Office as a whole. The amendment will ensure that the use of the powers is properly restricted and that there are no unintended consequences for other parts of the Cabinet Office.

I commend clause 6, as amended by Government amendment 1, to the Committee.

Amendment 1 agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7

POLICE AND CRIMINAL EVIDENCE ACT 1984 ETC POWERS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Schedule 1.

Clauses 8 and 9 stand part.

Georgia Gould: Clause 7 and schedule 1 cover the investigative powers in the Police and Criminal Evidence Act 1984. Clause 8 will give the PSFA a legal route to apply to a court for an order in relation to property that has come into its possession in the course of a fraud investigation. Clause 9 will bring the PSFA under the oversight of the Independent Office for Police Conduct for serious complaints about its use of PACE powers.

Clause 7 will designate authorised investigators with the necessary authority to use limited provisions from PACE within the remit of public sector fraud investigations. These include powers to apply to the courts for a warrant to enter and search premises and to seize evidence, and special provisions to apply to the courts to gain access to certain types of material that are regarded as excluded material or special procedure material.

These are criminal investigation powers and will only be used in criminal investigations to enable all reasonable lines of inquiry to be followed and all relevant evidence to be collected. PSFA staff must be specifically authorised by the Minister before they can use the powers in the clause. Authorised investigators will be able to access and process evidence under the same conditions applicable to the police, ensuring that robust investigative protocols are followed. PACE has its own code of practice, and authorised investigators will adhere to the provisions that apply to the PSFA's PACE powers, in particular PACE code B, which deals with the exercise of powers of entry, search and seizure.

Clause 7 is fundamental in reinforcing the Bill's objective of combating public sector fraud effectively by equipping investigators with powerful investigative tools, governed by long-standing safeguards. The provision of such

powers is essential and reflects our commitment to holding to account those who defraud public resources, maintaining the integrity of public administration.

Schedule 1 will modify the provisions of PACE adopted in clause 7 so that they apply to authorised investigators within the PSFA when they are conducting criminal investigations into fraud offences committed against the public sector. Clause 7 will enable these modifications to have effect; they include equating authorised investigators with constables for the relevant sections of PACE, clearly defining the range of their responsibility and authority. An amendment to replace "articles or persons" with "material" in schedule 1 is specifically intended to clarify the scope of investigations conducted by the PSFA. By defining the term more narrowly with reference to "material", it reflects the fact that the PSFA will not be conducting searches of individuals.

While detailed stipulations regarding the retention and handling of seized material are set out in PACE, schedule 1 will provide the essential adaptations necessary for the authorised investigators to carry out their roles effectively while adhering to established legal safeguards. Overall, schedule 1 is necessary to equip authorised investigators with precise, tailored powers from PACE so that they can enforce the legislative aim of combating fraud within the public sector.

Clause 8 will give the PSFA a legal route to apply to a court for an order in relation to property that has come into its possession in the course of a fraud investigation. The order will determine who the property should be returned to and whether changes need to be made to the property before it is returned or, if appropriate, destroyed, subject to suitable safeguards.

The PSFA will not routinely need to use this power. It will use it only in three specific situations: first, when there is conflicting evidence as to who the property should be returned to; secondly, when it is not possible to return property to its owner, and the PSFA is otherwise liable to retain it indefinitely; or, thirdly, when it has been identified that the property could be used in the commission of an offence. Clause 8 will protect the PSFA in situations in which it could otherwise face having to retain property indefinitely, at ongoing cost to the taxpayer, and where it cannot return the property to its owner. It will ensure effective management and disposal of items, helping to prevent misuse while reducing the administrative burden.

The use of a magistrates court to determine the appropriate course of action is a critical safeguard. This external judicial oversight ensures transparent and lawful disposal decisions. A mandatory six-month waiting period is built into the process before property can be disposed of or destroyed. This period will allow any interested parties to make claims on the property. However, if a magistrates court orders that the property be returned to its owner, there is no waiting period for that return. Further application to court can be made if initial orders do not resolve ownership or disposal issues, ensuring ongoing flexibility and fairness in property management. Equipping the PSFA with these powers is vital for appropriately concluding fraud investigations and reflects similar practices in other Government Departments.

I turn to clause 9. The PSFA's use of PACE powers will be subject to robust internal and external scrutiny. Elsewhere in the Bill, clauses 64 and 65 set out provisions

[Georgia Gould]

under which His Majesty's inspectorate of constabulary and fire and rescue services will work with the PSFA. Clause 9 amends the Police Reform Act 2002 to extend the functions of the director general of the Independent Office for Police Conduct to include oversight of public sector fraud investigators and enables them specifically to consider the PSFA's use of PACE powers and associated investigations. In doing so, this clause enables the IOPC to be engaged where necessary to investigate death, serious injury, accusations of staff corruption or serious complaints against the PSFA's use of PACE powers, although we hope that none of those will come to be.

