

Scottish Biometrics Commissioner

# Annual Report and Accounts 2021|22



Safeguarding our biometric future



Scottish Biometrics  
Commissioner  
Coimiseanair  
Biometrics na h-Alba



# Foreword

by the Scottish Biometrics Commissioner

Biometric data such as fingerprints and photographs have been used in policing and criminal justice in Scotland as a means of verification, identification, and exclusion for more than 100 years. In the past three decades, the advent of the forensic technique of DNA profiling has revolutionised the investigation of crime. It is used daily in the investigation of a wide range of offences to identify offenders from minuscule amounts of body fluids and tissues.

More recently there has been an exponential growth in a range of new biometrics in law enforcement, perhaps most controversially the use of live public space facial recognition surveillance by the police in other UK jurisdictions.<sup>1</sup> There has also been a proliferation of databases operating and exchanging biometric data over different legal and functional jurisdictions within the UK and globally, including the application of artificial intelligence (AI) to those databases to develop algorithms for biometric matching.

Such issues raise important questions for society, including how best to balance our need for public safety and security, with broader privacy, ethical, human-rights, and equality considerations. The principles of proportionality and necessity, and the long-established principle of policing by consent in Scotland, suggests the need to be careful about the nature and extent of such developments in future.

The Scottish Biometrics Commissioner Act 2020, was passed by the Scottish Parliament and received Royal Assent on 20 April 2020. I was subsequently appointed as Commissioner by HM the Queen on the nomination of the Scottish Parliament and took office on 12 April 2021 to commence the design and build of the new function.

In normal circumstances, the task of starting up a completely new public body in Scotland would be challenging. It was even more so in the early days against the context of an ongoing pandemic, the reach of which permeated everything. Nevertheless, significant progress was made during 2021/22, due in large part to the outstanding levels of cooperation from those bodies to whom my functions extend including Police Scotland, the Scottish Police Authority, and the Police Investigations and Review Commissioner, to whom I am extraordinarily grateful.

There are many to whom I owe a debt of gratitude, but I should make special mention of Janice Crerar, Huw Williams, and Lisbeth Craig at the Scottish Parliamentary Corporate Body for their exceptional support and assistance. Also, to the Scottish Public Sector Ombudsman Rosemary Agnew and her outstanding SPSO team for facilitating a shared service arrangement between us to achieve value for the public purse. Also, to all members of my professional Advisory Group, my Advisory Audit Board, the Scottish Parliament Criminal Justice Committee, and to Audit Scotland for their ongoing support and encouragement.

---

<sup>1</sup> Facial recognition use by South Wales Police ruled unlawful. BBC News, 11 August 2020: <https://www.bbc.com/news/uk-wales-53734716>

In the final quarter of 2021/22, the sequential build came to fruition when we moved into our new business address at Bridgeside House, Edinburgh. At this point my small team came together for the first time and I was joined by Cheryl Glen as Corporate Services Manager, Diego Quiroz as Operations Manager, and Joanna Milne as Business Support Officer. Their arrival transformed the scale and pace of everything, and by the close of the financial year we were in the process of finalising our internal corporate policies and procedures and establishing new governance arrangements and schemes of delegation and control. I am extraordinarily grateful to my new colleagues, firstly for having the courage to embark on this new journey with me, and secondly for their outstanding contributions in helping to shape and deliver the new function.

In this my first annual report, I chart our performance in successfully delivering the new function from the ground up both on time and under budget. This period also witnessed the laying of our first Strategic Plan before the Scottish Parliament and receiving Ministerial consent to lay a draft of our forthcoming statutory Code of Practice before the Parliament. During the year, the most significant risks to our new organisation were both its incremental new build status during the pandemic, and the ongoing resilience challenges which flow from being a very small organisation with only three members of staff.

I also report my findings to the Parliament on issues relevant to the use of biometric data for criminal justice and police purposes as required by [Section 32 \(2\)](#) of the Scottish Biometrics Commissioner Act 2020. My overall strategic conclusion is that the Parliament should have confidence in the ways in which biometric data and technologies are currently used for criminal justice and policing purposes in Scotland.

Looking ahead to 2022/23, our strategic function of supporting and promoting the adoption of lawful, effective, and ethical practices will guide the activity in our Strategic Plan as we seek to establish ourselves as an impartial and trusted voice in the criminal justice community in Scotland, the UK, and internationally. Our values of independence, transparency, proportionality, and accountability will remain at the heart of everything that we do. After my first 12 months in office, I am firmly of the opinion that there are potential opportunities to provide independent oversight of biometric data and technologies in other areas of criminal justice in Scotland should Ministers so determine.

It is a privilege to have been appointed as the first Scottish Biometrics Commissioner, and to lay my first Annual Report & Accounts before the Scottish Parliament.



**Dr Brian Plastow**

Scottish Biometrics Commissioner

SG/2022/207 – prepared in accordance with the provisions of sections 31 and 32 of the Scottish Biometrics Commissioner Act 2020.

# Contents

<b>Key facts</b> (section 32 report)	5
<b>Key findings</b> (section 32 report)	6
<b>Summary of recommendations</b>	8
Introduction	9

## Chapter 1

<b>About the Scottish Biometrics Commissioner functions</b>	12
The Scottish Biometrics Commissioner Act 2020	13
Policing databases and biometrics	15
Further reading	16

## Chapter 2

<b>Section 31 Performance report</b>	
Performance overview	19
<b>Performance analysis</b>	22
Issues arising from Financial Memoranda	22
Our ICT platform / Data protection	24
Corporate identity, vision and values	25
Section 33 Advisory Group	27
Advisory Audit Board	27
Building strategic relationships	28
Strategic Plan 2021 to 2025	29
Establishing a website	30
National Assessment Framework	30
Meet the team / Finalising the build	31
SBC Scheme of Internal Control	31
Complaints / Freedom of Information	33
Our people / Shared service arrangement	34
Bridgeside House accommodation	35
Environment and biodiversity	36
Set-up & operating costs analysis	37

## Chapter 3

<b>Section 32 Performance report</b>	39
Performance summary	40
<b>Performance analysis</b>	42
Strategic context	42
<b>Strategic priority No 1: Law, policy and practice</b>	44
DNA in criminal justice	44
Fingerprints in criminal justice	48
Photographs in CHS & PND	49
Other images	50
The 'problem' of automated facial recognition	51
Digital forensics	52
Constitutional matters	54
<b>Strategic priority No 2: Public awareness &amp; understanding</b>	56
Public attitudes survey	56
Public engagement	57
<b>Strategic priority No 3: Code of Practice</b>	57
Draft Code of Practice	58

## Chapter 4:

<b>Accountability report</b>	60
Corporate governance report	61
Remuneration & staff report	68
Parliamentary accountability report	73
Independent auditor's report	74

## Chapter 5:

<b>Financial Statements</b>	80
Financial statements	81
Notes to the financial statements	83
Direction by the Scottish Ministers	88

# Key facts:

about biometrics for criminal justice and policing purposes in Scotland (under section 32 of Scottish Biometrics Commissioner Act 2020)



**640,010**

**images**

**374,405**

**individuals**

640,010 images of 374,405 individuals attached to records held on the Police Scotland Criminal History System and the UK Police National Database (PND).

Over **1,000,000** other images

Held for policing and criminal justice purposes, on primary, secondary and tertiary databases with no automated biometric searching capabilities.



**383,279**

**DNA profiles**

**19,845**

**unmatched DNA profiles**

383,279 DNA profiles on the Scottish DNA database and 19,845 unmatched DNA profiles.

**60%**

The UK match rate from DNA recovered at a crime scene to an existing criminal justice profile.



**739,408**

**fingerprints**

**412,127**

**people**

739,408 fingerprint forms from arrests in Scotland on the UK fingerprint database (IDENT1), relating to 412,127 people.

**65.9%**

The UK match rate for fingerprints recovered at a crime scene to an existing criminal justice profile.

# Key findings:

## on biometrics for criminal justice and policing purposes in Scotland (under section 32 of Scottish Biometrics Commissioner Act 2020)

- The use of biometric data for policing and criminal justice purposes makes a valuable contribution to public safety in Scotland.
- A public attitudes and awareness survey conducted for the Scottish Biometrics Commissioner (SBC) by ScotCen in December 2021 points to fairly high levels of public confidence in the use of biometrics for policing and criminal justice purposes in Scotland.
- There have been significant concerns about the use of biometric data in other public sector contexts in Scotland during 2021/22, but these have not extended to criminal justice or policing.
- The Scottish Police Authority (SPA) Forensic Services provides Police Scotland and the Police Investigations and Review Commissioner (PIRC) with one of the most advanced DNA interpretation and analysis capabilities in world policing. The additional sensitivity of DNA24 is particularly helpful in cold case reviews.
- Unlike other UK jurisdictions, Police Scotland do not retain images of persons on the Police National Database (PND) who are not charged or convicted, unless they already have previous convictions.
- The techniques used in Scotland by the SPA Forensic Services to interpret DNA and fingerprints seek to establish characteristics of uniqueness and adhere to international scientific standards which are independently validated and accredited.
- Police Scotland has taken a measured approach to technologies involving 'face' and has not deployed overt live facial recognition technology in Scotland. However, there are circumstances where, with appropriate safeguards, such technologies could enhance public safety.
- Since most crime is committed by men, more than 75% of biometric data records held in Scotland for policing and criminal justice purposes relate to males.
- Digital forensic techniques can recover biometric data that has the potential to enter the chain of evidence from crime scene to court. It is therefore essential that the processes and procedures underpinning such techniques are independently validated and accredited.



- There are several constitutional challenges which arise from different legal definitions of 'biometric data' across the constituent parts of the UK, especially when such data is hosted on common UK law enforcement databases.
- There is a risk that decisions may be taken at a UK-level around the future direction of UK-wide databases containing images such as PND, including decisions on inter-agency data sharing, and international facial image exchange programmes, without input from Scottish Government or the Scottish Biometrics Commissioner.
- When Scottish biometric data is hosted on UK systems, it is essential that Police Scotland and the Scottish Police Authority have the functionality to administer and maintain that Scottish data in compliance with Scottish legislation and any Codes of Practice in terms of its use.
- The Scottish Parliament should have confidence in the ways in which biometric data is acquired, used, retained, and destroyed for criminal justice and policing purposes in Scotland.
- The Scottish Biometrics Commissioner's function has received exceptional levels of cooperation and support from Police Scotland, the Scottish Police Authority, the Police Investigations and Review Commissioner, and the wider policing and criminal justice community.

# Summary of recommendations

(Made under section 32 (2) (c) of Scottish Biometrics Commissioner Act 2020)

## Recommendation 1

Scottish Government should progress a legal resolution to realign the provisions of [Section 28](#) (period of Strategic Plan) and [Section 29](#) (budget period) of the Scottish Biometrics Commissioner Act 2020, in line with the original policy intention of the founding legislation.

---

## Recommendation 2

If proceeding to implement any future expansion of the functions of the Scottish Biometrics Commissioner beyond Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner, Scottish Government and the Scottish Parliamentary Corporate Body should firstly consult with the Commissioner prior to producing a comprehensive business assessment of the likely impact on both the established function and personal responsibilities of the Commissioner.

---

## Recommendation 3

In contributing biometric or forensic data to UK policing systems, Police Scotland and the Scottish Police Authority should ensure they have the functionality to administer and maintain that Scottish data, in compliance with Scottish legislation and any Codes of Practice in terms of its use.



# Introduction

This Annual Report and Accounts (ARA) for 2021/22 has been prepared for the Scottish Parliament in accordance with the provisions of the Scottish Biometrics Commissioner Act 2020, guidance contained within the UK Government Financial Reporting Manual (FReM),<sup>2</sup> and the [Accounts Direction](#) given to the Commissioner by Scottish Ministers.<sup>3</sup> The primary audience for this report is parliamentarians, however the report is of relevance to anyone with an interest in how biometric data and technologies are used for policing and criminal justice purposes in Scotland.

In accordance with the requirements of [Section 32 \(2\)](#) of the Scottish Biometrics Commissioner Act 2020, this report for 2021 to 2022 provides the following information relative to the performance of our statutory functions:

- a. A review of issues identified by the Commissioner in the fiscal year as being relevant to the use of biometric data for criminal justice and police purposes,
- b. A review of the Commissioner's activity in that year, including the steps taken to fulfil each of the Commissioner's functions,
- c. Any recommendation by the Commissioner arising out of such activity.

Additionally, and in accordance with the requirements of [Section 31](#) of the Act, the Commissioner must:

- a. Keep proper accounts and accounting records,
- b. Prepare in respect of each fiscal year a statement of accounts, and
- c. Send a copy of the statement to the Auditor General for Scotland for auditing.

The accounts must be prepared on a going concern basis.

This report is therefore structured into five chapters the first of which is preceded by a summary of key facts, findings, and recommendations. Chapter one commences with antecedent information to introduce readers to our founding legislation and statutory purpose.

Chapter two provides performance information on the incremental build of the Scottish Biometrics Commissioner functions over most of the financial year, and chapter three provides information on progress against our statutory functions and Strategic Plan. Each of these chapters report on parallel activity and are about our performance, but it is useful to delineate them for the convenience of readers to give a more holistic insight into performance against budget over the period.

---

<sup>2</sup> Government Financial Reporting Manual: 2021/22, <https://www.gov.uk/government/publications/government-financial-reporting-manual-2021-22>

<sup>3</sup> Accounts Direction from Scottish Ministers to Scottish Biometrics Commissioner dated 20 October 2021.

Chapter four contains our accountability report including the report of the independent auditor, whilst chapter five presents our financial statements.

Due to a 12-month lag between the enacting of the primary legislation in April 2020 and the appointment of the first Commissioner in April 2021, Scottish Government subsequently amended the primary legislation via regulations which deferred the commencement of the first 4-year Strategic Plan from 01 April 2021 to 01 December 2021.<sup>4</sup>

Therefore, whilst my first ARA covers the fiscal year 2021/22, the retrospective misalignment of Section 28 (Strategic Plans) and Section 29 (budgets) of the Act means that it covers only the first four months of activity following the laying of my first [Strategic Plan](#) before the Scottish Parliament. If not addressed, this misalignment will be a recurring theme in future years and will continue to complicate reporting and audit arrangements. In turn, this may hamper the Scottish Parliament in appropriately holding the Commissioner to account for performance against budget.

For a small organisation with limited resources, this is both unhelpful and unnecessarily cumbersome. It also means that the Scottish Biometrics Commissioner is the only independent officeholder supported by the Scottish Parliamentary Corporate Body (SPCB), and accountable to the Parliament, whose financial and operational reporting periods are not aligned to the financial year.

Therefore, my very first recommendation to the Scottish Parliament is for Scottish Government to progress a legal resolution as soon as reasonably practical to return to the policy intention of the founding legislation in terms of financial and operational alignment.

### Recommendation 1

Scottish Government should progress a legal resolution to realign the provisions of Section 28 (period of Strategic Plan) and Section 29 (budget period) of the Scottish Biometrics Commissioner Act 2020, in line with the original policy intention of the founding legislation.

---

<sup>4</sup> The Scottish Biometrics Commissioner Act 2020 (Commencement) Regulations 2020, 20 August 2020: <https://www.legislation.gov.uk/ssi/2020/250/contents/made?view=plain>





# Chapter 1

## About the Scottish Biometrics Commissioner functions



# The Scottish Biometrics Commissioner Act 2020

The Scottish Biometrics Commissioner (SBC) function was established by [the Scottish Biometrics Commissioner Act 2020](#) (the Act). The Commissioner's general functions are 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 in Scotland by:

- (a) The Police Service of Scotland (Police Scotland)
- (b) The Scottish Police Authority (SPA)
- (c) The Police Investigations and Review Commissioner (PIRC)

The establishment of an independent oversight body by the Scottish Parliament was particularly significant in an area where sensitive personal biometric data are captured from people who have been arrested by the police and therefore without the usual safeguards of consent, and often in circumstances where they are at their most vulnerable.

This is equally important in circumstances where such data is obtained from materials recovered from suspects, victims of crime, or at crime scenes, and may form part of the evidential chain from crime scene to court in criminal proceedings. This includes 'virtual' crime scenes where evidential materials, including biometric data (normally images or voice) may be recovered from a range of electronic devices and other sources through for example digital forensic techniques.

The distinctiveness of the Scottish Biometrics Commissioner functions therefore is to provide independent oversight of the relevant sections of the enabling criminal procedure laws in Scotland which sanction the acquisition, retention, use, and destruction of biometric data. This involves engaging with often complex technical and ethical considerations and reporting to the Scottish Parliament on associated matters, including the overall effectiveness and efficiency of how biometric data is used for those specific purposes in Scotland.

Importantly, the definition of biometric data under the Act in Scotland is also more expansive than in other UK jurisdictions where only DNA and fingerprints qualify as biometric data under the Protection of Freedoms Act 2012. It provides that:

*“biometric data” means information about an individual’s physical, biological, physiological, or behavioural characteristics which is capable of being used, on its own or in combination with other information (whether or not biometric data), to establish the identity of an individual. This may include:*

- *Physical data comprising or derived from a print or impression of or taken from an individual’s body,*
- *A photograph or other recording of an individual’s body or any part of an individual’s body,*
- *Samples of or taken from any part of an individual’s body from which information can be derived, and*
- *Information derived from such samples*

*(Scottish Biometrics Commissioner Act 2020, [Section 34](#))*

Therefore, the legal definition of biometric data in Scotland is distinct and includes fingerprints, DNA and images captured from persons who have been arrested. It also caters for any other biometric type that may be used overtly for policing and criminal justice purposes in Scotland now or in the future, for example voice or gait recognition. Additionally, it also includes source materials such as the biological samples from which a DNA profile can be obtained, or recordings of an individual's body or any part thereof.

