



Meeting	Policing Performance Committee
Date	6 December 2023
Location	Video Conference
Title of Paper	Scottish Biometrics Commissioner’s (SBC) Thematic Review of Children & Thematic Review of Vulnerable Persons Recommendations - Improvement Plan/Progress Report
Presented By	ACC Bex Smith
Recommendation to Members	For Discussion
Appendix Attached	Yes Appendix A – New Biometrics Acquisition Policy for Children Appendix B – Summary of Review Recommendations / Next Steps

PURPOSE

The purpose of this paper is to provide the Committee with an update on the progress of recommendations from the SBC’s Thematic Review of Children and the Thematic Review of Vulnerable Persons. This is the second progress report presented to committee on this issue.

Members are invited to discuss the contents of this paper.

1. PROGRESS IN THE REPORTING PERIOD

- 1.1 As reported to committee in June 2023, the PS response to the SBC's Thematic Review is delivered by DCS Suzanne Chow, Local Crime, overseen by ACC Bex Smith as Biometrics Data & Asset Owner for PS. There were 3 identical recommendations from the each of the reviews and a 4th from the Review of Children.
- 1.2 Given the increased demand in the biometric data and technology space, together with the additional scrutiny provided by the Commissioner's office and statutory Code, approval has been given for 2 new biometrics posts within Local Crime. Until these roles are appointed, support is provided from a single source, namely a Data Governance Manager within the Chief Data Office. Capacity is currently prioritised for the SBC's Code of Practice (COP) Compliance Self-Assessment and the SBC's Thematic Review of Images, both of which are running simultaneously.

Despite the resource challenges outlined above, we are pleased to report the following progress in relation to each of the recommendations:

1.3 Introduce a Biometrics Acquisition Policy for Children (by 31/01/24)

The new policy in relation to the taking of biometrics from children has been drafted and now approved by ACC Smith. The policy change will be reflected on the PS Biometrics Acquisition SOP as soon as reasonably possible, and the relevant communications disseminated to ensure early compliance. Please see Appendix A for full details of the new policy.

1.4 Improved Published Management Information (by 31/01/24)

The preferred content and frequency for improved published biometric management information has been agreed with the SBC. PS and SPA FS aim to provide updated information every 6 months as of 2024. Publication will include arrestee DNA, Fingerprint and Image statistical data, volunteer DNA data and, as far as possible, local, UK and national biometric match data to help promote the value of biometrics to policing and "keeping people safe". Engagement and analysis will continue to determine what data can be extracted, what is already recorded, where data gaps exist, etc., across both the PS and SPA FS data landscapes.

- 1.5 Improved Information for Donors re Biometrics (by 31/01/24)
Improved Information for Donors re SBC & COP (by 31/01/24)

ACC Smith has approved the SLWG's recommendation as best way forward via the production of a dedicated biometrics leaflet to be provided to subjects from whom biometrics will be taken. This will require a considerable undertaking to ensure multiple versions are available for all audiences. Further work to drive this recommendation forward will be prioritised upon completion of the new SBC audits referred to at 1.2 above.

2. NEXT STEPS

The next steps are outlined in Appendix B below and are on target to achieve the estimated date.

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 are no legal implications in this report, however delivery of continued improvements will support compliance with the statutory SBC Biometrics Code of Practice.

6. REPUTATIONAL IMPLICATIONS

- 6.1 There are no reputational implications in this report, however continued collaboration with the SBC will mitigate reputational damage.

7. SOCIAL IMPLICATIONS

- 7.1 There are no social implications in this report.

8. COMMUNITY IMPACT

8.1 The improvements delivered by these recommendations will undoubtedly improve the service to the public and therefore the communities Police Scotland serves.

9. EQUALITIES IMPLICATIONS

9.1 An updated EqHRIA in relation to PS Biometrics Acquisition is scheduled for review as part of the annual PS Biometrics SOP review. The Equality and Diversity Unit will be included as part of the consultation phase for each.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to discuss the contents of this paper.

Appendix A – New Biometrics Acquisition Policy for Children

Adults	
1.1	<p>Subject to the content detailed below, Criminal Justice (CJ) DNA samples (DNA1 kit / green in colour), Fingerprints and an Image should be taken from any adult who has been arrested for a matter which may lead to (i.e., live investigation on-going) or has already resulted in a report for the consideration of:</p> <ul style="list-style-type: none"> • The Procurator Fiscal • Conclusion by the issue of a Police Fixed Penalty Notice (FPN). <p>CJ DNA samples, Fingerprints and Images should be captured for each individual case, even if detained as a single arrest, (i.e., arrested for 3 cases at once = 3 x CJ DNA samples, 3 x Fingerprints and 3 x Images taken).</p>
1.2	<p>It is not necessary to take CJ DNA samples, Fingerprints or an Image from an individual who is eliminated from any further enquiry or from whom a warning is given unless required for ID or evidential purposes.</p>
1.3	<p>It is not necessary to take CJ DNA samples from an individual whose CHS record indicates they are "DNA confirmed" (DNAC). Please be aware, any other marker means a DNA profile for this individual is only temporarily held and may subsequently be deleted.</p>
1.4	<p>It is imperative relevant samples are taken to ensure evidence is available for COPFS at a later stage. Evidential DNA samples (DNA2 kit / white in colour) should be taken in addition to CJ DNA samples where relevant.</p>

