

Scottish Biometrics Commissioner
& Scottish Police Authority



SCOTTISH POLICE
AUTHORITY
ÙGH DARRAS POILIS NA H-ALBA



Joint Assurance Review

on the acquisition of biometric data from
vulnerable persons in police custody requiring
the support of an Appropriate Adult under
The Criminal Justice (Scotland) Act 2016
(Support for Vulnerable Persons) Regulations 2019.

Safeguarding our biometric future



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba

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www.biometricscommissioner.scot

Key Facts

98,295
custody episodes

In the calendar year 2022, there were **98,295 custody episodes** recorded by Police Scotland

1,880

1,880 of those episodes had the **'Appropriate Adult required'** tick box checked on the custody system indicating a vulnerable person in custody requiring Appropriate Adult support

1.9%

The percentage of all custody episodes where the 'Appropriate Adult required' tick box was checked equates to **1.91%**

1,211
fingerprints taken

From the **1,880** episodes indicating a vulnerable person requiring the support of an Appropriate Adult, the Police Scotland data indicates that **fingerprints were then taken in 1,211 cases**

1.23%
of all custody episodes

The available data suggest that fingerprints captured from people requiring the support of an Appropriate Adult was equivalent to **1.23% of all custody episodes**

Police Scotland has good safeguarding arrangements in place for vulnerable adults in custody, including the presence of an Appropriate Adult (where required) at the point of biometrics capture

If a person is not proceeded against, or not convicted, and has no previous convictions, then law states that prints and samples must be destroyed in no proceedings or non-conviction scenarios, and there the subject has no previous convictions¹

In partnership with the SPA, Police Scotland publishes **good management information on DNA profile volumes retained to promote public awareness and understanding, but little or no public management information on fingerprints or image volumes held**

There are opportunities for Police Scotland to improve the information given to data subjects, and also more generally to the public to enhance transparency, confidence, and trust in the use of all biometric data types

¹ There are also conditional legal provisions to retain biometric data for violent and sexual offenders not charged or convicted on application to a Sheriff, and no laws in Scotland which give authority to the Police to acquire, retain, use or destroy images. However, it should be noted that the Police in Scotland have been photographing arrested persons for more than 110 years

Key Findings

- Police Scotland's overall strategic approach to working in partnership to safeguard vulnerable people who find themselves in police custody and requiring the support of an Appropriate Adult, including when biometric data is captured, is strong.
- The available fingerprint data from Police Scotland would suggest that biometric data captured from vulnerable people requiring the support of an Appropriate Adult during calendar year 2022 is equivalent to 1.23% of all custody episodes.
- Appropriate Adult services have been provided (where required) during police investigations in Scotland for more than thirty years. Appropriate Adults (AA) provide an essential service in the criminal justice system, helping to ensure that the rights of vulnerable individuals are safeguarded during police procedures including at the point of biometrics capture.
- The Police Scotland policy guidance at the time of our assurance review did not include any requirement for operational staff to provide meaningful information to data subjects of the reasons why their biometric data is to be captured following arrest; or any explanation of where the data will be hosted; what the data will be used for; who shared with; how long kept, or any appeal mechanisms to Police Scotland. Action is therefore required to ensure compliance with Principle 9 of the Scottish Biometrics Commissioner's [Code of Practice](#), and UK Data Protection law on information rights.
- The Police Scotland policy guidance fails to make reference to the Scottish Biometrics Commissioner Act 2020; the role of the Scottish Biometrics Commissioner; the statutory [Code of Practice](#) approved by the Parliament in November 2022, or the provisions of the 2020 Act which provide for a complaints mechanism where a data subject has concerns about potential failure to comply with the statutory [Code of Practice](#) in Scotland.
- Police Scotland are data rich but information poor when it comes to understanding the utility of biometrics in the criminal justice system. For example, Police Scotland has no automated means of knowing how many biometric samples taken from vulnerable people in 2022 were then matched to an existing or subsequent crime scene sample.
- There are opportunities for Police Scotland to take steps to improve the collection of management information around biometric data to better inform strategic decision-making. Improving the granularity of such data will also improve the ability of Police Scotland to respond to Freedom of Information (FOI) requests, Subject Access Requests under the Data Protection Act 2018, as well as having the ability to place more information in the public domain about the ways in which biometric data and technologies keep citizens safe. Furthermore, monitoring how effective the processing is, in keeping citizens safe is also an important component in ensuring Police Scotland's compliance with Data Protection Law.

- Placing more management information and metrics in the public domain (where appropriate) would help Police Scotland to promote greater public understanding around the use of first-generation² biometrics. Improving transparency will also maintain public confidence and trust, and potentially pave the way for greater public acceptance of the second-generation² policing biometrics that will inevitably emerge in the years to come.
- During interviews and discussions with police officers and staff, we found that staff working in the custody environment were knowledgeable about policies and procedures relating to the care and welfare of vulnerable people. Staff also gave examples of having used the services of an Appropriate Adult to help vulnerable people understand that the police have power to take biometric data such as fingerprints, photographs, and DNA samples.
- Vulnerable people in police custody requiring the support of an Appropriate Adult enjoy the safeguards and protections of an AA during all investigatory activity including at the point of biometrics capture.

