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UPDATE ON LAW ENFORCEMENT USE OF BIOMETRICS

We welcome the important roles you have played in the current debate on the use of biometrics and in particular facial images by law enforcement. We committed to provide an update to you on current work in this area.

Biometrics can swiftly and effectively identify people, providing a valuable tool for the police in protecting the public, notably through identifying and eliminating suspects in investigations. This inevitably involves some intrusion into people's privacy and the challenge we face is whether new biometric technologies can both enhance public protection, while minimising or even reducing the overall impact on privacy.

These new technologies have the potential to be genuinely transformative and we are committed to working with you and others to ensure that we take the public with us and build their trust.

We already have a strong legislative framework for biometrics use including for the emerging facial recognition technology. This includes the Data Protection Act 2018, Human Rights Act 1998, Equality Act 2010, the Police and Criminal Evidence Act 1984 (PACE) and the Protection of Freedoms Act 2012 (POFA). In particular, POFA created the Surveillance Camera Commissioner and Biometrics Commissioner roles, and the Forensic Information Databases Service strategy board, which oversees the police DNA and fingerprint databases. PACE provides specific powers for police to collect DNA, fingerprints and custody images and sets out the data retention regime for DNA and fingerprints. We also have an agreed regime for the retention, review

and deletion of custody images laid out in the College of Policing's Authorised Professional Practice (APP) on the Management of Police Information.

The Surveillance Camera Commissioner (SCC) in particular is responsible for encouraging compliance with the Surveillance Camera Code and has issued guidance on automatic facial recognition to all police forces, to ensure that when they use the technology they comply with the Code. The SCC has also undertaken other activities to improve the standards of security and use of surveillance cameras, such as the "Secure by Default" cyber security minimum requirements and a self-certification scheme that extends to third-party operators of surveillance cameras.

We have of course now seen the Science & Technology Committee's report published last week, and in particular the concerns raised about live facial recognition and custody images. We will respond to the report in the usual way, but we set out our approach below.

We must always ensure that law-enforcement have the right tools to do the job. This includes testing emerging technologies including those with proven value from the private sector. When we meet victims of crime they rightly want to know what the police and the Home Office is doing to apprehend the people who carry out these crimes. They expect and welcome the fact we are supporting the use of emerging technologies, including facial recognition. We therefore support the police trialling live facial recognition technologies.

We firmly believe that there is a legal framework for the police to do this, which includes the common law powers that are available to the police to prevent and detect crime, working within the framework of the Data Protection Act, the Human Rights Act, the Police and Criminal Evidence Act and the Surveillance Camera Code of Practice. But that framework is being challenged in the courts to clarify the position, and I would not want to pre-empt the outcome of that case.

Nevertheless, recognising both the potential benefits and impacts on privacy we have gone further by establishing the Facial Images and New Biometrics Oversight Board, which brings together the Commissioners, Regulators, policing and a representative of the HO Biometrics and Forensics Ethics Group (BFEG). Their remit includes ensuring that use of new biometrics conforms with legislation and codes of practice, adheres to scientific quality and ethical standards, has a proper evidence base, and making recommendations to police forces on best practice. In particular the Board will ensure that if there are any new proposed LFR trials or deployments they will be subject to proper external oversight and approval. This is in addition to the

independent work of the Information Commissioner's Office (ICO), the SCC and BFEG.

We are working with the National Police Chiefs Council (NPCC) to produce operational guidance on the use of LFR that will continue to be scrutinised by the Board. The operational guidance is being informed by the independent reviews of the recent trials, including that of South Wales Police (SWP), which received Police Transformation funding. We will ensure that lessons are learned, best practice is set out and a proper evaluation is conducted, to benefit and support future use. Some of the key themes that have been identified, and which we expect the police to address in guidance, include how watchlists are developed, when it is appropriate to deploy this technology and who makes that decision, data retention regimes and skills and training of operating staff. A particular concern will be ensuring we take account of and address possible bias in the way the systems operate.

More broadly across Government the newly established independent Centre for Data Ethics and Innovation (CDEI) is looking at the question of bias in algorithms, including how this can be minimised, and has published its interim findings from that work. We also welcome the SCC and ICO's ongoing work in this area, who have both produced guidance on the use of automatic facial recognition.

MPS and SWP both commissioned independent reviews of the trials from Essex and Cardiff Universities respectively, which have been published. The headline finding of the University of Cardiff's evaluation of SWP's use of LFR was that 'automatic facial recognition technologies can certainly assist police to identify suspects and persons of interests, to both solve past crimes and prevent future harms'.

We know that there have been particular concerns over the question of accuracy in live facial recognition deployments. Whilst this is affected by many factors it is worth highlighting that the MPS trials found that, based on the international standard for measuring accuracy, for those not on a watchlist there was a 1 in 1,000 chance of there being an alert against them. A human operator always takes the final decision to engage with an individual, and only in around a third of those cases did they decide to do so. Combined, there was, therefore, around a 1 in 3,000 chance of being approached by a police officer looking to check the identity of someone who wasn't on the watchlist. We would hope to see improvements on those figures, reducing the chance of someone being affected incorrectly. Against those figures, if a person was on a watchlist, they had between a 66% and 89% chance of an alert being made against them.

We recognise that the use of live facial recognition is a particular area of public interest and in some cases a concern. In that respect we welcomed the work of the London Policing Ethics Panel to carry out polling. That research found overall that 57% of respondents thought that in general terms police use of LFR was acceptable, and over 80% thought it was appropriate for the police to use it to identify people wanted for serious crimes. We will continue, working with the police and others, to engage the public in understanding and seeking views on the appropriate use of LFR to support our public safety obligations.

In your reports you have also raised concerns over the implementation of the data retention regime for custody images as set out in the Review of the Use of Custody Images 2017. This allows those who have been arrested but not convicted to request the deletion of their custody images, with a strong presumption in favour. To support implementation of that policy, we are working with police to produce guidance on the rights to request deletion of custody images and we have written to the Association of Police and Crime Commissioners (APCC) and the NPCC asking them to improve compliance with the existing custody images policy.
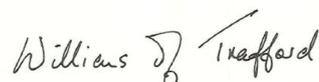
Nevertheless, given the concerns raised by you and others, we have decided to bring forward the review of custody images policy, which had been planned for next year. This will be taken forward with the NPCC and APCC and will include work with relevant technology programmes to develop options for automatic deletion and short-term solutions.

Biometrics already play a vital role in enabling the police to protect the public. We have a duty to ensure that the police can make further use of these tools and do so in a way that maintains public trust. In a democratic society it is right that we and the police are held to account, particularly in Parliament, and we can both attest that you have been doing that. We therefore hope that this letter provides a useful basis for further engagement.

We are placing a copy of this letter in both House libraries.

RT HON NICK HURD MP   **Baroness Williams of Trafford**