



OFFICE OF THE BIOMETRICS
AND SURVEILLANCE
CAMERA COMMISSIONER

Commissioner for the Retention and Use of
Biometric Material Annual Report
January 2021 – March 2022

And

Surveillance Camera Commissioner Annual
Report March 2021 – March 2022

February 2023

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Presented to Parliament pursuant to Section 21(4)(b) and Section 35(1)(b) of the
Protection of Freedoms Act 2012

February 2023



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OFFICE OF THE BIOMETRICS
AND SURVEILLANCE
CAMERA COMMISSIONER

The Rt. Hon. Suella Braverman, KC MP
Secretary of State for the Home Department

Home Office
2 Marsham Street
London

November 2022

Dear Home Secretary

Biometrics and Surveillance Camera Annual Report – 2021/2022

As Commissioner for the Retention and Use of Biometric Material, I am required under s21(1) of the Protection of Freedoms Act 2012 (PoFA) to make a report to you about the carrying out of the Commissioner's functions. Additionally, as the Surveillance Camera Commissioner, I am enjoined under s35(1) of PoFA to prepare a report about the exercise of my functions in that role.

I am pleased to attach my report for 2021/2022 which is the first combined report that includes the respective responsibilities of both the Biometrics and Surveillance Camera Commissioners.

Key points in the report include:

1. The Data Protection and Digital Information Bill will remove the current duty on the Secretary of State to publish a Surveillance Camera Code of Practice after which the attendant functions performed by the Commissioner will fall away and the role will be abolished. The Bill transfers the existing casework functions of the Biometrics Commissioner to those of the Investigatory Powers Commissioner (IPC). I note *en passant* that the future regulation of and support for the lawful and accountable exploitation of new surveillance technology by the police remains undecided.
2. The system empowering chief police officers and others to make National Security Determinations (NSD) for the retention of biometric material continues to work effectively and the large backlog of biometric material shared with the UK by other jurisdictions has now been finalised, although further measures will be needed to prevent future accretion. I understand that the Independent Reviewer of Terrorism Legislation proposes to raise with you

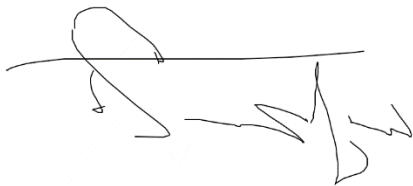
a potential legislative change to reflect the different context under which such material is obtained and shared. While there remain basic shortcomings in the software used to make NSDs, and I remain concerned about the variation in the standard of NSDs, the transfer of functions to the IPC (subject to the will of Parliament) would offer an opportunity to address this.

3. I am pleased that chief officers' use of powers under s63G of the Police and Criminal Evidence Act 1984 is improving, but my impression is that those provisions remain underutilised. My visits to forces, which have again been hampered by Covid-19 lockdowns, have demonstrated a willingness by police leaders to engage with the legislation and understand the benefits it offers. I am convinced that these visits are critical to identifying and sharing good practice, and I would encourage others to consider this when determining any future arrangements for biometrics casework.
4. My visits have also revealed the good work that some forces are undertaking to review Voluntary Attendance and the attendant opportunities to capture biometrics. At the same time, I have emphasised the need for robust governance and monitoring processes for Release Under Investigation cases. Some reported concerns are easily remedied: forgoing blanket searching against the Immigration and Asylum Biometrics System where there are no grounds to suspect the detainee is involved in immigration-related offences, for example, and reducing sampling errors through correct sealing procedures.
5. The capability of biometric surveillance camera systems is growing ever faster. The opportunities presented by new technological capabilities are extraordinary, and their potential for improving police efficiency and effectiveness cannot be overstated. Many of the risks and societal concerns that accompany those opportunities – particularly in the area of facial recognition technology and artificial intelligence – sit at the interface of my two functional areas, and I have reflected this in both the report's structure and content. There remains a clear gap between how facial recognition technology is being used and how it is *perceived* as being used. In this respect I echo the view of others in recognising the need for legislation and guidance to provide greater certainty and accountability in this area.
6. The Surveillance Camera Code of Practice (the Code) was passed in an amended form by Parliament this year. The Code's overarching purpose is "to enable operators of surveillance camera systems to make legitimate use of available technology in a way that the public would rightly expect and to a standard that maintains public trust and confidence", and it remains the only legal instrument expressly to acknowledge that Live Facial Recognition has a legitimate role in policing. As noted above, the provisions in the Data Protection and Digital Information Bill will abolish the need to publish the Code, but I am convinced of the Code's broader value in enabling not only the police and local authorities, but also central government, the public and private sector to make legitimate use of available technology in a way that the public would rightly expect and to a standard that maintains public trust and confidence. While there are, in my view, key omissions around cyber security and ethical considerations, I believe the contribution of this legislative

instrument is borne out by the certification schemes that my office has in place and by the absence of challenge that those organisations adopting it have encountered over the past decade.

7. Balancing the technological possibilities with proper legal accountability in a way that meets the legitimate expectations of the public will be a continuing challenge for any regulatory framework. This combined report aims to make a constructive contribution to that dynamic endeavour.
8. While the legislation empowers you to exclude any part of my report if you are of the opinion that its publication would be contrary to the public interest or prejudicial to national security, I have not included any information which I believe would attract the need for excision, and hope you will feel able to lay it before Parliament as submitted.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Fraser Sampson', written over a horizontal line.

Fraser Sampson

Commissioner for the Retention and Use of Biometric Material and Surveillance
Camera Commissioner

Foreword

This is the first combined report of the Biometrics and Surveillance Camera Commissioners¹, and may, subject to the will of Parliament, be the last. It is also the first annual report which covers my period of tenure alone. Since my last report, the government launched a public consultation on data reform, one aspect of which proposed that the Information Commissioner's Office (ICO) absorb the functions of the Biometrics and Surveillance Camera Commissioners². I submitted a full response to that consultation³ and, while I am somewhat relieved to see that the government has decided not to transfer all these functions to the ICO⁴, the proposal in the Data Protection and Digital Information Bill simply deletes the Surveillance Camera Code and its attendant functions rather than making provision for their being taken on by the ICO as proposed in the consultation.

The Bill sets out the broad legislative arrangements for adding the statutory functions of the Biometrics Commissioner to those of the Investigatory Powers Commissioner, which is what I proposed as an alternative in my response to the consultation. As I also indicated in my response, there are devolution implications in treating the police use of surveillance technology as purely data protection matters and leaving responsibility for their regulation and oversight to the UK data protection authority. This is principally because the Scottish Parliament has adopted a broader definition of 'biometrics', which includes facial images, and is consistent with the combination rather than the re-separation of our two commissioner roles. I have discussed these implications with the Scottish Biometrics Commissioner and have had the benefit of working closely with him over the reporting period.

The State's use of biometric and surveillance technology plainly engages individual data rights, but it should be noted that some of the key issues that have raised significant questions of public trust and confidence are no more 'just' data protection than facial recognition is 'just' photography or DNA profiling 'just' chemistry.

¹ Made pursuant to ss.21(1) & 35(1) of the Protection of Freedoms Act 2012.

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022315/Data_Reform_Consultation_Document_Accessible.pdf

³ <https://www.gov.uk/government/publications/data-a-new-direction-commissioners-response>

⁴ www.gov.uk/government/consultations/data-a-new-direction/outcome/data-a-new-direction-government-response-to-consultation#ch5

If we are to get the most from biometric surveillance technology, we will need a systemic approach to regulation focusing on integrity – of both technology and practice – along with clear standards for everything and everyone involved because, in a systemic setting, compromising part means compromising the whole. Biometric capability in its widest sense could revolutionise the investigation and prevention of crime and the prosecution of offenders. At the same time, the manner in which that technology is used could jeopardise the model of policing by consent on which we rely. Its future regulation and oversight ought to reflect both its potential and its risk.

As a society, we are becoming inured to biometric surveillance, while technological developments have meant that our capability to prepare for, respond to and recover from global crises has increased beyond anything our forebears might have realistically imagined. When extended into other areas such as schools and impacting upon young people's lives, the sensitivities and risks of what has been termed *omniveillance*⁵ are amplified. We must be able to have confidence in the whole ecosystem of surveillance, to be sure that what is technologically *possible* is only being done in a way that is both legally *permissible* and societally *acceptable*.

As citizens in the UK, we enjoy a range of clearly described human rights and fundamental freedoms, most of which carry with them obligations and qualifications. The police must respect and uphold the individual human rights of those they police and from whose consent they derive their legitimacy in our policing model, which is still both venerated and cherished. Their duty is to uphold the rights of the citizen while meeting their legitimate expectations. This is a difficult balancing exercise and often creates contradictory choices and competing demands, which must be balanced in light of all the circumstances of each particular case.

A publicly accountable police service that must balance competing individual and public interests is a hallmark of democracy and, to that extent, this is nothing new. What *is* new, however, is the scope of technological capability and its potential impact on police efficacy as well as on areas of accountability, legitimacy and trust.

⁵ Blackman, J 2008 Omniveillance, Google, privacy in public and the right to your digital identity: a tor for recording and disseminating and individual's image over the Internet, Santa Clara Law Review 49, 313-392.

Denying the police access to technology not only encroaches on their operational primacy, it also dilutes their accountability because it involves someone, or something else, assuming responsibility for deciding not to use this or that technology, and for that being the correct decision in every given operational setting. As technological capability increases – for the police and criminal actors – anyone presuming that they are best placed to make such a difficult judgment call, and to accept responsibility if, or when, they are wrong, will need to be very sure of their ground.

People must be able to have confidence in the relevant technology doing what it is supposed to but that means the whole ecosystem that uses surveillance cameras and biometrics, not simply novel offshoots of it. It also means having clearly defined, publicly accessible and intelligible policies setting out the parameters, and a sensible system for reviewing those policies in light of experience.

Policy is for others, but *practically* I believe that we need a set of clear, infeasible principles by which the police will be held transparently and auditably to account for their use of biometrics. There are many different models by which to achieve this, but the acid test for all of them will be whether they ensure that biometric technology (what is possible) is *only* being used for legitimate, authorised purposes (what is permissible) and in a way that the citizen is prepared to support (what is acceptable).

Fraser Sampson

Biometrics and Surveillance Camera Commissioner

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Executive summary

This is the first combined report for the Biometrics and Surveillance Camera Commissioners' functions, and it reflects the Commissioner's connected but legally discrete responsibilities. It also reports on facial recognition and AI, the point at which the two statutory roles overlap.

This report fulfils the Commissioner's statutory responsibility to provide a report to the Home Secretary in respect of the retention and use of biometrics, and to Parliament in respect of the Surveillance Camera Code of Practice. The report acknowledges the government's intention to abolish the Office of the Biometrics and Surveillance Camera Commissioner (OBSCC) through the Data Protection and Digital Information Bill which is unlikely to have attained Royal Assent before the end of the Commissioner's term of office, which ends on 1 March 2023.

PART 1 – Commissioner for the Retention and Use of Biometrics – Overview

Since the last annual report, the new Information Commissioner has set out his Strategic Plan which takes his office to 2025, and the new Forensic Science Regulator (FSR) has published a consultation on a draft statutory code of practice. The Commissioner has enjoyed a positive and purposeful working relationship with both over the period covered by this report.

Chapter 1 – National Security Determinations (NSDs)

- Against a complex and dynamic backdrop of national and international affairs, the Commissioner has adopted an enabling and pragmatic approach, minimising bureaucratic friction while maximising the operational impact of the legislative framework for the retention of biometric material in the interests of national security. However, the software used by chief officers in making NSDs has significant limitations, which makes the process burdensome and less accurate than one would expect. Transferring these functions to the Investigatory Powers Commissioner (IPC) would bring an opportunity to address these shortcomings.

- The standard of NSD varies widely and many errors are fundamental and recurring. The National Police Chiefs' Council should consider identifying a national cadre of chief officers to take responsibility for all NSDs, possibly on a regional basis. The Commissioner made more challenges to NSDs in 2021 (199) compared to 2020 (85), principally owing to lockdown restrictions easing, allowing greater access to relevant IT systems. There are a number of areas which will be of interest to the IPC if statutory oversight is transferred: legacy challenges from previous Commissioners, the apparent lack of use of NSDs under s18B of the Counter Terrorism Act 2008 by a number of statutory bodies and the approach to 'bulk' applications which is a potential solution to resourcing pressures but may conflict with legal considerations of necessity and proportionality.
- There are two potential areas for legislative change. The first concerns deletion of biometrics obtained from foreign law enforcement bodies, specifically those shared by Interpol with the National Crime Agency (NCA). A solution which the Independent Reviewer of Terrorism Legislation proposes to raise with the Home Secretary concerns a potential change in the legislation to reflect the different context under which such foreign material is obtained and shared, particularly in respect of the timing of the original taking of the material and the avoidance of duplication in relation to safeguards for the individual. The second area relates to a public consultation on a future strategy for addressing complex legal issues in Northern Ireland, the responses to which were published in October 2020.

Chapter 2 – s63G of the Police and Criminal Evidence Act 1984

- This year, the Commissioner has placed much emphasis on improving the content and quality of applications, together with encouraging greater use of the retention provisions. The OSBCC hosted a workshop with the Metropolitan Police Service (MPS) in November 2021 with more than 60 participants from policing. Since the workshop there has been an increase in applications, but ensuring that these are consistent and of a high quality remains a work in progress. There were 150 applications under s63G in this reporting period, compared to 113 in 2020, of which the MPS continued to

submit around half, and the majority of applications relate to allegations of sexual offences.

- Overall, the provisions under s63G of the Police and Criminal Evidence Act 1984 appear to be underutilised. There appears to be a disconnect between understanding and best use of this statutory power. During the Commissioner's compliance visits and engagement with Police and Crime Commissioners (PCCs), it was clear that more emphasis is being placed on using s63G not just as a data protection mechanism, but a practical tool for the detection and prevention of crime and criminality in some of the highest priority crime types in our communities.

Chapter 3 – International

- Covid-19 restrictions prevented the Commissioner from visiting the National Crime Agency (NCA) during the reporting period. Consequently, the dip sampling exercise to ensure that the export of an individual's DNA and/or fingerprints from the UK has been done appropriately, was postponed until next year.
- As with the dip sampling exercise, the inaugural Prüm audit was postponed. However, when it is undertaken in the new reporting period it will be informed by the EU Council's recent positive decision on the continuation of Prüm exchanges. Since the last annual report, the UK, for the purpose of DNA, connected to two more Member States, taking the number of connections to 14. Germany was the only Prüm connection for fingerprints during the reporting period, although further connections were made with Belgium, Czech Republic, and Austria outside the reporting period.

Chapter 4 – Compliance, retention, use and destruction

- Visiting police forces during Covid-19 lockdowns proved challenging, but the Commissioner managed to visit 12 forces in this reporting period. Feedback from these visits, together with meetings with PCCs, is a critical part of the process of identifying and sharing good practice. Interestingly, the importance attached to 'biometrics and forensics' was the lowest occurring priority in statutory police and crime plans, featuring in only 37% of the plans. The

Commissioner has taken this up with the Association of PCCs and the Forensic Science Regulator.

- There was a marked increase in the number of subject DNA profiles added to the national database in the reporting period (341,141 by forces in England and Wales compared to 217,609 in 2020). The additional three months of this reporting period will account for some of the increase, but it may be more attributable to the easing of lockdown restrictions and more concerted efforts towards biometrics capture.
- Compliance visits have revealed that some forces are introducing ways of working to review the Voluntary Attendance (VA)/biometrics capture gap, which occurs when opportunities to capture biometrics are lost in the VA process. The Commissioner will continue to focus on this with recommendations to forces to have robust processes, governance, and monitoring in place. In parallel, Release Under Investigation (RUI) cases are not being monitored scrupulously, creating a risk of biometrics being unlawfully retained.
- The Police, Crime, Sentencing and Courts Act 2022 will necessitate software changes to relevant systems, which will be an opportunity for forces to incorporate additional changes to ensure RUI cases can be appropriately monitored. Allied to this is the prospect of 'remote enrolment' of biometrics during the legislative changes whereby fingerprints might be taken away from the custody environment.
- Other concerns remain: 1) The blanket policy to searching against the Immigration and Asylum Biometrics System where there are no grounds to suspect the detainee is involved in immigration-related offences, raising questions about proportionality. 2) The overwhelming majority of sampling errors arise from sample bags being incorrectly sealed (953), which puts the forensic science cycle at risk at its simplest stage. Conversely, notwithstanding the definition of 'lost sample', all but two forces have been able to identify the number of lost samples which compares favourably with the seven forces in the previous reporting period. 3) The 'CPIA exception' to the destruction of DNA samples should not be used as a general power for retention of samples.

- Some police forces take a proactive approach to the review of custody images, which are taken from every person arrested. But some forces do not proactively review and delete, unless requested by the individual. More contentious is the use of images of those never charged or summonsed for compilation of Live Facial Recognition watchlists. Forces have been reminded of the Home Office recommendation to apply Management of Police Information (MOPI) guidelines to their custody images. The Commissioner has encouraged forces to make individuals aware of their rights in relation to deletion of images when leaving custody.
- Last year it was noted that the MPS was unlawfully retaining some 90,000 foreign law enforcement records. These have now been deleted using additional resource via a manual process. Although the explanation of the process of deletion has been satisfactory, the MPS will have to ensure that such retention does not recur, and the use to which the retained records were put will be examined in the coming year.

Chapter 5 – Biometrics trends and the future

- Biometrics and surveillance are inextricably linked, meaning that the separation of the capture and use of images from fingerprints/DNA has resulted in an artificial distinction. It is questionable as to whether disparate legislation has kept pace with the use, retention, and forensic application of biometrics. Biometrics are more than fingerprints and DNA as recognised by s28 of the Protection of Freedoms Act 2012. However, even though there is rapid growth in ‘new’ biometrics, it does not follow that each ought to be regulated in the same way. Democratic states must ensure there is a systematic approach to getting the most out of biometric surveillance by focusing on the integrity of technology and practice alongside standards.

PART 2 – Facial recognition and AI

- The risks and opportunities presented by facial recognition sit at the interface of Biometrics and Surveillance Camera use. As Parliament considers legislation for reform, this may be an opportune time to address pressing questions around the legitimate role for newly-intrusive technology such as

facial recognition, which remains the most contentious of all biometrics used by policing at this time. The need to address the legitimate role for this technology was one of the conclusions of the event hosted by the OBSCC at the London School of Economics in June 2022.

