

# Science and Technology Committee

## Oral evidence: [Work of the Biometrics Commissioner and the Forensic Science Regulator](#), HC 1970

Tuesday 19 March 2019

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Members present: Norman Lamb (Chair); Vicky Ford; Bill Grant; Darren Jones; Stephen Metcalfe; Carol Monaghan; Damien Moore; Graham Stringer; Martin Whitfield.

Questions 1 - 204

### Witnesses

**I:** Dr Gillian Tully, Forensic Science Regulator; and Paul Wiles, Commissioner for the Retention and Use of Biometric Material.

**II:** Baroness Williams of Trafford, Minister of State for Countering Extremism, Home Office; Dr Christophe Prince, Director for Data and Identity, Home Office; and Professor John Aston, Chief Scientific Adviser, Home Office.



## Examination of witnesses

Witnesses: Dr Tully and Paul Wiles.

Q1 **Chair:** Welcome, both of you. Thank you very much for attending. Do you want very quickly to introduce yourselves?

**Dr Tully:** I am Gill Tully. I am the forensic science regulator.

**Paul Wiles:** I am Paul Wiles. I am the biometrics commissioner, under the Protection of Freedoms Act.

Q2 **Chair:** If either Members or witnesses have any financial interests that they wish to declare, they should do so. There are none. That is good.

My first question is for Dr Tully. Why do you think that the Government appear to be so reluctant to give you the statutory powers you have called for?

**Dr Tully:** I think that one of the main reasons is that there has been a lack of parliamentary time.

Q3 **Chair:** Over some years.

**Dr Tully:** Yes. It has got worse in recent years. A private Member's Bill is before the House and has been objected to several times. I note that in the same period other private Members' Bills that have been objected to, such as the upskirting Bill and the FGM Bill, have found their way into Government legislation, but this one has not. I do not think that it is high enough on the public's radar or the Government's priority list.

Q4 **Chair:** Does the private Member's Bill do everything that it needs to do? Ideally, would you want a fuller, Government-sponsored Bill? I am particularly interested in the civil courts, which we will come back to later.

**Dr Tully:** It does the vast majority of what needs to be done to put things on a more stable footing now. It could and should be added to in the future, particularly to clarify the position of forensic pathology and to make sure that issues such as the protection of people whistleblowing and access to information are covered.

The issue with the family courts sits with the Ministry of Justice. It is my understanding that it is waiting for a Bill to be enacted. It would have the opportunity, if it decided to do so, to build on that and to say, "We need to expand this to include aspects of family courts."

Q5 **Chair:** Does it not make sense to do them both together, in one piece of legislation? If the need is to give you the statutory powers that you need, wouldn't it make sense to have one code that dealt with criminal and civil courts?

**Dr Tully:** The requirements for the family courts would be somewhat different, so it would require a substantial piece of extra work. I would



## HOUSE OF COMMONS

say that it makes sense to put the criminal side in first and then to build on that with a family side. We need to be careful about suggesting that we can cover all the civil courts, because the number of disciplines of science and engineering that are used in the civil courts, and the number of ways in which they are used, is vast. However, in my opinion, toxicology and DNA analysis in the family courts should certainly be covered by forensic science regulation.

**Q6 Chair:** You mentioned whistleblowing. Did you say that the private Member's Bill did not include powers on whistleblowing? If that is the case, what powers do you want in that regard?

**Dr Tully:** That is right. The private Member's Bill does not cover making me a prescribed person under the whistleblowing legislation.

**Q7 Chair:** In other words, someone to whom someone can go to raise concerns?

**Dr Tully:** Yes. If it were enacted, it would be easier to put me on to the list of prescribed persons, because I would be a statutory regulator.

**Chair:** I see.

**Dr Tully:** In the meantime, we are going ahead with setting up a whistleblowing facility, but we will have to put at the front of it, "Please be aware that you are not covered by the whistleblowing legislation."

**Q8 Chair:** That is an unsatisfactory situation.

**Dr Tully:** It is.

**Q9 Chair:** For people who may be quite anxious about their protection.

**Dr Tully:** Yes. If they are not able to raise concerns through their own organisation, which is always the first route to raise issues, and want to use an anonymous facility, clearly they are quite anxious. We now have a preferred provider for the facility that we are setting up and are close to issuing contracts. It is someone who is very used to handling confidential information. The problem comes down to the fact that it is quite a small field. Sometimes, when a problem is identified and escalated, it may be possible for people to put two and two together and to guess who gave the information, even if nobody's name is ever associated with it in any way.

**Q10 Chair:** In 2016, the forensic science strategy said that you would get your statutory powers by the end of the Parliament, which at that stage, before we had the election in 2017, was due to end in 2020. From the discussions that you have had with the Home Office, are you confident that you will get your statutory powers within the timeframe it committed to?

**Dr Tully:** No, I am not. I think that it is possible, but I do not have any sort of guarantee—or even a strong level of confidence—that it will definitely happen within that timescale.



## HOUSE OF COMMONS

Q11 **Chair:** To what extent would you say that your effectiveness is being compromised by the lack of that statutory authority?

**Dr Tully:** I think that it is significant. The example that I give is fingerprint comparison. Back in 2014, I set a requirement for all fingerprint comparison work to be covered by accreditation by October 2018. I gave organisations four years to meet that standard. I ran a number of workshops and provided organisations with training and assistance. By the time we reached that date, only three of the bureaux had reached accreditation.

Subsequently, a European framework decision was implemented by statutory instrument. It becomes law on 25 March this year. When it became clear that that was going to impact on fingerprint comparison and that all DNA and fingerprint work would need to be accredited to meet that legal requirement, the pace of change stepped up enormously.

Alongside that, there was practical assistance from the Transforming Forensics programme. I acknowledge that that made a big difference as well, but the pace of change came about only when there was going to be a legal imperative to reach the standard. I think that they would have got there anyway, in the end, but they certainly would not have made the progress that they have made.

Q12 **Chair:** You give that by way of analogy. In your current situation, with your desire to see comprehensive high standards across the board now, are there other ways in which it is currently compromising your ability to enforce those standards?

**Dr Tully:** Yes. Essentially, there are disciplines across policing—and in some smaller forensic science providers—where people are not gaining the standards that they need to gain, because they know that there is no sanction if they do not do it.

Q13 **Chair:** Ultimately, they can just ignore you?

**Dr Tully:** Yes.

Q14 **Vicky Ford:** If it is the EU law that has made people pull up their standards and do accreditation, and that comes into place on 25 March, what happens on 29 March, if we leave?

**Dr Tully:** It has been transposed into UK law by the statutory instrument, so it will be UK law at that point.

Q15 **Vicky Ford:** So that stays?

**Dr Tully:** Yes.

**Vicky Ford:** Good. No more SI Committees on that one.

Q16 **Chair:** This is related to my question about whether you are confident about getting the powers in 2020. Has the Home Office told you that it has applied for a slot for the next session of Parliament, so that this



## HOUSE OF COMMONS

legislation can be taken through Parliament?

**Dr Tully:** I cannot remember the exact wording, but I think that the most I have had is something like, "They are looking at options for a Bill in the next Session." I do not have a particular commitment on an application for a slot.

Q17 **Chair:** Presumably you are lobbying the Home Office heavily to try to get it to take this more seriously.

**Dr Tully:** Yes.

Q18 **Damien Moore:** I move to Professor Wiles. How much of a role did you have in helping the Home Office to prepare its biometrics strategy?

**Paul Wiles:** None whatsoever. I saw a version of the strategy before it was published. In fact, I think that versions of the strategy have been floating around the Home Office for some time. My predecessor saw an earlier version of the strategy, which was rather different. I saw the draft, but the version that came out was not the same as the draft, anyway. I played no role in drawing up the strategy.

Q19 **Damien Moore:** Were you in role while it was being prepared?

**Paul Wiles:** If you are referring to the version that was published, yes. I would not particularly see it as part of my role.

Q20 **Chair:** Were you enthusiastic about it when you saw it?

**Paul Wiles:** I thought that it was a slightly confusing and disappointing document. What I mean by that is that it starts by laying out a vision of improving services and services to citizens through new technology, which is fine. It recognises the key question of proportionality, because of the fact that this will have serious implications for individuals' privacy, and that public trust will be crucial to carrying it forward.

It starts off with what I might describe as a very good prologue for a strategy. It then simply becomes a list of some of, but by no means all, the things that the Home Office is doing on the use of biometrics—and then stops. I thought that that was disappointing. It was a missed opportunity to lay out a strategy.

There are two things that it proposes, as I am sure you are aware. One is that there should be, basically, a biometrics modalities board—although it has ended up with a very long name—whose voting members are the representatives of the police service, the Home Office and the police and crime commissioners, and the various independent overseers and commissioners. Dr Tully and I are both members of that board. Discussions of that kind are helpful and fine. We should participate in them. What is not clear to me is where the political drive behind that comes from, so that we come to some kind of decision. I do not really see that.



The other thing that the strategy said was that there would be a review of the governance of biometrics. According to the original timetable, that should be finished this June.

**Q21 Damien Moore:** You described the non-legislative approach as “disappointing”. Is it disappointing because it means that it is not effective?

**Paul Wiles:** No. It remains to be seen whether it can be effective. I think that there is a more fundamental problem. It seems to me perfectly reasonable that the police should experiment with new biometrics. There are clearly potential public benefits from some of the new biometrics. In order to understand what they are and how they can be used, the police need to carry out trials. I do not see any problem with that. There is a question about the quality of the trials, but there is no reason in principle why they should not do that.

Having done that, if they wish to deploy, somebody has to decide the key proportionality question. Any biometric, by definition, will be extremely intrusive as regards individual privacy and, therefore, liberty. It is a fairly important decision. Absent anybody else deciding that, the police will decide it, through police regulation. I am not criticising the police. Without somebody else saying that they are going to do it, of course that is what will happen. What I was hoping to see was Ministers taking the lead on that.

This is a big change in a very important technical area. I do not have to tell any of you that it is linked to the new data analytics, the new big data platforms, global tech companies and all the rest of it. These things are interwoven. It is a major change in the nature of the world we live in. It is important. Therefore, I would have thought that one might see a more important public debate and some ministerial leadership on the direction in which it ought to go. Given the public importance of that proportionality decision and the fact that things like automatic facial recognition systems will potentially affect the life of every citizen, because this is mass surveillance through facial imaging, it seems to me that it is very much in the public interest that that decision should be taken in a public way. I would have thought that the obvious body to do that was yourselves—Parliament.

**Q22 Damien Moore:** You spoke about Ministers taking the lead. Why don't you think that they have taken the time to do this?

**Paul Wiles:** I do not know. You will have to ask the Minister concerned.

**Damien Moore:** We may well do.

**Paul Wiles:** It is a genuinely difficult area. It is interesting that at the moment we have something of a lead coming from Scotland. Later this year, a proposal for new legislation on biometrics will go before the Scottish Parliament. It is interesting, because it appears to solve what is otherwise a very difficult problem—that, if you are not careful, you try to



legislate for each new biometric but that the technology is moving so fast you will simply never keep up if you try to do that. That is the problem at the moment—the legislation is way behind the technical change. The Scottish proposal tries to deal with that problem.

