

Biometrics Forensics Ethics Group

Minutes of the 2nd meeting held on 04 December 2017 Home Office, 2, Marsham Street, Westminster, London, SW1P 4DF

1.0 Welcome and Introductions

- 1.1 The chair welcomed all members to the 2nd meeting of the Biometrics Forensics Ethics group. Alan Clamp and Barbara Prainsack were thanked in absentia for their contribution to the work of the BFEG during their terms.
- 1.2 The Chair welcomed the observers to the meeting: Liz Campbell (University of Durham), Simon Caney (University of Warwick), Louise Amoore (University of Durham), Sue Black (University of Dundee), Peter Waggett (IBM), Penny Carmichael (Home Office), Carl Jennings (Home Office), Alex Macdonald (Sponsor for the Committee), Gemma Gyles (Home Office). Kirsty Faulkner (Home Office) joined the meeting by teleconference,

2.0 Minutes of the last meeting and Matters arising

- 2.1 The minutes of the last meeting were confirmed by correspondence and were published on the BFEG website.
- 2.2 Matters arising:
 - 2.2.1 Subgroups to consider the retention of biometric data from convicted individuals and ethical consideration of research proposals will be established in 2018.
 - 2.2.2 Members were asked to forward any feedback on the Biometrics Commissioner's annual report to Gemma Gyles.
 - 2.2.3 Kirsty Faulkner agreed to pass the explanatory leaflet concerning DNA sample collection to the secretariat for distribution to members.

Action 1: Kirsty Faulkner to forward the DNA Sample Collection information leaflet to the secretariat for distribution to members.

3.0 Transforming Forensics Programme

- 3.1 The Chair welcomed Jo Ashworth and Ben Sargent to present this item.
- 3.2 This Transforming Forensics Programme is funded by the Police Reform and Transformation Board. The programme aims to improve forensic delivery in England and Wales to provide modern, efficient and world leading capabilities and consistent and high quality delivery, innovation, training and support.
- 3.3 The need for a single national approach to forensic services across the UK was identified in the Home Office Forensic Science Strategy. In considering how to take forward recommendations it was considered necessary to take a pragmatic approach taking into account the diversity of local practices, capabilities and needs.

- 3.4 Members were informed that the programme was at an early developmental stage and that delivery will be staged with initial deliverables related to: fingerprint use, specifically the 39 fingerprint bureaux; helping to improve sharing and networking of data and capabilities; improving front line digital technology, and digital forensics; and empowering police through accreditation.
- 3.5 Funding until 2020 was being sought.
- 3.6 The programme board was keen to obtain early consideration from the BFEG.
- 3.7 In early 2017 a mixed method study had been undertaken into the forensic research and development landscape. This was complemented by a study into the value of forensic science achieved by interviewing key stakeholders (e.g. police, judges, and scientists). The study looked at the relationship and link between the police (with their detection of crime) and the CPS (with their prosecution of crimes). Further, a quantitative financial study was undertaken to determine the cost effectiveness of forensic services. Members were informed that the conclusions of these studies would be published in the New Year and would help the police to better align financial resources with forensics which lead to prosecutions.
- 3.8 The quality of forensic work was an important aspect in relation to the FSR, and associated ISO 17025 and 17020 accreditation. The programme sought to broaden the approach to quality so that it was seen as synonymous with integrity. This was a culture change approach which was linked to accountability.
- 3.9 Members commented that it was important to understand who 'the public' were in the context of the questions posed to better understand their responses. It was unlikely that the public would speak with one voice. The public might include those directly affected by crime and those with an interest in forensics and the forensic system. It was noted that the public would expect an appropriate approach to error and error detection, including that actions were taken to prevent recurrence.
- 3.10 In consideration of the separation of forensics between 'volume' and 'serious' crimes, it was important to remember that those who committed serious crime may well have started in volume crime; therefore it may be important to record their earlier 'volume crime' activities in a forensic way. Members noted that they were pleased that the focus was on quality and the integrity of forensic science.
- 3.11 Members were reassured that the programme leads would proactively liaise with the Group.