- This event, at which speakers included the Forensic Science Regulator, a senior academic, representatives of the Biometrics Institute, the ICO, South Wales Police, and Big Brother Watch, aimed to gain a better understanding of how facial recognition technology is perceived by society in a law enforcement context. The event was attended not only by those with a professional interest in the subject but also members of the public. Around 150 attended the event, remotely and in person.
- Some of the polarised positions adopted during the debate demonstrated the need for greater clarity, if not intervention, potentially in the form of regulation, in the use of facial recognition technology within policing and law enforcement. The key issues on which there was some agreement included: the need for greater transparency and understanding of how the technology is used, the potential for racial and gender bias, why an individual would be placed on a watchlist, the accuracy of the technology, proportionality and the link between use and the number of arrests, and how deployment decisions are made. The Commissioner recognises that there is a gap between how the technology is being used and how it is understood to be used, which creates uncertainty and mistrust. He welcomes the publication of the College of Policing Authorised Professional Practice on LFR, although has significant reservations about its use to locate “potential witnesses”.
- AI driven video analytics have revolutionised the power of surveillance which can now combine multiple image capture from a range of sources. As with LFR, the issue is not so much *whether* AI should be used by policing and law enforcement, but rather how their use of available technology is lawful, ethical, and accountable. The Ryder review, published as a legal review of the biometric environment in England and Wales, made 10 recommendations including 'new, primary legislation'. This echoes the need for greater certainty in the arena, which can only serve to help dispel concerns held both by the police and public.

PART 3 – Surveillance Camera Commissioner

Chapter 1 – Overview and the National Surveillance Camera Strategy

- The Surveillance Camera Code of Practice was revised this year. Those revisions were largely limited to updating references to recent legislation and addressing the judgment in *R (on the application of Bridges) v Chief Constable of South Wales Police*. Although the Code has not kept pace with the rapid evolution of technology, it has brought professionalism and regulation to areas of overt surveillance activity needing additional safeguards. Notwithstanding that, the revised code continues to be largely silent on cyber security and, most disappointingly, on ethical and human rights considerations, despite concern within the sector and Parliament. A number of revisions suggested by the Commissioner were not taken on board.
- The National Surveillance Camera Strategy was established in 2017, and aims to develop systems and processes to establish efficient working practices in the operation of surveillance cameras to protect communities, while complying with relevant legislation. In that context 'trusted partnerships', including the police and local authorities working together, is important. To that end, a Service Level Agreement (SLA) has been designed which was prepared by the NPCC, the Public CCTV Managers Association, the LGA and other key organisations. The template SLA has been designed for relevant authorities to facilitate an effective partnership, addressing a number of areas of collaborative working including Information Sharing Agreements, directed surveillance, and the sharing of live images.

Chapter 2 – Technologies and Trusted Partnerships; ANPR; Drones

- Use of biometric surveillance by the state is a matter of increasing sensitivity as the number of cameras increases. London was recently ranked as the third most surveilled city in the world with an estimated 73.31 cameras per 1,000 population. And almost all technological capability for public space surveillance is privately owned. Therefore, there needs to be a strong ethical partnership between user and supplier, and those public bodies using the technology must be able to trust their partners. The Commissioner has raised significant concerns about the security arrangements and refusal to engage in

public scrutiny of some technology companies. This has extended to correspondence with those companies and government departments, but has yet to produce discernible action.

- Police use of ANPR has resulted in the largest non-military database in the UK: 15,400 traffic lanes covered by cameras submitting between 70 and 80 million reads a day. The resourcing implications raise a specific legal question about proportionality. At the national ANPR conference last year, the Commissioner proposed that the ANPR system is now part of our critical policing infrastructure. Consequently, it should be overseen by an accountable governance framework and monitored by an independent body, with a duty to report publicly. Moreover, this need is underscored by the increasing capability to capture non-vehicular data, and ANPR is increasingly being considered for purposes which, while laudable and arguably necessary, would not have justified its establishment in the first place (as required by the Surveillance Camera Code).
- While the Independent Advisory Group is the closest thing to a governance body for ANPR, comprising representatives of the police, Home Office, academia, and industry regulators, it is neither a governance nor an oversight body. This contrasts strongly with the regulation of overt surveillance by the police where the government is committed to a strong legal framework and simplification. Both of these are lacking for ANPR.
- Owing to their surveillance capability, the use of drones by relevant authorities is often covered by the provisions of the Surveillance Camera Code. However, two familiar issues have emerged: mission creep in the use of this technology, and suppliers around whom there remain both ethical and security questions as noted in paragraph 135. However, the NPCC and National Police Air Service are working to introduce oversight of procurement, training, and operational standards for policing.

Chapter 3 – Certification schemes

- The third-party certification scheme continues to grow: a total of 102 organisations have been successfully certified against the code; six new organisations have signed up; and in the reporting period there have been

many recertifications. Some organisations have applied for a second round of five years (being the period a step 2 certification lasts). The Commissioner wants to include ethical and human rights considerations within the scheme to assure the public that where surveillance cameras are being operated that activity is carried out in a way that is not just proportionate and necessary but also expressly ethical.

- The number of local authorities achieving certification continues to expand, but remains a small proportion of all local authorities using surveillance cameras. There is a marked contrast between those private companies willing to showcase their use of surveillance cameras compared to those regulated public bodies.
- Covid-19 restrictions opened up the possibility of moving from on-site audits. While this would be easier for accreditation bodies, there is a risk of such being viewed as less valid. The Commissioner's Office will continue to monitor those risks.
- In light of the proposed abolition of the Commissioner's Office, the Secure by Default scheme has been suspended. And it is against the backdrop of this legislative change that there may be concerns about what the future holds for those companies who have signed up to the third-party certification scheme, accreditors, and those placing reliance on certified businesses.

PART 4 – Conclusion

- The budget for the reporting year was £602,000, reflecting the economies of scale the Home Office expected to achieve by combining the two parts of the Commissioner's office.
- During the reporting period, the Commissioner has not achieved the stability within the combined team that he would have desired and at no time has the office been fully resourced. This has impacted on biometrics casework in particular, as only half the allocated number of caseworkers were available for two thirds of the year. This led to backlogs on top of those that were inherited. The transition to a single office has not been as smooth as the Commissioner would have liked, and the recruitment processes have proved slow and cumbersome.

- Abolition of the office would mean that successor bodies will not benefit from the cross-over that occurs between biometrics and surveillance camera work. Similarly, economies of scale will be lost and there is a significant risk that any work not ringfenced as transferrable to the IPC will fall through the cracks unless adequate consideration is made about the likely consequences of dispensing with the OBSCC.

Part 1 – Commissioner for the Retention and Use of Biometrics

Overview

1. The Police and Criminal Evidence Act 1984⁶ (PACE) provides the police with specific powers to take fingerprints⁷ and DNA⁸ from an arrested person without their consent. Other legislation gives the police similar powers in relation to people entering the UK⁹. In police custody suites, fingerprints - which are cheaper and much quicker to process than DNA - are taken from every arrestee on every occasion they are arrested, and are checked against the national fingerprint database (IDENT1) to verify the identity of a subject and to confirm their custody history. DNA samples, on the other hand, are often only taken where the subject's DNA profile is not already held on the National DNA Database (NDNAD).
2. Clear rules are in place governing the circumstances when fingerprints, DNA samples and DNA profiles can be retained, and for how long. These are summarised in appendix A to this report.
3. Section 63G of the Police and Criminal Evidence Act 1984 sets out the Biometrics Commissioner's decision-making powers relating to police applications to retain biometrics for certain types of offences, where the circumstances have prevented the suspect being charged, and the responsibilities for reviewing and approving National Security Determinations made by chief officers. As the Commissioner, I am required by the Protection of Freedoms Act 2012 (PoFA) to keep under review the retention and use of DNA and fingerprints by the police, and to report annually to the Home Secretary on compliance with the relevant statutory provisions.

Other independent oversight of police use of biometrics

4. In last year's annual report¹⁰, I briefly set out how, in addition to these statutory functions, the Forensic Science Regulator (England & Wales), the Surveillance Camera Commissioner (England & Wales), and the Information Commissioner

⁶ <https://www.legislation.gov.uk/ukpga/1984/60/contents>

⁷ s.61 PACE

⁸ s.63 PACE

⁹ for example Schedule 7 to the Terrorism Act 2000

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036487/E02669527_Biometrics_Commissioner_ARA_2020_Text_Elay.pdf

have distinct roles in providing independent oversight of biometrics use by the police. The role of the Scottish Biometrics Commissioner extends to policing and criminal justice in Scotland.

5. Since then, the Information Commissioner has set out the Strategic Plan to take his office to 2025¹¹. And the Forensic Science Regulator has recently published a consultation on a draft statutory code of practice¹², having previously reflected that he anticipates it will take about 18 months for all the provisions in the 2021 Act to be fully commenced¹³.
6. On 10 September 2021, the Department for Culture, Media and Sport launched a public consultation on reform to the UK's data protection regime. The consultation document, *Data: A New Direction*¹⁴, is the second of two back-to-back consultations by the government that affect my statutory roles and functions, the first being the statutory consultation on the Home Secretary's revised Code of Practice for surveillance camera systems in August 2021.
7. The DCMS consultation sought views on the government's exploration of "the potential for further simplifying the oversight framework absorbing the functions [of the Biometrics and Surveillance Camera Commissioners'] roles into the ICO". I published my response to that consultation in November last year¹⁵.

Chapter 1 – National Security Determinations

Legislation

8. Against the complex and dynamic backdrop of national and international affairs, the ability of the police to take and retain biometrics of individuals assessed to present a real threat to national security should not be underestimated. The role played by all CT Policing partners in managing those arrangements on behalf of the UK is critical to the overall national security infrastructure, and I have adopted an enabling and pragmatic

¹¹ <https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/ico25-plan/>

¹² <https://www.gov.uk/government/consultations/forensic-science-draft-statutory-code-of-practice>

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041792/2021_FSR_Newsletter_37.pdf

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022315/Data_Reform_Consultation_Document_Accessible_.pdf

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030248/BSCC_DCMS_Consultation_Response.pdf

approach to minimise bureaucratic friction and maximise operational impact of the legislative framework created by Parliament for this essential purpose.

9. In addition to the general powers to take DNA samples and fingerprints provided in PACE, or similar legislation applicable in Scotland¹⁶ and Northern Ireland¹⁷, there are a number of specific ways in which biometrics may be obtained in relation to national security:
- The police have the power to take a person's DNA and fingerprints if the suspect was arrested under section 41 of the Terrorism Act 2000 (TACT)¹⁸.
 - Powers to stop, search and detain individuals at ports are provided in Schedule 7 to TACT, including where they suspect the person has been involved in the commission, preparation or instigation of acts of terrorism. Schedule 8 to the same Act provides the powers to take DNA and fingerprints.
 - Schedule 3 to the Counter-Terrorism and Border Security Act 2019 confers powers to stop, question, search and detain persons at a port or border area for the purpose of determining whether they are, or have been, involved in hostile state activity, and powers to take fingerprints and DNA samples.
 - A police officer may take the fingerprints and DNA sample from an individual who has been issued with a TPIM Notice under the Terrorism Prevention and Investigations Measures Act 2011.
 - There are provisions in the National Security Bill, passing through Parliament at the time of writing, which mirror those in the TPIMs Act for offences relating to espionage, sabotage and people acting for foreign powers
10. As well as having powers to take fingerprints and DNA samples directly, the police may receive fingerprints, DNA profiles and, increasingly, other biometric material, from overseas law enforcement partners or other agencies. All the specific powers set out above carry automatic retention periods for biometrics

¹⁶ <https://www.legislation.gov.uk/ukpga/1995/46/contents>

¹⁷ <https://www.legislation.gov.uk/nisi/1989/1341/contents>

¹⁸ <https://www.legislation.gov.uk/ukpga/2000/11/contents>

taken or received under them. Table 1 at appendix B provides detail on these time limits.

11. The police may retain DNA profiles¹⁹ and fingerprints for an extended period on national security grounds where it is necessary and proportionate to do so. The vehicle for retention is provided by a relevant chief officer making a National Security Determination (NSD)²⁰. An NSD can only be made where the material cannot be retained lawfully on any other basis – therefore it will only be required where that material has been taken from an individual who has not been convicted of a recordable offence. The individual will not be made aware of the existence of an NSD, and therefore will not have the opportunity to make representations²¹. The Home Office has published guidance on the making and renewing of NSDs²², which gives detail on the relevant legislation and process for making these determinations by a chief officer, my role in reviewing NSDs, and the use to which the biometric material so retained is put. Further detail on the NSD process and retention period are in the flow chart at appendix B.
12. The software used by chief officers to make their NSDs, and on which I must review their decisions and record mine, is not the most intuitive, and has a number of limitations which make the process more burdensome and less accurate than I would expect in records of this importance. Examples include the inability to reflect the legislation in the drop-down menu of reasons why the biometrics were taken and the specific retention period over which the NSD is to have effect when it has been reduced on being challenged by me. The government's proposals to transfer these NSD functions to the Investigatory Powers Commissioner (IPC) present an opportunity to address the shortcomings of this system. In terms of practicalities, I must record my thanks to Police Scotland²³ for providing me with facilities and support to review NSDs over the reporting period, without which the statutory NSD processing would have been considerably more challenging.

¹⁹ but not usually the DNA samples themselves

²⁰ My duty to keep national security biometric retention and use under review applies only to material retained by police forces; it does not extend to any material that might be retained by non-law enforcement agencies, such as the security and intelligence agencies

²¹ in contrast to the procedure for retention under s.63G of PACE - see flow chart at appendix C

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908334/pfa2012-revised-guidance-making-renewing-national-security-determinations-retention-of-biometric-data.pdf

²³ In particular Kris McCall

Retention of biometrics for national security purposes – the NSD process

13. In addition to the flow chart at appendix B, setting out the process for making an NSD, the Home Office guidance on the making and renewing of NSDs (referenced in paragraph 11 above) provides further information on the relevant legislation and process for making these applications to a chief officer, my role in reviewing NSDs, and the use to which the biometric material so retained is put.
14. In reviewing NSDs, I see a range of good and poor practice in terms of both substantive content and presentation; in order to improve standards, I share examples of both with partners. During my visits to forces and in my meetings with the MPS CT Command, we have agreed improvements to our collective approach to NSDs over the reporting period, including the ways of working in my office. The standard of NSDs themselves varies widely depending on the authorising chief officer with some exemplary practice being shown by Commander Richard Smith and several of his chief officer colleagues around the UK. However, while some NSDs will perhaps inevitably contain administrative slips (such as spelling and grammar), other errors are more fundamental and recurring, for example failure to address the relevant areas of necessity and proportionality, ensuring consistency in the period of time over which the Determination is to remain in force, identifying the relevant legislation under which the NSD is being made and – far too frequently – inserting an entirely different name to that in the supporting intelligence, or there being no name at all, in the key chief officer section. I would encourage the National Police Chiefs' Council to adopt the approach proposed by some chief officers, and identify a national cadre to take responsibility for all NSDs, perhaps on a regional basis. This ought to reduce the number of challenges (226 for this reporting period) and improve the consistency of NSDs.

NSD Decisions

Source: SOFS

	2017	2018	2019	2020	2021/2022*
Total possible NSD applications processed	1170	1480	1374	1719	892
Renewal NSDs considered	158	448	262	154	415
New NSDs considered	1012	1032	1112	1565	477
NSDs made by Chief Officer	322	497	398	406	835
Renewals	77	228	117	209	392
New NSDs	245	269	281	197	443
NSDs declined by Chief Officer	27	32	25	11	57
Renewals	3	15	7	5	22
New NSDs	26	17	18	6	35
NSDs supported by the Commissioner	325	468	367	155	927
NSDs challenged or further information sought	34	55	26	85	226
Destruction ordered by Commissioner	26	11	6	0	3

NB: some NSDs considered in a year may have been submitted the previous year

*01 January 2021 to 31 March 2021

15. In this reporting period, I supported 927 of the NSDs made, ordered the destruction of the biometric material to be retained under 3 NSDs, and raised challenges against 226 of the cases examined. This represents more challenges than were made by my predecessor in 2020, and there are several reasons which could account for this, including my predecessor's inability to review NSDs during his term as Commissioner as a result of the lockdowns, resulting in NSDs made during 2020 being considered by me in 2021; a significant number of NSDs which contained errors such as the wrong name; and some cases in which adequate reasons were not given to justify the length of the biometric retention period.
16. That said, I continue to see a small number of responses to challenges made by my predecessor, and my team has been working with the MPS team to understand how Commissioner challenges are processed, and so determine

why this is still happening. This will be of interest to the IPC, in the event this area of oversight is moved under his portfolio via the reforms in the Data Protection and Digital Information Bill.

Matches with NSD retained material

Source: SOFS

Type of biometric match	Number of matches		
	2019	2020	Reporting period*
Fingerprint crime stain to tenprints	4	4	2
Tenprints (arrestee/Sch 7, etc) to tenprints	106	48	112
DNA crime scene stain to DNA reference profile	1	0	2
DNA reference profile to DNA reference profile	20	11	87
DNA arrestee to DNA reference profile	8	6	24

*01 January 2021 to 31 March 2022

NSDs in Northern Ireland

17. My functions in relation to NSDs extend to Northern Ireland, and I visited the Police Service of Northern Ireland (PSNI) in February 2022, meeting with Chief Constable Simon Byrne and his team. I was very grateful for their candour, their receptiveness to challenge and their professionalism, and I look forward to working with them in better understanding the specific challenges faced by the PSNI in relation to the retention and use of biometrics.
18. At the time of writing my previous annual report, the government had been conducting a public consultation on a future strategy for addressing the complex legacy issues arising from Northern Ireland's past. A summary of responses and way forward was published in October 2020²⁴, which set out

²⁴ <https://www.justice-ni.gov.uk/consultations/proposals-amend-legislation-governing-retention-dna-and-fingerprints-ni>

the government's intention to draft legislation for the proposals contained within that document. At the time of writing, that legislation has yet to be published.

Biometric material shared by other jurisdictions

19. I note at paragraphs 85 and 86 in this report the process by which the MPS undertook the deletion of records retained out of time. More generally, there has been some uncertainty about the retention of biometric material properly shared with the UK by foreign jurisdictions.
20. In my last annual report, I highlighted an ongoing issue with the deletion of foreign law enforcement data, which had also been noted by my predecessors. At that time there were some 90,000 records outstanding. Some of the issues have arisen from the practicalities of retaining volume material shared lawfully with the UK. I have worked closely with the MPS SO15, and sought counsel's advice with specific reference to material obtained from Interpol by the NCA; I have also met several times with the Independent Reviewer of Terrorism Legislation (IRTL), Jonathan Hall KC. We have agreed that a pragmatic solution would be to explore the amendment of the relevant section under which this material is currently retained, in order to reflect the very different context in which such *extra-territorial* biometric material is obtained and shared. I understand that the IRTL intends to raise this with the Home Secretary within his statutory remit. Any such amendment would, if approved, take some time, and there remains a pressing need to address the current challenges of assessing the biometric material shared with the UK by other jurisdictions, and identifying a lawful basis for its continued retention while that assessment takes place.
21. It continues to be the case that a significant proportion of the NSDs which I oversee relate to biometrics taken under statutory powers to stop, detain and question people entering the UK, and any evaluation of the effectiveness of the legislation would need to consider their combined effect. The interconnectedness between the specific biometrics and surveillance legislation and the wider framework for counter terrorism and national security is something that I have discussed productively and in some detail with the

IRTL, and I am very grateful to him for his thoughtful assistance in this critical area over the reporting period.

