



Factsheet: PSFA Civil Penalties Powers in the Public Authorities (Fraud, Error and Recovery) Bill

What is the current policy?

The PSFA sits in the Cabinet Office and was launched in August 2022 to act as the UK government's Centre of Expertise for the management of fraud against the public sector. In 2022 it began designing an Enforcement Unit to work with departments and public bodies to take action on cases of fraud where the public sector may have previously struggled. The PSFA's Enforcement Unit does not currently have civil or criminal counter fraud powers and is unable to take action on public sector fraud.

The Bill gives the PSFA's Enforcement Unit a much needed range of enforcement tools, both criminal and civil, to act against and prevent fraudulent activity against the public sector. Civil penalties are an essential part of the proposals - criminal investigations leading to prosecution are often resource heavy and time intensive, placing a burden on the court system.

Policy intent

The Bill addresses the government's ability to respond to public sector fraud by giving the PSFA new powers to pursue criminal and civil action. Civil penalties will be issued for fraud and for non-compliance with information sharing and gathering, and debt recovery powers within the Bill.

The introduction of a robust civil penalties regime shows that there are meaningful consequences for breaking the law even when prosecution is not appropriate or achievable. Penalties will serve as an important deterrent to tackle fraud against the public sector and send a clear message to fraudsters that their actions have consequences.

Civil penalties offer an alternative route to criminal prosecution, helping to remove some of the burden on the courts by offering alternative resolutions to fraud cases so that cases that may not otherwise be enforced can be pursued. This will enable the PSFA to respond appropriately to the facts of a case, deal with more cases, and act quickly against and prevent fraudulent activity within the public sector.

Aligning with other government departments, the PSFA will issue civil penalties to the civil burden of proof (i.e. on the balance of probabilities). This means that the PSFA will not offer offenders a choice between a civil penalty and a criminal prosecution. Criminal prosecution and civil penalties will be two distinct options for dealing with fraud cases.



Public Sector Fraud Authority

How will it work?

The Bill will enable a PSFA ‘authorised officer’ to issue a Civil Penalty when an individual commits fraud against a public authority. An authorised officer may only issue a penalty if they can prove, on the balance of probabilities, that fraud has occurred or been attempted. Civil penalties will not be issued for cases of error. The PSFA can only exercise these powers in England and Wales.

The Bill allows for penalties to be issued up to 100% of the fraudulently received payment to which the penalty relates. In cases of fraud where no payment is made, penalties can be up to 100% of the loss incurred by the public authority or, if higher, 100% of the benefit obtained by the individual as a result of the fraud in question. This includes attempted fraud¹ even if an amount has not been paid.

The penalties which the PSFA will be able to issue for fraud will not be capped at a particular sum. Capping civil penalties for fraud at a lower amount could decrease the deterrent the Government wishes to achieve by introducing these powers.

Penalties for non compliance will be as follows:

- (a) non compliance with information gathering and information sharing requirements: daily rate of £300
- (b) non compliance with debt recovery powers (information provision): daily rate of £300
- (c) non compliance with debt recovery powers (beyond information provisions): a fixed penalty of £300

A notice of intent, issued prior to the final penalty notice, will set out the amount of the proposed penalty. It will also set out the steps which may be taken to make a representation to the PSFA about the notice.

If no representation is made, a penalty decision notice will be issued. This states the amount of the penalty. It will also set out the steps which may be taken to request an internal review of the penalty decision notice by the PSFA. Internal reviews will be conducted by an authorised officer of a higher grade than the authorised officer who made the initial decision to issue the penalty decision notice. They can uphold, amend, or cancel the penalty decision notice.

If no internal review is requested, a penalty notice is imposed and recipients will be informed of their right to pursue an appeal via the appropriate tribunal. A tribunal may uphold, amend or cancel a penalty notice.

¹ There is no offence of “attempted fraud” in law, as, under the Fraud Act 2006, a person can be guilty of fraud by acting dishonestly with an *intention* to make a gain/cause a loss by so acting.



Public Sector Fraud Authority

Oversight and safeguards

The PSFA is committed to ensure these powers are used proportionately and effectively. The following safeguards are included in these measures.

- **Representation:** A notice of intent will include the proposed amount owed and how to make representations to PSFA.
- **Internal review:** Once a penalty decision notice is finalised, individuals and businesses will be informed of the amount owed and information on how to request an internal review by PSFA. Recipients have 28 days to request a review of the decision to issue the penalty decision notice.
- **Appeal:** Following an internal review of the penalty decision notice a person can also appeal to the appropriate court who will then either vary, uphold, or revoke a penalty notice.
- **Code of Practice:** Ahead of the powers being used, the PSFA will publish a code of practice setting out how penalties will be determined and administered, including the circumstances in which discounts will be applied. This Code of Practice will be laid before Parliament.
- **A person cannot be penalised twice:** The Bill prohibits issuing a penalty notice if a person has been found guilty of an offence related to the same act or omission. It also prevents a person from being found guilty of an offence if a penalty has already been paid in response to a penalty notice given in relation to the same act or omission.
- **Independent Inspections** - 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.