Q23 **Chair:** It is a principle-based approach.

**Paul Wiles:** Yes. You lay down general principles and have a mechanism for saying how they should apply to a particular use of a biometric—rather like the GDPR does in data protection legislation. It is a similar legal architecture. I can see that, from the Home Office’s point of view, the legal mechanism for doing this is complicated and difficult. I understand that. To make a point that I am sure is obvious to all of you, Brexit is getting in the way of all sorts of things.

Q24 **Chair:** You mentioned that you had seen an earlier draft. How did it differ from the final version that came out? Was it a fuller strategy, given that you say that what eventually came out was not really a strategy at all?

**Paul Wiles:** It was simply a very different document. It was not just that it was more extensive than the one that came out—it was a different document.

Q25 **Chair:** Were you more enthusiastic about it?

**Paul Wiles:** As I said, versions of strategies have gone backwards and forwards between my office and officials, including under my predecessor. I have been in post for almost three years, which shows you how far back this goes. I do not think that either my predecessor or I was particularly enthusiastic about any of them.

Q26 **Carol Monaghan:** Professor, you mentioned Scotland, where the process started with a formal public consultation. The Home Office stated in the strategy that it would be consulting on governance arrangements. Are you expecting there to be a public consultation similar to that which took place in Scotland?

**Paul Wiles:** There are two differences. First, as you know, the consultation in Scotland followed a report by an expert group. The first step in Scotland was to set up an expert group, chaired by John Scott QC. That included lawyers, scientists, police officers, Her Majesty’s Inspectorate of Constabulary and academics. It was quite a broad group. They came up with a set of proposals that were then the basis of the consultation. Therefore, there was something quite specific to consult on.

Q27 **Chair:** Do you think that that was a good route?

**Paul Wiles:** Yes.

Q28 **Chair:** Do you think that we could do something similar in this jurisdiction?

**Paul Wiles:** That is for others. I think that the process in Scotland worked well. I went to one of those consultations. I thought that there





was a very good and informed discussion of the kinds of issues the group had tried to deal with and what it was proposing.

I go back to your question, which was about the Home Office review of biometrics. I do not really know how that is being done. I had one conversation about it with officials. That was purely about the scope of the review. I simply raised the question of whether the review needed to go beyond the police use of biometrics into, certainly, the wider Home Office use of biometrics, if not the wider Government use of biometrics—never mind their use by the private sector.

Q29 **Carol Monaghan:** Could what has happened in Scotland simply be mirrored? Is the Home Office trying to reinvent the wheel?

**Paul Wiles:** I seem to remember that that is what it tried to do with the Protection of Freedoms Act. That was supposedly based on the Scottish legislation at the time. Actually, that was not quite the case—it got considerably more complex than the Scottish legislation. I think that it is a bit early to say that. I have not seen the final proposals. As I understand it, they have not gone to the Scottish Parliament, so I have not seen a Bill. I do not know whether they are the same as the original proposals that I saw.

Q30 **Carol Monaghan:** I was asking more about whether the consultation process, and the proposals for that, could be mirrored.

**Paul Wiles:** Yes, I think that it could. It has two advantages. First, you can bring a lot of different experience and expertise to bear on a question. You also get some of the key players to find out whether they have or do not have agreement on the way forward. That is what the Scottish group did.

The other thing is that, as I said, you then have some concrete proposals to consult on, so that it is not a vague consultation but a very specific one. You say, "Here are some proposals. Do you think that they are the right ones? If not, what do you think are the right ones?" It was a quite specific mechanism.

On the other hand, it seems to me that such processes always work better in Scotland. There are all sorts of reasons for that. One of them, of course, is size. It is a smaller country. The various players involved tend to know one another quite well already and are used to working together.

Q31 **Carol Monaghan:** Have you been involved in developing any consultation suggestions with the Home Office?

**Paul Wiles:** No. It announced in the strategy that it was going to have a consultation, but that was a consultation on the governance. That is slightly difficult for me, in the sense that, clearly, one of the things that it is going to consider as part of that is whether or not my role should be there. It is perfectly entitled to do that. That is clearly right. In a sense, Dr Tully and I are slightly the objects of that review.





## HOUSE OF COMMONS

Q32 **Graham Stringer:** Dr Tully, the Home Office has had a review of forensics within the criminal justice system. How have you been involved in that review?

**Dr Tully:** I have seen all the various drafts of the review and the implementation plan, through being on the forensic policy steering group. I have provided quite robust comments back on the various drafts that I have seen.

Q33 **Graham Stringer:** That sounds very interesting. Will you tell us what the robust comments were?

**Dr Tully:** I preface this by saying that the review is still at draft stage, so I do not think that I can make a comment on what the final version will look like. I think that the review has done quite a good job of identifying the issues and problems with forensic science, but I do not believe that the recommendations that I have seen in the various drafts are sufficient to deal with the problems that have been identified.

Q34 **Graham Stringer:** Can you be a bit more explicit?

**Dr Tully:** For example, the review has identified all sorts of problems with stability of the provision of forensic science, but it has not changed the mechanism by which funding is assigned to forensic science or the mechanism by which decisions are made about where and how funding goes. Again, it is a local decision, down to chief constables and police and crime commissioners. None of that has been changed. In the last few months, we have come perilously close—within weeks—of a market collapse, with potentially more than one organisation in such severe financial difficulties—

Q35 **Chair:** Literally in the last few weeks?

**Dr Tully:** No—in the last few months. A rescue plan has been put together, again under the auspices of Transforming Forensics, to stabilise the market in the first instance, so that there is not a collapse and companies do not leave the market, while a longer-term plan is worked out. It seems to me that—if we have reached the stage of having taken so much money out of the market, despite repeated warnings that this was happening and we were getting towards this point—we are weeks away from a complete collapse, so a review at this stage should be looking at whether we need to do something fundamentally different. Ultimately, trying to stop that collapse still involved trying to persuade 43 chief constables and 43 police and crime commissioners all to back a rescue plan.

Q36 **Graham Stringer:** When you gave evidence to the Lords Science and Technology Committee, you said that the building of what you called a national forensic science capability might be required, because, as you have just said, the availability of forensic science skills is being threatened. How would that differ from what was the Forensic Science Service when this Committee first visited you nearly nine years ago? Are



you trying to recreate the Forensic Science Service with those comments?

**Dr Tully:** No, not as such. Let me expand on that. I believe that some disciplines in forensic science are very strongly threatened because, every time contracts change hands, we lose skills. We see it again and again.

Q37 **Chair:** There are repeated redundancies?

**Dr Tully:** Yes—repeated redundancies, with people who get a job being on worse conditions, lower pay and so on, and people being made redundant more than once.

The demand for certain methodologies and disciplines is also reducing. One could say, “Maybe we just don’t need those any more.” I think that that is a very short-sighted way of looking at it. While CCTV, digital, DNA and footwear can tell you a great deal, in some cases you still need fibres or forensic chemistry. Then there are disciplines like forensic toxicology, where there is a huge demand, which current capacity cannot meet, but where the system of procurement that we have been using, which has driven down prices, has not supported building up any new capacity. There is an argument that some of the areas that have shown that the current system is not working need to be protected specifically, within a national supply or service of some sort.

Q38 **Chair:** Could this be either a state-provided service or a commissioned national service?

**Dr Tully:** Yes.

Q39 **Graham Stringer:** You have listed some of the areas that are inadequate or that might be disappearing. Are other areas threatened that you have not mentioned?

**Dr Tully:** There are some aspects of specialist crime scene work—for example, having enough people with firearms experience to be able to keep up sufficient on-call rotas to attend firearms incidents. There is fibres. There is forensic chemistry. Then there are the disciplines that, as I have said, have a lot of demand but not sufficient capacity—drugs, digital and toxicology. It may not be an absolutely full list. We would need to look at gathering data.

Q40 **Graham Stringer:** May I approach the same question in a different way? Is there not a simple or short answer to this? How would you compare the forensic science service now with the situation when the Committee first visited you nearly nine years ago? What is better? What is worse?

**Dr Tully:** The stability is worse. As I said, a rescue plan has been put in place. We could have been having a very different conversation had that not come about. Still, I think that there is an issue with stability.

There is an issue with loss of skills. There is an issue with it being very difficult to give the new recruits coming into forensic science sufficient



## HOUSE OF COMMONS

breadth of training that they will make the really skilled forensic leaders of the future. All of that is worse.

The prices have gone down. As I said, I think that that went too far. That is how we ended up in a situation of instability. I would say that the research and development landscape is less good than it was before.

Q41 **Graham Stringer:** It was quite poor then, wasn't it?

**Dr Tully:** I have to declare an interest in that. I was the head of research at the Forensic Science Service, so I have to be careful about what I say.

**Chair:** Don't take Graham's comment personally.

Q42 **Graham Stringer:** The first report that we did said that there was not enough capacity within universities. That is what I mean—that there was not enough of it. The issue was not the quality of the work that was done.

**Dr Tully:** Yes. There have been some bright spots. There is the Leverhulme centre up in Dundee, which has funding. A new forensic science academy has just been opened in Lancashire. There are some bright spots, but, overall, we are struggling to get the concentration of expertise in one place to move the field on and to make sure that things like the interpretation of evidence get enough concentration.

Q43 **Graham Stringer:** I resisted asking the question I have asked you every time you have been before the Committee previously, but, looking at a similar question differently, do you believe that more criminals are getting away with things because of the changes in the forensic science system?

**Dr Tully:** It is a really difficult question for me to answer. I do not think I have a full dataset. One thing I will say is that, when Key Forensic Services was in administration for three or four months last year while the work was being run down to make sure it could exit smoothly if a buyer was not found, a cap had to be put on submissions by all police forces to forensic science, so in many areas of forensic science there were cases that would otherwise have been submitted that were subject to a cap because there was insufficient capacity to do the forensic science.

When you look at that, it is hard not to think that at some level opportunities were missed in investigation and potentially a prosecution. I imagine that forces were being very careful about how they considered their submissions and were making sure that their most serious cases were prioritised. I do not think we are talking about murders and serious sexual assaults, but inevitably there will have been cases where opportunities were missed.

Q44 **Chair:** Inevitably, there is an increased risk that the fighting of crime is compromised.

**Dr Tully:** There is, and it is not just the commercial environment because the internal police spend on their own forensic units is also reduced. I



## HOUSE OF COMMONS

heard one chief constable talk about how, with a heavy heart, he had reduced his forensic spending by 50% in recent years. He said that was much more than he had cut any other area of spending. It is clear that it is not the number of officers on the frontline. It is not a criticism—I absolutely accept that the police are under tremendous pressures—but if we have forensic science spending as one of x number of other priorities it is inevitable that funding will decrease.

