House of Commons
Science and Technology Committee

Biometrics strategy and forensic services: Government’s Response to the Committee’s Fifth Report

Eighth Special Report of Session 2017–19

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Science and Technology Committee

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The current staff of the Committee are: Danielle Nash (Clerk), Zoë Grünewald (Second Clerk), Dr Harry Beeson (Committee Specialist), Dr Elizabeth Rough (Committee Specialist), Martin Smith (Committee Specialist), Sonia Draper (Senior Committee Assistant), Julie Storey (Committee Assistant) and Joe Williams (Media Officer).

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Eighth Special Report

On 25 May 2018 the Committee published its Fifth Report of Session 2017-19, Biometrics strategy and forensic services [HC 800]. On 28 September 2018 we received the Government’s Response to the Report, which is appended below.

Government Response

Introduction

1. The Home Office welcomes the House of Commons Science and Technology Select Committee’s report on Biometrics Strategy and Forensic Services.

2. The Government agrees with the Select Committee on the need for a Biometrics Strategy, a review of forensic services and appropriate governance and oversight arrangements for forensics and biometrics.

3. A month after the Select Committee’s report, the Home Office Biometrics Strategy was published. The Strategy addresses most of the related issues in the Select Committee’s report.

4. The Select Committee’s recommendations in relation to forensic services are being addressed through our review of forensic science provision.

5. The Government response to the Select Committee’s conclusions and recommendations is set out below.

6. An update on the Biometrics Strategy and Forensics Review will be provided to the Select Committee by 19 December.

Conclusions and Recommendations

Forensics

Concerns about the sustainability of the forensics market—a problem identified many years ago—have continued, with the collapse of private sector providers in recent months. The overarching focus in the police’s forensics procurement appears to be on low price, and problems of fragmentation of forensics testing remain. The Randox case has highlighted how an unsustainable market has also affected standards in the forensics providers supporting the civil courts. The Government should review the sustainability of the forensics market as part of a wider review of its Forensics Strategy. That should include planning for dealing with providers exiting the market, but also an assessment of the underlying causes of market unsustainability. It should consider afresh whether the fragmentation of forensics testing is a result of the unsustainability of the forensics market or a contributing factor to it, and whether the procurement approaches examined by our predecessor Committee need to change. (Paragraph 12)

7. The Government recognises that current forensic science provision relies on a market running close to capacity with high barriers to entry. In that climate, it is important that
commercial risks are managed and that there is effective demand management, strategic planning and industry engagement. For this reason, the Home Office in collaboration with the National Police Chiefs’ Council (NPCC) and the Transforming Forensics programme is setting up a national, police-led market management and specialist procurement capability, to provide dynamic leadership and market expertise on a national scale.

Accreditation of forensics providers remains vitally important in maintaining the confidence of the courts and the public in the evidence used in the justice system. The Randox case has demonstrated the importance of all forensic providers becoming fully accredited (including to the Regulator’s ‘Codes’) in accordance with the deadlines set by the Regulator. That case also highlighted how standards and accreditation cannot be fully effective unless there is rigorous auditing of compliance. The Randox case, and its links to the earlier Trimega case, also point to a more fundamental disconnect of the forensics standards and regulatory systems between the criminal justice system (which is covered by the Regulator’s remit) and the civil courts system (which is not). (Paragraph 23)

8. We welcome the extensive work that the Regulator has undertaken to document standards and the positive impact she has had on increasing professionalism in the sector. In particular, the Government supports the Regulator’s timetable for police forces and external forensic science providers to achieve accreditation against ISO 17025 for a range of forensic techniques.