The amendments made by clause 9 also include allowing the Minister to issue regulations conferring functions on the director general in relation to these investigations. In practice, this enables the Minister to detail in due course the specific remit of the IOPC in relation to the PSFA. This clause represents a typical approach to engaging the IOPC in legislation, similar to that of other law enforcement agencies.

The clause will also enable the sharing of information between the director general, the Minister and those who act on their behalf. Additionally, it will enable the sharing of information with the Parliamentary Commissioner for Administration to facilitate potential collaborative investigations with the IOPC. The clause will ensure that any information sharing complies with existing data protection and investigatory powers legislation. Incidents and complaints will be either self-referred from the PSFA or referred to the IOPC via a third party. Any potential cases of serious injury or death that occur in the exercise of the PSFA's PACE powers would be automatically referred to the IOPC for review.

The use of the independent complaints function offered by the IOPC is a key element of the oversight landscape, ensuring that the PSFA is held accountable to the highest standards in the exercise of PACE powers, and providing confidence to the public that the Government take their responsibilities in using the powers seriously. I went through a lot of detail there, but I know that the Committee is concerned about the proper oversight of powers, as it should be.

2.15 pm

Mike Wood: Clauses 7 to 9 give authorised investigators the powers to enter and search premises and execute search warrants, and powers for the seizure, retention and disposal of property. Those are obviously extensive powers with potentially significant consequences. While strengthening powers to tackle fraud is welcome, we have some concerns. For example, clause 7(3) states:

"An authorised investigator is an individual who is authorised by the Minister to exercise the powers conferred by this section."

The clause would extend some PACE powers to authorised investigators at the PSFA to investigate offences of fraud against a public authority.

An authorised investigator is defined as a Cabinet Office civil servant of at least higher executive officer grade. What training will those investigators have in order to carry out their functions appropriately? In evidence earlier this week about public sector investigators, Dr Kassem said:

"Are they trained and do they have the proper skills to enable them to investigate without accusing, for example, innocent people and impacting adversely vulnerable individuals? That would be the main challenge, in my view."—[*Official Report, Public Authorities (Fraud, Error and Recovery) Public Bill Committee*, 25 February 2025; c. 6, Q2.]

Paragraph 3(2)(b) of schedule 1 states that an authorised investigator may be "a higher executive officer", which is adding to the positions specified in PACE. The comparable position in the police appears to be specified as

"a police officer of at least the rank of inspector".

Is the Minister satisfied that a higher executive officer is of equivalent rank and experience to a police inspector? Salary bands would suggest that they are not. A quick search suggests that the starting salary of a higher executive officer may be as little as £38,000, whereas a police inspector in London would typically be on at least £61,000. That suggests that there will be some disparity in the level of seniority that one might expect between the two positions. Is she satisfied that a higher executive officer has the seniority for the very far-reaching powers that the Bill would give them?

Turning to clause 8, it is welcome that there is a role for the magistrates court—we finally have some external oversight—where a Minister must apply to make a decision about an individual's property.

Clause 9 amends the Police Reform Act 2002 so that an individual may go to the director general with complaints or misconduct allegations in relation to the Public Sector Fraud Authority. However, it appears that there remains discretion for the Minister, who only "may" make regulations conferring functions on the director general in relation to public sector fraud investigators and "may" disclose information to the director general. Does the Minister intend to make those regulations? What may they contain? If regulations are made under those provisions, what parliamentary procedure will they be subject to?

Georgia Gould: I thank the shadow Minister for those questions. As he said, these are important powers, and it is critical that the right training is in place. I reassure him that all these authorised officers will have relevant training to the standard that police officers have for the use of the PACE powers. As he set out in his remarks, an application for search warrants must be made to a magistrate, so there is already an external body ensuring that they will be used correctly.

Another critical component of the PSFA's use of the powers is that if an authorised officer is visiting a property, they will be accompanied by a police officer and will not go their own, so we have not included powers of arrest because of the nature of the PSFA investigations as separate to the Department for Work and Pensions. The powers sit within a range of safeguards, some of which have been mentioned. To remind Members, His Majesty's inspectorate of constabulary and fire and rescue services will also oversee the use of all these powers, as it has experience of doing that. The powers will be overseen in any serious circumstances by the Independent Office for Police Conduct.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clauses 8 and 9 ordered stand part of the Bill.

Clause 10

ACTING FOR ANOTHER PUBLIC AUTHORITY

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to debate clauses 11 and 12 stand part.

