

By email from: christopher@equality-network.org

6 May 2025

Scottish Police Authority
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Sent by email to: SPAStrategyandPerformance@spa.police.uk

Dear Scottish Police Authority,

We are writing to you as a charity in Scotland that works to improve the equality and human rights of LGBTQIA+ people concerning the national conversation on Live Facial Recognition ('LFR') technology and its potential introduction in Police Scotland.

We attended an online engagement session organised by the Scottish Police Authority on Friday 25th April detailing our concerns about the introduction of LFR and the potential negative impacts this will have on LGBTQIA+ people and human rights more broadly. During that meeting, we advised that we would follow-up this engagement with a more in-depth written response, and we hope that this letter will supplement and aid the ongoing conversation.

We understand that currently, the Scottish Police Authority is not consulting on the introduction of LFR but instead its potential introduction, and that the initial national conversation happening around this is to decide whether or not this work should be taken forward.

In our view, further work should not progress around the introduction of LFR in Police Scotland and below, we will outline our reasons for this and the negative consequences that may ensue if it were introduced. We ask that these concerns are given serious consideration in deciding whether or not to progress work on LFR.

Yours sincerely,



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General concerns

Disproportionate Impact

We are a policy charity that works to uphold and advance the rights of LGBTQIA+ people in Scotland. While we have written a section of this document focusing on the specific impacts of surveillance, especially in the form of LFR, on LGBTQIA+ people, we have also highlighted impacts on human rights and equalities more broadly. The reasons for this are twofold. Primarily, LGBTQIA+ people are people – we are part of every community and every walk of life. Any action that negatively impacts, for example, women, young, BAME, or disabled people will also affect LGBTQIA+ people within these groups. Secondly, due to a long history of criminalisation, harassment, and persecution at the hands of law enforcement, LGBTQIA+ people will be disproportionately impacted in our free enjoyment of public space, freedom to engage in political activity, and self-expression.

When reading our broader human rights analysis, it is therefore essential to recognise that while these rights belong to everyone, some groups, such as LGBTQIA+ people, will have their access to these rights disproportionately affected by the use of LFR, and that these impacts can multiply intersectionally.

Inaccuracies and bias

LFR technology is well documented as being notoriously inaccurate. Whilst this is the case, we do not believe it should be introduced as it could cause serious problems and human rights infringements. For example, if LFR wrongly identifies someone in the form of a ‘false positive’ result, this could ultimately lead to wrongful arrest and/or criminalisation which would have serious ramifications on that person’s life and potentially expose them to harm. In South Wales, [LFR was used at a football game](#) in Cardiff where over 2,000 people were wrongly identified as being potential criminals, and 92% of these matches were false positives. South Wales Police [admitted](#) that ‘no facial recognition system is 100% accurate’.

If people know that they could be wrongly identified by LFR when accessing public spaces, this may further erode trust and confidence in Police Scotland and could stop them from exercising their human rights in lawful and legitimate ways. Whilst LFR remains inaccurate, it also raises questions around whether a court would accept this as admissible evidence in a criminal trial.

LFR is also well documented as being biased. This is a result of how the technology, and algorithms within it, are designed, and a lack of diverse testing has a disproportionate impact on marginalised communities. [Recent studies](#) highlight how LFR has racial bias

and gender bias hard-wired into it, and that machine-based learning algorithms can discriminate against people based on race and gender. There have been instances in America where Black people have been falsely identified by facial recognition technology which have led to wrongful arrest ([Robert Williams](#)) and even wrongful imprisonment ([Nijeer Parks](#)).

Furthermore, LFR can be inaccurate due to inadequate lighting and quality of images on the watchlist, which will limit its effectiveness. Poor lighting or shadows may obscure facial features and lead to false positives, and those with darker skin tones will be disproportionately impacted by these lighting-related inaccuracies. Poor lighting over someone's face could result from something as simple as wearing a hood in the rain. Where people's human rights are at risk, the effectiveness of LFR is ultimately a gamble and we do not have confidence that it will be designed in an inclusive way that will prevent these inaccuracies and bias from taking root.