The Regulator should work with UKAS to strengthen the auditing of standards compliance, to include validation of test results as well as governance structures and processes; the effectiveness of which would be bolstered by the Regulator being given statutory enforcement powers, which we discuss below. The Ministry of Justice should work with the Home Office and the Forensics Regulator to examine the scope for the Regulator’s remit to be extended to the civil courts forensics system, or for a similar regulator to be established with a similar remit, to bring a comprehensive and enforceable standards system to that sector also. (Paragraph 24)

9. Our understanding is that the Ministry of Justice is currently working with the family procedure rule committee to consider whether changes should be made to court rules on the admissibility of forensic toxicology evidence to limit this to laboratories accredited to relevant ISO standards. More generally, the ministry will continue to consider with the Home Office how existing regulatory safeguards for laboratory testing in the criminal justice system might be extended to other jurisdictions.

We welcome the Government’s commitment to make the Regulator a ‘prescribed person’ under the whistle-blowing legislation. That should happen as soon as her position is put on a statutory footing. (Paragraph 25)

10. We will address this commitment once the Regulator’s position has been put on a statutory footing.

The Forensics Regulator needs statutory powers to allow her to ensure that providers seek accreditation and that standards are delivered. Governments have stated a desire over several years to introduce statutory powers, with varying degrees of enthusiasm, and the Government has now lent support to a Private Members’ Bill. The Government,
having supported the drafting of the current Forensic Science Regulator Bill, should now give it time in its legislative programme in order for it to make progress. It should then ensure rapid implementation following Royal Assent. (Paragraph 28)

11. The Government strongly supports the introduction of the Forensic Science Regulator Bill and its aim to put the Regulator on a statutory footing, which will ensure that the provision of forensic science services across the CJS is subject to an appropriate regime of scientific quality standards. The regulator will also be able to take enforcement action against forensic service providers that are not operating at an appropriate standard.

The Forensics Strategy requires re-evaluation. The weaknesses identified by our predecessor Committee in 2016 remain, and have since been exacerbated by accreditation delays, the Randox case and some forensics companies failing. The work underway under the ‘Transforming Police Forensics’ programme, intended to help shape future forensics services, is still under way two years after the Forensics Strategy was published. The Government should revise, re-issue and consult on a new Forensics Strategy; one that addresses the forensics requirements of both the civil and criminal justice systems. (Paragraph 33)

12. Recognising concerns raised by policing, Criminal Justice System (CJS) partners and the Forensic Science Regulator, notably on the need to improve quality standards in policing, the Minister for Policing & the Fire Service asked the chair of the NPCC, chair of the APCC and the Home Office to take forward a collaborative review of the provision of forensic services.

13. The review is considering the provision of forensic science to criminal investigations in England and Wales, including both ‘in-house’ police and private provision. It covers all forms of forensic science including digital forensics. Early findings are under consideration and stakeholders are being consulted on next steps. The review will be published in due course.

**Biometrics**

The Government’s rationale for the more than four years’ delay in producing a Biometrics Strategy is less than convincing. We agree with the Minister that the Strategy needs to put in place a governance structure that is fit for the future and ‘fixes’ the ethical and legal questions involved, but it is those issues—notably around facial images—that make a Strategy urgently needed. The Government must now produce the Strategy in June, without any further delay. (Paragraph 36)

14. The Home Office Biometrics Strategy\(^1\) was published on 28 June 2018, a month after the Committee’s own report recommending its publication. The Strategy sets out how the Home Office and its partners currently use biometric data, and how we will approach all future developments. The Strategy seeks to establish the overarching framework within which such considerations and decisions will be made. Through implementing the commitments made in the strategy, we aim to increase public confidence in the use of biometric data.

