



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba



Scottish Biometrics Commissioner

Business Plan 2023/24

‘Supporting and promoting 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’

Safeguarding our biometric future

Introduction

This Business Plan for 2023/24 sets out the priorities of the Scottish Biometrics Commissioner (SBC) for the coming year to ensure the delivery of the outcomes set out in our [Strategic Plan 2021 to 2025](#). Our Business Plan is intentionally ambitious and builds on the achievements of earlier fiscal years where we have successfully delivered and consolidated the SBC function, achieving all objectives whilst operating within our allocated budget. In this our third financial cycle, we will do so again.

Last year, and with the approval of the Scottish Parliament and Scottish Ministers, we successfully introduced a new statutory [Code of Practice](#) on the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland. The delivery of a national Code of Practice which appropriately balances the needs and responsibilities of law enforcement with the rights of private citizens was both a ‘world first’ and a significant human rights achievement for Scotland.¹ Such progressive policy developments in Scotland also continue to generate interest from an international audience.²

In 2023/24, and following our Code of Practice having been in legal effect for a period of twelve months, we will initiate a new rolling programme of annual compliance assessments to assess how well [Police Scotland](#), the [Scottish Police Authority](#) (SPA), and [Police Investigations and Review Commissioner](#) (PIRC) are complying with the general principles and ethical considerations as detailed in our Code of Practice. Over the period, we will also conduct a thematic review of how facial images and technologies are being used and will also keep under review the laws of retention in Scotland. In doing so, we will seek to provide the necessary assurances to the Scottish Parliament and to consolidate our reputation as a trusted voice within the policing and criminal justice community within Scotland, the UK, and internationally.

In this plan, our objectives for 2023/24 are presented under the most appropriate of the four strategic priorities defined within our Strategic Plan. For reasons of accountability, each objective has clearly assigned ownership demonstrating a recognisable ‘golden thread’ linking individual roles and responsibilities to operational delivery. We also include key performance indicators for our strategic priorities and other legal obligations.



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01 April 2023

¹ [Scotland first country in world to produce biometrics code of practice](#), Independent, 16 November 2022

² [New Zealand Commissioner considers introducing biometrics code of practice](#), biometricupdate.com, 15 December 2022

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Our purpose

The [Scottish Biometrics Commissioner Act 2020](#) established the office of Scottish Biometrics Commissioner (SBC) and provides for its functions. The Commissioner is independent of Scottish Government and is appointed by the Monarch on the nomination of the Scottish Parliament. 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 Police Scotland, the Scottish Police Authority (SPA), and the Police Investigations and Review Commissioner (PIRC).³ The Commissioner must lay an annual report on activities each year before the Scottish Parliament and must publish annual audited accounts. The Commissioner may also publish other reports and research, as necessary.

[Section 7](#) of the Act provides that in furtherance of the Commissioner's general function, 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. The Code of Practice prepared by the Commissioner was approved by the Parliament and Scottish Ministers and took legal effect on 16 November 2022. The Commissioner must keep the approved Code of Practice under review, prepare and publish a report on the Commissioner's findings, and lay a copy of the report before the Scottish Parliament. The first such report must be laid before the Parliament no later than 3 years after the date on which the first Code of Practice comes into effect.

[Section 15](#) of the Act requires that the Commissioner must provide a procedure by which an individual, or someone acting on an individual's behalf, may make a complaint to the Commissioner that a person who is required by [Section 9\(1\)](#) to comply with the Code of Practice has not done or is not doing so in relation to the individual's biometric data. The [complaints procedure](#) relating to the Code of Practice can be viewed on the Commissioner's website.

