



Agenda Item
2.5

Meeting	Policing Performance Committee
Date	15 June 2023
Location	MS Teams
Title of Paper	Biometrics Commissioner’s review of children and young people and vulnerable adults.
Presented By	Dr Brian Plastow, Scottish Biometrics Commissioner
Recommendation to Members	For Discussion
Appendix Attached	Yes Appendix A: Joint Assurance Review – Children and Young People Appendix B: Joint Assurance Review – Vulnerable Adults

PURPOSE

This paper provides an overview of the two joint assurance reviews conducted by the Scottish Biometrics Commissioner and the recommendations outlined within these reviews.

1 BACKGROUND

- 1.1. The Scottish Biometrics Commissioner undertook two joint assurance reviews on (i) the acquisition of biometric data from children arrested in Scotland and (ii) the acquisition of biometric data from vulnerable persons in police custody requiring the support of an Appropriate Adult.
- 1.2. The Scottish Biometrics Commissioner was supported in both of these reviews by the Scottish Police Authority (SPA) and, in the one relating to those aged 12-17 years, by The Children and Young People's Centre for Justice (CYCJ).
- 1.3. The joint assurance reviews were laid before the Scottish Parliament on the 29th of March 2023. The joint assurance reviews are contained within Appendices A and B and are also available on Scottish Biometrics Commissioner's [website](#).

2 FURTHER DETAIL ON THE REPORT TOPIC

- 2.1. The joint assurance reviews involved broad engagement with Police Scotland and Forensic Services officers and staff, quantitative analysis of Police Scotland data as well as identifying examples of international practice. The reviews were also informed by engagement with children and young people and Appropriate Adult providers.
- 2.2. Of the 98,295 police custody episodes last year, available Police Scotland management information suggests 4,150 related to children and 1,880 to vulnerable people who were supported in custody by an appropriate adult. While the number of children who came into contact with the police was small, a significant amount of biometric data was taken and held in the criminal justice system. The review considered the human rights of children and whether it was lawful, proportionate and necessary to obtain children's biometric data and record it on policing databases.
- 2.3. The reviews concluded that there are strong generic arrangements in place to safeguard children and vulnerable adults in custody, but that those safeguards did not extend to the information rights of data subjects (as per two recommendations).
- 2.4. The reviews identified several improvement recommendations. In a recommendation for Police Scotland, Dr Plastow advocated there should be distinct policies, procedures and practices about the

capture of biometric data from children which should only be taken when authorised by a senior officer balancing both the interests of the child and the gravity of the offence.

A similar recommendation was raised in 2018 by now Lord John Scott while chairing the '[Independent Advisory Group on the Use of Biometric data in Scotland](#)'. Specifically recommendation four of this report stated that 'Distinct policies should be formulated for the acquisition, retention, use and disposal of the biometric data of children aged between 12 and 17'.

- 2.5. Three further recommendations common to both reports stated that Police Scotland should improve the information provided to anyone who has their biometric data taken in police custody to comply with the data subjects right to be informed under UK GDPR and with the Commissioner's statutory Code of Practice, approved by the Scottish Parliament in November 2022, and the associated complaints mechanism available to data subjects. The Commissioner also recommended Police Scotland improve its management information around biometric data to better inform strategic decision making and enhance transparency.
- 2.6. Police Scotland is required to set out how it proposes to respond to the recommendations by 30th June 2023.

3 FINANCIAL IMPLICATIONS

- 3.1. There are no financial implications in this report.

4 PERSONNEL IMPLICATIONS

- 4.1. There are no personnel implications in this report.

5 LEGAL IMPLICATIONS

- 5.1. There may be legal implications if the recommendations presented in the assurance reviews are not addressed to comply with the Scottish Biometrics Commissioner's Code of Practice.

6 REPUTATIONAL IMPLICATIONS

- 6.1. Reputational issues may arise in the situation that the recommendations outlined in each of the assurance reviews are not met.

7 SOCIAL IMPLICATIONS

7.1. There are no social implications in this report.

8 COMMUNITY IMPACT

8.1. There are no community implications in this report.

9 EQUALITIES IMPLICATIONS

9.1. There are no equality implications in this report.

10 ENVIRONMENT IMPLICATIONS

10.1. There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to **discuss** the content of this paper.



Scottish Biometrics Commissioner
& Scottish Police Authority



SCOTTISH POLICE
AUTHORITY
ÙGH DARRAS POILIS NA H-ALBA



centre for youth
& criminal justice

Joint Assurance Review

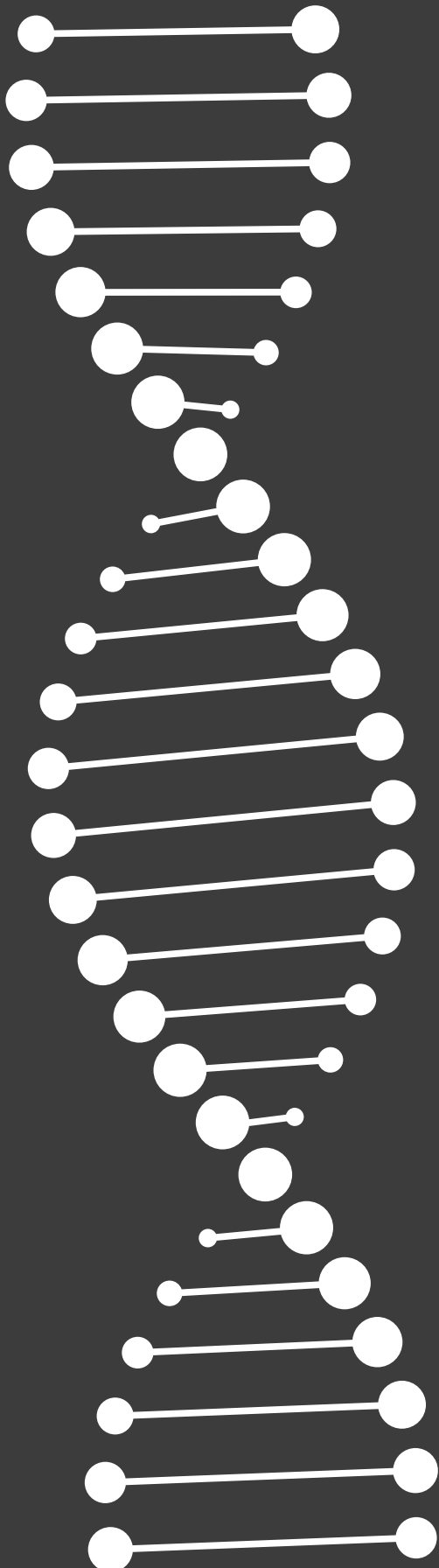
of the acquisition of biometric data
from children arrested in Scotland.

Safeguarding our biometric future



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba

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www.biometricscommissioner.scot

Key Facts

Childrens DNA

98,295

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

3,091

DNA data was captured from children in 3,091 of these episodes.

1,434

By January 2023, 1,434 of these DNA samples were still on retention.

Children aged 12 or over who admit to a serious crime at a Children's Hearing, or where a Children's Hearing court case determines that they committed a serious crime, results in continued retention of data.

There is a paucity of evidence pointing to the value of capturing biometric data from children except in the most serious types of offending. However, biometric data fixes identity and is a crucial element in investigations.

4,150

4,150 of those custody episodes in Scotland during calendar year 2022 involved a child aged 17 years or under.

No biometric data was captured in 2022 from children below the age of criminal responsibility.

Police Scotland's overall strategic approach to working in partnership to safeguard children who find themselves in police custody and have biometric data captured, is strong.

Emerging policy to move 16 and 17 year olds out of the adult system would have a positive effect on children by removing the need to capture biometric data in all but the most serious of offence types.

Key Findings

- Police Scotland's overall strategic approach to working in partnership to safeguard children who find themselves in police custody and have biometric data captured, is strong.
- The available data from Police Scotland would suggest that there were 4,150 custody episodes in Scotland during calendar year 2022 which involved a child aged 17 years or under. This equates to 4.22% of all custody episodes.
- DNA data was captured from children in 3,091 of these episodes. By January 2023, 1434 of these DNA samples were still on retention.
- No biometric data was captured in 2022 from children below the age of criminal responsibility.
- Police Scotland is not appropriately supported by legal framework for the acquisition, retention, use, and destruction of images which are not referenced in the Criminal Procedure (Scotland) Act 1995. This will be picked up in our review of the laws of retention scheduled for 2023/24.
- The Police Scotland policy guidance at the time of our assurance review did not include any requirement for operational staff to provide meaningful information to children as data subjects of the reasons why their biometric data is to be captured following arrest; or any explanation of where the data will be hosted; what the data will be used for; who shared with; how long kept, or any appeal mechanisms to Police Scotland. Action is therefore required to ensure compliance with Principle 9 of the Scottish Biometrics Commissioner's Code of Practice, and UK Data Protection law on information rights.
- The Police Scotland policy guidance fails to make reference to the Scottish Biometrics Commissioner Act 2020; the role of the Scottish Biometrics Commissioner; the statutory Code of Practice approved by the Parliament in November 2022, or the provisions of the 2020 Act which provide for a complaints mechanism where a data subject has concerns about potential failure to comply with the statutory Code of Practice in Scotland.
- Police Scotland are data rich, but information poor when it comes to understanding the utility of biometrics in the criminal justice system. For example, Police Scotland has no automated means of knowing how many biometric samples taken from children in 2022 were then matched to an existing or subsequent crime scene sample.

