



## Factsheet: PSFA Rights and Methods of Recovery in the Public Authorities (Fraud, Error and Recovery) Bill

### What is the current policy?

The Public Sector Fraud Authority (PSFA) was launched in August 2022 to act as the UK government's Centre of Expertise for the management of fraud (and associated error) against the public sector. The PSFA currently has limited civil powers to recover payments made by public bodies as a result of fraud or error.

Whilst the PSFA has been granted certain recovery powers under the Proceeds of the Crime Act 2002, these can mostly only be used following a criminal investigation.

### Policy intent

The government recognises that the vast majority of debt to it is owed by those doing their best to repay it. A small but significant proportion of debt owed to the government arises from people who have committed fraud or who seek to avoid their responsibilities to repay.

The Bill contains measures to provide the PSFA with the power to recover debt in relation to funds that a public authority is entitled to recover and which, following a PSFA investigation into suspected fraud, were obtained fraudulently or through error. The PSFA will initially seek voluntary repayment of debts through affordable and sustainable repayment plans. These powers are only intended to be used when an individual has refused to comply with voluntary repayment when they have the means to pay. Where the person disagrees that the amount is recoverable, the PSFA must bring a claim through the relevant court to obtain a final determination that the amount is recoverable.

PSFA will be able to recover debts from PAYE earnings via Deduction from Earnings Orders, and directly from bank accounts via Direct Deduction Orders. This will bring the PSFA's powers to recover in line with the powers held by the Department for Work and Pensions, HM Revenue and Customs, the Child Maintenance Services and some local authorities.

PSFA will also be able to seek alternative recovery enforcement through the courts.

### How it will work

The new powers will allow the PSFA to recover fraud or error related debt, unpaid penalties and relevant costs, directly from an individual's PAYE earnings via a Deduction from Earnings Order and directly from bank accounts via Lump Sum Direct Deduction Orders for specified amounts or Regular Direct Deduction Orders for regular deductions.

These Orders will be applied for by Authorised Officers following a PSFA civil investigation into suspected fraud. Before the PSFA can use the powers to recover fraud or error related debt, the liable person has to agree or a court must have determined that the amount is recoverable. The person will be notified of the PSFA's intention to bring a claim by serving a recovery notice to set out the amount sought to be recovered, the reasons, and inviting the



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person to repay, etc. There is a minimum time limit of 28 days before a claim can be issued via the courts. If the person disagrees, or fails to engage within the time period, a claim can be issued.

In the case of exercising these new powers to recover civil penalties, the time for appealing a penalty must have passed or the appeal must have been finally determined.

Once the court determination has been received or the person agreed that an amount was recoverable but failed to repay, orders will only be made after affordability and vulnerability checks have taken place. Before making a direct deduction order, the Authorised Officer will be required to obtain bank statements of the liable person's bank account to assess whether an order can be imposed, and subsequently invite that person to make representations on the proposed order. This will be achieved by issuing an information request to the relevant bank. For deduction from earnings orders, the liable person will have the right to make representations before the final order is made. When changes of circumstance occur that affect the affordability, the liable person can apply to vary the Order.

Those who are impacted by having to facilitate a deduction from earnings order, regular direct deduction order or lump sum direct deduction order are able to charge administration fees for completing the process in order to prevent business being burdened by the provision.

### Oversight and safeguards

The PSFA is committed to ensuring these powers are used proportionality and effectively. The following safeguards are included in this measure:

- **Debt established via a court** - Where the debtor disagrees that an amount is recoverable, PSFA will need to bring a claim through the courts in the first instance to determine that the amount is recoverable before exercising the recovery powers.
- **Affordability checks** - Affordability and vulnerability checks will be carried out before any deductions are made. This is to ensure that deductions are affordable and will not cause undue hardship in meeting essential living expenses to the debtor, those in their household or those financially dependent on them. The Bill limits the total amount of deductions that can be made under a regular direct deduction order to protect debtors from excessive deductions.
- **Rights to representations, reviews and appeals** - Debtors will be informed of the proposed deductions before any recovery action takes place and will be invited to make representations to the PSFA before any deduction is made. They can request a review of a deduction order and following a review, if a deduction order is upheld, the debtor will also have the right to appeal to the First-tier Tribunal.
- **Rights to request variation** - During the lifetime of a deduction order, the debtor (and where relevant a joint account holder) has the right to apply for the order to be varied. This is to ensure that where the person's financial circumstances change, the PSFA can make the relevant changes where necessary.
- **Independent oversight** - PSFA's internal oversight provisions will be supported by a new PSFA internal oversight team, separate from those using the powers, who will report to an external Independent Chair.



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## Key statistics

- The [Fraud Landscape Report 2021/22](#) reports that only 23% of fraud losses were recovered in 2021/22.