



GREATER MANCHESTER
POLICE

GMP Live Facial Recognition (LFR) Legal Mandate

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Terms & Definitions: Capitalised terms used in this LFR Legal Mandate shall have the meaning given to them in the GMP LFR Policy & Procedure documents unless otherwise defined in this LFR Legal Mandate.

1. Introduction

An explanation of Live Facial Recognition terminology can be found in GMP's LFR Policy Document.

LFR for law enforcement purposes is not subject to dedicated primary legislation. LFR is regulated by a number of sources of legislation and common law as well as both national and local policy. This 'tapestry' of legislation combines to provide a multi-layered legal structure to regulate the use of LFR.

Tier one: Legislation	<i>Legal Power to use LFR</i>	Common Law Section 64A(4) Police and Criminal Evidence Act 1984
	<i>Regulating the use of LFR</i>	Operational Human Rights Act 1998, incorporating the European Convention on Human Rights and Fundamental Freedoms Equality Act 2010 Code D to the Police and Criminal Evidence Act 1984 Data Management Data Protection Act 2018 (Parts 2 and 3) UK General Data Protection Regulation Protection of Freedoms Act 2012
	<i>Requests for Information in relation to LFR</i>	Freedom of Information Act 2000 Data Protection Act 2018 (Subject Access Requests)
Tier Two: Code and Guidance	<i>Regulating the use of LFR</i>	Secretary of State's Surveillance Camera Code of Practice. Guidance issued by the Surveillance Camera Commissioner (Facing the Camera) Information Commissioner's Office Code of Practice for Surveillance Cameras and associated guidance issued by the Information Commissioner Police information and records management: code of practice (issued under s. 39A Police Act 1996)

<p>Tier Three: GMP LFR Documents</p>	<p><i>Regulating the use of LFR</i></p>	<p>GMP LFR Policy & Procedure documents GMP LFR Data Protection Appropriate Policy Document GMP LFR Data Protection Impact & Equality Assessment GMP LFR Community Impact Assessment GMP LFR Legal Mandate</p>
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2. Common Law

2.1 - The police have a number of long-established policing responsibilities and powers derived from common law which have been recognised by the courts. GMP is obliged to comply with common law and statutory safeguards in delivering its policing operational duties and relies on common law to discharge a number of its duties.

2.2 - Key common law powers GMP may rely on when utilising LFR technology include the policing common law powers to:

- (a) protect life and property;
- (b) preserve order and prevent threats to public security;
- (c) prevent and detect crime;
- (d) bring offenders to justice; and
- (e) uphold national security.

2.3 - The use of common law power as a legal basis to support the deployment use of LFR has been considered and recognised in the ‘Bridges’ case:

a) R (on the application of Edward Bridges) v The Chief Constable of South Wales Police [2019] EWHC 2341 (Admin) (the “High Court Bridges” decision); and then on Appeal in,

b) R (on the application of Edward Bridges) v The Chief Constable of South Wales Police [2020] EWCA Civ 1058 (the “Court of Appeal Bridges” decision).

The Court of Appeal further summarised the legal basis in relation to compilation of Watchlists as being “both authorised under the Police and Criminal Evidence Act 1984 and within the powers of police at common law.” The reference to the 1984 Act is a reference to imagery obtained pursuant to Section 64A (Photographing of suspects etc.) of the Act and particularly section 64A(4)(a) which allows a photograph taken under the section to be “used ... for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or to the enforcement of a sentence”.

When considering the use of LFR technology, authorising officers must be clear as to the common law policing power that is relied upon for lawfully authorising the use of LFR and record this as part of the decision-making process.

3. Police & Criminal Evidence Act 1984

3.1 - Section 64A of PACE allows photographing a person who is detained at a station.

3.2 - Allows for the photographs to be used for the prevention and detection of crime, the investigation of offences or the conduct of prosecutions.

4. Human Rights Act 1998

4.1 - GMP use of LFR must be in compliance with the Human Rights Act 1998. LFR technology engages the Human Rights Act 1998 and in particular has the potential to impact upon an individual's Article 8 rights, the right to respect for private and family life. This provides:

"There shall be no interference by a public authority with the exercise of the right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

4.2 - As a qualified right, any interference with an individual's Article 8 rights is only permissible if:

- a) there is a **legal basis** for the interference with the qualified right that the public can understand;
- b) the use of LFR seeks to achieve the **legitimate aim**;
- c) it is **necessary** for the purposes of that aim in a democratic society; and
- d) the use of LFR is **proportionate** to the legitimate aim being sought.

4.3 - It is well-established that the reach of Article 8 can be broad. The case of *S & Marper v. United Kingdom* [2008] ECHR 1581 confirms that this can relate to a person's right to their biometric data and any storing of data relating to it. Recognising that LFR involves biometric processing, that case went on to recognise that, in protecting the personal data and other forms of biometric processing, the interests of the data subject and the community as a whole "may be outweighed by the legitimate interest in the prevention of crime".

4.4 - The High Court and Court of Appeal *Bridges* cases considered Article 8, specifically in the context of LFR technology and confirmed that Article 8 is engaged in so far as someone passes through the Zone of Recognition and in so far as someone is placed on a LFR Watchlist for a Deployment. Depending on the nature of the deployment, the then Surveillance Camera Commissioner identified that there are also potential impacts on other human rights. These include the right to freedom of assembly, freedom of thought, belief and religion, freedom of expression, freedom of association, and the protection against discrimination in respect of those rights and freedoms. Authorising Officers should contact

GMP's Legal Services Branch for advice should a proposed deployment have a wider human rights points to consider.