- There are opportunities for Police Scotland to take steps to improve the collection of management information around biometric data to better inform strategic decision-making. Improving the granularity of such data will also improve the ability of Police Scotland to respond to Freedom of Information (FOI) requests, as well as having the ability to place more information in the public domain about the ways in which biometric data and technologies keep citizens safe.
- Placing more management information and metrics in the public domain (where appropriate) would help Police Scotland to promote greater public understanding around the use of first-generation biometrics. Improving transparency will also maintain public confidence and trust, and potentially pave the way for greater public acceptance of the second-generation policing biometrics that will inevitably emerge in the years to come.
- During interviews and discussions with police officers and staff, we found that staff working in the custody environment were knowledgeable about policies and procedures relating to the care and welfare of children, but those policies do not reference the Scottish Biometrics Commissioner Act 2020, the statutory Code of Practice approved by the Parliament or the associated complaints mechanism. However, we acknowledge that our fieldwork was completed only two months after the Code taking legal effect.
- During the roundtable discussions with children, it was clear that participants understood that the police will sometimes need to capture and retain children's biometric data. However, they expressed that this should only be actioned when necessary, proportionate and justifiable based on an individualised, case-by-case assessment. Children understood the serious implications of this process, both in the moment of having data collected, with participants highlighting how this can be experienced as scary and intimidating, and also in the long-term, with the potential for biometric retention to be stigmatising and anxiety-inducing. Therefore, it was crucial to raise awareness of processes, their rights and how to use them in order to alleviate some of their concerns.
- As Commissioner, I support the proposition that 16 and 17 year olds should be dealt by, except for the most serious offences, the Children's Hearings system¹ and come out of the adult system. This is in line with human rights standards, including the UNCRC (Scotland) Incorporation Bill, UNCRC General Comments² and the Children (Care and Justice) (Scotland) Bill currently at the Scottish Parliament³, which increases the maximum age of referral to the Principal Reporter.

¹ Children's Hearings (Scotland) Act 2011.

² The UN Committee on the Rights of the Child in 2016 recommended that the UK needed to do more to prevent children being drawn into the adult justice system.

³ The Commissioner provided detailed comments to the Scottish Parliament's Education, Children and Young People Committee on the Children (Care and Justice) (Scotland) Bill in March. See: <https://www.parliament.scot/bills-and-laws/bills/children-care-and-justice-scotland-bill>.

Summary of Recommendations

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

Police Scotland should develop, consult on, and then publish operational policies, procedures, and practices for the acquisition of biometric data from children under 18 years of age that are consistent with the Justice Vision for Scotland and relevant standards for working with children in conflict with the law. There should be no general policy, which otherwise sanctions the blanket capture of biometric data from children. Any decision to take biometric data from a child should be taken on a case-by-case basis and authorised by a senior police officer not beneath the rank of Inspector. In reaching a decision, the senior officer should have regard to factors such as the best interest of the child and the gravity of the offence.

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

Partners of the Review

Scottish Biometrics Commissioner

The Scottish Biometrics Commissioner is established under the [Scottish Biometrics Commissioner Act 2020](#).

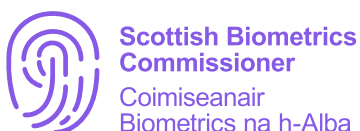
The Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

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

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

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

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



The Scottish Police Authority

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

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

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



Children and Young People's Centre for Justice, University of Strathclyde

A central component of the review is the capture of the experiences and views of children. The Children and Young People's Centre for Justice (CYCJ) was commissioned by the Scottish Biometrics Commissioner to undertake a consultation with children and young people as part of the Commissioner's wider review of biometric data relating to children. The aim of the review is to assess the law, procedure and practice related to the acquisition, retention, use, and destruction of biometric data relating to children and young people. This work contributes to the review through qualitatively exploring the perspectives and experiences of care and justice experienced children and young people in relation to the collection and retention of biometric data by police.

CYCJ works towards ensuring that Scotland's approach to children and young people in conflict with the law is rights-respecting, contributing to better outcomes for our children, young people and communities. CYCJ focuses on three key activities:

- Participation and engagement: amplifying the voices of children and young people
- Practice and policy development: developing, supporting and improving justice for children and young people, and
- Research: Improving our understanding of justice for children and young people

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

Definitions

Meaning of biometric data

The Scottish Biometrics Commissioner Act 2020 contains the following definition:

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

- Physical data comprising or derived from a print or impression of or taken from an individual’s body
- A photograph or other recording of an individual’s body or any part of an individual’s body
- Samples of or taken from any part of an individual’s body from which information can be derived, and
- Information derived from such samples⁴

For the purposes of this review, we have examined the arrangements for the acquisition of photographs, fingerprints and DNA samples taken from persons under 18 years of age in police custody settings arising from an arrest and criminal charge episode in Scotland during the calendar year 2022.⁵

Definition of a Child

Children are defined as any individual under the age of 18 years under Section 2 of the Scottish Biometrics Commissioner Act 2020. Article 1 of the United Nations Convention of the Rights of the Child (UNCRC) defines a child as ‘every human being below the age of 18 years’. Under the Age of Criminal Responsibility (Scotland) Act 2019, which fully commenced on 17 December 2021, children under the age of 12 can no longer be charged, arrested or prosecuted. The Scottish Parliament voted in 2021 to incorporate the UNCRC into Scottish Law via The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. In October 2021, the UK Supreme Court ruled that certain parts of the Bill fall outwith the competence of the Scottish Parliament (Case: [2021] UKSC 42). Both Scottish and UK governments are now revising these provisions to limit scope to devolved matters.

⁴ Scottish Biometrics Commissioner Act 2020, Section 34.

⁵ For a further discussion on what is biometrics see: <https://www.biometricscommissioner.scot/news/what-is-biometrics/>

The Criminal Procedure (Scotland) Act 1995

This Act is the primary Scottish legislation allowing the retention of fingerprints and DNA samples from a person arrested by the police, including children. Sections 18 to 19C stipulate the conditions under which samples may be taken by the police, as well as rules for retention and specification of the purposes of use of sample. There is no legislation specifically regulating the use or retention periods of facial images (e.g. photos). It has been common practice for more than one hundred years to take photographic custody images of persons who have been arrested or detained.

Taking biometric data from people who have been arrested helps the police and the criminal justice system to verify and fix identity, including those against whom criminal proceedings may be initiated. This act does not discriminate between children and adults; therefore the police may acquire biometric data from any person arrested and to be charged with an offence who is above the age of criminal responsibility. It is noteworthy that Chapter 5 of the Criminal Justice (Scotland) Act 2016 on the rights of suspects in police custody does not provide additional safeguards around the acquisition of biometric data of children.

Age of Criminal Responsibility (Scotland) Act 2019 (ACRA)

This Act raises the age of criminal responsibility to 12 years and make consequential changes to the law on the provision of information by the Principal Reporter and on operational procedures by the police such as search, interviews and on the taking of forensic samples. The Act received Royal Assent on 11th June 2019. The Act came into force on 17 December 2021.

Guide to further reading on biometric data

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

An animation [video](#) explaining what is biometrics and the role of the Commissioner in Scotland can be viewed on our website.

Period and data types covered by our review

For the purposes of this review, we have examined the arrangements for the acquisition of photographs, fingerprints and DNA samples taken from children arrested by the police in Scotland. We have also examined retention guidance and practice with in both SPA and Police Scotland. The period of the data considered in this review is the calendar year 2022.

Our Assurance Review

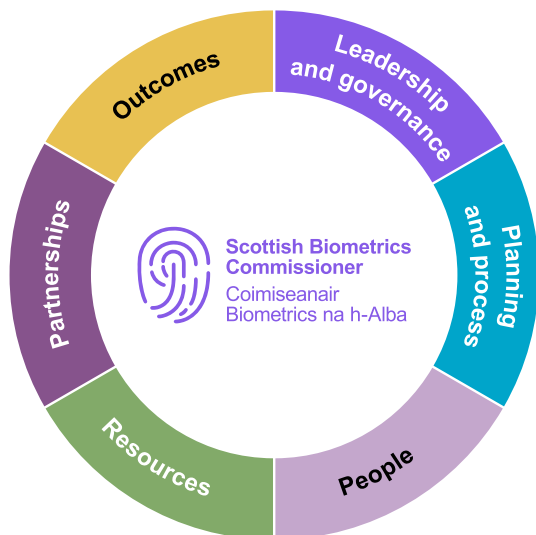
The aim of this assurance review was to: **assess the law, procedure and practice related to the acquisition, retention, use, and destruction of biometric data relating to children and young people.**

The report highlights best practice, what is working well, and explores any challenges in the acquisition, retention, use, and destruction of biometric data by Police Scotland and the Scottish Police Authority. The review examined the views of police officers and staff as well as qualitative insights of young people with experiences of the criminal justice system who have had their biometrics captured.

The review considered what evidence exists to support the value and outcomes of capturing biometric data from children and young people in terms of crime scene to criminal justice sample match rates. The review also assessed the impact of the Age of Criminal Responsibility (Scotland) Act 2019 relative to biometric data acquisition, retention, use, and destruction. The review does not assess data protection, which the Information Commissioner (ICO) has statutory responsibility for.

Under existing law in Scotland, the police have legal authority to acquire biometric data from any person over 12 years of age who has been arrested and taken into police custody. The law also permits the retention of biometric data of children. Scotland's "Whole System Approach" to youth justice aims to keep children out of the formal justice system as far as possible, mindful of the risks of stigmatising children and in line with the best interests of the child. The Scottish Government believes delivering the rights of children and young people, as enshrined in the UN Convention on the Rights of the Child (UNCRC), is fundamental to making children's rights real and Scotland the best place in the world to grow up. To underline its commitment, the Scottish Government delivered new legislation to incorporate the UNCRC into domestic law. Equally the Justice Vision for Scotland supports the agenda to keep children out of the criminal justice system. In line with these principles, there is a strong need to ensure that biometric data is acquired, used and retained in a manner that reduces any unintended negative risks and takes full account of children's human rights.

This review was conducted as part of a wider programme of assurance activity outlined to the Scottish Parliament in the Commissioners 4-year [Strategic Plan](#) laid before the Parliament in November 2021. The specific methodology for this review is explained below and was outlined in a terms of reference (TOR) agreed between partners, which was published on the Commissioner's website on 31 October 2022. The terms of reference and our judgements are based on our [National Assessment Framework](#) for biometric data outcomes which ensures a consistent and objective approach to our work.



