



Children and Young People's
Centre for Justice

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Thematic Review of Biometric Data – Children and Young People's Perspectives

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Introduction

The Children and Young People's Centre for Justice (CYCJ) was commissioned by the Scottish Biometrics Commissioner to undertake a consultation with children and young people as part of the Commissioner's wider Thematic Review of Biometric Data Relating to Children and Vulnerable Adults. The aim of the review is to assess the law, procedure and practice related to the acquisition, retention, use, and destruction of biometric data relating to children, young people and vulnerable adults. This consultation contributes to this through qualitatively exploring the perspectives and experiences of care and justice experienced children and young people in relation to the collection and retention of biometric data by police.

This report will first outline the methodology used to gather children and young people's views, before presenting the key findings. These are split into three sections: when should biometric data be collected; how should this be collected; how long should this be retained for. Findings are then discussed and conclusions drawn.

Methodology

Recruitment and Consent

Participants were recruited by purposive sampling, with researchers contacting existing groups of children and young people via CYCJ's professional network of practitioners and children's organisations. Group leads would then discuss and gauge interest in the project amongst the children and young people they were working with. Where interest was expressed, researchers then sought informed consent from each participant. Where participants expressed that they would prefer to engage via one-to-one interviews, this was accommodated.

Participants

Three focus groups and two semi-structured interviews were conducted with a total of 16 care and justice experienced participants. Ages of participants ranged from 11-25 years, with only one participant over 18 and the mean age 14 years.

Data Collection

Focus groups were structured around a storyboard activity that participants completed together (see Appendix 1 for storyboard template). Interviews were semi-structured and based on the questions within the storyboard activity. For both interviews and two of the focus groups, consent was given for the session to be audio-recorded. This was then transcribed verbatim, removing all names and identifiers, with the original recording deleted. For the focus group that did not give consent to be recorded, researchers took notes throughout the session which were then typed up alongside the group's completed storyboard.

Analysis

All data was coded and analysed through Nvivo using an inductive, thematic approach (Braun and Clarke, 2006). Transcripts were initially coded by one of the researchers using a mixture of descriptive and 'in vivo' coding methods to identify the key points in the data, and then grouped into wider higher-level themes. The data was then re-read to check for fit with these themes. Following this, the codes and themes were reviewed by the second researcher involved in this project, with their feedback considered and incorporated.

Findings

Why and when should police take biometric data?

Across the groups and participants that we spoke to, there was agreement that in some situations police might need to collect biometric data from children and young people. The primary situation in which participants felt this was acceptable was when police had existing evidence from a crime scene (e.g. fingerprints or DNA samples) and sought to match these with a suspect's biometrics. One group also discussed that it might be useful for the police to collect biometric data from children and young people who have been missing, to help them locate the child or young person if they go missing again. Interestingly, participants did not express that biometric data should be collected as a matter of course when a child or young person has been arrested, or for the purposes of expanding police databases. Instead, there was a real sense that this data should only be collected when necessary for investigations, and that police needed to have existing evidence to justify why the biometric data needed to be collected:

I don't really think they should be able to take it unless they have a solid reason [...] say they had an abuse scene or something where there was blood
(Interview Participant 1)

One of the groups we spoke to suggested that this was not currently the case, that police can "pick anyone off the street and bring them in" (Focus Group 1), collecting their biometrics in the process. This, they stressed, was unfair and unjustified – adding that police should only be able to collect biometrics when they have evidence that links a child or young person to an offence.

In addition to police needing to have existing evidence before collecting biometric data, participants also expressed that any data collection should be proportionate to the specifics of each individual case. Participants cited three key, interrelated factors that they felt should influence decisions over proportionate data collection:

Offence type and seriousness

This was the most prominently cited factor that participants thought should inform whether, and how much, biometric data should be collected. Collecting biometric data was seen as more justifiable when someone had been suspected of more serious and harmful offences, with participants referencing murder, assault and theft as cases where it would be acceptable.. One group also highlighted that for cybercrimes there would be limited reason why police should take biometric data, as there would be no trace of their biometrics on the 'crime scene'.