Those general functions do not extend to biometric data in Scotland beyond Police Scotland, the SPA, or PIRC. They also do not extend to other areas within the Scottish Government criminal justice portfolio where significant volumes of biometric data are held without consent, for example prisons<sup>5</sup>. The Commissioner's functions also do not extend to reserved policing or other matters within the authority of the UK Parliament. There are four specific examples to highlight:

1. Where biometric data is retained in Scotland as part of a National Security Determination (NSD) in relation to which the Commissioner for the Retention and Use of Biometric Materials (CRUBM) for England and Wales has a broader UK remit,<sup>6</sup>
2. Where biometric data is obtained covertly by Police Scotland or a UK policing body operating in Scotland under the Regulation of Investigatory Powers (Scotland) Act over which the UK Investigatory Powers Commissioner (IPCO) has statutory oversight,
3. Where biometric data is obtained in Scotland overtly from persons arrested by a UK wide policing body such as the National Crime Agency (NCA), British Transport Police (BTP), or Ministry of Defence Police (MDP),<sup>7</sup>
4. Any matter relating specifically to the UK Data Protection Act 2018 and UK General Data Protection Regulations (GDPR) over which the Information Commissioner (ICO) has statutory responsibility.

It should also be noted that the functions of the Scottish Biometrics Commissioner do not extend to public or private space (non-police) surveillance cameras in Scotland, or to the regulation of forensic science techniques used for policing and criminal justice purposes. Scotland does not have a Surveillance Camera Commissioner or a Forensic Science Regulator.

---

<sup>5</sup> The Scottish prison population on 31 March 2021 was 7,389 people: Source HMIPS Annual Report 2020/21

<sup>6</sup> If a person has been arrested in the UK in connection with a suspected terrorism offence but is not the subject of criminal proceedings or is not convicted, but is believed to pose a substantial threat, their biometric data may be retained. Further information on National Security Determinations can be found on the UK Government Website: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/908334/pfa2012-revised-guidance-making-renewing-national-security-determinations-retention-of-biometric-data.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908334/pfa2012-revised-guidance-making-renewing-national-security-determinations-retention-of-biometric-data.pdf)

<sup>7</sup> Scottish Government and UK Government are seeking to progress an order under section 104 of the Scotland Act to enable UK wide policing bodies to come under the jurisdiction of the Scottish Biometrics Commissioner with regard to biometric data derived from operations in Scotland.

## Shared UK policing databases and biometrics

By way of comparison with other UK jurisdictions, it may also assist readers to know that England and Wales have an entirely different biometrics and forensics oversight regime. In relation to the police use of biometric data, oversight is currently discharged by Professor Fraser Sampson in his capacity as Commissioner for the Retention and Use of Biometric Material (CRUBM). His functions in relation to police biometrics relate solely to fingerprints and DNA and not to police images. He also has a wider UK role in relation to fingerprints and DNA retained under a National Security Determination (NSD) anywhere in the UK, including Scotland. Additionally, he is also the Surveillance Camera Commissioner for England and Wales. Both former independent roles having been combined under one post holder by the Home Office in 2021. The Forensic Science Regulator for England and Wales is Gary Pugh OBE. His functions are concerned with the scientific integrity of forensic science techniques and his statutory functions do not extend to Scotland.

Scotland has its own DNA database (SDNAD), and Police Scotland operate their own Criminal History System (CHS) which contains images. Scotland does not have its own fingerprint database and instead uses a UK-wide database known as IDENT1.

Much of this Scottish data is then replicated onto common UK systems for DNA, fingerprints, and face. However, although common policing databases are used to host biometric data from throughout the UK, it is important to understand that the criminal law authorising the acquisition, retention, use, and destruction of such data is jurisdictionally distinct.

The operational policing policies, practices, and retention regimes and the criminal justice processes based on prevailing legal frameworks are also distinct; as are the ages of criminal responsibility; as are the various independent oversight regimes, where they exist. All of this creates complexity in relation to effective management and oversight.

The significance of this is that the police in one jurisdiction (for example Scotland) will sometimes have access to shared biometric data from other jurisdictions, which is retained in circumstances that would not be permitted in the home jurisdiction. Examples include:

- Police Scotland having access to images placed on the Police National Database (PND) by police forces in England and Wales from custody episodes involving persons not subsequently charged or convicted of any offence and not subsequently expunged
- Another arises from differences in the age of criminal responsibility which in England and Wales is 10 years of age, but in Scotland is now 12 years of age
- The third arises from images held by the police not being classified as biometric data in England and Wales and therefore not falling within the protection of an independent oversight regime other than on very specific matters such as data protection law providing that such images have been subjected to specific technical processing and are stored as part of a profile of an individual.

## Further reading

A detailed and technical explanation of how DNA and fingerprints are used for policing and criminal justice purposes in the UK can be found in the [Annual Report](#) of the UK Forensic Information Database Service (FINDS) of which the Scottish Biometrics Commissioner is now a member. The FINDS report also provides information and data on the UK DNA Database (NDNAD) and the UK Fingerprint Database (IDENT1).<sup>8</sup>

Additional information on how DNA and fingerprints are used for policing and criminal justice purposes in Scotland can be found on the [Forensic Services](#) pages of the Scottish Police Authority website.<sup>9</sup>

Further information on images within the Police Scotland Criminal History System and the UK Police National Database (PND) including the Facial Search facility within that database can be found in the [2016 HMICS Audit and Assurance Review of the Facial Search functionality within PND](#).<sup>10</sup>

A full guide to how DNA, fingerprints and images are used for policing and criminal justice purposes in Scotland has been prepared by my office to assist members of the public and can be found on our [website](#).

---

<sup>8</sup> FINDS Strategy Board Annual Report 2020-21: <https://www.gov.uk/government/publications/forensic-information-databases-annual-report-2020-to-2021>

<sup>9</sup> SPA Forensic Services Homepage: <https://www.spa.police.uk/forensic-services/>

<sup>10</sup> HMICS Audit and Assurance Review of the Facial Search functionality within PND, 2016: <https://www.hmics.scot/publications/audit-and-assurance-review-use-facial-search-functionality-within-uk-police-national>





# Chapter 2

## Report under Section 31 of the Scottish Biometrics Commissioner Act

# Building the Scottish Biometrics Commissioner functions: performance overview

I was appointed as Commissioner by Her Majesty the Queen on the nomination of the Scottish Parliament and took office on 12 April 2021 at a point when Scotland was still in level 4 Covid-19 pandemic restrictions. This with a mandate from the SPCB to design and deliver the new functions from the ground up, and without recourse to a predetermined blueprint beyond the significant constraints of the various financial memoranda submitted during the passage of the Bill leading to the founding legislation.

Accordingly, during the greater part of the fiscal year, business activity has focussed on the entire spectrum of necessary start-up activities, most with critical or legal sequencing dependencies to each other. I cannot overstate the difficulties of building a new function during a global pandemic, the reach of which permeated everything.

Nevertheless, significant progress was achieved, and our performance in terms of building the functions may be summarised as follows:

Period	Key milestone achievements
Quarter 1: April to June 2021	<ul style="list-style-type: none"> <li>• Design of vision, values, and corporate branding</li> <li>• Secure access to SG business ICT platform</li> <li>• Purchase ICT hardware</li> <li>• Design business file structure plans</li> <li>• Hold introductory meetings with stakeholders</li> <li>• Commence drafting Code of Practice</li> <li>• Commence drafting Strategic Plan</li> <li>• Develop draft National Assessment Framework</li> <li>• Produce 1st Quarterly Newsletter</li> <li>• Keep under review law, policy, and practice</li> <li>• Secure membership of UK FINDS Strategy Board</li> <li>• Secure membership of Biometrics Institute</li> <li>• Liaise with bodies to whom functions extend</li> </ul>
Quarter 2: July to September 2021	<ul style="list-style-type: none"> <li>• Establish SBC Act 2020 Section 33 Advisory Group</li> <li>• Commence consultation on first drafts of Strategic Plan, Code of Practice and National Assessment Framework</li> <li>• Identity potential business address as part of shared service arrangement with SPSO</li> <li>• Arrange security survey for ICT</li> <li>• Approve planning permission application for building alterations to Bridgeside House</li> <li>• Design website structure and content plan</li> <li>• Produce 2nd Quarterly Newsletter</li> </ul>

Figure No 1: Building the SBC Function: Quarterly Milestones

Period	Key milestone achievements
Quarter 3: October to December 2021	<ul style="list-style-type: none"> <li>• Launch phase 2 consultation of draft Code of Practice under Section 10 SBC Act 2020</li> <li>• Lay Strategic Plan before Parliament</li> <li>• Commence activity to recruit staff through fair and open procedures</li> <li>• Register with HMRC as employer</li> <li>• Conduct procurement exercise for website builder and hosting</li> <li>• Receive Accounts Direction from Scottish Ministers</li> <li>• Run procurement and award contract for website with SPCB assistance</li> <li>• Take possession of office premises on 12 December 2021 following building alterations</li> <li>• Corporate Services Manager and Business Support Manager start in December 2021</li> <li>• Arrange initial staff induction</li> <li>• Produce 3rd Quarterly Newsletter</li> <li>• Commission ScotCen to conduct public attitudes and awareness survey</li> <li>• 2nd meeting of Section 33 Advisory Group</li> <li>• 1st formal meeting of Advisory Audit Board</li> <li>• Keep under review law, policy, and practice</li> <li>• Liaise with bodies to whom functions extend</li> </ul>
Quarter 4: January to March 2022	<ul style="list-style-type: none"> <li>• Operations Manager appointed and staffing model complete on 17 January 2022</li> <li>• SBC Website goes live. Publication Scheme published</li> <li>• Commence the build of internal corporate policies and procedures and schemes of governance and control</li> <li>• Develop shared services arrangement with SPSO around HR, payroll, facilities management</li> <li>• Prepare for transfer of responsibility for accounting and financial administration from SPCB now that staffing model is complete</li> <li>• Cabinet Secretary for Justice and Veterans approves draft Code of Practice to be laid before Parliament (subsequently laid on 19 April 2022)</li> <li>• 3rd meeting of Section 33 Advisory Group</li> <li>• 2nd meeting of Advisory Audit Board</li> <li>• Meet with NRS to agree timescales for completion of RMP under Public Records (Scotland) Act 2011</li> <li>• 4th Quarterly Newsletter published on website</li> <li>• Introductory meeting with Audit Scotland re external audit arrangements</li> <li>• Publish National Assessment Framework</li> <li>• Conduct national data gathering snapshot exercise on 31 March 2022</li> <li>• Keep under review law, policy, and practice</li> <li>• Liaise with bodies to whom functions extend</li> <li>• Develop 1st draft of a complaints procedure to accompany the Code of Practice once introduced by regulations</li> </ul>

Figure No 1: Building the SBC Function: Quarterly Milestones (continued)



Our staffing model was finally completed on 17 January 2022, and only at that stage were we able to gather significant pace in the design and implementation of our various internal corporate policies and procedures. By the end of the financial year, that journey was advanced but not yet complete.

In anticipation of the significant lag in staff recruitment whilst the new function was designed from the ground up, it was agreed on my appointment in April 2021 that the SPCB would provide my financial and accounting services for the whole of the financial year 2021/22.

In essence, this section charts our performance in building the new function and I also make a specific recommendation that the functions of the Scottish Biometrics Commissioner should not be further expanded beyond Police Scotland, the SPA, and PIRC without any such proposal being informed by a proper business impact assessment to ensure due diligence.

# Building the Scottish Biometrics Commissioner function: performance analysis

## Issues arising from the Financial Memoranda surrounding the legislation

The most significant constraining variable determining the initial shape and form of the SBC function arises from the various and evolving Financial Memoranda (FM's) submitted in stages 1, 2 and 3 of the Bill leading to the enabling legislation. Ultimately these dictated both the remuneration level of the Commissioner and the available budget to design and build the function. Whilst these predate my appointment as Commissioner, my view, now that the function is physically established, is that these should no longer be used as a reliable basis upon which to make decisions around issues such as potential expansion of remit beyond Police Scotland, the SPA, and PIRC.

On appointment, there were three immediate constraining variables with which I had to contend.

- The first was to design the new function from the ground up to be able to discharge the functions given to me in the Act as they relate to Police Scotland, the SPA and PIRC.
- The second was to do so amidst the necessary public health constraints of an ongoing global pandemic.
- The third was the constraints of available budget based on those early financial assumptions and reassurances presented to Ministers.

In other words, the seeds of my operating model had already been sown in the various hypotheses advanced within the various Financial Memoranda which accompanied the passing of the enabling legislation.

Sometimes small is beautiful in organisational terms and bigger is not necessarily better. However, any organisation needs a minimum critical staffing mass to be able to independently operate with legal 'employer' status and to independently establish HR, Finance, ICT, and payroll functions and systems. As an independent officeholder with an exceptionally small budget this would not have been possible without having entered a shared service arrangement with the Scottish Public Sector Ombudsman (SPSO) around HR, payroll, facilities management, and certain other matters. I am extraordinarily grateful to the Scottish Public Sector Ombudsman Rosemary Agnew and her outstanding team for assisting me in this regard, and to the SPCB for approving this innovative arrangement.

As Commissioner, I have reservations about the rigour of some of the early financial assumptions leading to our founding legislation. Following my appointment, I also became aware of the content of a [published letter](#) written after the Act had taken legal effect in August 2020 which seems to suggest that the appointment of a full time Commissioner, should be predicated on the assumption that the role will be expanded in future to include the National Crime Agency, British Transport Police, and Ministry of Defence Police at no additional cost.<sup>11</sup>

---

<sup>11</sup> Letter from Cabinet Secretary to Presiding Officer 26 August 2020: [https://archive2021.parliament.scot/S5\\_JusticeCommittee/Inquiries/Letter\\_from\\_CSJ\\_to\\_PO\\_-\\_26\\_August\(1\).pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/Letter_from_CSJ_to_PO_-_26_August(1).pdf)

I am of course fully supportive of the further expansion of remit to include those UK-wide policing bodies operating in Scotland if the consent of the UK Parliament is given, and also to other areas of criminal justice. However, doubling the number of bodies to whom my functions extend, regardless of the scale of their operations, or the volume of biometric data held, will have an impact on our staff and our operations. It will require us to engage on a regular basis with those UK-wide bodies, their respective chief officers and oversight bodies, and the respective UK Ministers with relevant portfolio responsibilities, and potentially the UK Parliament. We have this issue recorded in our Strategic Risk Register as a very high risk to the delivery of our Strategic Plan should Scottish Ministers expand our remit without providing additional resource.

Therefore, I recommend that if considering any future expansion of remit, including to other areas of criminal justice such as other policing bodies or perhaps to prisons, it is done without reliance on those early FM's presented pre or post the Act receiving Royal Assent.<sup>12</sup> Should such circumstances materialise, I would welcome the opportunity to assist in the production of a comprehensive business impact assessment of any proposal made.

## Recommendation 2

If proceeding to implement any future expansion of the functions of the Scottish Biometrics Commissioner beyond Police Scotland, the SPA, and PIRC, Scottish Government and the SPCB should consult with the Commissioner before producing a comprehensive business assessment of the likely impact on both the established function and personal responsibilities of the Commissioner.

With only three members of staff there is also a latent risk to the continuity of our business operations. For example, if one member of staff was on leave and another off sick then 66% of our staffing would be temporarily unavailable. We will seek to partially mitigate this by developing some cross-functionality within the team. Our tiny scale also dictates that the Commissioner must be 'hands on' and fulfil strategic, tactical, and operational functions. This is not in keeping with the traditional Chief Executive Officer status of an independent officeholder, however this is what the Scottish Parliament determined based on the Financial Memoranda which accompanied the Bill leading to the founding legislation.

In addition, our Strategic Risk Register highlighted two 'very high' risks (as below) which we rigorously monitor and have embedded mitigating actions to reduce these risks:

- We fail to deliver the Strategic Plan and fulfil our statutory duties due to not securing sufficient budget resources or inability to influence external factors / environment
- We fail to maintain and implement business continuity and cyber resilience plan

<sup>12</sup> For example, expansion of remit to include the National Crime Agency, British Transport Police and Ministry of Defence Police. It should be noted that the Civil Nuclear Constabulary do not have user access to the UK DNA Database (NDNAD), IDENT1 for fingerprints, or PND for images.

## Our ICT platform

We use the Scottish Government's core SCOTS/eRDM system as an external paying customer.

## Data protection and cyber security

We utilise SCOTS Connect to host our network services to provide a safe and secure digital environment. SCOTS is the name for the Scottish Government's range of managed IT services and products that hold Cyber Essentials Plus accreditation. Our emails are sent over the secure Public Services Network (PSN) and all traffic is scanned for inappropriate or harmful content, which protects our systems, people, and data. Our website is hosted on our behalf by [Gecko](#) who also hold the relevant data protection and cyber security accreditations.

Due to the nature of our business which engages with the subject of biometric data in a policing and criminal justice context we have a policy which prohibits the use of all portable storage devices such as external hard drives or pen drives. Staff are also prohibited from printing any protectively marked reports or materials received from Police Scotland, the Scottish Police Authority or Police Investigations and Review Commissioner.

There is also a specific criminal offence provision in [Section 19](#) of the Scottish Biometrics Commissioner Act 2020 which creates an offence of the Commissioner's office disclosing third party confidential information, unless it is necessary for the exercise of the Commissioner's functions under the Act.