² Page 5 within <https://ico.org.uk/media/about-the-ico/documents/4021972/biometrics-insight-report.pdf>

Summary of Recommendations

Recommendation 1

Police Scotland should improve the information given to all persons who have their biometric data acquired in police custody settings because of being arrested and deprived of their liberty. As a minimum, this should include an explanation of the legal basis under which the subject's biometric data (fingerprints, image, DNA swab) is to be acquired; the length of time the data will be retained for and an explanation that such data may be speculatively searched against UK policing databases. Such information and how it is presented and delivered should be tailored to the needs of the recipient, for example vulnerable people or children.

Recommendation No 2

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

Recommendation No 3

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

In accordance with the provisions of [Section 21\(2\)](#) of the Scottish Biometrics Commissioner Act 2020, the Commissioner imposes a requirement on Police Scotland to provide a written statement by no later than 30 June 2023, setting out what it proposes to do in response to the recommendations contained in this report, or if Police Scotland does not intend to implement the recommendations (in full or in part), the reasons for that.



Introduction to our assurance review

Scottish Biometrics Commissioner Act 2020

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

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

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

The Commissioner may, in the exercise of those functions, work jointly with, assist, or consult a range of other bodies as outlined in [Section 3](#) of the Act, including such other persons as the Commissioner considers appropriate. The Scottish Police Authority is one of those bodies detailed in the Act.

The Commissioner may prepare and publish a report about any matter relating to the Commissioner's functions, and any such report must be laid before the Scottish Parliament

This joint assurance review was conducted under the provisions of [Sections 2\(6\)\(b\)](#) and [3\(f\)](#) of the Scottish Biometrics Commissioners Act 2020 and is laid before the Scottish Parliament under [Section 20\(2\)](#) of the Act.

Meaning of biometric data

The term 'biometric data' is legally defined in the Scottish Biometrics Commissioner Act 2020:

'In this Act, "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, and 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 samples³*

Exercising our general function

In exercising our general function as previously described, the Commissioner is to 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 (SPA) and the Police Investigations and Review Commissioner (PIRC).

We must also promote public awareness and understanding of the powers and duties these 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 or challenged. In supporting and promoting the adoption of lawful, effective, and ethical practices, we must have regard to the interests of children and young people, and to vulnerable persons.⁴ Details of how we will exercise our general function can be viewed in our [Strategic Plan 2021 to 2025](#).

When discharging our statutory functions, we use our [National Assessment Framework](#) to consider strategic direction, execution, and results in relation to biometric data used for criminal justice and policing purposes by the bodies to whom our statutory powers extend. Our framework has six outcome headings and contains forty-two quality indicators that have been nuanced to the biometric data context.

³ Scottish Biometrics Commissioner Act 2020, [Section 34](#)

⁴ Scottish Biometrics Commissioner Act 2020, [Section 2\(8\)](#)

About the Scottish Police Authority

[The Police and Fire Reform \(Scotland\) Act 2012](#) created the Scottish Police Authority (SPA) and set out its five core functions:

- to maintain the Police Service
- to promote the policing principles set out in the 2012 Act
- to promote and support continuous improvement in the policing of Scotland
- to keep under review the policing of Scotland; and
- to hold the Chief Constable to account for the policing of Scotland.

These five functions demonstrate the dual, integrated responsibilities of the SPA: its oversight role in scrutinising policing in Scotland and holding the Chief Constable to account; and its supportive role in maintaining and improving the police service. The SPA is also responsible for the management and delivery of Forensic Services in Scotland.

The Authority aims to increase public trust and confidence in the policing of Scotland in the way it discharges its functions and through the quality of its governance arrangements. Further information can be found on the [SPA website](#).

Meaning of Vulnerable Persons

The term “vulnerable persons” can mean different things in different legal contexts. Notwithstanding, and as pertinent to this assurance review, [The Criminal Justice \(Scotland\) Act 2016 \(Support for Vulnerable Persons\) Regulations 2019](#) took legal effect on 10 January 2020. The regulations and [Section 42](#) of the Criminal Justice (Scotland) Act 2016 make provision for “Appropriate Adult support” to be provided for vulnerable persons during a criminal investigation by the police where the vulnerable person is a victim, witness, or potential witness, suspect, or officially accused. The arrangements cater for persons that a Constable believes is 16 years of age or over, and who in the opinion of a Constable requires the support of an Appropriate Adult.

The regulations state this support is to:

- a. help the vulnerable person to understand what is happening, and
- b. facilitate effective communication between the vulnerable person and the police.

Responsibility for providing Appropriate Adult support to such persons on the request of the police rests with Local Authorities in Scotland under [Section 4](#) of the 2019 Regulations. In discharging that responsibility, Local Authorities must have regard to guidance issued by the Scottish Ministers in accordance with [Section 104\(2\)\(b\)](#) of the 2016 Act. Independent oversight and assessment of the quality of any Appropriate Adult support provided to the police by Local Authorities is within the remit of the [Care Inspectorate](#).

