



## Factsheet: PSFA Information Gathering and Sharing powers in the Public Authorities (Fraud, Error and Recovery) Bill

### What is the current policy?

The Public Sector Fraud Authority (PSFA) within the Cabinet Office was launched in August 2022 to act as the UK Government's Centre of Expertise for the management of fraud against the public sector. The PSFA Enforcement Unit in the Cabinet Office currently has no investigative powers provided for in statute to obtain information on behalf of other government departments.

Any information needed from either first parties or connected third parties can only be asked for; if they refuse to provide it, there is no way to compel the information to be produced without having to go through the civil courts. Furthermore, the PSFA is limited in their ability to share information with other public authorities for the purpose of detecting and preventing fraud.

### Policy intent

The Bill contains measures to provide the PSFA with the tools it needs to effectively investigate fraud on behalf of other government departments or public bodies.

Therefore, this Bill will provide the PSFA with powers to request and compel information from first and third parties when investigating fraud. This Bill will also provide a gateway for other public authorities to share information with Authorised Officers in the Enforcement Unit, and allow those officers to disseminate information with relevant parties when investigating suspected fraud. This will enable the efficient investigation of suspected fraud on behalf of other government departments and public bodies.

### How will it work?

The Bill will enable the PSFA to compel relevant information from any first and third parties when the PSFA believes it is necessary and proportionate for investigating potential fraud and if there are reasonable grounds to suspect fraud has been committed against a public authority.

PSFA's fraud investigators must only compel information that is relevant to the investigation from first and third parties who might reasonably be expected to hold the information. When an information holder does not have the information requested, they should explain why they cannot comply with the information notice in their response.

To compel this information, PSFA's fraud investigators must be an Authorised Officer who has been trained and accredited to investigate criminal matters

The role of technology and telecommunications in crime has increased significantly over the



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decade. To address this, the PSFA is being added to Schedule 4 of the Investigatory Powers Act (2016). This will provide PSFA the ability to collect communications data when investigating allegations of fraud. This is an essential tool for investigations and is used routinely by many organisations such as the Police, HMRC and DWP as evidence in suspected fraud offence cases.

## Oversight and Safeguards

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

- **Exemptions** - Information that is legally privileged or could lead to self-incrimination of the subject of the request, or their spouse or civil partner, is exempt from this obligation.
- **Internal review** - A person can request a review of PSFA's decision to issue an information notice. The PSFA can then either revoke, vary or uphold the notice in line with the outcome of that review.
- **Reviews and appeals against penalties for non-compliance** - Should the decision be taken to apply a penalty for failing to comply with an information notice, a letter of intent will be issued offering the information holder 28 days to make representations against the decision. If, after the representation stage, a decision to apply the penalty is upheld, a penalty decision notice is issued. This allows the information holder a further 28 days to request a review of that penalty decision notice. In the instances where the decision is made to uphold the penalty decision notice, the information holder will be informed and have 28 days to appeal to the appropriate court.
- **Restricted use of Information Sharing Powers** - Restricts the use of this disclosed information by the Minister strictly for the purpose of exercising those core functions and imposes conditions on any third-party recipient of the information, stipulating that information must only be used for its intended purpose and cannot be further disclosed without the Minister's consent.
- **Investigatory Powers Act** - The PSFA will also be required to follow the rules and regulations contained in the Investigatory Powers Act 2016 when processing any communication data in criminal investigations, which includes all requests for the collection of communications data to be authorised by the Investigatory Powers Commissioner's Office (IPCO). Any incorrect use can be reported to the investigatory Powers Commissioner's Office, who will also carry out inspections of the use of the powers.
- **Code of Practice** - PSFA's Code of Practice for Civil Penalties, will cover penalties for non-compliance, and will be consulted on before being laid before Parliament.
- **Independent inspections** - PSFA will commission His Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) to conduct inspections of the use of the powers. In addition, PSFA's internal oversight provisions will be further



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supported by a new PSFA internal oversight team, separate from those using the powers, who will report to an external Independent Chair.