We have a member of staff who as part of their role performs the function of Information Management Security Officer (IMSO). We also have access to the professional advice of a data protection officer (DPO), employed by the SPCB who is available to provide support, assistance, and advice.

During 2021 to 2022 there were no data protection or security matters identified that would meet the threshold for reporting to the Information Commissioner's Office (ICO). Our Information Governance handbook was still under development at the end of the reporting period and will be published on our website once finalised.

During 2022/23 we will explore options to mitigate the high risks that we have recorded in our Strategic Risk Register in terms of cyber resilience. Notwithstanding that we operate on a secure Scottish Government backed ICT platform and secure website, we acknowledge the need to develop a cybersecurity strategy to respond to cybersecurity incidents which continue to grow worldwide in terms of both complexity and frequency.



## Setting our corporate identity, vision, and values

In 2021 we established the brand identity for the Scottish Biometrics Commissioner function to begin to position the new body as a trusted voice within the existing policing and

criminal justice landscape in Scotland, the UK, and beyond. The various component parts of our corporate identity, vision, and values are summarised as follows:

---

### Our corporate identity

Our corporate logo comprises two key elements:



**Scottish Biometrics  
Commissioner**

Coimiseanair  
Biometrics na h-Alba

The badge comprises of a representative symbol of a human fingerprint (dactyloscopic data) which is one of the most common forms of biometric and forensic data collected worldwide for policing purposes

The unique text expression 'Scottish Biometrics Commissioner' is replicated from the enabling legislation and is produced in English and Scottish Gaelic.

---

### The tagline for the logo

Our tagline to accompany our corporate logo '**Safeguarding our biometrics future**' is intended to be inclusive and convey on our publications what we are trying to achieve as a strategic outcome.

### Our purpose and vision

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 in Scotland. In other words, we seek to balance the needs of law enforcement and criminal justice with the human rights of private citizens.

## Our values

As a values-led organisation, it is important that we 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 Her Majesty the Queen on the nomination of the Scottish Parliament and is independent of Scottish Government.

### 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.

### 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.

### 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.



Figure No 2: The Values of the Scottish Biometrics Commissioner

## Establishing a professional Advisory Group

Under [Section 33](#) of the Act, I am required to establish and maintain an Advisory Group. The Advisory Group does not form part of our internal governance arrangements but instead its purpose is to give advice and information to the Commissioner about matters relating to the Commissioner's functions.

The first meeting of the Advisory Group was convened (virtually) on 19 July 2021 during the ongoing design phase and physical build of the SBC function and around four months before the first member of staff was appointed.

Over the summer and autumn months of 2021, I was able to secure the assistance of my Advisory Group in helping to shape the form and content, of drafts of my first Strategic Plan; Code of Practice; National Assessment Framework and a range of other matters. There were further meetings of my Advisory Group in November 2021 and February 2022. The full membership, minutes, agendas, and actions arising from these meetings can be found on our [website](#). Terms of reference for the Advisory Group can also be viewed on our [website](#).

## Establishing an Advisory Audit Board (AAB)

As part of its governance arrangements, the Scottish Parliamentary Corporate Body (SPCB) has established an Advisory Audit Board (AAB) to perform a function like that of an Audit Committee. The main purpose of the AAB is to provide advice to the Clerk/Chief Executive of the Parliament and, where appropriate, the SPCB on the standard of corporate governance and internal control across the organisation.

Parliamentary Commissioners have access to the services of the AAB. This provides a mechanism for the AAB to oversee the management of risk and audit issues within the office of the Scottish Biometrics Commissioner and to advise the Commissioner on matters relating to good governance. This includes:

- Financial reporting
- Internal controls, performance, and risk management systems
- Whistleblowing
- Internal audit
- External audit

The members of my Advisory Audit Board (AAB) are Andy Shaw and David Watt whose profiles and declaration of interest may be viewed on our [website](#). Minutes from our AAB meetings can also be viewed on our [website](#).

## Establishing and building strategic relationships

Due to my background in policing and criminal justice over the past four decades in Scotland and having significant practical and leadership experience in the use of biometric technologies and data for those purposes, the task of establishing and building strategic relationships (even in a pandemic) was significantly more straightforward than it might otherwise have been.

Shortly following my appointment, I had introductory meetings with those to whom my functions extend including members of the Chief Officer team within Police Scotland; the Chair, Chief Executive, and Director of Forensic Services at the SPA; the PIRC Commissioner and Director of Operations; HM Chief Inspector of Constabulary in Scotland; the Chair of the Scottish Parliament Criminal Justice Committee; other Parliamentary Commissioners; Scottish Government officials, and a long list of significant others.

In a UK context, I meet regularly with the Biometrics and Surveillance Camera Commissioner for England and Wales, and we both sit as members of the UK Forensic Information Databases Service (FINDS) which is the strategic forum which oversees the management of the UK DNA and Fingerprint databases.

I have also had discussions with Scottish Government officials based at Scotland House in Brussels and have sought to engage with Europe and internationally. This is important as when our Code of Practice takes effect under regulations made by the Scottish Parliament, Scotland will become the first country in the world to have a statutory Code of Practice on the acquisition, use, retention, and destruction of biometric data for criminal justice and policing purposes. This will be a significant human rights achievement for Scotland.

In March 2022, my office [submitted a briefing](#) on the new policy and legislative framework introduced in Scotland to the UN Human Rights Council for consideration as part of the 4th cycle of the Universal Periodic Review (UPR) of the United Kingdom.

Until our website went live in January 2022, I prepared and circulated by e-mail a series of quarterly newsletters to update parliamentarians and the policing and criminal justice community on progress with building the new function. In 2021 to 2022, I published newsletters in June, September, December, and February. Our newsletters can be viewed on our [website](#).



## Our Strategic Plan 2021 to 2025

Over the summer and autumn months of 2021, I consulted widely on the shape and form of my first Strategic Plan, and with the approval of the SPCB, on 24 November 2021 my first Strategic Plan covering the period from 01 December 2021 to 30 November 2025 was laid before the Scottish Parliament.

The SBC Strategic Plan contains four strategic priorities directly derived from the requirements of the Act:

The four strategic priorities from our Strategic Plan 2021 to 2025	
1	Keep under review and report on the law, policy, and practice relating to the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland
2	Promote public awareness and understanding of criminal justice and policing sector powers and duties in relation to biometric data, how these powers are exercised, and how the exercise of these powers can be monitored or challenged
3	Develop, publish, promote, and assess compliance with a statutory Code of Practice on the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland
4	Provide reports to the Scottish Parliament on the outcomes from the use of biometric data and technologies and highlight key issues to inform public debate, thus strengthening democratic accountability.

Figure No 3: Our 4 strategic priorities

The Strategic Plan relates to the discharge of the functions as set out in the Act, and solely in relation to the bodies specified in the Act, or in other words Police Scotland, the SPA, and PIRC. It does not cater for any expansion of function which may or may not arise, for example expansion to UK-wide policing bodies operating in Scotland.

In year one of our Strategic Plan covering the period from 01 December 2021 to 30 November 2022 there are six specific outputs. In terms of timetables, two of those outputs fall within the fiscal year reporting period for this 2021/22 annual report and both have been achieved:

1. To publish a National Assessment Framework for biometric data by February 2022
2. Provide a public information hub on the Commissioner's website in January 2022.

The remaining four outputs for year one of our Strategic Plan covering the period from 01 December 2021 to 30 November 2022, fall due for delivery in fiscal year 2022/23. Likewise, our Strategic Plan has 15 Key Performance Indicators (KPIs) for each year covering the period 01 December to 30 November. However, due to the legislative misalignment of our reporting periods for finances and performances under Section 28 of the Act (Strategic Plan) and Section 29 (budgets) I am unable to report on progress against our specified KPI's until my next ARA in 2022/23, other than to say that I believe we will achieve our targets on all KPIs specified.

Our Strategic Plan 2021 to 2025 may be viewed on our [website](#).

## Establishing our website

Over the summer and autumn months, and prior to the arrival of staff, I had initiated activity to determine my business requirements in terms of a public facing website. I had determined at the outset that I would not spend any public money on consultants' fees in any area where I had the skills and experience to do the relevant task myself.

Accordingly, to assist me in securing the services of a website builder and hosting service, I had personally designed a non-technical website structure and content plan and had populated the content plan before seeking the assistance of the SPCB to procure the services of a website builder.

Our website went live in January 2022 and can be accessed via the following link:

<https://www.biometricscommissioner.scot/>

## Our National Assessment Framework

In January 2022, we published our National Assessment Framework for biometric data outcomes. This assessment framework is based on the Public Sector Improvement Framework (PSIF) methodology in Scotland developed by the Improvement Service. The Framework, together with our forthcoming Code of Practice is intended to provide both a self-assessment framework for those to whom our legal jurisdiction extends, and to serve as a mechanism through which we can assess biometric data outcomes in support of the national outcomes for Scotland.

## Meet the team

In December 2021 and January 2022, the team at the office of the Scottish Biometrics Commissioner came together for the first time with the staffing model being complete on 17 January 2022.

As Commissioner, I was delighted to be joined by:

- Cheryl Glen  
as Corporate Services Manager
- Diego Quiroz  
as Operations Manager
- Joanna Milne  
as Business Support Officer

Further details of our team can be found on the [‘Who we are’](#) pages of our website.

## Finalising the corporate build

Following the on boarding of staff by the final quarter of 2021/22, we were able to significantly escalate the design and build of our corporate policies and procedures, our Scheme of Governance and Risk Management and our Risk Management Policy and Strategic Risk Register. By the end of the financial year much of that work was well advanced but some was still ongoing.

## SBC Scheme of Internal Control - Overview

The SBC Scheme of Governance and Control (the Scheme) is a series of protocols and policies through which the Commissioner demonstrates they are meeting their responsibilities as the Commissioner and as the Accountable Officer. It also demonstrates the assurances they receive and the external scrutiny to which they are subject to.

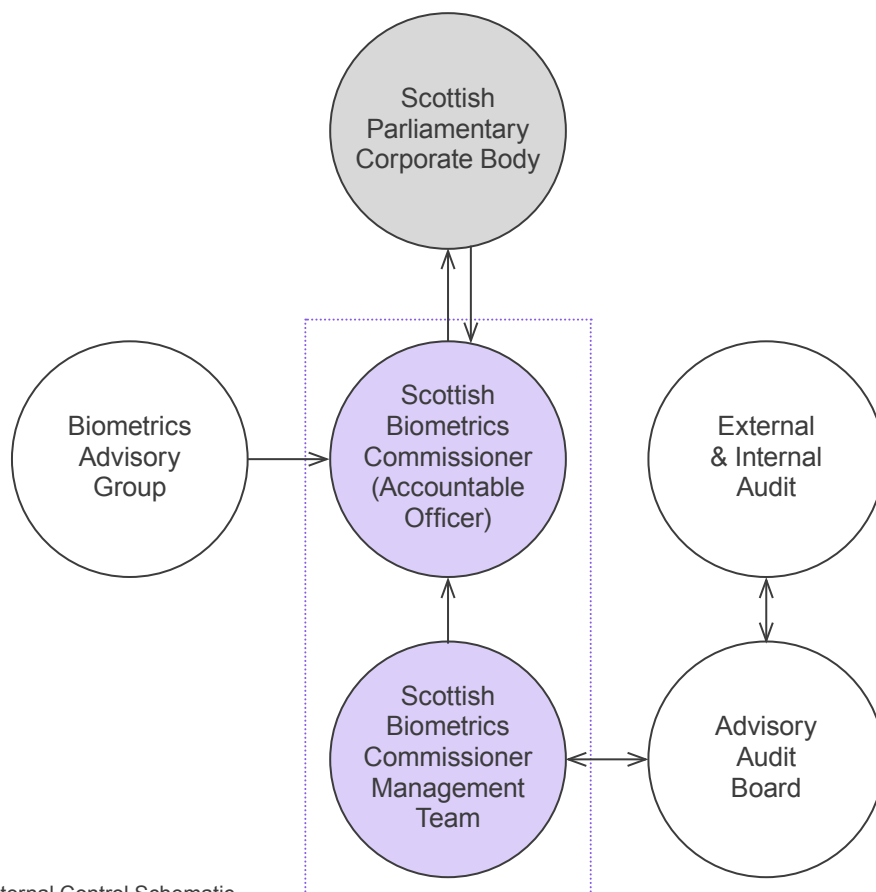


Figure 1: Scheme of Internal Control Schematic

## SBC Scheme of Internal Control (continued)

The Scheme is supported by a Risk Management Policy and Strategic Risk Register, both of which were nearing completion at the end of the financial year but are yet to be finalised and signed off by our AAB. These define how the SBC monitors and manages risk in respect of:

- Achievement of, and compliance with statutory obligations
- Achievement of strategic and operational objectives
- Establishment of, and compliance with, effective financial controls
- Achievement of, and reporting on, effective and efficient operational performance
- Effective asset management
- Ensuring the wellbeing of staff
- Developing and maintaining strategic relationships with partners and safeguarding the SBC's professional reputation

### The key features of the Scheme are:

- The Commissioner is the Accountable Officer
- The Commissioner sets the strategic objectives and priorities, support by the SBC Management Team (Operations Manager, Corporate Services Manager and Business Support Officer)
- The Commissioner leads the SBC Management Team which has overall responsibility for the development of the SBC function
- The Operations Manager is responsible for external operations including maintaining and ensuring compliance with the statutory Code of Practice (once brought into effect by regulations) on biometric data by bodies to whom our functions extend, and for delivery of our external assurance function. The Operations Manager also has responsibility for investigating, monitoring, and reporting on complaints made to us about potential non-compliance with our Code of Practice
- The Corporate Services Manager is responsible for internal corporate and business functions including investigating, monitoring, and reporting on customer service complaints. The Corporate Services Manager is also responsible for day-to-day financial and asset management and for the keeping of proper records and accounts. The Corporate Services Manager also has responsibility for our Records Management Plan (RMP) and ensuring compliance with Data Protection, Freedom of Information, and Subject Access obligations

- The Business Support Officer reports to the Corporate Services Manager and is responsible for all business support functions, including the maintenance of the public facing website and inbound and outbound correspondence. The Business Support Officer is also the designated Information Management Support Officer (IMSO) with responsibility to ensure that official records on the Electronic Records Document Management (ERDM) system are properly managed in line with statutory obligations
- All decisions by managers must be taken in line with the Scheme of Delegation and approved policies and procedures. The Scheme of Delegation was nearing completion at the end of the financial year and will go to our next AAB
- The Advisory Group on Biometric Data is established and maintained in accordance with the provisions of Section 33 of the Scottish Biometrics Commissioner Act 2020. This is a biometrics subject expert group with the function to give operational advice and information. It does not form part of the internal governance arrangements of the SBC
- External scrutiny, and where appropriate advice, is provided by external auditors appointed by the Auditor General for Scotland; the Commissioner's Advisory Audit Board; internal auditors appointed by the Commissioner, and on an ad hoc basis by the Scottish Parliamentary Corporate Body (SPCB) for those areas about which it can give direction or hold the Commissioner accountable.

## Complaints about us

During 2021 to 2022, and in parallel with the entire spectrum of necessary start up activities for a new public body we developed a procedure for complaints made about us in line with the Scottish Public Sector Ombudsman (SPSO) Model Complaint Handling Procedure (MCHP). Our MCHP was approved by the SPSO and can be viewed on our website.

Perhaps unsurprisingly, as a new public body under construction for most of 2021/22 we received no customer service complaints during the fiscal year.

## Freedom of Information and environmental information requests

We have adopted the Scottish Information Commissioner (SIC) Model Publication Scheme, and we publish a guide to the information that we make available on our [website](#).

During 2021 to 2022 we received no Freedom of Information requests and no Subject Access requests.



## Our people

Our organisation comprises of four people who are all employed on a full-time basis. Those are the Commissioner, a Corporate Services Manager, Operations Manager, and a Business Support Officer. Our overall female to male ratio is 50:50.

As a brand-new organisation, staff have undertaken mandatory induction training on issues such as cyber security, Freedom of Information, Subject Access Requests, GDPR, and website publication and general records management. We have also identified some role specific training needs that we will progress during 2022/23 in areas such as complaints handling investigations.

During 2021/22, and including the Commissioner there were no instances of staff sickness. Our attendance rate was therefore 100% and our sickness rate 0%. This should however be interpreted against the context of the staffing model being completed in the final quarter of 2021/22.

As part of safe working arrangements during the pandemic we were mainly home-based up to and including the end of the financial year. Looking to the future, we have adopted a permanent hybrid working model to afford flexibility to staff in accordance with the needs of the business.

## Shared service agreement with SPSO

Once Bridgeside House and the SCOTS network became viable propositions in July 2021, I then entered a shared service arrangement with the Scottish Public Sector Ombudsman (SPSO). This arrangement involves:

### Facilities

- Facilities management, security
- Finance support for property and running costs (through the Bridgeside House Management Group and Building Coordinator)
- Shared front of house services - business address, serviced reception/front of house, mail services
- Shared telephony system
- Shared spaces - board room, training room, video conferencing facilities, shared kitchen space

### Corporate services

- Health and Safety support
- ICT procurement and support
- Finance management including monthly and annual accounts (through a contracted service)
- HR support services, including initial recruitment support
- Payroll

## Shared Services staffing cost supplement

To enable SPSO to incorporate a shared service function for Corporate Services for another body, the SBC funds 0.6 x Pay band 1 of a member of SPSO staff. This was approved by the SPCB.