[Section 2](#) of the Scottish Biometrics Commissioner Act 2020 sets out the functions assigned to the Commissioner by the Scottish Parliament. In discharging those functions, and recognising the vulnerable nature of certain groups within the criminal justice system, the Commissioner is required by the provisions of Section 2(6) to have regard to the interests of:

- a. children and young persons, and
- b. vulnerable persons

Section 2(8) of the Scottish Biometrics Commissioner Act defines “vulnerable persons” as:

‘...individuals who, by reason of their personal circumstances or characteristics, may have difficulty understanding matters relating to the acquisition, retention, use and destruction of their biometric data...’

Such a broad definition could of course cater for a multiplicity of circumstances and characteristics. In the police custody setting, this could include persons under the influence of drugs, alcohol, or other substances. It could also cater for a host of other mental health related conditions such as learning difficulties or dementia, or social circumstances where the subject does not have sufficient command of English. The definition would also cater for both adults and children, and beyond the custody setting would also cater for circumstances where biometric or forensic data may be acquired from victims, suspects, and witnesses who find themselves in a special position of vulnerability.

Recognising both the complexities of the terminology, and the constraints of readily available management information held by Police Scotland, the design of this assurance review was constrained to focus solely on the safeguards in place in relation to the acquisition of biometric data from those vulnerable persons arrested by Police Scotland during 2022 aged 16 years and over, and who were recorded on the Police Scotland National Custody System (NCS) as requiring the support of an Appropriate Adult.

Importantly, our assurance review focuses solely on that discreet part of the police custody process when persons have biometric data captured following arrest and mostly following the decision to caution and charge. Our assurance review does not consider broader matters relative to the effectiveness of efficiency of general custody arrangements as such matters fall within the statutory remit of [HM Chief Inspector of Constabulary in Scotland](#) (HMICS). The review also does not consider the appropriateness or effectiveness of the Appropriate Adult service which falls within the remit of the Care Inspectorate, and finally the review is not a review of the adherence to the Data Protection Act 2018 or UK GDPR which lies within the statutory responsibility of the [Information Commissioner’s Office](#) (ICO).

Appropriate Adult services during police investigations

Appropriate Adult services have been provided where required during police investigations in Scotland for more than thirty years. Appropriate Adults (AA) provide an essential service in the criminal justice system, helping to ensure that the rights of all vulnerable individuals are safeguarded during police procedures including at the point of biometrics capture typically after the decision has been made to caution and charge with a crime or offence.

In January 2020, the then Cabinet Secretary for Justice Humza Yousaf announced that Scotland would become the first UK nation to implement a statutory Appropriate Adult service. On 10 January 2020, [The Criminal Justice \(Scotland\) Act 2016 \(Support for Vulnerable Persons\) Regulations 2019](#) took legal effect.

The Regulations place a duty on the police to request the type of support provided by an Appropriate Adult for vulnerable persons in police custody. The Regulations also place a duty on Local Authorities to provide Appropriate Adults when requested to do so by the police (whether the request is made by the police, or whether it relates to support for a victim or witness), and making Local Authorities responsible for training AA and the [Care Inspectorate](#) responsible for assessing the quality of AA provision.

A vulnerable person is defined in the legislation as being a person aged sixteen or over who, owing to a mental disorder, is unable to understand what is happening or communicate effectively with the police. The term “mental disorder” is taken from the [Mental Health \(Care and Treatment\) Scotland Act 2003](#) and includes any mental illness, personality disorder or learning disability. This covers a wide range of illnesses and conditions including autism spectrum disorder (ADHD), acquired brain injury and dementia.

The Criminal Procedure (Scotland) Act 1995

The [Criminal Procedure Scotland Act 1995](#), as amended, is the primary legislation in Scotland which allows the police to capture fingerprints, photographs and DNA from people who have been arrested to verify and fix their identity, albeit photographs are not explicitly referenced in the Act. 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.⁵

Whenever someone is arrested by the police in Scotland, the police have the legal authority to capture their fingerprints, and take a saliva swab or other biological sample to enable their DNA to be profiled. It has also been custom and practice for more than one hundred years to take a photographic image. Taking biometric data from people who have been arrested helps the police and the criminal justice system to verify and fix the identity of people arrested by the police, including those against whom criminal proceedings may be initiated.

By storing such data on national policing systems, the police in the UK can also compare biometric data recovered at crime scenes with those held from previous custody episodes to help with the investigation of crime. There are of course many other circumstances where biometric data can assist the police and the criminal justice system. Examples range from missing person enquiries, to establishing the identity of bodies or body parts, or to child protection enquiries.

⁵ Recorded crime remains at low levels, Scottish Government. <https://www.gov.scot/news/recorded-crime-remains-at-low-levels/>

Guide to further reading on biometric data

A full guide on how biometric data and technologies are used for policing and criminal justice purposes in Scotland has been prepared by the Commissioner and may be viewed on our [website](#).