4.5 - There is a legal basis for the interference with the qualified right that the public can understand

LFR will be used to allow GMP to discharge its well-established operational duties pursuant to common law. The courts have recognised that “the rules need not be statutory, providing they operate within a framework of law and that there are effective means of enforcing them” (R (on the application of Catt) v Commissioner of Police of the Metropolis [2015] UKSC 9).

In the case of Catt Lord Sumption recognised that applicants could have their personal information noted down and retained by the police as they occupied publicly accessible space. The Supreme Court recognised the police's common law powers to collect and store information are subject to an “intensive regime of statutory and administrative regulation” under the Data Protection Act and various guidance documents on the management of police information.

The courts have further recognised the right of the police to make use of a photograph of an individual. The courts accepted the purposes of preventing and detecting crime, the investigation of alleged offences and the apprehension of suspects or persons unlawfully at large. This was the case whether or not the photograph is of any person they seek to arrest or of a suspect's accomplice or of anyone else. The court confirmed the “key is that they must have these and only these purposes in mind and must ... make no more than reasonable use of the picture in seeking to accomplish them” (Hellewell v Chief Constable of Derbyshire [1995] 4 All ER 473).

In the case of the GMP's use of LFR, the LFR Legal Framework outlines the legal basis for any interference with an individual's Article 8 rights. The High Court Bridges case confirmed the police's common law policing powers to be “amply sufficient” in relation to this type of use of LFR and confirmed that “the police do not need new express statutory powers for this purpose”. This was further considered in the Court of Appeal Bridges case which also recognised the sufficiency of the legal framework, noting:

“The legal framework which regulates the deployment of [use of LFR] does contain safeguards which enable the proportionality of the interference with Article 8 rights to be adequately examined.”

4.7 - The Court of Appeal Bridges decision further noted that, to be ‘in accordance with the law’, the legal basis must:

“Be ‘accessible’ to the person concerned, meaning that it must be published and comprehensible, and it must be possible to discover what its provisions are. The measure must be ‘foreseeable’ meaning that it must be possible for a person to foresee its consequences for them and it should not confer a discretion so broad that its scope is in practice dependant on the will of those who apply it, rather than on the law itself.”

4.8 - In considering accessibility and foreseeability, the Court of Appeal considered the level of discretion that South Wales Police officers held in the case before it to determine where they deployed facial recognition technology and who they deployed it to locate those on a watchlist. The court refers to this as the “Who Question” and the “Where Question”.

a) The ‘Who’ Question: When considering how the ‘Who Question’ should be answered, the Court of Appeal made it clear that the law does not seek specific confirmation as to who is on a Watchlist (they recognise the “Neither Confirm-Nor Deny principle 6). The Court of

Appeal recognised that individuals could be added to a Watchlist on the basis that they are wanted on suspicion of an offence, wanted on warrant and / or vulnerable persons”.

b) The Court of Appeal also explained why a category of those “other persons where intelligence is required” was not accessible and foreseeable to meet the ‘in accordance with the law’ test. They noted that the category was not readily understood, nor was it objective – it left “too broad a discretion vested in the individual police officer to decide who should go onto the watchlist” – essentially it allowed police officers to decide what ‘other persons where intelligence is required’ meant on a case-by-case basis rather than deciding if a subject met the criteria set out in the force policy.

c) GMP addresses the ‘Who Question’ in its published documents, particularly at Section 5 of the LFR Procedure. GMP sets the criteria that applies to govern the images that may be included on a Watchlist and in what circumstances. To ensure the Watchlisting criteria is accessible and foreseeable, GMP explains terminology such as ‘presenting a risk of harm’ and ‘otherwise of interest to the police’ such that they can be readily understood and objective to both officers and the public. It sets out the standard required for inclusion on a Watchlist, linking the necessity and criteria for the inclusion on a Watchlist with the policing need and the proportionality of taking any action.

d) The ‘Where Question’: in the *Bridges* case the Court of Appeal noted that South Wales Police “was not able to draw to our attention anything which specifies where AFR Locate may be deployed”. GMP LFR documents answer this question, particularly the LFR Procedure section 5. In answering this question, in many instances, the need to locate a person will determine where it is best to site LFR to facilitate achievement of the policing objectives. However, other factors will also be relevant and these include the nature of the site itself from a privacy perspective, those passing the site, and the policing need to be at the site (including for the public’s protection, suppressing crime hotspots, and getting ahead of crime trends).

With the benefit of the *Bridges* decisions, the law has now been applied to the live use of facial recognition technology. These judicial decisions, taken together with the GMP’s published documentation to support the use of LFR, allows the LFR Legal Framework principles to be predictably applied to the use of LFR in an accessible and understandable way. It allows the public passing an LFR system and those who may be placed on a Watchlist to understand the standards GMP operate to, including setting out the authorisation process and requirements to deploy LFR, details about where LFR may be used, and the considerations and constraints relevant as to who may be placed on an LFR Watchlist.

4.9 The use of LFR seeks to achieve a legitimate aim

Article 8 recognises action in the interests of national security, public safety and the prevention of disorder and crime as legitimate aims. The use of LFR in the context of assisting GMP to locate offenders will help GMP achieve its law enforcement purposes.

The means by which GMP may use LFR will be an operational decision within the parameters of the law and GMP LFR Documents. It will need to be driven by the policing issue at hand. This may vary from the need to locate those wanted in connection with criminality or otherwise pose a risk of harm, to more preventative tactics designed to bring reassurance to communities and enable the use of precision technology to more proactively focus policing resources.

Authorising Officers: At the point that it is decided to deploy LFR, the decision maker must be clear as to its purpose and how using LFR will help GMP realise a legitimate aim. In

deciding if the use of LFR is a suitable way to achieve a legitimate aim, the decision maker must consider if the benefits of using LFR justify its use for the legitimate aim when compared to any impact on the individual's Article 8 Rights and whether the aim could reasonably be achieved using other, less intrusive measures.