Our National Assessment Framework considers six overarching themes, namely:

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

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

I wish to extend our thanks and appreciation to the Scottish Police Authority our strategic partner in this review and to the officers and staff from Police Scotland who assisted our work. Particular thanks are due to Assistant Chief Constable Bex Smith the executive lead on biometric data for Police Scotland for supporting our work and to Gillian Jones, Data Governance Manager for facilitating our assurance activity and information requests. Thanks too to the CYCJ team for assisting us to gather children and young people’s views for this review.

Our assurance review was conducted by Diego Quiroz, SBC Operations Manager, assisted by SPA Policy Team: Sam Curran, Rachael Walker and Aidan Curran.



Dr Brian Plastow
Scottish Biometrics Commissioner
March 2023

Background to Review

Children come into contact with the criminal justice system in a variety of ways depending on their age, their needs and circumstances. The number of children in custody has reduced significantly in Scotland.⁶ There was a total of 4,012 children held in custody from 1st April 2021 to 31st March 2022. This is a year-on-year reduction in comparison with: 4,147 children in custody in 2020-21 and 5,359 in 2019-20.⁷

Around 2,200 children were proceeded against in the Scottish courts during 2015/16, of whom very few were under the age of 16. Scotland's Children's Hearings system was introduced to take an integrated and holistic approach to care and justice, in which the child's best interests are the paramount consideration. Children, therefore, can also receive support and supervision through the Children's Hearings System in relation to their offending behaviour as well as other behavioural and care concerns.⁸ In 2016/17, there were 26,840 referrals to the Children's Hearings system, of which 73% were on non-offence (care and protection) grounds and only 27% on offence grounds.⁹

While the number of children who come into contact with the police is small compared with adults, there are a significant number of biometric data taken and held in the criminal justice system. For example, there are around 37,000 records in the Scottish DNA database relating to people (mostly now adults) who were children at the time of the index offence to which the source biometric data record relate.¹⁰ Those 37,000 records include those convicted under Summary, Sheriff & Jury and High Court criminal procedure. In addition, the retention periods for children's biometric data are largely similar to adults and varies from three years to indefinitely in cases of criminal conviction.

Although the Criminal Procedure (Scotland) Act 1995 enables indefinite retention of biometric data on conviction, Police Scotland has its own data retention policies none of which sanction indefinite retention. The review explores if there is sufficient differentiation for the special position of children in policing acquisition and retention of biometric data. This includes a full consideration of the children's human rights and whether it is lawful, proportionate and necessary to obtain children's biometric data and recording it on the policing biometric databases.

⁶ See Children and Young People in Custody in Scotland: Looking Behind the Data, Centre for Youth & Criminal Justice (2017) Available at <https://www.cycj.org.uk/news/children-and-young-people-in-custody-in-scotland/>

⁷ Independent Custody Visiting Scheme Scotland, SPA. Annual Report 2021-2022.

⁸ There were 30,363 children's hearings held in 2019/2020. CHS available at <https://www.chscotland.gov.uk>

⁹ Use of biometric data: report of the independent advisory group, available at <https://www.gov.scot/publications/report-independent-advisory-group-use-biometric-data-scotland/pages/6/>

¹⁰ See, SPA Scottish DNA Database Statistics 2022-23 <https://www.spa.police.uk/spa-media/f0idqaqh/pdf-20221202-scottish-dna-database-stats-nov-2022.pdf>, accessed on 17 January, 2023.

Our initial examination of this issue made clear that little research had been carried out on children and biometric data in the criminal system in Scotland. We concluded that further analysis was required to fully understand the process of capturing biometric data in custody settings; to better comprehend the numbers of biometric data held; to better understand the value and outcomes of capturing biometric data and to capture and share best practice as well as challenges in the use, acquisition and retention of biometrics for children.

The review was conducted as part of a wider programme of assurance activity outlined to the Scottish Parliament in the Commissioners 4-year [Strategic Plan](#) laid before the Parliament in November 2021. Section 2 (6) of the Scottish Biometrics Act 2020 provides that in exercising our general functions, the Commissioner must have regard to the interests of children and young persons. For this reason, we have scheduled this thematic review, which commenced in November 2022. This was intentionally timed to coincide with the first anniversary of The Age of Criminal Responsibility (Scotland) Act 2019 which took effect on 17 December 2021. Consequently, the review also assessed the impact of the 2019 Act on biometrics.

Methodology

The primary research method for this review was literature review together with semi-structured qualitative interviews and focus groups, including with police officers, staff and children. A detailed description of the methodology used for the focus groups and qualitative interviews can be found in the respective section below.

The literature review covered available public information and internal policies, procedures and police's standard operating procedures relative to law, policy and practice. We also cross referenced comparable guidance in other parts of the UK. We provided a brief analysis of the current policy and practice related to children's biometric data. For this we used a set of established standards which are described below (see assessment framework). We invited both civil society and the Independent Custody Visitors Scheme to provide comments on any issues connected with children being photographed, fingerprinted and/or the taking of DNA while in custody. We also requested a data volume for 2022 to better understand the purpose and amount of biometric data (DNA) held for children. All of this supports our conclusions which cover recommendations for improvement.

The assurance review was conducted between November 2022 and February 2023 in partnership with the Scottish Police Authority.

This report is presented in two parts, which underpinned our conclusions:

- i. A literature review, which examines the current legal and policy framework as well as the international standards relevant for the review. The section includes a finding section on how relevant Police Scotland's guidance aligns with the law and standards.
- ii. Evidence Gathering, which includes a series of focus groups and interviews with staff, children roundtables and a data request for 2022 in relation to children's biometric decisions.

The Assessment framework

The legal and policy standards considered for this review were:

- The Criminal Procedure (Scotland) Act 1995
- The Criminal Justice (Scotland) Acts 2003 and 2016
- The Police, Public Order and Criminal Justice (Scotland) Act 2006
- The Age of Criminal Responsibility (Scotland) Act 2019
- The Human Rights Act 2008, which implements the European Convention of Human Rights (ECHR)
- The UK GDPR and Data Protection Act 2018
- The UN Convention on the Rights of the Child¹¹
- The Council of Europe's Convention 108+ (which is the Convention for the protection of individuals with regard to the processing of personal data)
- The Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
- SBC [National Assessment Framework](#) for biometric data outcomes, which ensures a consistent and objective approach to our work.

These standards constitute the basis for assessment of existing policy and practice on the acquisition and retention biometric data of children.

¹¹ There are four Articles in the UNCRC that are seen as interpretative, therefore crucial for the assessment criteria. They are known as the "General Principles." Article 2: Non-discrimination, Article 3: Best interest of the child, Article 6: Right to life survival and development and Article 12: Right to be heard. They help to guide all the other articles and play a fundamental role in realising all the rights in the Convention.

I. Review of Current Policy & Practice

This section provides an overview of current standards and covers two different but complementary aspects of how Police Scotland acquire and retain biometric data of children. The first part covers domestic law, policy and practice, including relevant standard operating procedures. The second part considers a number of international standards pertinent to the review.

a. Legal and Policy Framework

This section conducts a brief description of existing policy, including the current legal framework and Police Scotland's internal guidance¹² on acquiring and retaining biometrics for children. The final part of this section covers an assessment of the existing policy in the form of findings.

The Criminal Procedure (Scotland) Act 1995 is the primary Scottish legislation allowing the retention of fingerprints and DNA samples from a person arrested by the police, including children. Sections 18 to 19C stipulate the conditions under which samples may be taken by the police,¹³ as well as rules for retention and specification on the purposes and use of samples. While the Act does not specifically regulate the use or retention periods of facial images, it should be noted that the police have been photographing persons in police custody for more than one hundred years. This is an established custom and practice in Scotland.

The Age of Criminal Responsibility (Scotland) Act 2019 raised the age of criminal responsibility from 8 to 12 years old.¹⁴ However, it is possible to take biometric data from those under 12 in specific circumstances as described in Section 58 of the Act. The capture or use of biometrics will have to be authorised by a Sheriff and their biometric data will have to be destroyed as soon as they are no longer needed for the specific investigation and any ensuing Children's Hearing proceedings – they will not be placed on the Criminal History System (CHS) or Police National Database (PND).

Biometric data is given special protection under Data Protection law. The general data protection regime that applies to most UK private and public organisations is covered by the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018). Part 3 of the DPA 2018 explains the data protection regime that applies for law enforcement purposes. Data protection includes the right of individuals to be informed about the collection and use of their personal data.¹⁵

¹² E.g., standard operating procedures.

¹³ It defines 'relevant physical data' as 'a fingerprint, palm print, print or impression of an external part of the body or record of a person's skin on an external part of the body created by a device approved by the Secretary of State'. The Police, Public Order and Criminal Justice (Scotland) Act 2006 inserted Section 18A into the 1995 Act and contains provisions to allow retention of DNA samples and profiles of persons who have been arrested but not convicted of certain sexual or violent crimes.

¹⁴ The Act came into force on 17 December 2021.

¹⁵ The UK GDPR provides a number of rights for individuals, see more at: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>. Note that the SBC Code of Practice sits alongside a number of legal frameworks, including DPA and human rights, (etc).

Human rights and equality legislation sets out the fundamental rights and non-discrimination obligations that the police as a public authority has to comply with.¹⁶ The Human Rights provisions most relevant to this Code of Practice are Article 2 of the ECHR – the obligation of the State to protect the right to life, Article 8 of the ECHR – the right to respect for private life, home and correspondence, and Articles 9 to 11 of the ECHR - protection of our democratic freedoms.¹⁷ Both SPA and Police Scotland have the responsibility to assess and review all policies and practices to ensure that it complies with the equality duty in the exercise of its functions .

The statutory framework in Scotland for the retention of children’s fingerprints and DNA biometrics is as follows:

- Fingerprints and DNA data from convicted children can be retained indefinitely.¹⁸
- Data from children dealt with at the Children’s Hearings system may be retained post proceeding concluding only where grounds of referral are established (whether through acceptance by the child at such a hearing or a finding at court) in relation to a prescribed sexual or violent offence. Such data can only be retained for three years unless the police apply for, and are granted, an extension by a Sheriff.
- For less serious offences, and where grounds of referral are not established, there is no retention.
- Data from children arrested for any offences (and who have no previous convictions) must be destroyed immediately if they are not convicted or if they are given an absolute discharge.