Children (Over the Age of Criminal Responsibility)	
2.1	<p>Subject to the content detailed below, Criminal Justice (CJ) DNA samples (DNA1 kit / green in colour), Fingerprints and an Image should be taken from a child, over the age of criminal responsibility in Scotland, who has been arrested for a sexual or serious violence matter which may lead to (i.e., live investigation on-going) or has already resulted in a report for the consideration of:</p> <ul style="list-style-type: none"> • A Children’s Hearing • The Procurator Fiscal <p>The list of "relevant" offences is as per S19(A)(6) of Criminal Procedure (Scotland) Act 1995. (Criminal Procedure (Scotland) Act 1995 (legislation.gov.uk))</p> <p>CJ DNA samples, Fingerprints and Images should be captured for each individual case, even if detained as a single arrest, (i.e., arrested for 3 cases at once = 3 x CJ DNA samples, 3 x Fingerprints and 3 x Images taken).</p>

OFFICIAL

2.2	<p>For arrests in relation to matters other than those outlined in 2.1, the decision to take biometric samples from a child should be taken by a Custody Supervisor, i.e., an officer of rank no lower than Sergeant, or a CJ PCSO Team Leader.</p> <p>Decisions should be made on a case-by-case basis and ensure that it is <i>Proportionate</i> and <i>Necessary</i> to take biometric samples from the Child, for a legitimate policing purpose. Due regard should be given to the following key considerations when making this decision:</p> <ul style="list-style-type: none">• Is it the Child's first time in custody?• Are the Child's biometric sample data already held on police systems?• Is the Child a repeat offender?• Will the Child understand the reasons given to them for acquiring Biometric samples?• Will the acquisition of the samples adversely impact on the wellbeing of the Child?
2.3	<p>It is not necessary to take CJ DNA samples, Fingerprints or an Image from an individual who is eliminated from any further enquiry or from whom a warning is given unless required for ID or eventual purposes.</p>
2.4	<p>It is not necessary to take CJ DNA samples from an individual whose CHS record indicates they are "DNA confirmed" (DNAC). Please be aware, any other marker means a DNA profile for this individual is only temporarily held and may subsequently be deleted.</p>
2.5	<p>It is imperative relevant samples are taken to ensure evidence is available for COPFS at a later stage. Evidential DNA samples (DNA2 kit / white in colour) should be taken in addition to CJ DNA samples where relevant.</p>

Appendix B – Summary of Review Recommendations / Next Steps

Finding	Summary	Next Steps	Achievable Timescales
1 – Improved information re biometrics, powers, etc.	<p>Recommendation from both reviews</p> <p>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.</p> <p>Such information and how it is presented and delivered should be tailored to the needs of the recipient, for example children or vulnerable people.</p>	<ul style="list-style-type: none"> - Work to drive the leaflet forward will recommence upon completion of the SBC COP Compliance Self-Assessment and Thematic Review of Images currently taking priority. 	31 st January 2024
2 – Improved information re SBC, COP, etc.	<p>Recommendation from both reviews</p> <p>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.</p>	As per Recommendation 1 (joint solution)	31 st January 2024
3 – Acquisition Policy re Children’s Biometrics	<p>Recommendation from both reviews</p> <p>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.</p>	<ul style="list-style-type: none"> - SLWG to be led by PS. - Draft policy available (Sept 2023) - Approved by ACC Smith – Biometrics Data Owner (Oct 2023) - Submit for inclusion on the next version of the Biometrics SOP - Arrange for org-wide comms to ensure application of new policy ASAP. 	31 st January 2024

<p>4 – Improved Management Information</p>	<p>Recommendation from review of Children (should have been a joint Recommendation for PS & SPA Forensic Services as Joint-Data Controllers for DNA & FPs)</p> <p>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).</p>	<ul style="list-style-type: none"> - Preferred content, format and frequency of published data agreed with the SBC. - Engagement ongoing to determine what data can be extracted, what is already recorded, where data exists, etc., across PS and SPA FS data landscape. 	<p>31st January 2024</p>
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