22. In addition to the policing powers around NSDs, other law enforcement agencies²⁵ are empowered to make and renew NSDs under section 18B of the Counter Terrorism Act 2008. As with all other NSDs, PoFA requires me to keep under review all such NSDs made or renewed under s18B. In the time I have been in post, I have not received any NSDs from these bodies and have on more than one occasion asked MOD to explain what their processes are in respect of their making or renewal. My office has also contacted all the listed statutory organisations to understand what use, if any, they make of the s18B provisions, and what processes they use. At the time of writing, those enquiries remain outstanding with all but NCA and the Services Police (Ministry of Defence Police, Royal Air Force Police, Royal Navy Police, Royal Military Police), with the result that I am not in a position to report on the extent to which they are making use of NSDs under the s18B provisions, an important matter in itself and particularly ahead of the proposed transfer of responsibility to the IPC.

Bulk retention and deletion

23. The task of retaining and destroying records, without a technical tool to carry out the latter processing in large quantity, has proved resource intensive. While the resourcing of the NSD process by chief officers across the UK is a matter for others, the prospect of applying a 'bulk' application to NSDs, even where the relevant contextual information about each is materially the same, raises significant legal questions. While this has not been proffered as a solution to resourcing pressures, it has been raised as a means of reducing the number of single applications where the materials are similar. The decision maker is the chief officer but, were such an approach to be adopted, it would invite the obvious questions attending 'bulk' applications generally, not least of which would be the extent to which an assessment of the necessity and proportionality of the NSD had been (or was capable of being) made in relation to the individual whose biometrics were retained on the basis of the threat they

²⁵ HMRC, NCA, British Transport Police, Ministry of Defence Police, Royal Air Force Police, Royal Navy Police, Royal Military Police

were assessed as presenting to national security. Again, this is an area that will require further consideration with the IPC in the event that the government's proposals are enacted by Parliament.

Biometric databases for counter terrorism

24. The CT DNA Database is a standalone database of CT-related DNA profiles and crime scene stains, operated solely by the MPS Specialist Operations Forensic Services (SOFS). Similarly, the CT Fingerprint Database is a separate and secure database within IDENT1 (the national fingerprint database) for CT-related fingerprints and crime scene finger-marks. The biometrics of individuals who are arrested, charged with and/or convicted of relevant offences and who are deemed to represent a threat to national security will be held on the National DNA Database (NDNAD) and national fingerprint collection on IDENT1 in the usual way, according to the usual PoFA retention regime; they may also be held on the CT biometric databases. DNA profiles and fingerprints held under the authority of an NSD will only be held on the CT biometric databases.
25. All DNA profiles loaded to the NDNAD are compared against the CT DNA database, and all new tenprint fingerprint sets loaded to IDENT1 are automatically compared against the CT Fingerprint Database. There is a similar arrangement in place that allows immigration and asylum fingerprints to be compared against the CT Fingerprint Database. Restrictions are in place to ensure that only those with the relevant clearance, working in CT Command, are able to view the results of such searches.

Holdings of biometric material on the CT databases

Source: SOFS

		2019	2020	2021/22*
DNA	DNA	9,376	9,747	10,301
	Of which unconvicted	2,138 (23%)	2,143 (22%)	2,220 (21.6%)
Fingerprints	Fingerprints	11,741	11,833	12,839
	Of which unconvicted	2,281 (19%)	1,939 (16%)	2,309 (17.9%)
Totals	Total holdings of material	21,117	21,580	23,140
	Of which unconvicted	4,419 (21%)	4,082 (19%)	4,524 (19.6%)
	Individuals on databases	12,877	12,676	13,537
	Of which unconvicted	2,018 (23%)	2,099 (17%)	2,442 (18%)

*Fingerprint data covers period 01 January 2021 to 31 March 2022, and DNA 01 January 2021 to 01 August 2022.

26. The figures provided on the total holdings on CT databases are taken from differing timeframes, depending on whether they are fingerprints or DNA. While it is clear that the percentage of total holdings for the fingerprints of unconvicted people has remained broadly constant over the past 3 years, the percentage of unconvicted people's DNA material making up the total DNA holdings continues to fall. This is despite the figures covering a significantly longer period than in previous years (19, as opposed to 12 months).

Data losses

27. Previous annual reports have recorded that a number of issues around IT, procedures and handling errors have led to the loss of a significant number of new biometric records that could, and should, have been retained on the

grounds of national security. Resolution of these issues has meant that the numbers have fallen significantly from a high of 144 in 2018, to just one each during the last and this reporting period. Table 2 at appendix B sets out the figures in full.

Chapter 2 – s63Gs

Applications to retain DNA and fingerprints

28. Where there are compelling reasons to justify it, a chief officer may consider making an application to the Biometrics Commissioner for the extended retention of the biometric material of a subject, with no previous convictions, who has been arrested for a qualifying offence but is not charged. Such applications may only be made where the chief officer believes that retention is both necessary for the prevention or detection of crime, and proportionate in all the circumstances of the case. The process and considerations are explained in more detail in appendix C, and detail on the core principles and approach to assessing s63G applications is set out in the guidance document issued by FIND-SB²⁶.
29. My office has established good working relationships with forces, and collaborative efforts are being made to improve the content and quality of applications. This includes a virtual ‘s63G workshop’ held by my office in November 2021, alongside the MPS, following which a s63G applications toolkit was sent to forces. The purpose was to increase forces’ understanding of the s63G power and the application process, which has previously been treated in many police areas as a matter of data management, rather than an operational tool for the investigation and prevention of specific types of offences and victim protection. More than 60 participants joined the session, taking away a better understanding of the s63G application processes, and I have seen an increase in cases since the workshop. There is, however, more to be done to ensure that every force is consistently producing applications which adequately address the factors required in the application, and reducing the reliance on information within supporting documents, and my team is

²⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764558/Applications_to_the_Biometrics_Commissioner_under_PACE_September_2018.pdf

working to update and refresh guidance, which will be promulgated to all forces later this year.

30. In this reporting period, 150 applications were made under s63G, compared with 113 during 2020. Whilst the MPS submitted around 50% of all applications, it should be noted that not all forces have made applications in the last two years, and some never have. Table 1 in appendix C provides the numbers of applications made by forces this year, and compares that figure with the number made since the provisions came into force in October 2013. The number of applications in 2022 appears to be rising. As of 30 June 2022, 66 applications had been submitted. If similar numbers continue, we may receive around 130 plus applications by the end of 2022. The majority (55%) of all applications have been made in relation to allegations of sexual offences, a little over half of which were approved.
31. These figures tell me that the 63G provisions are underutilised. While I am somewhat encouraged that, since the November 2021 workshop, we have seen an increased understanding of the value of the retention of biometrics under the s63G provisions, and that 'new' forces have started or are keen to start making applications, there remains more to do to ensure best use is made of this useful tool. Anecdotal evidence shows that there is still something of a disconnect between that increased understanding, and investigators making best use of s63G, despite concerted education and awareness drives in various forces. During my compliance visits and my conversations with Police and Crime Commissioners (PCCs), I encourage the use of s63G not only through a crime detection lens, but increasingly through one of crime prevention: when a subject knows that their fingerprints and DNA profile are being retained, that retention inherently holds a deterrent factor that may prevent potential future offending. This is a point that I have also raised with Ministers, highlighting the utility of the powers to Baroness Williams during our regular meetings, and writing to the then Parliamentary Under Secretary of State (Minister for Safeguarding) Rachel Mclean MP in October 2021.
32. The Police and Criminal Evidence Act 1984 provides that applications may be made on two statutory bases: that one or more victim criteria are met (i.e. the victim was under 18 at the time of the alleged offence, that the victim was vulnerable, and that the victim was associated with the subject of the

application) or, where the victim criteria do not apply, the retention of the biometric material is necessary to assist in the prevention or detection of crime. Between 31 October 2013 and 31 December 2021, 527 applications were made in relation to victim characteristics and 358 were made for the purpose of preventing or detecting crime. In some cases, more than one of the 'victim criteria' was satisfied.

Statutory basis for s63G applications to the Commissioner (31 October 2013 to 31 March 2022)

	Applications received*	Approved	Refused
Victim criteria – under 18	399	258	133
Victim criteria – vulnerable	45	30	12
Victim criteria – associated with subject of the application	102	43	58
Prevention/detention of crime	372	261	96

*Includes applications that are still outstanding, withdrawn, or invalid. Also, applications were previously counted more than once when more than one category applied.

S63G applications to the Commissioner to retain biometrics for qualifying offences

	01 Jan to 31 Dec 2017	01 Jan to 31 Dec 2018	01 Jan to 31 Dec 2019	01 Jan to 31 Dec 2020	01 Jan 2021 to 31 March 2022*
Total applications	107	76	65	112	150
Representations from subjects	9 (11.8%)	8 (10.5%)	4 (6%)	9 (5%)	6 (4%)
Outcomes					
Approved	62 (58%)	48 (63%)	58 (89%)	77 (69%)	139 (81%)
Rejected	19 (18%)	17 (22%)	12 (18%)	29 (26%)	22 (16%)
Refused	8 (7.5%)	5 (6.5%)	3 (4%)	5 (4%)	4 (3%)

*for cases completed - as of 26/07/22 11 cases were outstanding

(NB: does not include withdrawn applications. Some cases submitted one year may be considered in the following year)

S63G applications to the Commissioner since provisions came into force

	31 October 2013 to 31 December 2020	1 January 2021 to 31 March 2022
Total applications	747	150
Representations from subjects	82	6
Outcomes*		
Approved	499	139
Rejected	175	22
Refused	69	4

*Does not include withdrawn applications

33. As of 30 June 2022, I have reviewed 156 biometric retention applications made by the police under s63G PACE. Of these, I approved 127 applications and refused the remaining 29 applications.

Outcome of applications to the Commissioner to retain biometrics for qualifying offences under section 63G PACE (31 October 2013 to 31 March 2022)

Offence Group	Total applications	Approved*	Refused*	Withdrawn*
Murder, Attempts and Threats to Kill	17	9	7	1
Sexual Crimes	492	301	143	40
Assaults	155	118	17	17
Robbery	138	111	15	10
Burglary	76	59	14	3
Other	19	14	1	4
Total	897	612	197	75

* 13 applications are not included in these figures, as they had yet to be reviewed by 31 March 2022

(NB: In previous years, some applications were double-counted, where the application was reliant on more than one offence)

Subject challenges to police applications

34. As highlighted in my first annual report, only a handful of subjects have submitted representations to challenge the biometric retention applications made against them. In this reporting period, representations were made in just five cases. This is lower than in 2020 when there were nine representations from a possible 113 (8%). As of 30 June 2022, we had received four representations. It will be interesting to note whether this changes if the application process is made more overtly 'judicial' under the IPC.

Representations by subjects and outcomes (ending 31 March 2022)

Applications	Total	Representations made by the Subject of the Application
Retention approved	613	50 (8%)
Retention refused	198	35 (18%)

Preliminary applications

35. A preliminary application can be made if a chief officer has concerns about disclosing certain information to the subject of the application, for example intelligence about live criminal activity or sensitive witness statements. The force can discuss with my office whether the information can be withheld from the subject before they formally submit the application. I have considered one such application. Prior to my tenure²⁷, 17 preliminary applications were submitted to the office.

Holding applications

36. A holding application can be made when a decision to take no further action (NFA) against a subject who has been arrested for a qualifying offence has been made, but the subject has a pending non-qualifying offence and therefore their biometrics can be legally held. Essentially, this enables forces to inform us that they wish to “hold” a s63G application while they await the outcome of the investigation/proceedings relating to the non-qualifying offence. Detailed guidelines on which applications fall under this category were provided in an update by my office to police contacts in July 2021.
37. For those potential s63G applications where a subject has been NFA’d for a qualifying offence but has another pending *qualifying* offence, an application should only be made in relation to the latter qualifying offence and only once a decision has been made to take no further action. There have been occasions when applications have been submitted while there is a pending qualifying offence. Where these have been identified, my office has informed forces that the application cannot be kept on hold and should only be made if the pending qualifying offence is later NFA’d.
38. Only a very few forces submit holding applications. This could potentially be because forces are unaware of the process or have difficulty understanding it. My office will look at this issue again later this year and explore options to increase awareness of the holding application process.

²⁷ Between 2013 and 2020

Applications to a District Judge

39. In cases where I approve a s63G biometric retention application, the biometrics can be held for three years from the date they were taken. If the police wish to retain them for a further period of two years, they can apply to a district judge. In the 2020 Annual Report, it was recorded that six such applications had been made to a district judge up until 31 December 2016. There is no requirement for forces to inform my office about such applications, although we were recently informed that West Yorkshire Police applied for such an extension. The Magistrates Court approved the extension for two years in April 2020.

Chapter 3 – International

40. Part of my role is to oversee the sharing of biometric material with international partners, which is governed by the Home Office’s International DNA and Fingerprint Exchange Policy for the United Kingdom.²⁸ Further provision for the international exchange of personal data within a law enforcement context is contained in the DPD Bill which is before Parliament at the time of writing, and what follows in this chapter should be read in conjunction with those proposals. The sharing of biometrics is a specific sub-set of the much wider legal and regulatory framework governing the international processing of personal data more generally. The policy clearly states the parameters within which DNA and fingerprint exchanges can lawfully take place, and details the nationally agreed processes and mechanisms for doing so. My role is to dip sample cases where an individual’s DNA and/or fingerprints have been exported from the UK, to ensure this has been done appropriately.
41. As part of a wider update to the international exchange policy, FINDS were reviewing the distinction between providing biographical information with fingerprints, but not with DNA, at the time of my last annual report. Work on that review continues, and the requirement that FINDS must authorise concurrent exchanges of DNA profile and demographic data, and notify my office of any authorisations, remains in place²⁹. FINDS have not approved any of these exchanges during this reporting period.

²⁸ <https://www.gov.uk/government/publications/international-dna-and-fingerprint-exchange-policy-for-the-uk>

²⁹ 2.1.2 of the Home Office’s International DNA and Fingerprint Exchange Policy for the United Kingdom

42. Excepting matters relating to counter terrorism, most requests for the international exchange of DNA profiles are channelled through the NCA, which also deals with the international exchange of fingerprints for intelligence purposes. DNA profiles are exchanged far less frequently than fingerprints, while DNA samples, as opposed to profiles, are only exchanged in very rare situations set out in the *International DNA and Fingerprint Exchange Policy* mentioned above. Chapter 3 of the 2020 annual report (paragraphs 157 to 161) provides further detail on the roles of the NCA, ACRO, counter-terrorism police and the International Crime Coordination Centre in the exchange process.

Exchange of fingerprints and DNA for intelligence purposes

43. The international exchange of DNA and fingerprints for intelligence purposes is coordinated by the NCA, which houses the UK's International Crime Bureau. ACRO provides the 'Requests In' service to the NCA for fingerprints, and therefore receives these requests directly from the NCA. The UK, USA and Canada have an agreement to share DNA crime scene profiles only, which is carried out via the Interpol security communication network. DNA subject profiles are not exchanged as part of this process.
44. Detail on the four types of DNA profile, as well as the four types of fingerprint dealt with by NCA, is provided in appendix D.

Dip sampling

45. Continuation of Covid-19 restrictions during the period of this report have meant I have been unable to visit the NCA, as I had intended, to dip sample cases where an international biometric exchange took place of either fingerprints or DNA profile. This is another part of my oversight responsibility that I will be revisiting in this coming reporting year which, along with the postponed inaugural audit of the Prüm exchanges with the ICO and Forensic Science Regulator, will be further informed by the recent EU Council's positive decision on the continuation of Prüm exchanges³⁰.

³⁰ See paragraphs 48 to 52 for more information on Prüm

Arrest warrants and exchanges of conviction information post EU exit

46. The NCA remains the central authority for certification of incoming extradition cases following the introduction, on 1 January 2021, of the arrest warrant to replace the European Arrest Warrant. The NCA arranges removals, as well as the communication channel for extradition matters, via Interpol. NCA publish statistics³¹ on the number of fingerprint requests from the UK and requests of the UK, providing a year-on-year comparison. The number of requests made by the UK dipped in the fiscal year 2021-2022, from 324 to 131. Similarly, requests made of the UK fell in the same period from 15,939 to 12,793.
47. Exchanges of fingerprints of EU and UK nationals continue to take place in the context of the sharing of conviction information, as I set out in last year's annual report³². Table 3 in appendix D shows the numbers involved for this reporting period, and are presented slightly differently to reflect the different arrangements in place for this process as a consequence of our leaving the European Union.

Prüm

48. The Prüm Council Decision of 2008 allows for the reciprocal searching of DNA and fingerprint databases within the EU on an anonymised 'hit/no hit' basis, and also the exchange of vehicle registration data. Having initially opted out of a number of EU Justice and Home Affairs measures including Prüm in December 2015, Parliament voted to opt into Prüm on the basis that proposed safeguards would be brought into force. Those safeguards were agreed by Parliament and include the following conditions:
 - only the DNA profiles and fingerprints of people convicted of a crime will be made available for searching by EU Member States;
 - demographic information about an individual will only be released following a DNA match if it is of a scientific

³¹ <https://www.nationalcrimeagency.gov.uk/what-we-do/how-we-work/providing-specialist-capabilities-for-law-enforcement/fugitives-and-international-crime/extradition-arrangements-with-eu-countries>

³² From paragraph 174

standard equivalent to that required to report a hit to the police domestically in the UK;

- such information will only be released in respect of a minor if a formal request for Mutual Legal Assistance has been made; and
- the operation of the system will be overseen by an independent Prüm Oversight Board.

Prüm DNA

49. Prüm DNA exchange is administered by the MPS through a decentralised copy of the National DNA database. Since my last report, the UK has connected to a further two Member States for the purpose of Prüm DNA exchanges, taking to 14 the total number of connections³³. This represents approximately 90% of European DNA holdings. There has been a significant fall in the number of legacy hits in this reporting period compared to last, for both UK crime stain hits and UK subject hits. The fall in legacy hits is to be expected, as these are hits generated at the point of connection to another country. Table 4 at appendix D compares the statistical return for this year to last.
50. Following scientific verification that a match is a true one, the UK can request further information, which is Step 2. Step 2 is the point at which demographic data and crime investigation details may be exchanged: prior to this, the data is anonymised.
51. Step 2 requests may be outbound or inbound. Outbound requests refer to requests made by the UK where there has been a match of UK data against Member States' systems, the match has been verified, and the NCA makes a request to the relevant Member State for the demographic information or crime investigation details associated with the match. Inbound Step 2 requests are those where there is a verified match against UK systems for a Member State, and that State carried out a request to the NCA for the associated demographic information. Figures for exchanges during this reporting period are shown in table 5 at appendix D.

³³ Austria, Germany, France, the Netherlands, Spain, Romania, Poland, the Czech Republic, Ireland, Latvia, Sweden, Belgium, Malta and Lithuania

Prüm fingerprints

52. Germany was the UK's sole Prüm connection for fingerprints for the period covered by this report, following connection in October 2020, although further connections with Belgium and Austria were made in late May 2022, and the Czech Republic in August 2022. An automated feed permits the comparison of fingerprints (Step 1), and once a hit occurs, the requestor verifies the hit and makes the Step 2 request for the intelligence linked to the fingerprints or crime mark. In contrast to Prüm DNA, where DNA profiles are checked against a Member State's holding at the point of collection, Prüm fingerprints operates on a quota basis. These quotas are designed to limit the manual resource required to verify matches, and are mutually agreed. The figures in tables 6 and 7 at appendix D are, therefore, much smaller than those for DNA exchanges, reflecting both the limiting quota, and the fact that UK has only connected with Germany so far.