In practice, biometric data are not obtained in every case involving a child. For children aged 12 to 15 years, Police Scotland gives consideration (by the relevant officer) as to whether it is proportionate and necessary to arrest and obtain biometric data for the purposes of recording on the biometric databases. In taking this decision the relevant officer will consider the best interest of the child together with relevant police guidance. This is consistent with, and supported by, the ‘Whole System Approach’ for young people who offend.¹⁹ Children aged 16 and 17 are treated as adults, unless they are considered vulnerable (e.g. subject to a compulsory/interim supervision order). Where the decision is to obtain and retain biometric data, the relevant officer should record the reasons. These reasons are subject to review and scrutiny within a reasonable timeframe, both internally by supervising officers.

Police Scotland and the SPA have established a weeding and retention policy in place for DNA, fingerprints and images. There are notable differences between CHS case retention periods and the 1995 Act.²⁰ For example in a police and fiscal warning the biometric data should be deleted as soon as possible according to the law, but the CHS case Retention & Weeding Police (which triggers IDENT1 deletion) is for 2 years. This means that in some instances fingerprint data from children was retained longer than the 1995 Act allows. However, SPA FS has introduced a manual workaround to ensure weeding is compliant with the 1995 Act and the SBC Code of Practice. We are aware of a number of areas where the rules of retention as specified in the 1995 Act are operationally impracticable at the moment. For this reason, we have an upcoming review of the laws of retention in Scotland scheduled. This review will commence in 2023 and will be reported by October 2024.

¹⁶ See also Scottish Government ‘Standards for those working with children in conflict with the law 2021, available at <https://www.gov.scot/publications/standards-those-working-children-conflict-law-2021/documents/>

¹⁷ The UK Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into UK law.

¹⁸ Police Scotland do not pursue a policy of indefinite retention, further information on the rules of can be found at: Record Retention SOP and Recording, Weeing and Retention of Information in CHS Guidance at <https://www.scotland.police.uk/spa-media/himljwyi/recording-weeing-and-retention-of-info.pdf>

¹⁹ Whole system approach to young offending, available at <https://www.gov.scot/policies/youth-justice/whole-system-approach/>

²⁰ The Guidance on retention is available at: <https://www.scotland.police.uk/spa-media/himljwyi/recording-weeing-and-retention-of-info.pdf>

We also reviewed public information and noted that Police Scotland's complaints website page makes no reference to the SBC complaint procedure, the Code of Practice, or SBC Act 2020.²¹ While statistics are publicly available for DNA, there are no statistics published for fingerprints and images. Police Scotland publishes monthly DNA Database statistics on SPA's website, in partnership with SPAFS, but the data is technical and does not use child-friendly language.

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

a.1. Police Scotland Guidance & Standard Operating Procedures (SOPs)

We reviewed a number of internal documents, guidance and standard operating procedures (SOPs) related to 'biometrics' and 'children'.²² This section provides a high level summary of six relevant SOPs and national guidance²³ and reviews them in relation to the discussed international standards and statutory framework.

- Biometrics (DNA, Fingerprints and Facial Images) SOP, Version 1.0
- Care and Welfare of Persons in Policy Custody SOP, version 14
- DNA Sampling and Retention SOP, version 5
- Fingerprints SOP, version 6
- Record Retention SOP, version 5
- Age of Criminal Responsibility (Scotland) Act 2019 National Guidance

²¹ Visited on 21 June 2023.

²² For example, Weeding & Retention of Information on the CHS document and Police Scotland Data Protection SOP and Criminal Justice (Scotland) Act 2016 (Arrest Process) SOP.

²³ The latest version of each document was reviewed in relation to the acquisition and retention of biometric data relating to children. SOPs and Guidance referenced were publicly available at the time of the research. All the documents were accessed in January 2023 via <https://www.scotland.police.uk/access-to-information/policies-and-procedures/standard-operating-procedures/>, with the exception of the Biometric Data and Record Retention SOPs, which were provided by SPA.

Biometrics (DNA, Fingerprints and Facial Images) SOP

The taking of criminal justice data (e.g. DNA samples fingerprints and images) by Police Scotland is governed by the Biometrics (DNA, Fingerprints and Facial Images) Standard Operation Procedure (SOP). In September 2022, Police Scotland consolidated previous SOPs versions and updated this SOP. Section 1 covers general definitions, including references to the Criminal Procedure (Scotland) Act 1995. Section 2 covers DNA, Section 3 covers fingerprints and Section 4 covers facial images. Section 5 covers volunteer DNA Samples and Section 6 volunteer fingerprints. It is noteworthy that the acquisition process for biometric data is the same for both adults and children.²⁴

While further consideration is given to taking of DNA from ethnic minorities, there are no references to children's rights and Data Protection law. The Biometrics SOP is silent on the information that should be given to data subjects during the acquisition process. There are no references to the Scottish Biometrics Commissioner Act 2020,²⁵ independent oversight, and SBC complaints procedure.

Care and Welfare of Persons in Policy Custody SOP

The SOP provides general definitions, roles in custody and process to follow when a person is arrested, including human rights considerations. Section 8.6 defines children under Scottish legislation, mainly under the Criminal Justice (Scotland) Act 2016. It also specifies that two categories of children based on their age "those under 16 and those under 18 who are subject to Compulsory Measures of Supervision under Section 99 of the Children's Hearing (Scotland) Act 2011 (hereafter referred as to under Supervision). Those aged 16 and 17 who are not under Supervision." There are no references to collection of biometric data of children.

DNA Sampling and Retention SOP

The SOP provides advice when DNA sampling should occur and outlines the procedure for obtaining and processing it. The legislative background references the relevant law, including criminal and the Human Rights Act 1998, but there are no references to the Scottish Biometrics Commissioner Act 2020. Appendix G contains a verbal notice to be read only to prisoners by custody staff should they be unwilling to provide the biometric sample. Children are not explicitly referenced in the SOP.

²⁴ As mentioned, current law does not distinguish between the taking of juvenile or adult biometric samples.

²⁵ This includes the SBC Code of Practice and the Individual Complaint Procedure on the Code of Practice (Sections 13 and 15 of the Scottish Biometrics Commissioner Act 2020).

Fingerprints SOP

The SOP provides guidance and instruction to police officers and staff on the circumstances when fingerprints should be taken. The legislative background references criminal and immigration & asylum law, but there are no references to human rights law or the Scottish Biometrics Commissioner Act 2020. Section 2.4. provides that ‘fingerprints should be taken for all persons arrested for all crimes, including juveniles each time they are apprehended.’ There is no definition of juveniles or children in the SOP.

Record Retention SOP

The SOP purpose is to define specific retention rules for records held by Police Scotland. The SOP also provides guidance to police officers and staff in interpreting record retention rules and disposal of records. The legislative background references the Data Protection Act 2018, the GDPR and the Public Records (Scotland) Act 2011, but lacks references to human rights law (e.g. Human Rights Act 1998) or the Scottish Biometrics Commissioner Act 2020. During our research it was explained that duplicate/copy records of DNA and Fingerprint data are weeded (as far as possible) and are not considered to be subject to separate retention rules. However, Section 2 on applicability, explains that ‘the retention rules are for master sets records only. Duplicate records may be destroyed at any appropriate point to the work of Police Scotland.’

Age of Criminal Responsibility (Scotland) Act 2019 National Guidance

The guidance restates the 2019 Act and clarifies the circumstances and process of acquiring data and forensic data and samples from a child under 12 and/over (i.e. DNA, Fingerprint and photographs). The document cites human rights considerations, including the best interests of the child, which derives from Article 3 of the UN CRC. The guidance describes that where physical data and samples are to be taken in urgent cases – when it is not practicable to apply for a Sheriff’s Order for Forensic Data and Samples because of the risk that, if the data or sample is not taken immediately, evidence derived from the data or sample would be lost or destroyed - the child must be provided with an ACRA²⁶ Child Information Leaflet (Taking of Data and Samples in Urgent Cases). The contents of the leaflet must also be explained to the child in a manner appropriate to the child’s age and maturity. The guidance also covers the process for destruction of data and samples, including in cases when data is taken under a Sheriff’s Order for Forensic Data and Samples or when the data is taken in urgent cases under the authorisation of a Superintendent or above.

²⁶ Age of Criminal Responsibility.

b. International standards

To inform our analysis a number of relevant children, data protection and human rights standards on the use and retention of biometric data were reviewed at both regional and international levels, including:

- The European Court of Human Rights' judgements²⁷
- General Comments by the United Nations Committee on the Rights of the Child²⁸
- UNICEF guidance, which outlines methods for assessing the value of biometric technologies²⁹

The European Court of Human Rights (ECtHR) has dealt with a number of judgments concerning the collection or retention of biometric data, which have clarified and developed the standards for the use of DNA, fingerprints and photographs in criminal justice. For example, in *Gaughran v. the UK* (2020), the Court called into question the extremely extensive scope of the data retention system.³⁰ The ECtHR has also dealt specifically with children's cases and emphasised the need of extra-protection due to their vulnerability. In *S. and Marper v. the UK* (2008), the Court stated that the retention of unconvicted persons' data may be especially harmful in the case of minors, given their special situation and the importance of their development and integration in society.³¹

It is noteworthy, that the ECtHR has also clarified in a number of occasions that a 'lengthy data conservation' of personal information does not imply a violation of Article 8 of the ECHR -providing the availability of adequate safeguards and sufficient criteria for the retention of the personal information.³²

In 2018, the Council of Europe (CoE) developed specific standards in relation to children in the digital environment.³³ The CoE Recommendation stresses the need for adequate legal basis for collecting data, particularly when processing of special categories of data which are considered sensitive such as 'biometric data'. The CoE Recommendation highlights the importance of digital literacy and easily accessible, meaningful, child-friendly and age-appropriate information, and available remedies. This should include information for instance on how data are collected, stored, used and disclosed, on their rights to access their data, to rectify or erase these data or object to its processing, and how to exercise their rights.

