



House of Commons  
Science and Technology  
Committee

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# The work of the Biometrics Commissioner and the Forensic Science Regulator

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**Nineteenth Report of Session 2017–19**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons  
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## Science and Technology Committee

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## Summary

It is over a year since we published our last Report on biometrics and forensics. We are deeply disappointed by how little has been achieved by the Government since then.

Not only has there been no improvement in the situation of the forensics market—the Forensic Science Regulator has highlighted that the situation has got worse in many respects. This is wholly unacceptable. We remain seriously concerned about the long-term viability of the market for forensic science services and the significant risk that this poses to the effective functioning of a criminal justice system. The Government should work with the Forensic Science Regulator to develop her proposals for a National Forensic Science Capability. This should focus on those forensic disciplines where skills were threatened and/or already insufficient. The National Forensic Science Capability should also ensure that cyber security standards and protection are strictly applied and secure data back-up of information is routinely and securely stored.

In the face of an unstable forensics market which has been on the brink of collapse, and the clear need to uphold quality standards across forensic services, the Regulator—now more than ever—needs statutory powers. The Government professes to “strongly support” the Forensic Science Regulator Bill yet it has not taken any active steps to facilitate its passage through Parliament. Nor are we reassured that it has contingency plans in place to ensure a similar Bill is afforded a legislative slot in the next Parliamentary session. This is unacceptable. The Government has failed to show leadership and pass what is ultimately an uncontroversial piece of legislation but which is vital for the effective administration of justice. The Home Office should apply for a legislative slot for a Forensic Science Regulator Bill in the next Parliamentary Session.

Although the Biometrics Strategy has been published—five years after it was first promised—the Biometrics Commissioner has called it a ‘missed opportunity’. We would argue it is not really a strategy at all, lacking a coherent, forward looking vision and failing to address the legislative vacuum around new biometrics. The UK Government should learn from the Scottish Government’s approach to biometrics and commission an independent review of options for the use and retention of biometric data that is not currently covered by the Protection of Freedoms Act 2012. The results of the review should be published along with a Government Response, and a public consultation on the Government’s proposed way forward should follow. This process should culminate in legislation being brought forward that seeks to govern current and future biometric technologies.

It is now seven years since the 2012 High Court ruled that the indefinite retention of innocent people’s custody images was unlawful and yet the practice is continuing. A system was meant to have been put in place where any custody images were kept for six years and then reviewed. Custody images of unconvicted individuals at that point should be weeded and deleted. It is unclear whether police forces are unaware of the requirement to review custody images every six years, or if they are simply ‘struggling to comply’. What is clear, however, is that they have not been afforded any earmarked resources to assist with the manual review and weeding process. Police forces should give higher priority in the allocation of their resources to ensure a comprehensive

manual deletion process of custody images in compliance with national guidance. In turn, the Government should strengthen the requirement for such a manual system to delete custody images and introduce clearer and stronger guidance on the process.

The reason it is so important that the images of unconvicted people are not kept on the police database is because these images can form the basis of 'watchlists' for automatic facial recognition technology when used by police forces in public spaces. We reiterate our recommendation from our 2018 Report that automatic facial recognition should not be deployed until concerns over the technology's effectiveness and potential bias have been fully resolved. We call on the Government to issue a moratorium on the current use of facial recognition technology and no further trials should take place until a legislative framework has been introduced and guidance on trial protocols, and an oversight and evaluation system, has been established.

# 1 Introduction

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1. Forensic science and biometrics have been reoccurring issues of concern for successive Science and Technology Committees. The Committee has published Reports on forensic science in 2011,<sup>1</sup> 2013,<sup>2</sup> 2016<sup>3</sup> and 2018,<sup>4</sup> and covered biometrics in 2015<sup>5</sup> and 2018.<sup>6</sup>
2. We held a one-off evidence session on biometrics and forensics in March 2019. This session was intended as an opportunity to follow-up on the Committee’s recommendations, made in its 2018 Report.<sup>7</sup>
3. No terms of reference were issued for the inquiry but interested stakeholders were invited to send written submissions on:
  - a) what progress had been made towards addressing the recommendations made in the Committee’s Report;
  - b) the Government’s ‘Biometrics Strategy’ and;
  - c) the Forensic Science Regulator Bill.
4. A total of 13 written submissions were received. A single evidence session was held on Tuesday 19 March, with the Biometrics Commissioner, the Forensic Science Regulator, the Minister for Countering Extremism (Baroness Williams), and Home Office officials.<sup>8</sup>
5. The evidence session highlighted how:
  - a) very limited progress had been made in addressing the Committee’s recommendations;
  - b) the situation had, in many respects, worsened in the intervening 10 months most notably, the Forensic Science Regulator told the Committee how “we have come perilously close—within weeks—of a market collapse, with potentially more than one organisation in [...] severe financial difficulties”;<sup>9</sup> and
  - c) addressing the problems raised by the Committee did not appear to be a Home Office/Government priority.
6. We recognise that the House of Lords Science and Technology Committee published a report in May 2019 on Forensic Science and the criminal justice system.<sup>10</sup> This was based on a detailed examination of the sector over the course of nearly a year (beginning in July

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1 Science and Technology Committee, [The Forensic Science Service](#), Seventh Report, Session 2010–12, HC 855

2 Science and Technology Committee, [Forensic science](#), Second Report, Session 2013–14, HC 610

3 Science and Technology Committee, [Forensic Science Strategy](#), Fourth Report of Session 2016–17, HC 501

4 Science and Technology Committee, [Biometrics strategy and forensic services](#), Fifth Report of Session 2017–19, HC 800

5 Science and Technology Committee, [Current and future uses of biometric data and technologies](#), Sixth Report of Session 2014–15, HC 734

6 Science and Technology Committee, [Biometrics strategy and forensic services](#), Fifth Report of Session 2017–19, HC 800

7 Science and Technology Committee, [Biometrics strategy and forensic services](#), Fifth Report of Session 2017–19, HC 800

8 Oral evidence: [Work of the Biometrics Commissioner and the Forensic Science Regulator](#), HC 1970

9 [Q34](#)

10 House of Lords Science and Technology Committee, 3rd Report of Session 2017–19: [Forensic science and the criminal justice system: a blueprint for Change](#) HL Paper 333 May 2019

2018). Our Report is not attempting to replicate the breadth and depth of work undertaken by our colleagues in the Lords. Instead it is focused on deficiencies in the governance of forensics and biometrics as this is where several problems appear to have their roots.

