



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba



Improving
Policing
Across
Scotland

ASSURANCE REVIEW OF THE USE OF RETROSPECTIVE FACIAL SEARCH TECHNOLOGIES FOR CRIMINAL JUSTICE AND POLICE PURPOSES IN SCOTLAND

THE SCOTTISH BIOMETRICS COMMISSIONER

Terms of Reference

Version 1 – September 2024



Safeguarding our biometric future



Document Control

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Prepared by	Diego Quiroz, SBC Operations Manager
Reviewed by	Dr Brian Plastow
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About the Scottish Biometrics Commissioner

The Scottish Biometrics Commissioner is established under the [Scottish Biometrics Commissioner Act 2020](#). The Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

- [The Police Service of Scotland](#) (Police Scotland)
- [Scottish Police Authority](#) (SPA)
- [Police Investigations and Review Commissioner](#) (PIRC)

The Commissioner has wide ranging general powers and may do anything which appears to the Commissioner to be necessary or expedient for the purposes of, or in connection with, the performance of the Commissioner's functions, or to be otherwise conducive to the performance of those functions¹.

Our values

As a values-led organisation, we will conduct our activities in a way that is Independent, Transparent, Proportionate and Accountable.

Independent

We will always act independently and publish impartial and objective review reports. Our professional advice will be informed and unbiased. The Scottish Biometrics Commissioner is a juristic person, appointed by HM the King on the nomination of the Scottish Parliament and is independent of Scottish Government.

Transparent

We will be open about what we do and give reasons for our decisions. We will publish our reports and findings and will not restrict information unless deemed necessary to protect the identity of data subjects, or due to wider public interest considerations. For example, section 19 of the Scottish Biometrics Commissioner Act 2020 provides that the Commissioner or a member of staff must not knowingly disclose confidential information unless necessary in the exercise of the Commissioner's functions. This means that we will never publish sensitive or specific case information in circumstances that could compromise police investigations or hand competitive advantage to criminals.

Proportionate

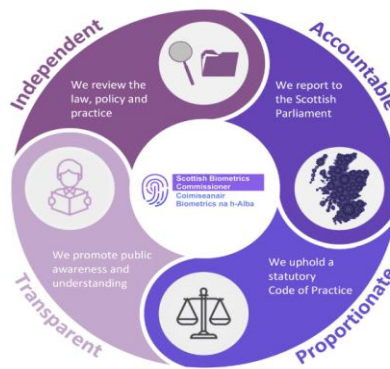
We will ensure that our activity is proportionate and does not exceed what is necessary to achieve our statutory purpose. We will minimise the burden of any review activity on Police Scotland, the Scottish Police Authority, and the Police Investigations and Review Commissioner. We will ensure that the way that we do what we do is necessary, effective and efficient.

¹ Scottish Biometrics Commissioner Act 2020, [Section 4](#)



Accountable

We will be accountable for what we do to the Scottish Parliament and will submit ourselves to whatever scrutiny is appropriate to our function. We will promote equality, diversity, and human rights in everything that we do.



Our power to work with others

[Section 3](#) of the Scottish Biometrics Commissioner Act 2020 confers a power on the Commissioner in the exercise of his functions to work, assist and consult with other named bodies. This includes amongst others, Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner.

This Assurance Review will be conducted by the Scottish Biometrics Commissioner working in partnership with HM Inspectorate of Constabulary Scotland (HMICS), Prof. Peter Fussey, University of Southampton and Dr. Daragh Murray, Queen Mary University of London, who have worked previously on this area in the UK. It is envisaged that the HMICS will assist the review by identifying and assessing the effectiveness of the retrospective facial searching tools used by the Police in terms of producing actionable intelligence leads.

Prof. Fussey and Dr. Murray will provide independent academic advice in support of the review, including on published information concerning the effectiveness and accuracy of police facial searching technologies, human rights and ethical concerns of known FRT use, in addition to wider matters including bias. Other considerations include the role of oversight, implications of possible future use as the technology evolves, potential Scottish specific considerations in the context of UK policy and its relationship to other international standards (e.g. EU law, European Court of Human Rights rulings and UN policy). A short discussion piece on the issues above may also be provided. Their role is as an independent advisory capacity and therefore neither an endorsement nor necessarily reflected in the report findings.