²⁷ The European Court of Human Rights (ECtHR) is an international court which rules on individual or State applications regarding possible violations of the rights set out in the European Convention on Human Rights (ECHR). The Court's judgments and other information relevant to the UK are publicly available in their website. The ECHR is an international treaty between the States of the Council of Europe. The UK helped with the ECHR drafting and was one of the first States to ratify it in 1951. The Convention came into force in 1953.

²⁸ UN General Comments analyse and interpret sections of the UNCRC and provide implementation guidelines for State Parties and non-state actors. General Comments are not legally binding, but they clarify what are expected of member states in fulfilling their obligations to under the UNCRC. The review focused on General Comment No. 25 on children's rights in relation to the digital environment.

²⁹ UNICEF guidance on the use of biometrics in children-focused services, published in 2019.

³⁰ The ECtHR in particular question the indefinite storage of the biometric data and photographs of the applicant - who had been convicted of driving with excess alcohol – and declared it a violation of Article 8 of the ECHR (right to respect for private life). Following *Gaughran* judgment, the Police Service of Northern Ireland's (PSNI) proceeded to update their internal policies on retention of biometric data. This included a mechanism whereby any individual who had their Fingerprints and DNA taken by the PSNI could apply have their biometrics deleted from local and national databases. Applications for early deletion are to be completed and submitted to the PSNI Biometrics Ratification Committee for consideration. The scope of this Committee is limited to reviewing the retention or deletion of the applicants PACE DNA samples, DNA profile derived from any sample, fingerprints, palm prints and any custody photographic images.

³¹ Similarly, in *N. Š. v. Croatia* (2020), the ECtHR held that, owing to children's vulnerability, the protection of their personal data was essential.

³² See for example: *B.B. vs France*, application no. 5335/06 and *Peruzzo and Martens v. Germany*, 2013.

³³ CoE Recommendation CM/Rec (2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment (Adopted by the Committee of Ministers on 4 July 2018).

At an international level, the UN has also developed a number of standards regarding biometrics and children which are relevant for this review, including the UNCRC General Comment No. 25 (on children’s rights in relation to the digital environment) and the UNICEF guidance on biometrics.³⁴ Both documents emphasise the vulnerability of children and the importance of legality, this is a legal framework that provides legitimacy and proportionality when processing children’s biometric data. The General Comment and the UNICEF guidance converge on the requirement of transparency, independent oversight, and strong safeguards as key requirements with regards to handling children’s data. General Comment No. 25 underlines that interference with a child’s privacy is only permissible if it is neither arbitrary nor unlawful. Any such interference should therefore be provided for by law, intended to serve a legitimate purpose, uphold the principle of data minimisation, be proportionate and designed to observe the best interests of the child. This means that interferences with this right must not conflict with the provisions, aims or objectives of the UNCRC.

Findings

There is no Scottish legislation specific to the capture and use of images taken from people who are arrested and taken into police custody, including on retention. This issue was highlighted in the report of the Independent Advisory Group on Biometric Data in Scotland in 2018, and will be picked up in our forthcoming review of the laws of retention in Scotland during 2023/24. The requirement that policing be conducted according to the law (the principle of legality) is a necessary condition of the rule of law. The principle of legality is key and an essential rule of statutory interpretation. It is well established that if Parliament intends to interfere with fundamental rights or principles, or to depart from the general system of law, then it must express that intention by clear and unambiguous language.³⁵ In this context any interference with, for example, Article 8 (right to respect for private life, family life) must be in accordance with the law and the notion of “law” under the ECHR.³⁶

SOPs are routinely updated and the Biometrics SOP consolidates in one single easy to read document a complex area. However, most SOPs lack explicit references to approaches and procedures specifically for the acquisition of children (and young people’s) DNA samples or fingerprints, including the Biometrics SOP. Relevant legislation such as the Scottish Biometrics Commissioner Act 2020 and specific human rights standards such as the UNCRC (incl. core principles) are not mentioned. For instance, the Record Retention SOP would be considerably enhanced by an explicit reference to the SBC and statutory Code of Practice, particularly in Section 6, which advocates a presumption in favour of deletion where the basis for lawful retention no longer exists.

³⁴ UNICEF guidance notes that children are often more vulnerable than adults through the lack of social agency, as well as not typically possessing technical knowledge and understanding to make informed decisions.

³⁵ The national law must be clear, foreseeable, and adequately accessible. “Lawfulness” also requires that there be adequate safeguards to ensure that an individual’s Article 8 rights are respected. The domestic law must provide adequate safeguards to offer the individual adequate protection against arbitrary interference.

³⁶ Klaus Müller v. Germany, ECHR 19 Nov 2020, § 48-51.

Guidance is mostly silent on information to data subjects. There are two notable exceptions such as the ACRA guidance and the Fingerprints SOP. In accordance with the right to information and the principle of transparency that buttress public trust in policing, better information should be provided to children whose biometric data is taken. For example, the Criminal Evidence Act 1984 (PACE) Code D in England and Wales requires that the data subject must be advised of (a) the reason that each sample type is being collected, (b) under what legal power the sample is being taken, and (c) that the photo/fingerprints/DNA may be speculatively searched against other samples held.

Police Scotland has not conducted or published a post implementation review on the outcomes from changes to the age of criminal responsibility. However based on the available data the impact of ACRA in terms of children coming into custody and having biometric data captured as a consequence is negligible. Police Scotland also has no management information to support the value of capturing biometric data from children beyond confirming their identity. For example, no data on how many biometric samples taken from children in 2022 were then matched to a crime scene profile. There are therefore obvious opportunities for Police Scotland to improve the quality of their internal management information to better inform strategic decision making.

Retention guidance is intricate and lengthy via the different SOPs with few references to children's processes. In contrast, the Review, Retention and Disposal Schedule of the Police Service of Northern Ireland (PSNI) details specific policies for the retention of data relating to a child.³⁷ The retention periods vary depending on the legislation it is collected under, whether or not an offence has been committed, previous charges or convictions and the type of biometric data recorded. Retention of some type of biometrics, for example fingerprints and photographs, due to CHS case retention guidance can be lengthier than the periods recognised in the 1995 Act.

DNA, fingerprints and images from convicted children can be retained indefinitely for any type of offence, regardless of gravity.³⁸ Case law has underlined the importance that retention periods are consistent with the type of crime, re-offending rates relating to different crimes, adequate safeguards and the value of biometrics in the investigation of criminal offences. The Gaughran v. UK judgment is especially relevant because it rules that blanket data retention policies without any safeguards breach the right to privacy of individuals, even when measures are considered to fall within the state's discretion.

³⁷ The PSNI schedule is available at <https://www.psni.police.uk/sites/default/files/2022-07/Police%20Service%20of%20Northern%20Ireland%20-%20Review%2C%20Retention%20and%20Disposal%20Schedule%20V0.3.pdf> and was accessed on 12 January 2023.

³⁸ See footnote no 15.

As Commissioner, it is my view that the age of criminal responsibility in Scotland is still too low. Accordingly, I would welcome policy initiatives to divert those under 18 years of age out of the adult system. This would provide the lever through which to avoid capturing biometric data from children except in the most serious of crime types.

It is also my view that people who have their biometric data taken without consent because of being deprived of their liberty through arrest in Scotland, including children should be given better information by the police as to the purposes to which their data will then be used. This is also a requirement of UK data protection law in terms of the 'right to be informed'. For children, being in custody can be a daunting experience, thus any additional support advising them more fully of their rights is to be encouraged. The ['easy-read' version](#) of the 'Letter of Rights' does provide some helpful information, but it is silent when it comes to biometric data.

I therefore make the following recommendations:

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

Police Scotland should develop, consult on, and then publish operational policies, procedures, and practices for the acquisition of biometric data from children under 18 years of age that are consistent with the Justice Vision for Scotland and relevant standards for working with children in conflict with the law. There should be no general policy, which otherwise sanctions the blanket capture of biometric data from children. Any decision to take biometric data from a child should be taken on a case-by-case basis and authorised by a senior police officer not beneath the rank of Inspector. In reaching a decision, the senior officer should have regard to factors such as the best interest of the child and the gravity of the offence.

Requirement to respond to this report

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

II. Evidence Gathering

a. Focus Groups and Interviews with Criminal Justice Services Department (CJSD) and SPA Forensic Services

Methodology

A series of interviews and focus groups were conducted between November 2022 and February 2023. A total of 20 people participated in this research. Interviewees and participants came from custody centres across different geographic locations, including custody centres at Glasgow London Road, Livingston, Edinburgh St Leonards, Aberdeen and Dumfries. The custody centres were selected to represent the experience in different regions of Scotland. The aim of the interviews and focus groups was to examine the range of views and experiences of police officers and staff. 14 people participated in the evidence gathering. While the small sample size means that the findings cannot be generalised to the entire Police Scotland CJSD population (or SPA Forensic Services), they provide valuable insight into current practices. The focus groups and interviews discussion revolved around the following themes:

- Experiences with regards capturing biometric data of children
 - Impact of the Age of Criminal Responsibility (Scotland) Act 2019
 - Internal guidance and policies for the acquisition of biometric data
 - Safeguards for children and type of information provided to children
 - Quality assurance in relation to biometric data
 - The value of capturing children’s biometric data, and
 - Views on potential improvements
- We also conducted a number of focus groups and interviews with SPA Forensics Services and Police Scotland Chief Data Office on fingerprints and DNA to identify in practice how biometric data is retained and when it is destroyed. A total of 6 staff participated in this evidence gathering. The focus groups revolved around questions on:
- Management process and Internal guidance for the retention of biometric data
 - Impact of the Age of Criminal Responsibility (Scotland) Act 2019
 - Data requests, complaints, and scrutiny
 - Retention and deletion of biometric data
 - Safeguards around biometric data
 - Publication of statistics and the value of capturing biometric data, and
 - Views on potential improvements

The focus groups were transcribed by a member of the research team. Thematic analysis was undertaken to identify key themes and areas of agreements and challenges within the discussions. Theme generation was achieved by individual support officers coding raw qualitative data, and then peer reviewing intermediary findings in a collective discussion group session. The final themes that emerged from our analysis are:

- A clear commitment to children and young people
- Localised good practice
- Enhanced policy and procedure
- Enhanced training
- Improved understanding among officers and staff of how biometric data support the criminal justice system
- Clear information on how biometrics are taken and used from the perspective of children and appropriate adults
- Complaints procedure
- Enhanced public understanding and transparency

The following section describes the way how these themes were discussed by interviewees and provide anonymised illustrative quotes.