Bias against LGBTQIA+ people is less well documented and researched, however we anticipate that similar biases will be present. This is particularly true for trans and non-binary people if the technology is designed with binary assumptions of gender and is not trained to adequately recognise faces that do not conform to gender/societal stereotypes and norms. We highlight more of our concerns for LGBTQIA+ people in the section titled 'LGBTQIA+ specific concerns' below.

Watchlist

Our understanding is that LFR would be used to identify individuals who are known to Police Scotland as criminals or as being suspects of committing crime. The scope for this is broad, and in theory could constitute anyone from someone with an outstanding parking ticket to a terrorist. The framing and scope of the watchlist will be a crucial factor in any use of LFR, and public support is likely to differ on whether that list is one which is broad in scope, or one which is narrower. [Research](#) shows that the public is often sceptical about how the police will use LFR and how it may impact their privacy and security and, if used illegitimately, it may lead to a decrease in trust and confidence in policing. [Scottish Police Authority data](#) shows that trust and confidence in policing is already low among LGBTQIA+ people and we believe that introducing LFR could further exacerbate this.

We are also concerned that if the watchlist were to start off narrow in scope, there is the opportunity for that to extend beyond its original intended purpose. We believe that the larger the scope of the watchlist, the further potential there is for wrongful identification and human rights intrusion.

Several questions remain unanswered around the process for adding an individual to the watchlist:

- Who decides that someone should be placed on the watchlist? Can this be challenged?
- How long does a person stay on the watchlist? Is there an expiry period?
- Will the watchlist be continually monitored and reviewed? By who?
- How can a person be removed from the watchlist?
- What constitutes the level of severity of being added to the watch list?
- How will Police Scotland ensure that additions are proportionate to the crime or suspected crime?

Furthermore, consideration must be given to the data of individuals who are wrongly identified from the watchlist. The briefing paper states that LFR will scan individuals' faces and if they do not present a match, they are automatically discarded. However, the briefing paper does not provide information on the storage or use of the data of those who are wrongly identified, or provide any information about preventing that from happening in future. There may be circumstances in which an individual is repeatedly wrongly identified by LFR in different locations and repeatedly stopped by police. Given the known biases that exist in LFR, we are concerned that this would have a disproportionate impact on marginalised communities, including LGBTQIA+ people. We seek clarity on how repeated wrongful identification can be avoided and how the data of those who have been wrongly identified will be stored and used in line with data protection legislation.

Use cases

The proposed use cases of LFR in the briefing paper are very broad and no evidence has been proposed as to the effectiveness of using LFR in these specific scenarios. We are seriously concerned that LFR could be authorised beyond the proposed specific use cases in future, furthering the potential for human rights intrusion. For example, [South Wales Police has introduced](#) 'operator-initiated facial recognition', a facial recognition technology on officers' phones enabling them to scan and potentially identify anyone they come into contact with, including anyone that is "reasonably suspected" of providing false details. This would cause problems for trans and non-binary people where their identity documents do match their outward appearance.

Regarding use case 1 – city/town centre nightlife – we fully support the aim of protecting women and girls from the risk of harm, however we do not believe LFR is the most appropriate or effective way to achieve this outcome. We are confused by the argument that LFR would provide a prevention and deterrence effect, as based on the briefing

paper, LFR would only be used to identify individuals who are already on the watchlist. It would not be able to detect regular members of the public who are not known to Police Scotland or stop those individuals from perpetrating violence towards women and girls. This is particularly important as violence against women and girls is most often committed by a partner or ex-partner, a relative or someone they already know. It also would not be able to record footage from city/town centre and nightlife areas either as it is not CCTV. This approach also further entrenches the myth that violence against women and girls is predominantly caused by a handful of bad actors, as opposed to being widespread and based in widely held societal attitudes. Furthermore, the broad nature of this use case gives Police Scotland a high level of discretion as to where and when to use the technology.

