

Scottish Biometrics Commissioner
& Scottish Police Authority



SCOTTISH POLICE
AUTHORITY
ÙGH DARRAS POILIS NA H-ALBA



centre for youth
& criminal justice

Joint Assurance Review

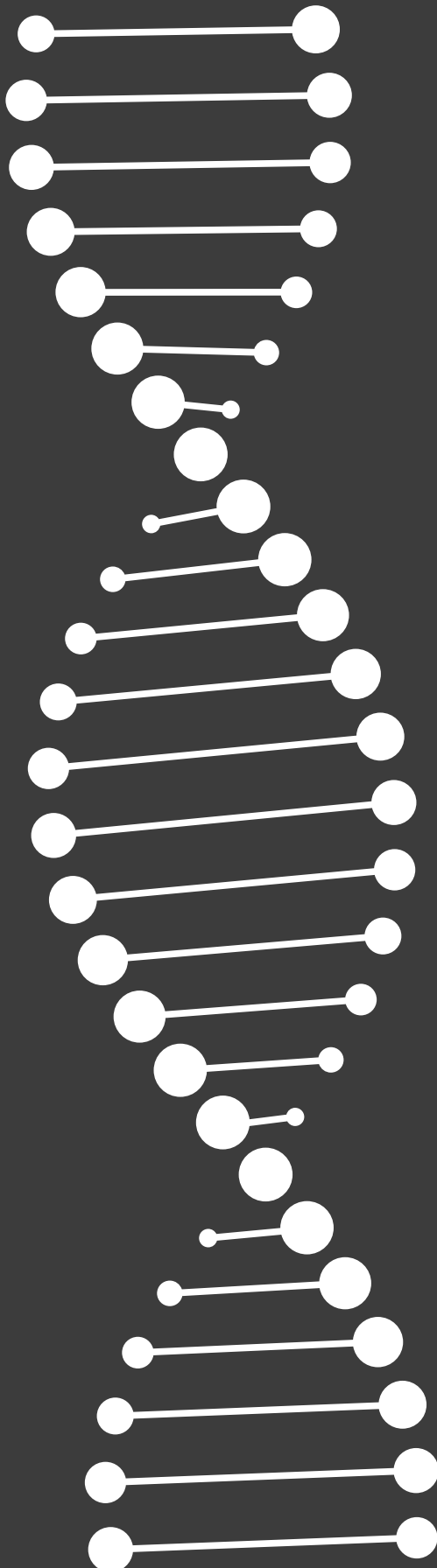
of the acquisition of biometric data
from children arrested in Scotland.

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](#).

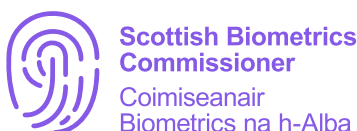
The Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

- 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

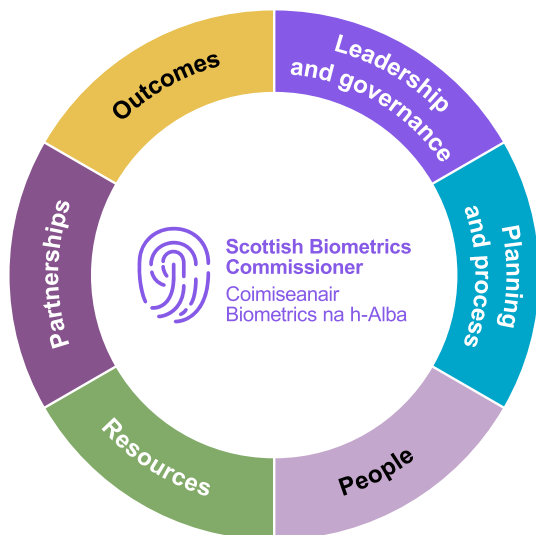
The aim of this assurance review was to: **assess the law, procedure and practice related to the acquisition, retention, use, and destruction of biometric data relating to children and young people.**

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:

(1) *“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-complaint 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**