A clear commitment to children and young people

Across all custody suites, participants confirmed that only small numbers of children come into custody. Some noted a decline in the number of children coming into custody overall in recent years, particularly as often issues can be resolved outside of the custody setting.

It was articulated by a CJSD representative that:

“Officers don’t want children and young people here, unless they pose a risk”.

In the discussions, it was reported that officers and staff use enhanced discretion when dealing with situations which relate to children and young people. For example, one officer noted that:

“Younger children tend to be dealt with out with custody suites”

This desire to not bring younger children into a police setting results in fewer biometric data being collected from this cohort. It was also reported to the interviewers in one custody centre that not all forms of biometric data are taken for every child or young person that comes into custody. A CJSD representative advised that:

“Often the crime type or offence will determine the priority of the need for biometrics to be taken and how many forms of biometric data – not all 3 types may be taken”.

They went on to explain:

“It is dependent upon the child, 16-17 year olds are more likely to be swabbed, but it depends on the crime type if a swab would be taken”.

This discretionary approach to how children's biometric data is acquired can likely be attributed to the attempt to minimise the time a child is spent in a police custody setting. The use of discretion was articulated best by a CJSD representative:

*“Young people have a quick turnaround, [...] with young people biometrics are not always taken”.*³⁹

This operational approach was also considered for DNA and fingerprints retention. A SPA Forensic Services interviewee told us:

“Once they are on the database and the case appears at court and is disposed of SPA Forensic Services get a daily print of children who have appeared at court from the criminal justice system. Any prints identified in this daily report would be immediately destroyed following this... and priority is given to juveniles by a new manual process recently introduced”.

In addition, officers and staff expressed a clear understanding of the Age of Criminal Responsibility Act (ACRA), but it was less clear the impact that it has on the acquisition of biometrics from children under the age of 12.

The findings indicate that officers and staff have a clear policy and practical understanding that children and young people should be handled differently compared to adults and this is reflected on the acquisition of biometric data. However, as detailed below, a specific child-based approach is not formalised for biometric data.

Localised good practice

Good practice in relation to capturing the biometrics of children was evident across the sampled custody suites. For example, officers and staff outlined that they would take more time to explain the biometrics process to younger children and would adjust the language used if required:

“You tend to be slower with children, you explain to them what mouth swab is, for example. The process can take longer. You don't tend to explain it to [children and young people] until you take to the room as they might not understand before they see the room and equipment.”

However, this appeared reliant on officers, staff commitment to children and also their experience of working with children, rather than being standardised or formalised through SOPs. Participants noted that there was no explicit guidance in SOPs in relation to children nor any training. It was noted by all that training and guidance would be beneficial and support continuous improvement.

While it was not possible for staff to identify a significant difference pre and post ACRA in terms of acquisition of biometric data, a few officers and staff credit recent ACRA internal guidance for an enhanced understanding of how children should be treated when arrested. In terms of retention, ACRA samples are given particular attention to ensure minimum retention according to the law. SPA Forensic Services participant commented that:

“We don't get many children at all that are being printed. They would have been printed more often in the past, but now they aren't printed on all occasions”.

We found clear examples of good practice, which bring opportunity to formalise it via explicit mention in policy documents and training.

³⁹ When a child is brought to a custody centre (one recent case just happened before our interview) their time in detention is kept to a minimum and a reasonably named person is informed of their circumstances.

Enhanced policy and procedure

It was reported by CJSD officers and staff that SOPs are largely clear. SPA Forensic Service interviewee expressed that SOPs could be clearer in terms of detail with what to do with children's data:

“SOPs could be expanded as it has been a bit of a grey area. Only within the last 6 months or so has it began to be clearer. Overall I would like more information”.

When asked about what kind of information, the interviewee added:

“More information from Crown Office such as lengths of retention time would be beneficial. The process we have is basic - the charge may stay on the system for 3 years, but the Biometrics are to be removed. More information would be better. We have our SOPs but it would be better if we had more definitive guidelines and regular updates from the decision makers - not only for Juveniles.”

Another interviewee added:

“Recently created biometrics SOP revamped retention and weeding policy. This should be public. The new SOP has made the rules more user friendly. This only covers DNA and prints”.

The findings also appear to show that there is very little understanding and information available on images (e.g. photographs), which is reflected on varied operational practice, particularly on retention. As images are included onto CHS and UK Police National Database (PND) - all images are available throughout the UK. The general practice seems to indicate that children's images deletion happens only when the CHS is weeded.⁴⁰

An interviewee noted:

(I) *“Think what we do is good, but documentation could be better in terms of articulation of the code. By consequence, an absence of knowledge at tactical level of the code of practice. Not just in relation to children, but also in relation to general principles. Think there is a bit of a gap”.*

Officers and staff exhibited a consistently high regard for the care and welfare of children when taking their biometric data. It was, however, noted that there was no procedural difference in taking biometric data between an adult and a child, with the exception that an Appropriate Adult may be in attendance when a child is having their biometric data taken. This reflects the Criminal Procedure (Scotland) Act 1995, which fails to differentiate between children and adults when setting the legal basis for biometrics capture.

From our discussions we noted a clear operational distinction between children aged 16-17 (who are not on a compulsory supervision order) and those under 16. The former are treated as adults, therefore biometric data will be generated from the arrest. This confirms our findings when reviewing the SOPs for the review of the current policy and practice (above).

This approach is also reflected in relation to retention policies. A staff member noted that:

“16 and 17 year olds are not treated as children – 16 year olds would still abide by the till 100th birthday rule for CHS.”

⁴⁰ Recording, weeding and retention of information on CHS guidance, version 4.0, redacted.

Available at: <https://www.scotland.police.uk/spa-media/himljwyi/recording-weeding-and-retention-of-info.pdf>

There is no difference in the processing the DNA of a child compared to an adult. A forensic expert interviewed explained:

“It is not relevant for us if the DNA belongs to child or an adult. Doesn’t impact from a technical perspective. Those who process the DNA don’t know who it belongs to as they will just use the relevant barcodes. Tying things up with names etc. comes together at the end of the process... The more anonymised the samples are, the better”.

When asked if children who are brought into custody be given different treatment compared to adults, an CJSD officer told the moderators that:

“Children and young people are not really treated any differently than adults. If they are really young they are probably given a more easy to understand explanation of what is happening, sometimes we’ll give them a longer explanation so they understand, there is more opportunity for people there”.

The findings indicate that opportunity exists for child-centred Standard Operating Procedures to be developed and implemented that outline steps which should be taken when taking the biometric data specifically from a child.

During the discussion on the value of acquiring biometrics of children, a number of SPA Forensic Service highlighted the technical challenges encountered:

“From my experience, there was one example of a juvenile who was printed at 12 and then again at 16. The system’s search algorithm could not match his prints due to the difference in hand sizes. As such, he looked new to the system. This brings into question the value of taking prints of younger children as they may not be recognised. If the unique reference number is known the two sets of prints can be manually matched by the fingerprint examiner.”

Another member of staff added:

(We) “Know the value in general, but not specific to children. They do record how many DNA matched they get but this is not broken down. Furthermore, just because there is a match, it does not mean that the case is solved. Value would therefore be on a case by case basis.”

Enhanced training

During discussions it was evident that officers and staff principally relied on ‘on the job’ training for the capturing of biometric data in a custody setting. There were examples of short training sessions being run by suppliers, however there was no evidence of any formalised training programmes noted.

When asked if specific training was provided for the acquisition of biometrics from children, an officer said:

“There has been no specific training on taking biometrics from children, but the general ambition is to not have children in custody. There has not been much training on taking biometrics. LiveScan have however visited the station and gave a ten min session on taking fingerprints.”

We understand that only officers and staff who have been trained in the use of the UK Fingerprint Database (IDENT1) are authorised to take fingerprints using the optical scanner. Manual fingerprints using traditional ink and paper may be taken by any officer or member of custody staff with relevant training.

The findings point out that opportunity exists for Police Scotland to develop a national training package for custody officers and staff that provides guidance on when and how biometric data should be captured from children. For example, the training could focus on, trauma informed approaches to biometric data acquisition, and on the proportionality of biometric data acquisition in different circumstances. Additionally, opportunity should be concurrently taken to reinforce operational knowledge of ACRA and the implications it has for the acquisitions of biometric data from children under the age of criminal responsibility.

Improved understanding among officers and staff of how biometric data support the criminal justice system

It was reported by the officers and staff who joined our discussions that they very rarely receive insight or constructive information on how the acquisition of biometric data has been managed. While they strongly expressed the value of capturing and retaining biometric data, they could not point to particular evidence for that. Officers described:

“We only get feedback if something does not match” – “apart from that we don’t really get anything”.

Another CJSD representative expanded on this point, to say:

“Yes feedback is very minimal – we don’t see data and have no idea what happens to the data. We don’t see the full picture of what happens, there are too many grey areas”.

In order to understand the value of biometrics within policing and support CJSD Officers and staff, it might be helpful for a briefing on how biometric data supports the CJSD in order to communicate the importance of their job role. Feedback on the quality of the samples or biometric data was considered to be potentially a valuable development opportunity:

“We don’t have an insight into the understanding behind decision making: ‘are we bogging down the system with unnecessary data?’” [...] ‘is it useful?’”

Another staff member went on to say:

“It would be good if we got a flow chart with guidance, there doesn’t seem to be a national standard. What [data] was useful should be communicated so we know what we are doing is right, more transparency and information would be useful.”

One Sergeant explained that once biometric data are captured on databases, it is no longer their responsibility.