Regarding use case 2 – to identify high risk missing persons – we acknowledge that Police Scotland plays a vital role in ensuring that vulnerable individuals are located prior to them coming to harm. We also recognise that this is the only potential use case proposed that need not involve criminality or suspected criminality and can indeed be used to uphold human rights. However, the effectiveness of LFR in these scenarios depends on the breadth of geographical locations where LFR is installed or the availability of the technology in that area. For example, it may not be useful to identify a vulnerable person that goes missing in a rural or remote location. Furthermore, [research exists](#) that shows that LFR is less accurate in identifying children and young people, and [examples exist](#) that detail severe human rights violations in the cases of mistaken identity of children at the hands of the police.

Regarding use case 3 – at large scale indoor events – we recognise that this could prevent serious disorder and crime, for example terrorism. However, LFR is limited in this aspect as terrorists would have to be known to Police Scotland and on the watchlist. Many terrorists are not known to the police and LFR would be ineffective at catching those who are acting in isolation, have not shown any signs of planning to commit terrorism and/or are undertaking these acts for the first time. The indiscriminate use of LFR at large-scale cultural events is one of the areas singled out by [the UN](#) as a significant potential breach of human rights.

LGBTQIA+ specific concerns

Police Scotland Citizens Panel

It is our view that introducing LFR to Police Scotland is likely to damage the LGBTQIA+ community's trust and confidence in policing and may erode ongoing work within Police Scotland to improve this.

Many challenges and barriers exist that prevent LGBTQIA+ people from engaging with and reporting to Police Scotland for a variety of reasons, including that of historical mistrust. This is due to the discrimination, mistreatment and exclusion that LGBTQIA+ people have faced (and continue to face) in society for decades. This harm has also been historically exacerbated by, and sometimes at the hands of, Police Scotland. However, we recognise Police Scotland's [apology](#) to LGBTQIA+ communities in Scotland by Chief Constable Jo Farrell for the pain caused through injustices, including policing's role in enforcing laws which criminalised love and identity. This is simply one-stepping stone in the journey to rebuild confidence and trust in Police Scotland for LGBTQIA+ people.

We would like to highlight the ongoing work around the Police Scotland LGBTQIA+ Citizens Panel, of which we are members of the oversight group. This process has been devised to engage with LGBTQIA+ community members to hear what they need from Police Scotland to improve their trust and confidence in policing. At the end of this process, a report with recommendations will be produced, and for this engagement to be meaningful, we strongly advise that the recommendations produced by the group be effectively implemented, tracked and monitored. Failure to do so may further damage trust and confidence in policing as community members want to see concrete action and steps taken to improve the status quo.

However, LFR has not been identified by the LGBTQIA+ community as being a priority or something they require to improve their trust in confidence in policing. Due to the historical mistrust in Police Scotland, and the potential for LFR to be used to their detriment, we are seriously concerned about the impact this will have on Police Scotland's relationship with the LGBTQIA+ community in Scotland.

Evidence exists that LGBTQIA+ people already modify our appearance, behaviour and how and where we travel in public to avoid unwanted attention. This is especially true for trans and non-binary people. Introducing LFR would only add to [the stressors facing LGBTQIA+ people in public spaces](#).

Trans and non-binary people

For trans and non-binary people specifically, facial recognition software often struggles to detect the faces of people who are medically transitioning (for example, see [1](#), [2](#), [3](#), [4](#)). This is because facial identification software is trained on the faces of people who are not trans. As such, it's possible that trans people whose faces are scanned may be misidentified as being someone else, or as unidentifiable, if software cannot recognise them properly, which may lead to them being questioned or treated as suspicious by Police Scotland if this technology is used.