Q45 **Chair:** You talk about the rescue plan that has been put in place. Is that a sticking plaster or a long-term solution?

**Dr Tully:** It is somewhere in between, to stabilise the financial position of the main providers, while a longer-term strategy for better procurement is what drives it.

Q46 **Chair:** Unless we get to that, we could be back in the same situation as we were a few months ago?

**Dr Tully:** That is exactly right.

Q47 **Chair:** You say that the system was close to collapse. What would be the implications of the system collapsing and companies and significant players going into receivership?

**Dr Tully:** I think there was sufficient monitoring and awareness that we would not have ended up with doors being closed and freezers turned off on day one, but we could have ended up with one or more companies going into administration and all that capacity being lost.

Q48 **Chair:** Which would have seriously affected the viability of it?

**Dr Tully:** Very seriously, because it could have been one company or two companies, or it could have been two companies, plus a whole discipline from another; it could have been in that range.

Q49 **Chair:** Your plea for police forces across the country and Government to come up with a proper long-term plan is a very strong one.

**Dr Tully:** Yes.

Q50 **Chair:** You are saying this is a very big priority that has to be confronted?

**Dr Tully:** Yes. It needs to be a long-term plan and not one that will be knocked off course by the next big issue that comes up for policing to deal with. At the minute it is knife crime; it could be other big issues that police have to deal with. There are terrorist incidents and so on that they have to deal with. We need somehow to stabilise it so that, no matter what else happens, forensic science spending does not drop below a level at which suddenly we are all in crisis again.

Q51 **Stephen Metcalfe:** Before I move on to discuss the use of facial recognition software, is it right that your sponsoring Department is still the Home Office?



**Dr Tully:** Yes.

Q52 **Stephen Metcalfe:** Do you still think that is the right place? I know I have asked you this before. Forensic science is so important to the judicial system, so would it be better to move it to the Ministry of Justice, where it might get more air time, if you like?

**Dr Tully:** My experience of working with the Home Office and the Ministry of Justice leads me to say that I am better staying in the Home Office at the present time. In the Home Office there are officials who are working hard in this area and trying to get somewhere, and there are Ministers who have been exposed to it all. There needs to be much closer working between the Home Office and Ministry of Justice and the responsibilities and accountabilities of both Departments need to be clarified.

Q53 **Stephen Metcalfe:** That is very helpful. I want to talk about the use of facial recognition technology. We understand that both the Met and South Wales police have been trialling live facial recognition technology, particularly at major events. Before they started doing that, did they have any discussions with you about how those trials might run, their implications and those sorts of things?

**Paul Wiles:** Before I answer the direct question, may I say that Dr Tully has, quite rightly, been talking about the problems in forensic science, but AFR is the first of a new generation of biometrics whose deployment offers something slightly different from a forensic capability and is technically and scientifically as important to the future of policing as the forensic techniques?

I had a discussion with the Metropolitan police fairly early after it had done its first AFR trial at Notting Hill. I then had a conversation with some colleagues and urged them to do a number of things that, to be fair, they have done: first, to be much more open and transparent, because I felt that not being as open and transparent as they could have been was creating concerns and suspicions, some of which might have been justified but some of which arose simply because people did not know what they were doing, so I urged them to do that.

Secondly, I said that, if they were to evaluate it, it should involve external science people simply to make sure that the evaluation they did had some independence and, when it was published, some credibility. Again, they have done that; they have had both a staff member from the National Physical Laboratory and an academic working with them. That evaluation has not been published yet, although the South Wales one has.

The South Wales trial was funded by the Home Office, which made sure that the evaluation was done. As you know, that involved the University of Cardiff and that evaluation has been published.



## HOUSE OF COMMONS

The reason I am laying such stress on the evaluations is that these are trials. What I take a trial to be is that you have a new piece of technology that you think might be in the public interest to be used for policing, but in order to be sure that is the case and work out how you would deploy it, if you were to deploy it, and things like whether it is legal and all the rest of it, you need to conduct a trial.

That was what South Wales did. A slight problem here is that I am not sure my understanding of the word "trial" is always the same as the police service's understanding of it. The police tend to regard trials as something you try before you use it operationally, which is not quite the same. I see the conclusion of a trial as a process when you take a decision on the basis of the evidence you have gathered on whether it is appropriate to go forward.

I mention that because, first, there are other facial recognition trials about to start; and, secondly, facial imaging is simply one of the new biometrics. The police are also interested in things like voice recognition, potentially gait analysis and so on.

We are going to see a number of these kinds of things. As I said earlier, I think it is right that, if the police have an interest and believe it is in the public interest, they should conduct trials. I would like to see those trials being more consistent in the way they are put together and the methodology that they use both from the point of view of it being good science and because at some point down the line the police will be faced with a whole range of biometrics. They have two already. They have been using face for a number of years, but there will be a whole lot of others.

They will have to make some choices. They will not have the money to deploy all of those; it probably will not make sense to deploy all of them, because you will get redundancy if you try to employ too many. They will have to make some decisions. I think they need to be building up the kind of evidence base they will need to make that decision, so I would like to see more standardisation in the way they go about conducting those trials.

I observed the Metropolitan police trial in Romford. I think there is a slight misunderstanding about what is being tried. I have seen the criticism by some people that the number of matches they got was very small. I am not surprised by that because they were searching the public against a quite small watch list, so the probability of getting a match was pretty low. I did not think that the point of the trial was to test the match rate—that can be done by other means—but to work out operationally whether you could use it and, if so, how, so they were also testing the procedure. For example, they used their cameras at pinch points; they then had officers downstream so that, if the system said there was a match, officers intervened, looked at it and decided whether it probably could be a match. If it could be, they told officers downstream who stopped the individual and did further checks, so they were trying a





procedure for operational use, not just testing the matching. I think there has been a misunderstanding.

Q54 **Chair:** It does not sound as though it was a properly designed academic trial in any way; it was a bit haphazard.

**Paul Wiles:** I think that in the case of the Metropolitan police it got better, if I may put it that way. When it started, it could have been accused of being slightly haphazard, but as things went along and they brought in external people to help them conduct it the methodology got better. We await the result of the evaluations. That will tell us a bit more.

Q55 **Stephen Metcalfe:** You mentioned having more consistency in the way trials are conducted, and perhaps also ensuring that the definition of “trial” is fully understood. Who should be responsible for that? You said in your first answer that the Metropolitan police spoke to you only after they had conducted their first trial. That makes it sound like there is perhaps no formal oversight.

**Paul Wiles:** There are two or perhaps three possible places you might look to for guidance on how to conduct trials. The third one is Dr Tully, who has precisely laid down some recommendations on how trials should be conducted. If the police service itself is going to do it, the National Police Chiefs Council—it does have a lead in this area—should come up with an agreed process for conducting trials. I do not have to tell you that when you have 43 different forces there is always a problem in making that happen, but if the NPCC says this is the way things should be done there is a much greater chance that when the forces start conducting trials they will follow an agreed methodology.

That is one route. The other route is through the Home Office, and in a way that happened in South Wales because that Department was funding the trial there. Of course, the Home Office could lay down—indeed, the former Home Office Centre for Applied Science and Technology did lay down—some recommendations for the trials and experiments.

Q56 **Stephen Metcalfe:** You do not see a particular role for yourself in this?

**Paul Wiles:** I need to be a bit careful here. A number of us were involved in this area. I obviously have an interest; the Surveillance Camera Commissioner has an interest; and Dr Tully to some extent has an interest, although it is not particularly forensic. My role is in compliance rather than the science. Do I have an interest? Yes. I am a former chief scientific adviser at the Home Office, so of course I have an interest. I also have my own views, but I do not think it is right for me to start imposing them. I think that, if you got any six scientists in a room and asked them to do it, you would come up with a pretty similar answer. There are well-established processes for conducting these kinds of trials.

Q57 **Stephen Metcalfe:** I accept the point that perhaps you should not be imposing them, but you could share your views.





**Paul Wiles:** Yes, absolutely.

Q58 **Stephen Metcalfe:** Are you happy with the way this is progressing at the moment?

**Paul Wiles:** No, and that is the point. At the last meeting of the new modalities board, which came out of the biometric strategy, there was some discussion of this. I did not think it was a very good discussion; it was slightly confused, partly on the question of “trial”. I know that Dr Tully, who is also on the board, has asked for this to be put on the agenda of the next meeting, so we are going to have another look at it and in different ways we will probably both be making our points.

Q59 **Chair:** In her submission to this inquiry the Information Commissioner said, “The Commissioner is so concerned with the practices in some areas”—this is about automatic facial recognition—“that a priority investigation has been opened to understand and investigate the use of AFR by law enforcement bodies in public spaces. This will include considering the legal basis, the necessity, proportionality and justification for this intrusive processing.” Do you share exactly that concern?

**Paul Wiles:** Yes, and we have discussed it. So far, what we have been talking about is the evidential basis. This is about the legality of it.

Q60 **Chair:** Is there a concern that the current use without a clear legal framework may be unlawful?

**Paul Wiles:** That is a slightly different question. As you know, two cases have been taken by Liberty and Big Brother Watch against both South Wales police and the Home Office and against the Metropolitan police and the Home Office. As I understand it, the second of those is stayed. Their challenge has been that this violates article 8 of the European Convention on Human Rights and is not proportionate or necessary. We have to wait and see what the courts say, but we are awaiting other judgments that are not specifically on AFR—in particular, the Gaughran case from Northern Ireland—but are about facial images. Again, we have been awaiting that judgment from the European Court of Human Rights for some time and that will have relevance to this as well.

The reason I did not say yes or no to whether what the police are doing is lawful is that there are police powers and regulations that the police can plausibly say are the basis on which they are doing what they are doing. The question is whether, when challenged, the courts will uphold that, but that is why and, I think, most of the police service would like to see a proper legal framework for the new biometrics; otherwise, as each of these different biometrics is trialled, they will be challenged and will find it very difficult, but it is also more difficult to develop and evaluate new technology of this kind if you do not know what the rules are that will apply once you have done it. If they have to be bolted on afterwards, that makes life more complicated, so I think the police service would like to see a framework within which to operate. However, I entirely accept



that, absent Ministers doing so, the police service is perfectly entitled to try to create its own framework.

Q61 **Chair:** But that goes to another point you have made. You said that other schemes, trials or whatever you want to call them are about to start in other places. I think that was essentially what you said. The Information Commissioner also said, "The Committee's view was that facial recognition technology should not generally be deployed, beyond the current pilots"—presumably, the Metropolitan police and South Wales pilots—"until the current concerns over the technology's effectiveness and potential bias have been fully resolved. The Commissioner is concerned that this has not been fully addressed and it is not yet clear how the 'oversight board' will address these issues."

Do you share the view that we should not be allowing the spread of this to other areas until we have properly assessed the outcome of the trials being undertaken and established a clear legal framework?