Chapter 4 – Compliance, retention, use and destruction

Compliance visits

53. The Covid-19 pandemic continued to restrict my ability to visit police forces to find out how they apply the law, and get a national picture of trends, issues and good practice surrounding the use of DNA, fingerprints and, increasingly, other biometrics. These visits are important in evidencing compliance with the statutory provisions, and I am keen to identify where there is good practice which can be shared across policing. I encourage the force representatives who I meet to put to me any issues they are encountering in the biometrics field. The feedback my team provides can assist forces in resolving issues in the areas that are proving problematic, and improving assurance for their communities. I recently summarised these in a blog which was later referred to in the Ryder Review on the future regulation of biometrics³⁴.
54. As restrictions were lifted and reimposed throughout 2021, and into the first three months of 2022, I travelled to 12 forces to undertake compliance visits, meeting with a range of police staff and officers at all levels, including those who work in forensic or scientific departments, those responsible for information management, and those involved more directly with investigative work. I ask to speak to members of the force's senior leadership team and the Police and Crime Commissioner³⁵, if not on the day, then at least in a follow-up call shortly after my visit. In the 2022/2023 reporting period, if resource within my office allows, I intend to visit those forces which featured in earlier plans for visits, and follow up on recommendations made as a consequence of previous visits.
55. I was particularly pleased, when visiting the three Yorkshire forces and Humberside, to meet with West Yorkshire's Deputy Mayor for Policing and Crime, Alison Lowe, who took the time to give me a very helpful understanding of the wider issues relevant to the use of biometric and surveillance camera technologies in the local area. Similarly, my meetings with Essex's Deputy Police, Fire and Crime Commissioner, Jane Gardner and my post-visit contact with PCCs David Sidwick (Dorset)³⁶ and Mark Shelford (Avon and Somerset)

³⁴ <https://videosurveillance.blog.gov.uk/2021/10/12/what-we-talk-about-when-we-talk-about-biometrics/> at p177 of the Ryder Report

³⁵ or equivalent local elected policing body under Pt 1 of the Police Reform and Social Responsibility Act 2011

³⁶ Mr Sidwick is also the national lead for biometrics on behalf of the Association of Police and Crime Commissioners

were helpful in gaining an understanding of the priorities and realities of biometrics surveillance from the perspective of the locally elected governance body.

56. In this regard, it was interesting to note the research conducted by the Association of Policing & Crime Commissioners (APCC) published just before this report, which indicates that the area of “biometrics and forensics” was the lowest occurring priority within the statutory police and crime plans published across England and Wales, featuring in only 37% of plans. Given the importance of community consultation, understanding and support - particularly in the area of new technology such as Live Facial Recognition - I believe that the elected local policing bodies will have a critical role to play in the future, and this is something that I have discussed with the APCC and the Forensic Science Regulator.

The governance of national databases

57. My 2020 report details how the Forensic Information Databases Strategy Board (FIND-SB) provides governance of the national databases for both DNA (NDNAD – the National DNA Database) and fingerprints (IDENT1 – the national fingerprint database). DCC Ben Snuggs continues to provide FIND-SB with impressive chairmanship and the 2020/2021 annual report³⁷ was laid in Parliament on 27 April 2022. FIND-SB figures are reproduced in this report in a slightly different manner, covering the period January 2021 to March 2022, to align with the period covered by this report, and therefore align with all my other findings and observations. Proposed changes to the FIND-SB are contained in the DPDI Bill.
58. The National DNA Database (NDNAD) was established in 1995 and, by 31 March 2022, held 6,249,562 subject DNA profiles and 654,772 crime scene profiles for England and Wales police forces. UK holdings total 6,870,705 subject profiles and 685,063 crime scene profiles. This is estimated to represent a total number of 5,288,393 individuals whose DNA profiles are retained on NDNAD by forces in England and Wales, and 5,795,790 for all forces. The overwhelming majority of DNA profiles held on NDNAD in both

³⁷ <https://www.gov.uk/government/publications/forensic-information-databases-annual-report-2020-to-2021>

England and Wales and in the rest of the UK are of arrestees (6,249,562 and 621,143 respectively), and the fewest held are of volunteered profiles³⁸.

Volunteered profiles include a limited number of those given voluntarily by vulnerable people at risk of harm, and which are searchable on the NDNAD, convicted people and/or sex offenders.

59. The National Fingerprint Database (IDENT1) became fully operational in 2001, and held all fingerprint sets ('tenprints') taken from people arrested in England and Wales and those from Scotland or Northern Ireland convicted of certain offences. Currently, fingerprints taken under PACE or its equivalents in the UK are enrolled onto IDENT1 for storage and search.
60. I noted in last year's annual report that the statistics on holdings on IDENT1 are not as detailed as those on NDNAD, and this remains the case as work continues to improve the statistics available as part of the IDENT1 transition to a cloud-based platform. As of 31 March 2022, IDENT1 held 27,043,983 sets of tenprints, which relate to 8,562,878 unique arrestee subject tenprint records (that is, the fingerprints of 8.56 million individuals are currently held in the main policing fingerprints collection on IDENT1)³⁹. The proportionality of the long-established practice of fingerprinting every arrestee every time they are arrested has not, to my knowledge, been tested in the courts, but the repeated taking of fingerprints plainly produces a considerable number of duplicated fingerprint records.
61. There has been a marked increase in the number of subject DNA profiles added to the national database by forces in England and Wales during this reporting period, compared with 2020 (341,141 compared with 217,609). The additional three months covered in this reporting period would go some way to explaining the increase, and some can be attributed to improved management information reporting within FINDS⁴⁰. But that may not account for them all. Inferences may be drawn in terms of easing of lockdown restrictions and a concerted attempt by some forces to ensure all opportunities for biometrics capture are taken (see section below on voluntary attendance, release under investigation and bail). Table 4 of appendix E sets out the number of additions

³⁸ See table 2 at appendix E

³⁹ See table 3 in appendix E for more detail

⁴⁰ In November 2020, new systems went live which allow FINDS to produce improved MI, that includes the counting of profiles loaded and deleted in the same month, which would not have been possible previously

to the NDNAD for this reporting period, for a number of different profile types. There have also been increases across four categories of additions to IDENT1, which again may in some way be a consequence of the lifting of covid restrictions⁴¹.

62. During the collation and validation of statistics for this year's annual report, colleagues in the FINDS National Fingerprint and PNC Office identified an anomaly in the figures for deletions from IDENT1 for previous years' data, whereby the values for the headings *tenprints sets from arrestees* and *individual subjects* were mistakenly transposed. This therefore gave the impression that a greater number of tenprints sets taken from arrestees, and fewer individual subjects, had been deleted than was the case. Table 6 at appendix E to this report clarifies last year's return, and allows comparison with numbers for this reporting period.

Match rates – DNA and fingerprints

63. The likelihood of DNA being present at the scene of a crime varies significantly between offence types. This impacts on the extent to which a crime scene is examined for DNA stains, as well as the seriousness of the incident, the more serious of which are likely to be prioritised.
64. As noted in last year's report, the rate at which crime scene profiles match to subject profiles held on the database is high (64.6% for all forces during this reporting period, compared with 66.13% in 2020). It is interesting to note that this is another slight fall in numbers, some of which can be attributed to the improved management information noted at paragraph 41 above, and which means that the loaded figures now include records loaded and deleted in the same month, resulting in the load figures being higher. The match rates for this reporting period for both DNA and fingerprints are provided at tables 7 and 8 in appendix E respectively. Further work is being undertaken by FINDS to improve the match rate counts to include matches where the crime stain or subject has been deleted.

⁴¹ Table 4 at appendix C

Voluntary attendance, release under investigation and bail

65. In the 2020 annual report, I referred to the impact that the introduction of Voluntary Attendance has had on the taking of DNA and fingerprints, and how the restrictions of the pandemic had exacerbated this. Voluntary attendance is where suspects are not arrested but are asked instead to attend voluntarily at a police station, usually outside a custody suite environment, to answer questions. This frequently results in lost opportunities to capture biometrics, principally because the powers and facilities to take fingerprints and DNA samples are linked to arrest and custody. In the limited number of PoFA compliance visits I was able to undertake over this reporting period, I was pleased to see that some forces had introduced ways of working to review the VA/biometrics capture gap, and I look forward to updates on this progress. Elsewhere, I continue to recommend that robust processes, monitoring and governance are put in place by forces to ensure all opportunities for capturing biometrics from voluntary attendees following charge and/or conviction are exploited, and I will continue to engage with forces during 2022.
66. Since the changes to the use of bail were introduced by the Bail Act in 2017, the use of pre-charge bail has increased, although the majority of suspects continue to be 'released under investigation'. I have learned from a number of forces that the number of pre-charge bail cases is creeping up, but it remains the case that release under investigation (RUI) is used much more frequently. The RUI arrangements lack the inherent structure and time limits of the bail regime, and it is unfortunate that some forces do not monitor RUI cases as scrupulously as they might, resulting in cases remaining open for protracted periods and creating a risk of unlawful retention of biometrics.
67. The Police, Crime, Sentencing and Courts Act (PCSCA) 2022 received Royal Assent on 28 April 2022, and contains provisions which, once enacted, will remove the overriding presumption of release under investigation over bail; the PCSCA will also extend the bail period to three months. I understand these changes will be implemented in the autumn, and will necessitate software changes to the relevant systems, and so would urge forces to incorporate any further changes to ensure RUI cases can be robustly monitored, in the same way as bail cases, which will go some way to mitigate any unlawful biometrics holdings of previously RUI subjects.

68. One possible solution to some of the difficulties that have been experienced during these legislative changes is 'remote enrolment', which allows the taking of fingerprints away from a custody environment. The technology itself is at an early stage of development; more challenging would be the legislative changes required before it could be introduced, and there are already significant concerns about the way in which such technology might be introduced by the police, and the consonant impact on certain communities was raised with me during my police force visits⁴². This will require more work for the Forensic Science Regulator and the Home Office before it becomes a feasible proposition for consideration.

Speculative searches

69. The relevant legislation⁴³ provides the police with the power to conduct speculative searches of fingerprints and DNA profiles against national databases *within such time as may be reasonably be required for the search*. In practice, this is done automatically at the time, or shortly after, fingerprints are taken in custody, with a result being returned almost instantaneously. The process is slower for DNA, as the sample is taken from the arrestee in custody, which must (under current arrangements⁴⁴) be sent to a laboratory for profiling before it can be loaded onto the NDNAD and searched against existing profiles.
70. I have learned from a number of forces that it is common practice for the fingerprints of all arrestees passing through custody to be routinely searched against the Immigration and Asylum Biometrics System (IABS). IABS provides biometric enrolment, identification, identity management and verification services within the immigration and citizenship domains. For example, for visa applicants to the UK, biometric residency permit applicants, asylum applicants and passport applicants. Blanket searching where there are no grounds to suspect that the detained person is involved in immigration-related offences raises questions of proportionality, and I recommend that all police forces review their searching policies in this regard, particularly in light of the reported

⁴² Meeting with Alison Lowe, Deputy Mayor for Policing and Crime, West Yorkshire in July 2021

⁴³ PACE s63D

⁴⁴ The Metropolitan Police Service is conducting a pilot scheme to provide profiling capability at police stations, the outcome of which is awaited

concerns⁴⁵ about the approach by policing and law enforcement agencies and the Home Office Biometrics programme in this area.

Legislative change and IT repercussions

71. In my last annual report, I reported that the Police National Computer (PNC) had yet to be updated to allow the implementation of changes made in the Policing and Crime Act 2017. These changes permit the retention of biometrics on the basis of any conviction in another jurisdiction, where ‘the act constituting the offence would constitute a recordable offence if done in England and Wales⁴⁶’. I am encouraged that planning work is finally underway and that the necessary software changes have been developed, although it is still not clear when the necessary updates will be delivered.

Sampling errors

72. Once a DNA sample has been taken from an arrestee in custody, that sample will be collected and taken to the scientific or forensic service used by the force. Here, checks will be conducted to determine whether the bag has been properly sealed, the barcode correctly applied, or the swab placed in the tube correctly. The sample will then be submitted to a Forensic Service Provider (FSP), which will also have a number of safeguards in place to prevent and identify any errors in processing DNA samples. Furthermore, daily integrity checks are carried out by FINDS on the DNA profile records that are loaded onto the NDNAD.

73. It is clear from my visits to forces that the overwhelming majority of sampling errors continue to arise from sample bags being incorrectly sealed, and this is borne out by the errors reported to FINDS by forces: in this reporting period, 953 errors involving the sample bag not being sealed were reported, and instances of this error were reported by all but nine of the England and Wales forces. It is very frustrating for all involved that the forensic science cycle continues to fall down at what must be the simplest stage, and I have raised this with the Forensic Science Regulator. I understand that one of the reasons for this is thought to be that it is difficult to see the seal itself, which is currently

⁴⁵ www.theguardian.com/uk-news/2022/aug/04/uk-policing-and-border-control-infiltrated-by-war-mentality-says-report

⁴⁶ s. 70(2) Policing and Crime Act 2017

colourless when it used to be a distinct colour. Work is being done to explore the ability to ensure future supplies revert to having a coloured seal, which they anticipate will go some way to mitigate this number of errors.

74. I am encouraged that all but two forces from England and Wales have been able to provide the number of lost samples, compared with seven forces last year. This is something that I picked up with these forces (Surrey and Sussex) during my recent compliance visit, and which seems, on the face of it, to be a matter of interpretation of what qualifies as a 'lost' sample. My office will continue to work with them to iron out this issue in the coming months. For those forces providing a return, this figure remains pleasingly low (2292), compared to the total number of samples taken, but of course there is always room for improvement
75. Other sampling errors reported by England and Wales forces in the same timeframe include *incomplete forms or sample tube details* (253 reported), *contamination on swab i.e. hair/staining* (177), and *sample missing* (145). While the majority of errors are identified either by the force before submission of the sample of the forensic service provider (FSP), or by the FSP when processing the sample, a small number of force handling errors on the NDNAD are identified by FINDS.

Forensic Service Providers

76. There are three private forensic service providers (FSPs) in England and Wales: Key Forensic Services, Eurofins Forensic Services, and Cellmark Forensic Services. In Scotland and Northern Ireland, similar forensic services are provided by the Scottish Police Authority Forensic Service and Forensic Service Northern Ireland respectively. I continue to hear from forces that caps on the number of samples that can be sent to a FSP at any one time can create significant backlogs, which impact on other parts of the police process, for example necessitating bail extension requests because forensic results are outstanding. Whilst this is outside my strict statutory remit, I believe that the specific impact of this on victims ought to be investigated and understood.

Destruction of DNA samples

77. The relevant legislation contains clear rules for when biometric samples must be destroyed⁴⁷. While allowing the police to take DNA samples from all people arrested for a recordable offence, the legislation requires, as a general rule, that the samples themselves be destroyed once a profile has been derived from that sample, and certainly within six months of its being taken. This reflects Parliament's decision that the information contained in a person's DNA sample is so sensitive that, once the police have derived a DNA profile for criminal justice purposes, that sample should be destroyed⁴⁸.
78. There is a specific exception to this general rule⁴⁹, which allows the police to keep DNA samples until a criminal investigation and allied disclosure arrangements are concluded. It is the responsibility of the FSP to destroy samples once a DNA profile has been obtained, or to retain it under the 'CPIA exception' if requested to do so by the owning force. The remaining PACE samples and the majority of elimination samples are retained by individual forces, who have responsibility for monitoring those samples and ensuring they are destroyed in a timely manner. Timely destruction is an area I cover in each of the force visits I undertake.
79. As an exceptional provision, the CPIA power should not be used as a means for general retention of DNA samples. However, I am aware that some forces continue to apply it as a matter of course to DNA samples relating to certain types of offences, to prevent samples that may be required for further specialised analysis, or which may become disclosable in court, from being destroyed due to FSP backlogs. This is a practice noted previously by my predecessor and I continue to raise the use of the CPIA exception at force visits and in my regular meetings with the Forensic Science Regulator, monitoring the number of DNA samples so retained in the quarterly returns to FINDS. It is unclear whether the government's proposals for legislative reform include this issue.
80. The numbers for this reporting period are provided in table 9 at appendix E, and are broken down into two categories: those held by forces, and those held

⁴⁷ For details and discussion, see Commissioner for the Retention and Use of Biometric Material, Annual Report 2015, at Section 4.1.

⁴⁸ There are further specific considerations where DNA profiles are retained under the authority of National Security Determinations – see para 20

⁴⁹ under the Criminal Procedure and Investigations Act (CPIA) 1996, commonly referred to as the CPIA exception.

on behalf of forces by FSPs. The 2020 figures are included for comparison purposes, and show an overall increase in both arrestee/PACE samples and elimination samples retained under the CPIA exception: the total number of arrestee/PACE samples has increased by just over a third to 9903, and elimination samples by a little under 75% to 5184. While forces are holding fewer arrestee/PACE samples (382, compared with 654 in 2020), FSPs now hold more (9521, compared with 5770 in 2020). One obvious hypothesis for this relative change is that retention has simply shifted from forces to FSPs, but it is a subject I will continue to discuss with police forces during my visits, and my office will continue to monitor these figures via the quarterly FINDS returns.

Deletion of Police Records

Application for PNC record deletion

81. An individual whose biometrics are being lawfully retained by the police can apply for the 'early' deletion of their records from national police systems, namely PNC, NDNAD and IDENT1, a process referred to as the 'Record Deletion Process'⁵⁰. The ACRO Information Management Unit is responsible for coordinating requests for record deletion, and will contact applicants where the grounds for record deletion have not been fully evidenced, to give the applicant the opportunity to provide additional information to support their request. After taking account of the national guidance issued to support the process, the chief officer of the relevant police force will decide whether the record is retained or deleted.
82. During this reporting period, of a total 2722 applications received by the ACRO Deletion Unit, 894 deletions were approved and 777 rejected by chief officers, compared with 671 and 566 during the 2020 calendar year. This is a small percentage of records potentially eligible for deletion. It is encouraging to see that the number of applications pending with force has fallen slightly compared with 2020 figures, but still have a very long way to go before they fall to pre-pandemic levels. Table 10 at appendix E provides a fuller picture across the different stages of this request process.