Georgia Gould: As I have set out, the Bill provides the key powers to investigate suspected fraud against the public sector. However, to be able to deliver a holistic counter-fraud service and recover vital funds lost to fraud and error, powers are needed to act on behalf of other public authorities for recovery action. That is what clause 10 outlines. The PSFA will already have conducted investigations before the recovery phase and will know the background to the case and the people and businesses involved. It will be able to leverage that information and those relationships to secure recovery, prioritising voluntary repayments first. It will then be able to utilise the proposed recovery powers already used across Government to get back fraudulent funds where people can afford to repay their illicit gains but are refusing to engage with us.

The recovery of fraudulent funds is complex, as is fraud itself. In 2021-22, the Government's fraud landscape report found that only 23% of fraud losses were recovered. That is not good enough. Having a central recovery function within the PSFA will allow it to develop the expertise and capability required to drive effective recovery action on behalf of other public bodies. Providing the option to keep some of the recovered funds, subject to agreements with the public bodies concerned, helps to fund the development of that recovery expertise and provides value for money for the Government and taxpayer.

Clause 11 outlines the requirement to issue a recovery notice before proceedings can be brought to a court or tribunal. The notice must outline what the Government believe is owed and why. It must also provide information as to how the amount can be voluntarily repaid. Once issued, the liable person has a minimum of 28 days to respond. The recovery notice will effectively signal the end of the PSFA investigation.

During an investigation, a suspected liable person will already have had the opportunity to make their case and provide evidence to support their position. This provides the liable person with further opportunities to positively engage on the matter, either through voluntary repayment or by providing additional evidence. It also provides them with ample opportunity to prepare for a potential future court or tribunal proceeding. The issuing of a recovery notice is therefore an important step that promotes fairness and transparency in proceedings by providing a liable person with an overview of the position.

Clause 12 provides a key safeguard for the use of the recovery powers. During an investigation, the PSFA will collect and assess evidence to determine whether a liable person or business received payments made as a result of fraud or error. It will outline its reasonings in the recovery notice. However, it will be able to use the proposed recovery powers only if a liable person agrees and a court or tribunal has made a final determination of what is owed.

We will not be making unilateral decisions as to what is owed. Instead, this process firmly embeds independent judicial decision making. If a liable person disagrees with the determinations, they can present their case in a court or tribunal. If a liable person agrees, we do not need to seek confirmation from a judge, making important judicial time and cost savings and ensuring that we do not further overburden the judicial system.

Those are all important steps in commencing our recovery action. The positive impact of the Bill is predicated on being able to effectively recover funds identified as being lost to fraud or error. We have already agreed that recovery is a vital new core function of my Department, and it is one that we should strive to ensure can operate effectively to return money lost to fraud and error to the public purse.

Mike Wood: Clause 10 allows the Minister for the Cabinet Office to act on behalf of another public authority to recover a recoverable amount, including bringing court or tribunal proceedings, and recovered money will be returned to the other public authority unless it is agreed that the Minister can retain some or all of it. We have some questions about what has to be agreed ahead of time. Can the Minister just act, or do they need prior approval from the public authority beforehand, so that there is clarity about the basis on which the Minister for the Cabinet Office is acting and any division of recovered funds?

Clause 11 sets out the recovery notice that the Minister must give before proceedings can be brought to court or a tribunal, and what is included in it. How is it decided how much can be recovered? What assets are taken into account, and what is the process before the legal system becomes involved?

Clause 12 sets out that the recovery methods can be used only to cover the amount where the liable person agrees or a court or tribunal has determined the amount is recoverable. Where the liable person does not engage, what mechanisms exist to encourage them to do so? Are there penalties if a court or tribunal is involved, and how long is the legal process typically expected to take, given current capacity? What does capacity look like at the moment? We feel that, in principle, the powers could be proportionate, but that depends on how they are to be exercised. I would be very grateful if the Minister clarified some of those points.

Georgia Gould: The first point to clarify is that before any investigation and any debt recovery are started, there would be a vulnerability test on that individual, and that would be part of the basis for the decision making. As for whether there was a voluntary agreement about the recovery of debt, a conversation would happen with the individual, but there is a limit to the amount that would be recovered—up to 40% of their assets in their bank account for fraud and 20% for error. In terms of whether people would try to frustrate the process by unnecessarily reviewing it, one of the features of the Bill is that it can include interest on the money that is paid, so that is a disincentive to continue to drag out the process, and the matter can be resolved as quickly as possible—and voluntarily.

On the initial phase of the PSFA's investigatory and debt recovery work, if there is a limited number of officers, we do not expect a high burden on the court

[Georgia Gould]

system—we expect less than double digits to be taken through initially—and we believe that the provision around interest is a key disincentive against frustrating the process.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.
—(Gerald Jones.)

2.30 pm

Adjourned till Tuesday 4 March at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

PAB05 Public Law Project

