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**MPS RESPONSE TO THE LONDON POLICING ETHICS PANEL FINAL REPORT ON LIVE FACIAL
RECOGNITION TECHNOLOGY**

Dear Mayor,

1. I am writing as the Metropolitan Police Service (MPS) Management Board lead for Live Facial Recognition (LFR) in response to the London Policing Ethics Panel's (LPEP) final report on MPS trials of live facial recognition (LFR) technology. LPEP, as an independent body set up to provide external ethical advice to both the Mayor's office and the MPS, has undertaken work that has been of great value to the MPS. It has helped us consider how we deploy LFR technology in a lawful and ethical way, such that its use supports our mission to make London safer whilst retaining the support and confidence of the public.

2. For the MPS to use LFR in a lawful and ethical manner we acknowledge the need to adopt safeguards that sufficiently mitigate the impact that LFR has on Article 8 rights. We also recognise that LPEP set out five conditions that they considered necessary to support the ethical use of LFR in a law enforcement context:-

- The need to demonstrate LFR is of more than marginal benefit
- Building trust by making trial data public
- Necessity and proportionality
- Focused training for police civilian operators and officers
- Robust voluntary self-regulation with independent oversight

3. This written response, and the wider work undertaken by the MPS in preparing for LFR, seeks to provide you with assurance that the MPS has carefully considered the LPEP conditions and in the development of its legal mandate, operating procedures and governance arrangements has comprehensively addressed them.

4. The MPS is keenly aware of the concerns articulated in the LPEP report regarding “injustices associated with misidentification”. We have built in a number of levels of assurance to prevent such injustices. The MPS’s safeguards are critical to retaining the public’s trust and confidence in our use of this technology. Many of the safeguards are ‘by design’, supported by a developed adjudication process. By way of example, any alert generated by the LFR system is initially scrutinised before an officer makes a decision to engage with the public. Even where a decision to engage is made by an officer (and it will always be an officer and not the LFR system that makes this decision), there is no automatic consequence that a member of public who is spoken to by the MPS will be arrested.

5. The use of imagery by the MPS is clearly a matter of concern to the public and any image used by the MPS for LFR needs to be lawfully held. There are therefore systems in place to ensure the currency of any watchlist used by the MPS for an LFR deployment and to make sure that the watchlist composition is not excessive. An intelligence case will always drive the composition of the watchlist supported by the MPS LFR legal mandate. Additionally, the authorising officer must be satisfied that the intelligence case makes it necessary and proportionate to deploy LFR to locate the individuals being sought by the MPS.

6. The rest of this letter outlines the MPS response to the LPEP conditions and recommendations.

1. The need to demonstrate LFR is of more than marginal benefit

How the MPS has addressed this:

7. The MPS has drawn extensively on the experience gained from the LFR trials to inform the future use of LFR. The MPS view is that LFR is a valuable tool that supports the MPS in keeping London safe for everyone. The trials also enabled the MPS to develop and refine its LFR processes and to implement extensive planning, authorisation and review procedures to ensure that the use of LFR is lawful and effective. This is particularly important in addressing the LPEP condition - it would not be possible to use LFR in circumstances where the anticipated benefits from using LFR are marginal. This is because the law requires the use of LFR to be necessary and proportionate.

8. The MPS trials have shown the potential benefits of LFR as an important policing tool – its use has resulted in the arrest of wanted individuals. The trial deployments demonstrate that LFR technology can significantly improve the effectiveness of an officer’s ability to identify wanted individuals. It can assist officers where traditional policing methods may struggle to yield results. An individual officer cannot possibly remember all the faces of wanted persons on a watchlist. Neither can an individual officer easily spot someone in a large crowd. LFR is a tool that improves our chances of picking out the person we are looking for.

9. LFR has a number of advantages over other systems currently used by the MPS such as CCTV. LFR allows the MPS to deploy its resources more efficiently. For example, the LFR system will actively alert officers to the potential presence of individuals of interest to them rather than requiring larger numbers of officers to watch a busy CCTV feed. LFR has the capacity to assist officers where the number of people passing officers or a CCTV system makes identifications challenging (e.g. when the number of individuals to be identified is significant).