⁵⁰ Paragraphs 64-66 of last year's annual report provides more detail on the Record Deletion Process

Custody images

83. The police take a ‘custody image’ from every person they arrest and use these facial images as a biometric identifier under their general policing powers. Annual reports by my predecessor and my own of last year⁵¹ have highlighted the issues engaged by retention of such images, and forces continue to report difficulties with reviewing the retention of custody images in line with current MoPI⁵² requirements. While some forces are taking a proactive approach to reviewing these images, many forces do not proactively review and delete, unless an individual makes a specific request for deletion of the image.
84. More worrying is the reported use of images of people who, while having been arrested, have never subsequently been charged or summonsed, for comparison against Live Facial Recognition ‘reads’ and watchlists. As I record in Part 2 of this report, the use of facial recognition technology by the police has become one of the most contentious areas of biometric surveillance, not just in the UK but globally. If they are to retain the support of the public for their use of such technological innovation, the police will need to address this element of both the retention and use of facial images as a priority. Forces are reminded that the Home Office recommends they apply the MoPI guidelines to their custody images and may wish to consider the retention, monitoring and use of custody images in line with the recommendations of the Home Office’s 2017 Custody Images Review, with reference to current MoPI guidelines. I encourage more forces to follow the practice of some, and put measures in place to inform individuals upon leaving custody of their rights in relation to requesting deletion of their custody image and other police records.

Deletion process

85. In last year’s annual report I highlighted the ongoing issue with the deletion of foreign law enforcement data (see also paragraph 19 of this report). I can now report that the MPS have deleted the last of these unlawfully held records. This is a significant result because the control and treatment of these records is critical in securing public trust and confidence that all material is held legitimately and the MPS are to be congratulated in managing the competing

⁵¹ Paragraphs 70-74

⁵² <https://www.college.police.uk/app/information-management/management-police-information>

risks presented by this situation. The MPS completed these deletions via “a manual process undertaken by diverting technical staff from undertaking ‘business as usual’ activities”⁵³. Notwithstanding this allocation of additional resources, the MPS further explained that the deletion process had been hampered by two factors: the absence of a technical solution to carry out bulk deletions, and the need to ensure that deletions did not affect other legitimately held records. I am content with the MPS’s explanation of the process by which they deleted the records, but will be returning to the investigative lines that have been generated by the relevant dataset at my next inspection.

86. Having done well in achieving this result, the MPS will need to keep on top of the situation and monitor the conditions under which these unlawfully held records were retained so that they are not allowed to recur. My office will continue to work with MPS colleagues to examine biometrics retentions more widely to prevent any recurrence. I will also be looking more closely at the retention and deletion process of those holdings of biometric material received from international law enforcement bodies.

Chapter 5 - Biometrics trends and the future

87. Technology is advancing at an exponential rate, which brings both opportunities and challenges to democratic states. The decision whether to provide comprehensive, coherent and consistent regulation and standards for all biometrics is not one for me to make, but it is clear to me that biometrics and surveillance are inextricably linked, and separating the capture and use of images from that of fingerprints/DNA is therefore increasingly contrived and requires an artificial distinction⁵⁴. I have illustrated this structurally in the production of this report, and any new accountability framework will need to reflect not only practice, but also a clear understanding of the ethical considerations around biometric use, including public perception and legitimate expectation. In my view meaningful community consultation,

⁵³ Letter from MPS to the Commissioner 21 June 2022

⁵⁴ an image capture of the unique folds of skin on someone’s hand from which they might reliably be identified is currently treated differently from an image capture of their palm.

communication and accountability mechanisms will all be vital in balancing opportunity with risk.

Growth in capabilities and biometrics types and gaps in frameworks

88. Both the operational and legislative landscapes for biometrics are complex. The exploitation of biometrics is growing, and the overlapping sources of biometrics available for policing and law enforcement purposes continue to evolve. In that context, it is questionable how far the disparate pieces of legislation governing the use, retention and forensic application of biometrics have kept pace with the practices they purport to regulate. Biometrics are no longer thought of as being simply fingerprints and DNA. Section 28 of PoFA already contains a broader descriptive provision for biometrics in schools than we see in the policing arena, while other jurisdictions such as Scotland have taken a much more holistic – some might say realistic – approach to the subject.
89. At the time of reporting there are calls for the legislative framework governing biometrics to be revisited, not just as proposed within the government’s data reform consultation, but also in broader terms⁵⁵.
90. From a purely law enforcement perspective, and notwithstanding the need to balance security and privacy, the greater the certainty there is about identification the greater the potential benefits: ensuring the right suspect is pursued and prosecuted; saving of time and resources in the investigation and prosecution processes; and the ability to make early interventions to prevent crime. At a very basic level the use of biometrics simply involves collating information and looking for points of congruence with a reference sample. As our capability to collect and compare more biometric information from more sources with greater speed and at scale increases, the greater becomes the need for democratically accountable governance of the deployment of those capabilities, and standardised and accredited training to help instil public confidence in these capabilities. We are moving quickly into a new era of biometrics where technological innovation has been driven largely by

⁵⁵ House of Lords Justice and Home Affairs Committee *Technology rules? The advent of new technologies in the justice system*, 30th March; Matthew Ryder C Review for the Ada Lovelace Institute <https://www.adalovelaceinstitute.org/wp-content/uploads/2022/06/The-Ryder-Review-Independent-legal-review-of-the-governance-of-biometric-data-in-England-and-Wales-Ada-Lovelace-Institute-June-2022.pdf>

consumer convenience and retail solutions, the product of which is readily available to the police and other state institutions.

91. The vast majority of biometric capability is privately owned and accessed under contractual arrangements between law enforcement and policing bodies and the private sector which means we rely on trusted partnerships and must therefore be careful whose corporate company we keep⁵⁶. In terms of regulation, there is a clear case for revisiting our approach to biometrics to ensure that it reflects this contextual transformation. While some ‘new biometrics’ such as gait, heart rhythm and voice patterns are very much in their infancy, and it does not necessarily follow that all future forms of *zoemetrics*⁵⁷ should be regulated in the same way, it makes no practical sense to regulate only those established elements (fingerprints and DNA) or some of the equipment where it is operated in public spaces by a small number of public bodies.
92. If society is to get the most from biometric surveillance technology, it will need a systemic approach focusing on the *integrity* of technology and practice – along with the standards of everything and everyone in it – because, in a systemic setting, contamination of part contaminates the whole.

⁵⁶ something that is being debated within the parameters of the Public Procurement Bill at the time of writing

⁵⁷ measures of life

Part 2 – Facial Recognition and AI

93. I have placed this section between the two discrete areas of Biometrics and Surveillance Cameras because the issues and risks presented by facial recognition sit at the interface of both - as expressly recognised by ministers and exemplified in my dual appointment⁵⁸.
94. As Parliament begins to consider the proposed legislation for reform, there is an opportunity – perhaps a necessity – to address for the first time the many pressing questions around the legitimate role for newly-intrusive technology such as facial recognition in biometric surveillance by the police and law enforcement.
95. The need for debate and the depth of concern at the current proliferation of face-based technology has been reported on by my predecessors in both roles, and was roundly corroborated at the event hosted by my office at the London School of Economics in June 2022⁵⁹.
96. The objective of the event was to gain a better understanding of how facial recognition technology is perceived by society in a policing and law enforcement context. Speaking at the event were the Forensic Science Regulator, a senior lecturer from Sheffield University and representatives from the Biometrics Institute, the Information Commissioner’s Office, South Wales Police, and Big Brother Watch. I want to put on record my thanks to all for participating in such a lively and dynamic debate, but especially the Centre for Research into Information, Surveillance & Privacy, and Professor William Webster of Stirling University who helped organise and chair the event. There were many areas of difference between participants, but the thing on which all were agreed was that more public debates are needed, and that some of those debates ought to take place in Parliament.
97. Involving interaction with a live audience, the event was attended by around 150 in person and remotely⁶⁰. The audience comprised members of the public, policy makers, policing representatives, local authority representatives,

⁵⁸ Rt Hon Kit Malthouse MP, giving evidence at the Justice and Home Affairs Committee on 12 January 2022
<https://committees.parliament.uk/oralevidence/3287/pdf/>

⁵⁹ <https://stirling.cloud.panopto.eu/Panopto/Pages/Viewer.aspx?id=56d462f3-a8f5-44b3-9ffc-aeba00db92df>

⁶⁰ Aside from the eight speakers there were 86 attendees in person. More than 100 people registered for the live stream and there were 178 views and downloads. However, we do not know the precise number of livestreamers who accessed the event at a later date as there were technical problems for those attempting to livestream in real time.

regulators or their support staff, Home Office officials, other government departments, academics, civil libertarians, lawyers, security experts, and technology experts. While this was a diverse audience, it was random and not pre-selected in such a way as to produce representative balance⁶¹.

98. Owing to the audience make up, there are naturally limits on the extent to which conclusions about their reported understanding of the subject could be taken as reflective of that within the population at large. Similarly, I would be hesitant to draw conclusions in isolation from those voicing opinions at the event about particular issues, such as why an individual is placed on a watchlist. I am however confident that the audience, 90% of whom are directly or indirectly involved in the subject, together with the guest speakers, ably captured the range of issues vexing both the policing community and those who unofficially monitor live facial recognition (LFR) activity.
99. The principal tension between proponents of LFR and those against it, or at least wary of the way in which it is used, arises from a perceived lack of transparency and accountability, and the absence of any express requirement for users to demonstrate why and evidence how its use was necessary and proportionate.
100. Some key issues to emerge during the course of the debate included:
 - concerns about the potential for racial and gender bias;
 - accuracy of the technology;
 - a need for greater transparency and governance in the use of LFR;
 - accuracy of reporting of false positives in the media;
 - proportionality arguments particularly with reference to the rate of 'success' compared to the number of faces scanned; and
 - the legal basis for deployment of the technology together with the need for independent authorisation.
101. In respect of all the above, it is worth noting the proposal before Parliament at the time of publication in the form of the DPDI Bill. Concerns about intrusive

⁶¹ Notwithstanding the fact that participants were not selected to provide a statistically balanced audience, responses to questions can be found within Appendix F

surveillance across the country, combined with the need to rebuild public trust and confidence in policing, call for a clear, comprehensive and coherent framework to ensure proper regulation and accountability, now more than ever. The revised Surveillance Camera Code of Practice was approved by Parliament in January 2022 and specifically addresses the use of public space surveillance – including the use of facial recognition technology – by the police and local authorities. Commercial companies using CCTV such as Marks & Spencer have adopted the Code to provide assurance to their customers, and I have advised how it might usefully be adopted across all government departments to address some of the concerns about surveillance companies and their practices, and also the mission creep in surveillance functions. As currently drafted, the Bill will simply abolish the requirement to publish the Code, and I am unsighted on what, if anything, the government proposes to do with the existing one or to put in its place.

102. Of course, even with 100% accuracy, the surveillance technology also needs to be proportionate for its use to be justified, and the figures produced by any policing body should specify how many people have been arrested as a result of their deployments and for what level of offence/offending against the total number of faces scanned. Increasingly, my view is that greater transparency is needed from the police in relation to how and why deployment decisions are made (including decisions to include people on a watchlist). Increased leadership from the government and those responsible for providing the public with information on the use of facial recognition technology will be vital if the benefits and risks are to be understood.
103. The use of facial recognition capability by the police has attracted a lot of attention and controversy – but police surveillance runs both ways. Research by the BBC into Hacktivism and doxing of police records in Belarus, for example, shows how cyber activists managed to obtain photos from officers' personal files and run facial comparisons against internet images of those same officers reportedly beating protestors⁶², after which the hackers identified the officers and revealed where they lived. This story illustrates other risks of Internet scraping and piecing together Open-Source Intelligence. The citizen

⁶² BBC Radio 4 The Digital Human Series 25 'Partisan'

now has access to surveillance tools that only a decade ago were restricted to state intelligence agencies, and the risks of facial recognition technology being used to frustrate vital aspects of our criminal justice system such as witness protection, victim relocation and covert operations are obvious, yet this aspect of facial recognition has received very little attention in the many debates on the subject. Over recent years, France began legislating to ban the photographing of police officers⁶³ and, in an extension of the 'chilling effect', we may readily envisage a world in which the citizen hides their face from the police and the police hide theirs from the citizen, leaving no public faces for the technology to recognise.

104. Against this background, I welcomed the publication of the College of Policing Authorised Professional Practice (APP) on LFR⁶⁴, setting out a clear commitment to 'lawful and ethical' use of this technology. Being guided by lawful and ethical considerations will be critical if we are to address, for example, the prospect of state-controlled surveillance companies supplying our police and schools with the facial recognition technology reportedly being used to perpetuate genocide and human rights atrocities in other parts of the world. Aside from the security risks, it also seems incongruous that the College, as the keeper of ethical standards for policing, has since installed surveillance cameras across its estate which will capture images of all attendees and visitors, using a surveillance company that has been widely condemned by parliamentarians and others for their association with policing operations to persecute, torture and 're-educate' minority communities on grounds of faith and ethnicity.
105. I have expressed some concerns about the intention to use facial recognition technology to find 'potential witnesses'. While I can understand there may be some exceptional, very high harm events such as terrorist attacks or natural disasters where retrospective facial recognition might legitimately make a significant contribution to an understanding of what happened, those events would be mercifully rare and wholly exceptional. Moreover, what constitutes a 'witness' in cyberspace will be difficult to define. If the APP envisages tracking people said by an algorithm to have been present at an event, identifying them

⁶³ www.politico.eu/article/france-ban-photos-police-violence-freedom-privacy-protests/

⁶⁴ <https://www.college.police.uk/app/live-facial-recognition>

against a national database of images and ‘inviting’ them to disclose what they heard and saw, that is a new and somewhat sinister development. As one charitable group described it, such a situation would mean us all becoming involuntary participants in a permanent police identity parade⁶⁵.

106. Responses from partners over the APP pointed out that its focus is data-rights driven, whereas the overall direction in biometric surveillance, coupled with the acute public sensitivity to some technology, extends far beyond keeping data safe. While this data-centric approach is consistent with the government’s proposals for surveillance cameras, the use of facial recognition capability is widely seen as being an extension of biometric technology.
107. In the same vein, as the Data Protection and Digital Information Bill proposes to transfer oversight and approval of biometric retention and use by the police to the IPC, it is a legitimate question whether there is a case for the Commissioner to also provide prior judicial approval for and subsequent oversight of the deployment of some Live Facial recognition (LFR), and the exchange of LFR image templates between the UK and other jurisdictions.
108. Having listened carefully to the many competing arguments in this area over the course of the past year, I have questioned whether some of the risks and benefits of facial recognition technology might be balanced by having a scheme under which some uses of the technology are licensed. I have worked with the Biometrics Institute, a well-established and well-respected organisation that speaks with an objective, neutral voice, and took part in an event hosted by the institute to consider this specific question which I believe to be worthy of serious consideration.

The Accountable Use of AI in Policing and Law Enforcement

109. The use of Artificial Intelligence (AI) is intrinsically linked to surveillance generally and facial recognition in particular. As noted in research being undertaken by the university with which I am affiliated⁶⁶, the implications of AI go far wider than the areas covered by my statutory functions, but they are central to many of the considerations within this annual report.

⁶⁵ Silkie Carlo, Director of Big Brother Watch speaking at the facial recognition event <https://stirling.cloud.panopto.eu/Panopto/Pages/Viewer.aspx?id=56d462f3-a8f5-44b3-9ffc-aeba00db92df>

⁶⁶ The Centre for Excellence in Terrorism, Resilience, Intelligence & Organised Crime Research (CENTRIC), Sheffield Hallam University.

110. Every public service already needs to use AI. In administrative and mechanical settings, data has become commoditised, and every functioning organisation depends on AI to manage that data to some extent. While not at the top level of deep learning or recursively self-improving machines, basic AI has become another utility helping manage iterative tasks at scale and speed efficiently, and freeing up resources for other purposes. In the context of policing, there is a qualitative difference between a chief officer using AI to order new uniform off the shelf⁶⁷ and using it to order people off the streets. Beyond this minimally functional level, there are some high-risk areas in the police use of AI specific to biometric surveillance functions that raise legitimate concerns about its proper role. As covered later in this report, AI driven video analytics have revolutionised the power of surveillance, which can now combine multiple image captures from a range of sources (CCTV, Go-Pros, dashcams, Ring doorbells, body-worn devices etc.) in helping the police understand what happened during an incident or investigation. AI has also enhanced the capabilities of others including organised crime groups, hostile state actors and individual offenders. Criminal exploitation of technology is indiscriminate and immediate, and the citizen now has access to formidable technology.
111. At the same time, facial recognition algorithms need to be ‘trained’, which means scanning as many manifestations of physiognomy as possible, including those of children and other ‘categorisations’ of intersectionality. How far people are even aware of these features and functions in what are powerful computers which they see as simply ‘cameras’ is unclear.
112. In assessing the proper role of AI in this context, the central issue is not whether or what AI should be used by the police and other law enforcement agencies, but rather how their use of available technology in all its forms and operational use cases is lawful, ethical, and accountable. In any jurisdiction it is usually clear *where* police accountability lies, but *how* that accountability is measured, reviewed, and improved is often far less defined.
113. At the time of publication, I was pleased to be invited to speak at the launch of the Ada Lovelace Institute’s three-year research into the challenges and

⁶⁷ As discussed in my meeting with the then Chief Constable Andy Marsh of Avon & Somerset Police in March 2022

potential harms represented by the use of biometric technology. The Ryder Review⁶⁸ was published as an independent legal review of the biometric environment in England and Wales in which the collection and retention of biometric data by policing and law enforcement bodies takes place. It makes 10 recommendations including “new, primary legislation” and a new regulatory body to publish a register of biometrics deployments in the public sector. The report reviews the legal and societal landscape against which future policy discussions about the use of biometrics will take place, and the extent to which the current distinctions between established regulated biometrics (fingerprints and DNA) and others such as facial recognition adequately reflect both risk and opportunity.

114. It is over a decade since the government abandoned the concept of compulsory ID cards, yet we are morphing from a standard police surveillance model of humans looking for other humans to an automated, industrialised process (as some have characterised it, a move from line fishing to deep ocean trawling). In that context, we should recognise concerns that we may be stopped on our streets, in transport hubs, outside arenas or school grounds on the basis of AI-generated selection and required to prove our identity to the satisfaction of the examining officer or of the algorithm itself.
115. I was also invited to provide observations to the team researching the challenges of self-driving vehicles, which observations included the very specific public space surveillance considerations that arise where such vehicles are intended for or used by the police.
116. The ramifications of AI-driven facial recognition in policing and law enforcement are therefore both profound enough to be taken seriously, and close enough to require our immediate attention.

⁶⁸ www.adalovelaceinstitute.org/report/ryder-review-biometrics/

Part 3 - Surveillance Camera Commissioner

Chapter 1 - Overview

Role of the Commissioner

117. The statutory functions of the Surveillance Camera Commissioner were established by section 34(2) of the Protection of the Freedoms Act 2012 (PoFA)⁶⁹.
118. Since March 2021, I have carried out the functions of both the Biometrics and Surveillance Camera Commissioners. My functions *qua* Surveillance Camera Commissioner involve reviewing and encouraging compliance with the Surveillance Camera Code of Practice⁷⁰ ('the Code'), providing reports to the Home Secretary about the carrying out of my functions, and offering advice to ministers on amendments to the Code⁷¹.
119. I am independent of government and have no enforcement or inspection powers regarding surveillance cameras. Rather my office and I work with relevant authorities to remind them of their obligations in having regard to the Code, and assist them in doing so.
120. The Data Protection and Digital Information Bill proposes to repeal the relevant statutory provisions under which these functions are carried out and reported upon; it makes no provision for the Code to remain in force, or for public space surveillance to be expressly regulated by another body.