Even if an individual who is questioned because of this is completely innocent, the suspicion of guilt created by this issue with software may be “confirmed” if the person is carrying IDs that use different names or genders. Many trans people have inconsistent ID for a variety of reasons, such as being in the process of changing it, only having the money or resources to update some, or not feeling safe to change it in some places – for example, they may leave their bank account in their birth name and gender if they do not feel safe coming out to family members who they may rely on financially. Possessing inconsistent ID and using different names in different places is not a crime if it is not being done for fraudulent purposes, and is to some degree a necessary part of the process of transition, as one cannot usually update all of their documents at once.

If facial recognition software was perfectly accurate for all people, including trans people, the issue of inconsistent ID could still create a suspicion of fraudulence of criminality where none exists, and potentially increase tension between officers and trans people based on a misunderstanding around the complexities of our lives.

Prides and Protests

If this technology was used at large gatherings where members of the LGBTQIA+ community are present, such as prides or protests, this could also create considerable issues around trust in the police, safety, and freedom of association.

Even if this software was ostensibly being used for the “safety” of LGBTQIA+ people at prides and protests for counter-extremism purposes, this would still create a presumption among many LGBTQIA+ attendees that they are the ones being surveilled. As a community, we have been historically criminalised and mistreated by police, and even though efforts have been made to address this, there are still high levels of mistrust among the community. This is especially the case for trans and non-binary people, with Police Scotland being the lowest rated public service that we asked about in our recent [Scottish Trans and Non-binary Experiences Report](#).

With ongoing debates within the community about whether police should be involved in or allowed to attend prides, the presence of police monitoring at prides and other events would likely inflame these issues, and activate suspicions that police are once again trying to prevent us from public assembly. This is especially the case for protests relating to LGBTQIA+ issues, which have increased in frequency in recent years in response to rising anti-trans sentiment and backslides in policy and legislation. As protests may already have police presence, which again protesters may feel is there to police them rather than protect them, using facial recognition technology in this context will add to the sense that LGBTQIA+ people are being seen as suspicious for peacefully protesting the erosion of our rights.

Even if the purpose of facial recognition in these instances would be to look for known people who may be likely to violently counter-protest prides or LGBTQIA+ protests, we believe that the many negative impacts of facial recognition on our community and others outweigh the benefits of this. While this technology could compliment police efforts to monitor and police far right and anti-LGBTQIA+ extremism, it should by no means replace it, and we believe police should be able to carry out this work without using tools that have wide ranging human rights impacts on the people they are intended to protect.

We would also be concerned that over reliance on this technology would lead to less police on the ground if incidents did occur, or a belief that anyone who is an issue will be picked up by the technology if they are really a threat, leading to a decline in traditional policing at contested protests. At a time when we are often told that Police Scotland's budgets are stretched extremely thin, it's hard to see how investing budget and police power into operating this inconsistent technology would not then remove police capacity from other areas.

Finally, a key issue with the technology as a whole is that it would only be set up to detect people already selected to be searched for, or who are already known to Police Scotland. While this may be effective for some people, many who commit extreme acts of terrorism are those who have never committed crimes before, or were not on police watch lists, and so if the use of this technology does draw resource and staffing away from current methods of monitoring, this could lead to a neglect of preventing crime by those with no criminal record. This is especially the case for crimes that occur out of opportunity rather than with pre-meditation – for example, a person who is anti-LGBTQIA+ who sees a pride taking place that they were not aware of and is enraged by LGBTQIA+ people using public space.

Human Rights concerns

Human rights violation and the potential for human rights interference of police-based surveillance and use of technology are well documented. We echo the sentiments of human rights organisations on LFR, including [Amnesty International](#), [Big Brother Watch](#) and [Liberty](#), who are calling for a ban on LFR in policing.