4.10 - The use of LFR is necessary for the purposes of that legitimate aim in a democratic society

LFR will be used in response to a pressing social need by helping GMP combat crime in areas where LFR has the greatest potential to assist. It is a tool that helps GMP to discharge its operational responsibilities, primarily to help prevent and detect crime and protect the most vulnerable.

Authorising Officers: When considering the Deployment of LFR, its use is to be underpinned by an intelligence case to highlight the need to combat the relevant crime or public safety issue or policing need to deploy. Having identified a need, this will allow the authorising officer to consider the use of LFR. Authorising officers must decide if the use of LFR is necessary and not just desirable to enable GMP to achieve its legitimate aim. In deciding the use of LFR to be necessary, the issue which LFR was intending to address and how LFR would be deployed to address that problem. The following are examples of why LFR may be used as a necessary tool to assist GMP in preventing crime and disorder. The examples are illustrative only and there will be other scenarios where the use of LFR is justified.

Child sexual abuse: The use of LFR can assist GMP in tackling child sexual abuse. LFR could be deployed based on intelligence to find vulnerable individuals who are missing and believed to be at risk of child sexual abuse. Equally LFR could be used at large crowded events known to be frequented by sexual predators in an attempt to identify and prevent similar attacks. Missing persons investigations use significant police resources where the need to locate is time critical. In such circumstances, it is of great importance to use all reasonable measures, to have the best chance of making a successful identification when the often scarce identification opportunities arise. At times, the police may also enlist the public to help with locating missing people through the use of public appeals, by circulating a photograph of a vulnerable child across the media. This is a potentially much greater intrusion to the individual's privacy rights given the aim of the public appeal is for wide-scale awareness and that information goes outside of police control when it is placed in the public domain. Where it might be viable to use LFR as a tool for identification instead, the intrusion on the individual's privacy rights can be lower, yet it still offers GMP a route to discharge its common law responsibilities to protect life. However, it should be noted that data protection law is not a barrier to information sharing.

Personal property theft: The use of LFR can assist GMP in fighting criminals targeting potentially young and vulnerable persons at music events. By way of example LFR could be deployed at music venues, LFR can act as a tool to assist police officers identify those persons connected to large scale personal property theft. LFR has the ability to have a watchlist that can be scoped to focus on organised criminal groups who attend events with the sole purpose of engaging in criminal activity. Using LFR in this way would help GMP achieve its aim of preventing and detecting crime and disorder and protecting the public through the disruption of those seeking to commit thefts.

Additionally, in a climate where police forces need to operate efficiently technology such as LFR can assist with the challenges of quickly and cost efficiently locating those with outstanding warrants or who have otherwise breached their bail conditions. It is right and appropriate to bring those who are unlawfully at large to justice noting the need to protect the public in such circumstances.

The High Court *Bridges* case supports that there is a “considerable additional benefit to the public interest to including those wanted on a warrant” for a deployment of LFR, even when there is no specific intelligence to place them in the area of the deployment. The intrusion to those passing the system is no greater, but

(i) the potential to protect the public from those wanted by the courts,
(ii) the results from deployments where those with outstanding warrants were included and
(iii) the resultant arrests
justified the inclusion of those with outstanding warrants from the courts as a necessary action to bring offenders to justice.

4.11 - The use of LFR is proportionate to the legitimate aim being sought

When considering the Deployment of LFR, the benefits of using LFR for an investigation or operation should not be disproportionate or arbitrary. In this respect the Surveillance Camera Commissioner recognises that:

“used appropriately, current and future technology can and will provide a proportionate and effective solution where surveillance is in pursuit of a legitimate aim and meets a pressing need”.

In this respect, the following factors (amongst others, depending on the nature of the deployment) will guide Authorising Officers:

a) *The use of LFR should be a reasonable use of police powers* - it will not be proportionate if the proposed use of LFR is excessive in the overall circumstances of the investigation, operation or wider operational strategy to tackle a policing issue.

Authorising Officers will need to consider the seriousness of the policing issues at hand and the potential benefits of using LFR and balance this with any wider impact its deployment may have to those on a Watchlist and the public at large. This will allow a decision to be made as to whether LFR is appropriate for use.

Authorising Officers must give consideration to the composition of the watchlist compiled for the LFR system to match against, to ensure that it is not compiled in an excessive manner. The watchlist needs to satisfy the necessity and proportionality test and will therefore be driven by the intelligence case and bespoke for each deployment of LFR to ensure it meets the aims of each deployment.

With this in mind, the watchlist compiled for each deployment of LFR should be current; based on those currently of interest to GMP and/or wider UK law enforcement to mitigate the risk of the LFR system matching with those no longer of interest to GMP and/or wider UK law enforcement.

b) *Consideration should be given as to the extent of any proposed interference with privacy against what is sought to be achieved and if there are other viable methods to achieve the aim which involve a lower level of interference.*

The use of LFR should be considered against other methods of locating persons of interest to GMP and/or UK Law Enforcement and other policing tactics which may help tackle the policing issue at hand. Consideration should be given as to the effectiveness and intrusiveness of other viable methods that could give the same result, with the least intrusive, viable method being adopted to progress an investigation or deployment.

For example circulating a wanted image on social media may be considered as an alternative to the use of LFR. The use of LFR can be targeted to a specific area and does not result in the public being made aware of the identity of a person being sought by GMP. It can also be used for a limited period, targeted, based on wider intelligence, to times and places when it might be most expected to locate an individual.

By comparison, social media results in a person's image being put into the public domain in a less targeted way. Once online, the image is public and GMP no longer have control of that image. It therefore has potential to remain online even when the person has been traced and thus is a greater intrusion into the privacy of the individual being sought.