10. LFR also has a public protection and safeguarding role. For example, where the courts have issued a warrant for a person’s arrest, many of these people pose a risk to public safety. These people

may be located using LFR in circumstances where the officers would otherwise struggle, and could not possibly be expected to remember the faces of all those currently wanted by the courts.

11. The MPS has had the benefit of being able to review the judicial consideration given to South Wales Police’s (SWP) use of their facial recognition technology. The case¹ confirmed that there is a lawful basis for the police to use facial recognition technology. This lawful basis was found to be “amply sufficient” - the importance of the police discharging their common law policing powers is not marginal, but a sufficiently important one such that interference with human rights is capable of justification on the grounds of necessity and proportionality. In the *Bridges* case, the courts noted:

“[Automatic Facial Recognition] permits a relatively mundane operation of human observation to be carried out much more quickly, efficiently and extensively...”

[In relation to the USPI Report²] The evidence clearly supports the conclusion that [Automatic Facial Recognition] processes and systems can contribute to police identifying persons of interest that they would not otherwise have been able to do so.” It also considered that some of the results were “impressive” and that the introduction of a new algorithm had introduced a step-change in terms of what could be accomplished.”

12. The *Bridges* case cites examples of where SWP’s facial recognition technology has enabled identification of people of interest to them for offences relating to domestic violence, making bomb threats and a range of other offences. The ten MPS LFR trials also resulted in eight arrests being made for violent offences. This included one for threatening rape and for an assault on police. The MPS would otherwise have been very unlikely to locate these individuals.

13. The table below sets out some of the measures the MPS has adopted to respond to LPEP Condition 1:

MPS Measure	How the measure addresses the LPEP Condition
The implementation of a detailed legal mandate, guidance document and standard operating procedures	<p>The MPS LFR Legal Mandate clearly articulates the legal basis underpinning the use of LFR. It outlines the conditions that need to be satisfied prior to any deployment and the requirements to ensure the need to use LFR is made out on a deployment-by-deployment basis.</p> <p>There is also a need to ensure proportionality. This means that the interference with human rights and people’s expectations of privacy must be outweighed by the need to deploy LFR to achieve the MPS’s law enforcement purposes. In this way, the ethical concerns raised regarding the intrusion caused by LFR are fully considered prior to any deployment.</p> <p>This approach has been embedded throughout the MPS’s LFR policies and processes. The guidance document requires those using LFR to ensure the:</p> <p><i>“overall benefits to the public must be great enough to sufficiently compensate for the potential public distrust it may invoke”</i></p>

¹ *R (on the application of Edward Bridges) v The Chief Constable of South Wales [2019] EWHC 2341 (Admin)*

² Evaluation of South Wales Police’s Use of Automatic Facial Recognition (Cardiff University, Police Science Institute, Crime & Security Research Institute) (September 2018) (“the UPSI Report”)

	<p>This requirement is to be covered as part of any application to deploy LFR. The authorising officer has to be satisfied that the use of LFR is proportionate in granting any authorisation to use LFR.</p> <p>The standard operating procedures require that the authorising officer for a deployment:</p> <p><i>“considers that the deployment is proportionate with the benefits anticipated from the use of LFR outweighing the concerns and impacts there may be in relation to people’s human rights and rights relating to equalities”.</i></p> <p>The application and Written Authority Document will introduce a level of rigour to the planning and approval process that must be satisfied prior to any LFR deployment. It also provides a documented decision-making process that will be subject to audit.</p> <p>Any application must outline the lawful basis, legitimate aim and intelligence case for a deployment. It must also explain how the intelligence case causes it to be necessary to deploy LFR and how it is proportionate in the circumstances. The rationale for the watchlist and how the intelligence case supports it must also be outlined together with any deployment specific safeguards. The application is then the subject of careful scrutiny by an authorising officer who must articulate their reasons for authorising the application to deploy LFR. The authorising officer is fully empowered to refuse any application or impose conditions on the deployment.</p>
<p>Defined roles and command structure</p>	<p>The use of the Bronze-Silver-Gold command structure and defining responsibilities for key roles means that the use of LFR is reviewed throughout deployment.</p> <p>LFR system engineers are charged with optimising the performance of the LFR system. The LFR operator is responsible for monitoring system performance and is required to flag any performance issues to the Silver commander. The Silver commander is empowered to halt any LFR deployment.</p>
<p>A post-deployment review process and audit function</p>	<p>The guidance document and standard operating procedures establish a post-deployment review process. This allows the MPS to examine the effectiveness of each deployment and consider any lessons to be learnt for future deployments. The use of LFR by the MPS will be subject to audit to ensure compliance with the MPS’ LFR policies and procedures both internally and as part of the governance structure.</p>
<p>Transparency measures</p>	<p>The MPS has committed to publishing information relating to LFR deployments on its website. This includes information in advance of planned LFR deployments to raise public awareness of them. This reflects the approach upheld in the <i>Bridges</i> decision. The commitment also includes the publishing of information after each deployment to allow the public to better understand the results. The public information will also facilitate LPEP with any further reviews it may undertake in relation to LFR.</p>