We have specific concerns around the compatibility with LFR and the European Convention on Human Rights (ECHR) which is given domestic effect via the Human Rights Act 1998. Specifically, we are concerned about:

- Article 5 – right to liberty and security;
- Article 6 – right to a fair trial;

- Article 8 – right to respect for private and family life;
- Article 10 – right to freedom of expression;
- Article 11 – right to freedom of assembly and association;
- Article 14 – right to non-discrimination.

We can envisage some circumstances where LFR may actually uphold human rights. For example, the right to life in Article 2 ECHR might be upheld by preventing death from terrorism at a large indoor concert (use case 3), or the right to be free from inhuman and degrading treatment in Article 3 ECHR might be upheld by preventing violence against women and girls (use case 1). However, those scenarios are at the most severe end of the scale, and LFR may negatively impact on the everyday rights on individuals in its attempt to uphold human rights and prevent disorder and crime.

We note that Article 8, 10 and 11 ECHR are qualified rights and interference can be justified if that interference pursues a legitimate aim which is necessary in a democratic society, is grounded in law and is proportionate to the means pursued. If Police Scotland were to introduce LFR, those authorising its use would have to undertake a ‘balancing of rights’ assessment between the rights it seeks to protect versus the impact of the rights of the general public in Scotland. Of course, that balancing of rights assessment will be subjective and subject to the particular use case and likely threat. We propose below in the section ‘Safeguards, regulation and oversight’ that this balancing of rights also be done by an independent body.

We are concerned that Police Scotland would not be able to guarantee that the correct balance would be struck in all circumstances, especially given the inaccurate and biased nature of LFR. We would strongly urge Police Scotland to consider the jurisprudence from the European Court of Human Rights (ECtHR) in-depth on the use of surveillance technology by police and ask that a full Human Rights Impact Assessment is conducted before considering introducing LFR, not at the end of its introduction. We would like to highlight a recent judgement from the ECtHR, [Glukhin v Russia](#), where the court found that where the police processed the claimants personal data in the context of a peaceful demonstration, which had not caused any danger to public order or safety, it had been particularly intrusive and violated Article 8 and 10 of the ECHR.

There has also been a court case here in the UK which has found LFR to breach human rights. In [R \(Bridges\) v CC South Wales & ors](#), the Court of Appeal in Wales found that South Wales Police’s use of facial recognition technology breaches privacy rights, data protection and equality laws. The court found that there were ‘fundamental deficiencies’ in the legal framework which led to an infringement of human rights.

Furthermore, we would like to highlight the below in relation to LFR and human rights:

- The Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission [raised concerns](#) in both the 2020 and 2024 UN reporting cycles that the use of LFR potentially abrogated the UK's International Covenant on Civil and Political Rights (ICCPR) responsibilities and called for a pause until the issue could be more thoroughly studied.
- In their [2020 submission to the UN](#), the EHRC raised the issues that facial recognition technologies were inadequately regulated; inherently disproportionate; and prone to disparities in accuracy, especially for Black people and women. These issues, in their view, constituted a risk of breaching Article 17 of the International Covenant on Civil and Political Rights, and Article 8 ECHR. They also highlighted the risk of 'big data' processing large amounts of personal information infringing upon privacy rights, promoting self-censorship, and producing chilling effects on freedom of expression and association.
- In their [2024 submission to the UN](#), the EHRC updated these concerns to note that the storing of data for use with all forms of automated facial recognition (live, retrospective, and operator-initiated) carried risks to arbitrary interference with the right to privacy.
- In a [blog post](#) for the EHRC, the human rights organisation, Big Brother Watch, highlighted misuse of LFR – including a mistaken identity case of a 14-year-old Black child who was restrained and searched after being falsely identified by LFR.
- In their 2021 issue paper for the Scottish Government Independent Advisory Group on Emerging Technologies in Policing, '[Human Rights and New Technologies in Policing](#)', the SHRC raised concerns that Scotland lacked a legal and regulatory framework for technologies, such as digital triage, already being used by Police Scotland and that this would continue to be a problem for regulating the human rights impacts of additional new technologies like facial recognition.
- In the same report, the SHRC highlighted a range of potential human rights infringements as a result of the use of facial recognition and other new policing technologies, including: ECHR Article 6(2), where the retention of biometric data on unconvicted persons could infringe on the right to the presumption of innocence; ECHR Article 8, where automated mass data collection could infringe on the right to respect for private and family life; and ECHR Articles 9-11, where automated mass surveillance could infringe upon the democratic rights to freedom of expression, peaceful assembly and association, and freedom of thought, conscience and religion.
- In 2019, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association [raised concerns](#) about the potential of face

