



Bedfordshire Police Live Facial Recognition (LFR): Legal Mandate

Title	Outlines the legal basis for Bedfordshire Police's (BEDS) use of overt LFR technology to locate persons on a Watchlist
Policy Reference No	
Procedure(s) Ref. No	
Version No.	1
Senior Officer Lead	Detective Superintendent Aman S. Dhaliwal
Author	Detective Superintendent Aman S. Dhaliwal
Ratifying Group	Date
Date	03.06.2025

1	Introduction	Error! Bookmark not defined.
2	Common Law	4
3	Police and Criminal Evidence Act 1984	5
4	Human Rights Act 1998	5
5	Equality Act 2010	177
6	Data Protection Act 2018	19
7	General Data Protection Regulation	24
8	Protection of Freedoms Act 2012	25
9	Freedom of Information Act 2000	26
10	Legal Framework and Governance Overview	27

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

1. Introduction

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

Tier one: Legislation	Legal Power to use LFR	a) Common Law b) Police and Criminal Evidence Act 1984 Code D (revised)
	Regulating the use of LFR	Operational b) Human Rights Act 1998 c) Equality Act 2010 Data Management d) Data Protection Act 2018 (Part 3) e) UK General Data Protection Regulation f) Protection of Freedoms Act 2012
	Requests for Information in relation to LFR	g) Freedom of Information Act 2000 h) Data Protection Act 2018 (Subject Access Requests)
Tier Two: Code and Guidance	Regulating the use of LFR	a) Secretary of State’s Surveillance Camera Code of Practise. b) Guidance issued by the Surveillance Camera Commissioner (Facing the Camara) c) Information Commissioner’s Office Code of Practise for Surveillance Cameras and associated guidance

		issued by the Information Commissioner
Tier Three: BEDS LFR Documents	Regulating the use of LFR	a) BEDS Policy Document b) BEDS Standard Operating Procedures c) BEDS Training Documents d) BEDS Data Protection e) Appropriate Policy Document f) Data Protection Impact Assessment g) Equality Impact Assessment h) Community Impact Assessment i) BEDS Legal Mandate

2. **Common Law**

The police have several long-established policing responsibilities and powers derived from common law which have been recognised by the courts. BEDS 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.

Key common law powers BEDS 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.

Example: BEDS has detailed uses of LFR as a policing tactic for locating those who are wanted for an outstanding warrant. In this context the use of LFR technology to facilitate officers to promptly locate those evading arrest would enable BEDS to discharge its responsibilities to protect life and property. It would also be compatible with BEDS' duty to bring offenders to justice by facilitating a prompt and effective investigation.

The use of BEDS's common law power as a legal basis to support the deployment use of LFR has been considered and recognised by the courts in:

- 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
- 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". The Court of Appeal notes that "this was not an issue which we have to address in this appeal, since it is now common ground that SWP do have the power to deploy [LFR]."

Authorising Officers: When considering the use of LFR technology, 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 and Criminal Evidence Act 1984

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

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

BEDS use of LFR must comply with the Human Rights Act 1998. LFR technology engages the Human Rights Act 1998 and 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.’

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.

It is well-established that the reach of Article 8 can be broad. The case of *S v. United Kingdom*¹ 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”².

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 Surveillance Camera Commissioner has 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 of discrimination in respect of those rights and freedoms. Authorising Officers should contact BEDS Special Legal Casework should they consider a proposed deployment may have a wider human rights point to consider.

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

LFR will be used to allow BEDS 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”.³

In the case of *R (Catt) v Chief Police Officers [2015] A.C. 1065*, Lord Sumption recognised that applicants could have their personal information noted down and retained by the police as they occupied publicly accessible space. The court recognised the police’s common law powers to collect and store information are

¹ (2009) 48 EHRR 50, at [66 and 67]

² At [104]

³ *R (Catt) v Association of Chief Police Officers [2015] A.C. 1065* at [11].

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 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”.⁴

In the case of BEDS’ 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, noting⁵:

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

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’.”

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 NCND principle⁶). The Court of Appeal recognised that individuals could be added to a Watchlist

⁴ Per Laws J in *Hellewell v Chief Constable of Derbyshire* [1995] 1 WLR 804 at 810F

⁵ At [69].

⁶ At [95].

on the basis that they are wanted on suspicion of an offence, wanted on warrant and vulnerable persons”.

- b) The Court of Appeal also explains 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) Following an approach recognised by the Court of Appeal⁷, South Wales Police addressed the ‘Who Question’ in its published LFR Documents, particularly at Section 6 of the SOP.
- d) BEDS also 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, and explains terminology such as ‘presenting a risk of harm’ and ‘otherwise of interest to the police’ to ensure that these are 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.
- e) The ‘Where Question’: The Court of Appeal noted that South Wales Police “was not able to draw to our attention to anything which specifies where AFR Locate may be deployed”.
- f) BEDS LFR Documents also answer this question, particularly the BEDS LFR SOP at 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 making a successful location. 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).

With the benefit of the *Bridge*’s decisions, the law has now been applied to the live use of facial recognition technology. These judicial decisions, taken together with the BEDS’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 BEDS 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.

⁷ At [118].,

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 BEDS locate offenders will help BEDS achieve its law enforcement purposes.

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 BEDS 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 benefits of using LFR justify its use for the legitimate aim when compared to any impact on the individual's Article 8 Rights.