This again highlights the significance that participants placed on 'evidence matching' as the most important, or only, reason why police should take biometrics from children and young people.

Lower-level offences that did not involve interpersonal harm were not seen as justifying biometric data collection, even if police had existing evidence linking the child or young person to the offence. One participant highlighted several reasons for this, including that in these circumstances the child's right to privacy supersedes the police's need for the biometric data:

If you've done something like vandalism or something, there's no need to take your data and it would honestly just waste police time, money and everything. But if it's something bad then take the data, because there's this thing where it's like you can't take the data unless you have a reasonable reason for why you need to take it to connect it to other crimes [...] But if you're taking data from someone who's vandalised something, you've no need to take the data and at that point you're just trying to... be annoying or something. People have their right to privacy, to not have their biometrics stored on that system that most police officers would have access to.

(Interview Participant 1)

Age

The age of the person was also an important factor in determining whether biometric data collection was justifiable and proportionate, with only one participant expressing that they did not think it should be taken into consideration. Two groups specified that the police shouldn't take biometrics from anyone younger than 12, with one group feeling like this should be for no one younger than 14. This was largely explained by acknowledging that younger children "don't know what they're doing" (Focus Group 2) and are less likely to fully comprehend the consequences of their actions compared to older young people and adults. This was also linked to the perception that collecting biometric data might have a more negative impact on children and young people than on adults, and therefore conducting it requires a higher level of justification – as the next section will discuss in more detail. For these reasons, it was felt that consideration of the child's age and maturity level should be factored in when deciding whether it is proportionate and justifiable to collect biometric data. At the same time, two of our focus groups discussed that whilst age was important, this should always be considered alongside other specifics of the case, and, in particular, the type of offence and level of harm.

Interviewer: So younger than that [15] you think it [biometric data collection] wouldn't be appropriate?

Participant: No. maybe 14, in fact, 14, any younger is too much of a wee guy [...] it depends what they've done but, obviously if there's some wee 12 year old jumping about murdering folk then he's going to get the jail isn't he

(Focus group 1)

Further, Focus Group 3 also discussed that age should be considered alongside the child's previous behaviour. There was a sense where that older children and young people who had not previously been in contact with the law might be just as unaware of the consequences as younger children. Considering a child's previous behaviour, this group felt, also allowed the police to factor in the risk of future harm when deciding whether biometric data collection was proportionate.

Biometric data type

Another important factor that participants felt influenced whether biometric data collection was proportionate was the type of data police were seeking to collect. Several participants stressed that police should only take the types of biometric data they need to match with the evidence they already have, rather than taking any/all types as a matter of course. This, it was felt, should be considered alongside the first factor discussed – with more data likely needed in more serious and harmful cases:

I would say the more serious, the more severe the crime then more data should be taken in accordance with what's being investigated.

(Interview Participant 2)

Linked to this, several participants discussed that some types of data would feel more invasive than others, and would therefore require a higher level of justification for police to collect, with fingerprints and DNA samples seen to be particularly sensitive. Conversely, photographic images and facial recognition software were understood as being less invasive, on the basis that people are subjected to similar kinds of data collection in everyday life:

I think it would change depending on the data, because there would be different uses for each type because there's cameras like everywhere in the country so there'd always be pictures of you somewhere.

(Interview Participant 1)

There was also a small amount of discussion over the appropriateness of taking biometric data from victims. Participants expressed that this might be necessary and appropriate when it supports the police's investigation, however that in these circumstances victims' consent would need to be given and respected.

Children and young people therefore identified a number of situations where police would need to collect biometric data, and agreed that this was often necessary and appropriate. Importantly, though, there was a sense across groups and participants that any collection of biometric data had to be carefully considered and justified in line with the specifics of the case and largely for the purpose of matching a suspect's biometrics with existing evidence, instead of as a matter of course or as part of standard arrest procedure. Even where police did have existing evidence, participants discussed the need for nuanced, case-by-case decision making that was underpinned by the need for proportionate data collection and informed by a range of factors including the offence type, age of the person and the type of data they sought to collect. Only following due consideration to this, and balancing it against children's right to privacy, would biometric data collection from children and young people by police be seen as fair and proportionate.