Period and data types covered by our review

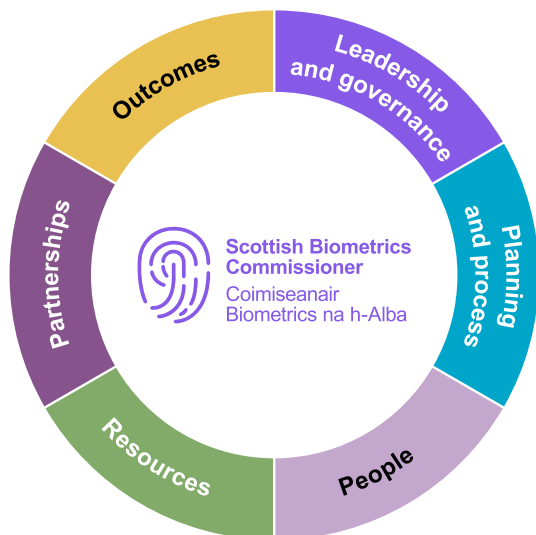
For the purposes of this review, we have examined the arrangements for the acquisition of photographs, fingerprints and DNA samples taken from vulnerable persons arrested by the police in Scotland and who have been recorded on the Police Scotland custody system vulnerability assessment page (AA required tick box) as requiring the support of an Appropriate Adult. The period of the data considered in this review is the calendar year 2022.

Assurance review methodology

Our review was conducted as part of a wider programme of assurance activity outlined to the Scottish Parliament in the Commissioner's [4-year Strategic Plan](#) laid before the Parliament in November 2021.

The assurance activity included a review of all pertinent policies and procedures relating to biometric data, interviews with police officers and staff working in the custody environment, a questionnaire for custody staff, a data return provided by Police Scotland on volumes of biometric data acquired for the calendar year 2022, and strategic discussions with partner agencies including but not limited to COSLA, Local Authority representatives providing AA support, NHS Healthcare Improvement Scotland, the Care Inspectorate, HMICS, Community Justice Scotland, the Independent Custody Visitors Association (ICVA), the Law Society of Scotland, the Scottish Government Victims and Witnesses Unit and other Scottish Government officials.

The specific methodology for this review was outlined in a [terms of reference](#) agreed between partners and published on our website. The terms of reference and our judgements are based on our [National Assessment Framework](#) for biometric data outcomes which ensures a consistent and objective approach to our work.



Our National Assessment Framework considers six overarching themes, namely:

- Leadership and governance
- Planning and process
- People
- Resources
- Partnerships
- Outcomes

My expectation as Commissioner is that any recommendations from our published assurance reviews will result in an action plan by the organisation(s) to whom they are directed and taken forward to enable relevant good practice to be disseminated across Scotland to promote continuous improvement. I will monitor actions to address any recommendation made and will report on progress in our Annual Report to the Scottish Parliament. Where a recommendation is made to Police Scotland, I will also expect the SPA to monitor progress through normal mechanisms for holding the Chief Constable to account. Further to this, where our reviews also identify actions that we could take re wider strategic influence beyond the bodies to whom our functions extend, then we will seek to make connections and exercise wider influence.

I wish to extend our thanks and appreciation to the Scottish Police Authority our strategic partner in this review and to the officers and staff from Police Scotland who assisted our work. Particular thanks are due to Assistant Chief Constable Bex Smith the executive lead on biometric data for Police Scotland for supporting our work and to Gillian Jones, Data Governance Manager and Dave Lambert of the Continuous Improvement Unit of Police Scotland, for facilitating our assurance activity and information requests.

Our assurance review was led by Cheryl Glen, SBC Corporate Services Manager assisted by SPA and SBC managers and staff as required.



Dr Brian Plastow
Scottish Biometrics Commissioner
March 2023



Findings from our assurance review

Police Scotland policy

Our assurance review activity commenced with a desk-based literature review of all policies, procedures, and standard operating procedures followed by Police Scotland relative to vulnerable adults, custody procedures and biometric data. This included, but was not limited to a review of the following Standard Operating Procedures (SOPs):

- Police Scotland: [Appropriate Adults Standard Operating Procedure](#)
- Police Scotland: [Care and Welfare of Persons in Police Custody Standard Operating Procedure](#)
- Police Scotland: [Fingerprints Standard Operating Procedure](#)
- Police Scotland: [DNA Sampling and Retention Standard Operating Procedure](#)
- Police Scotland: [Crime Investigation Standard Operating Procedure](#)
- Police Scotland: [Adult Support and Protection Standard Operating Procedure](#)
- Police Scotland: [Criminal Justice \(Scotland\) Act 2016 \(Arrest Process\) Standard Operating Procedure](#)

Our literature review of relevant references and operational guidance on the acquisition of biometric data in Police Scotland policies confirms that such guidance is in accordance with the laws of Scotland, and that the policy arrangements described in relation to biometric data are proportionate and necessary to achieve legitimate policing objectives.

When biometric data is obtained from persons arrested by the police, that data is then stored on Scottish and/or UK biometric databases. Scotland has its own Scottish DNA database (SDNAD), and Scottish DNA profiles are also replicated onto the UK National DNA Database (NDNAD). Scotland does not have its own fingerprint database. In the case of fingerprints, these are stored on a UK wide law enforcement database known as IDENT1. This system contains police and immigration fingerprints. Facial images derived in the custody setting are stored on the Police Scotland Criminal History System (CHS) and these images are replicated onto a UK wide intelligence sharing platform hosted on the Police National Database (PND). The Police Scotland interim Vulnerable Persons Database (iVPD) does not contain biometric data.