## Finance

During 2021/22, the processes for managing costs and expenditure against budget were:

### Set up costs

The SPCB covered all set-up costs for the Commissioner, and any reconfiguration or changes required by the SPSO to accommodate the Commissioner. These costs were invoiced directly to the SPCB, including any overtime requirements for approval by the Commissioner.

### Operational expenditure

The Commissioner's expenditure against budget was drawn down to the SPSO bank account directly from SPCB and managed by the finance team with appropriate sign-off by the Commissioner. This expenditure is clearly identified in the SPSO accounting system by using a separate department cost centre.

The Commissioner's operational expenditure managed by the finance team included:

1. Payroll
2. Proportions of shared application costs and licence fees, such as payroll application (MoorePay)
3. Any other Commissioner's costs on invoice, as approved by the Commissioner.

Property and associated running costs are incorporated in the Bridgeside House budget and expenditure. Monthly Management Reports provide clear oversight of all expenditure attributed to the SBC.

## Bridgeside House accommodation

We occupy a single self-contained office in a building that houses several bodies supported by the SPCB including the Scottish Public Sector Ombudsman (SPSO), the Scottish Human Rights Commission (SHRC), and the Children and Young People Commissioner for Scotland (CYPCS). Our office area is entirely secure and accessible only to SBC staff via a coded entry fob system.

## Environment and biodiversity

Within the Bridgeside House shared accommodation arrangement, SPSO as the primary tenant, have responsibility for reporting on the waste and energy carbon emissions for all four organisations.

The [Nature Conservation \(Scotland\) Act 2004](#) places a statutory duty on all public sector bodies in Scotland to further the conservation of biodiversity and the [Wildlife and Natural Environment \(Scotland\) Act 2011](#) by introducing a requirement for all public bodies to make a report publicly available on their compliance with biodiversity duty. Biodiversity duty reports are required every three years.

We do not own or manage land and therefore have more limited opportunity to carry out activities for biodiversity than organisations that own or manage land. Nevertheless, we support biodiversity through the adoption of a hybrid working model and virtual meeting technologies to minimise our carbon footprint. When in the office we minimise waste and reduce waste to landfill by recycling.

During the financial year, the Commissioner made no business journeys by air, and only one business train journey. As the holder of an over-60 bus pass, the Commissioner is mostly able to travel in an environmentally friendly way that has no budgetary implications for the public purse. No mileage claims were made by the Commissioner during 2021/22.

In all our activity, we are mindful of the need for public bodies leadership on the global climate emergency. Through hybrid working arrangements, environmentally friendly business travel, and virtual meetings technologies we strive to contribute to helping deliver Scotland's Climate Change Adaptation Programme.

Against this context, it should be noted that our physical office only became available for occupation in mid-December 2021, and our staffing model was only complete in mid-January 2022, therefore it will be financial year 2022/23 before we have gathered sufficient data such as energy usage to baseline our initial carbon footprint.

## Financial overview

The Financial Memoranda accompanying the Scottish Biometrics Commissioner Bill estimated that funding of £619k would be required for set-up and year one running costs. As a result of decisions made by the Commissioner, including being co-located at Bridgeside House and entering into a shared services agreement for administrative services with the Scottish Public Services Ombudsman which resulted in a reduced staffing complement, considerable savings were achieved.

Total funding requested by the Scottish Parliamentary Corporate Body for the Scottish Biometrics Commissioner for set up and year one costs in 2021/22 via the Spring Budget Revision to the Budget (Scotland) Act 2021 was £301,000. This was based on the latest estimates for set up and running costs for the year.<sup>13</sup>

£278,000 of the funding transferred was accessed by the SPCB.

## Financial position

In terms of financial analysis our total expenditure on running costs for 2021/22 was £294,000 against our budget of £301,000 but after non cash adjustments funding of £278,000 was required from the SPCB, an underspend of £23,000 against the budget. Variances against budget arose from the staff recruitment lag due to several other implementation dependencies and doing non-technical design in-house on the website structure and content plan.

The main areas of outturn are:

	Note	2021/22 £'000
Staffing and pension costs	3	149
Administration costs	5	81
<b>Net operating cost</b>		<b>230</b>
Capital expenditure	6	64
<b>Total expenditure</b>		<b>294</b>
Non cash adjustments (depreciation and increase in trade and other payables at year end)	6, 7	(16)
<b>Funding required from SPCB</b>		<b>278</b>

Table No 1: Finance Position

Capital expenditure in 2021/22 was on fit out costs, furniture and fittings and IT kit. More information is available within the financial statements and notes to the accounts.

As indicated, for most of 2021/22, the SBC has been, and to a certain extent still is a 'work in progress'. However, I also believe that important work such as this takes time, therefore we will continue to evolve and develop as a learning organisation as we seek to position ourselves as a trusted voice within the policing and criminal justice sector in Scotland, the UK, and internationally.

<sup>13</sup> Source, spring budget revision 2021/22 – Budget (Scotland) Act 2021 Amendment Regulations 2022 – included with the Scottish Parliamentary Corporate Body funding changes.







# Chapter 3

## Report under Section 32 of Scottish Biometrics Commissioner Act 2020

# Performance summary

## Introduction

[Section 2](#) of the Scottish Biometrics Commissioner Act 2020 sets out our statutory functions. Section 2 (3) of the Act then directs that in exercising those general functions, the Commissioner is to:

- (a) Keep under review the law, policy and practice relating to the acquisition, retention, use, and destruction of biometric data by or on behalf of the persons referred to in subsection (1) [Police Scotland, the SPA, and PIRC],
- (b) Promote public awareness and understanding of the powers and duties those persons have in relation to the acquisition, retention, use, and destruction of biometric data, how those powers and duties are exercised, and how the exercise of those powers and duties can be monitored and challenged,
- (c) Promote, and monitor the impact of, the Code of Practice

In our Strategic Plan covering the period from 01 December 2021 to 30 November 2025, these three legislative imperatives translate directly into three of our four strategic priorities. The fourth strategic priority that we have added is:

- ‘Provide reports to the Scottish Parliament on the outcomes from the use of biometric data and technologies and highlight key issues to inform public debate, thus strengthening democratic accountability’.

Accordingly, this section of our Annual Report and Accounts details our performance in pursuit of the first three of these strategic priorities, and by reporting our findings to the Scottish Parliament it contributes to the fourth.

It is worth mentioning that Section 2 (6) of the Act provides that in exercising those general functions, the Commissioner must have regard to the interests of (a) children and young persons, and (b) vulnerable persons. For this reason, we have scheduled a two phase thematic review of the acquisition, retention, use, and destruction of biometric data relating to children and young persons, and vulnerable persons towards the end of 2022. This is intentionally timed to coincide with the first anniversary of [The Age of Criminal Responsibility \(Scotland\) Act 2019](#) which took effect on 17 December 2021.

Our Strategic Plan was laid before the Scottish Parliament on 24 November 2021 and covers the period from 01 December 2021 to 30 November 2025 for the reasons of legislative misalignment as previously discussed. Therefore, the greater part of the financial period to which this report relates was in advance of our first Strategic Plan taking effect. Nevertheless, in this section of our Annual Report and Accounts we provide progress against those strategic priorities.

This section therefore commences by setting the strategic context on contemporary debates around biometrics to help readers understand why the topic is sometimes controversial. I also provide information to the Scottish Parliament on the main biometric databases used for policing and criminal justice purposes in Scotland and offer comment on their effectiveness and efficiency. In doing so, we note that the SPA Forensic Services provides Police Scotland and PIRC with one of the foremost DNA profiling and analysis capabilities available in world policing, and in advance of the UK standard.

I explain how the science of DNA and fingerprint analysis is based on independently validated and accredited scientific techniques which seek to establish characteristics of uniqueness, and their value in fixing or helping to establish identity as part of the criminal justice process. I contrast this with the less reliable use of facial search or facial recognition technologies which look for characteristics of similarity and which are mostly not independently validated or accredited to an international scientific standard.

I also provide metrics on volumes of biometric data held for these purposes in Scotland during a national data gathering 'snapshot' arranged for the last day of the financial year on 31 March 2022. For the convenience of readers, the key points from this data gathering exercise are summarised in the key facts' graphic at the start of this report.

In this section I also discuss some constitutional issues and considerations which arise from different definitions of what constitutes 'biometric data' in different parts of the UK. As part of that, I discuss the aggregation of Scottish data acquired under the distinct legal system in Scotland to common UK policing databases and the need for necessary safeguards. I make one recommendation on this topic which mirrors a key finding previously made by HM Chief Inspector of Constabulary in Scotland (HMICS). I view it as essential that Police Scotland and the Scottish Police Authority have the functionality to administer Scottish biometric data held on UK databases to ensure the observance of the laws of Scotland on such data, and any codes of practice in terms of its use.

I also make comment on digital forensics which is a collective term used to describe various processes through which the police can recover electronic evidence, including biometric data, from devices such as smartphones, laptops, computers, and numerous other sources. I note that Police Scotland intends to pursue quality accreditation of its digital forensics laboratory work to ensure the integrity, validity, and reliability of data (including biometric data) which may be recovered through such techniques, and which has the potential to enter the chain of evidence from crime scene to court.

# Performance analysis

## Strategic context around biometric data and technologies

In the financial year 2021/22, there were 96,821 custody episodes at Police Scotland custody facilities throughout Scotland.<sup>14</sup> As most crime in Scotland is committed by adult males, 75% of all biometric data records held in Scotland for policing and criminal justice purposes relate to males.<sup>15</sup>

The [Criminal Procedure Scotland Act 1995](#), as amended, is the primary legislation in Scotland which allows the police to capture fingerprints and DNA from people who have been arrested to verify and fix their identity.<sup>16</sup> There is no explicit provision for taking of photographs although it may be implied that the terms of Section 18 of the 1995 Act cover this matter. There is not specific statutory provision which regulates the retention of photographs in Scotland or indeed the way in which such items may be used. The number of people arrested by the police in Scotland has declined consistently over the past three decades in line with falling levels of crime in Scotland.<sup>17</sup> I have included plans to conduct a full review of the laws of retention in Scotland in year two of my Strategic Plan and so this is an area that will be covered in a future annual report.

Over the reporting period 2021/22, the use of biometric data for criminal justice and policing purposes in Scotland has not been associated with the types of reputational concerns that have arisen in other public sector contexts attracting the attention of the popular media and the Scottish Parliament.

By contrast, in October 2021 there were exchanges in the Scottish Parliament about the use of facial recognition technology on pupils in secondary schools in North Ayrshire as a means of administering school meals through contactless payments.<sup>18</sup> Then in February 2022, the UK Information Commissioner (ICO) formally reprimanded Scottish Government and NHS Scotland for failure to comply with UK GDPR in relation to the NHS Scotland Covid Status App by allowing the third party App provider to retain facial images provided by the user during the registration process for five days in order to train their proprietary facial recognition algorithms.<sup>19</sup>

---

<sup>14</sup> Source, Police Scotland management information.

<sup>15</sup> published statistics on the Scottish DNA Database on the SPA Forensic Services page of the SPA website. [pdf-20220706-scottish-dna-database-stats-may-2022.pdf \(spa.police.uk\)](#)

<sup>16</sup> Details on arrest and custody procedures may be found in the [Criminal Justice \(Scotland\) Act 2016](#)

<sup>17</sup> Recorded crime remains at low levels, Scottish Government: <https://www.gov.scot/news/recorded-crime-remains-at-low-levels/>

<sup>18</sup> Facial recognition tech in schools is disproportionate, says Sturgeon: The Times, 28 October 2021: <https://www.thetimes.co.uk/article/facial-recognition-tech-in-schools-is-disproportionate-says-sturgeon-x626txngq>

<sup>19</sup> ICO investigation into the NHS Scotland Covid Status App - Reprimand for failure to comply with UKGDPR: <https://ico.org.uk/media/about-the-ico/documents/4019703/sg-nhs-nss-reprimand-20220224.pdf>

In a contemporary UK policing context, the police and criminal justice use of DNA and fingerprints is well established. Each seeks to establish characteristics of uniqueness and in terms of forensic analysis both are independently validated and accredited to international scientific standards. By contrast, biometric technologies interpreting ‘face’ look for characteristics of ‘similarity’ and do not adhere to the same stringent standards of accreditation, raising legitimate questions around the validity and reliability of the underpinning scientific techniques, and the output from such technologies where they are used.

In relation to ‘face’, biometric enabled surveillance technologies in UK jurisdictions outside of Scotland have also been the subject of intense debate. For example, in England and Wales, my counterpart has highlighted concerns around policy and practice surrounding the use of Live Facial Recognition (LFR) by the police.<sup>20</sup> On 22 March 2022, he also published an [open letter](#) to the Chair of the National Police Chiefs’ Council (NPCC) expressing concerns about the police partnering in procurement arrangements with surveillance technology companies involved in facilitating the surveillance-enabled atrocities in Xinjiang, China.<sup>21</sup> This led to UK Government intervention.

In a European context, there have been discussions under the Prüm II data-sharing proposals announced in December 2021 for member states to participate in the building of a large-scale shared facial recognition database. It has been suggested that these proposals will allow European states to share photographs from the driving licence image of innocent citizens.<sup>22</sup> As the UK retains membership of Prüm 1 (relating to international data sharing of fingerprints and DNA) under the terms of the European withdrawal agreement, it is unknown at this stage as to whether the UK Government will be participating in these proposals.

Over the reporting period, there have been no such controversies or concerns publicly expressed about the use of biometric data and technologies in a policing and criminal justice context in Scotland. Police Scotland have not deployed overt biometric-enabled live facial recognition technologies in Scotland. In 2020, Police Scotland also confirmed that they had no plans to do so at that time, after an enquiry by the former Justice Sub Committee on Policing noted in evidence that the facial recognition software in use in other UK jurisdictions was known to discriminate against females, and those from black, Asian, and ethnic minority communities.<sup>23</sup>

---

<sup>20</sup> Police warned against ‘sinister’ use of facial recognition to find potential witnesses not just suspects, Sky News, 04 April 2022: <https://news.sky.com/story/police-warned-against-sinister-use-of-facial-recognition-to-find-potential-witnesses-and-not-just-suspects-12582176>

<sup>21</sup> Letter to Martin Hewitt NPCC Chair 22 March, published 6 April, Home Office: <https://www.gov.uk/government/publications/letter-from-the-biometrics-and-surveillance-camera-commissioner-to-martin-hewitt-npcc-chair-22-march-2022/letter-from-biometrics-and-surveillance-camera-commissioner-to-martin-hewitt-npcc-chair-22-march-2022-accessible>

<sup>22</sup> Europe is building a huge international facial recognition system, Wired.UK: <https://www.wired.co.uk/article/europe-police-facial-recognition-prum>

<sup>23</sup> Facial Recognition: How policing in Scotland makes use of this technology, Scottish Parliament, 2020: <https://digitalpublications.parliament.scot/Committees/Report/JSP/2020/2/11/Facial-recognition--how-policing-in-Scotland-makes-use-of-this-technology>



Against this introductory context, I now turn to provide some analysis of our performance against our strategic priorities.

## Strategic Priority 1

Keep under review the law, policy and practice relating to the acquisition, retention, use, and destruction of biometric data by or on behalf of Police Scotland, the Scottish Police Authority, and Police Investigations and Review Commissioner.

In parallel with activity to design and build the new Scottish Biometrics Commissioner function, I have been able to engage regularly with the bodies to whom my functions extend and have kept under review the law, policy and practice relating to the acquisition, retention, and use of biometric data in areas within my jurisdiction.

For ease of presentation, I will segment what I have examined and what I have found by each of the main types of biometric data used for policing and criminal justice purposes in Scotland, before turning to identify some constitutional matters arising from what I have found.

## DNA in the criminal justice process in Scotland

DNA is Deoxyribonucleic Acid. This is the genetic material which can be found, although not exclusively, in the nucleus (centre) of most cells in the body.<sup>24</sup> It contains a person's genetic information – it is a genetic 'code' unique to each of us. We inherit 50% of this DNA from our mother and 50% from our father. Our DNA determines the colour of our eyes, our hair colour, and many other physical characteristics. The DNA in a person's body is the same regardless of which body fluid or cell type it comes from. It is therefore possible to create a DNA profile from samples such as blood, saliva, semen, hair roots, etc.

In forensic science, the process of analysing DNA is referred to as DNA profiling and involves targeting specific parts within the DNA known as Short Tandem Repeats (STRs). DNA profiling in Scotland looks at 24 areas of a person's DNA – a significant step up from the 11 areas that made up previous DNA profiling technology and an advance on the 17 areas used by other UK police forces which is the European standard. The additional sensitivity of DNA24 is particularly helpful in providing scientific insights during cold case reviews where biological samples may have degraded over time.

<sup>24</sup> Commonly referred to as nuclear DNA as distinct from other forms of DNA found in other parts of cells such as mitochondrial DNA. The UK National DNA Database (NDNAD) is a repository of nuclear DNA data.

This technology makes it possible to compare a DNA profile from a person, known as a reference sample, with a DNA profile from a 'crime' sample, i.e. from the scene of a known crime. If there is a match between the DNA profile from the person and that of the crime sample, it can be stated in terms of probability. For example, the probability of two persons who are not related to each other having an identical DNA profile is more than one in a billion. This explains why DNA has become so important in criminal investigations as it can be used to exclude an individual as a source of DNA or to contribute to establishing presence at a crime scene. A DNA match on its own however, without other evidence would not be enough to establish guilt.