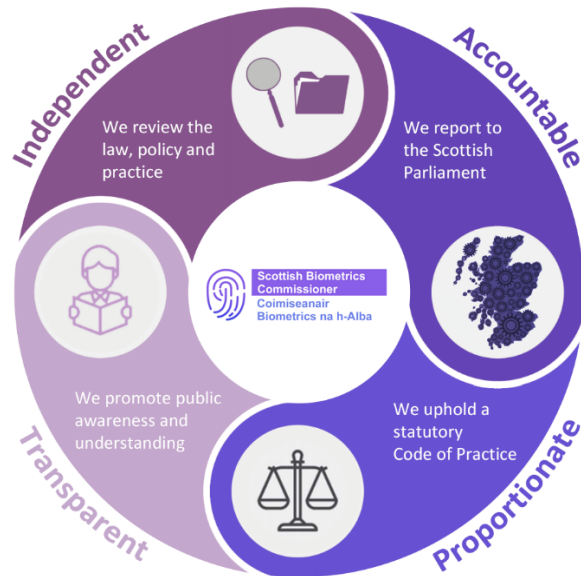
[Section 20](#) of the Act provides that if the Commissioner determines that a person who is required by Section 9(1) to comply with the Code of Practice has not done so or is not doing so, the Commissioner must prepare and publish a report about that failure unless the Commissioner considers that it is sufficiently minor not to merit it. Such reports must be laid before the Scottish Parliament. [Section 23\(1\)](#) of the Act provides that where the Commissioner considers that Police Scotland, the SPA, or PIRC has not complied or is not complying with the Code of Practice then the Commissioner may issue a compliance notice. A 'compliance notice' is a notice requiring the person to whom it is issued to take the steps set out in the notice to address the person's failure to comply with the Code of Practice. Further detail on compliance notices can be found in Sections 23 to 26 of the Act.

[Section 27](#) of the Act provides that where a person to whom a compliance notice has been issued refuses or fails, without reasonable excuse, to comply with the notice, the Commissioner may report the matter to the Court of Session.

³ See [Section 34](#) of Scottish Biometrics Commissioner Act 2020 for full definition of 'biometric data'

Our values

As a values-led organisation, we will 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 the Monarch on the nomination of the Scottish Parliament and is independent of Scottish Government.

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.

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 proportionate, necessary, effective, and efficient.

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.

Our National Assessment Framework for biometric data outcomes

In 2021/22 the SBC developed and published a National Assessment Framework of forty-two quality indicators for biometric data outcomes. This Assessment Framework is based on the Public Sector Improvement Framework in Scotland (PSIF) and has been independently validated by the Improvement Service in Scotland.⁴ The framework also serves as a self-assessment tool for Police Scotland, SPA Forensic Services and the Police Investigations and Review Commissioner who were fully consulted on its content.

Our statutory Code of Practice together with our National Assessment Framework for biometric data outcomes will provide a substructure through which to assess compliance with the guiding principles contained within our Code of Practice and more generally in the evaluation of overall direction, execution, and results. This will help improve independent oversight, governance, and scrutiny.

Our Assessment Framework mirrors the 6 PSIF framework domains most applicable to criminal justice and policing. These framework domains have been used by HM Chief Inspector of Constabulary in Scotland (HMICS) and are illustrated as follows:

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



⁴ [Improvementservice.org.uk](https://www.improvementservice.org.uk)

PSIF allows people to understand and manage the relationship between what their organisation does and the outcomes it achieves. This framework shall guide our work and together with our Code of Practice can also serve as a self-evaluation model for policing and criminal justice agencies when considering their approach to biometric data and technologies.

PSIF is a recognised management framework endorsed by Scottish Government which allows organisations to achieve success and to understand gaps and viable solutions, empowering them to progress.

To ensure synergy within the wider policing family in Scotland, the Scottish Biometrics Commissioner has adopted the six framework themes from PSIF already used by HMICS and Police Scotland that are of most relevance to the policing and criminal justice context in Scotland. Those themes are:

Outcomes

We will focus on the overall performance of the organisation in relation to biometric data and technologies and seek to examine success in delivering demonstrable, high quality and improved outcomes in support of statutory functions and national outcomes.

Leadership and governance

We will examine strategic leadership and governance, scrutiny, and accountability arrangements for biometric data and technologies to assess whether the organisation is delivering its overall vision in support of statutory functions and national outcomes.

Partnerships

We will assess how well partners work together to support the delivery of criminal justice, community safety and policing outcomes in relation to biometric data and technologies. This will include an assessment of partnership working in Scotland, and where appropriate to the functions of the organisation, wider UK, and international partnerships in connection with biometric data sharing and the operation of shared biometric databases and technologies.

