Scottish Biometrics Commissioner
Bridgeside House
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Audrey Nicoll MSP
Convenor
Scottish Parliament Criminal Justice Committee
cc Clerk to Criminal Justice Committee
by e-mail

Dear Audrey, 16 March 2026

Criminal Justice Committee: Evidence Session 11 March 2026

Thank you for the opportunity to appear before the Criminal Justice Committee for the final time during this session of Parliament.

Due to time constraints, the Committee had asked if I could provide follow up information in writing covering two broadly similar areas of interest. The first related to a question asked by Jamie Hepburn MSP on ethical considerations relating to the question of the potential future adoption of live facial recognition technology (LFR) by Police Scotland and how appropriate legal safeguards could be ensured (whether through primary legislation or the SBC Code of Practice) and to what extent the Parliament would or should be involved.

The second from Katie Clark MSP was a broader question about retrospective facial search, live facial recognition, and related surveillance technologies including police drones. She was also interested in additional context on issues such as emerging legal and regulatory frameworks including the EU Artificial Intelligence Act (EU AIA) and legislative approaches in other parts of the UK. She also sought information on known concerns relating to facial identification technologies used in a policing context such as misidentification and demographic bias.

Acknowledging the crosscutting nature of the questions posed, it may be helpful to the Committee for me to group my response into logical themes which I now do.

The case for primary legislation for Live Facial Recognition (LFR) by the police

Primary legislation is the name used to describe the main laws passed by legislative bodies of the UK as Acts of the UK Parliament, Scottish Parliament, Welsh Parliament, and Northern Ireland Assembly.

Whilst primary legislation would undoubtedly provide the **'gold standard'** for LFR in Scotland, there is currently no country in the world which has passed comprehensive and specific primary legislation dedicated exclusively to governing the police use of Live Facial Recognition (LFR) in public spaces. Instead, police forces internationally operate within a patchwork framework of existing legal frameworks, including common and statutory law, data protection laws, human rights laws, and relevant professional practice and codes of practice.

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In October 2025, I signalled my support for primary legislation in Scotland to allow this topic to be properly debated in Parliament to allow for full democratic participation. This option would of course be dependent on the decision of a future Scottish Government (Cabinet and Ministers) to bring forward a Bill based on their specific policy agenda and view on the matter including their judgment on the necessity of a new and specific legal authority.

I also explained in an earlier 2025 blog that any future decision by Police Scotland to adopt LFR would necessitate a significant programme of work including to address issues of custody image quality and to develop policy, processes, and governance arrangements and to procure an ICT solution with transparent algorithms addressing accuracy rates and bias. Any future deployment would of course also have to be proportionate and lawful and adhere to UK data protection law and in Scotland with the Code of Practice approved by the Scottish Parliament.

It is also pertinent to note that in the absence of primary legislation, any such future use would inevitably be highly contested by civil and human rights organisations and data subjects and would result in a significant increase in complaints to my office relative to the Code of Practice. With only three members of staff, any future decision by Police Scotland to proceed with LFR without the safeguards of primary legislation, could project significant additional complaints demand onto the SBC function that I would be unable to service with my current staffing model.

More importantly, LFR if deployed in Scotland in future without the democratic safeguards of primary legislation could fundamentally change the relationship between the citizen and state through treating ordinary citizens as digital suspects in state surveillance of the population.[1] Accordingly, it follows that if great care is not taken, it has the potential to undermine the policing principles for Scotland. Without unambiguous evidence of both need and public support, it could also simultaneously undermine the key policing values of integrity, fairness, and respect which underpin the model of policing by consent in Scotland which is founded on upholding human rights.

