



Scottish Biometrics Commissioner – Advisory Group Meeting

Minute of meeting of 28 February 2023 (1400 - 1530 via MS Teams)

Members Present	
Professor Derek Penman (Chair)	Independent Member
Professor Fraser Sampson	Biometrics & Surveillance Camera Commissioner for England and Wales
Gina Wilson	Head of Strategy - Children & Young People’s Commissioner Scotland
Denis Hamill	Chief Data Officer – Police Scotland
Mhairi Morrison	Assistant Procurator Fiscal for Major Crime – Crown Office and Procurator Fiscal Service
Raymond Brown	Detective Chief Superintendent – Police Scotland
Brian Roy	Change & Operational Scrutiny – Scottish Police Authority (SPA)
Richard Casey	Senior Investigator – Police Investigations and Review Commissioner (PIRC)
Ray Jones	Lead Inspector – His Majesty’s Inspectorate of Constabulary in Scotland (HMICS)
Ken McDonald	Head of Regions - Information Commissioners Office
Gillian Jones	Data Governance Manager - Police Scotland
Richard Casey	Senior Investigator – Police Investigations and Review Commissioner (PIRC)
Professor Shannon Vallor	Baillie Gifford Chair in the Ethics of Data and Artificial Intelligence at the Edinburgh Futures Institute (EFI) at University of Edinburgh
Brian Plastow	Scottish Biometrics Commissioner
Cheryl Glen	Corporate Services Manager - Scottish Biometrics Commissioner
Diego Quiroz	Operations Manager - Scottish Biometrics Commissioner
Joanna Milne (Minutes)	Business Support Officer - Scottish Biometrics Commissioner

Apologies	
Phil Chapman	Director of Operations - Police Investigations and Review Commissioner (PIRC)
Professor John McNeil	Independent Member
Clare Hussain	Head of Data Governance - Police Scotland
Fiona Douglas	Director of Forensic Services - Scottish Police Authority
Mark Hargreaves	Assistant Inspector - His Majesty’s Inspectorate of Constabulary in Scotland
Claire Methven O’Brien	Scottish Human Rights Commissioner
Scott Ross	Head of Change & Operational Scrutiny - Scottish Police Authority (SPA)
Genevieve Lennon	Strathclyde University

1. Welcome, Apologies & Introductions

The Chair welcomed members to the seventh meeting of the Advisory Group for the Scottish Biometrics Commissioner (SBC).

The Chair announced a new Advisory Group member Claire Methven O'Brien from the Scottish Human Rights Commission. Unfortunately Claire was unable to make the meeting and sent her apologies.

2. Minutes of previous meeting and Action Log

Minutes of the meeting on 29 November 2022 were approved.

Action log updates

Denis Hamill confirmed the first part of Police Scotland's data ethics framework is now live. All new data ethics cases go through triage. If a high risk is identified it will go through additional scrutiny. The additional scrutiny is still a work in progress, however the internal scrutiny will go through a group called the Data Ethics Oversight Group (DEOG). The independent external scrutiny group is being progressed and various attendees including a chair are being sought.

Fraser Sampson supplied an update on the progress of the Data Protection and Digital Information Bill. Fraser's role will remain in place for the next 18 months until this Bill is passed and his role is redistributed.

OUTSTANDING ACTION - Operations Manager to forward a copy of the Children and Young People's Joint Assurance Review to Gina Wilson from the Children and Young People's Commissioner Scotland.

Where appropriate the Scottish Biometrics Commissioners details have been added to partners' websites and discussions are ongoing re Police Scotland increasing the prominence of biometrics in general across both public and internal sites.

3. Update on Assurance Reviews

Operations Manager confirmed the process for the review. The first stage was to review current standard operating procedures (SOPs) relating to children and young people in custody. Secondly, custody officers and data governance staff from Police Scotland were then invited to focus groups to discuss how they acquire and retain biometrics from children and young people. The last part of the review involved round table discussions with children and young people to understand their experiences of the criminal justice system. Overall the report is very positive with recommendations as below.

There were four recommendations (recommendations 1-3 are for both reports and recommendation 4 is for the Children and Young Person's report)

Recommendation No 1

Police Scotland should improve the information given to all persons who have their biometric data acquired in police custody settings as a result of being arrested and deprived of their liberty. As a minimum, this should include an explanation of the legal basis under which the subject's biometric data (fingerprints, image, DNA swab) is to be acquired, and an explanation that such data may be speculatively

searched against UK policing databases. Such information and how it is presented and delivered should be tailored to the needs of the recipient, for example vulnerable people or children.

Recommendation No 2

When acquiring biometric data in police custody settings from all persons deprived of their liberty through arrest, and whose biometric data is acquired, Police Scotland should provide basic information to data subjects about the applicability of the Scottish Biometrics Commissioner's statutory Code of Practice, including the legislative provision for the Commissioner to consider complaints about failure to comply with the Code by Police Scotland. Such information and how it is presented and delivered should be tailored to the needs of the recipient, for example vulnerable people or children.