Authorising Officers considering the use of LFR should balance any intrusion into privacy against the need for the investigative activity. If the Authorising Officer uses LFR in a way which minimises any impact it may have on a person's privacy as far as possible, it may offer a more appropriate, less intrusive alternative to public appeals.

Authorising Officers when taking a decision to deploy LFR, should record what other methods, as appropriate, were either not implemented or have been employed but which were assessed to be insufficient or inappropriate to fulfil the policing objectives.

c) How and why the methods adopted will cause the least possible interference to the person(s) sought and others must be addressed.

All uses of LFR under this Legal Mandate will be overt. LFR will be used for a limited time, with a limited footprint and with a defined purpose (controlled by way of GMP LFR Documents). The LFR system will be visibly deployed in an open and transparent way. Consistent with the principle of engaging with the public, GMP LFR Documents also provide a structure for awareness measures which respond to the nature and objectives of the use of LFR.

Proportionality controls. Controls are also designed into the LFR system and its operation to help minimise any impact on the public and those placed on a Watchlist as follows:

- i. LFR cannot be used to locate persons unless they have been included on a Watchlist.
- ii. The creation of any watchlist is specific to the deployment of LFR and informed by the intelligence case for the deployment; this is to ensure the currency, relevancy, necessity and proportionality by which any image is included for potential matching.
- iii. Images on a watchlist will be lawfully held by GMP with all reasonable steps being taken to ensure that the image is of a person intended for inclusion on a given watchlist.
- iv. Authorising Officers need to expressly consider and approve the use of non-police originated images on any watchlist. This is because particular privacy considerations may attach to an image where it originates from outside of a policing context. For example, it may be that the image was not placed in the public domain, was taken in a place that attracts a higher expectation of privacy or is an image that was supplied to, or taken by, a third party for a specific purpose that does not usually see routine data sharing with the police. Even when GMP can lawfully hold the images, the need for the watchlist to be a proportionate policing response requires the Authorising Officer to undertake a careful assessment of an individual's privacy expectations against the policing need to locate them using LFR. GMP LFR Procedure outlines considerations for Authorising Officers.

- v. On adding an image to the watchlist the LFR system will assess the image for quality and suitability for matching in order to allow GMP personnel to consider and manage the risk of poor-quality images generating inaccurate LFR Alerts.
- vi. All Watchlists are deleted as soon as practicable, and in any case within 24 hours following the conclusion of the deployment.
- vii. The cameras used in the LFR system are of sufficient quality for the LFR system's needs.
- viii. The LFR system is 'closed' and not connected to other GMP systems or the internet.
- ix. The LFR system is designed to assist GMP personnel locate people. The LFR system will always flag potential matches to at least one officer for a decision on any further action rather than autonomously taking a decision on any action after making a potential match.
- x. LFR Deployments and the materials that support LFR Deployments will be subject to periodic review to ensure that the LFR system and its operation remains necessary, proportionate and effective in terms of meeting its use case.

Controls have also been implemented with regards to personal data retention to minimise the impact on the wider public and those on the watchlist. The controls provide that:

1. where the LFR system does not generate an alert, then a person's biometric data is immediately automatically deleted; and
2. the data held on the encrypted USB memory stick used to import a watchlist is deleted as soon as practicable, and in any case within 24 hours following the conclusion of the deployment.
3. watchlists are deleted as soon as practicable, and in any case within 24 hours following the conclusion of the deployment.
4. where the LFR system generates an alert all personal data is deleted as soon as practicable and in any case within 24 hours following the conclusion of the Deployment.

All CCTV footage generated from LFR Deployments is deleted within 31 days, except where retained:

- i) in accordance with the Data Protection Act 2018, MOPI and the Criminal Procedure and Investigations Act 1996; and /or
- ii) in accordance with the GMP's complaints / conduct investigation policies.

Deployment location privacy considerations.

Many Deployment locations will be identified as being necessary by the intelligence case supporting the prospects of locating persons at the site and/or how LFR plays a role within wider policing tactics. However, Authorising Officers must also consider the reasonable expectations of privacy the general public as a whole may have when traversing a public place where LFR is being considered for Deployment. Some places, and the people expected to be at some places by their nature attract greater privacy expectations than

others. Authorising Officers also need to consider what measures are appropriate to identify the use of LFR when it is deployed, particularly where expectations of privacy may be greater. This is important to establishing if the proposed use for LFR, and the Deployment location itself is proportionate.

Authorising Officers should also consider if a proposed Deployment location attracts particular privacy concerns by reference to those expected to be at a particular location.

For example areas particularly focused on providing facilities or attractions aimed at children would typically attract greater privacy expectations over an area that typically sees attendance from the public more broadly. The public would not typically expect LFR to be sited outside a school that may disproportionately see children passing the LFR system if the LFR system could be sited elsewhere.

There may nevertheless be instances where the intelligence case, and the need to protect children makes it necessary and proportionate to deploy LFR to these areas. For example if it is known that wanted sex offenders are targeting those that visit the location and it not possible to locate them by siting LFR elsewhere or using other less intrusive policing tactics.

If it is necessary to use LFR at the location, mitigations to reduce the privacy impact should be used wherever possible. This could include extra measures to ensure that the signage and information about the LFR Deployment is accessible to children and their guardians who pass through the zone of recognition. The signage should be tailored to children where necessary.

Where it is possible to so, and does not increase the risk to children, the time of a deployment and configuration of a zone of recognition should also seek to minimise the numbers of children assessed by the LFR system. Areas assessed as having high expectations of privacy which give the public little option to avoid the LFR area without substantial inconvenience should generally be avoided unless the following mean that the authorising officer is satisfied the use of LFR in the circumstances remains necessary and proportionate:

1. the importance of using LFR in that location to realise a legitimate aim supports LFR's use;
2. the lack of a viable, less intrusive alternative available for use in the circumstances; and
3. any further mitigations are implemented to reduce any impact to the wider public in so far as it is possible to do so.

