



Scottish Biometrics Commissioner – Advisory Group Meeting

Minute of meeting of 29 November 2022 (0930 - 1100 via MS Teams)

Members Present	
Professor Derek Penman (Chair)	Independent Member
Genevieve Lennon	Strathclyde University
Scott Ross	Head of Change & Operational Scrutiny, Scottish Police Authority
Denis Hamill	Chief Data Officer, Police Scotland
Mark Hargreaves	Assistant Inspector of Constabulary in Scotland, HMICS
Victoria Morton	Forensic Services, Scottish Police Authority
Richard Casey	Senior Investigator, PIRC
Professor Shannon Vallor	Baillie Gifford Chair in the Ethics of Data and Artificial Intelligence at the Edinburgh Futures Institute (EFI) at University of Edinburgh
Gina Wilson	Head of Strategy, Children & Young People's Commissioner Scotland
Gillian Jones	Data Governance Manager, Police Scotland
Damian Armstrong	Superintendent, Programme Lead Digital Evidence Sharing Capability Programme (DESC), Police Scotland
Brian Plastow	Scottish Biometrics Commissioner
Cheryl Glen	Corporate Services Manager, Scottish Biometrics Commissioner
Joanna Milne (Minutes)	Business Support Officer, Scottish Biometrics Commissioner

Apologies	
Phil Chapman	Director of Operations, PIRC
Professor John McNeil	Independent Member
Clare Hussain	Head of Data Governance, Police Scotland
Mark Manders	Mental Welfare Commission for Scotland
Maggie Miller	Detective Superintendent and Acting Head of Local Crime, Police Scotland
Fraser Sampson	UK Biometrics & Surveillance Camera Commissioner
Ken McDonald	Head of Regions, Information Commissioners Office (ICO)
Mhairi Morrison	Assistant Procurator Fiscal for Major Crime, COPFS
Diego Quiroz	Operations Manager, Scottish Biometrics Commissioner

1. Welcome, apologies & introductions

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

Mark Hargreaves and Gillian Jones welcomed as new members of the SBC Advisory Group.

2. Minutes of previous meeting and action log

The Commissioner confirmed that the new Data Protection and Digital Information Bill being brought in May will see the UK Biometrics and Safety Camera Commissioner's responsibilities removed and will see surveillance camera duties being moved to the Information Commissioner Officer. The Commissioner confirmed the Bill does not apply to Scotland and will therefore have little impact on Scotland. Only where data is held under National Security determination will it affect Scotland and this information will now be held by the Investigatory Powers Commissioner.

All other actions have been closed.

Minutes of the meeting on 30 August 2022 were approved.

3. Annual Report and Accounts (ARA)

The Commissioner thanked everyone who contributed to the ARA including Police Scotland (PS), Scottish Police Authority (SPA) and Police Investigations and Review Commissioner (PIRC) for providing data which was included in the ARA.

The ARA was laid before the Parliament on 25 October and has been well received by Parliament. The Chief Constable provided positive feedback on the ARA at the SPA Board meeting held last week.

[Link to ARA](#)

4. Code of Practice and Complaints mechanism

The Commissioner thanked everyone in the Advisory Group past and present for their input into the Code of Practice and Complaints procedure.

The Commissioner ran through the process of getting the Code from draft to sign off for those new members of the Advisory Group.

Volumes of complaints are not anticipated to be high due to the nature of who can complain.

The Chair wanted to understand what has been done to raise public awareness of the Code. The Commissioner explained that when the Code of Practice was approved, the SBC were able to use a media consultant who provided media support. The Commissioner is also promoting the Code and Complaints procedure through those bodies that collect biometric data and by participating in online discussions through academia.

Throughout winter, work will continue to highlight the Code of Practice and Complaints procedure to those who collect biometric data so they can make people, whose biometrics they are collecting, aware that there is a Code of Practice and a Complaints procedure available to them. This could include having the SBC's information included on the Letter of Rights which is given to those who have their biometrics taken by Police Scotland.

The Commissioner also confirmed that as part of our budget bid for next year we have requested funds to allow us to recruit a media consultant to help us with our social media presence.