7. Arguably we are seeing serious governance failings that are stemming from the absence of a comprehensive legislative framework covering forensics and biometrics. Therefore in this Report:

- In Chapter 2 we look at the stability of the forensics market and the need for the Regulator to be given statutory powers; and
- In Chapter 3 we consider the Biometrics strategy, the use of live facial recognition and the retention of custody images.

## 2 Forensics

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### Market Stability

8. In our 2018 Report, we concluded that “concerns about the sustainability of the forensics market—a problem identified many years ago—have continued”.<sup>11</sup> We therefore called on the Government to undertake a “review [of] the sustainability of the forensics market as part of a wider review of its Forensics Strategy”. The Forensic Science Regulator’s (FSR) evidence to us in March 2019 indicated that matters had not improved and that the situation was “worse” than nine years ago when we first looked into the Forensic Science Service:

The stability is worse [...] There is an issue with loss of skills. There is an issue with it being very difficult to give the new recruits coming into forensic science sufficient breadth of training that they will make the really skilled forensic leaders of the future. All of that is worse. The prices have gone down. As I said, I think that that went too far. That is how we ended up in a situation of instability. I would say that the research and development landscape is less good than it was before.<sup>12</sup>

9. A Home Office review into forensics provision was carried out last year<sup>13</sup> and an implementation plan was published in April 2019, after we took evidence for this inquiry.<sup>14</sup> Dr Tully emphasised that the “recommendations” (as set out in the draft document she had seen at the time of giving evidence) were not “sufficient to deal with the problems that have been identified”. More specifically she noted that:

the review has identified all sorts of problems with stability of the provision of forensic science, but it has not changed the mechanism by which funding is assigned to forensic science or the mechanism by which decisions are made about where and how funding goes. Again, it is a local decision, down to chief constables and police and crime commissioners. None of that has been changed. In the last few months, we have come perilously close—within weeks—of a market collapse, with potentially more than one organisation in such severe financial difficulties.<sup>15</sup>

The implementation plan highlighted four recommendations that had arisen from the review and set out 13 actions, many of which did not appear to address some of the stability challenges facing the forensics sector:

- “Ensure police forces and their contracted providers adhere to the quality standards set by the Regulator”;
- “Ensure funding and commercial models are sustainable and encourage investment”;

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11 Science and Technology Committee, [Biometrics strategy and forensic services](#), Fifth Report of Session 2017–19, HC 800

12 [Q40](#)

13 Home Office, Forensics Review: [Review of the provision of forensic science to the criminal justice system in England and Wales](#) July 2018

14 Home Office, [Implementation Plan For the joint review of forensics provision](#) (2018), April 2019

15 [Q34](#)

- “Ensure policing and the [criminal justice system] benefits from advances in science and technology by developing and implementing new forensic techniques more coherently”; and
- “Ensure practitioners and policy makers have stronger evidence and data to support decision making and facilitate more effective working with partners”.<sup>16</sup>

10. Dr Tully explained that police forces were having to reduce their spending on forensics and gave the example of how one Chief Constable had:

with a heavy heart, [said] he had reduced his forensic spending by 50% in recent years. He said that was much more than he had cut any other area of spending [...] if we have forensic science spending as one of x number of other priorities it is inevitable that funding will decrease.<sup>17</sup>

Dr Tully was also clear that unless the financial situation was stabilised, forensic science services could be back in the same place as they were a few months ago, namely approaching market collapse:

we could have ended up with one or more companies going into administration and all that capacity being lost [...]it could have been one company or two companies, or it could have been two companies, plus a whole discipline from another; it could have been in that range.<sup>18</sup>

11. The Minister seemed less concerned than Dr Tully on the stability of the forensics market, noting that a mix of providers was a positive feature of the forensic market:

within market provision there are forensic service providers other than some of the ones that have struggled. I think it enhances my view that we need a mix of different providers,<sup>19</sup>

There is no harm but every benefit in having a mix of different providers available to the market.<sup>20</sup>

12. Dr Tully suggested that a way forward was to develop a national forensic science capability for certain forensic services.<sup>21</sup> Dr Tully’s evidence to the Lords Science and Technology Committee stated the following:

For all disciplines where skills are threatened and/or already insufficient, concentration of the expertise in a single national provider may be the optimal or indeed the only way to safeguard future provision and attract highly experienced scientists who have moved away from front-line provision of scientific services back to the profession.<sup>22</sup>

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16 Home Office, [Implementation Plan For the joint review of forensics provision](#) (2018), April 2019

17 [Q44](#)

18 [Qq47–48](#)

19 [Q124](#)

20 [Q131](#)

21 [Qq37–39](#)

22 Dr Gillian Tully – Supplementary written evidence ([FRS0107](#))

13. The fragility of the current forensics market were starkly reinforced this June with the cyber attack on Eurofins Forensics Services (EFS). Although the National Police Chiefs' Council (NPCC) suspended use of EFS immediately and isolated police networks with urgent and priority submissions diverted to alternative suppliers, capacity was affected with a backlog of cases building (Eurofins deals with over 70,000 criminal cases in the UK each year). EFS handled circa 90% of England and Wales complex forensics toxicology work and while it was prohibited from providing such services there is not enough capacity amongst other private providers to carry out the work. Some police forces only used EFS for all of their forensic testing. To ensure an equitable distribution of capacity the NPCC placed caps on what individual police forces could submit for testing but there was a risk that delays to forensics could lead to cases being dropped as there are, for some types of samples and cases, a chemical shelf life and a legal shelf life.<sup>23</sup> It has now been established that EFS paid a ransom to unlock the frozen accounts.<sup>24</sup>