For example, if there was a necessity and proportionality case, based on intelligence, to deploy LFR in a residential suburban area to locate a group of burglary offenders, then we understand there may be a greater expectation of privacy in this area when compared to a non-residential area.

To mitigate this, depending on the circumstances we may provide additional communication about the use of LFR, for example by leafleting local residents or posting on local neighbourhood social media groups.

Authorising Officers: when taking a decision to deploy LFR, authorising officers should record the measures taken to ensure the use of LFR causes the least possible interference to the person(s) sought and others. This should include explicit reference to any particular privacy considerations that may be relevant to a deployment location and any mitigations in place to mitigate the impact of the LFR deployment. Reference should also be made to

whether other options to achieve the legitimate aim have been considered and, if so, give reasons why the Authorising Officer believes that those options are not viable. Authorising officers should then continue to review Deployments of LFR to ensure the use case remains appropriate.

4.12 - Wider Human Rights Act considerations.

The right to privacy is a value which protects the autonomy and human dignity of individuals by enabling them to conduct their lives in a way of their choosing. There are therefore circumstances when freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10) and freedom of assembly and of association (Article 11) may be particularly relevant.

a) *Article 9.* The clothing people wear can be an act of thought, conscience and religion and in normal circumstances, the police do not have the legal power to require a person to remove clothing (including any headdress) simply because they are passing the LFR system. Additionally, the location where people may pass the LFR system may also engage Article 9.

For example the use of LFR can assist GMP to ensure public safety, including at a place of worship where the intelligence case has identified a threat to the public. A decision to place a LFR deployment outside a place of worship or in a way that substantially impedes access to a place of worship can engage Article 9. Article 14 (Prohibition of discrimination) may also be engaged since a deployment near to a place of worship may disproportionately impact members of the public of a particular religion, race or ethnicity. In this context, the public safety considerations need to be balanced against the interference with the rights of those affected in determining the need to use LFR at that location.

If the public safety policing objectives could be achieved by deploying the LFR system elsewhere, it would not be necessary to deploy LFR at the proposed location. If the threat makes it necessary to site LFR near to a place of worship, authorising officers also need to determine if the infringement on Article 9 rights is disproportionate to the likely benefits of using LFR. Considerations would typically include the impact on those seeking to access a place of worship, the likely impact on the same people without LFR (being potentially impacted by other policing measures or site closures) and the benefits to safety LFR brings the public.

b) *Articles 10 and 11* have particular relevance when considering both the policing of assemblies and demonstrations and any use of LFR which may impact on an assembly or demonstration. Article 10 is especially pertinent should people have reservations about expressing themselves as a result of an LFR Deployment. Article 11 is also relevant should the use of LFR deter people from attending an assembly or demonstration at all or otherwise cause people to minimise their involvement.

The use of LFR can assist GMP in policing an assembly or demonstration, particularly where there is an intelligence case supporting there being a risk to public safety. Specifically, LFR can support police officers by efficiently searching for perpetrators of violence in crowded locations where it might otherwise be difficult to locate them. In deciding whether the use of LFR is necessary and proportionate, regard should be had to an individual's Article 10 and 11 rights – noting there may be expectations of anonymity in a crowd and that individuals may choose to alter their means of demonstration as a result of the LFR Deployment.

Article 10 and 11 rights must be weighed against the need to use LFR to enable an assembly that might otherwise be disrupted by the risk to public safety. In making this decision, consideration should be given to factors which could minimise the impact of LFR.

These include limiting the use of LFR in time and scope to the minimum needed to ensure safety. They could also include there being focus placed on ensuring the public understand the use of LFR is to help them safely undertake their assembly.

c) Operational Duties

The 'operational duty' was first outlined in the case of *Osman v United Kingdom* and concerned an alleged failure to prevent the young victim and his family from the risk to life posed by a stalker. The European Court of Human Rights in *Osman* found that the police were under a positive duty to take reasonable measures to avert a real and immediate risk to the life of an identified individual or individuals of which the police were, or ought to have been, aware. Case law also supports that the police are under an Osman style duty to investigate serious allegations in a timely and efficient manner in order to uphold an individual's Article 3 rights.

The Osman operational duty has particular relevance to LFR in two contexts:

(i) being used to locate those posing a threat to the public or themselves where a real and immediate risk to life is identified and LFR is thought to provide an appropriate response to such risk; and

(ii) on an alert being generated where the need to locate that person may engage the Osman operational duty with measures being put in place should a person generating an alert seek to evade officers.

d) Article 14. This right requires that all of the rights and freedoms set out in the Human Rights Act 1998 must be protected and applied without discrimination. This is based on the principle that everyone, no matter who they are, should enjoy the same human rights and have equal access to them. Article 14 is not a stand-alone right – there is a need to show that discrimination has affected the enjoyment of one or more of the other human rights, not that the other rights have been actually breached.

The use of LFR will be relevant in circumstances where demographic performance of the LFR algorithm varied to such an extent that people of a particular demographic were more or less likely to see a false alert generated against them. As a result there are two points to consider in relation to the LFR system:

(i) does the LFR system's demographic differential performance vary by a particular demographic such as it results in a person suffering a discriminatory effect, and

(ii) if there is a difference in treatment, is this capable of an objective and reasonable justification?

This is explored further below in relation to the Public Sector Equality Duty and the technical performance of the LFR system, and also in GMP's Equality Impact Assessment relating to the use of LFR.

5. Equality Act 2010

5.1 The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Equality Act 2010 prohibits discrimination based on different treatment on the basis of a protected characteristic. The prohibition of discrimination applies to both direct and indirect discrimination. As a public authority, GMP

must comply with section 149 of the Equality Act 2010 which is most commonly known as the Public Sector Equality Duty (“PSED”).