Community engagement	<p>The MPS will undertake a programme of community engagement to continue to build trust, help people understand how LFR is used, and the safeguards in place to ensure LFR is not used disproportionately.</p> <p>The LPEP report identified that public support for the use of LFR in relation to serious crime, was between 81% and 83% of respondents and, that in general terms, more than half thought that the police use of LFR could be acceptable. The MPS’s community engagement strategy seeks to build on this position – the LPEP findings help confirm that in the right circumstances, the public recognise that LFR is a valuable policing tool.</p>
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2. Building trust by making trial data public

How the MPS has addressed this

14. The MPS will publish an evaluation report regarding its LFR trials. This report will include data relating to each trial, algorithmic bias and the learning points identified. The MPS will also publish the legal mandate, guidance document, standard operating procedures and other relevant documentation to allow the public to see how the MPS has carefully responded to the trials and implemented the points of learning identified.

15. The MPS has carefully considered issues regarding bias and algorithmic injustice. With regards to the algorithm and software used in the MPS trials, there was no disproportionality across any particular ethnic group with regards to the generation of false alerts. The MPS has observed differences in the way the LFR algorithm responds to gender. The results relate to a single test and show that the LFR system is less likely to trigger alerts in relation to women who pass an LFR camera. Wider independent testing has been undertaken by the National Institute of Standards & Technology (NIST) on facial recognition algorithms with respect to demographic differentials (Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, NISTIR 8280, December 2019). The NIST tests show universal statements about ‘bias’ are not supported by testing. Instead they found that it is very important that a highly accurate algorithm is selected for use. NIST tests have reported that “the NEC-3 algorithm is, on many measures, the most accurate we have evaluated”. The algorithm used by the MPS is the NEC NeoFace algorithm.

16. In light of the MPS trials and the NIST report, the MPS has carefully considered the issue and has concluded that algorithmic injustice / bias within the LFR system (if any) can be effectively mitigated so that policing decisions are made in compliance with the Public Sector Equality Duty. In this respect the MPS has built-in to its processes a number of important safeguards. These include:

MPS Measure	How the measure addresses the LPEP Condition
The adjudication process	<p>When the LFR system generates an alert, it is not an automatic consequence that any member of the public will be engaged by the MPS. Adjudication means that an officer, and not the LFR system, makes the decision about whether to engage a member of the public.</p> <p>An officer’s decision to carry out an engagement will utilise their training, policing experience, and the information from the LFR system tempered by their awareness of the factors that impact on accuracy of an LFR alert. Relevant factors include camera configuration, camera location, lighting conditions, the distance at which people will pass the LFR system, and points relating to an individual’s age and appearance.</p>