How should biometric data be collected?

This section explores participants perspectives on how biometric data should be collected by police, including how to ensure this process is fair and rights respecting. Several participants suggested that biometric data collection can be a particularly negative experience, often occurring at a point of acute stress as a person is arrested and/or taken into a police station. Participants used words like 'worried', 'alone', 'scared', 'angry' and 'uncomfortable' to describe

how this can feel. This could be especially difficult for children and young people, who likely have less understanding of what is happening to them and why:

children and young people may not necessarily, or won't, have the knowledge that adults, mature adults have of the process

(Interview Participant 2)

At the same time, whilst age was considered important, participants stressed that how this is experienced will vary from person to person, with other factors like mental health and neurodivergence also impacting on a person's ability to cope with the process.

Participants provided limited detail on the issues they perceived, or had experienced, with the police's current biometric data collection process. Of those that did discuss this, it was expressed that police can be quite forceful, often rushing the process without explaining why they are collecting the data, what is going to happen to it or what their rights are. Participants did, however, provide several detailed suggestions on how to make sure this process was fair and rights respecting for children and young people:

- **Ensure the child or young person understands the process.** This was one of the most prominent suggestions raised by several participants, and links to the concern that police often do not explain what is going to happen to children and young people in advance of collecting their biometrics. Participants acknowledged that children and young people are less likely to understand legal processes and therefore explaining this in a clear and accessible way should be prioritised. Understanding the process, participants suggested, can help alleviate some of the anxiety and worry that a child or young person may be experiencing. This would also provide space for someone to explain to the child or young person what their rights are.
- **Ensure workers/officers are trained and experienced in working with children.** This was considered critical, and relates to both the person collecting the biometrics and the person explaining the process to the child or young person (if this is not the same person). There were mixed perspectives on whether police officers were best placed to take children and young people's biometric data. What seemed to be more important to participants was that whoever was collecting the data was respectful, highly trained, understood how the experience might be impacting the child, and capable of identifying and accommodating additional needs. One group emphasised that in the absence of this expertise the situation can quickly escalate, especially when the child or young person is already feeling stressed and anxious.
- **Go through the process more slowly and informally than with an adult.** This linked closely with the above two suggestions, and was considered critical in supporting the child or young person to feel as comfortable and safe as possible. There was a sense that processes can be rushed when officers do not understand the different needs of children, and that formal processes and language can heighten children and young people's sense of isolation.
- **Offer the child or young person the opportunity to have a trusted adult with them.**

This was raised by a couple of participants as important, with a trusted adult able to provide emotional support and a sense of familiarity that may reassure the child and make them feel more at ease. This might also support the first suggestion, with a trusted adult able to help the police ensure the child understands the process. Participants suggested this could be a parent, carer, teacher or social worker.

- **Undertake data collection in a child-friendly environment.** Although one participant felt that children and young people could have their biometrics collected in the same place as adults, all other groups and participants expressed that there was a need for this to take place in a different environment. Participants highlighted that police stations can be particularly intimidating, and that, if possible, data could be collected elsewhere – in social work offices or healthcare facilities. Participants expressed that where this was not possible, efforts should be made to ensure that the specific room in which the child or young person was having their biometrics collected is child-friendly. This could involve:
 - Rooms painted in bright or calming colours
 - Comfortable and more informal furniture
 - Entertainment available to distract the child or young person
 - Food and water/juice available, with one participant suggesting a mini fridge

The process of having biometric data collected by police was, therefore, not understood as a neutral or bureaucratic process but as one that held the potential to significantly impact on the child or young person. There was a sense that children and young people had particular needs which made coping with biometric data collection more challenging, and also some indication that these needs were not always currently addressed by police. Participants provided a range of interesting and important suggestions that can support a fair and rights respecting process, which should be considered in line with their perspectives from the first section, in that data is only collected when necessary, proportionate and justified.

How long should police store biometric data for?