The unenviable task and conundrum that policing faces is whether and how best to use such technologies to address human wrongs whilst simultaneously upholding human rights. My own view as Commissioner is that this is such a critical ethical dilemma potentially involving changing the fundamental relationship between citizen and state and the principles of policing by consent that primary legislation is by far the best and safest route. Against that context, a Bill of the Scottish Parliament on a proposed law would be by far the best option as it serves as a draft Act that undergoes rigorous scrutiny, debate, and amendments by Members of the Scottish Parliament before potentially becoming law through Royal Assent. Any other route could be perceived by the public and campaigners to provide inferior democratic safeguards.

In making these observations I would reiterate that I do acknowledge and support the potential need for and value of LFR and, if used in a limited, proportionate, and strictly necessary way can see real benefits as part of a strategic policing response to male violence

[1] Data from the Metropolitan Police indicates that to achieve one thousand arrests with LFR, the faces of 1,900,000 citizens were scanned.

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against women and girls, to target serious and organised crime including county lines drug dealing, and to mitigate serious criminal threats from known individuals to protect public safety.

The Code of Practice and section 7 (4) of the Scottish Biometrics Commissioner Act 2020

In the absence of primary legislation, the SBC Code of Practice is the next best option and could provide the **'silver standard'** to govern the future use of LFR as opposed to the 'bronze standard' that exists in England and Wales through reliance solely on common law and with no statutory code of practice and no independent oversight.

The current Code provides a universal approach to biometric data by setting guiding principles and ethical considerations and was designed to cater for existing biometric data types and circumstances pertaining to conventional use in the criminal justice process. It is due to be updated during 2026/27 to cater for minor changes including to UK legislation. However, it is pertinent to point out to the Committee that section 7 (4) of the Act provides that **'…the code may make different provisions for different purposes'**. Therefore, in amending the Code in 2026/27 or in the future, there is an opportunity to make specific legal provisions via the Scottish Code of Practice to provide specific enabling criteria and guardrails around any future use of LFR.

Sections 7 to 13 of the SBC Act 2020, outline the procedures for consultation on any revised code and for bringing it into legal effect. The legislation requires that any revised code must be subject to the approval of Ministers who have authority to approve or reject it under the 2020 Act. In terms of Parliamentary control, the regulations to bring a revised code into effect are made by Ministers (SSI) under negative procedure with input from the lead committee meaning that a full vote of Parliament is not required.

In the absence of primary legislation on LFR (gold standard), making specific provisions for LFR within a revised Code (silver standard) would provide a mechanism for Ministerial and Committee scrutiny and oversight by the Criminal Justice Committee but without the advantages of exposing the matter to full Parliamentary scrutiny.

On 9 February 2025, the Scottish Police Authority published a briefing note on LFR confirming that no final decision has yet been taken by Police Scotland and that any such decision may be 18 to 24 months in the future. The briefing note also confirms that the SPA expects Police Scotland to develop its own code of practice and acknowledges that Police Scotland would have to comply with the statutory SBC Code of Practice. Whilst such an approach could be mutually reinforcing, it could also lead to potential confusion with operational staff unsure of which code of practice to follow. This will be an area for further discussion with the Authority and Police Scotland given the opportunity to provide specific and legally binding provisions for LFR in a single code (the statutory SBC Code) as catered for by section 7 (4) of the SBC Act 2020.

The approach in England and Wales

In England and Wales, police forces rely on the common law powers to prevent and detect crime as the legal basis for the use of LFR as well as policies governed by UK data protection and human rights and equalities laws.

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The functions of the Biometrics and Surveillance Camera Commissioner in England and Wales include to exercise independent oversight of DNA and fingerprints only (not face) under the Protection of Freedoms Act 2012. The Commissioner also maintains a Surveillance Camera Code of Practice which is a non-statutory instrument therefore carries no punitive powers of enforcement. The Code in England and Wales is intended to guide the use of public space CCTV and applies to local authorities and private operators on a voluntary basis. It does not cater for LFR by the police.