The Police Scotland guidance at the time of our assurance review did not include any requirement for operational staff to provide any of the aforementioned information or indeed meaningful information to data subjects of the reasons why their biometric data is to be captured following arrest; or any explanation of where the data will be hosted; what the data will be used for; who shared with; how long kept, or any appeal mechanisms to Police Scotland. This contrasts with the approach in England and Wales where the Police and Criminal Evidence Act 1984 ([PACE](#)) [Code D](#), requires that when acquiring biometric data from persons arrested, the police must firstly advise the data subject of the lawful basis under which their data is to be captured, and secondly must advise the data subject that their data will be speculatively searched against national police databases.

As Commissioner, it is my view that people who have their biometric data taken without consent because of being deprived of their liberty through arrest in Scotland should be given better information by the police as to the purposes to which their data will then be used. Under Data Protection Law individuals have the right to be informed about the collection and use of their personal data.

For first time offenders, there is an obvious crime-prevention and deterrence potential in advising data subjects that (if convicted) their data will be retained on UK wide databases which facilitate the comparison of materials recovered at crime scenes with records held because of custody episodes.

Biometrics and forensics is an area of interest to the public and often the public's interaction or understanding of biometrics data comes from popular television shows. However, it would be better if more of that information came from Police Scotland. Police Scotland needs to work on ensuring appropriate and accurate representation of biometrics in an easily accessible format that is available to the public.

For vulnerable adults, their first time in custody could be considered daunting thus any additional support advising them of their rights and the procedures to take place would be considered extremely helpful. The '[Letter of Rights](#)' does provide some of this information clearly and in detail, particularly the [easy read version](#), but further enhancements around the taking, storing and retention of biometrics data presented pictorially would support the AA in conveying information and supporting the vulnerable adult during what may be a confusing experience.

The second notable omission from operational policy documents relates to the complete absence of any references to the Scottish Biometrics Commissioner Act 2020; the role of the Scottish Biometrics Commissioner; the statutory [Code of Practice](#) approved by the Parliament in November 2022, or the provisions of the 2020 Act which provide for a complaints mechanism where a data subject has concerns about potential failure to comply with the statutory Code of Practice in Scotland. As a member of the Police Scotland Biometrics Oversight Board chaired by the ACC Major Crime, Public Protection and Local Crime, and having senior Police Scotland representation on my Advisory Group maintained under [Section 33](#) of the Scottish Biometrics Commissioner Act, it is disappointing to find that Police Scotland's strategic engagement with the functions of my office has not yet permeated into Police Scotland's operational practice.

That said, I acknowledge that our assurance review commenced within two months of the Code of Practice taking legal effect in Scotland. There is also a wider communications complexity as biometrics straddle several executive portfolios within Police Scotland (local policing, digital, crime and public protection, custody, organised crime, and counterterrorism etc). This may potentially complicate strategic level engagement with the new policy framework in Scotland and appropriate adjustments permeating down through operational policy and practice.

However, it is important that Police Scotland now takes steps to improve the information that it gives to citizens in Scotland whose biometric data is to be acquired following arrest to ensure that they are better informed of the reasons why their data is being captured and how it will then be used. It is also important that data subjects are made aware by Police Scotland that the provision of the Scottish Biometrics Commissioner Act 2020, and the Scottish Biometrics Commissioner's statutory [Code of Practice](#) apply to Police Scotland, and that persons who have any concerns about how their biometric data is acquired, retained, used, or destroyed may complain to the Scottish Biometrics Commissioner. As the data controller in these circumstances, the moral, ethical, and legal obligation under the Data Protection Act 2018 is on Police Scotland to provide this sort of information to data subjects so that they are better informed of their rights.

Accordingly, I recommend that Police Scotland firstly introduces some basic measures to better inform data subjects of why their biometric data is being captured and how it will then be used. This could be through amendments to the existing '[Letter of Rights](#)' or by other means as considered most appropriate and effective by Police Scotland. Taking cognisance of the needs of vulnerable adults amendments or additions to information being provided could take the form of visual aids e.g. a release from custody letter highlighting where to find out more information re their biometric data; cue cards to use while providing information verbally or an animation/film playing while in custody.

It is essential that Police Scotland undertakes this activity quickly to ensure compliance with Principle 9 of the Scottish Biometrics Commissioner's Code of Practice which provides that:

'individuals, under data protection law also have the right to be informed about the collection and use of their personal data and this Code advocates a requirement for outward facing documentation in relation to the acquisition, retention, use and destruction of biometric data that is particularly tailored to certain audiences such as children, young people, and adults with additional support needs.'