**Paul Wiles:** There are two separate issues. The first one is that the reason I went to such lengths to try to distinguish trials from operational deployment is that, if you want to understand some of the issues like bias, you need to carry out trials. We know from testing done by the American National Standards Institute that bias has been found in some of the algorithms used for facial matching. However, the reasons for those biases are not entirely clear and they are different between different products. It is not a straightforward issue, but that is exactly one of the things I would expect to see examined and tested in a trial. The fact that a particular technique might have a bias, or certain things wrong with it, does not necessarily mean you should not deploy it; it means you have to be very aware of that when you do deploy it and put measures in place to make sure that does not lead to unfairness, miscarriages, discrimination or whatever, so that ought to be part of the trial.

The question of legality is a rather different one. The Information Commissioner can, under the data protection legislation, take her own view about whether the police use of these things matches the requirement of data protection legislation. She has enforcement powers and can issue codes of practice. She has significant power in this area, if she wants to use it, but it is not just compliance with data protection law; it is particularly human rights that other bodies have been challenging.

Where I agree with the Information Commissioner is that this would not be a sensible time to start routinely to deploy AFR operationally; a number of questions still need to be answered.

Q62 **Chair:** You made the point that the police are not always clear about the distinction between a trial and just extending deployment, and I guess there is a risk of creep.

**Paul Wiles:** There is that danger, and what I would like to see in the trials, as you would expect in a medical or any other trial, is a very clear



## HOUSE OF COMMONS

laying out before they start of what is being tested, why and the implications of the results.

Q63 **Chair:** To do it to a proper academic standard?

**Paul Wiles:** Yes.

Q64 **Stephen Metcalfe:** Has any of the evidence that has been gathered in the trial against potential criminals ever been presented or used in court? If so, was it challenged?

**Paul Wiles:** I am afraid I do not know the answer to that. The watch lists used were different on the different occasions and were used by different police forces. Sometimes the watch lists contained people who, for example, were wanted on a court order, in which case if they were identified they were taken to court. Sometimes when you have major public events they are people whose behaviour has been problematic, if I can put it that way, at similar events in the past and you want to be alert to the fact if they turn up at an event. There are different kinds of responses. Prosecution is just one response that might be used.

Q65 **Stephen Metcalfe:** You mentioned the court system and the challenge that might be made without a framework in which this is used.

**Paul Wiles:** Yes, but I have to say that, from what I have seen of the trials, the police are not going to launch a prosecution purely on the basis of an AFR match; they will make sure that they have other evidence.

Q66 **Stephen Metcalfe:** It is just a tool?

**Paul Wiles:** Yes. They will make sure there is a process of decision making, or I hope they will; otherwise, they may well fall into that problem.

Q67 **Bill Grant:** I note there has been some improvement in fingerprinting accreditation, driven I think by an EU influence. Dr Tully, last year you advised the Committee that less than 50% of in-house police forensic providers had any sort of accreditation for digital forensics. Have there been improvements? Has that crept up?

**Dr Tully:** It has crept up. Unfortunately, all the extra effort that went into getting fingerprint departments up to scratch slowed progress on digital forensics, because there is not the capacity in those departments to try to do two things at once. There has been some improvement, but there is still a long way to go.

Q68 **Chair:** How many of the 46 are now accredited?

**Dr Tully:** I do not have the most up-to-date figures; they change daily. It is my understanding that about 70% to 80% of police forces have some form of digital forensics accreditation, but I do not know of any that have all the accreditation they need in digital forensics.

Q69 **Bill Grant:** But none of them has it across the range in digital?



## HOUSE OF COMMONS

**Dr Tully:** No. A couple of private providers have very broad scopes of accreditation, but in policing it is much more limited.

Q70 **Bill Grant:** There is some progress?

**Dr Tully:** Yes.

Q71 **Bill Grant:** There are some positive signs, but there is a way to go?

There is a 2020 deadline for achieving accreditation for crime scene investigations. Do you think that will be met by all forensic providers, or is that just a benchmark that may not be met?

**Dr Tully:** Interestingly, after this hearing I will be going to a gold group meeting—it is probably starting about now—that the police have set up to try to make getting accreditation a high priority. That is exactly what that gold group is set up to do. It is led by a deputy chief constable and aims to support and challenge forces towards getting to where they need to be on accreditation. That is a good step forward; a higher priority is being placed on it.

The current projections I have seen are that most forces will get some level of accreditation for crime scene investigation, but few will get all their crime scene accreditation by 2020.

Q72 **Bill Grant:** Did you say all or some?

**Dr Tully:** The most optimistic view is that all will get something, but I do not think any will get everything, or very few will get everything.

Q73 **Bill Grant:** It is all very well setting deadlines. I sense that they are taking these deadlines seriously. In the event that they do not achieve these deadlines, are there any repercussions for those that fail to take it seriously or achieve accreditation? Is there any point in having repercussions for failing to achieve it?

**Dr Tully:** That is where I feel I need statutory powers to enable me essentially to issue prohibition notices where people have repeatedly failed to meet standards. However, people are taking it seriously and trying to get there, so in the meantime we try to support them to get as far as they possibly can on that journey.

One particular area in relation to crime scenes, which is a huge task, is forensic collision investigation. That is an area where there is consideration among police about how they might work more constructively together and have a more national approach, if not a specific national service. I am working very closely with that group to see whether, if they can make certain decisions at certain time points, we can stagger that deadline to help them at least to make the right decisions and progress in a nationally co-ordinated manner.

Q74 **Bill Grant:** You used the word “collision”. For my own clarity, is this to do with road traffic crashes?



**Dr Tully:** Yes.

Q75 **Bill Grant:** Is it confined to that? Would it apply to transport crashes? Would it apply equally to trains?

**Dr Tully:** It is road traffic collisions.

In terms of other things people need to do if they are not compliant, under the criminal procedure rules for expert evidence there is a requirement to declare in any statement anything that could undermine the credibility of the witness or their evidence. Therefore, we have issued guidance to say that not having obtained the necessary quality standards set by a national regulator could undermine the credibility of your evidence and, therefore, that you should be stating that in all your statements.

Q76 **Chair:** Do they do that?

**Dr Tully:** The police have started to do that. I think that a lot of small private providers will not be doing that, but national guidance has certainly gone out to police about how to do that. The idea is not that the courts would look at it and say, "We can't accept this," but that alongside a statement that you have not complied you would set out an annexe in which you say what you have done to mitigate the risk; how far you are along that journey; whether you have competent staff; whether you have tested your methods; and whether you have got to the point where you are quite confident you have routine proficiency trials going on, even though you have not quite got to accreditation, and then the courts can judge whether the information before them is reliable.

Q77 **Bill Grant:** Do you think it would weaken the evidence, or would it have only a marginal effect if there is no accreditation as opposed to having it?

**Dr Tully:** It would be for the court to decide on admissibility and weight. If, for example, an expert before the court had used fully accredited methods and had everything in place but was challenged by another expert who had done nothing at all, the court may wish to consider how they judge the weight of the evidence of the two experts; or in extreme cases it may come down to an issue of admissibility, but I think it would go more to weight in all likelihood.

Q78 **Chair:** I guess that the declaration of whether they meet that accreditation in itself creates in your view an incentive to comply.

**Dr Tully:** Yes. The requirement around that declaration was mainly to make sure we are properly fulfilling disclosure obligations to the court and the court has the information to make proper judgments on admissibility, but it does have that secondary slight push towards gaining accreditation.

Q79 **Chair:** A nudge?

**Dr Tully:** Yes.



**Q80 Darren Jones:** This Committee has been concerned previously about the retention of custody images in the police national database. Can you update us on whether there are now clear national protocols in place and whether all police forces are following them?

**Paul Wiles:** As you know, this goes back to a court judgment in 2012, which held that at that time the Metropolitan police's holding of custody images was unlawful, although it followed the then police guidance, basically because the facial images of unconvicted people were being kept in the same way as those of convicted people. Therefore, it wanted greater proportionality. I ought to say in passing that Scotland is not open to that criticism because it keeps them only on conviction.

The 2017 custody images review was a response to that court judgment. What it did not do was put in place a system of automatic weeding of facial images from PND to separate the unconvicted from the convicted. The reason for that, which is a technical one that I know the Minister has explained to you in the past, is that in order to do that they would have to be able to link PND with PNC, because PNC has the record of convictions, so that they could then weed PND. That is not true under the current system, so they could not put in place automatic weeding.

Instead, a system was put in place where any custody images were kept for six years and then should be reviewed. During those six years anybody, but especially those who had been unconvicted, could apply to have their images removed, and the guidance was that there should be a presumption that the police would do that unless there were good reasons why not. That was put in place, and the College of Policing turned it into a procedure for the police service.

As for whether that is what is happening, no. This year we have visited just over half the police forces in England and Wales. Two things emerge. First, there was very poor understanding of that six-year review period and little evidence that it was being carried out. Very few applications were being made to chief officers, and not all of those had been accepted. I am not surprised by the latter because it means that everybody who has had their image taken has to be aware of this kind of procedure, and it is not a very obvious thing for people to do. Therefore, I am not surprised by that, but there is clearly a need, in so far as the recommendations from the custody image review are concerned, to bolster and remind police forces that they should be carrying out reviews at the end of six years and deciding whether they need to keep those images and, if not, to delete them. Secondly, there needs to be much greater public visibility of people's right, if they want to, to apply to a chief officer to have their images removed.

**Q81 Darren Jones:** Why do you think some police forces are not following the guidance and some are?

**Paul Wiles:** I do not think it is that some are and some are not.





## HOUSE OF COMMONS

Q82 **Darren Jones:** All of them are not?

**Paul Wiles:** No. The fact is that the six-year review has somehow not been taken into routine police practice.

Q83 **Darren Jones:** But why?

**Paul Wiles:** Because I think it came from the College of Policing. I do not know why the college recommendation was not more visible. There is also a problem with PND in its current position. PND, the national system, holds only some of the images that are kept on local systems. At the moment PND has 23 million images, but not all of those are facial images and not all are good enough to do automatic digital searching. Only about 10 million of those 23 million are susceptible to digital searching. In a way, digital searching is what you need in order to do that kind of weeding, so there is an issue about the technology at the moment. It is not really good enough.

Q84 **Darren Jones:** You said there were two reasons: first, that guidance from the College of Policing does not have the veracity, or maybe the enforcement, it ought to have.

**Paul Wiles:** Yes.

Q85 **Darren Jones:** Secondly, there are difficulties with the technology.

**Paul Wiles:** It is a manual weeding procedure for many of them.

Q86 **Darren Jones:** Therefore, if it is not good enough coming from the College of Policing, where should it come from?

**Paul Wiles:** I think it should be good enough coming from the College of Policing and it needs to reinforce it; the Home Office needs to reinforce it with guidance, but that will not deal with the fact that this is an intensive and largely manual searching process, and that is an issue.