\(^1\) https://www.gov.uk/government/publications/home-office-biometrics-strategy
The result of the 2012 ‘RMC’ case was a ruling that it is unlawful to hold custody images without making a distinction between those who are convicted and those who are not. The Home Office’s response has been to introduce a system for unconvicted individuals to be able to request the deletion of their images, but not an automatic deletion system. The Government’s solution reflects current weaknesses in IT systems and a concern about the potential cost of a manual deletion process that does not depend on external requests. New IT is planned, which might help automate the system in future. The Government’s approach is unacceptable because unconvicted individuals may not know that they can apply for their images to be deleted, and because those whose image has been taken should not have less protection than those whose DNA or fingerprints have been taken. (Paragraph 44)

15. We do not agree that images should necessarily be treated in the same way as DNA and fingerprints—this issue is discussed in the Custody Image Review published in February 2017. However, the Home Office Biometrics Strategy commits us to enable more efficient review and, where appropriate, automatic deletion of custody images by linking them to conviction status. This will be done through the Law Enforcement Data Service which will replace the Police National Computer and Police National Database.

The Government must ensure that its planned IT upgrade under the Home Office Biometrics Programme is delivered without delay, and is used to introduce a fully automatic image deletion system for those who are not convicted. If there is any delay in introducing such a system, the Government should move to introduce a manually-processed comprehensive deletion system as a matter of urgency. The forthcoming Biometrics Strategy must address which of these possible routes will be followed. The Strategy should also set out the Home Office’s assessment of the lawfulness of its deletion-on-application response to the ‘RMC’ case, and the legal advice underpinning that assessment. (Paragraph 45)

16. It is Government policy not to publish advice that is legally privileged. For this reason, we cannot provide the legal advice as requested.

Facial image recognition provides a powerful evolving technology which could significantly help policing. There are serious concerns, however, over its current use, including its reliability and its potential for discriminatory bias. We welcome the Government’s assurances that the technology is only being used at the moment for targeting those on ‘watch lists’ rather than as a blanket approach, and that images collected from public events and the relevant watch lists are being deleted afterwards. (Paragraph 49)

17. We agree that automatic facial recognition (AFR) could significantly help policing. The police trials are an important step in helping demonstrate its utility, and detailed evaluations help to inform thinking. There is always human intervention before a significant decision is made concerning someone identified using automatic facial recognition. It is one tool in the police’s arsenal, and is not therefore used in isolation.

Facial recognition technology should not be generally deployed, beyond the current pilots, until the current concerns over the technology’s effectiveness and potential bias have been fully resolved. The new facial images ‘oversight Board’ that the Minister is planning to set up will need to ensure that that condition is satisfied. But in such an
important area, with public confidence critical, it must be ministers and Parliament
that take the final decision on any wider deployment of the technology. The forthcoming
Biometrics Strategy should include an undertaking that such a decision will not be left
to be “an operational decision for the police”, and provide a Government commitment
to give the House an opportunity to debate and vote on the issue. (Paragraph 50)

18. The new Oversight and Advisory Board met on 25 July and is due to meet again on
24 September. The Board will examine the policies for the retention, deletion and the use
of images; and will inform government’s consideration of any changes to legislation and
regulation that may be required. It will also consider new biometric modalities at an early
stage as they emerge in law enforcement. The Board’s objectives are to maximise public
protection, operational benefit and build public trust.

There are important ethical issues involved in the collection, use and retention of facial
images that have greater salience than for DNA, fingerprints and other biometrics,
not least because facial images can easily be taken and stored without the subject’s
knowledge and because (unlike DNA and fingerprints) facial images databases—
passports, driving licences and custody images—already include 90% of the adult
population. Recent developments in the oversight of biometrics, to include facial
images, will help such issues to be addressed. We welcome the Minister’s decision to
set up a facial images ‘oversight Board’. The forthcoming Biometrics Strategy should
consider the scope for further refinement in the oversight architecture, including
how image databases should be managed and regulated, potentially by a dedicated
‘Regulator’ or by the Biometrics Commissioner with an extended remit. (Paragraph 55)

19. We recognise that special legal provision for law enforcement’s use of sensitive
personal data in the shape of the Law Enforcement Directive demands commensurate
oversight in order to maintain public trust. Therefore, the strategy commits us to work with
stakeholders over the next 12 months to develop options for extending and simplifying
the governance framework.