	<p><u>Ultimately, no engagement will be made unless an officer is content that it is underpinned by a lawful policing purpose.</u></p> <p>Furthermore, even when an engagement with a member of the public does occur, it does not follow that further police action will result – the officer requires a legal basis for any action taken.</p>
Police officer experience	<p>The police are trained to engage with the public in the pursuit of their enquiries. There is a well-established legal basis by which officers can ask questions of members of the public. In this sense, LFR is doing nothing new. It is just a tool to aid policing and does not change the core policing role or necessarily result in a disadvantage where an engagement occurs.</p> <p>When deciding to engage with a member of the public, officers are still required to exercise their judgement based on their experience. This element of judgement is the same as when an officer decides to approach a member of public without the aid of LFR. Officers are also supported by their command structure. This ensures they make the decision to approach members of the public in the right circumstances, in the right way.</p>
Indicators of unconscious bias	<p>LFR operators and engagement officers receive awareness training on potential unconscious bias. Given the importance of the adjudication process to the Public Sector Equality Duty, it is important that MPS personnel do not unduly bring a bias into the deployment which could disproportionately impact certain members of the public. Further details relating to this will be made public in the MPS's LFR documents via its website.</p>
Post-deployment review	<p>The LFR post-deployment review provides an opportunity to review LFR deployments. The reviews can be used to identify where LFR system performance may not have met expectations, and will consider the effectiveness of the safeguards that were in place, identifying changes that can be implemented to improve the LFR system. This is an ongoing process to help ensure compliance with the Public Sector Equality Duty.</p>

17. Recognising the need for continued public engagement, the MPS will make data available to the public via our public facing website on a deployment-by-deployment basis so that the benefits and results of LFR can be scrutinised.

3. Necessity and proportionality

How the MPS has addressed this

18. The MPS has carefully considered the legal position clearly articulated in R (on the application of Edward Bridges) v The Chief Constable of South Wales [2019] EWHC 2341 (Admin). In all areas the MPS has created a framework to use LFR that allows it to comply with the Bridges decision.

19. Prior to any deployment of LFR an officer of at least the rank of Superintendent (or in cases of urgency, an officer of not below the rank of Inspector) has to be satisfied that the use of LFR is:

- Necessary and proportionate in relation to the Human Rights Act 1998;
- Strictly necessary and proportionate for the purposes of the Data Protection Act 2018 and necessary on the basis of a Schedule 8 ground.

20. The Bridges case makes it clear that the use of LFR should not be limited to serious crimes. This is not least as there are circumstances where minor offending may be part of a more serious and organised crime issue - the importance of addressing it means necessity can be made out. Assurance is therefore gained from rigorously applying the necessity threshold. The requirements of necessity means that the need to use LFR should lie somewhere between “indispensable” and more than something which is merely “desirable” when the MPS is seeking to achieve its legitimate aim.

21. The requirements of proportionality mean an overall assessment of proportionality has to be reached. It is essentially a question of whether the impact on the rights infringed, and data to be processed, is disproportionate to the likely benefits of using LFR.

22. The Bridges case confirmed that Regulation of Investigatory Powers Act 2000 is not engaged when LFR is used overtly. In this respect the court noted:

“It would be wrong in principle when applying the “in accordance with the law” standard to start from a premise that AFR Locate is to be seen as the equivalent of covert interception whether of specific communications, or bulk communications data.”

23. Nevertheless, whilst the nature of LFR means that the safeguards required to meet the proportionality requirements are different, LPEP may be assured that there are a number of safeguards the MPS has adopted for LFR which can be paralleled to those used in a RIPA context.

24. The table below sets out some of the measures the MPS has adopted to respond to LPEP Condition 3:

MPS Measure	How the measure addresses the LPEP Condition
Written Authority Document	The Written Authority Document approval process adopts a similar approach to that used for RIPA powers, as suggested in the LPEP report. However, the process is designed specifically for LFR and the legal framework applicable to it. The process requires the articulation of the deployment’s aim, legal basis, its necessity, and how proportionality is to be achieved. The authorising officer is accountable for the decision to deploy LFR and the responsibilities of the Bronze-Silver-Gold command structure have also been defined.
Safeguards	<p>The LFR documents include the safeguards to be adopted to mitigate the impact of the deployment. These include:</p> <ul style="list-style-type: none"> • a requirement to consider what alternatives have been tried and failed, or those discounted as not being viable in the circumstances (including for reasons of availability, practical issues or particularly significant cost differences); • a requirement that the size, scale, duration of the planned LFR deployment and the level of data being processed by the LFR system is the minimum needed to achieve the purpose for using LFR; and • controls relating to the watchlist to ensure that its composition is not excessive.
Data protection – ‘by design’.	In addition to the deployment specific safeguards, the MPS has adopted a number of data protection safeguards ‘by design’. These ensure the