Public Space Surveillance

121. The Code provides guidance on the appropriate use of overt surveillance camera systems in public space by 'relevant authorities'⁷². Those authorities must have regard to the principles of the Code when operating any surveillance system to which the Code relates. Organisations not defined as a relevant authority are encouraged to comply with the Code on a voluntary basis and, while a number of private organisations have adopted the Code, the government – its author – has not.

⁶⁹ <https://www.legislation.gov.uk/ukpga/2012/9/section/34/enacted>

⁷⁰ Issued under s30 PoFA www.gov.uk/government/publications/update-to-surveillance-camera-code

⁷¹ There is a misunderstanding within policing and local authorities about the Code which is often described as being the Commissioner's; in fact it is the Home Secretary's Code and was revised by the Home Office earlier this year.

⁷² defined at s33(5) of PoFA as policing bodies and local authorities in England and Wales

122. Introduced in 2013 to strengthen the regulation around the use of CCTV, the Code has not kept pace with the rapid evolution of technology. Video surveillance is no longer just CCTV, and is now used as a much broader term that encapsulates many different forms of surveillance camera and editing systems. Public space surveillance is no longer about where the police put a camera; it is about what they do with the millions of images and other biometric information captured by *everyone's* camera. When it needed a human to analyse it, there was simply too much surveillance material to be useful, but AI technology means that actors are now able to tap into an *aggregated surveillance capability* that is vast and growing.
123. The Code uses the definition from the Public Order Act 1986⁷³ of a 'public space' which excludes many areas open to the citizen, and the combined effect of its restricted definition means that the vast majority of publicly accessed space under surveillance by camera systems is outside the Code's ambit.
124. The government's recent revisions to the Code were largely limited to updating references to subsequent legislation and including paragraphs relating to the judgment in *R (on the application of Bridges) v Chief Constable of South Wales Police*⁷⁴ and some rationalising and reduction of the text to make it easier for the user to follow. I responded to the consultation in full⁷⁵ and the revised Code came into effect in January 2022.
125. Notwithstanding its limited parameters, the Code has for many years brought professionalisation and regulation of the areas of overt surveillance activity identified by Parliament as requiring additional safeguards. From raising standards and ensuring that systems operators have appropriate training, advising the police and local authorities on approved technical, operational and competency standards, ensuring responsibility and accountability for a range of surveillance activities, supporting public safety and law enforcement to process images of evidential value, addressing the impact that surveillance has on individuals' rights and freedoms, the Code covers a lot of ground which will surely need to be given at least the same degree of attention in the future

⁷³ Section 16(b) of the Public Order Act 1986

⁷⁴ [2020] EWCA Civ 1058

⁷⁵ www.gov.uk/government/publications/professor-fraser-sampsons-response-to-the-surveillance-camera-code-of-practice-8-september-2021

as it receives now. However, even in its revised form, the Code is largely silent on key areas such as cyber security, ethical practice and human rights observance by surveillance partners. The revised Code now emphasises the importance of any public space surveillance being “*legitimate*” and carried out “*in a way that the public rightly expect, and to a standard that maintains their trust and confidence*”⁷⁶ but its future is uncertain, and it remains unclear how those legitimate public expectations will be met in the future.

126. If it is to be effective, future regulation of public space surveillance will need to reflect the extent to which it has moved on from grainy CCTV images recorded and stored by static cameras and the reality that relevant authorities such as the police routinely access, not only the images from their own systems, but also from the aggregated surveillance capability of other public bodies, businesses and citizens. Following an incident, many police forces now make public requests for any images that might have been captured on personal devices and, to that extent, the surveillance relationship with the citizen has changed significantly.
127. We have moved from the situation originally envisaged by drafters of the Code where the police need images *of* the citizen, to one where they also need images *from* the citizen and where the citizen is often capturing images of the police. In terms of technological advancement, we are seeing facial recognition technology that can identify who you are with greater accuracy at a greater distance, and some which purports to read emotions, assess sexuality or even predict the likelihood of your being convicted of a criminal offence in the future. I remain unconvinced about some of those claims, but I do not think we are very far away from seeing some of those capabilities being relied upon in support of some significant decisions affecting individuals, their freedoms and their fate as described in Part 2 of this report.
128. In that context, it makes no practical sense to continue to regulate only the very limited part of the surveillance ecosystem owned and operated by police and local authorities.
129. I was disappointed that the revised Code made no reference to ethical and human rights considerations despite the overwhelming evidence of concern

⁷⁶ Para 3

within the sector, communities and even Parliament⁷⁷ and I have been working on my own advice to relevant authorities in response to many requests for further guidance in relation to the ethical and human rights considerations in creating and maintaining trusted surveillance partnerships. However, the DPDI Bill now offers the opportunity for Parliament to bring these matters fully up to date and identify the ways in which the accountability arrangements of public space surveillance will be further clarified and strengthened.

The National Surveillance Camera Strategy

130. The National Surveillance Camera Strategy (NSCS) was established by my predecessor in 2017, and my office has supported police and local authorities to meet their legal obligations via the delivery of the strategy's objectives. The overarching objective has been to develop systems and processes to establish efficient working practices regarding the operation of surveillance cameras, in order to protect communities while complying with all relevant legislation.
131. The importance of "trusted partnerships" is a theme running throughout both of my statutory reports and, in their legitimate deployment of surveillance camera systems, the police and local authorities must work together within such partnership arrangements. To that end, I am pleased to announce the publication of a framework Service Level Agreement (SLA) designed to help them set up their own SLAs. It was prepared by the NPCC, the Public CCTV Managers Association (PCMA), the Local Government Association and through consultation with other key organisations. Strand lead expert and Chair of the PCMA, Tony Gleason, said:

"An effective SLA is a crucial part of any partnership working arrangements between organisations. This template has been designed specifically for partnerships between relevant authorities defined at section 33(5) of the Protection of Freedoms Act 2012 (local authorities and police forces) regarding the operation of surveillance camera systems. However, it will be of use for any partnership working. The aim is to help facilitate an

⁷⁷ <https://www.bbc.co.uk/news/technology-59222751>

effective partnership addressing a number of areas of collaborative working including Information Sharing Agreements, directed surveillance, vetting, training, sharing live images, feedback and welfare of staff. It also sets out standards and procedures that will in turn reassure the public that the use of surveillance is proportionate, necessary and lawful.”

132. The NSCS has relied heavily on the expertise and goodwill of many experts, to whom I am very grateful.

Chapter 2 – Technologies and Trusted Partnerships

133. The use of biometric surveillance by the state is a matter of increasing sensitivity and significant public concern - not just here but globally. Figures over the last decade show a huge increase in the presence of visible public cameras. When measured in cameras-to-people, London was recently ranked the 3rd most surveilled city on Earth (having an estimated 691,000 cameras for 9,425,622 people, which equals 73.31 cameras per 1,000 population); in cameras per square mile, that is 1,138.48 cameras making London the second most surveilled city in the world. Add in mobile camera platforms such as drones and wearable devices and it gets more speculative – and when commercial systems watching our transport hubs and shopping centres, workplaces and schools are factored in, the number becomes impossible to identify with any accuracy.
134. Almost all of the technological capability for public space surveillance is privately owned, the only way we will be able to harness the many legitimate uses of that technology in the future is in trusted partnership with trusted private sector partners. Partnerships between relevant authorities and the private sector are therefore critical to the lawful, proportionate and accountable use of biometric surveillance technology in England & Wales. As the legitimate role of that technology continues to grow – both in scale and importance – the need to establish strong, ethical partnerships that reflect the values of our communities, our workforce and our businesses will grow with it. The human rights obligations arising in procurement and partnering form part of the ‘golden thread’ identified in the UK government’s guide to implementing the

UN Guiding Principles on Business and Human Rights, which also includes democratic freedoms, good governance and transparency.

135. The people we trust – the police, fire and rescue, local authorities and the government itself – must be able to trust their technology partners, both in terms of security and of our shared ethical and professional values. I have raised significant concerns about the extent to which some surveillance technology companies can be trusted, both in terms of their security arrangements and their refusal to engage in public scrutiny of their trading history around human rights and forced labour⁷⁸. I have put all my correspondence with those companies and also with government departments on this matter into the public domain⁷⁹ (in ironic contrast to the correspondence between some of those companies and ministers) but it has yet to produce any discernible action.
136. As for the position of the police, the very specific role of facial recognition technology used by the police in identifying and persecuting Uyghur Muslims in Northern Xin Jiang Province, China, has been recognised by our government, along with the direct involvement of companies such as Hikvision and Dahua. This has made the introduction of facial technology⁸⁰ all the more sensitive, and if our police are to retain the trust and confidence of communities here, this area will need conspicuous ethical leadership. Over the reporting period, I have therefore asked police leaders responsible for the use of surveillance devices and systems⁸¹ how many are using surveillance systems supplied by these companies. I have also invited police chiefs to consider how compatible the procurement and use of such systems is with the office of constable and how it meets the requirements of the National Decision-Making Model which puts ethics at the heart of every decision.
137. In the meantime, a recent report by Big Brother Watch⁸² corroborated what the surveillance community has known for some time: that the procurement of surveillance systems without having had regard to all the relevant risks, means

⁷⁸ www.channel4.com/news/government-concerns-over-china-owned-cctv-company-embedded-in-uk

⁷⁹ <https://www.gov.uk/government/publications/never-again-the-uks-responsibility-to-act-on-atrocities-in-xinjiang-and-beyond>

⁸⁰ As to which see Part 2 of this Report

⁸¹ <https://www.gov.uk/government/publications/letter-from-the-biometrics-and-surveillance-camera-commissioner-to-martin-hewitt-npcc-chair-22-march-2022/letter-from-biometrics-and-surveillance-camera-commissioner-to-martin-hewitt-npcc-chair-22-march-2022-accessible>

⁸² https://bigbrotherwatch.org.uk/wp-content/uploads/2022/02/Whos-Watching-You_The-dominance-of-Chinese-state-owned-CCTV-in-the-UK-1.pdf

our public surveillance infrastructure appears to have produced a legacy akin to 'digital asbestos', requiring both considerable caution when handling products installed by a previous generation and, as a priority, a moratorium on any further installation until we fully understand the dependencies we have created.

138. In his final report as HM Chief Inspector of Constabulary Fire and Rescue Services, Sir Tom Winsor said that policing needs “a material intensification of a partnership with the private sector that is soundly and enduringly based on trust and common interest.” Nowhere is that need more acutely evidenced than in the context of biometric surveillance. In a world where almost all our biometric capability is in private ownership, we need to be very careful whose corporate company we keep, because if our surveillance partnerships are not “soundly and enduringly based on trust and common interest”, we are at significant risk as a nation. Which is why I believe the Public Procurement Bill going through Parliament at the time of reporting is so important in this area.

Automatic Number Plate Recognition (ANPR)

139. Automatic Number Plate Recognition (ANPR) continues to attract attention, focused in both the public and private sector. Police use of this technology has resulted in the culmination of the largest non-military database in the UK, with approximately 15,400 traffic lanes covered by cameras which submit between 75 and 80 million reads daily on a regular basis, and occasionally over 80 million. While these have shown only a slight increase in the past 3 months, it is conceivable that the current trajectory since my predecessor reported on this in 2019, will reach 100m reads each day by 2023/24.
140. Such is the enormity of the number of daily 'hits' produced by ANPR that the vast majority have to be ignored because of the resourcing implications of responding to them, raising a specific legal question about its proportionality and why so many potential infringements of relevant road traffic, vehicle excise and other legislation is being collected when there is no possibility of doing anything about it.

141. Opening the national ANPR conference last year⁸³, I proposed that the national ANPR system is now part of our critical policing infrastructure. Adopting the government's definition⁸⁴, in terms of its contribution to overt and covert investigations, traffic monitoring, insurance, revenue, vehicle safety, safeguarding, disrupting organised crime, counter-terrorism and border security, I think this is difficult to gainsay that it is part of Critical National Infrastructure. Should not an asset of such critical importance to policing and law enforcement be supported by an express legal basis, overseen by an accountable governance framework and closely monitored by an independent body with a duty to report publicly on its operation? From the motorist's perspective, it seems to me that the driver of the Clapham omnibus would have a legitimate expectation to be able to look up such an intrusive tool and its parameters in an Act of Parliament, with all the express enabling sections, limitations and safeguards which have been the product of democratic scrutiny. Pity then the poor motorist who sets out on a journey to discover who can look at their 'ANPR data', when and for what purposes. Plotting a route through the GDPR and Law Enforcement Directive, the Data Protection Act, the Regulation of Investigatory Powers Act, the Protection of Freedoms Act, MOPI and NASPLE⁸⁵, to arrive at ANPR accountability involves an epic journey, and there is a compelling case for greater legal clarity and consolidation.
142. ANPR is a well-established form of surveillance in policing. And the fact that it is established is important, because people have grown up with it and to an extent have so far – generally – trusted its use, or at least have not been as concerned about its potential *misuse* as some newer surveillance capabilities. However, technological capability means that, like other forms of surveillance, ANPR can now do far more than it was originally designed to do. Increasingly it is able to capture non-vehicular data, monitoring people, behaviour, associations, networks and habits, not just of the driver but occupants too.

⁸³ <https://www.gov.uk/government/news/biometrics-and-surveillance-camera-commissioner-speech-at-the-national-anpr-conference-2021>

⁸⁴ Of the UK's Critical National Infrastructure: "A critical system, the loss or compromise of which would result in major detrimental impact on the availability, delivery or integrity of essential services, leading to severe economic or social consequences or to loss of life."

⁸⁵ National ANPR standard for policing and law enforcement

Which means it is increasingly difficult to separate its output from the mass of aggregated surveillance data and devices.

143. The revised Surveillance Camera Code provides “A surveillance camera system should only be used in a public place for the *specific purpose or purposes* it was established to address. It should not be used for other purposes *that would not have justified its establishment in the first place*”⁸⁶. In the context of ANPR that is an interesting test. The Code goes on to provide that “Any proposed extension to the purposes for which a system was established and images and information are collected *should be subject to consultation before any decision is taken*. When using surveillance systems, you can only use the data for a new purpose if either this is compatible with your original purpose, you get consent from individuals, or you have a clear obligation or function set out in law”. I should add that that I make no criticism of the use of ANPR by the police – quite the opposite in fact – but highlight the potential for mission creep which may have consequences for its original policing and law enforcement purposes. There is a clear need for a structural underpinning to the system, which is currently missing, and exacerbated by the complexity of this not being a single, homogenous system.
144. The COVID-19 pandemic produced some very specific policing issues. Aside from the relationships between communities and their police where there was at times a blurring of law enforcement and health enforcement, the use of ANPR to identify potential breaches of lockdown arrangements attracted criticism in some areas⁸⁷.
145. Proportionality is a key legal concept and a relative one: the greater the reasonably anticipated harm to be avoided by the intrusive tactics, the more room there is for their justification. When the reasonably anticipated is a global threat of a pandemic, “local law enforcement tactics” can suddenly become “proportionate” in a way previously only seen in high harm criminality such as terrorism or even national security. When the harm is the health of the planet, the stakes are arguably even higher, and the use of ANPR capability by local government to enforce low emission zones presents a very interesting and

⁸⁶ at paragraph 1.3

⁸⁷ <https://planetradio.co.uk/tay/uk/news/anpr-lockdown-rule-breaks/> and <https://www.devonlive.com/news/devon-news/police-clarify-use-anpr-catch-4878885>

topical setting in which the relative expectations of privacy of the individual citizen will be balanced against the wider public interest. *Quaere* how proportionality of the State's intrusion into individual privacy is to be assessed in the context of combatting climate change because nothing is comparable to the enormity of the overall threat?

146. Aside from emergency and supra-strategic provisions, integrated surveillance solutions bring their own challenges, and it remains to be seen how far the implied consent of the citizen can be relied upon to support the use of ANPR once it can, say, recognise all the occupants of a moving vehicle (including children), confirm when and where they got their flu jabs, compare images with records of their passport and drivers' licence, and issue the registered keeper with a penalty notice if the computer records indicate that the vehicle is not insured.
147. Integration can also bring new considerations such as latent capability within cameras that is to be activated remotely at a later date. If surveillance cameras leave the factory routinely fitted with ANPR and audio detection capability, how will the relevant local authority, for example, assure its citizens which functions and features are in use at any time? Moreover, the ability to deliver new 'payloads' of capability to internet-connected devices raises similar questions. In short, the more that our surveillance cameras *can* do, the more important it will be for public bodies to be able to show what they are *not doing*. And that will require trust.

Independent Advisory Group

148. The National Police Chiefs' Council (NPCC) have a National Portfolio Lead on ANPR⁸⁸ to drive the ANPR Strategy⁸⁹ convened to add value by offering challenge and guidance on the use of ANPR by police and other agencies. The group is the closest thing to a governance body for ANPR and comprises representatives from police, Home Office, academia and industry regulators, all of whom provide valuable advice and challenge on the legitimate,

⁸⁸ Currently Charlie Hall, Chief Constable of Hertfordshire.

⁸⁹ <https://www.npcc.police.uk/ANPR%20Strategy%202020%20Final.pdf> and <https://www.gov.uk/government/organisations/biometrics-and-surveillance-camera-commissioner/about/our-governance>

transparent, proportionate and ethical use of ANPR by police and law enforcement agencies.

149. I agreed to chair the IAG throughout the period covered by this annual report following revision of the Terms of Reference and, as far as it goes, it adds some external monitoring function. However, membership of the Group is reducing⁹⁰, it convenes infrequently (once in the past year) and has very limited opportunities or abilities to intervene; it cannot be regarded in any way as a governance or oversight body.
150. A sub-group of IAG members was formed in 2019 to hold informed discussions around the manufacture and supply of non-compliant and cloned plates and the impact this has on operational policing and the accuracy of data going into the National ANPR System. The sub-group was chaired by the Driver and Vehicle Licensing Agency (DVLA) and members included representatives from the Home Office, my office, the British Number Plate Manufacturers Association, the NPCC and the APCC. At the March 2022 meeting of the IAG⁹¹, the DVLA provided an update on the work of the sub-group which had been paused owing to resourcing issues.
151. In the regulation of overt surveillance by the police, the government is committed to a strong legal framework and simplification. The area of ANPR is in urgent need of both.

Closed Circuit Television (CCTV)

152. CCTV has come a long way since its inception, and its use in crime prevention and bringing to justice those who commit crime is significant. According to the College of Policing Crime Reduction Toolkit: Closed-circuit television⁹² there is a 13% crime reduction in places with CCTV and a 20% reduction in drug-related crime in places with CCTV.
153. With new kit and smarter technology that allows for remote monitoring, the capturing of high-definition images, motion detection and advanced video analytics, CCTV is an integral part of everyday policing and the inescapable number of times we are captured on camera every time we leave our homes

⁹⁰ The ICO has withdrawn from membership as have Highways England

⁹¹ <https://www.gov.uk/government/publications/anpr-iag-minutes-and-agenda-21-march-2022>

⁹² <https://www.college.police.uk/research/crime-reduction-toolkit/cctv>

has become an acceptable and virtually unnoticed aspect of our lives for most of the population.