**14. It is wholly unacceptable that the forensics market has—once again—come perilously close to collapse in the year since we published our Report. We remain seriously concerned about the long-term viability of the market for forensic science services and the significant risk that this poses to the effective functioning of a criminal justice system. It is encouraging that the Home Office did, eventually, accept our recommendation to review the sustainability of the forensics market. However, the implementation plan for the joint review of forensics provision (2018), published in April 2019, does not appear to propose measures that would adequately address many of the market stability challenges in the forensic services market.**

***15. The Government should work with the Forensic Science Regulator to develop her proposals for a National Forensic Science Capability. This should focus on those forensic disciplines where skills were threatened and/or already insufficient. The National Forensic Science Capability should also ensure that cyber security standards and protection are strictly applied and secure data back-up of information is routinely and securely stored.***

## Forensic Science Regulator: statutory powers

16. Since 2011, successive Science and Technology Committees have called for the Forensic Science Regulator to have statutory powers. The Government finally agreed, in 2016, to provide a “clearer statutory role for the Forensic Science Regulator” by the end of what was then the 2016–17 Session of Parliament.<sup>25</sup> Such powers are still not in place.

17. We again heard powerful arguments from Dr Tully, the Forensic Science Regulator for why statutory powers were needed:

Essentially, there are disciplines across policing—and in some smaller forensic science providers—where people are not gaining the standards that they need to gain, because they know that there is no sanction if they do not do it.<sup>26</sup>

23 Forensic Service Provider Cyber Incident: [Written statement](#) - HLWS1618

24 BBC News: Eurofins Scientific: [Forensic services firm paid ransom after cyber-attack](#), 5 July

25 Home Office, Forensic Science Strategy [A national approach to forensic science delivery in the criminal justice system](#) CM9217 March 2016

26 [Q12](#)

18. She also informed us about the implications of an absence of statutory powers for whistleblowing. Without being a statutory regulator, the Forensic Science Regulator is not on the list of prescribed persons. Therefore, whistle-blowers in the forensics sector are not as protected by Whistleblowing<sup>27</sup> Legislation as in other industries with statutory regulators.<sup>28</sup>

19. The lack of statutory powers has also meant that the Regulator's remit has not been extended to cover the civil and family courts. Dr Tully explained that the Ministry of Justice:

does not want to do anything, as I understand it, that is on a non-statutory basis. Therefore, until the role of the regulator is put on to a statutory basis, it is my understanding that it does not plan to make any moves on regulation<sup>29</sup>

One consequence of this is that at present there are “no quality requirements on toxicology provided to the family court system”.<sup>30</sup> In our 2018 Report, we called on “the Ministry of Justice [to] 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”.<sup>31</sup> Despite this, work between the Home Office and the Ministry of Justice to tackle this challenge does not appear to be taking place. Baroness Williams of Trafford, the Home Office Minister with responsibility for forensics, told us: “I have not personally had conversations with the Ministry of Justice. I do not know whether others have”.<sup>32</sup>

20. Despite these important reasons for statutory powers, disappointingly the regulator still does not have them. This is all the more frustrating given that:

- a) a Forensic Science Regulator Bill was introduced to the House of Commons but it was a Private Member's Bill which has yet to have its Second Reading nor has it been afforded any Government time. Dr Tully noted that “in the same period other private Members' Bills that have been objected to, such as the upskirting Bill and the FGM Bill, have found their way into Government legislation, but this one has not. I do not think that it is high enough on [...] the Government's priority list”;<sup>33</sup>
- b) The Committee recommended in its 2018 Report that “the Government should now give [the Private Member's Bill] time in its legislative programme in order for it to make progress”. Despite repeated letters from us to the then Leader of

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27 Protection for whistleblowers in the UK is provided under the Public Interest Disclosure Act 1998 (PIDA). Disclosures are only protected if they are made to an appropriate party. The PIDA protects whistleblowers who make disclosures in good faith to:

- Their employer, either directly or through an internal company procedure.
- Another person whom they reasonably believe to be solely or mainly responsible for the relevant failure
- Those persons who make disclosures to a “prescribed person” (that is, a party outside the company prescribed by the Secretary of State, such as a regulatory body) must satisfy more conditions to obtain protection. In turn, whistleblowers who make disclosures to external persons or bodies not specified in the PIDA must fulfil a larger number of conditions before qualifying for protection.

28 [Qq6–8](#)

29 [Q111](#)

30 [Q108](#)

31 Science and Technology Committee, [Biometrics strategy and forensic services](#), Fifth Report of Session 2017–19, HC 800

32 [Q149](#)

33 [Q3](#)

the House of Commons and the Home Office, asking why the Bill could not be afforded Government time, the Government has not taken any clear steps to assist the Bill through Parliament. In oral evidence the Minister herself expressed “disappointment” and frustration that the Bill had not progressed;<sup>34</sup> and

- c) The Minister could not confirm whether the Home Office had applied for a legislative ‘slot’ in the next Parliamentary session.<sup>35</sup>

**21. In the face of an unstable forensics market which has been on the brink of collapse, and the clear need to uphold quality standards across forensic services, the Regulator—now more than ever—needs statutory powers. The Government professes to “strongly support” the Forensic Science Regulator Bill yet it has not taken any active steps to facilitate its passage through Parliament. Nor are we reassured that it has contingency plans in place to ensure a similar Bill is afforded a legislative slot in the next Parliamentary session. This is unacceptable. The Government has failed to show leadership and pass what is ultimately an uncontroversial piece of legislation but which is vital for the effective administration of justice.**