Scottish Biometrics Commissioner
Code of Practice Principle 9

In addition, it should be noted that this Principle includes reference to the ICO Guidance on the [Right to be Informed](#), which stipulates that:

- Individuals have the right to be informed about the collection and use of their personal data
- You must provide individuals with information including: your purposes for processing their personal data, your retention periods for that personal data, and who it will be shared with. We call this 'privacy information'
- The information you provide to people must be concise, transparent, intelligible, easily accessible, and it must use clear and plain language
- Exemptions apply, and you may restrict the provision of information where it is necessary and proportionate

Secondly, I recommend that Police Scotland should also provide basic information to data subjects on the applicability of the Scottish Biometrics Commissioner's [Code of Practice](#) to such data, including the existence of the Commissioner's complaints mechanism for data subjects concerned about potential non-compliance with the Code.

Recommendation 1

Police Scotland should improve the information given to all persons who have their biometric data acquired in police custody settings as a result of being arrested and deprived of their liberty. As a minimum, this should include an explanation of the legal basis under which the subject's biometric data (fingerprints, image, DNA swab) is to be acquired, and an explanation that such data may be speculatively searched against UK policing databases. Such information and how it is presented and delivered should be tailored to the needs of the recipient, for example vulnerable people or children.

Recommendation 2

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

These points aside, it was clear from our assurance review that the Police Scotland strategic approach to working in partnership to safeguard vulnerable people who find themselves in police custody through arrest, and who therefore often have biometric data captured, is strong. Rather than stray beyond my statutory remit on broader custody matters, I will leave further comment on this area to HM Chief Inspector of Constabulary who is currently conducting joint work with NHS Healthcare Improvement Scotland to assess the state, efficiency, and effectiveness of the force's provision of mental health related policing services.⁶

However, it is also worth reflecting on the broader context and what others have said about the emphasis placed by Police Scotland on preventative solutions:

'It encompasses early help in Police Custody: linking up with services around mental health, addiction and connecting those who come to the attention of the police. It's phenomenal. They are identifying people who are at risk: those who are vulnerable and working with other services to make their lives better and not worse. It makes the country safer for everyone. This work often proceeds beneath the radar – prevention is hard to measure – but absence of evidence is not evidence of absence, and I'm lucky enough to meet people whose lives are changed by it.'

Karyn McCluskey

Chief Executive of Community Justice Scotland, quoted in interview with The Herald, 06 January 2023⁷

⁶ HMICS: Policing Mental Health in Scotland – A Thematic Review – Terms of Reference 05 January 2023

⁷ Community Justice Scotland's Karyn McCluskey on hidden cost of Covid: The Herald, 6 January 2023

Data return, analysis, and constraints

In January 2023, and by prior arrangement, Police Scotland provided the Commissioner with a data return showing the total volumes of custody episodes recorded in Scotland during the calendar year 2022, and related data on episodes where the 'Appropriate Adult Required' check box had been ticked to give an indication of the volume of episodes which may relate to a vulnerable person requiring the support of an Appropriate Adult. The key facts drawn from this data return are summarised for the convenience of readers in the graphic near the start of this report to the Scottish Parliament.

Readers should be aware that there are a number of caveats that need to be applied to this data as there is limited automated management information extraction capabilities within the Police Scotland National Custody System (NCS), and also in some of the biometric databases. For example, it is relatively straightforward for Police Scotland to take a data snapshot to ascertain the volumes of images held in CHS, DNA profiles held on SDNAD, or Scottish fingerprint forms held within IDENT1 at any given moment. However, this data changes on a daily if not hourly basis through dynamic update as new records are created, or as pending cases or cases at the end of their retention period are expunged.

Those caveats aside, the Police Scotland data return indicated that there were 98,295 custody episodes in Scotland during the calendar year 2022, and that from this the 'AA required tick box' was checked in 1,880 of those episodes indicating a vulnerable person who may require the assistance of an Appropriate Adult. This figure must also be treated with caution as Police Scotland have explained that when a person comes into custody on a subsequent episode to one where they previously required an Appropriate Adult, NCS automatically defaults to 'AA required' even if that person's circumstances have changed meaning that they are no longer considered vulnerable.

Another system constraint is that NCS does not then record in a searchable field if or when an Appropriate Adult then attends the custody suite to help. This information is likely to be recorded in a free text field within NCS that is not automatically searchable. This means that Police Scotland have no automated means or reconciling 'AA required' with actual 'AA attendance'.

It is somewhat surprising that these figures are so low, [published research](#) from Cardiff University and the National Appropriate Adult Network (NAAN) (England and Wales)⁸ highlighted through clinical interviews that 39% of adults in police custody had a mental disorder, including mental health and learning disabilities, the report further highlighted that the need for an Appropriate Adult was recorded in only 6.2% of over 831,000 detentions of adults. Chris Bath, Chief Executive of the NAAN said "front line police officers have an incredibly difficult job. As a minimum, they deserve tools to implement the complex rules about vulnerable suspects..." – it would be advantageous to know what quality assurance checks Police Scotland has in place to ensure that staff are properly recording and assessing vulnerability. This is something that HMICS and Healthcare Improvement Scotland may wish to look at in their forthcoming inspections. Further to this, the latest [Independent Custody Visiting Scheme Annual Report 2021/22](#)⁹ highlighted that of the 96,170 people detained by Police Scotland (between 1 April 2021 and 31 March 2022), over 40% of those individuals self-declared as having some vulnerability with regards to mental health at some point in their life.