## The Scottish DNA Database

The SPA Forensic Services and Police Scotland jointly operate and maintain the Scottish DNA Database which is held in Dundee. When a suspect is arrested, the police have the right to take a DNA sample, usually a mouth swab. This is known as a criminal justice sample. All such samples are then analysed by SPA Forensic Services scientists, and the profiles are then stored on the Scottish database as well as being sent to the UK National DNA Database (NDNAD), set up in 1995 and based in Birmingham. The Scottish DNA Database is administered by the National Systems Support department of Police Scotland.

DNA profiling from samples recovered from crime scenes is also undertaken by SPA Forensic Services. Such profiles are then searched against the Scottish DNA database and if a match is found a report is generated to Police Scotland for further action and investigation. If no match is found at that time, then the relevant profile is retained on the Scottish DNA Database and is also placed on NDNAD. This gives all UK police forces the ability to search against crime scene profiles and is helpful when dealing with criminals who travel extensively to evade justice and commit crime in different jurisdictions.

The exception to this is profiles taken from volunteers for the purpose of intelligence-led screens.<sup>25</sup> These samples are only compared against the crime scene profile in question and destroyed on conclusion of the investigation or, subject to any evidential requirement, if the volunteer withdraws their consent to retention.

---

<sup>25</sup> [Colin Pitchfork – The Forensics Library \(aboutforensics.co.uk\)](http://aboutforensics.co.uk)

In the case of persons arrested in Scotland by UK-wide policing bodies<sup>26</sup> the biometric data is mainly captured when the subject is processed at a Police Scotland custody facility. However, in these cases the DNA mouth swabs are not sent to the SPA Forensic Services for forensic profiling but instead are sent to accredited scientific laboratories in England. From there, the relevant DNA profile will be uploaded to the UK NDNAD. As these biological samples constitute biometric data under the Scottish Act, this means that to exercise proper oversight over such 'Scottish data' when it leaves Scotland, any extension of the powers and functions of the Scottish Biometrics Commissioner to cater for such circumstances would require cross border jurisdiction to be assigned for this specific purpose.

The DNA sections of SPA Forensic Service provide four key services to Police Scotland, PIRC, and other law enforcement agencies:

- **Casework**

These are cases where there is a known accused and comparisons can be made between reference samples and a crime sample.

- **Undetected cases**

These are where the police do not have a suspect and where the Scottish DNA database and UK National DNA Database are used to try to identify matches between a crime sample DNA profile and the profile of a person held on the database.

- **Criminal paternity testing**

in cases of rapes and incest etc.

- **Identification of individuals**

missing persons, bodies, and body parts.<sup>27</sup>

The current DNA profiling method used for the Scottish DNA Database – known as DNA24 – analyses 23 areas of a person's DNA and a gender marker. The resulting DNA profile is a series of up to 46 numbers plus the gender marker. This profile is then retained on the Scottish DNA database (a DNA 17 profile is retained on the UK DNA database) for the duration determined by current legislation and policy. Profiles retained on these databases will be routinely searched against unidentified profiles from unsolved crime scenes.

---

<sup>26</sup> National Crime Agency, British Transport Police, Ministry of Defence Police

<sup>27</sup> In rare circumstances, to identify a body or body part, the police under the supervision of the Procurator Fiscal may request access to NHS record for example the Scottish new born baby blood spot test cards:  
<https://www.nhsinform.scot/healthy-living/screening/newborn/blood-spot-test/>

## The UK National DNA Database (NDNAD)

The UK NDNAD was established in 1995. It holds DNA profile records, taken from individuals and crime scenes, and provides the police with matches linking an individual to a crime scene or a crime scene to another crime scene. Between April 2020 and March 2021, it produced 752,959 matches to unsolved crimes.<sup>28</sup>

### Volumes of Scottish DNA data held

On 31 March 2022, and by prior request, the Home Office provided us with an end of financial year 'snapshot' of Scottish DNA profiles and unmatched crime profiles held on the UK National DNA Database (NDNAD).

#### Key Fact:

On 31 March 2022 there were **383,279 Scottish subject DNA profiles** on the UK National DNA Database. Subject profiles are also known as criminal justice profiles. In other words, subject profiles are mainly derived from previous arrest episodes where a DNA mouth swab has been taken. There were also **19,845 unmatched Scottish crime scene DNA profiles** from Scotland on the database.

## Crime scene DNA profile match rate to subject (criminal justice) profile

The Scottish Police Authority Forensic Services publish public information monthly including data on DNA samples added to and removed from the Scottish DNA database. This includes match rates. This has enabled us to contrast and compare Scottish DNA match rates with UK match rates.

#### Key Fact:

In the financial year ending 31 March 2022, the **Scottish match rate from DNA recovered at a crime scene, to an existing criminal justice profile was 60%**.

UK data for the previous fiscal year (2020/21) obtained from the Home Office shows that **the overall UK match rate was also 60%**.

It is my professional opinion that the SPA Forensic Services provides a world leading DNA interpretation and analysis capability to Police Scotland, the PIRC and to the wider criminal justice system in Scotland. As a small country, this is something we should be proud of. In addition to DNA24, the team of scientists also use many other cutting-edge technologies in relation to biological material found at crime scenes which can subsequently be profiled for DNA. Examples include laser microdissection which enables forensics teams to identify sex attackers from a single sperm cell, or Rapid DNA which can potentially identify a suspect within 90 minutes, and which is vital in kidnap or child abduction cases. There is no doubt whatsoever that biometric data used for policing and criminal justice purposes makes a valuable contribution to public safety in Scotland.

<sup>28</sup> Source: Finds Strategy Board Annual Report 2020-21, *ibid*.

There are no additional matters of law, policy, procedure, or practice that I wish to draw to the attention of the Scottish Parliament in relation to DNA other than to note that the SPA Forensic Services provides one of the leading forensic capabilities in world policing, at least in part due to the significant investment by Scottish Government in Police Scotland's £75m Gartcosh Crime Campus.

## Fingerprints in the criminal justice process in Scotland

Scotland does not have its own fingerprint database but instead uses the single UK unified **IDENT1** system. This 'system' includes the use of front-end equipment (FEE) such as Livescan fingerprint terminals which enable the automated capture and comparison of data.

The absence of a Scottish fingerprints database means that both the front-end equipment and technical database infrastructures used for Scottish policing and law enforcement purposes are reliant on shared UK arrangements hosted and funded by the Home Office, albeit that Police Scotland and the Scottish Police Authority make revenue contributions towards all UK policing databases.

The National UK Fingerprint Database and National Automated Fingerprint Identification System (NAFIS), now collectively referred to as IDENT1, was established in 1999 and holds fingerprint images obtained from persons and crime scenes by law enforcement agencies of the United Kingdom. It provides the ability to electronically store and search fingerprint images to manage person identity and compare fingerprints from individuals with finger-marks from unsolved crimes. The Livescan terminal also enables the police to conduct a non-verified live search of fingerprints taken on the machine with UK police records and additionally with the 91.9 million fingerprints and images held on the Home Office Immigration and Asylum Biometrics System (IABS).

## Volumes of Scottish fingerprint records held

On 31 March 2022, and by prior request, the Home Office provided us with an end of financial year 'snapshot' of the number of Scottish fingerprint forms held on IDENT1. In this regard, it is important to note that sometimes more than one set of criminal justice fingerprints will be held relating to the same individual including cases such as travelling criminals who offend throughout the UK.

### Key Fact:

On 31 March 2022 there were **739,408 Scottish fingerprint record forms** on the UK IDENT1 Fingerprint Database. These are mainly obtained from previous arrest episodes in Scotland where fingerprints have been taken. These forms **related to 412,127 individuals**.

There are no additional matters of law, policy, procedure, or practice that I wish to draw to the attention of the Scottish Parliament in relation to fingerprints. As with DNA, the SPA Forensic Services uses independently validated and accredited scientific techniques and voluntarily adhere to the various codes of practice produced by the Forensic Science Regulator for England and Wales.



## **Criminal History System (CHS) photographs in the criminal justice process in Scotland and the Police National Database (PND)**

Police Scotland maintains a Criminal History System (CHS), where all records and images of charged and convicted persons are stored. The criminal history images within these records are obtained from photographic images relating to a custody episode when an arrested person is brought into police custody.

The criminal history records and images of persons charged with, or convicted of, a common law crime or statutory offence in Scotland on CHS are uploaded automatically to a UK policing intelligence sharing system known as the Police National Database (PND), so that other UK forces can search the PND to help identify and prosecute criminals. In the event of acquittal, the Scottish records and images are removed from CHS and PND by Police Scotland once notified of non-conviction or absolute discharge by the Crown Office and Procurator Fiscal Service (COPFS). If a child is referred to the Children's Hearings system, images are destroyed.

The national custody system used by Police Scotland does not have the means to automatically delete custody images in no proceedings or non-conviction scenarios, and Police Scotland also does not have an automated solution to enable the identification and deletion of such images on legacy databases.<sup>29</sup> In England and Wales, there is no automated solution for custody image management in either current or legacy applications.<sup>30</sup>

Images will be retained where the photograph is part of an on-going pending case and/or where the photograph is of the same date or newer than the oldest case which resulted in a conviction or Absolute Discharge. This means that images of persons not subsequently convicted (and who have no previous conviction) are removed from CHS and PND by Police Scotland in no proceedings and non-conviction scenarios, subject of course to the three-year retention periods permitted for certain sexual and violent offences as defined in [Section 48](#) of the Crime and Punishment (Scotland) Act 1997.

This was acknowledged as effective practice by HMICS in 2016 and contrasted favourably with the position in other parts of the UK where many forces in England and Wales have been criticised for retaining custody images of innocent people on the Police National Database (PND) despite the 2012 ruling by the High Court in England that this was unlawful.<sup>31</sup>

Unlike DNA and fingerprints, the physical appearance of a person will change over time, through ageing, injury or otherwise, and indeed is sometimes changed intentionally to evade identification and detection. Therefore, the police will often hold multiple images of offenders who have multiple criminal convictions.

---

<sup>29</sup> Retained on the individual custody database of the former eight police forces in Scotland

<sup>30</sup> Letter to chair of the Commons Science and Technology Committee, 3 September 2021: <https://committees.parliament.uk/publications/7366/documents/78131/default/>

<sup>31</sup> The Queen, on the application of (1) RMC and (2) FJ – and – Commissioner of Police of the Metropolis, High Court, London, 2012.

Police custody images in Scotland are only uploaded to CHS and PND if the subject has been charged with a crime or offence. This differs from the position in England and Wales where most forces upload all custody images directly to PND due to the absence of images on the Police National Computer (PNC) (the PNC holds a reference to the image held locally within each force) or any statutory controls or guidance to the contrary.

More broadly, the UK Police National Database (PND) contains over 19 million custody images, and 16 million of these have been enrolled in the facial recognition gallery making them searchable using retrospective facial searching software.<sup>32</sup>

### Key Fact:

On 31 March 2022 there were **640,410 images relating to 374,405 people** within the Police Scotland Criminal History System. This data is replicated onto the UK Police National Database (PND) so there were also 640,410 Scottish images relating to 374,405 people on PND.

### Other images held for policing and criminal justice purposes in Scotland

Unlike DNA and fingerprints which are hosted in distinct and automatically searchable databases, the police and others in the criminal justice system hold a range of different images for a range of different purposes. These other images are not held on databases with automated biometric searching capabilities. Examples include:

- images held in connection with the management of sex offender(s),
- images of persons wanted on warrant,
- images held for intelligence purposes,
- images held as productions as part of an investigation,
- images held for virtual identification parades, legacy databases and so on.

Such data is held on a range of primary, secondary, or tertiary databases and a particular image may also feature on multiple databases. In addition, images may be held in an individual case file by an officer as part of an ongoing investigation either physically or perhaps in digital format on a PDA network such as Pronto.

At the time of the report of the Independent Advisory Group on Biometric Data in Scotland in 2018 it was noted that Police Scotland held more than one million custody images on retention. There is no means of easily establishing how many images of all types are currently held for policing and criminal justice in Scotland other than to say that it will be significantly higher than this figure, and almost certainly at least double.

<sup>32</sup> Review of the Use and Retention of Custody Images, Home Office, 2017: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594463/2017-02-23\\_Custody\\_Image\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594463/2017-02-23_Custody_Image_Review.pdf)

## Characteristic of uniqueness and the 'problem' of automated facial recognition

The police in Scotland and other UK jurisdictions have been using images of people 'arrested or wanted' successfully for more than 100 years. They have also used fingerprints for more than 100 years, and DNA profiling for more than 30 years.

However, to understand what it is that distinguishes 'face' as a more intrusive, less reliable, and therefore more controversial form of biometrics when conducted by a machine rather than a human, we must firstly consider what the interpretation of these various biometric types is seeking to achieve, and secondly to consider whether the underpinning scientific techniques consistently produce accurate results based on independently validated and accredited scientific principles.

As discussed earlier in this report, the 'science' underpinning both fingerprints and DNA is concerned with establishing characteristics of uniqueness through forensic science techniques that are performed to a consistent and measurable ISO standard. In Scotland, DNA and fingerprint analysis is conducted independently of the police by SPA Forensic Services to separate the police investigation from the scientific investigation. The work of the SPA Forensic Services in this regard is independently accredited by [UKAS](#) who are the National Accreditation Body for the UK.

When we pass someone in the street, we cannot see their DNA profile and similarly our naked eye or any surveillance technology cannot detect the unique intricacy of their various fingerprints and palm prints. In other words, they remain private unless we rely on 'science' to tell them apart. As also mentioned, apart from identical twins, the probability of two unrelated individuals having identical DNA can be stated empirically as being greater than one in a billion. Fingerprints are also unique and no two people on the planet, including identical twins, have ever been found to share identical fingerprints.

To a certain extent, it can legitimately be argued that human faces are also unique as a product of evolutionary adaptation to enable us to recognise our friends and family and tell each other apart. However, human faces can also convey a wide range of expressions and emotions and are rarely static. Therefore, unless the image of a human face is captured in controlled conditions and compared in controlled conditions, the technology used to distinguish them can be very unreliable. That is why the traditional police 'mugshot' is captured in strictly controlled conditions, and similarly why you are not allowed to smile in your UK passport image or wear sunglasses.

In a policing context in Scotland, the police do not use what could accurately be described as facial recognition technology. Similarly, the only Home Office approved mainstream UK policing technology solutions that are equipped with a retrospective biometric searching solution are the Child Abuse Image Database (CAID) and the UK Police National Database (PND).<sup>33</sup> The operational use of CAID is not described more fully in this report so as not to compromise the various tactical options available to the police when investigating such serious offences.

---

<sup>33</sup> Other specialist police databases such as CAID (The Child Abuse Image Database) also use the images' unique identifiers called hashes, and metadata to investigate crime and protect children from sexual exploitation.

In the case of PND, the Facial Search software works by comparing an image uploaded by the police typically from a crime scene to an image already held in a gallery of images composed from previous custody episodes. The extent to which the system can identify a potential match is determined to a significant extent by both the quality and clarity of the 'probe' image, and similarly by the quality and clarity of the 'gallery' image. What PND does is simply to return a list of 'possible' matches for further interpretation by a human. In other words, PND looks for characteristics of 'similarity' and cannot definitively establish characteristics of uniqueness to an internationally recognised standard of scientific validity and reliability. Further information on the facial search functionality within PND can be found in the [HMICS Audit and Assurance Review](#) published in 2016.<sup>34</sup>

Police Scotland has taken a measured approach to technologies involving 'face' and has not deployed live facial recognition technology in Scotland. However, as Commissioner it is my professional opinion that there are specific circumstances, where with appropriate safeguards, such technologies could enhance public safety.

## Retrieval of biometric data through digital forensics techniques

One area of concern that I wish to highlight to the Scottish Parliament is the question of the scientific integrity surrounding the digital forensic extraction and recovery techniques deployed in Scotland and much of the UK. My concerns, as they relate to my role, are specifically in relation to the recovery of biometric data primarily 'face' or 'voice' in circumstances where that biometric data has the potential to enter the evidential chain from crime scene to court.

Much has been said about this issue previously. In 2017 HMICS conducted a [Thematic Review](#) of the SPA Forensic Services and in that report directed a recommendation at Police Scotland to 'consider quality accreditation for digital forensics in line with Forensic Science Regulator recommendations, UK Forensic Strategy, and wider good practice.'<sup>35</sup>

In May 2020, a [report](#) prepared by the Scottish Police Authority Digital Forensics Working Group endorsed the HMICS findings, and further recommended that Police Scotland should adopt ISO 17025 quality standard for accreditation of its digital forensic laboratory work by December 2022.<sup>36</sup> For the sake of full disclosure, I was involved in assisting the work of the SPA on this topic at that juncture.

---

<sup>34</sup> Audit and Assurance Review of the Facial Search functionality within the UK PND by Police Scotland, HMICS, 2013: <https://www.hmics.scot/publications/audit-and-assurance-review-use-facial-search-functionality-within-uk-police-national>

<sup>35</sup> Thematic Inspection of SPA Forensic Services, Recommendation No 9, HMICS, 2017: <https://www.hmics.scot/sites/default/files/publications/HMICS20170627PUB.pdf>

<sup>36</sup> Report of SPA Digital Forensics Working Group, May 2020: <https://www.spa.police.uk/media/flediwqv/rep-b-20200424-item-8-digital-forensics-wg-report.pdf>

Then in June 2021, the UK Information Commissioner (ICO) looking specifically at mobile telephone data extraction by Police Scotland directed that the same level of consideration given to the data protection implications of [cyber kiosks](#) must now be given to all mobile phone extraction operations, including the Digital Forensics Hubs used to extract data from phones.<sup>37</sup>

As Scotland's first Biometric Commissioner, I wish to align myself with and endorse the recommendations previously made by HMICS, the Scottish Police Authority, and the ICO on such matters. As digital forensic techniques offer the potential to recover biometric data (as defined in the Scottish Biometrics Commissioner Act 2020) that has the potential to enter the chain of evidence from crime scene to court, I view it as essential that Police Scotland (or PIRC, should it independently deploy such techniques) should pursue accreditation of its digital forensic laboratory work. This is necessary to ensure the scientific integrity of such work, and to ensure that exculpatory evidence that may be essential to the defence in criminal proceedings is not inadvertently overlooked.