That will be solved, as I know you have been told in the past, once the new PND and PNC replacements are in place. That will give the capabilities to do these kinds of weeding without them having to be done manually. The problem is that, according to my understanding, the PNC replacement is some way off, so this is not going to happen in the next two or three years.

Q87 **Darren Jones:** What support is being given to police forces to do this hard work now? Are they just being left to it, or are they being given support to do it with the understanding that it is a difficult process?

**Paul Wiles:** Do you mean support in the sense of extra resources?

Q88 **Darren Jones:** Perhaps.

**Paul Wiles:** I am not aware of any particular support of that kind being given. I think this is a matter for chief officers within their budgets to determine how they are going to do it.





## HOUSE OF COMMONS

Q89 **Darren Jones:** You noted the date of the initial court judgment; it was some time ago.

**Paul Wiles:** It was in 2012.

Q90 **Darren Jones:** I think it took almost five years for an official Government response to it. Do you think the Government are now in compliance with that High Court ruling?

**Paul Wiles:** In the end, that will be a matter for the courts. I said at the time the custody image review was published that I was not at all sure this would meet further court challenges. I still think that.

Q91 **Darren Jones:** You mentioned earlier that you were not surprised by the lack of take-up by unconvicted individuals to have their images removed.

**Paul Wiles:** Or convicted, because either can ask.

Q92 **Darren Jones:** You were not surprised by the small take-up in requests for deletion. Has there been any work to promote the fact that people have the right to request this, or do they just need to google it and find it out for themselves?

**Paul Wiles:** Basically, they need to google it and find it out for themselves.

Q93 **Chair:** They are not routinely told.

**Paul Wiles:** I do not know the answer to that. If they were, that would have to happen at the initial stage when they were arrested, taken into custody and had their images searched. As you know, at that time their facial image and DNA will be taken, unless it is already held, and fingerprints will be taken. There is an awful lot going on at that time, and I have no doubt that they are given fact sheets. That is an awful lot of information, and it is quite some time later that the person might find themselves in a situation where the investigation is NFA'd or they are found not guilty and then they need to think about that. I think there is a disconnect between the information they are given when the biometrics are taken and the point in the process when they may wish to challenge the fact that their biometrics are now being kept.

Q94 **Darren Jones:** There may be cases on a kind of front-book basis where people who are arrested are given FAQs about what they can and cannot do. Has there been anything done on a retrospective basis?

**Paul Wiles:** I am not aware of anything.

Q95 **Darren Jones:** Do you think that is good enough?

**Paul Wiles:** I think there is a more general problem with these kinds of mechanisms. We see them in one or two places. People can apply to chief officers to have their DNA deleted. Again, there are very few applications. As you know, the police can apply to me to hold biometrics under section 63 of the Protection of Freedoms Act in situations where they



## HOUSE OF COMMONS

would not otherwise be able to do so. In that case, there is a procedure where the subject of the police application can also make a submission to me to challenge what the police are asking. I get very few of those, and that concerns me.

These mechanisms are put in place and appear on the surface to protect the individual and make sure that, if they think their biometrics are being improperly held, they can challenge that with some probability that it will be changed. I think the evidence for all those is that there is very small take-up, and none of this is as straightforward as bright light rules.

Q96 **Darren Jones:** Which police force is the stand-out force on this issue?

**Chair:** Do you mean good or bad?

**Darren Jones:** I mean in being proactive in telling people of their rights and giving them access to have their images deleted?

**Paul Wiles:** I think all police forces in custody suites have a standard card that they give to individuals that talk about all this. As for proactively following through, I do not know a police force that does that.

Q97 **Darren Jones:** You mentioned earlier that there will be an increasing number of biometrics police forces will need to grapple with in the future. My understanding—this is an HMRC issue, as opposed to a police issue, although presumably it could lead to legal action—is that HMRC has been requiring voice recognition as part of signing up for certain services or advice. Do you think we risk falling into similar issues in the future with new biometrics as we have done with facial images when we get to a point where we say that the databases are too complicated to make sure citizens' rights are put in place?

**Paul Wiles:** I think we are less likely to get into that particular problem. There is more understanding now, certainly in the new Home Office biometric databases it is putting in place, that it needs to design databases where changes in rules and legality can be operated through the database. The problem we have at the moment is that the PNC is a very elderly database. A modern database would look very different from PNC. PND was put in place post-Soham to provide a database for the police to share intelligence. It was not basically designed as a database to hold facial images, and that is why we are getting some of these kinds of problems.

I think that once the new databases become available they will resolve some of these issues about technically not being able to implement different rules. I think that will become easier, but that is some way off, particularly for the PNC replacement, which is the key to all the others, because that is where the biographic details and court records are held.

Q98 **Chair:** The Information Commissioner has said in her submission that "the position remains, that there are potentially thousands of custody images being held with no clear basis in law or justification for...ongoing



## HOUSE OF COMMONS

retention." Do you agree with that?

**Paul Wiles:** I think I have already answered that question. I am not sure that the legal case is strong enough and that it would withstand a further court challenge.

Q99 **Chair:** She also says, "It also means that many images are potentially being held longer than necessary," which is the point you have made, "and this will therefore not comply with the DPA 2018. It is important that an update is provided to you and to my office on how this will be addressed." Do you share the need for that?

**Paul Wiles:** Yes. It is all part of the same problem. She is coming at this through the data protection legislation, but equally you could come at it through human rights and proportionality. It raises the same question of the basis on which the police should be able to take, hold and delete biometrics.

Q100 **Carol Monaghan:** In your 2017 annual report you stated that currently there are 19 million facial images being held and 16.6 million of them were enrolled in the facial image recognition gallery. That is a bit different from the figures you have just given.

**Paul Wiles:** It is. I have just given you a lower number for the ones that are searchable.

Q101 **Carol Monaghan:** Therefore, 16.6 million are searchable?

**Paul Wiles:** Were searchable. I think it is now smaller than that, and I assume that difference is because the standard of quality now required for matching has gone up, as it were.

Q102 **Carol Monaghan:** Will you repeat the figures you have given us?

**Paul Wiles:** The figures I gave you earlier are that 23 million images are held currently, but not all of those are facial images; some are scars, tattoos and that kind of thing, and not all of the facial images are of good enough quality to be searchable. At present, there are 10 million searchable facial images, but, to be clear, that does not necessarily mean 10 million people, because some could be duplicates.

Q103 **Carol Monaghan:** That seems like an extremely high figure.

**Paul Wiles:** Relative to the population.

Q104 **Carol Monaghan:** That would suggest that one in seven people had some sort of criminal record.

**Paul Wiles:** Yes.

Q105 **Carol Monaghan:** Or certainly that they had had their photographs taken. Among all the images we are talking about, is it possible they have got yours or mine in these databases?

**Chair:** Do not feel you have to answer that.



## HOUSE OF COMMONS

**Paul Wiles:** There are very few women because they tend not to commit crime as much as men. These images are taken on arrest in custody. We are talking about custody images, which are taken at the point when somebody is arrested as part of the investigation of a crime, so somebody has certainly been suspected. Whether they are subsequently proceeded with or convicted, which is what we have been discussing, is a different matter.

There is the issue of whether in the future the police have any interest in taking facial images outside custody suites.

Q106 **Carol Monaghan:** You mentioned that a lot of it is for sharing intelligence. I am wondering whether we are looking at particular aspects of intelligence, such as terror groups, where images have not been taken in custody.

**Paul Wiles:** I think that at the moment the police are generally concentrating on taking facial images only in custody suites following an arrest. I think they would claim to have a legal basis for doing that. To start taking facial images in different circumstances, certainly in public places, would raise completely different legal questions, and the challenge there would be an even greater one than the one they are seeing already.

Q107 **Carol Monaghan:** That is very interesting, but I have been told by the Chair to move on.

Dr Tully, have we learned lessons from the Radox case, and have effective changes been made, or do we run the risk of a similar scenario happening again?

**Dr Tully:** We have learned lessons from it, but I cannot say we would never have a similar scenario again. We are still at the point where there is an active police investigation into the events. If you consider that that investigation has been going on for more than two years and is one of the largest in Greater Manchester police, it shows the complexity of getting to the bottom of these events. It is not something you can say will always be picked up in a two or three-day audit under any circumstances, because it is a very complex issue.

Having said that, improvements have been made and are being made that will reduce the chances of something inappropriate going undetected. We are currently updating my codes of practice and conduct and will clarify that one of the internal audits an organisation must do each year is an integrity audit. We are going to ask organisations to circulate that around different disciplines without advance notice to staff on which discipline will have a detailed data integrity audit on an annual basis.

We will strengthen the requirements on training around integrity. My colleague has already delivered two sessions on this, and we will supply resources to all providers.



## HOUSE OF COMMONS

We will be publishing an initial lessons learned document that steers away from anything too specific on this one case, probably next month, and we hope next month that the whistleblowing line will go live. Those are some of the areas.

Work has also been undertaken within UKAS to look at its assessment regime. It has updated its guidance to technical assessors. That includes making sure that all the technical assessors are aware of the specifics of what is alleged to have happened in this case so they can be on the lookout for anything similar. It requires its technical assessors to take a more detailed look, right down to raw data, when it comes to the validation of methods. There will be more vertical audit down to the level of raw data in each of its assessments; there will be more witnessing of data handling; and there will be an emphasis on what safeguards each accredited organisation has in place to try to detect anything inappropriate.

That would include monitoring trends in the performance of methods and quality assurance samples. Do they have an effective whistleblowing procedure? Do staff, when the assessors talk to them, know what that is and know how to raise concerns and so on?

We are trying to approach it from every angle, but we have to be clear that, if someone was doing something inappropriate and they were skilled and hiding what they were doing, it is very difficult to say you would definitely find it.

**Q108 Carol Monaghan:** This case highlighted a fundamental disconnect between the forensic standards applied to the criminal justice systems and those applied to the civil and family courts. Why is the oversight system deployed for criminal forensics missing in civil courts?

**Dr Tully:** I think it was a historical issue when the role of the regulator was originally set up. It was set up in the Home Office and, therefore, covered the criminal justice side. We now have sufficient information on the problems and how they occurred. It is clear that, had there also been regulation in the family division, it might have helped us to pick up issues sooner, because there were questions raised about another company operating in that area. It would have been helpful if that had been flagged up earlier.

There is a gold group led by police looking at the issues at Radox Testing Services; there is a gold group led by the Ministry of Justice looking at issues at Trimega Laboratories Ltd. I think it is fair to say that the Ministry of Justice does not have the level of control over what is happening in forensic science that its equivalent in policing has. In part, that is a structural issue. The Ministry of Justice does not commission forensic science; it is commissioned by all sorts of people—local authorities, individuals and so on—and there are no quality requirements on toxicology provided to the family court system.



## HOUSE OF COMMONS

Q109 **Carol Monaghan:** Have you had any discussions with the Home Office about extending your remit to cover that?