As such, there is no independent oversight of LFR in England and Wales beyond the role of the ICO as regards to UK data protection law. Consequently, the regulatory framework for LFR in England and Wales is often described by campaigners as weak or unregulated because it depends on interpreting existing laws rather than through a tailored Act of Parliament. This is contrasted with the model in Scotland where images and recordings fall solidly within the definition of biometric data in section 34 the SBC Act 2020 and are therefore within the remit of SBC and the Scottish Code.

There have also been calls for stronger governance around the use of facial recognition by police forces in England and Wales, with the Information Commissioner's Office urging that they take a proportionate approach and the Ada Lovelace Institute calling for new legislation.

It is also worth noting that the Home Office is currently consulting on creating a new more comprehensive legal framework for biometric technologies including LFR. Any emerging proposals, including any primary legislation, will be for England and Wales only given that policing in Scotland and Northern Ireland is devolved.

As mentioned in evidence to the Committee, the Home Office has already committed to equip every police force in England and Wales with LFR capability by funding fifty vans to support static LFR deployments. Any decision to deny that capability in Scotland could have profound consequences in terms of the dispersion of activity by serious organised crime groups to Scotland and in thwarting the borderless UK wide coordination of strategic policing responses to issues such as serious and organised crime, human trafficking, and counterterrorism.

EU Artificial Intelligence Act (AIA) 2024

In August 2024, the EU AIA came into force which heavily restricts the use of LFR by law enforcement in public spaces. The EU AIA classifies LFR for law enforcement as a 'high-risk' tool. It prohibits the use of LFR in public spaces unless it is "strictly necessary" to search for specific suspects, missing persons, or to prevent threats of terrorism. The EU AIA in relation to LFR requires prior authorisation from a judicial or administrative authority before deployment. It does not allow the police to self-authorise or self-regulate as is currently the position in England and Wales.

Outside of Europe

Outside of Europe, China and Russia are amongst the highest users of live facial recognition technology for police/state surveillance.

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China

China has both the most advanced and extensive system of surveillance systems in the world serving policing, commercial convenience, and political purposes. The Chinese state has integrated live facial recognition into its vast CCTV network and in some regions police officers have biometric enabled sunglasses equipped with live facial recognition technology to identify persons of interest.

One use of LFR in China includes commercial convenience allowing citizens to access services and locations using their face. Transport infrastructure including railways and airports also uses the technology for ticketing and paperless security methods. China also uses LFR for targeted surveillance including to track and profile members of the Uighur Muslim minority in the Xinjiang region, with systems designed to differentiate between Uighurs and Han Chinese. Public security bureaus in China often integrate the facial data of citizens with other information such as travel history and health records to monitor citizen activity and to track dissidents and activists.

Russia

LFR is used extensively in Russia with Moscow having the largest network of facial recognition cameras outside of China. In a landmark case (Glukhin v. Russia 2023), the European Court of Human Rights (ECtHR) delivered an important ruling on the fundamental rights implications of such technology. The judgment underlines the highly intrusive nature and rules that blanket use by the police for the purposes of identifying protestors would violate fundamental rights unless detailed rules on use and adequate safeguards against arbitrariness are in place. Therefore, the ECtHR and EU recognise the need for detailed rules and safeguards in police deployments to protect citizens rights.

United States

While no federal ban exists in the U.S., several cities and municipalities have implemented bans or moratoria on the police use of LFR including San Francisco. Often such bans or moratoria relate to concerns around demographic bias.

Retrospective Facial Search technology

In March 2025, I laid an assurance review report in the Scottish Parliament on the use of retrospective facial search technologies by Police Scotland. The review was conducted in partnership with HMICS and explored Police Scotland's use of retrospective (after the event) facial search tools within the UK Police National Database (PND) which is a UK wide intelligence database populated with custody images from previous arrest episodes. Our review also considered the Facial Matcher capability within the UK Child Abuse Image Database (CAID).