***22. The Home Office should apply for a legislative slot for a Forensic Science Regulator Bill in the next Parliamentary Session and not rely on backbench Members to get the Bill through Parliament. Legislation is needed not only to put the Forensic Science Regulator on a statutory footing but also on the use of forensics in the civil and family courts. The Bill should include:***

- i) Prohibition on the police using non-accredited laboratories; and***
- ii) All in-house police laboratories should be accredited within a year.***

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34 [Qq113–116](#)

35 [Q117](#)

## 3 Biometrics Strategy

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### Biometrics Strategy

23. Since the Committee’s 2018 Report the Biometrics Strategy has finally been published (in June 2018), five years after it was first promised. Both our Chair and the Biometrics Commissioner have questioned whether the document is a Strategy. The Biometrics Commissioner, Professor Paul Wiles told us:

I thought that it was a slightly confusing and disappointing document [...] It starts off with what I might describe as a very good prologue for a strategy. It then simply becomes a list of some of, but by no means all, the things that the Home Office is doing on the use of biometrics—and then stops. I thought that that was disappointing. It was a missed opportunity to lay out a strategy.<sup>36</sup>

In addition, the Commissioner made a public statement in 2018 shortly after the Strategy was published saying:

It is disappointing that the Home Office document is not forward looking as one would expect from a strategy. In particular it does not propose legislation to provide rules for the use and oversight of new biometrics, including facial images. This is in contrast to Scotland where such legislation has been proposed. Given that new biometrics are being rapidly deployed or trialled this failure to set out more definitively what the future landscape will look like in terms of the use and governance of biometrics appears short sighted at best.<sup>37</sup>

24. By comparison, in Scotland the Scottish Government held a consultation on its proposals for second generation biometrics legislation.<sup>38</sup> As a result the Scottish Government is pursuing a principles-based approach.<sup>39</sup> The Scottish Biometrics Commissioner Bill: business and regulatory impact assessment (BRIA) was published on 31 May 2019.<sup>40</sup> The Biometrics Commissioner said, “It is an interesting example of attempting to legislate in a way that will cope with future technical change in this area”.<sup>41</sup> No similar public consultation has taken place in England and Wales, despite the Biometrics Strategy stating that there would be a consultation on the governance of biometrics. Whether the Home Office has privately consulted with relevant organisations remains unclear. The Government’s position on discussions with Scottish counterparts appeared confused with the Minister asking her officials whether they had been talking to their Scottish counterparts about legislation.<sup>42</sup>

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36 [Q20](#)

37 Press release: [Biometrics Commissioner’s response to the Home Office Biometrics Strategy](#), 28 June 2018

38 [Consultation on enhanced oversight of biometric data for justice and community safety purposes](#)

39 [Q23](#)

40 [Scottish Biometrics Commissioner Bill: business and regulatory impact assessment \(BRIA\)](#), May 2019

41 [Addendum to the 2018 Annual Report of the Biometrics Commissioner](#), 27 June 2019

42 [Q165](#)

25. The Surveillance Camera Commissioner (SCC), Microsoft and the Information Commissioner's Office highlighted the need for legislation regarding second generation biometrics, such as automatic facial recognition.<sup>43</sup> SCC said:

A clearer legal framework outlining how Automatic Facial Recognition (AFR) can be deployed would support law enforcement practitioners [...] AFR is arguably more invasive than some covert surveillance techniques".<sup>44</sup>

The Biometrics Commissioner also made this point:

I think, most of the police service would like to see a proper legal framework for the new biometrics; otherwise, as each of these different biometrics is trialled, they will be challenged and will find it very difficult, but it is also more difficult to develop and evaluate new technology of this kind if you do not know what the rules are that will apply once you have done it. If they have to be bolted on afterwards, that makes life more complicated, so I think the police service would like to see a framework within which to operate.<sup>45</sup>

26. A Home Office review of the governance of biometrics is currently underway. The Biometrics Commissioner said that he had been minimally involved with the review and had merely questioned the scope of the review.<sup>46</sup> Dr Prince, a Home Office official, told the Committee that the review would be

advising on a variety of options. Clearly, one of those might be legislation, but there are other mechanisms by which we could improve the clarity and simplicity of the way in which biometrics are governed going forward.<sup>47</sup>

The Minister informed us that there was already a legal framework in place including a data protection component, and that it was largely principles-based.<sup>48</sup> However, although there is a legal framework for two biometrics—DNA and fingerprints—under the Protection of Freedoms Act 2012, it does not cover 'new' biometrics, such as facial or voice recognition.

**27. The Government's 27-page biometrics strategy was not worth the five-year wait. Arguably it is not a 'strategy' at all: it lacks a coherent, forward looking vision and fails to address the legislative vacuum that the Home Office has allowed to emerge around new biometrics. Ultimately, it represents a missed opportunity for the Government to set out a principles-based approach for the use and oversight of second generation biometrics. Simply establishing an oversight board, with no legal powers, is not good enough given the highly intrusive nature of the technologies. Further, the development and use of biometric technologies must be transparent and involve as much public awareness and engagement as possible, to ensure that there is public trust in the technologies. Unfortunately, public engagement has been sorely missing**

43 Surveillance Camera Commissioner ([WBC0002](#)), Microsoft ([WBC0006](#)), Information Commissioner's Office ([WBC0008](#))

44 Surveillance Camera Commissioner ([WBC0002](#))

45 [Q60](#)

46 [Q28](#)

47 [Q167](#)

48 Home Office ([WBC0009](#))

from the Home Office’s approach to date. Its ongoing ‘consultation’ on the governance of biometrics has no published terms of reference and there is no obvious way for interested parties to participate. This is not good enough.