**Dr Tully:** Yes, and with the Ministry of Justice, because it will be for the MOJ to do that. The private Member's Bill that is before Parliament contains a clause allowing the Secretary of State to extend the areas covered, so, if enacted, it would enable a subsequent extension of the role to cover, for example, DNA and toxicology in the family courts, which I would say is the next area that really needs it.

Q110 **Chair:** You also mentioned some possible legislation the MOJ was promoting that might give an alternative opportunity to legislate. Is that right?

**Dr Tully:** No. The MOJ is waiting to see what happens on legislation around the forensic science regulator.

Q111 **Chair:** Therefore, it would only follow?

**Dr Tully:** It would only follow. It does not want to do anything, as I understand it, that is on a non-statutory basis. Therefore, until the role of the regulator is put on to a statutory basis, it is my understanding that it does not plan to make any moves on regulation. I think it wants to make some changes to the family procedure rules, but if there is no oversight of what is happening it is very difficult. For example, sometimes providers to the family courts now contact me and say, "We've discovered that there is an error. What should we do?" All I can say is that it is not within my remit and point them to officials in the Ministry of Justice, but nobody knows what to do with it because they do not have a technical expert looking after the area.

Q112 **Chair:** It sounds as if it is quite a mess, with commissioning done by all sorts of different bodies and no oversight.

**Dr Tully:** Yes.

**Chair:** Thank you both very much for your time this morning. It has been a really interesting and useful session.

### Examination of witnesses

Witnesses: Baroness Williams of Trafford, Dr Prince and Professor Aston.

Q113 **Chair:** Welcome, all of you. I apologise for keeping you waiting. Thank you for your patience.

I should also ask whether there are any interests that you want to declare that are relevant to this inquiry.

There is a sense that the Government have dragged their heels in giving the forensic science regulator statutory powers. I think the original consultation was back in 2013. More than five years on, we still have not got there. Should we doubt whether it is ever going to happen?



**Baroness Williams of Trafford:** You should not doubt it. I recall this time last year appearing before you and telling you that we would put the forensic science regulator on a statutory footing. Clearly, through Chris Green's private Member's Bill, which we have absolutely supported, this has been attempted. I know it is running into some difficulty, but we are looking at other options, should that not succeed, to ensure that it does happen, so we absolutely remain committed to it. I can only say I share your disappointment that it has not happened yet.

Q114 **Chair:** The regulator also expressed some degree of frustration that it has not happened. She did not feel confident she would get the powers by 2020, which was the commitment that had been given. She made the point that the Government have given Government time to some private Members' Bills—for example, she mentioned upskirting—so why have the Government not seen it as a priority to get this process completed?

**Baroness Williams of Trafford:** We have seen it as a priority.

Q115 **Chair:** But you have not given it Government time.

**Baroness Williams of Trafford:** I hope that I am not sitting here next year having to defend by that time the indefensible.

Q116 **Chair:** You are as frustrated as we are that others in Government have not given you the time to get this done?

**Baroness Williams of Trafford:** I am frustrated.

Q117 **Chair:** That is very clear. How do you intend to stick to the commitment of ensuring that there are powers by the end of 2020? For example, have you applied for a slot in the next Session to guarantee time?

**Baroness Williams of Trafford:** That is certainly one option we are considering, and there are other legislative mechanisms that we might use as well, so, yes, absolutely.

Q118 **Graham Stringer:** Nick Hurd told the Science and Technology Committee in the Lords that the review of forensic science would be published at the end of March. When is it going to be published?

**Baroness Williams of Trafford:** Shortly, Graham, to use Government speak.

Q119 **Graham Stringer:** I know that possibly there are important events on 29 March, but between now and then can we expect it to be published?

**Baroness Williams of Trafford:** I am not sure that you can expect it before 29 March, but we intend to do it shortly. Again, I apologise. Having finished the review, we are writing an implementation plan and starting to work on part of the implementation, so perhaps you could bear with us.

Q120 **Chair:** What is holding up publishing the review? If you have done it, why can you not just publish it?





**Baroness Williams of Trafford:** I think we want to publish the implementation and action plan with the review, which is quite often the process by which Government do things.

Q121 **Graham Stringer:** Can you give us some insight into what the headline findings of the review will be?

**Baroness Williams of Trafford:** Not really, not at this stage.

Q122 **Graham Stringer:** Why should it be secret?

**Baroness Williams of Trafford:** It is not secret. I will hand over to Christophe on this one.

**Dr Prince:** Some of the headline findings will not be a surprise to the Committee: the need to keep continued focus on accreditation and quality standards; focusing on market stability; looking at how we can improve the provision of science in the criminal justice system as a whole; and the forensic science regulator's statutory powers. Those four themes will, I think, be familiar.

Q123 **Graham Stringer:** I think this is the fifth inquiry this Committee has held into forensic science. We have just heard from the regulator; we have heard from her in different capacities previously. Speaking for myself, I am quite shocked at the state of forensic science. Will there be any remedies for the failings of forensic science in the report? Will the report focus on areas where there are clearly publicly known failures in the forensic science service?

**Baroness Williams of Trafford:** The focus on quality standards will be important, but the whole thing about using stronger evidence and data to support decision making is going to be important, and more effective working across the various partners will be an improvement.

Q124 **Graham Stringer:** When the Forensic Science Service was disbanded in 2012, after it had been run down for just over two years, we were concerned that the private sector would not provide the same service. All the evidence is that this Committee's concerns and worries have been supported by the facts since the Forensic Science Service went. Will there be any attempt to remedy those gaps in the service?

**Baroness Williams of Trafford:** Graham, if you think about the Forensic Science Service, first, it was losing £2 million a month; secondly, it was very slow; thirdly, if you think about the aspects of market failure that we have been discussing over the past few months, if there had been market failure within the one and only service, clearly there would have been a real gap in provision. You have spoken about the Forensic Science Service before: I do not think it is a system we want to go back to, but within market provision there are forensic service providers other than some of the ones that have struggled. I think it enhances my view that we need a mix of different providers.

Q125 **Graham Stringer:** I understand that it was expensive and there were



## HOUSE OF COMMONS

problems with the previous service. I have never tried to make it party political because the Labour Government first closed the Chorley laboratories, but, apart from today, every time Dr Tully has been before the Committee I have asked her whether she believes rapists and murderers are getting away with it because of the failures of forensic science and each time there has been a positive response to that. Today, she told us there were parts of the service that were probably—it is difficult to prove negatives—allowing criminals to get away with things. I do not understand why it is not a greater priority for the Government. Can you tell us why?

**Baroness Williams of Trafford:** It is a priority particularly within the Home Office. Bringing criminals to justice is a major priority, but one thing I would say is that, particularly over the past couple of years, we have recognised that the police have been under a huge amount of pressure not only in what they deliver but financially.

Q126 **Chair:** That has made the situation worse, according to the regulator.

**Baroness Williams of Trafford:** I want to say two things about that, Norman. In particular, the Home Secretary has recognised the pressure that the police are under. You will have heard that in the spending review, certainly coming up to 2019-20, the police will have a huge amount of extra money available to them, but also we have been supporting the NPCC in improving the capabilities of forensics because we recognise that the margins are very tightly drawn now, so we are supporting them.

Q127 **Chair:** The regulator talked about the system being close to collapse a few months ago. She said the rescue plan had been introduced because some businesses were close to collapsing financially. This seriously compromises the fight against crime.

**Graham Stringer:** To add to what Norman said, she also said that, while there had been a rescue plan, that crisis of the potential collapse of one, two or three businesses might happen again. This is a genuinely shocking situation.

**Baroness Williams of Trafford:** That is why we have taken the action we have through the NPCC and the transformation fund in improving the capabilities of forensics. If we do not get it right, Graham, it will allow criminals to escape justice, and that is not what any of us wants.

Q128 **Graham Stringer:** I do not want to fence over words, but it is not just the future tense; criminals are getting away with it in the past, present and future.

**Baroness Williams of Trafford:** Yes.

Q129 **Graham Stringer:** Does the review believe that having in-house police provision and private providers of forensic services is sustainable?

**Baroness Williams of Trafford:** Each police force having its own?



## HOUSE OF COMMONS

Q130 **Chair:** To have both.

**Baroness Williams of Trafford:** There is evidence that where police share capabilities it is obviously efficient. It would be up to individual police forces to decide whether they shared capabilities; that would be a matter for them, but it would certainly be more financially efficient.

Q131 **Chair:** The question Graham asked is about having both in-house and private providers sitting alongside each other.

**Baroness Williams of Trafford:** There is no harm but every benefit in having a mix of different providers available to the market.

Q132 **Chair:** At the moment several of the police in-house teams are not meeting the accreditation standard and there is no statutory power to require it.

**Baroness Williams of Trafford:** I think that up to about 93% of police forces now have it.

**Chair:** She said that all had some.

Q133 **Graham Stringer:** None has all, so zero are accredited across the board.

**Baroness Williams of Trafford:** Across the piece, and we are working towards all having all.

Q134 **Graham Stringer:** Will that happen by 2020?

**Baroness Williams of Trafford:** I hope it will, Graham.

Q135 **Chair:** Christophe, are you confident that is the case?

**Baroness Williams of Trafford:** I do not mind if he contradicts me.

Q136 **Chair:** Your body language suggests some doubt.

**Dr Prince:** Getting accreditation on all the different types of forensics by 2020 for all the police forces will be a significant challenge.

Q137 **Chair:** You mean it will not happen?

**Dr Prince:** Seeing the progress they have made, notably on fingerprints and some other areas, they will make a significant stride in reaching it over that timeframe.

Q138 **Graham Stringer:** Professor Aston, this Committee was highly critical of Professor Silverman when he was at the Home Office because when the changes to the Forensic Science Service were proposed he did nothing; he did not say what the scientific implications of that would be. Do you see it as being within your remit to advise on matters over the forensic science provision?

**Professor Aston:** I absolutely see it as being within my remit to look at the scientific implications of forensic science provision, so I look at where we are accessing technology and the research and development



landscape that is needed. I think that is integral to the quality of forensic science provision. I do not think you can have quality forensic science provision without a fundamental research and development landscape. I am required to make sure that that is looked at as a whole when considering the wider implications within forensic science.

Q139 **Graham Stringer:** What part have you played in the review?

**Professor Aston:** I have been fully involved in the review, in particular on the scientific aspects, looking at how the research and development landscape should progress from here.

Q140 **Chair:** What is your conclusion in terms of your contribution towards the review of the current state of resilience of good-quality scientific provision?

**Professor Aston:** Particularly in the research and development landscape it is fragmented, but we are making progress. In particular, you will have seen from UKRI's evidence to the Lords Committee that it also acknowledges there needs to be further proper funding of basic forensic science provision. That has been difficult in the past because of the fact that before the amalgamation UKRI was rather siloed and forensic science does not neatly fit within any one of those silos.

Q141 **Chair:** This is on the research side?

**Professor Aston:** Yes, and on the development side with Innovate UK there is also a need to look at the provision of research and development across the landscapes from basic science research done in academia all the way through to research and development being done by industry and commercial providers and research and development within police. We are now starting to bring that together to check that we are getting the proper research and development across the board.