154. CCTV footage is often used alongside other digital evidence, and we are seeing more integrated technologies, including CCTV, that have in-built facial recognition capabilities and ANPR.

Body-Worn Video

155. My office has recently engaged with the Attorney General's Office on the Annual Review of Disclosure 2021/22 and amended Disclosure Guidelines 2022⁹³. I am delighted that my office was given the opportunity to comment on the relevant section of the draft disclosure guidance, which has been updated to address concerns about the burden on police to pixilate images from body worn video footage.
156. I am interested to see that, following a trial period, West Midlands police have started to use body-worn devices that can livestream footage during active incidents⁹⁴. This will mean that, once the function is activated, officers in a control room can watch events as they occur, make quick assessments and issue commands – including the need to send reinforcements – without being physically present at the scene.

Drones

157. Drone usage has been developing at a rapid pace. Originally designed for military and tactical operations, unmanned aerial vehicles (UAV) are now an accessible, affordable device for hobbyists, photographers and remote-controlled flying enthusiasts. New and evolved drones have obvious benefits and are being used for myriad reasons, from tasks like delivering commercial parcels and surveying buildings under construction, to saving lives. Drones are being used for emergency organ transportation and, with the aid of thermal imaging, have been used by firefighters to identify hotspots and search unsafe buildings that might otherwise put their lives at risk. Because they need cameras in order to function, drones are necessarily involved in the

⁹³ <https://www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure>

⁹⁴ <https://www.bbc.co.uk/news/uk-england-birmingham-62186212>

‘surveillance’ of public space, and that is why their use by relevant authorities will often be covered by the provisions of the SC Code.

158. The cost effectiveness and reduced environmental impact of deploying a drone instead of alternative arial devices such as a helicopter (which in a policing context, is often a simply airborne camera platform) are axiomatic, and we are seeing more examples of the technology being used in search and rescue operations. There are drones that are specially designed for rescue at sea and which can find a person in difficulty and deploy a torpedo buoy or inflatable lifesaving device, allowing precious time for a lifeguard or other emergency services to reach the casualty.
159. But there are also issues and risks that come with drone technology. Drones have been known to be used for delivering contraband into prisons or disrupting flight paths in and around airports.
160. The government has backed the building of a 164-mile ‘drone highway’ which is due to become operational in 2024⁹⁵, to aid in the delivery of commercial packages and transportation of medical supplies and blood samples. While there are obvious advantages to receiving time-sensitive deliveries for patients in need, the opening of a drone highway raises concerns around the privacy of those captured on camera as the drone follows its flight path, and the mission creep that accompanies any new use of surveillance technology – albeit surveillance is not always its primary purpose.
161. The reports that some police forces are buying drone technology from the same companies who have reportedly facilitated genocide against Uyghur Muslims in China is a pressing concern that has attracted public attention this year, and raise the same issues that I have covered elsewhere in this report. I wrote to the NPCC Chair Martin Hewitt⁹⁶ to record formally my concerns around the human rights and ethical considerations in the police procuring and deploying surveillance technology from companies with concerning trading history.

⁹⁵ <https://www.bbc.co.uk/news/technology-62177614>

⁹⁶ <https://www.gov.uk/government/publications/letter-from-the-biometrics-and-surveillance-camera-commissioner-to-martin-hewitt-npcc-chair-22-march-2022>

162. On this point, at the National CCTV conference, I highlighted HM Chief Inspector of Constabulary Fire and Rescue Services Sir Tom Winsor's statement⁹⁷ that:

“Those who knowingly and deliberately create or tolerate the conditions in which crimes are committed and victims are isolated from protection and justice should be given the most potent grounds to fear the criminal law, operated and applied vigorously by the law enforcement institutions of the state.”

163. I invited policing colleagues to consider whether this generic description of criminality might equally be applied to the oppressive application of advanced surveillance technologies in other jurisdictions. I am pleased that Martin Hewitt and CCTV lead DCC Jenny Gilmer have confirmed that they are taking these matters very seriously, and that the appropriate policing leads are engaging to achieve a practical response; I will report on that practical response in due course.

164. The Department for Business, Energy & Industrial Strategy and the Department for Transport recently published their report Advancing airborne autonomy: the use of commercial drones in the UK⁹⁸. It “outlines how government and the drone sector will work together to achieve a vision for commercial drones will be commonplace in the UK by 2030, in a way that benefits the economy and wider society, delivering new capabilities, boosting productivity, and reducing emissions and risk to life, while sharing airspace equitably and safely with other users”.

165. I note from that report that “The NPCC and the National Police Air Service are working together to introduce oversight of drone procurement, training and operational standards for policing and to develop Standard Operating Procedures and training materials, including compliance and safety management. Significant investments and budget allocations are being made to support these activities.”

⁹⁷ *loc cit*

⁹⁸ <https://www.gov.uk/government/publications/letter-from-the-biometrics-and-surveillance-camera-commissioner-to-martin-hewitt-npcc-chair-22-march-2022>

Chapter 3 - Certification schemes

Third party certification

166. The third party certification scheme⁹⁹ continues to grow, and I am pleased to say that a total of 102 organisations have successfully been certified against the Code. Since my last Annual Report, where I also reported that there were approximately 100 organisations on the scheme, six new organisations have signed up. I believe this shows a significant commitment by those on the scheme who continue to work towards staying certified. More notably, however, the past year has seen many re-certifications; Step 2 certification lasts for five years, and as the scheme was set up in 2016, my office has seen a good number of organisations going for a second round of the five years. In total, 25 organisations have worked for and achieved another 5 years certification this year. I am pleased to note that, as they come to the end of their second Step 2 certification, those organisations will have been on the scheme for a decade.
167. The scheme certifies both relevant and non-relevant authorities against Closed-Circuit Television (CCTV), Body-Worn Video (BWV), Automatic Number Plate Recognition (ANPR) and Unmanned Aerial Vehicles (UAV). We have yet to see any organisations apply for certification against their use of facial recognition, but anticipate this may happen in due course. My office continues to encourage all organisations to adopt the certification scheme which, in the past year, has seen the return of in-person events and conferences. The scheme enables an organisation to demonstrate visibly their compliance with the Code and display the certification mark on their website and any other publicity materials. I am also keen to include the ethical and human rights considerations necessary to ensure trusted surveillance partnerships in the scheme, and certification should go a long way to assure people that where surveillance camera systems are being operated, it is being done in a way that is proportionate, transparent and ethical, and only where its use is necessary to meet a pressing need. Certification against the Code's principles by commercial camera operators also shows a commitment to

⁹⁹ <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-third-party-certification-scheme>

standards and transparency that is becoming increasingly relevant in the otherwise unregulated area of 'private' surveillance.

168. While the number of local authorities achieving certification continues to expand, this is still a very small proportion of the total number of local authorities using surveillance camera systems. As the number of private organisations on the scheme continues to rise, including high street retailers, universities, and the parking sector, the willingness of private companies to showcase their excellent use of surveillance systems stands in contrast to regulated public bodies who are being upstaged by other organisations that are seeking certification entirely of their own volition. Unless and until there is a change to the legislation and my statutory functions, we will continue to work with organisations aspiring to the Code's standards – including central government – to offer them support and guidance.
169. A final notable feature of the scheme from the past year is the possibility of moving away from on-site audits. Throughout the Covid-19 pandemic, we offered extensions in certification to those organisations that were unable to have an on-site audit. This opened the conversation that perhaps remote audits may be the way forward, as they could be an option for those organisations who are interested in the scheme but are put off by resourcing issues. Similarly, off-site audits would be easier for the accreditation bodies. Against this idea is the risk the scheme will be less robust and less 'valid' and may lose the sense of achievement once it is completed. My office will continue the conversation to assess the positives and negatives of this proposal.

Secure by Default

170. Secure by Default is a self-certification scheme¹⁰⁰ which allows manufacturers of surveillance camera devices and components to demonstrate clearly that their products meet minimum requirements relating to cyber-security, to ensure that they are secure by default and secure by design.
171. The scheme was originally designed for manufacturers by manufacturers, and provides assurance for end-users (installers and operators) that the devices

¹⁰⁰ <https://www.gov.uk/government/publications/secure-by-default-self-certification-of-video-surveillance-systems>

they are using meet a minimum level of cyber security, such as requiring default password settings to be changed on installation. While the scheme is currently suspended pending decisions on the future policy for this area, the next step if it is to continue will be to include an ethics and human rights element and to ensure that the ethical penetration testing is as conspicuous and robust as the technological 'pen testing' of systems and products.

Part 4 – Conclusion

Resources – staffing and budget

172. For this reporting year my office was allocated a budget of £602,000¹⁰¹, which reflected economies of scale that the Home Office probably expected to achieve from combining both the Biometrics and Surveillance Camera Commissioner roles.
173. For 2022/23 my allocation has grown to £670,000 but this is principally an increase in travel and subsistence to accommodate the backlog of police and other visits that could not be undertaken during the height of the pandemic. Perhaps of greater concern than the budget has been the inability to staff the office fully. I noted in my previous report that I had hoped to be able to provide assurance of greater stability and capacity within the combined team. Unfortunately, I cannot do that. While there has been a reshaping exercise to improve the transition of the two former offices into one, at no time has the office been fully resourced. The greatest challenge has been to my casework: for two thirds of the year, I have only had half of my allocated caseworkers. This has inevitably led to further backlogs on top of those I inherited, and an inability to action biometrics cases (both NSDs and S63G applications) within suitable timeframes.
174. Given these peculiar conditions and pressures over the reporting period, I would emphasise that the resourcing figures do not accurately reflect either the amount of work expected of my team or the projected costs of absorbing any functions by another body.
175. As I note elsewhere in this report, my successor or successor bodies will not benefit from the cross-over work, particularly within the facial recognition arena, that is one of the many advantages of having biometrics and camera surveillance within a single office. Similarly, any economies of scale will be lost through the allocation of work to different commissioners and/or functions. Given my experience in this post, I would urge the Home Office, and indeed other departments across which these responsibilities may be distributed, to ensure that successors are adequately resourced with the greatest speed to ensure that statutory functions can be fulfilled.

¹⁰¹ Against a spend of £426,000. This was primarily because of Covid-19 lockdown constraints affecting travel and also an Office without full complement.

Appendices

Appendix A: Biometrics retention rules

For fingerprints, DNA samples and DNA profiles taken by the police, there are clear rules as to when biometrics can be retained and for how long. The general rule is that:

- any DNA sample taken in connection with the investigation of an offence must be destroyed as soon as a DNA profile has been derived from it, and in any event within six months of the date it was taken;
- if an individual is convicted of a recordable offence their biometrics (DNA profile and/or fingerprints) may be kept 'indefinitely';
- if an individual is charged with, but not convicted of certain more serious offences (called 'qualifying offences') then their biometrics (DNA profile and/or fingerprints) may be retained for three years; and
- if an individual is arrested for but not charged with a qualifying offence, an application may be made to the Biometrics Commissioner for consent to retain the DNA profile and/or fingerprints for a period of three years from the date that person was arrested.

There are, however, a number of exceptions and more detailed qualifications to these general rules relating to things such as the age of the arrestee, the offence type and on grounds of national security. These are summarised in the table below:

Biometric Retention Rules under the Protection of Freedoms Act 2012

Convictions

Person	Type of offence	Time period
Adults	Any recordable offence (includes cautions)	Indefinite
Under 18 years	Qualifying offence (includes cautions, warnings and reprimands)	Indefinite
Under 18 years	Minor offences (includes cautions, warnings and reprimands)	Length of sentence + 5 years
	1st conviction – sentence under 5 years	5 years
	1st conviction – sentence over 5 years	Indefinite
	2nd conviction	Indefinite

Non convictions

Alleged offence	Police action	Time period
All Offences	Retention allowed until the conclusion of the relevant investigation or (if any) proceedings. May be speculatively searched against national databases.	
Qualifying offence	Charge	3 years (+ possible 2 year extension by a District Judge)
Qualifying offence	Arrest, no charge	3 years with consent of Biometrics Commissioner (+ possible 2 year extension by a District Judge)
Minor offence	Penalty Notice for Disorder (PND)	2 years
Any/None (but retention sought on national security grounds)	Biometrics taken	Up to 5 years with an NSD by Chief Officer ¹⁰²

¹⁰² Following an initial retention period allowed for by terrorism legislation – see Appendix C. The period of an NSD was extended to 5 years by the Counter Terrorism and Border Security Act 2019 – see Chapter 2.

Appendix B: National Security Determinations

Table 1: Retention period for biometrics taken under NS legislation

Provision	Relevant Material	Retention Period ¹⁰³
20B Terrorism Act 2000 (TACT)	DNA profiles/fingerprints relating to persons detained under s41 TACT	3 years
20C Terrorism Act 2000 (TACT)	DNA profiles/fingerprints relating to persons detained under Sch7 TACT	6 months
20(G)(4) Terrorism Act 2000 (TACT)	DNA samples taken under TACT	6 months (or until a profile is derived if sooner)*
20(G)(9) Terrorism Act 2000 (TACT)	DNA samples relating to persons detained under s41 TACT	6 months plus 12 months extension (renewable) on application to a District Judge*
S18 Counter-Terrorism Act 2008	S18 DNA samples	6 months (or until a profile is derived if sooner)*
S18A Counter-Terrorism Act 2008	S18 CTA DNA profiles/fingerprints	3 years
Sch6, Para 12 Terrorism Prevention and Investigation Measures Act 2011	DNA samples Relevant physical data (Scotland)	6 months (or until a profile is derived if sooner)*
Sch6, Para 8 Terrorism Prevention and Investigation Measures Act 2011 (TPIM)	DNA profiles/fingerprints taken under Sch6, paras 1 and 4 of TPIM	6 months beginning with the date on which the relevant TPIM notice ceases to be in force**
Sch3, Para 43 Counter Terrorism and Border Security Act 2019	DNA profile/fingerprints relating to persons detained under Sch3 CTBSA	6 months

* May be kept longer if required under CPIA

** If a TPIM order is quashed on appeal, the material may be kept until there is no further possibility of appeal against the notice or decision.

¹⁰³ The retention period starts from the date the relevant DNA sample/fingerprints were taken unless otherwise stated.

NSD process flow chart

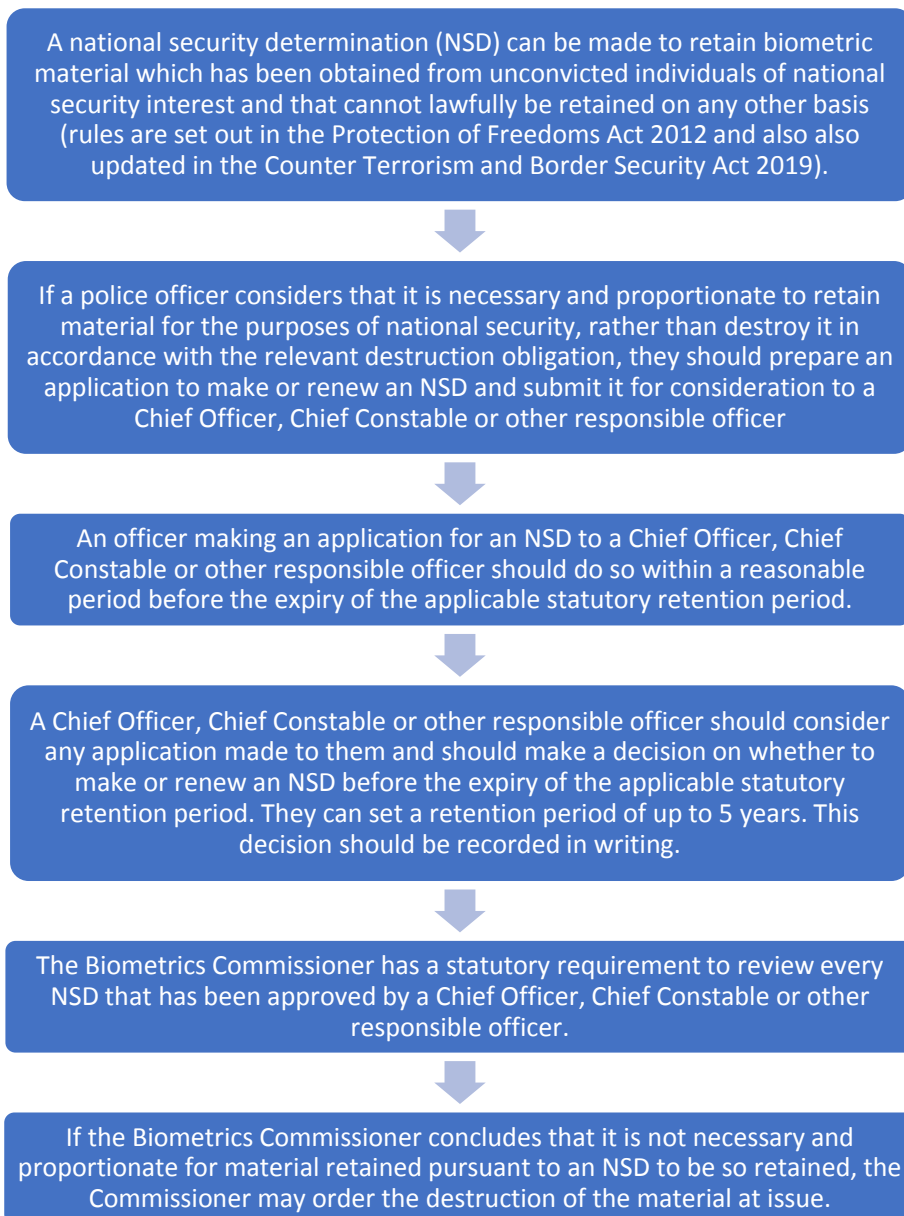


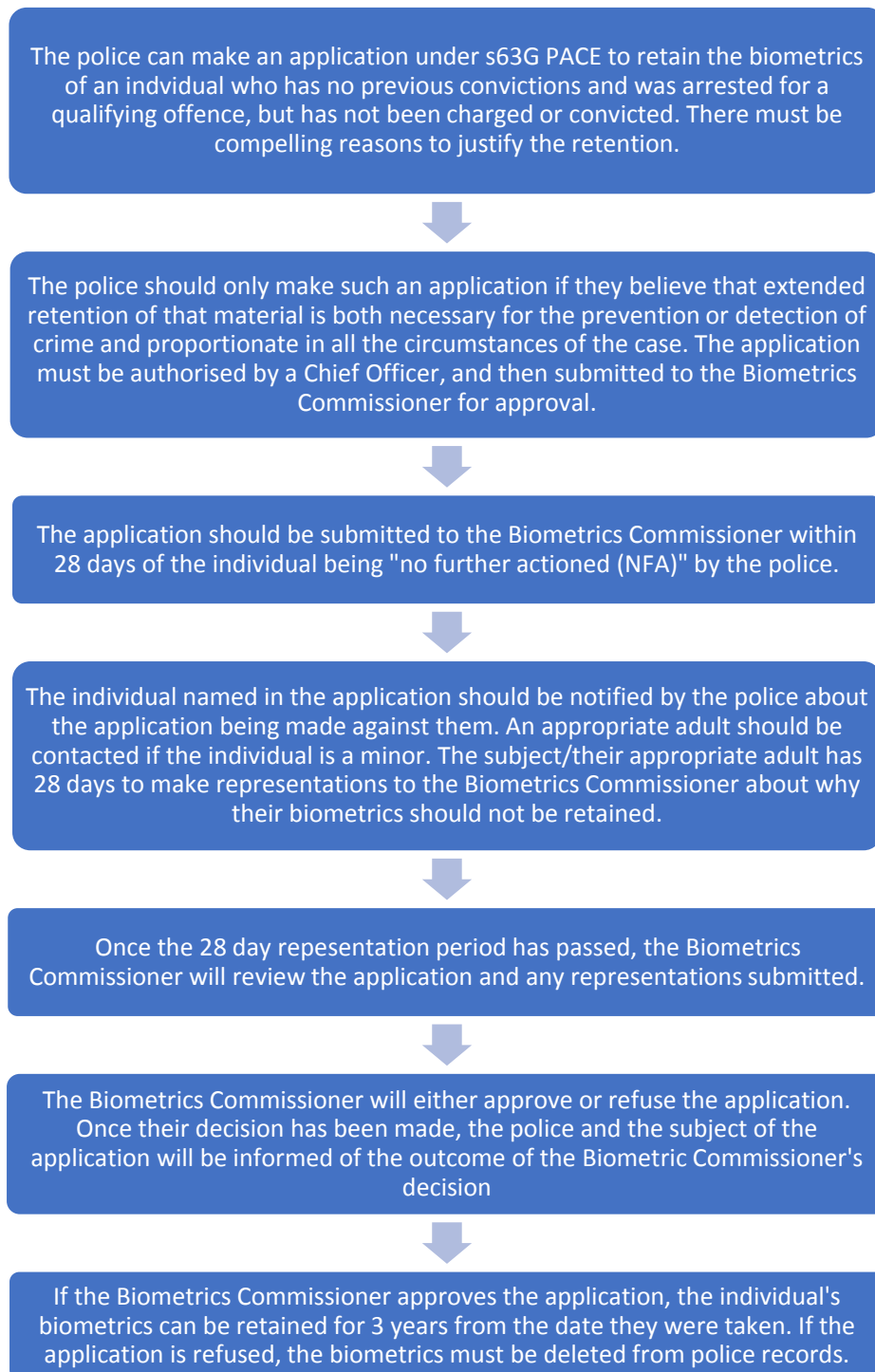
Table 2: Losses of biometric material of potential CT interest

