

Note from FRT and Biometric Briefing Meeting for Parliamentarians

On Monday 26th February Deputy Commissioner Emily Keaney and Executive Director Stephen Almond met with a cross section of Parliamentarians in response to a letter sent to the Information Commissioner expressing concerns with facial recognition technology (FRT) and other biometric technology, and asking for information relating to the ICO's approach to regulation.

The meeting took place in Parliament and was attended by -

Lord Clement-Jones

Baroness Hamwee

[REDACTED]

Lord Vaux

Lord Fox

[REDACTED]

[REDACTED]

Ian Deasha and Oliver O'Callaghan also attended from the ICO

Opening the meeting Emily K emphasised the desire to hear from Parliamentarians and have an exchange on the ICO's FRT and biometric work. And to lay out what we have done and are doing in this area. Stephen A set out our priorities in this area including the fact that biometric is one of our three causes which means it's of the highest level of focus for the ICO. Stephen and Emily set out examples of the work including the new biometric guidance and highlighted enforcement actions including the Clearview and Serco investigations.

Peers were interested in the differentiation between a case like Clearview and one like PimEyes, in terms of how the ICO chooses to take investigations forward. The ICO explained the need to best foster resources and often other regulatory authorities have taken the lead on a given case. Rather than replicate this, we can take the lead on another issue and share outcomes.

Peers raised the issue of a lack of legislative framework underpinning for these technologies. While accepting that there was no single encompassing law governing FRT, the ICO clarified that there is legislation in this space (UKGDPR & DPA2018) which allows us to regulate.

Peers asserted that we wouldn't create new arrest powers without primary legislation, but a lack of statutory underpinning meant this was happening in relation to FRT.

Peers were curious about how one would design a compliant biometric product from scratch – as an exercise to understand the regulatory framework.

Peers expressed frustration at the lack of engagement from the HO with the recommendations and conclusion of the Lords Justice and Home Affairs Committee report. They encouraged the ICO to revisit the report of that committee and its conclusions/recommendations. The ICO confirmed we would.

Peers appealed for thought leadership in this sphere and ICO described our horizon scanning work, highlighting concerns around emotion recognition technologies. As a result the ICO would be extending its guidance on biometrics to cover issues around biometric classification technologies - not just recognition.

There was a discussion around different approaches to enforcement in different jurisdictions, for example, with Facewatch. The ICO pointed out that there were often differing sets of circumstances, but highlighted the assurance and changes in practice secured by the ICO in this case in the UK.

The Peers raised the issues arising from the abolition of the Biometrics and Surveillance Camera Commissioner in the DPDI Bill – echoing what had been asked at a previous Select Committee.

The ICO clarified that while we would not be taking on specific function from the BSCC, this was because our regulatory remit already covers these areas where there is processing of personal data. The ICO also noted that some of the specific biometric case work functions would be picked up by IPCO, and that the ICO and IPCO have a good working relationship. There was a short discussion about the extent to which ICO would be able to effectively resource work in this area. ICO reiterated the prioritisation of biometrics as an ICO cause.

There was a discussion about the necessity of some ICO work e.g. investigations being reactive and a recognition of the harm that follows misuse of data in these contexts.

Peers also questioned whether it was challenging to assess lawfulness in the absence of a specific legislative regime and the use of common law. And the potential for challenges under Art 8.

Peers raised the specific issue of accuracy in the context of FRT – and the scope for discrimination. There are reported instances of watch lists based on “intent” to commit crimes etc. The ICO recognised all of these issues as legitimate concerns.

Questions were raised by the Peers about whether current FRT deployments by police were contrary to College of Policing Guidelines.

There was a short discussion on the outcomes of the ICO’s Serco action.

The meeting concluded with an agreement to continue to discuss the issues raised; to filter the concerns of Parliamentarians into the ICO’s work; and to keep Parliament informed on that work.