

Carol Monaghan MP,

SNP: Glasgow North East

Sent by e-mail

10 May 2023

## **Data Protection and Digital Information (No. 2) Bill**

Dear Carol, I understand that you are a member of the Westminster Committee considering the above Bill. One aspect of the Bill, which is difficult to comprehend, and which has devolution consequences for Scotland is the proposal to abolish the Biometrics and Surveillance Camera Commissioner for England and Wales. These two posts in England and Wales were amalgamated in 2021 into a single post and Professor Fraser Sampson is the current (and possibly last) officeholder.

On 19 November 2021, I wrote a [joint letter](#) to DCMS with Professor Sampson outlining our various concerns. I now highlight the contents of this letter to you to assist the Committee.

The case for abolishing the Commissioner in England and Wales seems to centre on the erroneous proposition that the police use of DNA, fingerprints, and facial images are simply questions of data protection. By extension, the argument also seems to be that ensuring compliance with criminal procedure legislation when acquiring biometric data, or questions of effectiveness or efficiency in their retention and use, or ethical considerations are no longer important enough to continue with independent oversight (the ICO remit does not extend to such matters).

Therefore, if the Biometrics Commissioner role is abolished in England and Wales, then except on matters specifically relating to DPA 2018, the police in England and Wales will be given carte blanche to do whatever they like in the biometrics space whether that be the chilling effect of rolling out mass public space surveillance, or indeed transgressing any ethical boundaries. It is also worth noting that the police hold significant volumes of biometric data on deceased persons, yet DPA/GDPR only protects the living.

As you will be aware, the Scottish Parliament does not view the police use of biometric data as simply a matter of data protection. My own role as Scottish Biometrics Commissioner was created by the Parliament in response to the report of the Independent Advisory Group on Biometric Data in Scotland in 2018 by John Scott (now Lord Scott). The enabling Bill was introduced by the now First Minister of Scotland during his time as Cabinet Secretary for Justice. In evidence to the Scottish Parliament, the ICO supported the need for a separate Biometrics Commissioner precisely because the police and criminal justice use of such data and technologies is not confined to questions of data protection.

Although my own role in Scotland may not be directly impacted by the Westminster Bill, there will be various devolution consequences for Scotland if this proceeds as the Commissioner for England and Wales is referenced in the Scottish Biometrics Commissioner Act 2020 and has a 'UK' function in reviewing where DNA and fingerprints have been retained as part of a National Security Determination (NSD).

I trust that this information will be of some assistance to the Committee.

Yours sincerely,

*Brian Plastow*

**Dr Brian Plastow**  
**Scottish Biometrics Commissioner**