In May 2021, shortly after my appointment, Police Scotland determined that it would commence a three-year programme to achieve accreditation of its digital forensic laboratory work. It also agreed ISO 17025 as the most appropriate quality standard for adoption for the laboratory work, and once accreditation has been achieved, will voluntarily adhere to the Forensic Science Regulators Codes of Conduct and Practice as mandated for England and Wales. This will place all Scottish policing forensic sciences on a common platform of requirement for quality standards accreditation. Police Scotland will also develop a quality framework for the non-forensic aspects of digital investigations including triage technologies.

This is a welcome development, however in the longer term, my view is that it would be preferable for the responsibility for the delivery of digital forensic laboratory work to transfer from Police Scotland to the SPA Forensic Services. In common with other forensic services, this would establish a sterile corridor between the police investigation and the scientific investigation in accordance with the existing forensic strategy and crime scene to court model in Scotland. However, I realise that this would require a major transformation programme involving significant financial investment from Scottish Government so make no formal recommendation in this regard.

More broadly, and particularly when investigating rapes and other serious sexual assaults, there is a need for the police to ensure that the nature and extent of forensic searches of the electronic devices of victims are proportionate and strictly necessary. In particular, there should be no blanket policy enabling the wholesale 'digital strip search' of private and sensitive biometric data such as private images held on the devices of victims in circumstances where such an image or data is unconnected with the specific matter under investigation.

---

<sup>37</sup> Mobile phone data extraction by Police Scotland, ICO, June 2021: <https://ico.org.uk/media/about-the-ico/documents/2620095/ico-investigation-mpe-scotland-202106.pdf>



## Constitutional matters

There are several constitutional matters and difficulties that require careful navigation when considering the operation of Scottish policing databases which contain biometric data including the aggregation of Scottish biometric data to UK policing biometric databases maintained either by the Home Office (in the case of DNA and fingerprints) or by the National Police Chiefs' Council (NPCC) in the case of images on PND.

The first of those is the distinct legal framework in Scotland governing the acquisition, retention, use, and destruction of biometric data including the more expansive definition of biometric data adopted in the Scottish Biometrics Commissioner Act 2020. In Scotland, images and source samples constitute biometric data and therefore fall within the independent oversight of the Scottish Biometrics Commissioner.

By contrast, in England and Wales, the [Protection of Freedoms Act 2012](#) (PoFA) which created the Commissioner for the Retention and use of Biometric Material (now known as the Biometrics and Surveillance Camera Commissioner) only affords protection in relation to fingerprints and DNA. Therefore, there is no independent regulator of images held on police databases in England and Wales except on specific data protection matters within the remit of the UK Information Commissioner (ICO), or where it has been obtained covertly under the Regulation of Investigatory Powers Act (RIPA) and therefore within the remit of the UK Investigatory Powers Commissioner (IPCO).

The Biometrics Commissioner for England and Wales also has a broader UK locus in relation to biometric data retained by the police in Scotland as part of a National Security Determination (NSD), as catered for in [Section 18G](#) of the Criminal Procedure (Scotland) Act 1995, as amended. As Scottish Biometrics Commissioner I have no statutory locus in such reserved matters. This is explicit in [Section 2 \(2\)](#) of the Scottish Biometrics Commissioner Act.

An individual may be subject to an NSD if, based on risk assessment and intelligence, a chief officer determines that it is necessary and proportionate in the circumstances of the case to retain their biometrics for the purpose of national security. This means that if a person is arrested in Scotland or detained at a point of entry to the UK on national security grounds, and has their biometric data captured in Scotland, but is not subsequently charged or convicted, the police may retain their fingerprints and DNA for five years under an NSD.

As counter terrorism is a matter reserved to Westminster, the Commissioner for England and Wales reviews every NSD made or renewed in the UK, including those in Scotland. It is inconceivable however, that a person of such interest to the police would not also have their photograph or image on retention. However, due to differences in the legal definition of what constitutes biometric material under PoFA in England and Wales, and the more expansive definition in Scotland this means that the remit of the Commissioner for the Retention and Use of Biometric Material (CRUMB) and their function under [Section 20](#) of PoFA extends solely to DNA and fingerprints. Therefore, the retention of photographs (or other biometrics within the Scottish definition) as part of an NSD in Scotland is not within the statutory oversight of either Commissioner.

As these are reserved matters beyond my statutory functions, I make no further comment on this other than to highlight the constitutional complexity arising from different legal definitions and to opine that on matters of national security it is essential that Police Scotland are not restricted in their ability to retain all biometrics within the Scottish definition for the duration of any NSD applying to corresponding DNA and fingerprints.

Because only fingerprints and DNA are considered as biometric data in England and Wales, the strategic UK body maintaining oversight of the necessary governance arrangements for these databases is the Forensic Information Database Service (FINDS) on which the SPA Forensic Services are represented. I also have membership of this strategic UK forum to ensure that Scottish interests are represented, as does the Commissioner for England and Wales, as does the Forensic Science Regulator for England and Wales.

By contrast, neither Commissioner is invited to sit on any of the UK level National Police Chiefs Council (NPCC) strategic forums involved in developing approaches to images, face, and facial search or recognition technologies. I am aware from discussions with the Home Office that the NPCC has a Facial Recognition Board and a Custody Images Working Group, but I have been unable to locate published minutes of these meetings. Therefore, there is a risk that decisions may be taken in England and Wales around the future direction of UK databases such as PND, including decisions on inter-agency data sharing, and international facial image exchange programmes under the Home Office Strategic Facial Matcher programme without any Scottish independent oversight except on specific matters of data protection.

As policing and criminal justice in Scotland operates under a distinct legal framework, and distinct oversight regime, it is important to ensure that decisions made about biometric data (under the Scottish definition) do not conflict with the laws of Scotland, our distinct operational practices and procedures, and any Scottish Code of Practice. The best way to achieve this is for Scottish data to be capable of being administered from Scotland by being hosted as a 'Scottish collection' within the UK systems architecture, and for Police Scotland and the SPA to have weeding permissions for the Police National Computer (PNC) which facilitates such administrative transactions on shared UK databases in a way broadly similar to how CHS is used in Scotland.

Therefore, when aggregating Scottish biometric data to UK systems, it is important that Scotland can retain the ability to govern its own data in compliance with Scottish legislation and any Scottish Codes of Practice in terms of its use. I therefore wish to expand on and formalise by recommendation a key finding that was first made by HMICS in the 2016 Audit and Assurance Review of the use of the facial search functionality within the UK Police National Database.<sup>38</sup>

### Recommendation 3

In contributing biometric or forensic data to UK policing systems, Police Scotland and the Scottish Police Authority should ensure that they have the functionality to administer and maintain that Scottish data in compliance with Scottish legislation and any Codes of Practice in terms of its use.

<sup>38</sup> HMICS, 2016: *ibid*

### Key Finding:

As Commissioner, my overall strategic conclusion during 2021/22 is that the Scottish Parliament should have confidence in the ways in which biometric data and technologies are currently being used by Police Scotland, the SPA, and PIRC for policing and criminal justice purposes in Scotland.

### Strategic Priority 2

Promote public awareness and understanding of the powers and duties those persons have in relation to the acquisition, retention, use, and destruction of biometric data, how those powers and duties are exercised, and how the exercise of those powers and duties can be monitored and challenged.

### Public attitudes and awareness survey

One of my functions under [Section 2 \(3\)](#) of the Act is to promote public awareness and understanding of the powers and duties that Police Scotland, the SPA, and PIRC have in relation to biometrics data, including how those powers and duties are exercised, and how the exercise of those powers and duties can be monitored and challenged.

In December 2021, I determined that it would be useful to conduct some initial research in Scotland to ascertain what a representative sample of the Scottish population think and feel about how biometrics are used for policing and criminal justice purposes in Scotland. This was important to help understand public knowledge and attitudes as there has been a paucity of research in this area.

The fieldwork for this research was conducted on my behalf in December 2021 by ScotCen, the Scottish arm of the largest independent social research organisation in the UK. In this survey, a sample of 1144 people was asked eight distinct questions to ascertain what their attitudes were towards the use of biometric data for policing and criminal justice purposes in Scotland.

The survey report can be read on our [website](#).

### Key Finding:

A public attitudes and awareness survey conducted on behalf of the Scottish Biometrics Commissioner by ScotCen in December 2021, suggests that there are fairly high levels of public confidence in the way that biometric data and technologies are used for policing and criminal justice purposes in Scotland.

## Public engagement

During 2021 to 2022 our opportunities for public engagement were constrained by several variables associated with the pandemic, prioritising the build of the new function, lack of resources pre-recruitment, and our website not going live until January 2022. We did however engage with civil society and the media over the period on a limited scale but will broaden our public engagement during 2022/23 as our function matures.

We have also designed our website to serve as a repository of useful information on both our function, and to provide a public information hub on how biometrics are used for policing and criminal justice purposes in Scotland.

### Strategic Priority 3

Promote, and monitor the impact of, the Code of Practice.

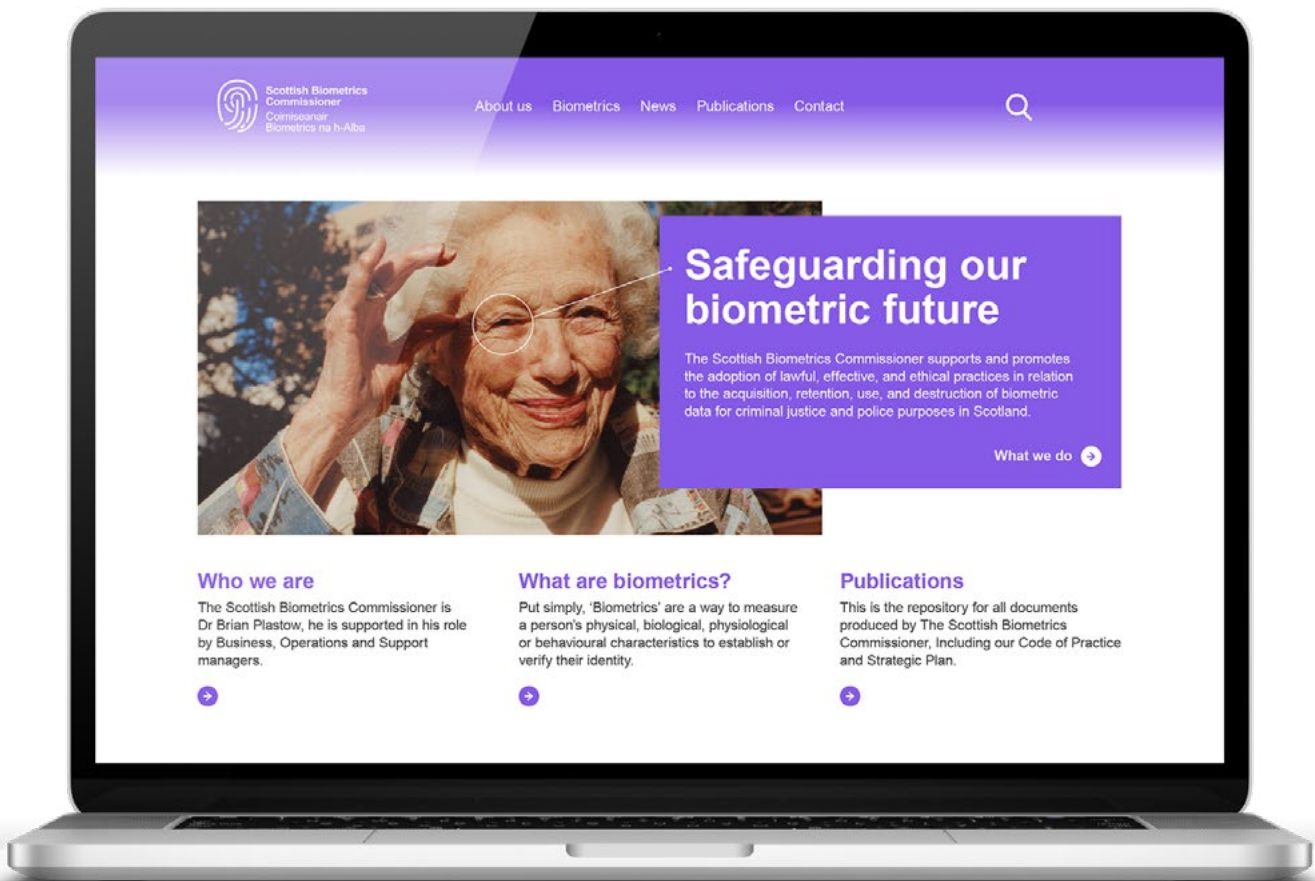


Image No 5: Screenshot from our website Homepage

## Our draft Code of Practice

As required by [Section 7](#) of the Act, the Commissioner must prepare, and may from time-to-time revise, a code of practice on the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland.

Over the summer months of 2021, I prepared a first draft of our Code for discussion and initial review by my Advisory Group established under [Section 33](#) of the Act. Having done so, I wrote to all statutory consultees as specified in [Section 10](#) of the Act and between 01 September 2021 and 31 December 2021 consulted widely on the draft.

The Code is structured around 12 Guiding Principles and Ethical Considerations to which Police Scotland, the SPA, and PIRC must adhere to when acquiring, retaining, using, or destroying biometric data for criminal justice and policing purposes in Scotland. These principles and ethical considerations form the basis against which compliance with this Code of Practice will be assessed.

In March 2022, I received consent from the Cabinet Secretary for Justice and Veterans to lay the draft Code of Practice before the Scottish Parliament. This was subsequently done when the next session of Parliament resumed after the Easter recess on 19 April 2022. Our draft Code may be viewed [here](#).

*Brian Plastow*

**Dr Brian Plastow**

Scottish Biometrics Commissioner

24 October 2022





# Chapter 4

## Accountability report

In this section, we set out:

- Our corporate governance report including:
  - Commissioner's report
  - Statement of the Accountable Officer's responsibilities
  - Governance statement
- Remuneration and staff report
- Parliamentary accountability report

## Commissioner's Report

### Background

These accounts for the financial year ended 31 March 2022, have been prepared for the Commissioner by the SPCB and are presented in accordance with the direction given by the Scottish Ministers, in pursuance of [Section 31](#) of the Scottish Biometrics Commissioner Act 2020.

I took up the appointment as the Scottish Biometrics Commissioner, on 12 April 2021.

### Organisational structure

The Commissioner is supported by three members of staff. These are:

- Corporate Services Manager
- Operations Manager
- Business Support Officer

The Commissioner's determined staffing model was completed on 17 January 2022, by which point the Commissioner had developed, consulted on, and laid his first Strategic Plan before the Scottish Parliament. Therefore, it was only in the final quarter of the financial year (which is the first quarter in year one of the SBC Strategic Plan) that significant traction could be achieved in terms of implementing a range of corporate policies, procedures, and processes, and developing a Scheme of Governance and Control to fit the new build. At the close of the financial year, some of this activity was still ongoing.

Due to the very small scale of the function, the Commissioner is the sole strategic decision-maker. Other specific matters may be delegated in accordance with the terms of our Scheme of Delegation which was still being finalised at the end of the financial year and will be published on our website once approved at our next AAB.

As explained earlier in this report, 2021/22 has been a year of building the new Scottish Biometrics Commissioner function from the ground up from the point of the Commissioner taking office on 12 April 2021 until the end of the financial year. Therefore, readers of this section of our report should keep the ‘new build’ and ‘work in progress’ contexts in mind.

As the new function was incrementally established, the Commissioner then entered a shared service arrangement with the SPSO around certain back-office functions such as HR, payroll, and facilities management. Specifically, this enabled the Commissioner to draw on the support of the SPSO in the recruiting of staff; in the establishment of terms and conditions of employment; in administering HR and payroll services, and in handling the various financial transactions concerned with obtaining planning consent for the building works and the subsequent works leading to the setting up of the physical office as part of that shared service initiative.

## Register of interests

The [Commissioner](#) and [Advisory Audit Board \(AAB\) members](#) publish declarations of interest on the SBC website with their biographies. Declarations of interests of other staff are held where required in accordance with the SBC Code of Professional Conduct.

## Data protection

We suffered no data protection breaches in 2021/22 that met the criterion for reporting to the UK Information Commissioner (ICO).

We have clear guidelines governing how we handle data. There is an established process for recording and investigating potential breaches in data security. All incidents must be logged using an incident recording system and, following an investigation, any identified risks are mitigated as far as possible. Due to the nature of our business, we prohibit the use of portable storage devices such as pen drives or external hard drives. Staff are also prohibited from printing off any protectively marked materials shared with us by the bodies to whom our functions extend. Although our remit relates to biometric data in the policing and criminal justice sector, we ourselves do not hold or process biometric data.

Our Business Support Manager is our dedicated Information Management and Security Officer (IMSO) and links into a wider network of colleagues who utilise the Scottish Government SCOTS/eRDM system.