In looking at retrospective facial search technologies, this assurance review will focus primarily on how those biometric enabled technologies are used by Police Scotland in relation to the automated searching of images. This will include images derived from crime scenes and related policing enquiries searched against the UK Police National Database (PND), and with regard to child protection matters the UK Child Abuse Image Database (CAID) to assess how effective (or not) those technologies are. Since neither offer true facial matching capability, any assessment of effectiveness cannot centre on successful 'identification' but instead

will centre on the number of potential ‘intelligence leads’ derived from such searches and will consider what management information Police Scotland holds to assess effectiveness.

The report to Parliament by the Commissioner in March 2025 will acknowledge the partnership approach and carry the corporate logos of the Scottish Biometrics Commissioner and HMICS.

Background

PND and Strategic Facial Matcher

In 2002, two children, Holly Wells and Jessica Chapman, were murdered by school caretaker Ian Huntley. This led to a public inquiry led by Sir Michael (now Lord) Bichard and the publication in 2004 of the Bichard Inquiry Report.

The Bichard report noted that forces in England and Wales had no means of knowing what intelligence, if any, was held on any particular individual by another force and also that there was no information based technology way of finding out. Bichard also found that the lack of shared intelligence systems in England and Wales compared unfavourably with the position in Scotland at the time which was in the final stages of implementation of the single Scottish Intelligence Database (SID). His primary recommendation was that an intelligence system for police forces in England and Wales should be introduced and that there was learning to be adopted from the approach in Scotland.

If such a system had been in place, Huntley was likely to have been identified as a serious threat to children far sooner as he was already known to the police in England. In 2008, the Home Office introduced the UK Police National Database (PND). The PND is a confidential and restricted UK data store of operational policing information and intelligence provided by individual forces and law enforcement agencies, including Police Scotland. It is not an evidential system. It contains copies of locally held police records covering intelligence, crime, custody, child and domestic abuse investigations. This includes facial images of people arrested or detained from police custody records in England, Wales and Northern Ireland. The images from Scotland come solely from the Scottish Criminal History System (CHS) introduced under legacy policing arrangements.

In March 2014, the Home Office introduced a UK wide facial searching functionality within PND to enable the police to search facial images of potential suspects against police records. The system provides a ‘facial search’ rather than a facial recognition capability as any potential matches returned by the system require human assessment to ascertain whether the returned images may be a match for a potential suspect. In essence though, this created a searchable database of UK police records, including the ability to automatically search images of people who were not necessarily yet convicted.

It also introduced the ability of searching third-party sourced images of suspects (known as probe images) against that database such as CCTV records obtained by the police, or images taken by the public on mobile telephones and subsequently handed to the police as part of an investigation, or from police body-worn video (BWV) cameras.

In 2016, HM Chief Inspector of Constabulary published an [Audit and Assurance Review of the use of the Facial Search Functionality within PND by Police Scotland](#). At that juncture, HMICS found that over a 12 month period, Police Scotland had conducted 567 retrospective facial searches on PND and categorised

these by PND search reason codes. HMICS concluded that all uses by Police Scotland up to July 2015 were lawful, proportionate, and necessary.

By 2022, Police Scotland has significantly increased its use of the facial search capability within PND to almost 4.000 searches. As Police Scotland does not publish management information on its use of images, the reasons for this growth and the extent to which it is proportionate, necessary, or effective is unknown.

It is also known that the Home Office has concerns about the quality of the resolution of images within PND some of which are now decades old, and that there are issues with the quality of CHS images in Scotland. There are also questions about the effectiveness of the facial search technology, which this review will help to answer. As a consequence, and as part of the Home Office Biometrics (HOB) Programme, the Home Office plans to replace PND facial search with a new Strategic Facial Matcher Programme. This is also controversial as the then Policing Minister for England and Wales stated publicly that ‘he wants to give the police in the UK access to the images of all UK passport and driving licence holders’, so that the images of millions of innocent citizens can be bulk-washed through the apparatus of state surveillance by the Police when investigating crimes such as shoplifting.²

The UK Child Abuse Image Database (CAID)

In 2014, the Home Office introduced the UK Child Abuse Image Database (CAID) to contribute to the fight against online Child Sexual Exploitation and Abuse (CSEA).