	<p>intrusions and processing of data caused by the use of LFR are minimised. This includes:</p> <ul style="list-style-type: none"> • adopting published retention periods after which irrelevant data is to be deleted; • security measures to protect the LFR system; • system measures to ensure the quality of the images used will be suitable for the LFR system; • the need for a watchlist to be bespoke to a deployment; and • a requirement that a watchlist is created less than 24 hours prior to any deployment to ensure its currency. <p>The MPS LFR legal mandate, guidance document, and standard operating procedures provide further information on the specific safeguards. This will be made available to the public via the MPS website.</p>
Oversight	<p>There are a number of levels of scrutiny and oversight applicable to MPS LFR deployments and the use of LFR more generally. These include:</p> <ul style="list-style-type: none"> • <u>Chief Officer involvement</u> : Whilst MPS NPCC ranked officers do not provide authority for LFR deployment, consultation at this level is required in order to maintain strategic oversight and to ensure pan-London issues are taken into account as much as possible before deployment. This affords the Chief Officer the opportunity to veto a deployment altogether, or to require mitigation to address any concerns at hand. • <u>MPS</u>: Within the MPS, a post-deployment review process helps ensure that lessons are identified on a deployment-by-deployment basis. Wider scrutiny is provided by the MPS LFR Strategic Board, which in-turn answers to the MPS Management Board. • <u>MOPAC</u> and <u>LPEP</u>: provide oversight and scrutiny from an external perspective. This is also the case with the Information Commissioner, Surveillance Camera Commissioner, and the Biometrics Commissioner.

4. Focused training for police civilian operators and officers

How the MPS has addressed this

25. The MPS has developed standard operating procedures, and implemented a training regime that clearly articulates the roles and responsibilities of those involved with an LFR deployment. The training helps to ensure that police officers and staff have the skills required to effectively perform their role.

26. The table below sets out some of the measures the MPS has adopted to respond to LPEP Condition 4:

MPS Measure	How the measure addresses the LPEP Condition
LFR operator role	<p>The standard operating procedures direct that LFR operators will:</p> <p><i>“receive detailed training prior to operational Deployment. Their role is to monitor and assess system Alerts, before working with LFR Engagement Officers (as necessary) to decide if and when an Engagement is appropriate.”</i></p> <p>The training covers the interaction between the LFR operator and the engagement officer to ensure that there absolute clarity around the decision to engage or not engage a member of the public.</p>
LFR engagement officer role	<p>The standard operating procedures make it clear that the engagement officer is the person who makes the final decision to engage a member of the public following an alert. It also clarifies how engagement officers seek more information to assist their decision-making. For deployments going forwards, these provide:</p> <p><i>“LFR engagement officers must ensure when conducting any engagements with members of the public that they do so lawfully, and in an appropriate and proportionate manner. Officers must comply with the Code of Ethics at all times. Wherever possible, members of the public who have been the subject of an engagement, should be supplied with an LFR information leaflet.</i></p> <p><i>Where the LFR operator supports engagement, it is for an LFR engagement officer to make the final decision on whether to engage with any member of the public. The LFR engagement officer should receive an alert on their handheld device (or otherwise have sight of it) and must then make their own decision about whether they should instigate an engagement or not. It must not be an automatic consequence that an alert results in an engagement.”</i></p>
LFR authorising officer role	<p>The standard operating procedures provide that authorising officers must require that officers and staff involved with LFR deployments receive training prior to each deployment. This is part of the LFR authorisation process.</p>

5. Robust voluntary self-regulation with independent oversight

How the MPS has addressed this

27. The MPS guidance document provides:

“Within the MPS, the senior internal oversight body for LFR is the MPS LFR Strategic Board, which in-turn answers to the MPS Management Board. In addition, MOPAC (Mayor’s Office for Policing And Crime) and LPEP (London Policing Ethics Panel) provide oversight and scrutiny from an external perspective.