As reported to Parliament, one of the key findings from the joint SBC/HMICS review was that retrospective image search has narrow use in practice and is of limited overall effectiveness to policing. During 2024/25, approximately 98% of searches conducted by Police Scotland failed to produce any potential matches. This suggests that the technology's current application may not be delivering significant operational value.

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The reasons behind such low match rates are primarily because the probe image (image from a crime scene) was of someone who did not have a corresponding gallery image already held by the police from a previous arrest episode. Another factor is poor resolution crime scene and or custody images and we noted that Police Scotland custody images (at that time) were of such poor resolution that they were unsuitable for upload to PND. Since then, Police Scotland has invested significantly in new high-resolution cameras for custody facilities throughout Scotland.

Algorithm accuracy and demographic bias

The UK National Physical Laboratory (NPL) conducts independent testing of facial search and recognition algorithms where such systems are provided to UK police forces by the Home Office.

PND

In December 2025, the Home Office published a report commissioned by them from the National Physical Laboratory comprising of an accuracy and equitability study of the algorithm used for retrospective facial search within the UK PND. The software within PND facial search is provided by a commercial provider (COGNITEC FACEVACS-DBSCAN ID V5.5).

The NPL study found that the algorithm contained **statistically significant demographic bias** against people with black or brown skin and against females and young people. The demographic bias was further aggravated when combining skin colour and gender resulting in significant false positives (misidentification) of the demographics mentioned and most significantly females with black skin.

The Assistant Chief Constable (ACC) Major Crime for Police Scotland immediately suspended the use of the facial search functionality within PND by Police Scotland. As the only UK police force to do so, this provides compelling evidence of the ethical stance and leadership taken on such matters by Police Scotland.

Strategic Facial Matcher (next generation PND algorithm replacement)

In December 2025, the Home Office published a report commissioned by them from the National Physical Laboratory comprising of an accuracy and equitability study of the algorithm used in the Idemia Strategic Facial Matcher product. This is the product that will replace the older software used in PND. The study confirms that there is no statistically significant demographic bias. Police Scotland plan to adopt this solution in the early phase of a UK-wide roll out commencing in 2026/27.

Live Facial Recognition: Metropolitan Police Service (MPS)

In September 2025, the MPS produced a Live Facial Recognition Annual Report. The report confirms that in 2023, the National Physical Laboratory (NPL), the UK's leading measurement institute, published its evaluation of the algorithm used by the MET confirming that it was free from any statistically significant bias when the algorithm is set appropriately. This work has provided reassurance that the technology performs consistently across different demographic groups.

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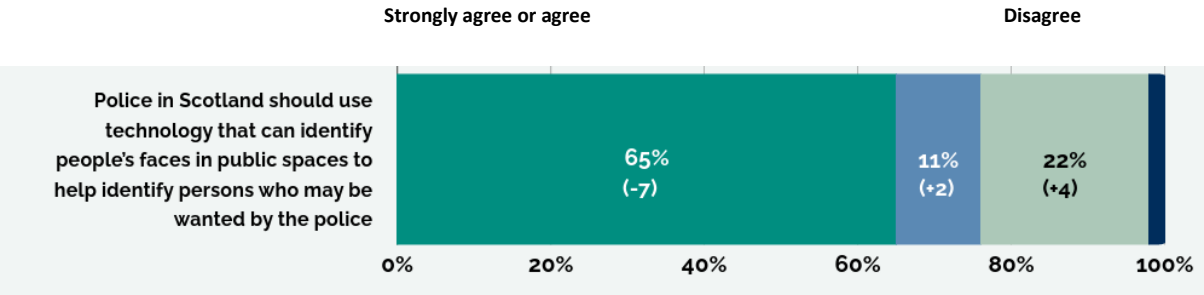
A Public Attitude Survey commissioned by the Mayor's Office for Policing and Crime shows that 85% of Londoners support the use of LFR technology. The report includes an analysis of deployments between September 2024 and September 2025. These led to 962 arrests, over a quarter of which were sex offenders and individuals involved in violence against women and girls.