Recommendation No 3

Police Scotland should improve the collection of management information in relation to all biometric data types to better inform its strategic decision-making. Police Scotland should then determine what information it could safely place in the public domain to improve the public understanding of its value. This could be in a similar manner to the Scottish DNA database statistics that are already published but should as a minimum include information on fingerprint volumes and match rates, and volumes of images held within the Scottish Criminal History System (CHS) and the Police National Database (PND).

Recommendation 4

Police Scotland should develop, consult on, and then publish operational policies, procedures, and practices for the acquisition of biometric data from children under 18 years of age that are consistent with the Justice Vision for Scotland and relevant standards for working with children in conflict with the law. There should be no general policy, which otherwise sanctions the blanket capture of biometric data from children. Any decision to take biometric data from a child should be taken on a case-by-case basis and authorised by a senior police officer not beneath the rank of Inspector. In reaching a decision, the senior officer should have regard to factors such as the best interest of the child and the gravity of the offence.

Corporate Services Manager confirmed the findings for the vulnerable adults assurance review highlighting the same approach was taken as the children and young people's review including a review of SOPs, focus groups and questionnaires to relevant stakeholders.

The first three recommendations for both reports are the same. The fourth recommendation was only included within the children and young people's report.

The SPA were strategic partners for both reviews and Children and Young People's Centre for Justice (CYCJ) were a strategic partner for the children and young people's report. Both reports will be submitted to the Scottish Parliament and published on our website by the end of March.

ACTION: Business Support Officer to circulate a copy of the reports to the Advisory Group once factual accuracy checking has been completed.

ACTION: Operations Manager to send Gina Wilson a copy of the children and young people's report for review.

4. End of financial year arrangements and Business Plan for 2023/24

External Audit is about to start again for financial year 2022/23. This year we will produce two separate reports. The Section 31 report which is our organisation's performance against our finances and the Section 32 report (which is not audited by Audit Scotland) on how biometrics are used in policing and criminal justice purposes in Scotland.

Due to the misalignment of our finances and our Strategic Plan, in April we will produce our yearly Business Plan which will set out what we plan to achieve in the financial year 2023/24.

5. Stakeholder engagement

Since the last meeting the Commissioner confirmed that he had finally met with the Cabinet Secretary for Justice and Veterans at the end of January.

Regular meetings have also been taking place with Criminal Justice Inspectorate group which includes HMICS, PIRC Commissioner, His Majesty's Inspectorate of Prisons Scotland (HMIPS), His Majesty's Fire Service Inspectorate for Scotland (HMFSI) and Chief Inspector of Prosecutions in Scotland.

The Commissioner and Operations Manager also recently met with Community Justice Scotland.

Meetings have also taken place with HMIPS re the Code of Practice.

The Commissioner confirmed that discussions are currently on going with Scottish Parliament officials around a visit to Brussels to raise further awareness of our Code of Practice.

In the last few month the Commissioner and team have been involved in meetings with the Leverhulme Institute at Dundee University.

The Commissioner has also been interviewed by SPRITe+ network (add link to interview) and by the AI Alliance (add link once available).

The Commissioner and Operations Manager have also attended ETIAG meetings and the final report and findings from this group have now been published (link to report).

6. UKG and SG position on Hikvision

Following the removal of Hikvision cameras from the European Parliament, UK Government core sites and sensitive networks, and from the Scottish Government estate, there was a short discussion on biometric enabled surveillance technologies. The Commissioner noted that the Scottish Parliament had recently discussed these issues noting that National Security and Data Protection are reserved matters for Westminster.

The Commissioner also advised that he had met with Hikvision in Edinburgh on 24 February and will place a note of the meeting on his website. It was noted that the Cabinet Secretary for Justice had said publicly that decisions on Hikvision technologies held by Police Scotland were a matter for the Chief Constable.

The Commissioner has also placed an article on biometric enabled public space surveillance in Scotland and has called for a coherent national strategy which includes ethical and human rights considerations in the supply chains of technology providers. (add link to article)

7. Tactical and operational meetings with Police Scotland and SPA

The Commissioner confirmed that monthly meetings have been taking place with Police Scotland and SPA to discuss and prepare them for the compliance assessments which will take place later in the calendar year.

The meetings have also been used to run through items with the Commissioner prior to the Police Scotland Biometrics Oversight Board. This allows them to be raised and viewpoints gauged prior to them being raised with the Assistant Chief Constable.

8. AOCB

The Commissioner discussed the number of Advisory Group meetings per year and it was agreed that now the initial setup has been concluded three times a year would be sufficient reducing from the current format of 4 per year.