28. *The UK Government should learn from the Scottish Government’s approach to biometrics and commission an independent review of options for the use and retention of biometric data that is not currently covered by the Protection of Freedoms Act 2012. The results of the review should be published along with a Government Response, and a public consultation on the Government’s proposed way forward should follow. This process should culminate in legislation being brought forward that seeks to govern current and future biometric technologies.*

### Automatic/live facial recognition

29. The development and application of automatic (or ‘live’) facial recognition (AFR), notably by some police forces, encapsulates a number of the problems that have arisen due to the lack of a clear legislative framework for the technology.

30. AFR, is the automated one-to-many ‘matching’ of near real-time video images of individuals with a curated ‘watchlist’ of facial images.<sup>49</sup> Since 2016 it has been trialled by the Metropolitan Police and South Wales Police. The Metropolitan Police told us that it had:

now concluded its trial of Live Facial Recognition Technology (LFR). The last formal trial was on 14th February 2019. The MPS is pleased that the technology—even though in a trial phase helped to show how it can keep people safe. In all, with very limited deployments, eight arrests were made directly from the technology with many relating to serious violence.<sup>50</sup>

The London Policing Ethics Panel<sup>51</sup> conducted a review of the trial by the Metropolitan Police and explained that:

Live facial recognition enables the police to conduct identity checks assisted by an automated recognition system, in real time and in public places. Facial features are scanned as people pass by cameras utilising specialised software. These are automatically checked against facial images on a ‘watch list’. These are images drawn from custody photographs and other police sources.<sup>52</sup>

The Metropolitan Police told us that:

LFR is only an intelligence tool to potentially identify those who are wanted/of interest to police. Once anyone is subject to ‘a match/alert’ then police still need to verify identification by traditional means e.g. personal documents, Police National Computer (PNC) or other mobile technology

49 [Ethical issues arising from the police use of live facial recognition technology](#), February 2019

50 Metropolitan Police Service ([WBC0013](#))

51 An independent panel established by the Mayor of London.

52 LONDON POLICING ETHICS PANEL [FINAL REPORT ON LIVE FACIAL RECOGNITION](#) May 2019

such as fingerprints. LFR sits separately to any investigation—however, it may well be mentioned in individual witness statements but only to describe the events up until the person of interest was stopped.<sup>53</sup>

The London Policing Ethics Panel final report on Live Facial Recognition proposed that LFR should only be deployed where specific conditions were met and under certain provisions. It also recommended:

- i) when conducting future trials its ethical framework be incorporated;
- ii) if LFR is adopted, 12 months later there should be a public attitudes survey; and
- iii) the need for the Home Office to simplify and strengthen regulation.<sup>54</sup>

31. The evaluation of the trials in both London and Wales by the Biometrics and Forensics Ethics Group<sup>55</sup> in its interim report<sup>56</sup> identified a number of questions which arose from the AFR trials, including:

- the accuracy of live facial recognition technology;
- its potential for biased outputs and biased decision-making on the part of system operators; and
- an ambiguity about the nature of current deployments.

The Group concluded that there had been a “lack of independent oversight and governance of the use of [Live Facial Recognition]” in these trials and recommended that, pending the development of a legislative framework, the police trials should comply with the “usual standards of experimental trials, including rigorous and ethical scientific design”. It proposed in its report “a number of ethical principles that can be used to inform these deployments and frame policy-making”.<sup>57</sup>

32. The Biometrics Commissioner has since called for the trials to be conducted in a more consistent, standardised and robust way therefore allowing proper academic evaluation but avoiding the risk of function ‘creep’ from trial to extended deployment.<sup>58</sup> He suggested this had not always been apparent throughout the whole of the trials to date.<sup>59</sup>

33. The Information Commissioner is so concerned about the use of AFR by police forces in public spaces that she had opened a priority investigation “to understand and investigate the use of AFR by law enforcement bodies in public spaces. This will include considering the legal basis, the necessity, proportionality and justification for this intrusive processing.”<sup>60</sup> The Commissioner is also concerned about:

- i) the ambiguity of the trials;

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53 Metropolitan Police Service ([WBC0013](#))

54 LONDON POLICING ETHICS PANEL [FINAL REPORT ON LIVE FACIAL RECOGNITION](#) May 2019

55 Biometrics and Forensics Ethics Group is an advisory non-departmental public body, sponsored by the Home Office.

56 [Ethical issues arising from the police use of live facial recognition technology](#), February 2019

57 [Ethical issues arising from the police use of live facial recognition technology](#), February 2019

58 [Q53](#), [Q62](#)

59 [Q54](#)

60 Information Commissioner’s Office ([WBC0008](#))

- ii) the more general roll out of AFR; and
- iii) whether the trials demonstrate full compliance with the Data Protection Act 2018.<sup>61</sup>

The investigation will therefore be looking at the trials as well as other deployments. It will be completed later in 2019.

34. The Minister did not share concerns about the lack of regulation of AFR, and stated that the:

very positive purpose of trials was to see where you have got it right and where improvements could be made. It has to be said that the police are operating within their powers when they do these trials [...] I am not personally concerned about whether it is lawful, given the parameters within which the police have operated. I am quite comforted by the fact that the Information Commissioner is using her remit to scrutinise the basis on which they are operating.<sup>62</sup>

35. Since we took evidence, a three day trial was heard at Cardiff High Court in May 2019 regarding South Wales Police's Home Office funded trials of live facial recognition. Liberty, on behalf of their client, a Cardiff resident, challenged the South Wales Police's use of live facial recognition on the grounds that the use breached the right to privacy, equality laws and data protection laws.<sup>63</sup> An expected date for the judgment has not been set. As the Biometrics Commissioner said in his 2018 Annual Report:

This judgment will be significant not just for South Wales Police and their ongoing trials and/or deployment of this technology but for all police forces, the wider use of the technology and its future governance.<sup>64</sup>