Planning and process

We will examine the effectiveness of strategy and planning processes in relation to the acquisition, retention, use, and destruction of biometric data. We will consider whether processes comply with the Code of Practice developed by the Scottish Biometrics Commissioner and consider safeguards and special arrangements when collecting biometric data from children, young people, and vulnerable persons.

People

We will assess whether staff working with biometric data and technologies have the skills and competencies required to deliver on agreed outcomes and priorities. This will include an assessment of familiarity with the concept of unconscious bias, and how well staff understand the reliability and validity of technologies and how human interaction with such technologies can impact on equalities, human-rights, ethical and privacy considerations. We will look for evidence of respect for human-rights through all themes of our Assessment Framework.

Resources

A key element of resourcing is the consideration of best value. We will assess whether organisations collecting biometric data for criminal justice and policing purposes in Scotland have the resources to manage and control Scottish biometric data in accordance with Scottish legislation, operational policies, and any Codes of Practice in terms of its use.

Our Strategic Plan 2021 to 2025

Our revised [Strategic Plan](#) laid before the Scottish Parliament in February 2023 sets out how I will perform my statutory functions during the 4-year period from 01 December 2021 until 30 November 2025⁵. In accordance with the requirements of [Section 28\(3\)](#) of the Scottish Biometrics Commissioner Act 2020, and [Scottish Statutory Instrument 2020/250](#), this Strategic Plan includes information on:

- Identified objectives and priorities for that period,
- How I propose to achieve those objectives and priorities,
- A timetable for doing so,
- Estimated (or actual) costs

⁵ The commencement period of the Strategic Plan was amended during the Covid-19 Pandemic by the commencement order ([S.S.I. 2020/250](#)) from 1 April 2021 to 01 December 2021, therefore the period of this Strategic Plan no longer aligns with the provisions of [Section 29\(1\)](#) of the Scottish Biometrics Commissioner Act 2020, which requires budgetary arrangements to align with the fiscal year

Our strategy on a page

Our strategy, purpose and vision is illustrated on a single page as follows:

Our strategy on a page:				
<u>Our purpose and vision:</u> 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 ⁶				
Our four strategic priorities	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 ⁷	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 ⁸	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
Our outputs and intended outcomes aligned to each priority	1(a). Develop, deliver, and publish, a National Assessment Framework to help assess the effectiveness and efficiency of biometric data outcomes. Publish annual and other reports to enhance independent oversight, transparency, and public accountability	2(a). Contribute to public awareness and understanding of how biometric data and technologies are used for criminal justice and police purposes in Scotland through various mechanisms including a website information hub, public reporting, and an established complaints procedure on our Code of Practice for biometric data subjects ⁹	3 (a). Deliver a statutory substructure and compliance framework through a Code of Practice approved by the Parliament and Scottish Ministers through regulations, which balances ethical public interest considerations with democratic freedoms and the privacy and human rights of data subjects	4 (a). Contribute towards the National Outcomes for Scotland, specifically: Delivering community safety, protecting equalities & human rights, avoiding discrimination, protecting children and vulnerable adults, and making a positive contribution internationally
Our values	Independent	Transparent	Proportionate	Accountable

⁶ Our strategic priorities are directly aligned to the statutory functions of the Commissioner as established in [Section 2\(3\)](#) of the Scottish Biometrics Commissioner Act 2020

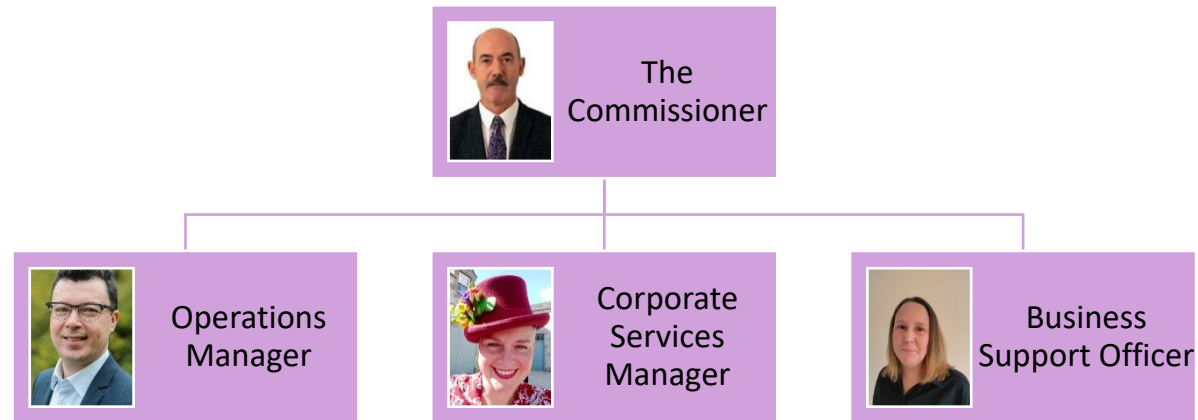
⁷ A [public attitudes survey](#) was conducted in 2021/22 to measure and baseline public attitudes, awareness, and understanding of biometrics in policing in Scotland

