

1st March 2024

Rt Hon Michelle Donelan MP

Secretary of State for Science, Innovation and Technology

Department for Science, Innovation and Technology

1 Victoria Street

London

SW1H 0ET

CC - Rt Hon Mel Stride MP, Secretary of State for Work and Pensions, by email only.

Subject: Letter from civil society groups expressing concerns regarding financial surveillance powers in the Data Protection and Digital Information Bill

Dear Secretary of State,

We are writing to you as civil society organisations representative of a wide-range of groups and causes, to express our concerns regarding the financial surveillance powers introduced in Clause 128 and Schedule 11 of the Data Protection and Digital Information Bill.

The proposed measures involve the use of mass algorithmic surveillance to scan bank and other third party accounts, ostensibly to detect potential flags for fraud and error in the welfare system. While we understand the importance of addressing fraudulent activities, these powers are disproportionate and raise significant concerns in the context of privacy, surveillance, data protection, and equalities.

Mass surveillance, privacy, and data protection

The scope of these new powers is extraordinary. They will compel third parties including banks, building societies, and transmission companies to trawl all customer accounts in search of 'matching' accounts without prior suspicion of fraudulent activity, setting a deeply concerning precedent for generalised, intrusive financial surveillance in the UK.

These powers are specifically aimed at people who receive state benefits, which is about 40% of the population, as well as individuals' accounts linked with benefit claims, such as partners, parents, and landlords. There are no restrictions on the type of information that can be requested. This wide scope of data collection could create a detailed and intrusive view of the private lives of those affected. Some financial data may constitute information designated as special category data under GDPR, revealing sensitive details like political opinions, trade union memberships, religious and philosophical beliefs, health information, and sexual orientation. The extensive sharing of such data poses significant risks to data security, especially given the Department for Work and Pensions' (DWP) history of data security issues.¹

The Information Commissioner has stated that he does not currently view these powers as proportionate.² As such, they may be unlawful and a breach of individuals' right to privacy under the Human Rights Act. Enacting a law that allows for disproportionate and intrusive mass surveillance would also be a substantial departure from current data protection legislation, potentially impacting adequacy status with the EU.

Impact on equality

These powers do not require someone to be suspected of fraud before their account is subject to surveillance by being scanned for "matching criteria". Instead, the presumption of innocence is reversed, subjecting people to unwarranted scrutiny simply for receiving benefits. There are approximately 22.6 million individuals in the welfare system, including those who are disabled, sick, caregivers, job seekers, and pensioners. They should not be treated like criminals by default. The government should not surveil any individual's bank account without very good reason and strong legal justification. These powers set an incredibly dangerous precedent and risk treating people in- and outside the welfare system as guilty until proven innocent.

The Horizon scandal saw hundreds of people wrongfully prosecuted using data from faulty software. The Government must learn from this mistake – not replicate it en masse. Using algorithms to scan millions of accounts is highly likely to result in mistakes. The people most affected will be people already suffering on the poverty line including those who are vulnerable, sick or disabled, elderly people, those who care for people in these groups, and others. The risks to some of the most vulnerable in our society are clear. Wrongful benefits investigations can result in demanding documentation requirements. Failure to comply accurately and on time can lead to

1 Information Commissioner's Office, Letter to the DWP (31 October 2022): <https://ico.org.uk/media/action-weve-taken/reprimands/4023126/dwp-reprimand.pdf>

2 Information Commissioner's Further Response to the Data Protection and Digital Information Bill: (18 December 2023): <https://ico.org.uk/media/about-the-ico/consultation-responses/4027809/dpdicommissioner-further-response-231218.pdf>

benefits being incorrectly withheld, potentially leaving innocent people unable to afford basic necessities such as food, medicine, or heating bills. In some cases, vulnerable individuals have died following the wrongful suspension of benefits.³

The proposed introduction of these powers comes at a time when the DWP has been found by the Public Accounts Committee to have 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”.⁴ DWP has also acknowledged that its ability to test for and take steps to avoid unfair impacts across protected characteristics, and therefore ensure that it is not acting discriminatorily, is currently limited due to deficiencies in its data collection.⁵

Ineffective and disproportionate

According to the government’s analysis, if the powers work as estimated, they are expected to generate approximately £250 million in net annual revenue. This amount is less than 3% of the estimated annual loss to fraud and error, demonstrating that these powers will not be effective despite their cost to human rights and civil liberties.⁶ It is important to note that a range of state powers already exist to tackle fraud in the welfare system.