We have access to the support of a Data Protection Officer (DPO) through the SPCB and have utilised this support to build and quality assure our data protection measures and policies. Due to our new build status and the on boarding of staff in the final quarter of the financial year we will put arrangements in place from 2022/23 onwards to receive an annual assurance statement from the DPO to assess our compliance measures, in line with UK GDPR requirements.

## External audit

The accounts of the Scottish Biometrics Commissioner are to be audited by auditors appointed by the Auditor General for Scotland in accordance with [Section 31 \(1\) \(c\)](#) of the Scottish Biometrics Commissioner Act 2020. The Auditor General has appointed Audit Scotland as our appointed auditor for 2021/22.



# Statement of Accountable Officer's responsibilities

[Section 30](#) of the Scottish Biometrics Commissioner Act 2020 sets out the functions of the Accountable Officer. The Commissioner has been designated as Accountable Officer by the SPCB under Section 30 (1) of the Scottish Biometrics Commissioner Act 2020. The SPCB has also directed that this may not be delegated by the Commissioner to a member of staff.

In preparing the financial statements, the Commissioner is required to:

- observe the direction issued by Scottish Ministers, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
- make judgements and estimates on a reasonable basis
- state whether applicable accounting standards have been followed, and disclose and explain any material departures in the financial statements, and
- prepare the financial statements on a 'going concern' basis, unless it is inappropriate to presume that the Commissioner will continue in operation.

The Accountable Officer is answerable to the Scottish Parliament for the performance of these functions.

[Section 31](#) of the Act, provides that the Commissioner must:

- (a) Keep proper accounts and accounting records,
- (b) Prepare in respect of each financial year a statement of accounts, and
- (c) Send a copy of the statement to the Auditor General for auditing

In accordance with section 31 (2) of the Act, the Commissioner must comply with the direction received from Scottish Ministers. That accounts direction was received on 20 October 2021 and is attached to this report.

## Disclosure of information to auditors

As Accountable Officer, I am aware of no relevant audit information of which our auditors are unaware. I have taken all necessary steps to ensure that I am aware of any relevant audit information, and to establish that the auditors are also made aware of this information.



## Governance statement

I took up the post of Scottish Biometrics Commissioner and Accountable Officer on 12 April 2021 for an eight-year appointment. As Accountable Officer, the Commissioner has responsibility for maintaining a sound system of governance and internal control that supports the achievement of organisational policies, aims, and objectives, whilst safeguarding the public funds and the organisation's assets for which I am responsible.

The key features are as follows:

- the Commissioner is the Accountable Officer.
- the Commissioner is supported by 3 members of staff. Those are a Corporate Services Manager, Operations Manager, and a Business Support Officer. Individual managers have delegated authority to make decisions as set out in the Commissioner's Scheme of Delegation. However, the Commissioner is the sole strategic decision-maker.
- The Corporate Service Manager is responsible for the day-to-day management of corporate matters including finances (acknowledging that financial and accounting services were provided to the SBC by the SPCB for 2021/22), corporate policies and procedures, the running of our office, and our website and records management procedures. The Corporate Services Manager is assisted by a Business Support Officer
- The Operations Manager is responsible for assisting the Commissioner in discharging our external oversight of the bodies to whom our functions extend, for maintaining and assessing compliance with our Code of Practice (once adopted by regulations made by Scottish Ministers), for public engagement, and for our thematic assurance programme as detailed in our Strategic Plan.
- The Commissioner chairs tactical (silver) monthly management team (MMT) meetings. Due to our small scale, all staff attend these meetings which were first established following the on boarding of staff in the final quarter of the year. The monthly management meetings consider corporate and operational matters associated with the delivery of our Strategic Plan. Under the MMT meeting structure, every fourth MMT meeting is designated as a strategic (gold) meeting where finances and risk management are discussed together with the strategic direction of the organisation.
- The Commissioner is supported by the AAB, which provides assurance and advice about governance, including management of risk and internal control. The AAB meets at least twice a year to consider audit matters and the SBC's approach to management of risks to the business in relation to strategic direction of the organisation. Due to the 'under construction' status of the SBC functions during 2021/22, the AAB met formally for the first time in October 2021, then again in February 2022 following the on boarding of staff.

- From 2022/23 external scrutiny will be provided by an internal audit function. Since we have a shared services arrangement with the SPSO, we will appoint a different internal audit company from the SPSO to ensure there is no conflict of interests. For 2021/22, there was no internal audit function due to the incremental new build status.
- Risk is managed actively through a risk management policy that sets out the approach to risk management for the delivery of strategic aims. The risk register identifies the key risks facing the organisation and will be reviewed and updated with the business plan on an annual basis with input from all staff. It is also reviewed by the Commissioner each quarter and the AAB at each meeting.
- The most significant strategic risks to the SBC functions in 2021/22 was its new build status and small scale as exacerbated by the ongoing Covid-19 pandemic and the resulting Government restrictions. This amplified the existing risk of adequacy of time and resources to design and deliver our statutory functions.
- Due to the new function being designed from the ground up during 2021/22, the SPCB provided financial and accounting services to the Commissioner for the entire financial year. From 2022/23 our new system of internal financial control is based on agreed administrative procedures and the system of delegation and accountability. This was still a work in progress at the end of the financial year but will be published on our website once approved.
- As part of the shared services arrangement, during 2021/22 the SPSO administered certain financial transactions on my behalf in relation to recruitment, HR functions, staff payroll and set up costs associated with obtaining planning permission and building works for the new office as well as necessary office fit out costs.
- To obtain the necessary assurances for this Governance Statement, I obtained an assurance statement from the Head of Internal Audit and Risk Management at the Scottish Parliament. As the SPCB provided my financial transaction processing services in 2021/22, I take assurance from the internal audit reviews which examined purchase order processing, low value payments and Payroll high level controls (the Commissioner is paid by the Parliament's payroll office). Similarly, I obtained an assurance statement from the Corporate Services Manager at the SPSO who confirmed that SBC invoices had been within the population of accounts examined as part of internal audit activities. In addition, the SPSO accountant checked all set up invoices issued to the SPCB in connection with SBC set up activity and issued a correction for an over-charge on payroll costs of £483.81
- The established systems of governance have been designed and implemented in parallel with the sequential build of the new function and have been in place for the year under review, and up to the date of the approval of the annual report and accounts

## Scheme of Internal Control

Following the arrival of staff in the final quarter of the financial year, a Scheme of Control and a Scheme of Delegation was developed and put in place and will be periodically reviewed and amended as necessary. As required by the Scheme of Control, this will ensure that the SBC strategic priorities and objectives are managed effectively, efficiently, and economically.

[Section 32 \(2\)](#) of the Scottish Biometrics Commissioner Act 2020 also details the mandatory information that must be included in the Commissioner's annual report. I can confirm that each of these elements have been addressed in the performance section of this report.

Our Scheme of Control which can be found in the Governance and Risk handbook will be added to our website once approved at our next AAB.

## Internal audit and risk management

The SBC's Advisory Audit Board (AAB) supports the Commissioner in relation to responsibilities for risk, internal control, and governance.

We did not have a programme of internal audit in place for 2021/22 as it was clear following my appointment that a consequence of building the new function from the ground up there would have been very little tangibly in place to audit or inspect before the final quarter of the year. However, as the SPCB provided my financial and accounting services for 2021/22, those finances and accounts were available to be audited as part of the internal and external audit programme of the SPCB. Likewise, costs incurred on my behalf by the SPSO as part of the shared service arrangement were also available to be audited as part of the internal and external audit programme of the SPSO.

By the close of 2021/22 some aspects of our internal governance arrangements were in the process of finalisation. From 2022/23 we shall establish an annual programme of internal audit, which will also coincide with the first year of our Strategic Plan. Our AAB met twice formally in 2021/22, the final of those meetings taking place in Q4 of the financial year following the on boarding of the new staff.

From 2022/23 our build status will be complete and begin to mature and our internal audit programme will kick in. Accordingly, I anticipate that in each following year the chair of the SBC AAB will consider our internal audit reports and produce a report summarising the audit work over the previous financial year and provide advice in relation to areas of improvement.

Our Strategic Risk Register records two very high risks for 2021/22. As discussed in the performance section of this report, one of these arises from the potential expansion of remit by Scottish Ministers without recourse to additional resources. The other relates to latent risks to business continuity arising from our very small staffing model and wider challenges around cyber resilience. We will seek to mitigate these high risks during 2022/23 through recommendation to Scottish Ministers, by developing more cross functionality within our small team, and by developing a cyber-resilience strategy to respond to cybersecurity incidents which continue to grow worldwide in terms of both complexity and frequency.

## Fraud, corruption, and bribery

Our policies and procedures on fraud, corruption, and bribery include the anti-fraud policy, Codes of Professional Conduct, the terms, and conditions for the supply of goods and services, and the broader financial governance arrangements. We do not accept gifts or hospitality. We will declare any fraud, whistleblowing or control failure incidents to the AAB and this will form part of the annual assurance process. In 2021/22, there were no instances of fraud or bribery identified or detected.

## Review of effectiveness of internal control and risk management

As a newly established function, I am satisfied that the current Scheme of Control developed following the on boarding of staff provides a robust and appropriate framework for good governance and internal control moving forwards into 2022/23. My office formally complies with the principles of the Scottish Public Finance Manual (SPFM) in line with the Financial Memorandum agreed with the SPCB.

2021/22 was a year of building the new Scottish Biometrics Commissioner function from the ground up. By the close of the financial year that journey was mostly complete but there is still more work to do in terms of fine tuning the corporate and operational aspects of our business.

The system of internal control has been designed to manage rather than eliminate the risk of failure to achieve policies, aims, and objectives; therefore, it can only provide reasonable and not absolute assurance of effectiveness. The system of internal control will continue to evolve to identify the principal risks to the achievement of the organisation's policies, aims, and objectives, to evaluate the nature and extent of those risks and to manage them efficiently, effectively, and economically.

The SBC Strategic Risk Register covers the four years of the Strategic Plan and seeks to identify and address risks around finances, resources, and business continuity. The overall operational risk profile for 2021/22 remained 'Open'. There is one risk arising from a financial memorandum submitted to the Parliament after our founding legislation had received Royal Assent which seems to imply the Scottish Government intention to expand the functions of the SBC to include UK-wide policing bodies operating in Scotland but without recourse to additional funding. This would present a significant risk to our financial sustainability and therefore as a control action, Recommendation 2 in this report seeks to mitigate this risk.

We have clear guidelines that govern how we handle data. There is a clearly established process for recording and investigation of any potential breaches in data security. All incidents must be logged using an incident recording system and, following an investigation, any identified risks mitigated as far as possible. There were no known or reported serious breaches of data security in the year.

# Remuneration and staff report

## Remuneration policy

Under the legislation establishing the Scottish Biometrics Commissioner, under Schedule 1, section 7 the SPCB is responsible for determining the salary of the Commissioner. Full time SPCB supported officeholders are on pay ranges determined by the SPCB and salaries are uprated in line with SPCB staff.

Staff appointed by the Commissioner adhere to the terms and conditions of the Scottish Public Services Ombudsman with salary uplifts in line with the SPCB remuneration policy. No staff were seconded from other organisations. Scottish Biometrics staff are not civil servants but pensions benefits are provided through the Civil Service Pension Scheme arrangements.

## Section 33 Advisory Group

The Commissioner is required by the provisions of [Section 33](#) of the Scottish Biometrics Commissioner Act 2020 to establish and maintain an Advisory Group. This Advisory Group does not form part of the SBC governance arrangements. Instead, the professional Advisory Group exists to give advice to the Commissioner on matters relating to his functions which related to biometrics in the policing and criminal justice sector. This group therefore comprises of subject professionals with relevant expertise. More information about this Advisory Group can be found on page 22 and membership details can be found on our [website](#).

Under Section 33 (4) of the Act, the Commissioner may pay to members of the group such remuneration and allowances (including expenses) as the Commissioner, with the approval of the Scottish Parliamentary Corporate Body, determines.

The scheme adopted by the Commissioner provides that 'non-employed' members of the Advisory Group may claim expenses at a daily rate of £300, and all members of the group may claim any travelling expenses incurred in association with Advisory Group business. There are a total of two members on the Advisory Group who meet the non-employed status. These are Professor Derek Penman (Independent Chair) and Professor John McNeil (independent member). No expenses claims were made by them during 2021/22.

## Advisory Audit Board

AAB members are not appointed or remunerated by the Scottish Biometrics Commissioner. They are appointed by the SPCB to provide advice to the SPCB following open competition based on their experience in governance, audit and public services. Independent officeholders supported by the SPCB may access this service at no cost to their devolved budget. The appointment of AAB members by the SPCB is not time limited, and all costs are met by the SPCB. The SPCB does not publish information on the daily rate paid by them to AAB members.



## Single total figure of remuneration

Set out in the table below is the salary in banding ranges (including overtime, but excluding employer's superannuation and national insurance contributions, benefits in kind, and pension entitlements of the Commissioner). Information is presented up to 31 March 2022.

Commissioner's remuneration	2021/22 £'000
Salary	65-70
Benefits in kind	0
Pension benefits <sup>39</sup>	27
<b>Total</b>	<b>95-100</b>

## Pension Benefits

Commissioner's pension benefits	2021/22 £'000
Accrued pension benefit at pension age as at 31/03/22	0-5
Real increase in pension and related lump sum at pension age	0-2.5
CETV at 31/3/2022	23
Real increase in CETV	18

## The cash equivalent transfer value (CETV)

A CETV is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement that the member has transferred to the civil service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

## The real increase in the value of the CETV

This reflects the increase in CETV effectively funded by the employer. It takes account of the increase in accrued pension due to inflation, contributions paid by the member (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

<sup>39</sup> The value of pension benefits accrued during the year is calculated as (the real increase in pension multiplied by 20) less (the contributions made by the individual). The real increase excludes increases due to inflation or any increase or decrease due to a transfer of pension rights

## Fair pay disclosure

Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid individual in their organisation and the median remuneration of the organisation's workforce. Total remuneration includes salary, non-consolidated performance-related pay, and benefits-in-kind of employees. It does not include severance payments, employer pension contributions and the cash equivalent transfer value of pensions. These figures do not include secondees, temporary staff or contractors.

2021/22 (full year equivalent)	
Staff remuneration	£30,729 - £52,236
Workforce median	£52,236
Commissioner remuneration	£65,000-£70,000
Ratio	= 1.34 times median of workforce

Due to the small workforce size no disclosure is made of 25% or 75% quartile information.

## Staff report

Information on staff pay including the Commissioners costs in 2021-22 can be found in note 3 to the accounts.

Staff numbers (including the Commissioner) 2021/22					
	Male	%	Female	%	Total
Full time	2	50%	2	50%	4

Pay bands (including the Commissioner) 2021/22					
	Male	%	Female	%	Total
Commissioner	1				1
Band 3			1		1
Band 4	1		1		2
Total	2	50%	2	50%	4

All staff are permanent and full time.

Employee sickness absence	
Total members of staff	3
Total absences	None
Average absence per employee	0
Total absence days	0
Average absence days per employee	0
% of staff with a period of absence	0

Note: the 3 staff were on boarded in December 2021 and January 2022, so this is part year data.

## Staff turnover

There has been no turnover in staff in 2021/22.

## Staff satisfaction and wellbeing

In our Strategic Plan 2021/25 covering the period from 01/12/21 to 30/11/25 we have included a performance indicator to the effect that each year we will conduct or commission a staff satisfaction and wellbeing survey. Our first staff survey will take place one year after the on boarding of staff so around February 2023.

## Staff policies for disabled persons

Our staff were recruited through fair and open competition and our HR functions are provided to us by the SPSO as part of a shared service arrangement. Accordingly, we have shared policies and are committed to providing a fair and inclusive workplace free from discrimination.

The SBC is committed to recognising and valuing what everyone has to offer. This includes a commitment to improving our policies and practices around disability. We are aware of our duties under the Equality Act and the Public Sector Equality Duty (PSED). Staff with management responsibilities have access to professional HR advice and support through the SPSO HR Manager. Looking to 2022/23 we hope to explore opportunities with [Inclusion Scotland](#) to offer intern opportunities on specific projects or programmes of work.

## Equality and diversity

The Commissioner supports that advancement of equal opportunities in carrying out our statutory functions and our employment practices. The SBC is committed to pursuing positive action through our policies and practices to ensure that no individual is discriminated against, either directly, or indirectly, unlawfully because of a protected characteristic.

## Learning and development

Our arrangements for comprehensive annual performance review will mirror the arrangements of the SPSO who provide our professional HR support. From 2022/23 this will include an annual appraisal review process, where individuals are encouraged and supported to plan for their own development needs and career plans. In 2022/23, we will also conduct a formal training needs analysis and source relevant training programmes and/or bespoke input for one-to-one or group training sessions.

## Health, safety, and wellbeing

The SBC is committed to promoting the health, safety, and wellbeing of all staff, and to ensuring that our working environment supports this. Our systematic approach to health and safety ensures we comply with all legislative obligations. It also ensures we all know what is expected of us and what we can expect of colleagues, by setting out the correct way of carrying out our duties. Perhaps most importantly, it provides a foundation for continually improving health and safety management within the SBC.

Health and safety procedures are an integral part of the overall management culture, and we seek to develop a positive attitude to health and safety amongst staff. Further detail on our approach to health and safety is published on the [SPSO website](#).

In addition, we have access to qualified first aiders and mental health first aiders through the shared service arrangement with the SPSO and other bodies at Bridgeside House supported by the SPCB. This includes the SPSO chaired Staff Wellbeing Group, consisting of staff members with an interest and training in mental health first aid.