5.2 GMP is required to take measures to ensure that the use of LFR complies with the Equality Act 2010. Particular attention is needed in two respects: (a) the technical performance of the LFR system (and then, if performance varies by any particular demographic), and (b) the operational Deployment of the LFR system:

a) *The technical performance of the LFR system:*

The Court of Appeal *Bridges* decision made it clear that the PSED requires police forces deploying LFR to take reasonable steps to satisfy themselves, either directly or by way of independent verification, that the algorithm used does not have an unacceptable bias on grounds of race or sex. To assist the public with understanding how GMP meets its PSED duties, GMP has published an LFR Equality Impact Assessment. Additionally, the SWP has published a paper entitled ‘South Wales Police LFR System’s Accuracy and Demographic Accuracy Variance’. This explains the steps SWP has taken to understand the statistical accuracy and demographic performance of its LFR algorithm. This includes:

1. Independent evaluation: A number of studies highlight the varying performance of facial recognition algorithms and the potential for the performance of algorithms vary dependant on demographic factors. As a result GMP has paid regard to the evaluations undertaken by the National Institute of Standards and Technology (NIST) who have evaluated circa 200 facial recognition algorithms for statistical accuracy and demographic performance, including those submitted by NEC – the provider used by SWP. SWP has then taken this further with the National Physical Laboratory (NPL) who have undertaken a scientifically underpinned evaluation of the SWP’s LFR algorithm in the operational environment and published their conclusions as regards the SWP LFR algorithm’s performance. SWP has then reflected the findings in the SWP LFR Documents to inform its operational practice.
2. Ongoing assurance: SWP LFR Documents provide for ongoing evaluation and a post-deployment review process. This reflects the ongoing nature of the PSED duty and also offers SWP a chance to monitor for technical issues by reviewing all alerts, including any incorrect ones and monitoring for trends. Should a concern be identified, SWP would then be in a position to explore that further and test for issues under the oversight and scrutiny of the SWP Facial Recognition Technology and Biometrics Programme Board.
3. Independent academic evaluation: SWP have commissioned an independent evaluation of all aspects of Facial Recognition Technology to include LFR. The evaluation will be conducted by the National Physics Laboratory and will focus of equitability particular to ethnicity, age and gender. The study is to commence in November 2021 with ongoing reviews during the life of the study being considered under the oversight and scrutiny of the SWP Facial Recognition Technology and Biometrics Programme Board.

b) *The operational Deployment of the LFR system:*

GMP LFR Documents are also responsive to the Subject, System and Environmental Factors to ensure the LFR system is suitable for its intended use and operating correctly. Subject, System and Environmental Factors including aspects such as camera configuration, camera location, lighting conditions, the distance at which people will pass the LFR system, crowd flow levels in so far as this may result in occlusion (including by reference to the height of the subjects being sought) and points relating to an individual’s age and appearance have been considered carefully in GMP LFR documents to ensure the efficacy of the LFR system and the GMP’s compliance with its Equality Act 2010 duties.

By way of example, GMP LFR documents provide that LFR Operators are trained to identify Watchlist issues with proposed images which may impact on system performance. Where the need to use an image is deemed to be necessary and proportionate, those using the LFR system have received training to maximise the LFR system's performance and to effectively consider any issues arising from the use of such images as part of the identification process.

As a result of having taken reasonable steps to understand the statistical accuracy and demographic performance of the GMP LFR system and then in light of points relating to Subject, System and Environmental Factors and the framework of safeguards implemented as a result, GMP has adopted a 'fail-safe' position to ensure that, absent there being other lawful grounds to take policing action:

No Engagement will occur with a member of the public unless at least one officer has reviewed an LFR system potential match and reached their own opinion that there is a match between the member of the public and the watchlist image.

This means the LFR system is not making any decision to engage with individual members of the public; the officer is making this decision - just as officers make similar decisions to engage with members of the public every day (without the support of LFR). The officer is best placed to make this decision, drawing on their training and policing experience.

Similarly the officer is best placed to consider the impact of any Subject, System and Environmental Factors which may have influenced the LFR system when it generated an alert and if such factors combine to mean an engagement with a member of the public is not appropriate in the circumstances.

Authorising Officers: In order to ensure that the officer is best able to make an informed decision on any engagement, all officers who are part of an LFR deployment are to have been briefed on the operation of the LFR system. This includes Subject, System and Environmental Factors that can impact performance. LFR Engagement Officers should also have been given training relating to unconscious bias given their key role in the engagement decision making process.

Beyond Subject, System and Environmental factors, GMP personnel are also familiar with managing the PSED requirement whilst undertaking policing activities from a number of other crime fighting techniques, for example, 'stop and search'. In this respect, it is important that the use of LFR is driven from the need to meet a legitimate aim, such as the prevention of crime and disorder. The Equality Impact Assessment and, where relevant, the Community Impact Assessment informs the policing plan to support the Deployment of LFR to mean GMP upholds the Public Sector Equality Duty. Compliance with the Equality Impact Assessment will then be monitored and reviewed for the duration of that deployment.

6. Data Protection Act 2018

6.1 GMP processes personal data for LFR 'based on law'; specifically its legal powers identified in relation to the common law as well as human rights and equality considerations as outlined in this Legal Mandate, and the policies put in place by GMP LFR Documents. The Appropriate Policy Document and other GMP LFR Documents published by the GMP as a public body allow the public passing an LFR system and those who may be placed on a Watchlist to understand the standards GMP operates to, including setting out the authorisation process and requirements to deploy LFR, details about where LFR may be used, and the considerations and constraints relevant as to who may be placed on an LFR Watchlist.

