

Scottish Biometrics Commissioner
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NL

16 May 2025

Dear Dr Plastow,

SHRC response to the first statutory review of the Scottish Biometrics Commissioner's Code of Practice

Thank you for your letter of 4th February 2025 inviting the SHRC to suggest amendments to the Scottish Biometric Commissioner's code of practice (the "Code") in the course of its first review.

We are pleased to offer a broad reflection around how human rights can better underpin the Code and ensure a human rights based approach.

As currently drafted, human rights are one of twelve 'guiding principles', as elaborated in chapter 5 of the Code. As the Code currently reads, "Respect for the Human Rights of Individuals and Groups" is one principle. This approach does not, in our opinion, capture the foundational nature of human rights in the collection and use of biometric data. By way of example, many of the guiding principles are human rights requirements stemming from Article 8 of the ECHR but are not comprehensively framed as such. These principles include necessity and proportionality.

In our view therefore, consideration should be given to whether it may be better to include an overarching human rights statement at the beginning of the principles, explaining that many of the principles stem from and directly relate to human rights requirements.

Linked to the articulation of the guiding principles as human rights entitlements where appropriate, the Code could also helpfully acknowledge that other standards

around equality, considerations to be given to vulnerable individuals including children, and data protection all derive from international human rights standards.

At paragraph 60, the Code describes the role of international human rights treaties. Unincorporated international treaties remain binding on the State without being able to be relied on in court. The SHRC's view is that the Code should highlight the binding nature of these treaties and make clear that the State has a duty to ensure the compliance of biometric technologies with unincorporated human rights treaties.

Finally, given the commencement of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Code ought to explain whether this requires specific measures to be taken in respect of children. The Code currently does not elaborate on the specific implications of the UNCRC, and how it affects the retention of children's biometric data, which should be given fuller consideration.

We hope the above comments are helpful, and we are of course happy to discuss any of our suggestions in further detail.

Yours sincerely,



Angela O'Hagan
Chair of the Scottish Human Rights Commission