⁸ [Vulnerable adults in police custody missing out on vital support, research shows](#)

⁹ [SPA Independent Custody Visiting Scheme Scotland Annual Report 2021/22](#)

Within the context of limited management information, the Police Scotland data suggests that fingerprints were taken in 1,211 of those 1,880 episodes or 1.23% of all custody episodes. We were also provided with data suggesting that DNA samples were 'still held' in 879 of these episodes. This reflects both subsequent weeding arrangements and operational policing practices throughout the UK where it is not necessary for the police to take a DNA sample from someone who is already 'DNA Confirmed' because of previous custody or offending episodes. The corresponding figure provided for images taken was 1,116. For all these reasons, the data return should be regarded as indicative rather than definitive, as the data cannot be independently validated by the Commissioner.

More generally, the Parliament should be aware that Police Scotland are data rich but information poor when it comes to understanding the utility of biometrics in the criminal justice system. For example, Police Scotland has no automated means of knowing how many biometric samples taken from vulnerable people in 2022 were then matched to an existing or subsequent crime scene sample. The paucity of management information on biometric data mirrors the position in the rest of UK policing where data is mostly only published at a macro level, for example total number of records held or total number of crime scene matches.¹⁰

Accordingly, there are obvious opportunities for Police Scotland to take steps to improve the collection of management information around biometric data to better inform strategic decision-making. Improving the granularity of such data will also improve the ability of Police Scotland to respond to Freedom of Information (FOI) requests, Subject Access Requests under the Data Protection Act 2018 as well as having the ability to place more information

in the public domain about the ways in which biometric data and technologies keep citizens safe. Furthermore, monitoring how effective the processing is, in keeping citizens safe is also an important component in ensuring Police Scotland's compliance with Data Protection Law.

At the time of writing, Police Scotland and the SPA Forensic Services publish very good management information on the SPA Forensic Services Pages of the SPA website in relation to [monthly statistics](#) on the Scottish DNA database. However, there is little or no meaningful data published relating to fingerprint or image metrics.

As Commissioner, it is my view that Police Scotland placing more management information and metrics in the public domain (where appropriate) would help promote public understanding around the use of first-generation biometrics¹¹. Improving transparency will also maintain public confidence and trust and potentially pave the way for greater public acceptance of the second-generation policing biometrics¹¹ that will inevitably emerge in the years to come.

Recommendation 3

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

¹⁰ See for example the [UK Forensic Databases Annual Report 2020 to 2021](#)

¹¹ Page 5 within <https://ico.org.uk/media/about-the-ico/documents/4021972/biometrics-insight-report.pdf>



Leadership and governance

As highlighted earlier in the report to the Scottish Parliament, biometrics straddle several executive portfolios within Police Scotland. The majority of **acquisition** of biometric data occurs in the custody environment as a result of images, fingerprints and DNA samples being acquired from persons arrested by the police. However, biometric data is also recovered in several other contexts such as through traditional crime scene examinations, or through digital forensics techniques, or by various other means.

Once acquired and stored within relevant databases, the **retention and destruction** of such data largely sits within the data governance portfolio to ensure that Police Scotland complies with its various legal obligations around data management including the Data Protection Act 2018 and UK GDPR as overseen by the UK Information Commissioner (ICO), as well as its legal obligations around domestic legislation in Scotland such as the Criminal Procedure (Scotland) Act 1995, the Freedom of Information (Scotland) Act 2002, the Public Records (Scotland) Act 2011, and the Scottish Biometrics Commissioner Act 2020 and our statutory Code of Practice.

When it comes to **use**, biometric data spans almost every area of policing adding to the challenges of effective leadership and governance. Further information on the ways in which Police Scotland acquire, use, retain, and destroy biometric data can be found in my [Annual Report and Accounts 2021/22](#).

In 2021, and in response to the Scottish Biometrics Commissioner Act 2020 taking legal effect, Police Scotland established a Biometrics Oversight Board under the portfolio responsibilities of the DCC Crime and Operational Support. Since its inception, I have attended several meetings of this forum which is now chaired by the ACC Major Crime, Public Protection and Local Crime. Whilst strategic leadership is strong, the sheer scale and complexity of Police Scotland as a national policing body means that evolving strategy is often difficult to communicate effectively throughout the organisation, and therefore it is sometimes slow to permeate operational policy.

These complexities of leadership and governance also translate into a paucity of information being placed in the public domain. As already mentioned, Police Scotland in partnership with the SPA places excellent data on DNA on the SPA Forensic Services web page but little or no information is placed in the public domain by Police Scotland about fingerprints or image metrics. Police Scotland has also not published the terms of reference or any minutes of its Biometrics Oversight Board. In fact, the public would only know of its existence through information placed in the public domain through third parties for example reports to the SPA Forensic Services Committee by the SPA Director of Forensic Services, or in the Scottish Biometrics Commissioner's Annual Report 2021/22 to the Scottish Parliament.