4.0 FINDS Briefing and Update

- 4.1 Members were provided with an update on the various works of the Forensic Information Database Strategy (FINDS) Board.
- 4.2 The performance of the forensic information database services (which includes DNA, fingerprint and footwear databases) was noted as within the statement of requirements. The Unit had supported two rapid DNA pilots during this reporting period.

- 4.3 Work to expand the Strategy Board's Access and Use Policy was reaching its conclusion following the expansion of the Strategy Board. This policy would consider DNA, footwear and fingerprints and enable other forensic information databases to be considered in the future, if required. The expansion of this policy aimed to ensure consistency of approach for all data being loaded and reported through the databases.
- 4.4 The Strategy Board had also expanded their international data exchange policy and had reached its final consultation phase following the expansion of the Board to include fingerprints in the past year. This policy considered the international exchange of DNA and fingerprint data, but enabled the exchange of other forensic information databases to be considered in the future, if required. The current consultation period aimed to achieve a pragmatic approach enabling operational needs to be balanced with the requirement defined within the Data Protection Act and the upcoming General Data Protection Regulation. It was noted that a meeting would take place on 12th December to iron out the final details.
- 4.5 Work continued on the Prüm exchange technical solution, however, the outcome from the discussions with the European Commission remains outstanding.
- 4.6 Kit Harling agreed to attend the next Strategy Board meeting in place of Chris.
- 4.7 Members were informed that a draft annual report was to be submitted to the December Strategy Board. There was a legal obligation in the Protection of Freedoms Act to produce a National DNA Database Annual Report and, for the first time, this report had been expanded to include the whole remit of FINDS (DNA, fingerprints and footwear).

Action 2: Kirsty Faulkner to circulate the International Data Exchange Policy to all members for comment on the changes made.

5.0 FINDS Access & Use Policy

- 5.1 It was noted that the Access and Use Policy document contained information about DNA, fingerprints and footwear. The policy had been updated to ensure that there was consistency in the data uploaded. IDENT1 policy was being reviewed to ensure robust access control.
- 5.2 The amended Access and Use Policy document had been circulated to the Group and comments and amendments should be submitted via the secretariat.

Action 3: Members are to provide the secretariat with comments and amendments on the Access and Use Policy Document, the secretariat will collate and return them to Kirsty Faulkner.

6.0 Forensic Science Regulator

- 6.1 The Forensic Science Regulator (FSR) provided an overview of her role and noted where her role and that of BFEG complemented each other. Whilst the BFEG considered the ethics of the degree of personal intrusion around the storage and

use of biometric samples the FSR provided assurance as to the quality of the science behind **analysis of** those samples. There was both a scientific and an ethical duty to ensure that the forensic science evidence that is presented was reliable.

- 6.2 The FSR noted that there had been improvement in transparency and, in particular, the reporting of uncertainty. Scientists were comfortable in working with uncertainty, however, it was important that scientists conveyed the uncertainty associated with methods and results to the end-user of the information. Whilst this was facilitated by the Quality Standards and Criminal Procedure Rules and Criminal Practice Directions, more work was needed to promote and ensure compliance with these rules. To enforce these rules it was now mandatory for those not compliant with the FSR's standards to declare this non compliance when evidence was presented in court.
- 6.3 The FSR also noted the importance of addressing non-compliance within the courts. This challenge function, if upheld by the courts, would support improvement in standards. A particular issue at present related to the inappropriate use of streamlined forensic reports (SFR). SFRs are a summary of expert evidence. SFR evidence is not intended to be presented at trial. In cases where these streamlined reports were not agreed, or more evidence was required, a full evidential forensic statement needed to be produced. There had been occasions where streamlined reports had been used inappropriately in the place of forensic statements. It was noted that the inappropriate use of streamlined forensic reports would be raised at the next Forensic Science Advisory Council meeting.