Q142 **Chair:** What about the application of science in the forensic companies? We heard from the commissioner about endless redundancies; scientists are constantly losing their jobs and moving on to different providers. Are you concerned about the impact this is having on the quality of forensics?

**Professor Aston:** Skill shortage is definitely an issue, but that is not just within forensics; it applies more generally, but we have to acknowledge and make clear that research and development and science in its proper form are at the heart of forensic science and forensic provision.

Q143 **Chair:** When you hear, as we did from the first panel, that one police force cut funding for its in-house forensic service by 50%, does that cause you concern?

**Professor Aston:** If it was affecting the science that was being done, it would definitely be a cause for concern.

Q144 **Bill Grant:** In the light of the allegations against the company called Trimega Laboratories, which was engaged in testing for family courts, do



## HOUSE OF COMMONS

you agree that the regulatory safeguards for lab testing as applied in the criminal justice system should encompass the family courts? Should we broaden that security? There seems to be an imbalance of protection.

**Baroness Williams of Trafford:** The PMB that was brought forward contained a clause to allow the regulator's remit to be extended to the family and civil courts.

Q145 **Bill Grant:** So that is already present?

**Baroness Williams of Trafford:** The PMB allowed for it. Obviously, the regulator is limited to the criminal justice system at this point in time.

Q146 **Bill Grant:** That is what we have pointed to.

**Baroness Williams of Trafford:** It remains the case at this point in time, but there was a clause in the private Member's Bill that allowed for it to be extended. Clearly, there is an MOJ issue to be considered as well.

Q147 **Bill Grant:** So we are not definite about that. Will that evolve to encompass—

**Baroness Williams of Trafford:** It could. As I have said, the private Member's Bill does contain that clause.

Q148 **Chair:** Do you think that it needs to?

**Baroness Williams of Trafford:** Obviously, we would make judgments based on reference to the Ministry of Justice. It is not a consideration simply for us.

Q149 **Bill Grant:** Have you had conversations with the Ministry of Justice in that regard?

**Baroness Williams of Trafford:** I have not personally had conversations with the Ministry of Justice. I do not know whether others have.

Q150 **Chair:** Do you think that you require close co-ordination?

**Bill Grant:** Would it be prudent and wise to have such conversations?

**Baroness Williams of Trafford:** I have not had them personally, but my colleagues have.

Q151 **Bill Grant:** You have engaged with the Ministry of Justice, with a view to the private Member's Bill encompassing the family courts?

**Baroness Williams of Trafford:** Yes—to look at the scope of it.

Q152 **Bill Grant:** I am quite happy with that. We have uncertainty in that journey, but I think that we are going in the right direction.

Some forensic organisations have failed in the private sector. Has your Department looked to the future? We have evidence that in the past they have failed and put at risk courts and trials. Have you undertaken a risk assessment of future failures? Have you taken any mitigation measures



that you may be able to apply in the event of the failure, receivership or administration of these companies?

**Baroness Williams of Trafford:** I just caught the forensic science regulator talking about it before we started. What happened in this instance was very difficult to predict. She asked whether we could prevent it ever from happening again. Human malintent is very difficult to prevent. Clearly, you need to put in place the systems to ensure that, as far as possible, you safeguard against such things happening.

Q153 **Bill Grant:** I am looking less at malintent and more at where companies have failed—where they have gone into receivership and have been called in by the banks. As a Department, have you looked at the risks in that regard and made provisions to fill that gap, should it suddenly appear?

**Baroness Williams of Trafford:** I think that that is why the NPCC has been working on improving the overall capabilities of the forensics market and on making sure that it is more financially viable going forward.

Q154 **Bill Grant:** You have looked at the horizon, to see what is in the future?

**Baroness Williams of Trafford:** Yes—we have looked at the overall picture.

Q155 **Bill Grant:** In a risk-reduction process?

**Baroness Williams of Trafford:** Yes.

Q156 **Bill Grant:** So you have contingency plans in the event of failure?

**Baroness Williams of Trafford:** Through the transformation fund and the NPCC, we have helped that capability to improve. That is what I would see as a more medium-term to long-term planning arrangement, in terms of the viability of the forensics market.

Q157 **Bill Grant:** You are confident that there are reasonable measures in place to mitigate the risk of collapse of companies?

**Baroness Williams of Trafford:** Indeed.

Q158 **Damien Moore:** Currently, there is a lack of clarity about the legal basis for the use of certain biometric technologies, such as facial recognition. Why doesn't the biometrics strategy propose to cover that?

**Baroness Williams of Trafford:** The biometrics strategy looks not at each different type of biometric that is used, but at the context in which it is used—the purpose, the proportionality, the transparency and the framework around its use, as opposed to each individual modality. It is clear that biometrics is a fast-evolving technology, in all sorts of ways. I heard one panel member talk about voice recognition systems. We need to be clear that when it is used—clearly, the police have powers to use it—it is used proportionately, legally, transparently and with good





communication with the public, in terms of the trials that are going on at the moment.

Q159 **Damien Moore:** Are you saying that we will not legislate because we cannot keep up with it?

**Baroness Williams of Trafford:** It is not because we cannot keep up with it. I think that it is because we need to be clear about what we are using it for, why we are using it and, therefore, the whole framework within which we use biometrics, not which biometrics we use—if that makes sense.

Q160 **Damien Moore:** Yes. The Scottish Government are consulting on facial recognition, aren't they?

**Baroness Williams of Trafford:** They are consulting. We have developed options to simplify the oversight of the various issues. Clearly, we have a biometrics commissioner. We have a surveillance camera commissioner. We have the Data Protection Act. We also have the Human Rights Act. We are committed to simplifying the governance around all those things. I think that that makes it easier for all the stakeholders who are operating in this area.

Q161 **Damien Moore:** Do you think that we would look at extending the biometrics commissioner's powers to include second-generation biometrics?

**Baroness Williams of Trafford:** Certainly, putting her powers on a statutory footing is the No. 1 thing. I do not think that what the Scottish Government have in place or are proposing is any different from what we have, in terms of powers.

Q162 **Chair:** Hang on. The Scottish Government are proposing a legislative basis. We heard from the commissioner that they were proposing a principle-based approach, where we lay this out in statute. We are not adopting that approach. It is a very different approach, is it not?

**Baroness Williams of Trafford:** As we have talked about, we are certainly looking at putting her on a statutory footing.

Q163 **Chair:** That is the forensics regulator. I am talking here about the biometrics commissioner.

**Baroness Williams of Trafford:** I am sorry.

Q164 **Chair:** Just to be clear, the Scottish Government are consulting on legislation on the use and oversight of the second generation of biometrics. We are not. The question is, why?

**Baroness Williams of Trafford:** We have a face and new biometrics oversight board, which looks at that. I apologise for getting forensics and biometrics—

Q165 **Chair:** But why is there no legislation? Why is the approach different





## HOUSE OF COMMONS

from that in Scotland? The commissioner applauded the Scottish approach. Why are we not following the same approach? That is the question.

**Baroness Williams of Trafford:** We engage with the Scottish Government on the different approaches to legislation and arrangements that they have. That is certainly the case for officials. Have you been talking to your Scottish counterparts?

**Dr Prince:** We have been in contact with them.

Q166 **Chair:** Dr Prince, do you think that the Scottish approach has merit?

**Dr Prince:** The way in which we have been looking at it, as part of the biometrics strategy, is to come back and carry out a review of the overall governance of biometrics. We are committed to coming back with that this summer. Of course, we already have the biometrics commissioner, the Information Commissioner and a number of others, so there is a legal framework for the way in which they are used.

Q167 **Chair:** Is legislation along the Scottish lines one of the options that you are considering when you come back in the summer?

**Dr Prince:** We will be advising on a variety of options. Clearly, one of those might be legislation, but there are other mechanisms by which we could improve the clarity and simplicity of the way in which biometrics are governed going forward.

**Damien Moore:** Excuse my ignorance, but what is the difference between a legal framework and legislation? Is one optional and one not?

**Chair:** There is no difference.

**Damien Moore:** So it is legislation.

Q168 **Chair:** Dr Prince, we do not have a legal framework in place in the sense in which the Scottish Government are proposing, to govern the oversight of the second generation of biometrics, do we?

**Dr Prince:** We already have the Data Protection Act, with the Information Commissioner.

Q169 **Chair:** That is rather different from what is being proposed in Scotland, is it not?

**Dr Prince:** They are consulting. The way in which they have taken it forward so far is simply to pull together some of the principles that are applicable in the use of new biometrics. They have not yet committed to specific legislation on those areas. Of course, we will look at the progress of their consultation and the other options that are available.

Q170 **Damien Moore:** When would you look at this? How long would you give it before you would look?

**Baroness Williams of Trafford:** We will be following it closely.



Q171 **Chair:** In her submission to this inquiry, the Information Commissioner said about automatic facial recognition, “The Commissioner is so concerned with the practices in some areas that a priority investigation has been opened to understand and investigate the use of AFR by law enforcement bodies in public spaces. This will include considering the legal basis, the necessity, proportionality and justification for this intrusive processing.” Do you share the concern about current practices in some police forces?

**Baroness Williams of Trafford:** Whenever the police use their powers to tackle criminality, they absolutely have to consider those proportionality issues. In the development of some of the trials, that has been absolutely at the heart of what they have done. They have also been to the modalities board—the face and new biometrics oversight board—before they deploy the technology in live facial recognition trials. It is very clear that they trial it in a very specific way, in a specific area, for a specific purpose, and that they communicate that with the public for whom the technology is being trialled.

Q172 **Chair:** We heard from the commissioner that often in the way in which police do this there is not a clear distinction between a trial, in the academic sense in which we know it, and the first stage of deployment. Is that a concern that you share?

**Baroness Williams of Trafford:** The very positive purpose of trials is to see where you have got it right and where improvements could be made. It has to be said that the police are operating within their powers when they do these trials.

Q173 **Chair:** She says that her priority investigation “will include considering the legal basis” for what is already being done. Is the Home Office in any way concerned about whether this is lawful?

**Baroness Williams of Trafford:** No. I am not personally concerned about whether it is lawful, given the parameters within which the police have operated. I am quite comforted by the fact that the ICO is using her remit to scrutinise the basis on which they are operating.

Q174 **Darren Jones:** When was the last time that the Home Office audited police forces for their compliance with the High Court ruling on custody images?

**Baroness Williams of Trafford:** I will pass on that. There was a custody image review a couple of years ago. On the back of that, there was then the guidance to say that the images of certain people, both convicted and unconvicted, could be taken down on request, as was said earlier. That followed the custody image review, which was two years ago.

Q175 **Darren Jones:** There has been no audit since the guidance, which was the 2017 response to the 2012 High Court ruling?



## HOUSE OF COMMONS

**Baroness Williams of Trafford:** We are now undertaking another custody image review. I know that HMICFRS is also looking at data use and protection.