An abuse of Parliamentary process

These are exceptionally broad and invasive powers, the like of which we have never seen before. Given the clear engagement of the right to privacy and the likely impact of these powers on some of the most vulnerable in society, it was entirely inappropriate that they were introduced late on in the Bill’s passage through the House of Commons at Report Stage – almost 9 months after the Bill was introduced, meaning that they have not been adequately scrutinised by MPs.⁷

These powers have no place in this Bill or our democracy. They are an unprecedented and disproportionate invasion of the public’s financial privacy, the effect of which will be felt most sharply by the most vulnerable in our society. We urge you to drop Clause 128 and Schedule 11 of the DPD Bill in their entirety.

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

4 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.

5 National Audit Office, Report on Accounts – Department for Work and Pensions, July 2023 para 5.1: <https://www.nao.org.uk/wp-content/uploads/2023/07/dwp-report-on-accounts-2022-23.pdf>

6 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 10.

7 HC Deb 29 November 2023 vol. 741: <https://hansard.parliament.uk/Commons/2023-11-29/debates/46EFOAA6-C729-4751-A3DA-6A3683EB8B87/DataProtectionAndDigitalInformationBill>; HL Deb 19 December 2023 vol. 834: <https://hansard.parliament.uk/lords/2023-12-19/debates/2960AC9B-D86E-4EA1-8E4E-F3198BEE702F/DataProtectionAndDigitalInformationBill>

Yours sincerely,

Caroline Abrahams, Age UK

Niki Adams, Legal Action for Women

Shameem Adhmad, Public Law Project

Mark Baggley, Choices and Rights Disability Coalition (Hull and East Riding)

Jen Beardsley, NSUN (National Survivor User Network)

Kathryn Bole, Chronic Illness Inclusion, Suffolk Coalition of Disabled People

Dr Melvin Bradley, Sara Crookdake MBE, Chris Hamnett MBA (GMDPP) Greater Manchester Disabled People's Panel

Rick Burgess, Greater Manchester Coalition of Disabled People

Linda Burnip, DPAC (Disabled People Against Cuts)

Lucy Byrne, Richmond AID

Sara Chitseko, Open Rights Group

Nic Cook, Difference North East

Susannah Copson, Big Brother Watch

Martha Dark, Foxglove

Ruth Ehrlich, Liberty

Dominic Ellison, WECIL (West of England Centre for Inclusive Living)

Jack Gilbert, Real DPO

Claire Glasman, WinVisible (women with visible & invisible disabilities)

Nil Guzelgun, Mind

Mark Harrison, ROFA (Reclaiming Our Futures Alliance)

Holly Harrison-Mullane, Amnesty International UK Disabled People's Human Rights Network

Zoe Hayward, Big Issue Group

Jenny Hurst, Greenwich DPAC

Roxana Khan-Williams, Organise

Svetlana Kotova, Inclusion London

Amy Litte, Leonard Cheshire

Lisa Longstaff, Women Against Rape

Nina Lopez, Global Women's Strike

Kamran Mallick, Disability Rights UK

Edmore Masendeke, ALLFIE (Alliance for Inclusive Education)

Jess McQuail, Just Fair

Shabaaz Mohammed, DPOFE (Disabled People's Organisations Forum England)

Stephanie Needleman, JUSTICE

Tracey Norton, Disabled Mothers' Rights Campaign

Sara Ogilvie, Child Poverty Action Group

Jen Persson, Defend Digital Me

Alexandrine Pirlot de Corbion, Privacy International

Jamie Renton, Action Disability Kensington and Chelsea (ADKC)

Jeni Tennison, Connected by Data

Juliet Tizzard, Parkinson's UK

Lynne Turnbull, Disability Positive

Simon Youel, Positive Money