In addition Big Brother Watch is currently bringing a legal challenge against the Metropolitan Police and the Home Secretary regarding the use of live facial recognition in public spaces.<sup>65</sup>

**36. There is growing evidence from respected, independent bodies that the 'regulatory lacuna' surrounding the use of automatic facial recognition has called the legal basis of the trials into question. The Government, however, seems to not realise or to concede that there is a problem.**

***37. We reiterate our recommendation from our 2018 Report that automatic facial recognition should not be deployed until concerns over the technology's effectiveness and potential bias have been fully resolved. We call on the Government to issue a moratorium on the current use of facial recognition technology and no further trials should take place until a legislative framework has been introduced and guidance on trial protocols, and an oversight and evaluation system, has been established.***

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61 Information Commissioner's Office ([WBC0008](#))

62 [Qq172-173](#)

63 Independent [Facial recognition technology 'violates human rights and must end'](#), landmark court case hears 21 May 2019

64 [Addendum to the 2018 Annual Report of the Biometrics Commissioner](#), Paul Wiles, 27 June 2019

65 Big Brother Watch ([WBC0012](#))

38. *We recommend that the Home Office should issue guidance on Automatic Facial Recognition Trials when it introduces a legislative framework for these trials and that trials must be of a scientific standard.*

### Retention of custody images

39. The retention of custody images is of concern as these images can form the basis of ‘watchlists’ for automatic facial recognition technology when used by police forces in public spaces. This issue was raised in our predecessor Committee’s 2015 Biometrics Report. First and foremost, the then Committee criticised the lack of a “robust governance regime” and a statutory basis for holding images of innocent people in order to detect crime. This follows a case in the High Court in 2012—*R (RMC and FJ) v MPS (Metropolitan Police Service)*—in which the High Court ruled that the indefinite retention of innocent people’s custody images was “unlawful”.<sup>66</sup> Big Brother Watch argued that:

the number of custody images currently held on the Police National Database [is] 23 million. This is an increase of 4 million since the previous figures were updated just one year ago. According to the Biometrics Commissioner, a staggering 10 million of these images have now been made biometrically searchable by facial recognition technology, following an upgrade to the system in 2014 which occurred without parliamentary or public scrutiny. With sub-sets of this database being used at police deployments of live facial recognition, innocent people are increasingly at risk of being wrongfully stopped or even arrested. This also completely blurs the line between the innocent and the guilty, and makes a mockery of the presumption of innocence.<sup>67</sup>

40. The Government responded to the 2017 Custody Image Review, which was its response to the 2012 High Court ruling in the case of *RMC and FJ v Commissioner of Police for the Metropolis and Secretary of State for the Home Department [2012] EWHC 1681(Admin)* (*RMC*),<sup>68</sup> by saying that individuals could request to have their images deleted but there was no ‘automatic weeding’ of unconvicted individuals.<sup>69</sup> The Biometrics Commissioner noted that:

a system was put in place where any custody images were kept for six years and then should be reviewed. During those six years anybody, but especially those who had been unconvicted, could apply to have their images removed, and the guidance was that there should be a presumption that the police would do that unless there were good reasons why not.<sup>70</sup>

66 *RMC and FJ v Commissioner of Police for the Metropolis and Secretary of State for the Home Department [2012] EWHC 1681 (Admin)*

67 Big Brother Watch ([WBC0012](#))

68 This ruling found that “that the retention of images from unconvicted individuals under the Metropolitan Police Service’s policy for the retention of custody images, which followed the Code of Practice on the Management of Police Information and accompanying guidance (‘MoPI’), was unlawful”.

69 Home Office, [‘Review of the Use and Retention of Custody Images’](#), February 2017

70 [Q80](#)

He went on to explain that “the fact is that the six-year review has somehow not been taken into routine police practice”<sup>71</sup> and that there was a:

very poor understanding of that six-year review period and little evidence that it was being carried out. Very few applications were being made to chief officers [...] [there is a need] to bolster and remind police forces that they should be carrying out reviews at the end of six years and deciding whether they need to keep those images and, if not, to delete them. Secondly, there needs to be much greater public visibility of people’s right, if they want to, to apply to a chief officer to have their images removed.<sup>72</sup>

The ICO had similar concerns:

It is unclear how those individuals would know that they could make a request and we are aware that there have not been a significant number of requests, indicating a lack of awareness. So, the position remains, that there are potentially thousands of custody images being held with no clear basis in law or justification for the ongoing retention.<sup>73</sup>

As we highlighted in our previous Report a Press Association investigation in 2018 revealed that only 67 applications for deletion had been made between February 2017 (when the Home Office review concluded that unconvicted individuals should have the right to apply for the deletion of their custody image from all police systems) and October 2017, and only 34 applications had been successful.<sup>74</sup>

41. Minutes from the September 2018 Biometrics Advisory Board said that “most forces” were struggling to comply with the management of police information policy (MOPI) when weeding the custody images that they held.<sup>75</sup> It was also clear that no earmarked additional resources had been provided by the Home Office to assist police forces with compliance.<sup>76</sup>

42. In 2018, the Home Office told the Committee that it expected the “new platform being delivered by the National Law Enforcement Data Programme to [...] enable a considerably more flexible approach to automatic deletion than is possible at present”.<sup>77</sup> The Committee heard, however, in 2019, that there had been delays to implementing this new technology. The Minister said that it had “not been procured”<sup>78</sup> and the Home Office “cannot commit to a date” for an automatic deletion system to be in place. In a further letter to us Baroness Williams said that:

There are a number of challenges to overcome but we are working up a detailed technology and business change plan, which will entail substantial investment.<sup>79</sup>

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71 [Q82](#)

72 [Q80](#)