7.0 Live Facial Recognition

- 7.1 The Chair welcomed representatives of the Metropolitan Police Service (MPS) to present preliminary findings on the use of live facial recognition.
- 7.2 This trial outlined cut across the purviews of different regulators and advisory groups. It involved biometrics being used through surveillance in the public domain, with live access to a watch list. Use of live facial recognition was being put forward for ethical scrutiny by the BFEG during its early trial phase to elicit feedback in relation to the ethics of its use and advice on proceeding to regulation. It was noted that oversight of use was through the offices of the Information Commissioner, Surveillance Camera Commissioner and the Biometrics Commissioner.
- 7.3 This trial was currently being undertaken to determine if live facial recognition was operationally possible and useful to policing. This technology was wholly separate from conventional CCTV surveillance. Current work comprised trials of the live use of facial recognition in a static area in a public space. It was deployed using a camera with a fixed field of view. A watch list, bespoke to each deployment, was created, and as individuals walk into the field of view their images were checked against the watch list.
- 7.4 Live Facial Recognition trials had been conducted at Notting Hill Carnival in 2016 and 2017, and the Cenotaph 2017 and early results demonstrated positive outcomes. It was noted that this was overt surveillance and that at the Cenotaph large dot matrix signs were utilised, alongside leaflets, alerting the public to the trial.

In addition to providing information on the trial the leaflets contained information on how to raise a complaint.

- 7.5 Members were informed that for each trial a bespoke watch list of images was created according to criteria specified and using the MPS wanted list. The national custody database of images was NOT used. Only the images of individuals already 'wanted' by the police for reasons including arrest, questioning, breach of bail or an outstanding warrant, or those potentially fixated on a celebrity that would be present, were utilised. The list was created by retrospectively analysing the crime types that occurred at past events.
- 7.6 In the event of a match between an image on the watch list and an individual present, the automated match was manually checked. If the match was confirmed the police on site were alerted and the individual in question stopped by a police officer. When stopped the individual was informed why they had been stopped and enabled their identity to be checked by the officer. If confirmed, the police carried out their duty. Manual confirmation of identification reduced the potential for false alerts
- 7.7 Images captured by the fixed-plot cameras were seamlessly relayed and checked against the wanted list.
- 7.8 The system utilised probabilistic algorithms which may produce false alerts potentially cross matching males and females and across ethnicities which evidenced matching only on facial features.
- 7.9 Members were informed that at the end of deployment, the watch list was deleted and all images captured were deleted after 3 months which provided sufficient time to generate the metrics to determine system performance. Consenting officers were seeded into the surveyed area and used as positive controls during trials to provide system metrics. Retaining the images for three months also provided the opportunity for any necessary investigation, for example in the event of a complaint by a member of the public. To date no complaints had been received.
- 7.10 This system was most usefully deployed at locations where the public had to cross into a controlled area enabled easy and safe interception.
- 7.11 In order to reassure the public and in accordance with the principle and best practice of policing by consent, the project was seeking advice on regulation, ethics and statutory control of the technology and its application. It was noted that in a principle based approach, whilst more efficient the technology differed only slightly from the use of "super recognisers".
- 7.12 The Chair noted that the BFEG had produced an ethical principles framework and suggested that this be used to commence the ethical assessment of the trials and technology.

Action 4: Secretariat to forward the BFEG Ethical Principles to the Live Facial Recognition Trial Team.

- 7.13 In response to questions from members, the project team confirmed the process of developing the watch list as a bespoke process which targeted only those already

wanted by the police for offences relating to the type highlighted as having occurred previously at the event in question. In generating the watch list, the, genders and ethnicity remained unknown. In the event of an image match, the officer questioning the individual was provided with sufficient information to assist with identifying the individual.

- 7.14 Clarification was provided on how individuals identified were managed. Once alerted to a potential match the individual was stopped by an officer who explained the situation to them and provided a leaflet of information, along with an email address to obtain more information or to lodge a complaint. They were then either released or advanced into the secure area ahead of the queue. So far all those who have been falsely identified have responded positively and no complaints have been lodged.
- 7.15 Facial recognition algorithms have been reported to have bias and this varies according to the algorithm used. However, it was impossible to remove all potential bias in the algorithms, and this was the reason for the human interaction to confirm identity following an alert being generated.
- 7.17 In terms of public engagement, there had been some negative media about the trial. This had expedited the need for a public engagement event. There was to be a public trial with civil liberty organisations and media invited to participate in a mock scenario. Members were invited to attend and participate in the trial.
- 7.18 Members noted the importance of informing the public of the boundaries of this project and its future uses, and to be explicit, open and proactive in stating that it was not to be used to covertly gather intelligence or to generate a soft watch list using social media.