Further oversight is provided by the ‘Law Enforcement Facial Images & New Biometrics Oversight & Advisory Board’. This is co-chaired by the NPCC (National Police Chiefs’ Council) Lead for Facial Identification and the Home Office Data and Identity Department, and is

attended by representatives of the Information Commissioner's Office, the Surveillance Camera Commissioner, and the Biometrics Commissioner."

28. The table below sets out some of the measures the MPS has adopted to respond to LPEP Condition 5:

MPS Measure	How the measure addresses the LPEP Condition
Standard operating procedures	<p>The standard operating procedures and other MPS LFR documents establish a framework for watchlists composition, ensuring they meet the requirements of legality, necessity and proportionality. Specifically, the standard operating procedures provide:</p> <ul style="list-style-type: none"> • Currency: Watchlists are to be created not more than 24 hours prior to an LFR Deployment. As part of the process, checks are carried out to ensure the information is current and person on the watchlist remain of interest to the MPS. • Accuracy: The information regarding individuals placed on an LFR watchlist is drawn from PNC or other intelligence databases. There is also a requirement that "all reasonable steps have been taken to ensure that the image is of a person intended for inclusion on a given Watchlist". • Limited to the agreed policing purpose for the deployment: The Written Authority Document process ensures that the scope of the watchlist is not excessive. The LFR documents provide that where an additional purpose is identified, further authority is required. It is not lawful to add images to a watchlist in the absence of a common law policing power to do so.
Operating procedures to govern the authorisation and deployment of LFR	<p>The MPS LFR documents provide a system that governs the authorisation and deployment of LFR. In particular the standard operating procedures outline the authority to deploy LFR and the responsibilities placed on the authorising officer when approving a deployment. This is supported by guidance issued to authorising officers on the decision-making process to follow when considering an application to use LFR.</p>
Transparency measures	<p>The MPS has committed to publishing information relating to LFR deployments on its website. This includes information in advance of planned LFR deployments to raise public awareness of them. This reflects the approach upheld in the <i>Bridges</i> decision. The commitment also includes the publication of information after each deployment to allow the public to better understand the results. The public information will also facilitate LPEP with any further reviews it may undertake in relation to LFR.</p>
MOPAC	<p>Oversight from MOPAC is welcomed with opportunity potentially presenting itself through pre-existing monthly bilateral meetings and MOPAC oversight boards.</p>
Independent input / review	<p>The MPS has engaged with the Information Commissioner's Office, the Surveillance Camera Commissioner, and the Biometrics Commissioner, and will continue to do so. The MPS legal mandate also reflects the role of the respective commissioners as articulated in the <i>Bridges</i> case.</p>

29. We have also carefully considered the LPEP recommendations and respond as follows:


LPEP Recommendation	MPS Response
We recommend that when designing and conducting future trials of new policing tools and technologies, MPS incorporates consideration of the ethical framework that we propose in this report into its planning processes.	The MPS notes this recommendation and recognises its value for consideration when designing and conducting trials in the future.
We recommend that in the event MPS proceeds to adopt LFR, approximately 12 months after the first LFR deployment MOPAC should gauge its effects through incorporating elements of the public opinion survey carried out for this report into MOPAC's next quarterly Public Attitudes Survey.	We welcome this recommendation and recognise the importance of policing by consent. We will continue to take account of public attitudes in relation to LFR.
Anticipating future technological developments, MOPAC and MPS should continue to draw Home Office attention to the need to simplify and strengthen the regulation of new identification technologies.	The MPS is keen to support and influence any work being undertaken to provide a code of practice in relation to LFR.

SUMMARY

30. I hope that you are assured by the detailed consideration the MPS has given to the LPEP report and with the safeguards put in place regarding the use of this technology by the MPS. We believe that LFR will be an effective crime fighting tool, providing greater opportunities to arrest violent offenders, stop would-be terrorists and to protect the most vulnerable in society.

31. The complete framework now established to enable the MPS to move beyond its LFR trials and use LFR operationally is more extensive than this summary. The legal mandate, guidance document, standard operating procedures and other relevant documentation will be published to allow LPEP and the public to see how the MPS has carefully responded to the trials, its wider engagement with key stakeholders, the public and the LPEP report.

Yours sincerely,



Nick Ephgrave
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