73 Information Commissioner’s Office ([WBC0008](#))

74 Big Brother Watch ([WBC0012](#))

75 [Law Enforcement Facial Images and New Biometrics Oversight and Advisory Board](#) 24 September 2018

76 [Qq188–191](#)

77 Science and Technology Committee, [Biometrics strategy and forensic services](#), Fifth Report of Session 2017–19, HC 800

78 [Q184](#)

79 [Letter from Baroness Williams of Trafford](#) to Chair of the Science and Technology Committee, 30 April 2019

However she confirmed that she had asked her officials “to work with the police to determine how manual deletion might be enhanced without placing an unmanageable burden on policing”.<sup>80</sup>

43. Concerns were also raised by the Biometrics Commissioner and the ICO about the lawfulness of the current situation: the Biometrics Commissioner told us “at the time the custody image review was published I was not at all sure this would meet further court challenges. I still think that”.<sup>81</sup> The ICO, meanwhile, stated that delays to implementing the new National Law Enforcement Data Service would mean “that many images are potentially being held longer than necessary and this will therefore not comply with the DPA18”.<sup>82</sup> Another custody image review was promised by the Minister in 2020.<sup>83</sup>

**44. Since the Committee published its Report in 2018, progress has stalled on ensuring that the custody images of unconvicted individuals are weeded and deleted. It is unclear whether police forces are unaware of the requirement to review custody images every six years, or if they are simply ‘struggling to comply’. What is clear, however, is that they have not been afforded any earmarked resources to assist with the manual review and weeding process. The Minister previously promised improvements to IT systems that would have facilitated automatic deletion. Such improvements now appear to have been delayed indefinitely. As such, the burden remains on individuals to know that they have the right to request deletion of their image. As we stated in 2018, this approach is unacceptable and we agree with the Biometrics Commissioner that its lawfulness requires further assessment.**

***45. Police forces should give higher priority in the allocation of their resources to ensure a comprehensive manual deletion process of custody images in compliance with national guidance. In turn, the Government should strengthen the requirement for such a manual process to delete custody images and introduce clearer and stronger guidance on the process. In the long-term the Government should invest in automatic deletion software as previously promised.***

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80 *Ibid.*

81 [Q90](#)

82 Information Commissioner’s Office ([WBC0008](#))

83 [Q177](#)

## Conclusions and recommendations

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### Forensics

1. It is wholly unacceptable that the forensics market has—once again—come perilously close to collapse in the year since we published our Report. We remain seriously concerned about the long-term viability of the market for forensic science services and the significant risk that this poses to the effective functioning of a criminal justice system. It is encouraging that the Home Office did, eventually, accept our recommendation to review the sustainability of the forensics market. However, the implementation plan for the joint review of forensics provision (2018), published in April 2019, does not appear to propose measures that would adequately address many of the market stability challenges in the forensic services market. (Paragraph 14)
2. *The Government should work with the Forensic Science Regulator to develop her proposals for a National Forensic Science Capability. This should focus on those forensic disciplines where skills were threatened and/or already insufficient. The National Forensic Science Capability should also ensure that cyber security standards and protection are strictly applied and secure data back-up of information is routinely and securely stored.* (Paragraph 15)
3. In the face of an unstable forensics market which has been on the brink of collapse, and the clear need to uphold quality standards across forensic services, the Regulator—now more than ever—needs statutory powers. The Government professes to “strongly support” the Forensic Science Regulator Bill yet it has not taken any active steps to facilitate its passage through Parliament. Nor are we reassured that it has contingency plans in place to ensure a similar Bill is afforded a legislative slot in the next Parliamentary session. This is unacceptable. The Government has failed to show leadership and pass what is ultimately an uncontroversial piece of legislation but which is vital for the effective administration of justice. (Paragraph 21)
4. *The Home Office should apply for a legislative slot for a Forensic Science Regulator Bill in the next Parliamentary Session and not rely on backbench Members to get the Bill through Parliament. Legislation is needed not only to put the Forensic Science Regulator on a statutory footing but also on the use of forensics in the civil and family courts. The Bill should include:*
  - i) *Prohibition on the police using non-accredited laboratories; and*
  - ii) *All in-house police laboratories should be accredited within a year.* (Paragraph 22)

### Biometrics Strategy

5. The Government’s 27-page biometrics strategy was not worth the five-year wait. Arguably it is not a ‘strategy’ at all: it lacks a coherent, forward looking vision and fails to address the legislative vacuum that the Home Office has allowed to emerge around new biometrics. Ultimately, it represents a missed opportunity for the Government to set out a principles-based approach for the use and oversight of

second generation biometrics. Simply establishing an oversight board, with no legal powers, is not good enough given the highly intrusive nature of the technologies. Further, the development and use of biometric technologies must be transparent and involve as much public awareness and engagement as possible, to ensure that there is public trust in the technologies. Unfortunately, public engagement has been sorely missing from the Home Office's approach to date. Its ongoing 'consultation' on the governance of biometrics has no published terms of reference and there is no obvious way for interested parties to participate. This is not good enough. (Paragraph 27)