Action 5: Secretariat to forward the details of the public engagement event to members.

- 7.19 The BFEG considered that the most ethically contentious element of the project related to the control of biometrics, rather than the use of cameras or the use of databases. As such, members concurred that regulation of live facial recognition sat most appropriately within the purview of the Biometrics Commissioner.

8.0 Chair's Update

- 8.1 The Chair welcomed Peter Waggett as an observer to the meeting.
- 8.2 The Group noted the recent publication online of a letter regarding the use of custody images.
- 8.3 Further work on the use of images and biometrics that was over 100 years old awaited review following the current decision underway in the European Court of Human Rights.
- 8.4 The Group noted the publication of the 2016 Annual Report of The Ethics Group: National DNA Database.

8.5 The BFEG Ethical Principles document had been shared with the Centre for Applied Science and Technology, who were to report back on its usefulness at the March meeting.

9.0 HOB PIA & Ethics Working Group Update

9.1 The Chair invited Isabel Nisbet to update the Group on the work of the HOB Subgroup.

9.2 The last HOB meeting was 17 November 2017. The members had fed back some privacy impact assessments (PIAs) and received presentations on aspects of programs that were running.

9.3 The PIAs had been considered somewhat narrow in their perspective and additional questions had been added to the template.

9.4 A pilot was tested which used mobile devices for the police to identify information about individuals. The group examined the security protocols and were content, although they noted a degree of evaluation creep rather than a planned structured evaluation.

9.5 There had been concern noted regarding the governance of data and access that individuals had to multiple datasets, however, members had been reassured that safeguards were in place.

9.6 The importance of consideration of the implications of the General Data Protection Regulation regime had been noted and a member of the Information Commission was to be invited to attend the subgroups next meeting to update the group.

9.7 Sensitivity concerns had delayed the distribution of meeting papers. An alternative solution was needed to enable members to read papers in advance. Members agreed the need for secretariat support to record the outcomes of meetings.

Action 6: Secretariat to determine a mechanism to improve the distribution of papers.

Action 7: Secretariat to note future HOB meetings and provide a paper for the BFEG meetings.

Action 8: Subgroup Chair to provide a summary of the evidence provided to date for inclusion within the annual report. Thereafter outputs to be reported in line with BFEG's.

10.0 Biometric Commissioner's Briefing and Update

10.1 For the purpose of background for observers, the role of the Biometrics Commissioner (BC) was established following the Protection of Freedom Act 2012, and the current commissioner took up position 2016. The role included the oversight of the retention and use of DNA samples, DNA profiles and fingerprints. In terms of the Police and Criminal Evidence Act, the BC had oversight of the

indefinite retention of data of those people convicted in England and Wales, and managed the limited retention of information related to those who were charged.

- 10.2 Under the Counter Terrorism Act 2008 the BC had an oversight role in relation to national security requests to retain data, which had to be in the interests of national security and must be proportionate and necessary.
- 10.3 In relation to new technologies, the BC worked with other commissioners to minimise overlap.
- 10.4 The BC had oversight of the international exchange of conviction information, fingerprints and in relation to Interpol and Prüm exchange. The exchange of information in relation to Prüm was to be undertaken in conjunction with the Information Commissioner.
- 10.5 The BC also audited the police services and their handling of data, and in 2018 they were to move towards a data reporting matrix in conjunction with FINDS.
- 10.6 The next annual report was to be published in mid 2018.
- 10.7 The Chair thanked Gemma for her outstanding work and contribution over the years and wished her all the best for the future.

11.0 BFEG Workstreams and working subgroups

- 11.1 Due to the pending appointment of new members and the expected ministerial commission in early 2018, it was decided to postpone arranging the workstreams until this is confirmed.

Action 9: Secretariat to arrange an away day for members to consolidate work programmes in the 2018.