CAID uses the latest technology to transform how the police deal with images of Child Sexual Exploitation and Abuse. It brings together all the images that the Police and National Crime Agency (NCA) encounter. Forces then use the images’ unique identifiers – called hashes - and metadata to improve how they investigate these crimes and protect children.

In addition to using Artificial Intelligence (AI) to grade the severity of child abuse images, CAID also now contains a facial search capability. Police Scotland were a late adopter of this capability, but it is understood that it is now a regular feature of investigations conducted by the Police Scotland National Child Abuse Investigation Unit (NCAIU).

Aims

The strategic aim of this joint review is to provide assurance to the Scottish Parliament that the retrospective facial search tools currently being used by Police Scotland are **lawful, effective, and ethical**. In particular, the emphasis of the review will be on effectiveness and explicitly:

“to assess the effectiveness of the retrospective facial searching tools used by Police Scotland in both PND and CAID in terms of producing actionable intelligence leads, and to consider what management information is held by Police Scotland pointing to their overall effectiveness”

² [Police to be able to run facial recognition searches on 50 m driving licence holders. The Guardian, 20 December 2023](#)



Methodology and scope

The methodology for this review will include (but not be limited to):

- The volumes of retrospective searches being conducted on PND by Police Scotland in the most recent calendar or fiscal year
- The volumes of retrospective searches being conducted on CAID by Police Scotland in the most recent calendar or fiscal year
- An audit of the PND reason codes via the Police Scotland PND Bureau for such searches to ensure lawful basis
- Any management information pointing towards their effectiveness in producing actionable intelligence leads
- Identifying any matters pertinent to the quality of probe or gallery images uploaded to PND and CAID by Police Scotland
- Considering what steps have been taken by Police Scotland to ensure that ethical considerations form part of the relevant Standard Operating Procedures for conducting retrospective facial searches on PND and CAID, including any due diligence steps taken by Police Scotland to ensure that the Home Office algorithms are free from bias and discrimination
- Gathering any sanitised case studies pointing to the value of retrospective facial search in contributing towards solving serious crimes, or in protecting children from abuse
- Ascertaining whether Police Scotland (other than in circumstances within the remit of the Investigatory Powers Commissioner) has requested any retrospective image searching on third-party databases such as the UK passport image database
- Identifying ethical and other considerations associated with any future decision by Police Scotland to adopt the Home Office Strategic Facial Matcher product

The scope of this assurance review will extend to:

- Police Scotland

Exclusions from scope

The review will focus solely on questions relating the lawful, effective, and ethical use of biometric data in Scotland by Police Scotland. Accordingly, there will be no wider assessment of the non-biometric data elements of either PND or CAID. The review is restricted to use by Police Scotland and to the remit of the Scottish Biometrics Commissioner. Accordingly, there will be no direct engagement with either the Home Office or in the case of CAID, the UK National Crime Agency or The Child Exploitation and Online Protection Centre (CEOP). However, minimal engagement may be required with Home Office, if Police Scotland have reliance on Home Office policy documentation in relation to their use of PND/CAID.

The review will also not consider biometrics used in covert policing activity or matters within the statutory remit of the Investigatory Powers Commissioner's Office (IPCO).



Resource plan

The review will be directed by the SBC Director and conducted with the SBC Operations Manager with the input from key partners as specified above. The review activity will be proportionate, mostly desk-based and any on site activity will be restricted to the Police Scotland PND Bureau for PND, and the Police Scotland National Child Abuse Investigation Unit (NCAIU) for CAID, and with the Head of Biometrics for Police Scotland. The review activity will be designed and executed to minimise any impact on the day-to-day operations of Police Scotland.

Timeline

The indicative timescale for the necessary activity is as follows:

Key areas	September to December 2024			Jan 2025	Feb 2025	Mar 2025
4-month fieldwork phase. Mainly desk based research and information requests. On site visit to NIB and NCAIU, meeting with Police Scotland Head of Biometrics. Bespoke discussion with subject experts will mainly be via Teams as required.						
Writing up report and in-house clearance on draft						
Factual accuracy checks and sending to publishers						
Submission of joint report to the Scottish Parliament in week commencing 17 March 2025 or sooner.						