



OFFICE OF THE BIOMETRICS
AND SURVEILLANCE
CAMERA COMMISSIONER

31 October 2022

Dear Gary

Forensic Science Regulator Draft Code of Practice

I welcome the opportunity to comment on your draft Code of Practice, in my capacity as Biometrics and Surveillance Camera Commissioner. I will not comment here on the specifics of the regulatory model set out in the Code but wanted to raise some high-level points about where I see crossovers in my work with that of the FSR, and where there will be a shortfall in oversight brought about by the reforms contained within the Data Protection and Digital Information Bill (the Bill). The fate of the Bill is, at the time of writing, unknown, as its Parliamentary passage has been paused as a consequence of recent leadership changes within the administration. But if it remains the intention of the current Government, subject to the will of Parliament, the Bill will abolish the roles of Biometrics Commissioner and Surveillance Camera Commissioner, and leaves questions around the policy intention for oversight not expressly addressed within it.

The Bill proposes to repeal the Surveillance Camera Code of Practice (the SC Code), and makes no provision for it to remain in force in another guise, or for public space surveillance to be expressly regulated by another body. In my 2021-2022 annual report to the Home Secretary, which will be published soon, I acknowledge that, despite the SC Code's limited parameters, it has for many years brought professionalisation and regulation of the areas of overt surveillance activity identified by Parliament as requiring additional safeguards. The revised SC Code was approved by Parliament in January 2022 and specifically addresses the use of public space surveillance – including the use of live facial recognition technology – by the police and local authorities, and supports public safety and law enforcement to process images of evidential value, amongst other key standard setting principles.

It is in this context that I raise the issue of regulation of facial recognition technology. This is something that I had thought might be included in the draft FSR Code of Practice but understand why it may not be a priority at this stage. However, I believe that there is a legitimate expectation – public and professional – that the use of facial recognition surveillance technology will be the subject of express statutory guidance and, in the event that the Bill abolishes the Surveillance Camera Code, there will be a stronger argument for the Forensic Science Regulator to set standards in this field. The issues and risks presented by facial recognition sit at the interface of both

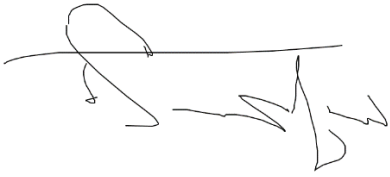
biometrics and surveillance cameras, and concerns across the country, combined with the need to rebuild public trust and confidence in policing, call for a clear, comprehensive and coherent framework to ensure proper regulation and accountability, now more than ever. The Bill's reforms present an opportunity to address for the first time these pressing questions around the legitimate role for newly intrusive technology such as facial recognition in biometric surveillance by the police and law enforcement. However, I am not convinced that, as currently drafted, the Bill forms part of the agenda for biometric reform in the round at this time, and there may be a need for the FSR Code to address these standards, ensuring the integrity of the use of biometrics as a Forensic Science Activity within the criminal justice system.

I have already noted in my response to the Information Commissioner's recent ICO25 consultation, that biometric capability in its widest sense has the potential to revolutionise the investigation and prevention of crime, and the prosecution of offenders. But equally, the manner in which that technology is used has the potential to jeopardise our very model of policing. All too frequently, the legislative frameworks that seek to underpin the use of biometric and surveillance technology by both public and private sectors have lagged behind the technologically feasible, resulting in early use before the full ethical and legal picture is clear. We must be able to have confidence in the whole biometric surveillance ecosystem, to be sure that what is technologically *possible* is only being done in a way that is both legally *permissible* and societally *acceptable/expected*.

Future regulation and oversight ought to reflect both the potential and risk, and it will be vital that your office work with the Information Commissioner to understand the associated challenges and opportunities, and which organisation is better suited to deliver the guidance that is needed. While the Information Commissioner's role is itself substantially altered by the current Bill's provisions, there are greyer areas where regulatory responsibility is not clear cut even now, particularly as new technologies develop. These must be addressed to achieve the aspirational clear regulatory landscape.

More broadly, I encourage the FSR to work closely with practitioners and policy makers in understanding the need for, and development of, a wider legislative framework for new and emerging biometrics, for all the reasons I set out about keeping pace with the technically feasible. This will permit advances in the use of biometrics and public space surveillance, ensure transparency, and engender public trust.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Fraser Sampson', written over a horizontal line.

Professor Fraser Sampson
Biometrics and Surveillance Camera Commissioner