⁸ *Ibid*, [Section 7](#), Scottish Biometrics Commissioner Act 2020

⁹ *Ibid*, [Section 15](#), Scottish Biometrics Commissioner Act 2020

Our team

Our team is small and consists of the Commissioner and three members of staff. Those are a Corporate Services Manager, Operations Manager and a Business Support Officer. Further information can be found on the [Who we are](#) pages of our website.



Our budget allocation for 2023/24

Our allocated budget for 2023/24 is £444k broken down as follows:

- Staff costs - £337k
- Running costs - £67k
- Advance authority to utilise a maximum of £50k from SPCB contingency funding for Communications & Engagement
- Bridgeside House shared-services contribution - £24k already removed from our allocated budget

Business Plan priorities 2023/24

The following pages list our Strategic Outcomes and objectives:

Strategic Objective No 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			
2023/24	Measure/KPI/Reporting	Due by	Led by
Commence review of laws of retention in Scotland	Initial pathfinder workshop to be conducted in April/May 2023 with report to be published on website following summer Parliamentary recess. (Full review and report to follow by October 2024 if necessary)	04 Sept 2023	Commissioner
Meet regularly with the bodies to whom our functions extend and other stakeholders	KPI No 1: meet a minimum of four times per year with bodies to whom functions extend	Ongoing	Strategic meetings - Commissioner Tactical and Operational meetings - Operations Manager
Maintain Advisory Group as required by <u>Section 33</u> of SBC Act 2020	KPI No 2: Advisory Group to meet no less than 3 times per year	Ongoing	Commissioner
Conduct an Assurance Review of policy and practice in relation to the acquisition, retention, use, and destruction of photographs and facial images including facial search and facial recognition technologies for criminal justice and police purposes. (Review to commence in autumn 2023)	Thematic Assurance Report to Scottish Parliament KPI No 3: To conduct one large scale thematic assurance review each year	15 March 2024	Operations Manager

Link to National Outcomes for Scotland: Delivering community safety. Protecting equalities & human rights. Avoiding discrimination. Protecting children and vulnerable persons. Making a positive contribution internationally

Strategic Objective No 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

2023/24	Measure/KPI/Reporting	Due by	Led by
Ongoing public and stakeholder engagement and the provision of capacity building materials through the website of the Scottish Biometrics Commissioner	Publish capacity building materials on website KPI No 4: Publish two newsletters each year KPI No 5: Measure footfall to website. Target is to increase annual footfall by 5% compared to year 1 (January 2023) baseline	Ongoing Ongoing January 2024	Corporate Services Manager
Maintain complaints procedure in parallel with Code of Practice	Maintain complaints mechanism and Code of Practice	Ongoing	Operations Manager
Conduct investigations into any complaints received from data subjects	Number of investigations into complaints relating to the Code of Practice Publish Commissioner’s determination in event of any individual breach of the Code of Practice	Ongoing Ongoing	Investigating officer as appointed by Commissioner Commissioner

Link to National Outcomes for Scotland: Delivering community safety. Protecting equalities & human rights. Avoiding discrimination. Protecting children and vulnerable persons. Making a positive contribution internationally