The findings highlight that there is an opportunity to providing CJSD Officers and staff with information on the role that biometrics play in the wider criminal justice system, including feedback on the role acquired data have played.

Clear information on how biometrics are taken and used from the perspective of children and appropriate adults

Several examples were provided of officers and staff taking time to explain to children why their biometric data was being taken and what it will be used for. However, it was noted that the approach taken relied considerably on the professional and personal experience of the custody staff member.

The findings indicate that it would be useful to give further consideration to developing a standard, easy read information sheet or visual aid which can be provided to children that outlines why their biometric data are being taken and how the data will be used. Several officers did however note that speaking to a child rather than providing a leaflet or information sheet is often the best way to keep a child or young person calm and informed. It is crucial that information is available, clear, and consistent across Scotland regarding the acquisition and retention of biometric data.

During one discussion, an officer suggested that on arrival to custody there should be:

“an easily explainable version for children like the rights document”.⁴¹

Complaints procedure

During discussions CJSD officers and staff were asked how they would support a child or appropriate adult in the circumstance that they wanted to raise a complaint about the acquisition of biometric data. A variety of answers were provided to this line of enquiry, with the majority of officers and staff suggesting that such a request would be escalated to the custody inspector.

It was apparent that few CJSD officers and staff were aware of the Scottish Biometrics Commissioner’s Code of Practice and the ability for members of the public to raise complaints with the Commissioner should they have concerns that activity may be non-compliant with the Code of Practice.

In contrast, all staff interviewed from SPA Forensic Services and Police Scotland’s Data Chief Office interviewed were familiar with the SBC role and the Code of Practice. In fact, the interviewees indicated:

“one recommendation from our internal audit was to include reference to the SBC Code of Practice in SOPs, to increase awareness and permanent presence of SBC.”

The findings suggest that there is an opportunity to increase awareness of CJSD officers and staff in relation to the role of the SBC and the Code of Practice. Importantly, this awareness raising should ensure that officers and staff understand that any member of the public whose biometric data is held by Police Scotland can raise a complaint with the Scottish Biometrics Commissioner if they have concerns that activity is not compliant with the Code of Practice following the date of its adoption.⁴²

This includes children who are subject to biometric acquisition in a custody setting (and their appropriate adult) are made aware of the Scottish Biometrics Commissioner complaints procedure. Consideration should be given to Police Scotland and the Scottish Biometrics Commissioner working in partnership to develop an easy to read version of the Code of Practice. A copy of the SBC complaints process, which outlines the steps an individual should take in the circumstance that they wish to raise a complaint, could also be provided to the children who are subject to biometric acquisition.

⁴¹ This is referring to the letter for people held in police custody in Scotland, which sets out their rights in straightforward language.

⁴² The Code of Practice came to effect on the 16 November 2022.

Enhanced public understanding and transparency

During discussions with SPA Forensic Services and PS Chief Data Office, they were asked about the statistics that are published in relation to children's biometrics capture, retention and deletion. A variety of answers were provided to this line of enquiry, with the majority of officers and staff suggesting that greater transparency could be helpful to increase public trust and understanding of this area within policing. Interviewees also mentioned that data should be provided within a specific context of what they mean for policing.

We were informed that SPA Forensic Services do not collate statistics in relation to biometric data of children.⁴³ A SPA Forensic Services interviewee interviewed told us:

“Don't think this data is routinely published. They are sometimes asked to produce this information for the Senior Management Team to maybe share with SPA board, which is the only route that they think that this would be publicly shared. This would just be a specific number of samples, no further breakdown of data”.

An interviewee added that:

“Criminal justice data is broken down by age every month, though there is nothing in terms of prints or images... It will show transparency to publish it.”

b. Children and young people's views

This section outlines the methodology used to gather children and young people's views. The key findings are split into three sections: when should biometric data be collected; how should this be collected; how long should this be retained for. Findings are then discussed and conclusions drawn.⁴⁴

Methodology

Participants were recruited by purposive sampling, with researchers contacting existing groups of children and young people via CYCJ's professional network of practitioners and children's organisations. Group leads would then discuss and gauge interest in the project amongst the children and young people they were working with. Where interest was expressed, researchers then sought informed consent from each participant. Where participants expressed that they would prefer to engage via one-to-one interviews, this was accommodated.

Three focus groups and two semi-structured interviews were conducted with a total of 16 care and justice experienced participants. Ages of participants ranged from 11-25 years, with only one participant over 18 and the mean age of 14 years. The focus groups were structured around a storyboard activity that participants completed together. For the semi-structured interviews, questions were drawn from those in the storyboard. Both interviews and two groups consented for their session to be audio-recorded – recordings were then transcribed, removing names and identifiers. For the third group, consent was not given and researchers instead took notes throughout the session. All data was coded and analysed through Nvivo using an inductive, thematic approach.⁴⁵

⁴³ It should be noticed that SPA collate and publish data on children's DNA statistics within the Scottish DNA Database.

⁴⁴ The full CYCJ report will be published in or website simultaneously to this report.

⁴⁵ Braun, V. & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3, 77-101.

Findings

1. Why and when should police take biometric data?

Across the groups and participants that we spoke to, there was agreement that in some situations police might need to collect biometric data from children and young people. The primary situation in which participants felt this was acceptable was when police had existing evidence from a crime scene (e.g. fingerprints or DNA samples) and sought to match these with a suspect's biometrics. One group also discussed that it might be useful for the police to collect biometric data from children and young people who have been missing, to help them locate the child or young person if they go missing again. Interestingly, participants did not express that biometric data should be collected as a matter of course when a child or young person has been arrested, or for the purposes of expanding police databases. Instead, there was a real sense that this data should only be collected when necessary for investigations, and that police needed to have existing evidence to justify why the biometric data needed to be collected:

"I don't really think they should be able to take it unless they have a solid reason [...] say they had an abuse scene or something where there was blood." (Interview Participant 1)

One of the groups we spoke to suggested that this was not currently the case, that police can "pick anyone off the street and bring them in" (Focus Group 1), collecting their biometrics in the process. This, they stressed, was unfair and unjustified – adding that police should only be able to collect biometrics when they have evidence that links a child or young person to an offence. Participants cited three key, interrelated factors that they felt should influence decisions over proportionate data collection:

- **Offence type and seriousness:** This was the most prominently cited factor. Collecting biometric data was seen as more justifiable when someone had been suspected of more serious offences. Lower-level offences that did not involve interpersonal harm were not seen as justifying biometric data collection. This again highlights the significance that participants placed on 'evidence matching' as the most important, or only, reason why police should take biometrics from children.
- **Age:** The age of the person was also an important factor in determining whether biometric data collection was justifiable and proportionate. Two groups specified that the police shouldn't take biometrics from anyone younger than 12, with one group feeling like this should be for no one younger than 14. This was largely explained by acknowledging that younger children "don't know what they're doing" (Focus Group 2) and are less likely to fully comprehend the consequences of their actions compared to older young people and adults.
- **Biometric data type:** Another important factor to determine proportionality was the type of data police were seeking to collect. Several participants stressed that police should only take the types of biometric data they need to match with the evidence they already have, rather than taking any/all types as a matter of course. Linked to this, several participants discussed that some types of data would feel more invasive than others and would therefore require a higher level of justification for police to collect, with fingerprints and DNA samples seen to be particularly sensitive.

2. How should biometric data be collected?

Several participants suggested that biometric data collection can be a particularly negative experience, often occurring at a point of acute stress as a person is arrested and/or taken into a police station. Participants used words like 'worried', 'alone', 'scared', 'angry' and 'uncomfortable' to describe how this can feel. This could be especially difficult for children and young people, who likely have less understanding of what is happening to them and why:

“children and young people may not necessarily, or won't, have the knowledge that adults, mature adults have of the process”.

(Interview Participant 2)

Participants acknowledged that, alongside age, factors like mental health and neurodivergence could impact on a person's ability to cope with the process. Participants provided limited detail on the issues they perceived, or had experienced, with the police's current biometric data collection process. Of those that did discuss this, it was expressed that police can be quite forceful, often rushing the process without explaining why they are collecting the data, what is going to happen to it or what their rights are. Participants did, however, provide several detailed suggestions on how to make sure this process was fair and rights respecting for children and young people:

- **Ensure the child or young person understands the process.** This was one of the most prominent suggestions raised and links to the concern that police often do not explain what is going to happen in a clear and accessible way. To support the child or young person's understanding and make them feel more comfortable, participants suggested officers go through the process more slowly and informally, and also offer them the opportunity to have a trusted adult with them throughout.
- **Ensure workers/officers are trained and experienced in working with children.** This was considered critical and relates to both the person collecting the biometrics and the person explaining the process to the child or young person (if this is not the same person). There was a sense that processes can be rushed when officers do not understand the different needs of children, and that formal processes and language can heighten children and young people's sense of isolation.
- **Undertake data collection in a child-friendly environment.** The vast majority of participants expressed that children and young people's biometric data should be taken in a different environment from adults. Participants suggested this could be in a social work office or healthcare facility, or if this is not practical then in a child-friendly room within a police station.

3. How long should police store biometric data for?

There was considerable concern over this due to the several potential negative implications for children and young people as they transition into adulthood. Participants expressed that having your biometrics stored on a police database could be experienced as stigmatising, with a lot of this discussion connected to wider concerns around children and young people receiving criminal records. This stigmatisation could manifest either in other people's treatment of children and young people, and/or how children and young people saw themselves. Two participants raised that biometric storage could lead to children and young people being targeted by police, and raised concerns that their biometrics could be falsely matched to future crime scenes so police can "accuse them of doing it [a crime]" (Focus group 1). Other participants suggested that having your biometrics stored could lead legal practitioners to assume their guilt should they come into contact with justice systems again, and that this in turn might lead to the child or young person receiving a harsher punishment. For these reasons, participants argued that biometric data storage may lead children, young people, and adults to feel constantly on edge, with a sense that they are always a:

"hair length away from going to prison because your data is there on the network"
(Interview Participant 1).