This section explores participants perspectives on how long biometric data should be stored for and the impact this might have on children and young people. There was considerable concern over this, with participants acknowledging several potential negative implications for children and young people as they transition into adulthood. Participants expressed that having your biometrics stored on a police database could be experienced as stigmatising, with a lot of this discussion connected to wider concerns around children and young people receiving criminal records. This stigmatisation could manifest either in other people's treatment of children and young people, and/or how children and young people saw themselves. Two participants raised that biometric storage could lead to children and young people being targeted by police, and raised concerns that their biometrics could be falsely matched to future crime scenes so police can "*accuse them of doing it [a crime]*" (Focus group 1). Other participants suggested that having your biometrics stored could lead legal practitioners to assume their guilt should they come into contact with justice systems again, and that this in turn might lead to the child or young person receiving a harsher punishment.

For these reasons, participants argued that biometric data storage may lead children, young people, and adults to feel constantly on edge, with a sense that they are always a “hair length away from going to prison because your data is there on the network” (Interview Participant 1). Dealing with this anxiety in the everyday was acknowledged as being a painful experience, although there were mixed perspectives on whether this would then work to deter children and young people from coming into contact with the law again – with some thinking it might, and others feeling that those who are going to continue offending will do so anyway. In addition to feeling anxious and worried, several participants raised that knowing your data was stored on a police database might reduce children and young people’s self-esteem, and change how they see themselves:

I would say generally it wouldn't be positive, for the child or young person to grow up into an adult and find out that biometric data is being stored about them by whoever, then I would say it would have a negative effect on them. It wouldn't be good for their self-confidence to know that they were being judged in a certain way, so yeah negative impact

(Interview Participant 2)

Based on their perception that biometric data storage could have a significant impact on children and young people, participants emphasised that any such storage must be limited and proportionate. For those who are no longer suspected or convicted, participants were clear that any biometric data that had been collected should be deleted. For those who had been convicted, most groups still argued that storage should not be indefinite, and instead proposed that each case should be subject to continuous, individualised decision making informed by the specifics of the case and the assessed risk of future harm. This should include due consideration to the seriousness of the offence and the person’s behaviour since, with the presumption that this will be deleted after some amount of time. In addition, several stressed the importance of factoring in the person’s age, emphasising that since storage can have particularly adverse implications for children’s ability to transition into adulthood, more care should be taken around decisions to continue storing this data:

If they'd done a bad crime or something that would seriously hurt someone, depending on the crime [the data] should be kept after, but if it was just a fight or something the data was taken for it should just be removed. After a certain time it should just be removed to make it easier for that young person when they go into their life. Because they may just have been in a bad childhood, so they didn't really know what to do, and they did something because of what they experienced and it could ruin their entire life. But having the records cleaned, the DNA gone, it makes it better for a safe and secure life.

(Interview Participant 1)

Participants were also asked about whether knowing their biometric data had been shared on a UK wide database would make a difference to them. There were mixed opinions on this – some acknowledged the utility of sharing this data for the purposes of public protection and thought it would not make a difference to how they felt or acted, whilst others thought it may feel worse and lead to wider data protection concerns given the differing jurisdictions.

Discussion and Conclusion

During our fieldwork, it became clear that the children and young people we met with knew relatively little about the processes for biometric data acquisition, retention, use, and destruction. This was explicitly raised by one of our participants, who argued that efforts should be made to address this by raising awareness amongst children and young people of the proper processes, in order that they know their rights and how to use them in advance of getting their biometrics taken by police. An increased familiarity with these processes prior to the point of crisis in which they are taken into a police station might help alleviate some of the stress and anxiety children and young people can experience when they are getting their biometrics taken. For this to be effective, outputs need to be child-friendly and accessible, accounting for the fact that much of the terminology surrounding these issues can be complex - during our fieldwork, we found the term 'biometric data' itself was often met with confusion, including from some of the adult group leads that we initially reached out to. Coproducing any future materials with children and young people who have experience of biometric data collection would help address some of these issues.