recognition at large-scale cultural, sporting, and music events as a disproportionate infringement on association and assembly rights.

Alternatives to LFR

We seek further clarity on the alternative options to LFR. We also are keen to understand, in Police Scotland's view, what about the current model of policing does not work effectively that LFR could significantly enhance.

We note that CCTV is used in many public areas across Scotland and oftentimes plays an important role in police investigations. We note that this is often followed with signs detailing 'CCTV in operation' to make people aware of its presence. However, LFR is not comparable to CCTV and the ability for CCTV to infringe upon people's human rights is far less than LFR. This is because LFR has agency to scan and detect faces (as opposed to general recording), make decisions and is hard-wired with inaccuracy and bias, and while CCTV does record people's likenesses without their consent, it does not identify them or present them as potential suspects to the police unless they are captured on CCTV potentially committing a crime.

Whilst we understand that many 'human hours' are dedicated to manning public areas or watching CCTV, and that it can be difficult for officers to pick known or wanted individuals out of a large crowd, we have yet to find evidence that suggests LFR is an appropriate response to these challenges. This is particularly true given the additional challenges that LFR will create for Police Scotland, including inaccuracy, bias and wrongful identification. Put simply, how do we know that LFR will *actually* achieve the outcomes that Police Scotland want it to?

We also seek clarity on whether a thorough cost v benefits analysis has yet been conducted. Given the massive investment of public money that the introduction of LFR will require, this should be proportionate to the success of LFR as a tool to prevent crime and disorder, and should be evidence-based. If such a cost v benefits analysis has not yet been conducted, we strongly advise that this takes place and that that information be made public for transparency.

We note that LFR will be used to identify a criminal or suspected criminal and following this, a 'human check' via local officers on the ground will take place. We agree that this check is absolutely necessary and essential, especially given how inaccurate LFR is in current forms, but in our view, this presents two potential problems.

The first is the potential for officers to give way to their judgement when LFR has identified someone as being on the watchlist. Here, officers may defer to, and rely on, the technology in situations where they are unsure if the identified person matches

someone on the watchlist, leading to confirmation bias. In some cases, this could lead to wrongful arrest and/or conviction. Furthermore, there is a body of research which suggests that over time, human operators begin to [adopt the biases](#) of the AI systems they use, and that over-reliance on AI [reduces human ability to spot AI errors](#).

Secondly, and particularly in relation to use case 3 at large indoor events, introducing LFR may decrease police presence at these events in a bid to cut down on 'human hours'. This is problematic given that LFR can only identify those who are on the watchlist and not individuals who intend to cause crime at these events who are not known prior to the police. The lack of police 'on the ground' in these situations may actually result in increased harm for members of the public. For example, if a large fight or riot breaks out and there are less police available to shut this down. During the Covid-19 pandemic, Glasgow witnessed mass riots in George Square following Rangers and Celtic football games which resulted in huge levels of violence and destruction of property. In these scenarios, LFR would be ineffective due to the number of people who joined in on the riot (as it cannot film or record or detect people not on the watchlist) and due to it taking place in a location that was not at the indoor event, i.e. the football stadiums.