6. *The UK Government should learn from the Scottish Government's approach to biometrics and commission an independent review of options for the use and retention of biometric data that is not currently covered by the Protection of Freedoms Act 2012. The results of the review should be published along with a Government Response, and a public consultation on the Government's proposed way forward should follow. This process should culminate in legislation being brought forward that seeks to govern current and future biometric technologies.* (Paragraph 28)
7. There is growing evidence from respected, independent bodies that the 'regulatory lacuna' surrounding the use of automatic facial recognition has called the legal basis of the trials into question. The Government, however, seems to not realise or to concede that there is a problem. (Paragraph 36)
8. *We reiterate our recommendation from our 2018 Report that automatic facial recognition should not be deployed until concerns over the technology's effectiveness and potential bias have been fully resolved. We call on the Government to issue a moratorium on the current use of facial recognition technology and no further trials should take place until a legislative framework has been introduced and guidance on trial protocols, and an oversight and evaluation system, has been established.* (Paragraph 37)
9. *We recommend that the Home Office should issue guidance on Automatic Facial Recognition Trials when it introduces a legislative framework for these trials and that trials must be of a scientific standard.* (Paragraph 38)
10. Since the Committee published its Report in 2018, progress has stalled on ensuring that the custody images of unconvicted individuals are weeded and deleted. It is unclear whether police forces are unaware of the requirement to review custody images every six years, or if they are simply 'struggling to comply'. What is clear, however, is that they have not been afforded any earmarked resources to assist with the manual review and weeding process. The Minister previously promised improvements to IT systems that would have facilitated automatic deletion. Such improvements now appear to have been delayed indefinitely. As such, the burden remains on individuals to know that they have the right to request deletion of their image. As we stated in 2018, this approach is unacceptable and we agree with the Biometrics Commissioner that its lawfulness requires further assessment (Paragraph 44)
11. *Police forces should give higher priority in the allocation of their resources to ensure a comprehensive manual deletion process of custody images in compliance with*

*national guidance. In turn, the Government should strengthen the requirement for such a manual process to delete custody images and introduce clearer and stronger guidance on the process. In the long-term the Government should invest in automatic deletion software as previously promised. (Paragraph 45)*

# Formal minutes

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**Wednesday 17 July 2019**

Members present:

Norman Lamb in the Chair

Vicky Ford	Stephen Metcalfe
Bill Grant	Carol Monaghan
Mr Sam Gyimah	Graham Stringer
Darren Jones	Martin Whitfield

Draft Report (*The work of the Biometrics Commissioner and the Forensic Science Regulator*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 45 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Nineteenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

[Adjourned till Wednesday 17 July at 2.30pm.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Tuesday 19 March 2019

**Dr Gillian Tully**, Forensic Science Regulator; and **Paul Wiles**, Commissioner for the Retention and Use of Biometric Material [Q1–112](#)

**Baroness Williams of Trafford**, Minister of State for Countering Extremism, Home Office; **Dr Christophe Prince**, Director for Data and Identity, Home Office; and **Professor John Aston**, Chief Scientific Adviser, Home Office [Q113–204](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

- 1 Big Brother Watch ([WBC0012](#))
- 2 Dr Julie Maxton ([WBC0007](#))
- 3 Home Office ([WBC0009](#))
- 4 Information Commissioner's Office ([WBC0008](#))
- 5 Leverhulme Research Centre for Forensic Science, University of Dundee ([WBC0003](#))
- 6 Metropolitan Police Service ([WBC0005](#)), ([WBC0013](#))
- 7 Microsoft ([WBC0006](#))
- 8 Office of the Biometrics Commissioner ([WBC0010](#))
- 9 Science and Justice RIG, Northumbria University ([WBC0004](#))
- 10 South Wales Police ([WBC0011](#))
- 11 Surveillance Camera Commissioner ([WBC0002](#))
- 12 University of East Anglia Joe Purshouse ([WBC0001](#))

## List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number

### Session 2017–19

First Report	Pre-appointment hearing: chair of UK Research & Innovation and executive chair of the Medical Research Council	HC 747
Second Report	Brexit, science and innovation	HC 705
Third Report	Genomics and genome editing in the NHS	HC 349
Fourth Report	Algorithms in decision-making	HC 351
Fifth Report	Biometrics strategy and forensic services	HC 800
Sixth Report	Research integrity	HC 350
Seventh Report	E-cigarettes	HC 505
Eighth Report	An immigration system that works for science and innovation	HC 1061
Ninth Report	Flu vaccination programme in England	HC 853
Tenth Report	Research integrity: clinical trials transparency	HC 1480
Eleventh Report	Evidence-based early years intervention	HC 506
Twelfth Report	Quantum technologies	HC 820
Thirteenth Report	Energy drinks and children	HC 821
Fourteenth Report	Impact of social media and screen-use on young people's health	HC 822
Fifteenth Report	Evidence-based early years intervention: Government's Response to the Committee's Eleventh Report of Session 2017–19	HC 1898
Sixteenth Report	'My Science Inquiry'	HC 1716
Seventeenth Special Report	Japanese knotweed and the built environment	HC 1702
Eighteenth Report	Digital Government	HC 1455
First Special Report	Science communication and engagement: Government Response to the Committee's Eleventh Report of Session 2016–17	HC 319
Second Special Report	Managing intellectual property and technology transfer: Government Response to the Committee's Tenth Report of Session 2016–17	HC 318
Third Special Report	Industrial Strategy: science and STEM skills: Government Response to the Committee's Thirteenth Report of Session 2016–17	HC 335

Fourth Special Report	Science in emergencies: chemical, biological, radiological or nuclear incidents: Government Response to the Committee's Twelfth Report of Session 2016–17	HC 561
Fifth Special Report	Brexit, science and innovation: Government Response to the Committee's Second Report	HC 1008
Sixth Special Report	Algorithms in decision-making: Government Response to the Committee's Fourth Report	HC 1544
Seventh Special Report	Research integrity: Government and UK Research and Innovation Responses to the Committee's Sixth Report	HC 1562
Eighth Special Report	Biometrics strategy and forensic services: Government's Response to the Committee's Fifth Report	HC 1613
Ninth Special Report	An immigration system that works for science and innovation: Government's Response to the Committee's Eighth Report	HC 1661
Tenth Special Report	Research integrity: clinical trials transparency: Health Research Authority Response to the Committee's Tenth Report	HC 1961
Eleventh Special Report	Quantum technologies: Government Response to the Committee's Twelfth Report	HC 2030
Twelfth Special Report	Impact of social media and screen-use on young people's health: Government Response to the Committee's Fourteenth Report	HC 2120