

REPORT OF THE POLICE AND CRIME COMMISSIONER

TITLE: Police and Crime Commissioner Facial Recognition Technology Update

DATE: 17th September 2019

PURPOSE: For Noting

1.	<p><u>RECOMMENDATION</u></p> <p>That the Police and Crime Panel considers the attached findings of the Judicial review into the use of facial recognition technology by South Wales Police.</p> <p>The Divisional Court refused the application for judicial review on all grounds.</p>
2.	<p><u>INTRODUCTION & BACKGROUND</u></p> <p>On September 4th the High Court gave its ruling on the application by Liberty for judicial review of the use of Facial Recognition Technology by South Wales Police. The Court Decision document is provided for the information of the Panel Members. It should be noted that the decision is purely about whether South Wales Police were acting within the law in deploying the technology and the Court did not consider the way in which the operational decision was scrutinised. In fact there was considerable scrutiny through our internal processes and the engagement of independent experts and we will present to the Panel an overview of those processes.</p> <p>While the Court decision is very clear – finding that the use by South Wales Police is legal – the internal discussion considered carefully the implications for protecting the civil liberties of the public as well as the benefits for protecting the public and for law enforcement. As is noted by the Court, the use by South Wales Police has not been “covert” and deployment has on each occasion been indicated clearly on police vehicles, with members of the public (and critics of the deployment) invited to observe how the technology is used. In advance of deployment South Wales Police engaged fully with the three relevant national Commissioners – the Information Commissioner, the Biometrics Commissioner and the Surveillance Commissioner – and decision-making was scrutinised in detail by the Joint Ethics Committee appointed by the Police & Crime Commissioner and the Chief Constable. The grounds of the decision on deployment and the processes were scrutinised personally by the Police & Crime Commissioner and by the Commissioner’s Strategic Board.</p> <p>So while the Court Decision Document makes it clear that South Wales Police were within the law in deploying the technology the Commissioner believes that the Panel will be interested in the steps taken to ensure that the decisions</p>

	on deployment took account of wider factors and were subject to careful scrutiny on behalf of the public.
3.	<p><u>ISSUES FOR CONSIDERATION</u></p> <p>The Court concluded that South Wales Police’s use of Facial Recognition met the requirements of the Human Rights Act. The use of facial recognition did engage the Article 8 rights of the members of the public whose images were taken and processed. But those actions were subject to sufficient legal controls, contained in primary legislation (including the Data Protection legislation), statutory codes of practice, and the South Wales Police’s own published policies, and were legally justified. In reaching its conclusion on justification, the Court noted that on each occasion facial recognition was used, it was deployed for a limited time, and for specific and limited purposes. The Court also noted that, unless the image of a member of the public matched a person on the watchlist, all data and personal data relating to it was deleted immediately after it had been processed.</p> <p>On the Data Protection claims, the Court concluded that, even though it could not identify members of the public by name (unless they appeared on a watchlist), when South Wales Police collected and processed their images, it was collecting and processing their personal data. The Court further concluded that this processing of personal data was lawful and met the conditions set out in the legislation, in particular the conditions set out in the Data Protection Act 2018 which apply to law enforcement authorities such as South Wales Police.</p> <p>The Court was also satisfied that before commencing the trial of facial recognition, South Wales Police had complied with the requirements of the public sector equality duty.</p> <p>The Court concluded that the current legal regime is adequate to ensure the appropriate and non-arbitrary use of facial recognition, and that South Wales Police’s use to date of facial recognition has been consistent with the requirements of the Human Rights Act, and the data protection legislation.</p>
4.	<p><u>NEXT STEPS</u></p> <p>The Police and Crime Panel are required to note and comment on the attached findings.</p>
5.	<p><u>FINANCIAL CONSIDERATIONS</u></p> <p>There are financial implications to the development and delivery of technology solutions and this is laid out within the medium term financial strategy.</p>
6.	<p><u>PERSONNEL CONSIDERATIONS</u></p> <p>Not specifically in this judgement although there is significant reference to</p>

	equalities and data protection.
7.	<u>LEGAL IMPLICATIONS</u> Significant legal implications are highlighted in the attached judgement, and summarised above.
8.	<u>EQUALITIES AND HUMAN RIGHTS CONSIDERATIONS</u> This proposal has been considered against the general duty to promote equality, as stipulated under the Strategic Equality Plan and has been assessed not to discriminate against any particular group. Consideration has been given to the requirements of the Articles contained in the European Convention on Human Rights and the Human Rights Act 1998. Both are referenced in the attached judgement.
9.	<u>RISK</u> The potential risks are addressed in the attached judgement. Consideration against any legal implications but also public understanding.
10.	<u>PUBLIC INTEREST</u> There has also been significant scrutiny and increased public engagement specifically around this topic prior to the pilot, during and as a consequence of the judicial review.
11.	<u>CONTACT OFFICER</u> Lee Jones, Chief Executive to the Police and Crime Commissioner for South Wales.
12.	<u>ANNEXES</u> The Annexe to this report is a copy of the findings of the Divsional Court for noting.