6.2 For the purposes of preventing crime and disorder, Part 3 of the Data Protection Act 2018 (DPA) regulates the processing of personal data, including sensitive processing, whether processed on a computer, CCTV, still images or other media. Any recorded image from a device which can identify a particular person is 'personal data'. The DPA therefore applies to the processing of data for LFR both in terms of locating those on a Watchlist but also in terms of processing data biometric

Authorising Officers: In order to ensure that the officer is best able to make an informed decision on any Engagement, all officers who are part of an LFR Deployment are to have been briefed on the operation of the LFR system. This includes Subject, System and Environmental Factors that can impact performance. LFR Engagement Officers should also have been given training relating to unconscious bias given their key role in the Engagement decision making process in reviewing images of members of the public to confirm they are not on a Watchlist. These actions are covered by the processing of data for law enforcement purposes, as defined in s.31 DPA:

"For the purposes of this Part, "the law enforcement purposes" are the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security."

Authorising Officers: Authorising Officers already need be satisfied of the necessity to use LFR to prevent crime and disorder and ensure public safety in the context of the Human Rights Act 1998. Similarly, to satisfy Section 35(5) DPA, they need to be content that the LFR system's processing of biometric data is strictly necessary for the law enforcement purpose. The law enforcement purpose should be clearly identified and the way in which the strictly necessary standard has been met explained.

a) Strictly necessary in this context means that the processing has to relate to a pressing social need, and it is not reasonably viable to address this through less intrusive means. Any personal data collected via LFR is not used in a manner that is contrary to the identified law enforcement purpose.

Example: alternative policing methods to prevent threats to public security: LFR may be deployed to police a high profile well-attended public event. When considering alternatives, in this example, other measures such as extra CCTV may be considered. However there will not always be a viable less intrusive alternative in the circumstances. For example:

1. Whilst CCTV can help ensure event safety, it lacks the ability to actively alert officers to the potential presence of individuals who pose a risk to public safety
2. It may not be practical to expect officers to recognise individuals who pose a risk or are otherwise sought by the police in a crowd of people given the nature and scale of the event, the numbers of officers available to police the event and the flow rate and number of people passing the CCTV system. This is especially relevant where the importance of making such identifications supports the use of a more suitable alternative such as LFR.
3. Where LFR is thought to offer further important protection to the public as opposed to other policing methods. For example, this may apply where the law enforcement purposes for a Deployment include wider public safety considerations. These may include the need to locate those wanted by the courts. Such persons may attend such a high-profile event and, in line with the decision of the courts to require their arrest, pose a risk to the public generally.

b) The 'strictly necessary' standard may be informed by the Authorising Officer considering factors including:

1. what other policing methods have been used / discounted when seeking to locate an individual(s) on the Watchlist or to provide a series of tailored security measures;
2. the importance of achieving the law enforcement purpose and the prospects of achieving the law enforcement purpose through the Deployment of LFR at the proposed location with the proposed Watchlist (for example, is the Deployment intelligence-led or otherwise supported by information which confirms that LFR can be expected to get results in the circumstances being contemplated);
3. the size and scale of the planned LFR Deployment and associated Watchlist and the level of sensitive processing anticipated as a result of the LFR Deployment; and
4. if the law enforcement purpose which underpins the use of LFR is strictly necessary and proportionate to the need to undertake sensitive processing and the interference with individuals' rights this entails (subject to the protections and safeguards implemented).

Authorising Officers: Authorising Officers need to be satisfied that the processing satisfies one of the Schedule 8 conditions set out below and complies with the six data protection principles.

Schedule 8 conditions of the DPA likely to be relevant in relation to a LFR deployment: :

- necessary for judicial and statutory purposes – for reasons of substantial public interest;
- necessary for the administration of justice;
- necessary to protect the vital interests of the data subject or another individual;
- necessary for the safeguarding of children and of individuals at risk; and
- necessary for the purpose of preventing fraud.

Example: The use of LFR will assist GMP in fighting knife crime in support of its common law policing powers. LFR could be deployed to identify wanted offenders who have failed to comply with court bail relating to such offences. Used in this way, LFR would assist in the prevention, investigation, detection or prosecution of criminal offences.

LFR offers advantages over other potential policing methods such as a police officer using a picture or a physical description to scan a crowd and try and spot an offender where positive results would otherwise be less likely and the risk of people being missed higher. Given the importance of tackling serious and violent crime, a clear law enforcement purpose can be identified. In this context LFR's use may be seen as strictly necessary to support the investigation of knife crime, to enable GMP to effectively respond to a pressing social need.

Similarly, the Schedule 8 condition of being necessary for judicial and statutory purposes for reasons of substantial public interest can be seen in this context to include a police officer working for the prevention, investigation, detection or prosecution of offences to keep the public safe. For similar reasons, the court in the Bridges cases accepted the substantial public interest in the police using LFR to discharge their common law policing duties.

6.4 GMP has also undertaken a number of steps in accordance with the Data Protection Impact Assessment (DPIA) to manage and mitigate the impact of any personal data processing using the LFR system. Particular actions are set out in the remainder of this section.

6.5 Data Protection Impact Assessment

A DPIA has been conducted to support the use of LFR in order to identify and minimise the data protection risks. Whilst the LFR DPIA will be under constant review and no later than on an annual basis, Authorising Officers authorising the use of LFR should ensure there is a DPIA in place which is sufficient for each Deployment. Specifically, consideration should to be given to:

- a. if the risks and controls remain current and sufficient for the planned use of LFR; and
- b. if the planned use for LFR poses any other risks which are capable of mitigation beyond those identified in the DPIA.