Source: SO15

Reason for loss of biometric data	Number of losses of biometric data			
	2018	2019	2020	01 Jan 2021 to 31 March 2022
Administrative error by SO15/SOFS	104	4	1	1
Case not reviewed by Chief Officer within statutory time limit	8	0	0	0
Case not progressed within statutory time limit	8	0	0	0
Taking of material not notified to SOFS	24	0	0	0

Appendix C: S63Gs

S63G process map



When considering applications, I will review whether the police have demonstrated that, while the person who is the subject of the application was not charged with the offence, there is evidence supporting the likelihood that they were involved in the offending, that retaining the biometrics for three years will either be a deterrent to

future criminal action or aid the prevention or detection of future crime, and finally that the interference with the subject's right to respect for a private and home life is proportionate given the public benefit that is likely to result.

I will review the police evidence against the following factors:

- (i) The nature, circumstances and seriousness of the alleged offence in connection with which the subject was arrested;
- (ii) The grounds for suspicion in respect of the subject (including any previous complaints and/or arrests);
- (iii) The reasons why the subject has not been charged;
- (iv) The strength of any reasons for believing that retention may assist in the prevention or detection of crime;
- (v) The nature and seriousness of the crime or crimes which that retention may assist in preventing or detecting;
- (vi) The age and other characteristics of the subject; and
- (vii) Any relevant representations by or on behalf of the person.

Table 1: Number of applications to the Commissioner by force

Force	Applications received 01 January 2021 to 31 March 2022	Total applications since 31 October 2013
Avon & Somerset	0	7
Bedfordshire	1	8
Cambridgeshire	0	16
Cleveland	5	11
Cumbria	0	2
Derbyshire	0	1
Devon & Cornwall	9	30
Dorset	0	9
Durham	0	4
Essex	18	40
Gloucestershire	2	3
Greater Manchester	0	3

Gwent	2	5
Hampshire	1	9
Hertfordshire	1	11
Humberside	8	23
Kent	1	30
Lincolnshire	0	1
MPS	69	487
Norfolk	0	1
North Wales	0	4
North Yorkshire	1	4
Northamptonshire	0	2
Northumbria	1	23
South Wales	7	31
South Yorkshire	6	13
Thames Valley	4	33
Warwickshire	0	4
West Mercia	0	6
West Yorkshire	12	73
Wiltshire	2	3
Total	150	897

Appendix D: International

Four types of DNA profile enquiry dealt with by the NCA:

- *Outbound subject profiles:* DNA profiles should always be anonymised before being sent to another country for searching. The DNA profile of a known individual is sent abroad only with the approval of the Data Controller¹⁰⁴. Should there be circumstances that require the individual's profile and demographic data to be released together, this must be authorised by the Chair (or nominee) of the FIND Strategy Board, and reported to the Biometrics Commissioner's office.
- *Inbound subject profiles:* DNA subject profiles are received from overseas and sent to FINDS-DNA for searching against the NDNAD. The Home Office policy details criteria under which searches will be authorised.
- *Outbound crime scene profiles and profiles from unidentified bodies:* Unidentified DNA profiles from crime scenes or from unidentified bodies/remains may be sent overseas for searching on another country's DNA database(s) at the request of the investigating police force. The Home Office policy details the criteria under which DNA profiles will be released from the NDNAD for searching.
- *Inbound crime scenes and profiles from unidentified bodies:* DNA crime scene profiles or unidentified body profiles may be received from overseas. The Home Office policy states that, absent specific authorisation from FIND-SB, the UK will normally only comply with a request for the searching of an inbound crime scene profile if the offence committed would be a recordable offence carrying a sentence of imprisonment for more than a year under England and Wales legislation. In every case, consideration will be given to whether the relevant exchange and/or searches are necessary, reasonable and proportionate.

Similarly, there are 4 types of fingerprint enquiry dealt with by NCA:

- *Outbound fingerprints:* This is the most common type of fingerprint exchange and usually takes place when a UK force wants to send fingerprints abroad in relation to an arrest in the UK, or because the

¹⁰⁴ NCA has delegated authority to act as Joint Controller for the management of biometrics (DNA and fingerprint data) exchanged via INTERPOL and the Prüm Mechanism

individual in question is a convicted sex offender who intends to travel to another country. The NCA checks the lawfulness, policing purpose, proportionality, and safeguarding assessments prior to outbound exchange.

- *Inbound fingerprints*: Inbound requests occur when a foreign country sends fingerprints to the UK, for example to confirm identity.
- *Outbound crime scene finger-marks*: Requests to send crime scene finger-marks to other countries are rarely made, although work is ongoing by the NCA through their Liaison Officers to educate regional forces as to the investigative benefits of international searching.
- *Inbound crime scene finger-marks*: Foreign crime scene finger-marks will normally only be searched against the UK database if the relevant crime meets the definition of a UK qualifying offence, and it is considered that there is a justifiable purpose to search IDENT1.

Table 1: DNA Interpol profile enquiries (01 January 2021 to 31 March 2022)

Source: NCA

DNA Type	Outbound from UK			Inbound to UK		
	Total	Searches concluded	Positive/potential match	Total	Searches concluded	Positive/potential match
DNA samples	0	0	0	0	0	0
DNA subject profiles	59	*Not known	4	38	38	4
DNA missing persons	99	*Not known	1	195	195	13
DNA crime scene profiles	37	*Not known	6	312	312	16
DNA unidentified bodies	23	*Not known	4	261	261	16

*For Outbound searches: Reason data not known for Outbound is that NCA are only notified if a hit occurs

Table 2: Interpol manual exchange: Inbound and outbound fingerprint requests (01 January 2021 to 31 March 2022)

Source: NCA

Fingerprint type	Outbound from UK			Inbound to UK		
	Total	Searches concluded	Positive/potential match	Total	Searches concluded	Positive/potential match
Tenprint sets	347	347	25	1560	1560	158
Crime scene fingerprints	12	12	0	117	117	0

Table 3: Conviction and fingerprint exchanges

Source: ACRO

	EU exchanges with Interpol	EU exchanges with country	NEU with Interpol
Requests in		1,276	448
Requests out	8,843	3,835	9,478
Notifications in		11	3 (2 individual records)
Notifications out	20,175 (20,096 individual records)	8,793 (8,755 individual records)	

Table 4: Prüm Step 1 DNA exchanges – UK matches

Source: MPS

	Legacy hits (2020)	Legacy hits (01 Jan 2021 to 31 Mar 2022)	Business as usual hits (2020)	Business as usual hits (01 Jan 2021 to 31 Mar 2022)
UK crime stain hits	1,347	451	3,141	2,513
UK subject hits	4,345	388	46,249	59,521

Table 5: Prüm Step 2 DNA exchanges (01 January 2021 to 31 March 2022)

Source: NCA

	Outbound from the UK		Inbound to the UK	
	*Total: 1764	Intelligence packages received	*Total: 1190	Intelligence packages disseminated
Step 2 hit with a person profile	1,063	1,063	1,101	1,101
Step 2 hit with a crime scene	295	295	28	28

*Total include cases which were ongoing, no match, or no further action. Breakdown on the stats below these totals exclude these three categories

Table 6: Prüm Step 1 fingerprint exchanges (01 January 2021 to 31 March 2022)

Source: NFO

	Outbound
Searches requested	18,512

Table 7: Prüm Step 2 fingerprint exchanges (01 January 2021 to 31 March 2022)

Source: NCA

	Outbound from the UK		Inbound to the UK	
	Total	Intelligence received	Total	Intelligence disseminated
Step 2 hit with a person	456	411	16	15
Step 2 hit with a crime scene	0	0	0	0

Appendix E: Legislation, retention, use and destruction

Table 1: Number of DNA profiles held

Source: FINDS DNA

	Subject profiles	Crime scene profiles	Total
England and Wales	6,249,562	654,772	6,904,334
Rest of the UK	621,143	30,291	651,434
Total	6,870,705	685,063	7,555,768

Table 2: Total DNA holdings on NDNAD by profile type

Source: FINDS DNA

	Arrestee	Volunteer	Crime scene profiles	Crime scene profiles derived from mixtures	Un-matched crime scenes
England and Wales	6,249,562	2,057	654,772	150,772	202,654
Rest of the UK	621,143	2,313	30,291	3,714	18,877
Total	6,870,705	4,370	685,063	154,486	221,531

Table 3: Total holdings on IDENT1 by classification, as at 31 March 2022

Source: FINDS National Fingerprint and PNC Office, in consultation with IDENT1 supplier

	Tenprint sets from arrestees	Number of individuals with prints on IDENT1	Unmatched crime scene marks	Number of cases with unidentified crime scene marks
England and Wales	25,793,229	Data not available	1,694,547	Data not available
Rest of UK	1,250,754	Data not available	321,761	Data not available
Foreign convictions	Data not available	Data not available	Data not available	Data not available
Total	27,043,983	8,562,878	2,016,308	827,799

Table 4: Additions to NDNAD (01 January 2021 to 31 March 2022)

Source: FINDS DNA

	Subject	Volunteer	Crime scene from mixtures	Crime scene from non-mixtures
England and Wales	341,141	0	18,741	11,637
Rest of the UK	33,844	27	892	634
Total	374,985	27	19,633	12,271

Table 5: Additions to IDENT1 (01 January 2021 to 31 March 2022)

Source: FINDS National Fingerprint and PNC Office, in consultation with IDENT1 supplier

Tenprint sets from arrestees	New individuals	Unmatched crime scene marks	Cases created with unidentified crime scene marks
857,961	444,661	149,285	26,256

Table 6: Deletions from IDENT1

Source: FINDS National Fingerprint and PNC Office, in consultation with IDENT1 supplier

	Tenprint sets from arrestees	Individual subjects	Unmatched crime scene marks	Cases with unidentified crime scene marks
01 Jan to 31 Dec 2020	38,731	140,384	166,344	Data not available
01 Jan 2021 to 31 March 2022	75,345	168,963	196,392	Data not available

Table 7: Match rates for DNA matches obtained immediately on loading for all forces (01 Jan 2021 to 31 Mar 2022)

Source: FINDS DNA

	Crime scene to subject profile	Subject profile to crime scene	Crime scene to crime scene
Total loaded	31,904	374,985	31,904
Number of matches	20,604	7,084	787
Match rate	64.6%	1.9%	2.5%

Table 8: Fingerprint matches in this reporting period

Source: FINDS National Fingerprint and PNC Office, in consultation with IDENT1 supplier

	Scene of crime palm mark to palm print	Scene of crime fingermark to Tenprint	Tenprint to scene of crime mark
Total searches	84,734	525,356	Data not available
Number of matches	4,080	18,686	Data not available
Match rate	1:20.77	1:28.12	1:138.41

Table 9: DNA samples held under CPIA by England and Wales forces (01 Jan 2021 to 31 March 2022)

Source: FINDS DNA

	Total		Held in force		Held by FSPs	
	2020	2021/22	2020	2021/22	2020	2021/22
Arrestee/PACE samples	6,424	9,903	654	382	5,770	9,521
Elimination samples	2,970	5,588	3,063	4,480	1,091	1,108

Table 10: Records Deletion Process (1 Jan 2021 to 31 March 2022)**Source: ACRO**

	Total applications received* by ACRO Deletion Unit	Approved by Force	Rejected by Force	Rejected as ineligible by ACRO Records Deletion Unit	Pending with Force	Pending with applicant
01 Jan 2021 to 31 Mar 2022	2,722	894	777	358	388	2
2020	2,233	671	566	454	497	20
2019	2,230	923	803	436	27	0

*Breakdown does not include applications partially approved by force

Appendix F: Facial recognition and AI

As noted in paragraph 97 above, the audience for the Live Facial Recognition event was not selected and its balance was not assessed. Consequently, the tables below only represent the views of those persons in attendance and not the public at large.

Table 1: benefits of facial recognition being used for policing and law enforcement purposes

Audience members were asked at the start of the event, and again once the event had concluded, to indicate what, if any, benefits they thought there were to facial recognition being used for policing and law enforcement purposes. Interestingly, the percentage of audience members who perceived benefits to the use of facial recognition technology in a policing and law enforcement context decreased in every area throughout the course of the event, although at its conclusion nearly two thirds of respondents still believed that use of facial recognition technology could significantly speed up investigations and significantly help in identifying perpetrators of crime and bringing them to justice.

	Before	After
It could significantly help in identifying perpetrators of crime and bringing them to justice	79%	64%
It could significantly help identify victims or assist vulnerable people (e.g. missing children or seniors)	70%	40%
It could significantly help identify and trace witnesses to crime	45%	20%
It could significantly deter people from committing crime if they know facial recognition technology is being used	43%	32%
It could significantly speed up investigations	74%	64%
It could significantly improve public safety and security	53%	36%
It drives forward technological innovation	36%	28%
Other reason(s)	11%	8%
There are no significant benefits	15%	24%

Table 2: concerns over use of facial recognition for policing and law enforcement purposes

At the start of the event, and again at the end, audience members were also asked to indicate what, if any, concerns they had about facial recognition being used for policing and law enforcement purposes. Few respondents were unaware of how the technology works and concerns around use of the technology were across a broad range of issues. The potential for racial and gender bias continues to attract a lot of negative attention, with more than half of respondents reporting a concern in relation to this.

	Before	After
I don't understand how the technology works	6%	4%
The potential for racial, gender or other bias	59%	54%
I'm not sure how my data is being used or who it's shared with	47%	54%
I don't know if my photo would get onto a 'watch list'	35%	50%
I don't think the technology is accurate enough	29%	29%
I think it's a disproportionate intrusion on my privacy	31%	50%
I believe there's an insufficient legal basis and/or lack of regulation	49%	71%
Other reason(s)	8%	13%
I have no concerns	22%	17%

Table 3: views on the use of facial recognition technology at the end of the event

At the conclusion of the event, audience members were asked whether their views on the use of facial recognition technology for policing or law enforcement had changed since the start of the event. Whilst some recorded an increased confidence in police use of facial recognition technology, a much higher proportion of audience members felt less confident at the end of the event about the use of facial recognition technology for both policing and law enforcement purposes.

I am more confident in the use of facial recognition for policing	8%
I am less confident in the use of facial recognition for policing	36%
My view about facial recognition for policing is about the same	40%
I am more confident in the use of facial recognition for law enforcement	12%
I am less confident in the use of facial recognition for law enforcement	32%
My view about facial recognition for law enforcement is about the same	20%

Appendix G: List of acronyms

ACRO	ACRO Criminal Records Office
AI	Artificial Intelligence
ANPR	Automatic Number Plate Recognition
APP	College of Policing's Authorised Professional Practice
CCTV	Closed Circuit Television
CPIA	Criminal Procedure and Investigations Act 1996
CTA	Counter-Terrorism Act 2008
CTBS Act	Counter-Terrorism and Border Security Act 2019
DPDI Bill	Data Protection and Digital Information Bill
FINDS	Forensic Information Databases Service
FINDS-DNA	Forensic Information Databases Service's DNA Unit
FIND-SB	Forensic Information Databases Strategy Board
FSP(s)	Forensic Service Provider(s)
GDPR	General Data Protection Regulation
HOB	Home Office Biometrics Programme
IABS	Immigration and Asylum Biometric System
IAG	Independent Advisory Group on ANPR
IPC	Investigatory Powers Commissioner
ICO	Information Commissioner's Office
IDENT1	The national police fingerprint database
IRTL	Independent Reviewer of Terrorism Legislation
LFR	Live facial recognition
LGA	Local Government Association
MOD	Ministry of Defence
MOPI	Management of Police Information
MPS	Metropolitan Police Service
NCA	National Crime Agency
NDES	National Digital Exploitation Service
NDNAD	National DNA Database
NFA	No Further Action

NPCC	National Police Chiefs' Council
NSCS	National Surveillance Camera Strategy
NSD	National Security Determination
OBSCC	Office of the Biometrics and Surveillance Camera Commissioner
PACE	Police and Criminal Evidence Act 1984
PCC(s)	Police and Crime Commissioner(s)
PNC	Police National Computer
PND (a or the)	A Penalty Notice for Disorder <u>or</u> <i>the</i> Police National Database
PoFA	Protection of Freedoms Act 2012
PSNI	Police Service of Northern Ireland
RUI	Released under investigation
SOFS	Secure Operations – Forensic Services
TACT	Terrorism Act 2000
TPIMs Act	Terrorism Prevention and Investigation Measures Act 2011
UKICB	United Kingdom International Crime Bureau
VA	Voluntary Attendance

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