## Provision of information to employees

We have adopted the principles of openness and participation and place a high level of importance on both informing and consulting staff. Because of our small scale, everyone is involved in weekly team meetings and in our monthly management team meetings. The minutes of our monthly management team meetings can be viewed on our [website](#).

Information is only withheld where this can be shown to be justified or where a duty of confidence is owed to a third-party.

## Expenditure on consultancy

During 2021/22 £47k was spent on general advisors. This was property advisor costs for establishment of the office, advisor costs in association with the technical build of the website and advisor costs on social research.

# Parliamentary accountability report

## Auditor's remuneration

The annual accounts of the Scottish Biometrics Commissioner are audited by Tommy Yule, Senior Audit Manager, Audit Scotland, who is appointed by the Auditor General for Scotland in accordance with section 21(4) of the Public Finance and Accountability (Scotland) Act 2000. The auditors will be paid the sum of £8,082 in respect of the statutory audit services for the financial year 2021-22. No payments were made in respect of non-audit work.

## Gifts

The Scottish Biometrics Commissioner made no gifts or charitable donations in the financial year.

## Losses and special payments

The Scottish Biometrics Commissioner incurred no losses or made special payments in the financial year.

## Remote contingent liabilities

The Scottish Biometrics Commissioner had no contingent liabilities in the financial year.

*Brian Plastow*

**Dr Brian Plastow**

Scottish Biometrics Commissioner

24 October 2022



# Independent auditor's report

Independent auditor's report to the members of the Office of the Scottish Biometrics Commissioner, the Auditor General for Scotland and the Scottish Parliament

## Reporting on the audit of the financial statements

### Opinion on financial statements

I have audited the financial statements in the annual report and accounts of the Office of the Scottish Biometrics Commissioner for the year ended 31 March 2022 under the Scottish Biometrics Commissioner Act 2020. The financial statements comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers Equity and notes to the financial statements, including significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and UK adopted international accounting standards, as interpreted and adapted by the 2021/22 Government Financial Reporting Manual (the 2021/22 FReM).

In my opinion the accompanying financial statements:

- give a true and fair view in accordance with the Scottish Biometrics Commissioner Act 2020 and directions made thereunder by the Scottish Ministers of the state of the body's affairs as at 31 March 2022 and of its net expenditure for the year then ended;
- have been properly prepared in accordance with UK adopted international accounting standards, as interpreted and adapted by the 2021/22 FReM; and
- have been prepared in accordance with the requirements of the Scottish Biometrics Commissioner Act 2020 and directions made thereunder by the Scottish Ministers.

### Basis for opinion

I conducted my audit in accordance with applicable law and International Standards on Auditing (UK) (ISAs (UK)), as required by the [Code of Audit Practice](#) approved by the Auditor General for Scotland. My responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of my report. I was appointed by the Auditor General on 13 October 2021. The period of total uninterrupted appointment is less than one year. I am independent of the body in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK including the Financial Reporting Council's Ethical Standard, and I have fulfilled my other ethical responsibilities in accordance with these requirements. Non-audit services prohibited by the Ethical Standard were not provided to the body. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

## Conclusions relating to going concern basis of accounting

I have concluded that the use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the body's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from when the financial statements are authorised for issue.

These conclusions are not intended to, nor do they, provide assurance on the body's current or future financial sustainability. However, I report on the body's arrangements for financial sustainability in a separate Annual Audit Report available from the [Audit Scotland website](#).

## Risks of material misstatement

I report in my separate Annual Audit Report the most significant assessed risks of material misstatement that I identified and my judgements thereon.

## Responsibilities of the Accountable Officer for the financial statements

As explained more fully in the Statement of Accountable Officer's Responsibilities, the Accountable Officer is responsible for the preparation of financial statements that give a true and fair view in accordance with the financial reporting framework, and for such internal control as the Accountable Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Accountable Officer is responsible for assessing the body's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless there is an intention to discontinue the body's operations.

## Auditor's responsibilities for the audit of the financial statements

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of users taken on the basis of these financial statements.

Irregularities, including fraud, are instances of non-compliance with laws and regulations. I design procedures in line with my responsibilities outlined above to detect material misstatements in respect of irregularities, including fraud. Procedures include:

- obtaining an understanding of the applicable legal and regulatory framework and how the body is complying with that framework;
- identifying which laws and regulations are significant in the context of the body;
- assessing the susceptibility of the financial statements to material misstatement, including how fraud might occur; and
- considering whether the audit team collectively has the appropriate competence and capabilities to identify or recognise non-compliance with laws and regulations.

The extent to which my procedures are capable of detecting irregularities, including fraud, is affected by the inherent difficulty in detecting irregularities, the effectiveness of the body's controls, and the nature, timing and extent of the audit procedures performed.

Irregularities that result from fraud are inherently more difficult to detect than irregularities that result from error as fraud may involve collusion, intentional omissions, misrepresentations, or the override of internal control. The capability of the audit to detect fraud and other irregularities depends on factors such as the skilfulness of the perpetrator, the frequency and extent of manipulation, the degree of collusion involved, the relative size of individual amounts manipulated, and the seniority of those individuals involved.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of my auditor's report.

## Reporting on regularity of expenditure and income

### Opinion on regularity

In my opinion in all material respects the expenditure and income in the financial statements were incurred or applied in accordance with any applicable enactments and guidance issued by the Scottish Ministers.

### Responsibilities for regularity

The Accountable Officer is responsible for ensuring the regularity of expenditure and income. In addition to my responsibilities in respect of irregularities explained in the audit of the financial statements section of my report, I am responsible for expressing an opinion on the regularity of expenditure and income in accordance with the Public Finance and Accountability (Scotland) Act 2000.

## Reporting on other requirements

### Opinion prescribed by the Auditor General for Scotland on audited part of the remuneration and staff report

I have audited the parts of the Remuneration and Staff Report described as audited. In my opinion, the audited part of the Remuneration and Staff Report has been properly prepared in accordance with the Scottish Biometrics Commissioner Act 2020 and directions made thereunder by the Scottish Ministers.

### Other information

The Accountable Officer is responsible for the other information in the annual report and accounts. The other information comprises the Performance Report and the Accountability Report excluding the audited part of the Remuneration and Staff Report.

My responsibility is to read all the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the course of the audit or otherwise appears to be materially misstated. If I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.

My opinion on the financial statements does not cover the other information and I do not express any form of assurance conclusion thereon except on the Performance Report and Governance Statement to the extent explicitly stated in the following opinions prescribed by the Auditor General for Scotland.

## Opinions prescribed by the Auditor General for Scotland on performance report and governance statement

In my opinion, based on the work undertaken in the course of the audit:

- the information given in the Performance Report for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Scottish Biometrics Commissioner Act 2020 and directions made thereunder by the Scottish Ministers; and
- the information given in the Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Scottish Biometrics Commissioner Act 2020 and directions made thereunder by the Scottish Ministers.

## Matters on which I am required to report by exception

I am required by the Auditor General for Scotland to report to you if, in my opinion:

- adequate accounting records have not been kept; or
- the financial statements and the audited part of the Remuneration and Staff Report are not in agreement with the accounting records; or
- I have not received all the information and explanations I require for my audit.

I have nothing to report in respect of these matters.

## Conclusions on wider scope responsibilities

In addition to my responsibilities for the annual report and accounts, my conclusions on the wider scope responsibilities specified in the Code of Audit Practice are set out in my Annual Audit Report.

## Use of my report

This report is made solely to the parties to whom it is addressed in accordance with the Public Finance and Accountability (Scotland) Act 2000 and for no other purpose.

In accordance with paragraph 120 of the Code of Audit Practice, I do not undertake to have responsibilities to members or officers, in their individual capacities, or to third parties.



Tommy Yule, FCPFA

Audit Scotland  
4th Floor  
8 Nelson Mandela Place,  
Glasgow

G2 1BT

24 October 2022





# Chapter 5

## Financial statements

## Statement of comprehensive net expenditure for the year ended 31 March 2022

	Notes	2021/22 £'000
<b>Administrative costs</b>		
Staff and pension costs	3	149
Other administrative costs	5	81
<b>Gross administrative costs</b>		<b>230</b>
<b>Net Operating costs and total comprehensive net expenditure for the year</b>		<b>230</b>

2021/22 represents the first year of activity.  
All amounts relate to continuing activities.  
There have been no gains or losses.

The accompanying notes on pages 83 to 87 form an integral part of these financial statements.

## Statement of financial position as of 31 March 2022

	Notes	2021/22 £'000
<b>Non-current assets</b>		
Property, plant, and equipment	6	60
<b>Total assets</b>		<b>60</b>
<b>Current liabilities</b>		
Trade payables and other current liabilities	7	(12)
<b>Total current liabilities</b>		<b>(12)</b>
<b>Total assets less current liabilities</b>		<b>48</b>
<b>Taxpayers' equity</b>		
General Fund		48
<b>Total Taxpayers' equity</b>		<b>48</b>

The accompanying notes on pages 83 to 87 form an integral part of these financial statements.

*Brian Plastow*

As Accountable Officer, I authorised these financial statements for issue on 24 October 2022

**Dr Brian Plastow**  
Scottish Biometrics Commissioner  
24 October 2022

## Statement of cash flows for the year ended 31 March 2022

	Notes	2021/22 £'000
<b>Cash flows from operating activities</b>		
Net cash outflow from operating activities		(230)
<b>Adjustments for non-cash items</b>		
Depreciation	6	4
<b>Movements in working capital</b>		
Increase in trade and other payables	7	12
<b>Net cash outflow from operating activities</b>		<b>(214)</b>
<b>Cash flows used in investing activities</b>		
Purchase of property, plant, and equipment	6	(64)
<b>Net cash outflow from investing activities</b>		<b>(64)</b>
Net cash requirement		(278)
<b>Cash flows generated from financial activities</b>		
Financing from the Scottish Parliamentary Corporate Body	2	278
<b>Net decrease in cash and cash equivalents</b>		<b>0</b>

The accompanying notes on pages 83 to 87 form an integral part of these financial statements.

## Statement of changes in taxpayers' equity for year ended 31 March 2022

	Notes	2021/22 £'000
<b>Balance at 31 March 2021</b>		<b>0</b>
Net operating costs and total net expenditure for the year		(230)
General funding from SPCB	2	278
<b>Balance at 31 March 2022</b>		<b>48</b>

The accompanying notes on pages 83 to 87 form an integral part of these financial statements.

# Notes to the financial statements

## 1. Accounting policies

These financial statements have been prepared in accordance with the Government Financial Reporting Manual (FReM), in compliance with the accounts direction issued by Scottish Ministers. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be most appropriate to the particular circumstances of the Scottish Biometrics Commissioner for the purpose of giving a true and fair view has been selected. The particular policies adopted by the Scottish Biometrics Commissioner are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

The accounts have been prepared on a going concern basis as explained in the Introduction on page 9.

### 1.1 Accounting convention

These accounts have been prepared under the historical cost convention.

## 1.2 Tangible non-current assets

### Capitalisation

The minimum level of capitalisation for individual items of equipment is £500. IT Equipment purchased with a group value exceeding £500, inclusive of irrecoverable VAT, is treated as a non-current asset.

### Depreciation

Depreciation is provided on all non-current assets at a rate calculated to write off the cost in equal instalments over the remaining useful life of the asset.

Furniture, fixtures, and fittings  
including fit out costs

#### 5 years

IT hardware and systems

#### 3 years

## 1.3 Funding

The accounts are prepared on an accrual basis, but the body is funded on a cash received basis. Funding received from the SPCB is credited directly to the general fund in the period to which it relates. The SPCB provided in its first year of operation a transaction processing and recording function for the Scottish Biometrics Commissioner. Accordingly, a bank account is not operated by the Scottish Biometrics Commissioner.

## 1.4 Leases

The Scottish Biometrics Commissioner holds no leases.



## 1.5 Pension Costs

The Commissioner and office staff are members of the Principal Civil Service Pension Scheme (PCSPS). The PCSPS is an unfunded multi-employer defined benefit scheme with benefits underwritten by the government. As a result, the Commissioner is unable to identify its share of the underlying assets and liabilities and therefore, it is accounted for as a defined contribution scheme and no liability is shown in the statement of financial position. The PCSPS is financed by payment from the employer and from those current employees who are members of the PCSPS, who pay contributions at different rates which depend on their salaries and the section of the pension scheme of which they are a member. The rate of employer contributions is typically set following an actuarial valuation. Government Actuary's Department has been appointed as the PCSPS actuary.

The scheme underwent a valuation designed to set employer contribution rates from 1 April 2019. HM Treasury have directed that part of the valuation process ("the cost control mechanism") should be paused but have confirmed that the valuation will be used to set employer contributions for 2021/22 on the basis of the draft valuation results. 2021/22 employer contribution rate of 26.6-30.3% of pensionable pay was applied, according to the relevant pay band.

Further details can be found in the separate scheme statement of the PCSPS.

## 1.6 IAS 19 short term employee benefits

In line with the requirements of IAS 19 short term employee benefits are recognised for staff annual and flexi leave accrued but not taken as at the financial year end.

## 1.7 Value added tax (VAT)

The Scottish Biometrics Commissioner is not registered for VAT, as such all amounts are recorded inclusive of VAT.

## 1.8 Critical judgements in applying accounting policies

In applying the accounting policies set out in these Notes, the Commissioner has had to make judgements about financial transactions or those involving uncertainty about future events. The critical judgement made in the financial statements is that the organisation will continue as a going concern. This is based on the assumption of continuation of service and appropriate funding from the SPCB.

## 2 Financing from the Scottish Parliamentary Corporate Body (SPCB)

	2021/22 £'000	2021/22 £'000	2021/22 £'000
	Budget	Outturn	Variance
Net operating costs (notes 3 & 5)		230	
Capital expenditure (note 6)		64	
<b>Budget available /total expenditure</b>	<b>301</b>	<b>294</b>	<b>7</b>
Non cash adjustments (note 6 & 7)	0	(16)	16
<b>Funding required from SPCB in year</b>	<b>301</b>	<b>278</b>	<b>23</b>

## 3 Staff costs (including the Commissioner)

Breakdown of staff costs	2021/22 £'000	2021/22 £'000	2021/22 £'000
	Commissioner	Staff	Total
Salaries and wages	69	29	98
Social security costs	8	12	20
Pension	19	12	31
<b>Total</b>	<b>96</b>	<b>53</b>	<b>149</b>

## 4 Pension costs

For 2021/22, employers' contributions of £31,163 were payable to the Civil Service Pension arrangements at one of four increased rates in the range 26.6 to 30.3 per cent of pensionable pay based on salary bands

The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme. Outstanding scheme contributions at 31 March 2022 amounted to £0.

## 5 Other administration costs

	2021/22 £'000
General Advisors	47
Shared Corporate Services	10
Audit fee	8
IT Support	3
Design & Digital Costs	3
Recruitment	2
Payroll Administration Costs	2
Telephone Costs	1
Other Business Running Costs	1
Depreciation	4
<b>Total</b>	<b>81</b>

## 6 Property, plant, and equipment

	Furniture fixtures & fittings £'000	IT hardware £'000	Total £'000
<b>Cost</b>			
At 1 April 2021	0	0	<b>0</b>
Additions	55	9	<b>64</b>
At 31 March 2022	55	9	<b>64</b>
<b>Depreciation</b>			
At 1 April 2021	0	0	<b>0</b>
Charge in year	3	1	<b>4</b>
At 31 March 2022	3	1	<b>4</b>
<b>Net book value at 31 March 2022</b>	<b>52</b>	<b>8</b>	<b>60</b>

## 7 Trade payables and other current liabilities (amounts falling due within one year)

	2021/22 £'000
Accruals	12
<b>Total</b>	<b>12</b>

Accruals include £4k in respect of the estimated short-term employee benefits under IAS 19 accrued in respect of annual leave and flexi leave entitlements for the staff at the end of the financial year. The Commissioner is not included in this calculation.

## 8 Related party transactions

The Scottish Biometrics Commissioner was constituted by the Scottish Parliament which provides funding for the Commissioner. The SPCB is regarded as a related body. In 2021-22 the SPCB provided support to the Commissioner by processing set up invoices, payment of the Commissioners salary and maintenance of accounting records. There was no cost associated with this service. From 2022-23 onwards the SPSO will provide this service. Neither the Commissioner nor the Commissioners staff have undertaken material transactions with the SPCB nor within the Commissioner's office during the year. The SPSO provided shared corporate services to the Scottish Biometrics Commissioner in 2021/22 in the form of HR support and payroll processing services which cost £9,688 (note 5).

## 9 Post balance sheet events

No events have occurred since the date of the balance sheet that materially affect the financial statements.

# Scottish Biometrics Commissioner

## Direction By The Scottish Ministers

1. The Scottish Ministers, in accordance with section 31 of Scottish Biometrics Commissioner Act 2020 hereby give the following direction.
2. The statement of accounts for the period from the date that the Office of the Scottish Biometrics Commissioner is established to 31 March 2022, and for subsequent years, shall comply with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FReM) which is in force for the year for which the statement of accounts are prepared.
3. The accounts shall be prepared so as to give a true and fair view of the income and expenditure and cash flows for the financial year, and of the state of affairs as at the end of the financial year.
4. This direction shall be reproduced as an appendix to the statement of accounts.



**Jackie McAllister**

Chief Financial Officer

Signed by the authority of the Scottish Ministers

Dated 20/10/2021





**Scottish Biometrics  
Commissioner**  
Coimiseanair  
Biometrics na h-Alba

**Safeguarding  
our biometric future**