Strategic Objective No 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

2023/24	Measure/KPI/Reporting	Due by	Led by
<p>Maintain statutory substructure and compliance framework through a Code of Practice approved by the Parliament and Scottish Ministers through regulations, which balance ethical public interest considerations with democratic freedoms and the privacy and human rights of data subjects</p> <p>Note: The Code compliance assessments will generate a report on each agency for publication on the SBC website only. However, any finding of a significant breach of the Code would result in a full report from the Commissioner to Parliament</p>	<p>Keep Code under review</p> <p>Compliance Assessment report PIRC (SBC website publication)</p> <p>Compliance Assessment report SPA (SBC website publication)</p> <p>Compliance Assessment report Police Scotland (SBC website publication)</p> <p>KPI No 6: measures our legal requirement to assess compliance with a Code of Practice</p>	<p>Ongoing</p> <p>31 January 2024</p> <p>24 February 2024</p> <p>24 March 2024</p>	<p>Operations Manager</p> <p>Commissioner</p> <p>Commissioner</p> <p>Commissioner</p>

Link to National Outcomes for Scotland: Delivering community safety. Protecting equalities & human rights. Avoiding discrimination. Protecting children and vulnerable persons. Making a positive contribution internationally

Strategic Objective No 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

2023/24	Measure/KPI/Reporting	Due by	Led by
Prepare Annual Report under <u>Section 32</u> of SBC Act to report to Parliament on Commissioner's activities during fiscal year 2022/23 on matters relevant to the use of biometric data and technologies	Section 32 report to Parliament	29 September 2023	Report to be prepared by Operations Manager for approval by Commissioner
Prepare Annual Accounts and performance report under <u>Section 31</u> of SBC Act to report to Parliament for fiscal year 2022/23, including the findings of the external auditor	Section 31 report to Parliament	30 November 2023	Report to be prepared by Corporate Services Manager for approval by AAB, Audit Scotland, and Commissioner
	KPI No 7: measures our public reporting obligations. Our target is to lay two major reports each year before the Scottish Parliament. These are our Annual Report(s) and one thematic report	X-ref to Strategic objective No 1 and KPI No 3	

Link to National Outcomes for Scotland: Delivering community safety. Protecting equalities & human rights. Avoiding discrimination. Protecting children and vulnerable persons. Making a positive contribution internationally

Our other Legal, Corporate and Governance - Key Performance Indicators (KPIs)

2023/24	Our Key Performance Indicators (KPI's)	Led by
We will operate within our budget as allocated each year by the Parliamentary Corporation ¹⁰	KPI No 8: measures our financial performance. Our target is to operate entirely within our allocated budget for each fiscal year	Corporate Services Manager (31 March 2024)
We will respond to complaints received about us and conclude investigations as soon as reasonably practicable	<p>KPI No 9: Measures our initial response to complaints received about us. Our target is to acknowledge 100% of complaints within three working days</p> <p>KPI No 10: Measures the timeliness of our investigations into complaints made about us. Our target is to communicate the outcome of our investigation within twenty working days in 95% of cases investigated</p>	Corporate Services Manager Corporate Services Manager
We will respond quickly to Freedom of Information requests	KPI No 11: Measures our performance in responding to our legal duty to respond to FOI requests within twenty working days. Our target is to respond to 100% of FOI requests within twenty working days	Corporate Services Manager
We will respond quickly subject access requests	KPI No 12: Measures our performance in responding to our legal duty to respond to subject access requests within 1 month. Our target is to respond to 100% of subject access requests within twenty-eight working days	Corporate Services Manager
We will seek to promote staff wellbeing, retention, and effective attendance management	<p>KPI No 13: Measures staff happiness, safety, security, and wellbeing in the workplace. Our target is to conduct one staff survey every 12 months and to publish the results and any action plan arising</p> <p>KPI No 14: Measures staff retention levels. Our target is to achieve a minimum of 85% staff retention in any fiscal year</p> <p>KPI No 15: Measures sickness and effective attendance management. Our target is for the average total number of staff working days lost to sickness or other absence each year to be lower than 6% of total available staff working days ¹¹</p>	Commissioner (01 March 2024) Commissioner (31 March 2024) Commissioner (31 March 2024)

¹⁰ Subject to any future expansion of our statutory remit being funded by Scottish Government or the Parliamentary Corporation

¹¹ In this KPI 'attendance' does not denote physical attendance at a workplace due to hybrid working arrangements. Instead, it refers to the number of days where staff reported that they were unfit for work due to sickness or other reason