Therefore, my assessment is that whilst Police Scotland has strong and effective leadership and governance arrangements in relation to biometric data and technologies, there are also opportunities for Police Scotland to improve how that strategy then permeates operational practice. There are also opportunities for Police Scotland to improve the quality of its own management information around biometric data to better support strategic decision-making, and as a corollary to place more and better information in the public domain to maintain public confidence and trust.

In addition to this and as aforementioned, the policies, procedures and standard operation procedures available on the Police Scotland website are publicly available describing effective safeguards in place. However, to ensure public satisfaction and reassurance that the police continue to deliver an effective and inclusive public service across Scotland, it would be advantageous for these policies to be updated more regularly as legislation and national policy changes and/or is introduced e.g. by including descriptions of why and how biometrics are taken; what happens to the data and how long the biometric data is kept for.

Police Scotland practice - interviews with police officers and staff

During interviews and discussions with police officers and staff we found that staff working in the custody environment were knowledgeable about policies and procedures relating to the care and welfare of vulnerable people. Staff also gave examples of having used the services of an Appropriate Adult to help vulnerable people understand that the police have power to take biometric data such as fingerprints, photographs and DNA samples where a person has been arrested and is to be charged with an offence. However, in relation to the point of biometrics capture, information would be communicated through the Appropriate Adult on an 'if asked' or ad hoc basis, rather than as part of a structured approach to help people understand things like where their data would be stored, what it would be used for, who shared with, or how long kept. However, the wider environment and this behaviour should be considered further, feedback from interviews with Appropriate Adults highlighted that vulnerable adults are often very compliant, not forthcoming with questions and would conform with police procedures.

Officers and staff confirmed that they had not received any specific training about the Scottish Biometrics Commissioner Act 2020, the role of the Commissioner or about the statutory Code of Practice having taken legal effect, although many were aware of the function in more general terms. On providing better information to data subjects, several agreed that this would be the right thing to do and highlighted the [Letter of Rights: Easy Read Version](#) which they used on a regular basis. Some felt that there was an opportunity for the Letter of Rights to be updated to ensure that persons who have their biometric taken in custody are aware of the [Code of Practice](#) and complaints mechanism for data subjects.

Interviews with Appropriate Adult providers

A discussion with Appropriate Adult providers highlighted a consistent approach by police while a vulnerable adult is in custody, the Letter of Rights was used and the police verbally explained each step of the process. However, it was felt that further, perhaps pictorial information, could be used to explain and describe what to expect re the taking of biometrics; why it happens and what happens next to the data. Visual aides were thought to be effective at complimenting the verbal descriptions and perhaps help to decipher the abstract concept of 'biometrics' which in turn would help support the Appropriate Adult in supporting the vulnerable person.

The Appropriate Adults confirmed they were aware of the police complaints procedure and that they could complain on behalf of the vulnerable person. They did however highlight that questions are not usually asked during the time in custody and we can perhaps infer that the environment and situation the vulnerable adult finds themselves in can be daunting. An area for consideration and raised during the discussion was the capacity/capability of the police recognising someone with learning disabilities and requiring an Appropriate Adult. Another area for consideration, and as mentioned previously is the enhancement of the Letter of Rights, or something similar, explaining what happens to the biometric data – depicted in a way that is not overburdensome.

Independent Custody Visitors (ICVs)

A questionnaire sent out to Independent Custody Visitors provided the following:

- No-one reported encountering any issues connected with vulnerable people being photographed, fingerprinted and/or the taking of DNA while in custody and it was felt that policies and safeguards were working
- It was suggested that support should be available from a fully trained individual to assess the vulnerability concerns and for this information to be passed to the police so they can have a clearer vision as to their welfare
- It was highlighted there was surprise at how few people in custody are recorded on the custody systems vulnerability assessment as requiring the assistance of an Appropriate Adult
- There was awareness of the Letter of Rights and recognition that Police Scotland and the SPA had done a lot of work in this area e.g. providing this in different languages and an easy read version
- It was unknown as to what type of information is provided to vulnerable adults about the reasons for taking and retaining their biometric data, how long it would be kept and where it would be kept. Further to this it was suggested this information should be provided due to this being personal data and by not providing it in a clear and concise manner the rights of the individual could be breached inadvertently
- Lastly it was highlighted that communication needs to be adapted and delivered in the most effective way

Compliance with the Code of Practice

Subject to Police Scotland addressing the first two recommendations contained in this assurance review, my overall assessment of the available evidence is that there are no other matters of concern relative to compliance with the statutory [Code of Practice](#) in Scotland.

My overwhelming impression is that Police Scotland's overall strategic approach to working in partnership to safeguard vulnerable people who find themselves in police custody and requiring the support of an Appropriate Adult, including when biometric data is captured, is strong.

During our work, I was also impressed with the knowledge, professionalism, and dedication to public service amongst the officers and staff of Police Scotland to protecting the rights of vulnerable people. I am grateful for everything that they do in that regard, and to their broader contribution in making Scotland one of the safest countries in the world in which to live.



**Scottish Biometrics
Commissioner**

Coimiseanair
Biometrics na h-Alba

**Safeguarding
our biometric future**