Public attitudes in Scotland

Since 2021, SBC has sought insights into societal attitudes in Scotland in relation to citizens perception of their understanding of how biometrics and forensic are used in policing in Scotland including to what extent the public agree that the police should use technology that can identify people's faces in public spaces to help identify people who may be wanted by the police.

In 2021, our survey was conducted independently by ScotCen and found that **66%** of respondents either agreed or strongly agreed that the police should use technology that can identify people's faces in public spaces to help identify people who may be wanted by the police. In 2025, the Scottish Police Authority through the Annual Public Confidence in Policing Survey conducted by the Diffley Partnership found that the level of support was **72%**. The same survey has been conducted again in 2026 and found that the level of support was **65%.** In 2026, 11% of respondents (blue) neither agree nor disagree, 22% disagree and 2% do not know.

Therefore, over the five-year period from 2021 to 2026, the indicative data would suggest that public support in Scotland for such technology in public spaces ranges between 65% and 72%. Significantly, it also suggests that three times as many citizens support the use of such technologies by comparison with those who are opposed.



Public attitudes in Scotland 2026 to police use of technology to identify people's faces: Diffley Partnership

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Remotely Piloted Aircraft Systems (Drones) by Police Scotland

Remotely Piloted Aircraft Systems, also known as drones, are small aircrafts with a camera onboard that are piloted from the ground via remote control. This affords officers a live aerial view of the immediate area where they are deployed. Use of drones is controlled and authorised by the Civil Aviation Authority. Only specially trained officers are qualified to pilot drones.

Police Scotland's Air Support Unit has been using drones since 2019. Police officers using a drone must be in uniform, near a marked police vehicle and the drone must stay within their sight. If the drone is being operated in a busy environment, officers will cordon off an area from which to operate the drone. Where possible and when appropriate, Police Scotland will also notify the public and local community when there is a planned deployment of drones.

Drones can be used to support a variety of policing operations including missing person searches, major incidents and events, armed policing, and public order operations as well as fire investigation and crime scene analysis. Importantly, Police Scotland drones are not equipped with facial recognition cameras. They are equipped with conventional recording equipment and thermal imaging which is particularly useful when searching for missing persons or casualties in darkness.

One of the most common uses of drones is to facilitate requests from COPFS for an aerial view or flythrough of an outdoor crime scene. This helps the courts and juries to gain a valuable insight with the added efficiency to the criminal justice system of best evidence and of not having to physically visit the location.

Further information on the use of drones by Police Scotland can be found in a briefing provided to the Scottish Police Authority.

Concluding remarks

As Commissioner, I have no doubt that any future decision by Police Scotland to adopt LFR could enhance public safety if used in a limited and proportionate way including as part of a strategic policing response to address male violence against women and girls, to target serious and organised crime including county lines drug dealing, and to mitigate serious criminal threats from known individuals to protect public safety.

Equally, its future use without legislative safeguards and public support could fundamentally change the relationship between the citizen and state. Accordingly, its potential future use may require to be considered in the seventh session of Parliament to allow any future proposal to be properly debated. Whilst a specific legislative vehicle for LFR is available through making specific provisions for specific purposes in the SBC statutory Code, the trend in other areas and most notably the EU is towards primary legislation. This is the approach that I would advocate for Scotland.

Finally, it is pertinent to note that the Home Office has already committed to equip every police force in England and Wales with LFR capability by funding fifty vans to support static LFR deployments. Any future decision to deny that capability in Scotland, if deemed

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operationally necessary by the Chief Constable, could have profound consequences in terms of the dispersion of serious organised crime group activity to Scotland and could undermine the borderless UK wide coordination of strategic policing responses to issues such as serious and organised crime, human trafficking, and counterterrorism.

Yours sincerely,

Brian Plastow

Dr Brian Plastow
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