Dealing with this anxiety in the everyday was acknowledged as being a painful experience, although there were mixed perspectives on whether this would then work to deter children and young people from coming into contact with the law again – with some thinking it might, and others feeling that those who are going to continue offending will do so anyway. Several participants raised that knowing your data was stored on a police database might reduce self-esteem, and change how they see themselves:

"I would say generally it wouldn't be positive, for the child or young person to grow up into an adult and find out that biometric data is being stored about them by whoever, then I would say it would have a negative effect on them. It wouldn't be good for their self-confidence to know that they were being judged in a certain way, so yeah negative impact".

(Interview Participant 2)

For these reasons, participants emphasised that any such storage must be limited and proportionate. For those who are no longer suspected or convicted, participants were clear that any biometric data that had been collected should be deleted. For those who had been convicted, most groups still argued that storage should not be indefinite, and instead proposed that each case should be subject to continuous, individualised decision making informed by the specifics of the case and the assessed risk of future harm.

Discussion and Conclusion

During our fieldwork, it became clear that the children and young people we met with knew relatively little about the processes for biometric data acquisition, retention, use, and destruction. This was explicitly raised by one of our participants, who argued that efforts should be made to address this by raising awareness amongst children and young people of the proper processes, in order that they know their rights and how to use them. For this to be effective, outputs need to be child-friendly and accessible, accounting for the fact that much of the terminology surrounding these issues can be complex - during our fieldwork, we found the term 'biometric data' itself was often met with confusion. Coproducing any future materials with children and young people who have experience of biometric data collection would help address some of these issues.

Participants expressed that whilst they understood that police will sometimes need to capture and retain children and young people's biometric data, these processes can have serious implications for children and young people. These can occur both in the moment of having data collected, with participants highlighting how this can be experienced as scary and intimidating, and also in the long-term, with the potential for biometric retention to be stigmatising and anxiety-inducing. Because of these implications, participants stressed that biometric data should only be collected when necessary, proportionate and justifiable based on an individualised, case-by-case assessment – they understood these processes to have serious implications for children and young people.

Participants discussed various factors they felt should influence when police should capture and retain biometrics. Age came out as an important factor at every stage of these considerations. In discussing whether age should be considered in decisions about the continued retention of biometric data, participants often linked this with wider discussion around criminal records to stress that being on police databases can have particularly adverse consequences for children and young people, where they may struggle to transition into adulthood and away from offending. Further, there was a perception that the process itself of having biometrics collected can be more difficult for children, especially where police have not explained processes to them and when other needs have been not being identified. For all of these reasons, it was largely felt that processes for children and young people should be different. Despite this, though, most participants expressed that with the exception of very young children, police also need to consider other factors when deciding whether to collect and retain biometrics, including the seriousness of the offence and the assessed risk of future harm. Only then, after taking all of these factors into consideration, was it felt that police should have the power to collect and continue to retain the biometric data of children.

c. Data return, analysis, and constraints

In January 2023, and by prior arrangement, Police Scotland provided the Commissioner with a data return showing the total volumes of custody episodes recorded in Scotland during the calendar year 2022, and related data on biometric data volumes captured from children. The key facts drawn from this data return are summarised for the convenience of readers in the graphic near the start of this report to the Scottish Parliament.

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

Those caveats aside, the Police Scotland data return indicated that there were 98,295 custody episodes in Scotland during the calendar year 2022, and that from this 4,150 of those episodes (4.22%) related to children aged 17 years or under. From these 4,150 episodes, DNA was taken on 3,091 instances. No biometric data was taken from any child below the age of criminal responsibility.

Many of these samples are of course not retained once a case has been disposed. Accordingly, there were 1,434 DNA samples taken from children during the calendar year, and still retained at the point of the data return in early January 2023. This was 1,234 samples relating to males and 188 samples relating to females. The breakdown by age is illustrated by the following table:

Date Taken 2022 (Still retained)	Male	Female
Aged < 12	0	0
Aged 12	3	0
Aged 13	17	4
Aged 14	62	5
Aged 15	154	13
Aged 16	439	72
Aged 17	571	94

Table No 1: Children’s DNA acquired during 2022 and still retained in January 2023 by age at the point of capture and gender

More generally, the Parliament should be aware that Police Scotland are data rich but information poor when it comes to understanding the utility of biometrics in the criminal justice system. For example, Police Scotland has no automated means of knowing how many biometric samples taken from children in 2022 were then matched to an existing or subsequent crime scene sample. The paucity of management information on biometric data mirrors the position in the rest of UK policing where data is mostly only published at a macro level, for example total number of records held or total number of crime scene matches.⁴⁶

Accordingly, there are obvious opportunities for Police Scotland to take steps to improve the collection of management information around biometric data to better inform strategic decision-making. Improving the granularity of such data will also improve the ability of Police Scotland to respond to Freedom of Information (FOI) requests, as well as having the ability to place more information in the public domain about the ways in which biometric data and technologies keep citizens safe.

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

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

I also support the proposition that 16 and 17 year olds should be dealt by, except for the most serious offences, by the Children's Hearings system⁴⁷ and come out of the adult system. This is in line with Human Rights Standards, including the UNCRC (Scotland) Incorporation Bill, UNCRC General Comments⁴⁸ and the Children (Care and Justice) (Scotland) Bill currently at the Scottish Parliament, which increases the maximum age of referral to the Principal Reporter.

⁴⁶ See for example the [UK Forensic Databases Annual Report 2020 to 2021](#)

⁴⁷ Children's Hearings (Scotland) Act 2011.

⁴⁸ The UN Committee on the Rights of the Child in 2016 recommended that the UK needed to do more to prevent children being drawn into the adult justice system.



**Scottish Biometrics
Commissioner**

Coimiseanair
Biometrics na h-Alba

**Safeguarding
our biometric future**

Scottish Biometrics Commissioner
& Scottish Police Authority



SCOTTISH POLICE
AUTHORITY
ÙGH DARRAS POILIS NA H-ALBA



Joint Assurance Review

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

Safeguarding our biometric future



Scottish Biometrics
Commissioner
Coimiseanair
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www.biometricscommissioner.scot

Key Facts

98,295
custody episodes

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

1,880

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

1.9%

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

1,211
fingerprints taken

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

1.23%
of all custody episodes

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

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

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

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

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

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

Key Findings

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

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

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

Summary of Recommendations

Recommendation 1

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

Recommendation No 2

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

Recommendation No 3

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

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



Introduction to our assurance review

Scottish Biometrics Commissioner Act 2020

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

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

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

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

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

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

Meaning of biometric data

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

'In this Act, "biometric data" means information about an individual's physical, biological, physiological, or behavioural characteristics which is capable of being used, on its own or in combination with other information (whether or not biometric data), to establish the identity of an individual, and may include:

- *Physical data comprising or derived from a print or impression of or taken from an individual's body*
- *A photograph or other recording of an individual's body or any part of an individual's body*
- *Samples of or taken from any part of an individual's body from which information can be derived, and*
- *Information derived from such samples³*

Exercising our general function

In exercising our general function as previously described, the Commissioner is to keep under review the law, policy and practice relating to the acquisition, retention, use and destruction of biometric data by or on behalf of Police Scotland, the Scottish Police Authority (SPA) and the Police Investigations and Review Commissioner (PIRC).

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

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

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

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

About the Scottish Police Authority

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

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

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

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

Meaning of Vulnerable Persons

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

The regulations state this support is to:

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

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

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

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

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

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

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

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

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

Appropriate Adult services during police investigations

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

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

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

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

The Criminal Procedure (Scotland) Act 1995

The [Criminal Procedure Scotland Act 1995](#), as amended, is the primary legislation in Scotland which allows the police to capture fingerprints, photographs and DNA from people who have been arrested to verify and fix their identity, albeit photographs are not explicitly referenced in the Act. The number of people arrested by the police in Scotland has declined consistently over the past three decades in line with falling levels of crime in Scotland.⁵

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

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

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

Guide to further reading on biometric data

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

Period and data types covered by our review

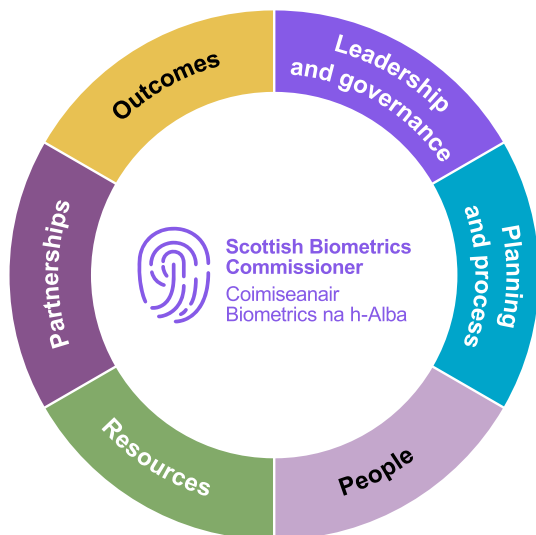
For the purposes of this review, we have examined the arrangements for the acquisition of photographs, fingerprints and DNA samples taken from vulnerable persons arrested by the police in Scotland and who have been recorded on the Police Scotland custody system vulnerability assessment page (AA required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

Assurance review methodology

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

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

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



Our National Assessment Framework considers six overarching themes, namely:

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

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

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

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



Dr Brian Plastow
Scottish Biometrics Commissioner
March 2023



Findings from our assurance review

Police Scotland policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scottish Biometrics Commissioner
Code of Practice Principle 9

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

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

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

Recommendation 1

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

Recommendation 2

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

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

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

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

Karyn McCluskey

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

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

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

Data return, analysis, and constraints

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 3

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

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

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



Leadership and governance

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

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

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

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

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

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

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

Police Scotland practice - interviews with police officers and staff

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

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

Interviews with Appropriate Adult providers

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

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

Independent Custody Visitors (ICVs)

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

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

Compliance with the Code of Practice

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

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

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



**Scottish Biometrics
Commissioner**

Coimiseanair
Biometrics na h-Alba

**Safeguarding
our biometric future**