



By email: cc.office@scotland.police.uk

7 June 2025

Dear Deputy Chief Constable Smith,

Consideration of the use of live facial recognition technology

We are writing to highlight equality and human rights concerns of the Children and Young People's Commissioner for Scotland (CYPCS), Equality and Human Rights Commission (EHRC), and the Scottish Human Rights Commission (SHRC), around the potential introduction of live facial recognition technology (LFRT) by Police Scotland. Some of those concerns were articulated at the Policing in a Digital World Professional Reference Group meeting in December 2024. We now write jointly to set out our plans to continue engaging with your work in this area and the basis on which we will do so.

The CYPCS has the statutory responsibility to promote and safeguard the rights of children and young people in Scotland under the terms of the Commissioner for Children and Young People (Scotland) Act 2003. The EHRC is the regulator of the Equality Act 2010 across England, Scotland and Wales. The SHRC has the statutory responsibility to promote human rights in Scotland, under the terms of the Scottish Commission for Human Rights Act 2006. All three of our organisations have a range of formal

legal powers that we can exercise in relation to our respective mandates.

EHRC have gained valuable insight into police use of LFRT through engagement with police forces in England and Wales, and SHRC and CYPCS continue to engage as a member of the Scottish Biometrics Commissioner's Advisory Group. The shared position of our organisations is that police use of LFRT raises significant concerns under both equality and human rights law.

The EHRC's concerns, from an equality law perspective, include the risk that equality implications are not fully understood or mitigated, which can indicate non-compliance with the public sector equality duty. This risk may be exacerbated by, for instance, a lack of protected characteristic data to scrutinise watchlists and deployments to ensure non-discrimination.

In relation to human rights requirements, the SHRC's concerns principally arise in relation to the rights to private and family life (Article 8 ECHR), freedom of expression (Article 10 ECHR), freedom of assembly (Article 11 ECHR) and freedom from discrimination (Article 14 ECHR), which are protected in domestic law by virtue of the Human Rights Act 1998 and the Scotland Act 1998.

In relation to the rights of children and young people, CYPCS has concerns in terms of children's right to be free from discrimination under Article 2 UNCRC, and their rights to free expression, assembly and privacy under Articles 13, 15 and 16 UNCRC. We are also concerned that the paper produced by SPA does not include specific consideration of children's rights. This is especially surprising given both Police Scotland and the SPA are public authorities for the purposes of s6 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

CYCPS and SHRC in reference to our remits believe the introduction of LFRT without a specific legal basis may fail to satisfy the requirements that state interferences with certain human rights be “in accordance with the law” and that any given deployment of LFRT be assessed as proportional. The use of LFRT could therefore be open to legal challenge and risk reputational damage to Scottish policing.

More broadly, we are concerned that there is a lack of information available to regulatory and oversight bodies to allow them to effectively assess the use of LFRT. There is also an absence of specific legal basis for the use of LFRT and there is limited case law.

At these early stages of policy development, we want to use our specialist expertise to inform Police Scotland’s consideration of LFRT and ensure that it takes full account of equality and human rights obligations from the outset. For example, under the public sector equality duty and associated specific duties in Scotland, you will be aware that Police Scotland and the Scottish Police Authority must assess the equality impact of proposed policies and practices, and should do so at the earliest stage of policy development. Police Scotland must also comply, at all times, with the Human Rights Act 1998. Police Scotland use of surveillance powers as well as a wide range of general police powers must also comply with children’s rights under the UNCRC Incorporation (Scotland) Act 2024.

We look forward to a role for CYPCS, EHRC and SHRC in informing any upcoming consultation, as well as responding to it and monitoring the outcome. All three organisations have formal legal powers in relation to their respective mandates.

We were happy to be invited by Police Scotland, the Scottish Police Authority and the Scottish Biometrics Commissioner to take part in

scheduled focus groups, which allowed us to expand upon our concerns set out in this letter. We look forward to hearing the results of these focus groups and the outcomes from the recent conference on LFRT, and details of how Police Scotland intends to proceed.

In the meantime, we would be happy to answer any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nicola Killean'.

Nicola Killean

Children & Young People's Commissioner Scotland

A handwritten signature in black ink, appearing to read 'Lesley Sawers'.

Dr Lesley Sawers

EHRC Scotland Commissioner

A handwritten signature in black ink, appearing to read 'Angela O'Hagan'.

Professor Angela O'Hagan

Chair Scottish Human Rights Commission