Q176 **Darren Jones:** When will that review be concluded?

**Baroness Williams of Trafford:** The CI review or the HMICFRS review?

Q177 **Darren Jones:** The custody image review.

**Baroness Williams of Trafford:** I think that it will conclude in 2020.

Q178 **Darren Jones:** The High Court ruling was in 2012, and the first full audit since the guidance will be concluded in 2020. Is that right?

**Baroness Williams of Trafford:** Of course, a custody image review was undertaken in 2017.

Q179 **Darren Jones:** Sure. Minister, the point of my questions, as you will have heard when you came in earlier, is to try to understand how equipped police forces are to comply with the High Court ruling. You will have heard the biometrics commissioner say that he could not name one police force that was an exemplar police force for ensuring that citizens know their rights, both retrospectively and, potentially, prospectively, to ask for deletion of their images. Do you know whether there is a standout police force? The commissioner did not know. How would you know?

**Baroness Williams of Trafford:** I do not know.

Q180 **Darren Jones:** The Home Office does not know?

**Baroness Williams of Trafford:** No. One thing that I would say is that there is information on it on gov.uk. I have been challenged on it in Parliament by my friend and colleague Baroness Jones.

Q181 **Darren Jones:** No relation.

**Baroness Williams of Trafford:** No. I do not know whether she has requested the deletion of her image yet, but I informed her on the Floor of the House that she could. In fact, the biometrics oversight board has been encouraging the police to take down images. I took on board the point that you made to the biometrics commissioner about the lack of take-down.

Q182 **Darren Jones:** You have just referred to the biometrics advisory board. The minutes from the meeting of September 2018 said that "most forces" were struggling to comply with the management of police information policy when weeding the custody images that they held. What conversations has the Home Office had with police forces, having known in September 2018 that they were struggling, to offer help and assistance?

**Dr Prince:** As the Minister said, there have been conversations, particularly through the chair of the biometrics oversight board, to encourage police colleagues to implement the custody image review.



## HOUSE OF COMMONS

Through the law enforcement data service programme, we have been looking at the technological solutions that can assist in removal and weeding of those images. We are taking action to support them through those mechanisms.

**Q183 Darren Jones:** I will separate those points into two, if that is all right. The first point was about encouraging police forces to take action. The commissioner said that he felt that the guidance from the College of Policing did not seem to have a strong enough pull factor for police forces. Do you think that the Home Office ought to issue guidance along the same lines?

**Dr Prince:** The College of Policing vehicle is the best vehicle for encouraging the police to take action.

**Q184 Darren Jones:** But we heard evidence that they were not taking it seriously enough. Should the Home Office step in to beef that up a bit?

**Baroness Williams of Trafford:** Clearly, it is a manual process now, which is not satisfactory. First, I have asked officials to undertake this second review. Secondly, when the technology emerges to enable automatic take-down—it is probably there, but it has not been procured—that will be much more preferable; people will not have to go and ask to have their images taken down. Unfortunately, that is where we are at the moment.

**Q185 Darren Jones:** I do not mean to be frustrating, but I am still going to try to separate out these points. You do not think that the Home Office should issue additional guidance beyond what the College of Policing has offered?

**Baroness Williams of Trafford:** No. The police are operationally independent of the Home Office. That is clear. I share your frustration that these things cannot be taken down automatically.

**Q186 Darren Jones:** I understand. I think that there is a separate technology question, which I will come to in a second. The commissioner said that he felt that the Home Office might be minded to issue guidance if the College of Policing guidance was not being afforded seriousness.

**Baroness Williams of Trafford:** I am not sure how one set of guidance on top of another somehow makes the guidance more likely to be read.

**Q187 Darren Jones:** There is not a suggestion, for example, that police forces might take Home Office guidance more seriously than College of Policing guidance? You would disagree with that?

**Baroness Williams of Trafford:** I would neither agree nor disagree. I am just saying that I am not sure that duplicate guidance—

**Q188 Darren Jones:** I am keen that, for the purpose of our recommendations, we get a clear view between what the commissioner said and what the Home Office is saying. I think that that point is okay.



## HOUSE OF COMMONS

The second point was that you talked about encouraging police forces to follow the guidance. What resource is being given to what are already strapped police force resources to help them to do that?

**Baroness Williams of Trafford:** I am guessing that we issued the up-to-date position to police forces. Of course, we have the PCCs.

Q189 **Darren Jones:** I mean either human resource, funding or technical resource to do what the guidance asks them to do. I am sure that the police and crime commissioner will not be deleting facial recognition records from the database.

**Dr Prince:** Within their police allocations, they will have to make choices around where they prioritise their activity—in compliance or in other activities. Following the passage of the Data Protection Act, there has been a significant uplift in activity across police forces to bring themselves into compliance with the Act, of which, in effect, the custody image review is one element.

Q190 **Darren Jones:** The Home Office position is that, if police forces need additional financial resource to comply with the guidance from the College of Policing, they need either to find that from existing budgets or to take it from an uplift that has been associated with the incoming rules under the Data Protection Act. Is that correct?

**Baroness Williams of Trafford:** Christophe is saying that they make decisions about how they deploy their resources. It is not for us to tell them, but it is up to us to ensure that the police have sufficient resources to be able to undertake the various roles that they have to carry out—hence my point earlier about the Home Secretary ensuring that police forces will have an awful lot more money available to them in 2019-20.

Q191 **Darren Jones:** That is understood. Let me ask the question one more time, in a slightly different way: there has been no additional financial resource provided specifically for police forces to comply with the guidance?

**Baroness Williams of Trafford:** There has not been ring-fenced money, but there is transformation fund money for which police forces can apply. Of course, there is also the overall grant, which they can choose to deploy in the way they see fit.

Q192 **Darren Jones:** That is understood. My last question is about the technology piece. We have talked about the new online system coming into play soon and automatic deletion. When is that due?

**Baroness Williams of Trafford:** Is it in 2020?

**Dr Prince:** It is moving.

**Baroness Williams of Trafford:** Okay.

Q193 **Darren Jones:** Shortly?



## HOUSE OF COMMONS

**Baroness Williams of Trafford:** I will not say, “In due course.”

Q194 **Darren Jones:** It is not 2020 now—it is later. Do we have a date, or are we just waiting to see?

**Baroness Williams of Trafford:** We cannot commit to a date.

Q195 **Darren Jones:** Are you able to say why that is the case? Is it a funding issue from the Treasury? Is it a supply issue? Is it a technology issue? What is it? Why is it delayed?

**Baroness Williams of Trafford:** I do not know, actually. I will have to write to you about that.

Q196 **Darren Jones:** With the greatest of respect, I have to say that I am not filled with huge amounts of confidence by your answers today. On a very fundamental liberties issue, where you have unconvicted citizens’ faces and images on a policing database, which the courts have said is unlawful, you seem to be unable to answer questions about how this is being fixed. This is not good enough, is it?

**Baroness Williams of Trafford:** We share your frustration. We want the technology to be there as soon as it possibly can be, because it will make the process a whole lot easier. I am not trying to evade the fact that it is an issue.

**Darren Jones:** In your written response to my question about the deadlines and why, it would be super interesting to know what we, as a Select Committee, could recommend to unlock that, so that we can see it come into force sooner rather than later.

Q197 **Bill Grant:** I share my colleague’s thoughts. I would be fearful if I was an unconvicted person and found myself retained on a database, when technology can put you there but it does not seem to have the ability to take you off. Does the fact that we are retaining these images not lead to a risk of errors being made further down the line, when these people are there and are unconvicted? I think that that brings an additional unnecessary risk, besides the unfairness of the fact that they are retained. There is something that is just basically wrong.

**Baroness Williams of Trafford:** I share your view that, if you have not been convicted and you ask for your facial image to be taken down, it should be taken down. I look forward to the day when it is taken off the system automatically. At this point in time, we are relying on human intervention. When it comes to someone who is unconvicted, I share that view.

Q198 **Bill Grant:** I understand the adoption of the new technology to ensure that criminals are brought to justice properly. I am fine with that. When you are a suspect, your picture can be taken in custody. I just cannot come to terms with the fact that you unnecessarily retain images of people who are, in essence, innocent. There is something that does not ring true about that.





**Baroness Williams of Trafford:** Yes.

Q199 **Chair:** In her submission, the Information Commissioner is clear that there are problems with this basis of the individual having to request take-down. It is not clear whether people are even properly told about their right. She says, "So, the position remains, that there are potentially thousands of custody images being held with no clear basis in law or justification for the ongoing retention." She also says that there is a risk that the length of time that they are being kept will not comply with the Data Protection Act 2018. Do you share that concern?

**Baroness Williams of Trafford:** Clearly, there is a need to take these images down, if there is a request for them to be taken down.

Q200 **Chair:** She has made it clear that she does not feel that that is sufficient to comply. Do you share the concern that this is not a satisfactory situation?

**Baroness Williams of Trafford:** I take her point.

Q201 **Chair:** Perhaps I may summarise matters, to finish the session. Many years on, we are still waiting for statutory powers for the forensic science regulator. The forensic sector is clearly very fragile and was close to collapse a few months ago. It was rescued by a rescue plan that now has to be brought into some permanent arrangement, but we heard very clearly from the regulator that there was an increased risk that the fight against crime could be compromised, here and now, as a result of this situation. That seems to me to be a significant failure in the protection of people in this country against crime.

On civil liberties, we heard the concerns expressed by the first panel about the emergence of a surveillance state. With thousands of images being held without a clear basis in law and automatic facial recognition creeping across police forces without any clear statutory basis, it is a pretty sorry state, is it not, both in protecting citizens against criminals and in protecting their civil liberties?

**Baroness Williams of Trafford:** I go back to live facial recognition. This is not an attempt to curtail people's liberties—it is actually an attempt to keep people safe. That is the first job of our law enforcement—

Q202 **Chair:** But it has to be done within a proper legal framework, does it not?

**Baroness Williams of Trafford:** Absolutely. I am not disagreeing with you.

Q203 **Chair:** That is what is lacking.

**Baroness Williams of Trafford:** I hope that I tried to outline that the police were operating within their powers. They have to be proportionate, reasonable and transparent. Clearly, it is a modality that is developing, hence the trial process that they are using.





## HOUSE OF COMMONS

I go back to the first point that you made, which was about the forensic market. I hoped that I had explained some of the mitigations that we are putting in place to try to avoid that happening in the future.

Q204 **Chair:** We heard that, but we have not got to a conclusion yet. We have heard evidence that, until this is actually resolved, the same crash could happen again. We have heard evidence that there is still a significant risk.

**Baroness Williams of Trafford:** I hope that we are mitigating that risk through some of the interventions that we have made—for example, through our support to the NPCC on building capabilities, through general funding to the police and through the funding that we have put in to enable them to address some of the capability and viability issues. Obviously, the Radox case is totally different. That is ongoing.

**Chair:** Thank you very much for attending.