If police presence was not to reduce in the proposed use cases, then the introduction of LFR does not meet one of its core outcomes and part of the rationale for its introduction – to reduce human hours – which again, would limit its effectiveness.

Safeguards, regulation and oversight

It is our view that LFR should not be adopted by Police Scotland. However, if Police Scotland chooses to proceed with its introduction, there should be robust safeguards, regulation and oversight to avoid unlawful human rights interference.

Regarding safeguards, it is our view that LFR should be authorised by an independent body other than Police Scotland that will be able to conduct a thorough human rights assessment of whether its use is necessary and proportionate. We note that in cases where Police Scotland are required to obtain a warrant or in some cases of covert surveillance, this is authorised by the judiciary given that police will be interfering with the right to privacy and to property. We call for the same level of independent authorisation to be adopted here and that authorisation be adopted in a two-stage process, by two public bodies (for example, by Police Scotland and a court or tribunal), at minimum.

In addition to this, nobody should be added to the watchlist unless suspected of committing a serious crime and their addition should be proportionate to prevent the

disorder or crime they are suspected of. This should not be used to track citizens who are exercising human rights, for example the right to protest or their right to freedom of assembly and association, in lawful and legitimate ways. The SHRC has [raised concerns](#) about incidents in England where photographs taken by the police at protests have been passed on to the DWP, contributing to the intimidation of peaceful protestors in violation of human rights standards, and we are concerned that similar problems could arise in Scotland if LFR were introduced.

There are little rules or laws governing police use of live facial recognition in the UK, which [Liberty have called](#) “a regulatory Wild West”. Both the [UN](#) and the [SHRC](#) have unequivocally stated that new policing technologies, including live and retrospective facial recognition, should not be adopted without an adequate legal regulatory framework. Scotland currently lacks any such framework.

The Scottish Parliament Justice Sub-Committee on Policing has raised a [number of concerns](#) about both the regulatory environment that LFR would operate under, and how this would affect policing. In their report on facial recognition, they noted that “the use of live facial recognition would be a radical departure from Police Scotland’s fundamental principle of policing by consent” and that, as of its writing, there was “no justifiable basis for Police Scotland to invest in this technology”.

If Police Scotland were to introduce LFR, it is our view that this should be enacted via primary legislation from the Scottish Parliament given the potential for Police Scotland to act in violation of the European Convention on Human Rights which is prohibited by section 6(1) of the Human Rights Act 1998. Primary legislation around LFR would ensure appropriate parliamentary debate and oversight around its introduction. Failure to have the use of LFR grounded in law may fail the proportionality test in a court’s assessment of compliance with qualified rights in the ECHR, breaching those human rights, as was the case in the case of [R \(Bridges\) v CC South Wales & ors](#) in Wales.

Any primary legislation should, in our view, include a reporting duty on the Scottish Ministers, akin to that in section 14 of the Hate Crime and Public Order (Scotland) Act 2021. This would ensure transparency and accountability to the public around, for example, how many times LFR was authorised, if it was successful or not and if this complied with human rights.

Regarding oversight, we call for there to be a sufficiently independent body from Police Scotland that monitors and oversees the use of LFR, if it were introduced, to be able to hold Police Scotland accountable should it misuse LFR. Within this, there should be a sufficient complaints procedure available to individuals that is accessible and unintrusive that allows individuals to complain if they feel that LFR is being used against them in a way that is incompatible with their human rights.

We see two scenarios where this is important. Firstly, where somebody who is not suspected of a crime or is known to the police, but is regularly detected by LFR and approached by officers. This may be because they look similar to someone on the watchlist or because they are being identified through technological bias. Secondly, where an individual wishes to challenge a decision about being on the watchlist for it being disproportionate to their crime or suspected crime, or where they have been convicted of a minor offence and their criminal conviction is spent, but the watchlist has not been updated. Individuals should not be placed on the watchlist indefinitely, particularly for minor crimes, unless they pose a serious threat to society. Any watchlist should be continually monitored and reviewed, including by an independent oversight body.