Whilst many of our participants' awareness of biometric processes was limited, this meant they were able to really think about how things ought to be, without being hindered by an understanding of how things are now. This provided interesting and important insights. Across the three sections, what came out clearly was that our participants did not think that the police's ability to collect and retain biometric data was inconsequential – they understood these processes to have serious implications for children and young people. These occurred both in the moment of having data collected, with participants highlighting how this can be experienced as scary and intimidating, and also in the long-term, with the potential for biometric retention to be stigmatising and anxiety-inducing. For these reasons, participants expressed that whilst they understood that police will sometimes need to capture and retain children and young people's biometric data, this should only be actioned when necessary, proportionate and justifiable based on an individualised, case-by-case assessment.

Participants discussed various factors they felt should influence this assessment. Age came out as an important factor at every stage of these considerations. Participants acknowledged that children and young people come into contact with the law due to a range of issues, and that they do not have the same maturity levels as adults to fully comprehend their actions. Further, there was a perception that the process itself of having biometrics collected can be more difficult for children, especially where police have not explained processes to them and when other needs they may have are not being identified. In discussing whether age should be considered in decisions about the continued retention of biometric data, participants often linked this with wider discussion around criminal records to stress that being on police databases can have particularly adverse consequences for children and young people, where they may struggle to transition into adulthood and away from offending. For all of these reasons, it was largely felt that processes for children and young people should be different. Despite this, though, most participants expressed that with the exception of very young children, police also need to consider other factors when deciding whether to collect and retain biometrics, including the seriousness of the offence and the assessed risk of future harm. Only then, after taking all of these factors into consideration, was it felt that police should have the power to collect and continue to retain the biometric data of children and young people.



Appendix 1 – Storyboard Template

BIOMETRIC DATA: WHY AND WHEN?

BIOMETRIC DATA: HOW?

BIOMETRIC DATA: STORAGE

THE POLICE OFFICER ASKS JAMIE TO HAVE HIS FINGERPRINTS RECORDED

WE NEED TO RECORD SOME BIOMETRIC DATA

WHY WOULD THE POLICE WANT TO HAVE MY BIOMETRIC DATA?

WHAT MIGHT BE A FAIR REASON FOR THIS TO HAPPEN?

LATER ON, JAMIE IS THINKING ABOUT HOW HE FELT HAVING HIS FINGERPRINTS RECORDED...

HOW DO OTHER PEOPLE LIKE ME FEEL IN THIS SITUATION?

SOME PEOPLE MIGHT FEEL LIKE POLICE WERE RESPECTFUL, OTHERS MIGHT HAVE BEEN MADE TO FEEL A BIT UNCOMFORTABLE...

WHAT COULD BE DONE DIFFERENTLY TO MAKE IT A BETTER EXPERIENCE FOR YOUNG PEOPLE?

THE POLICE OFFICER TELLS JAMIE THAT HIS BIOMETRIC DATA WILL BE STORED ON A POLICE DATABASE

HOW LONG WILL THEY KEEP MY DATA FOR?

CAN I ASK THEM TO DELETE MY DATA?

JAMIE IS 15 YEARS OLD. WHAT AGE DO YOU THINK IS FAIR FOR SOMEONE TO HAVE BIOMETRIC DATA CAPTURED?

DO YOU THINK IT'S OKAY FOR JAMIE TO HAVE HIS DATA RECORDED?

WOULD YOUR OPINION BE DIFFERENT FOR OTHER KINDS OF BIOMETRIC DATA?

BIOMETRIC DATA COLLECTION SHOULD BE FAIR AND RESPECTFUL. WHAT DO YOU THINK WOULD MAKE THE PROCESS FAIR AND RESPECTFUL?

"I SHOULD BE HELPED TO UNDERSTAND WHY POLICE NEED THE DATA"

IF JAMIE KNOWS THAT HIS DATA IS STORED ON A POLICE DATABASE, DO YOU THINK IT WOULD AFFECT HOW LIKELY HE IS TO DO THINGS THAT MIGHT BE AGAINST THE LAW?

HOW DO YOU THINK JAMIE MIGHT FEEL IF HIS DATA WAS STORED ON A UK-WIDE DATABASE?