6.6 Data Protection by Design

A number of data protection controls have been designed into the LFR system in order to mitigate processing impacts on privacy and to comply with the general obligation in Part 3 of the DPA to implement appropriate technical and organisational measures having considered and integrated the principle of data protection into LFR processing activities. The designed-in measures identified at paragraph 4.11(c) of this document, include measures to:

- a. limit the amount of personal data collected;
- b. limit the extent of personal data processing;
- c. limit the period of personal data storage.

Additionally, GMP will ensure that that the LFR system performs to a level where the statistical accuracy of the data being processed and fairness 'by design' is ingrained into the LFR system GMP use. GMP LFR Documents and other published supporting information explain how GMP is assured that its LFR system operates with a high degree of statistical accuracy and in a way that does not lead to unjust results between demographics.

Further consideration has been given to limiting access to any personal data retained for the 31 day period. The LFR system also includes a number of physical and technical security measures including:

- a. Images are transferred onto the LFR system via a USB using an AES-CBC 256-bit full disk hardware encryption engine, that is further protected by pass-number access;
- b. The LFR system is a fully closed system with password protection to access the application. The LFR system is physically protected when in use and securely wiped following each Deployment;
- c. Role-based access controls with limited user permissions are implemented on the LFR system;
- d. A full audit is maintained of all user initiated actions undertaken during the course of a deployment; and
- e. Technical issues with the LFR system are always dealt with by member of the technical staff who support the deployment of the LFR system.

6.7 Appropriate Policy Document

Section 42 of the DPA requires that, at the time that the processing is carried out, the controller has an appropriate policy document in place. GMP has produced this document and published it. This document allows the public to understand details of:

- a. the data being processed by the LFR system, how often it is processed and whose data is processed;
- b. the procedures, safeguards and accountability principles for complying with the data protection principles when relying on a condition from Schedule 8 to process biometric personal data both for those on the watchlist and those passing an LFR system;
- c. GMP policy for the retention and erasure of personal data for LFR processing.

6.8 Data Protection Officer

GMP has appointed a Data Protection Officer (DPO) in compliance with Part 3 DPA who has been consulted in relation to LFR. The DPO is available to inform and advise the Chief Constable (as data controller) and GMP personnel about their obligations in relation to the DPA. The DPO also provides an internal function to monitor compliance with the DPA.

7. General Data Protection Regulation

7.1 As part of GMP's common law powers to protect and preserve life and property, we process special category data in accordance with the requirements of Article 9 of the UK GDPR (which is incorporated into UK law under and supplemented by Part 2 and Schedule 1 of the DPA).

7.2 The Schedule 1 DPA conditions for processing special category data require GMP to have an APD in place, setting out and explaining our procedures for securing compliance with the principles in Article 5 GDPR (relating to processing of personal data) and policies regarding the retention and erasure of such personal data.

7.3 Article 9 conditions of UK GDPR are engaged:

- explicit consent and
- substantial public interest

7.4 Section 10 DPA supplements Article 9 GDPR, requiring the following conditions of Schedule 1 to be satisfied (historical research part 1 of schedule 1 / substantial public interest part 2 of schedule 1).

7.6 Schedule 1 DPA (part 2) are engaged:

- statutory and government purposes;
- Administration of justice and parliamentary purposes
- Preventing or detecting unlawful acts
- safeguarding of children and of individuals at risk

7.7 Appropriate Policy Document (APD):

Schedule 1 DPA conditions for processing special category data require GMP to have an appropriate policy document in place, setting out and explaining our procedures for securing compliance with the principles in Article 5 of the UK-GDPR. GMP has produced this document and published it. This document allows the public to understand the details of:

- a. the data being processed by the LFR system, how often it is processed and whose data is processed;
- b. the procedures, safeguards and accountability principles for complying with the data protection principles when relying on a condition from Article 9 to process biometric personal data for those on the Watchlist and those passing the LFR system.
- c. GMP policy for the retention and erasure of personal data for LFR processing.

8. Protection of Freedoms Act 2012

The Protection of Freedoms Act 2012 (PoFA) has seen the introduction of a new Surveillance Camera Code of Practice issued by the Secretary of State (the Code) and the appointment of a Biometrics and Surveillance Camera Commissioner. Section 33(1) PoFA requires GMP to have regard to the Code for the use of LFR. This includes compliance with the 12 guiding principles that system operators should adopt. The Code makes a number of specific points in relation to automated recognition technologies which GMP have regard to as follows:

Code	GMP's approach
Fair processing information to data subjects	GMP makes information relating to LFR and data processing available publicly via its external website. LFR deployments are publicly disclosed with supporting information.
Appropriate retention & disposal systems	This is addressed in GMP's LFR Policy, Procedure & DPIA documents.
Suitable technological & physical security measures	This is addressed in GMP's LFR Policy, Procedure & DPIA documents.
Cameras of sufficient quality to meet the intended purpose	This requirement is addressed by the design of the LFR system.
Monitored by trained individuals	The LFR system will always flag possible matches to a trained member of EP personnel for a decision on any further action. In this way, the LFR system works to assist EP personnel to make identifications rather than acting as an autonomous machine-based process devoid of user input.

9. Freedom of Information Act 2000

The Freedom of Information Act 2000 (FOIA) provides public access to information held by public authorities. It does this in two ways:

- 9.1.1 public authorities are obliged to publish certain information about their activities;
- 9.1.2 members of the public are entitled to request information from public authorities.

Live Facial Recognition Legal Mandate

In recognition of its FOIA duties, GMP makes LFR information about its use of LFR available on its website. This includes a summary information relating to LFR deployments including the watchlist size, the total number of alerts, positive action and incorrect identification numbers, arrests and disposal numbers and estimates of the total number of faces seen as people passed the LFR system.

GMP also had a process in place to respond to FOIA requests.

10. Legal Framework and Governance Overview