Unintended consequences

Whilst we can anticipate some of the eventualities of the introduction of LFR, for example the apprehension of criminals or prevention of serious crime, we do not yet know the unintended consequences that this will have on Scottish society. For example, will people start avoiding public areas and spaces for fear of state-based surveillance and constant monitoring? Will this cause fear and alarm to vulnerable people, especially those who have reason to be concerned about poor treatment from the police? Will people stop expressing themselves in entirely legitimate ways for fear of being apprehended by the police? Will hackers and fraudsters develop ways to hijack the system to commit identity fraud? Will private businesses take this as a nod to introduce LFR to track employees? The list of potential unintended consequences is endless and introducing this in Scotland creates a slippery slope which may prevent individuals from realising their human rights in ways that have not yet been thought of.

Many people within the LGBTQIA+ community are disabled, with our recent [Scottish Trans and Non-binary Experiences Survey](#) finding that 67% of the people we heard from were disabled. Some of those are also immune-compromised, and vulnerable to diseases such as covid, which still spread at high rates, or may live with or regularly see people who are themselves vulnerable. As such, they may still wear face masks or coverings when out in public, or when attending events or gatherings including prides, and indeed there has been a recent resurgence in many people wearing face masks at prides even when they are not immunocompromised to make these events safer for those who are.

From trials in England and Wales, we are aware examples of people who wear face masks being stopped by police because this interferes with facial recognition technology, and treated as suspicious for doing so. People who continue to wear face

masks in public already receive social stigma and poor treatment from others because of this, which can impact their ability to feel safe and confident engaging in public life, and so being treated as suspicious by police for taking measures to protect their own health with likely add to this. Similar concerns are also raised for those who wear head and/or face coverings for religious or cultural reasons.

Further engagement

We would like to reiterate our understanding that Police Scotland have not committed to introducing LFR but are conducting a national conversation on the potential for taking this work forward. In our view, this work should not be taken forward.

However, if work is to begin around the introduction to LFR, we strongly advise that this is done with meaningful and extensive public consultation with various stakeholders, civil society organisations and the general public. This should be devised by using a human rights-based approach and developed with the PANEL principles (participation, accountability, non-discrimination and equality, empowerment and legality) to ensure it is person-centred and that people's rights are at the heart of the process.

Consultation should be done via co-design with communities, and at all stages of the process, not just at the beginning where proposals are not concrete enough making it hard to form a view, or at the end where proposals are too concrete to be changed and engagement is rendered meaningless. This is particularly true for LGBTQIA+ people who are repeatedly consulted on policy and practice by duty-bearers but rarely see a meaningful difference/improvement to their everyday lives. Views sought should be representative of the general public at large, and not just within segments of the public who currently engage with Police Scotland or who have high levels of trust and confidence in policing.

When engaging with stakeholders, civil society and the public, we believe it is the responsibility of Police Scotland to adequately inform participants of the dangers and human rights impacts of LFR. For this, the framing of how LFR will be used is important. Whilst the public will likely agree that it is the responsibility of policing to apprehend serious criminals and prevent crime, and that LFR may be a way to do this, they should also be made aware that it has the potential to impact them and their human rights, as well as the notorious inaccuracies and biases that are hard-wired into the technology. Failure to do so will be intentionally misleading, and it is crucial that Police Scotland does not bias the public during such consultation if its own position is in support of adopting LFR.

Furthermore, to best understand the impact that LFR will have on LGBTQIA+ people, we support full and extensive engagement with civil society organisations who work with, for, and represent LGBTQIA+ communities on a daily basis. The third sector has a breadth of knowledge, experience and expertise which can be utilised in a consultation process, and who are best placed to advocate for their communities. We particularly support thorough engagement with the LGBTQIA+ sector, but also the ethnic minority and women's sectors given the known racial and gender bias within LFR.

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