Mark Hargreaves offered to put our details on the HMICS website and link to the SBC Complaints procedure.

Action: Advisory Group to see how they can support SBC widen their social media presence and promote the Code of Practice on their own organisational websites.

Action: Scott Ross to engage with SPA and Police Scotland media teams to link in with SBC to promote the Code of Practice and Complaints procedure.

Action: BSO (Business Support Officer) to send Mark Hargreaves, HMICS details and links for SBC website so HMICS can highlight how to complain to Scottish Biometrics Commissioner about a breach on the Code of Practice.

5. Winter work programme

Two assurance reviews will be produced over the next few months.

The first review will specifically look at the capture of biometric data for children and young people (under the age of 18) who end up in police custody and are subsequently charged. This review will be run jointly with Scottish Police Authority and Children and Young People's Centre for Justice (CYCJ). The ToR has already been agreed and is available on our website. ([Link to ToR](#))

This review will feed into the year one review of the Age of Criminal Responsibility Act and the forthcoming Children's Care and Justice Bill which is a Bill that essentially takes 16 and 17 year olds out of the adult criminal justice system.

The second assurance review will look at vulnerable adults; with 'vulnerability' meaning different things in different situations. This piece of work will specifically look at vulnerable adults who are arrested and have their biometrics taken that require support from an appropriate adult. The ToR for this assurance review will be published later this week.

The objective of both these reviews is to reassure Parliament that the appropriate safeguards are in place when children and vulnerable adults find themselves having their biometrics taken after an arrest.

Next year we will be conducting a rolling programme of compliance assessments across those bodies to whom our functions extend – Police Scotland, the SPA, and the PIRC. These will include a self-assessment to be completed, then we will discuss any queries with a view to providing a certificate endorsing compliance with the Code of Practice.

Gina Wilson confirmed that the Children and Young People's Commission Scotland should have capacity next year to review and comment on the outputs from the work produced from the assurance C&YPs review.

Action: Operations Manager to contact Gina Wilson once the C&YPs review has been concluded to allow the Children's and Young People's Commission Scotland to provide review and comments.

6. Digital Evidence Sharing Capability (DESC) project

Damian Armstrong, Programme Manager from the DESC project took us through slides explaining the project. It is a collaboration between Police Scotland, the Crown Office, and Procurator Fiscal Service (COPFS), Scottish Courts and Tribunals Service and Scottish Government regarding the collection and sharing of digital evidence.

The digital evidence will also be made available to the defence team and will allow the client to make an informed early choice re their plea. This will have a direct impact for victims, witnesses, and the accused by reducing waiting times for courts.

The project is currently being rolled out in Dundee and if successful will be rolled out nationally by August 2024.

Action: Once slides received from Damian Armstrong, BSO to circulate to Advisory Group.

7. Review of laws of retention

In 2018 there was a recommendation from the Independent Advisory Group (IAG) on the use of biometric data for policing and criminal justice purposes in Scotland, that the laws of retention should be reviewed by the Scottish Government. At the time when the Advisory Group discussed same it was thought that some of the laws were arbitrary in terms of the notion that it didn't matter what crime had been committed your biometrics would be taken.

The Commissioner agreed with the Scottish Government to discuss further with the Advisory Group to gauge opinion on whether they felt the laws of retention should be reviewed.

Genevieve Lennon agreed that with changes that have taken place since discussions in 2018, a review should be conducted in 3 or 4 years' time. The Commissioner confirmed there will be a 3-year review of the Code of Practice.

Mark Hargreaves agreed there should be a period of settling in before reviewing, and with the Code of Practice being reviewed in 3-years, this could form part of the review.

Gillian Jones confirmed that she would like to see a 'light touch' review of the laws of retention. Gillian appreciates the Code will be reviewed in 3-years; however, this does not include the legislation. Also, images are not currently part of the legislation unlike DNA and fingerprints.

It was agreed that a useful exercise might be to bring academics together to discuss what could be looked at and that may not be the whole laws of retention. It was also thought helpful to benchmark our laws against other countries to understand where we can improve them.

8. AOCB

Next meeting to be held end of February.

The Commissioner took this opportunity to thank everyone in the Advisory Group for their input.