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 BEDS combat crime in areas where LFR has the greatest potential to assist. It is a tool that helps BEDS 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, each use to be underpinned by an intelligence case to highlight the need to combat the relevant crime or public safety issue. Having identified a need, this will allow the Authorising Officer to consider the use of LFR. Authorising Officers must decide the use of LFR is *necessary* and not just desirable to enable BEDS to achieve its legitimate aim. In deciding the use of LFR to be necessary, the issue the Deployment 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 BEDS 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 will assist BEDS 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 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 using 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 BEDS 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 will assist BEDS 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 traveling criminals who follow bands across Europe with the sole purpose of engaging in criminal activity. Using LFR in this way would help BEDS achieve its aim of preventing and detecting crime and disorder and protecting the public through the disruption of those seeking to commit thefts by making it more difficult to enter the location.

Additionally, in a climate where police forces need to operate efficiently, BEDS has also identified that 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.

The use of LFR is proportionate to 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 BEDS powers - it will not be proportionate if the proposed use of LFR is excessive in the overall circumstances of the investigation or operation.*

Authorising Officers will need to consider the seriousness of the investigation 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 that Deployment.

An objective for the use of LFR is to locate individuals who are of interest to the BEDS and to utilise LFR technology with a view to apprehending them, reducing the prevalence of crime within the relevant area. With this in mind, the Watchlist compiled for each Deployment of LFR should be based on those currently of interest to BEDS and/or wider UK law enforcement to mitigate the risk of the LFR system matching with those no longer of interest to BEDS 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 BEDS and/or UK Law Enforcement. 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.

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 the BEDS. 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 BEDS no longer has 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.

The Authorising Officer 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 a social media

Authorising Officers: When taking a decision to deploy LFR, Authorising Officers 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 BEDS's aim.

Proportionality controls. Controls are also designed in to 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 each Deployment of LFR and informed by the intelligence case for that 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 BEDS 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 BEDS 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. The BEDS LFR SOP outlines considerations for Authorising Officers at Section 6.

- 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 BEDS 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 BEDS systems or the internet.
- ix. The LFR system is designed to assist BEDS 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:

- a) where the LFR system does not generate an Alert, then a person's biometric data is immediately automatically deleted; *and*
- b) 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.
- c) watchlists are deleted as soon as practicable, and in any case within 24 hours following the conclusion of the Deployment.
- d) 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:

- 1. in accordance with the Data Protection Act 2018, MOPI and the Criminal Procedures and Investigations Act 1996; and /or
- 2. in accordance with the BEDS'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. However, Authorising Officers must also consider the reasonable expectations of privacy the general public may have 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.

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 toy shop or 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 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 to reduce any impact to the wider public.

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 impact the impact of the LFR Deployment. Authorising Officers should then continue to review Deployments of LFR to ensure the use case remains appropriate.

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 engaged Article 9.

Example: The use of LFR can assist BEDS 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. In this context, the public safety considerations need to be balanced against 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 that 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) *Article 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 because 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.

Example: The use of LFR can assist BEDS 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 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*⁸ 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. Caselaw 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

⁸ [1999] 1 F.L.R. 193 (ECtHR)

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 different in treatment, is this capable or an objective and reasonable justification.

5. **Equality Act 2010**

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

BEDS 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 makes it clear that the PSED requires BEDS to take reasonable steps to satisfy itself, either directly or by way of independent verification, that the algorithm in this case does not have an unacceptable bias on grounds of race or sex. To assist the public with understanding how BEDS meets its PSED duties, BEDS has published the BEDS LFR Equality Impact Assessment. Additionally, BEDS will be deploying South Wales Police LFR teams, SWP has published a paper entitled 'South Wales Police LFR System's Accuracy and Demographic Accuracy Variance'. This explains the steps taken to understand the statistical accuracy and demographic performance of its LFR algorithm. This includes:

- i. **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 BEDS 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.

- ii. **Ongoing assurance:** BEDS LFR Documents provide for ongoing evaluation and a post-deployment review process. This reflects the ongoing nature of the PSED duty and also offers BEDS a chance to monitor for technical issues by reviewing all alerts, including any incorrect ones and monitoring for trends.
- iii. **Independent academic evaluation:** South Wales Police, the provider of LFR to BEDS have commissioned an independent evaluation of all aspects of Facial Recognition Technology to include LFR. The evaluation was conducted by the National Physics Laboratory and focused on equitability particular to ethnicity, age and gender. The study commenced in November 2021 with ongoing reviews during the life of the study being considered under the oversight and scrutiny of Facial Recognition Technology and Biometrics Programme Board.

b) The operational Deployment of the LFR system.

BEDS 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 and points relating to an individual's age and appearance have been considered carefully in BEDS LFR Documents to ensure the efficacy of the LFR system and the BEDS's compliance with its Equality Act 2010 duties.

By way of example, BEDS 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 LFR system and then in light of points relating to Subject, System and Environmental Factors, BEDS 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 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, BEDS 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 BEDS 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

BEDS 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 BEDS LFR Documents. The Appropriate Policy Document and other BEDS LFR Documents published by the BEDS as a public body allows the public passing an LFR system and those who may be placed on a Watchlist to understand the standards BEDS 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.

For the purposes of preventing crime and disorder, Part 3, 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 biometric information 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 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 must 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, they 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 of interest to them.
2. It may not be practical to expect officers to recognise larger numbers of people of interest to the Police 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:

- i. 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;
- ii. 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);
- iii. 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*
- iv. 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 risk to 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 are engaged:

- 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 BEDS 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 the BEDS 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.

BEDS 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. Actions are set out in the remainder of this section.

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 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.

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 3.11(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.

BEDS LFR Documents and other published supporting information explain how BEDS 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 two layers of 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. The LFR application is connected to mobile devices using a private access point with three levels of protection (i) specific IP addressing, (ii) password access to the access point, and (iii) password access to the mobile app. The mobile app has a RESTful API and will be covered by SSL;
- e. The Dashboard and RESTful API are secured with SSL and TLS by default;
- f. All connections are directed through HTTPS within a closed system;
- g. A full audit is maintained of all user initiated actions undertaken during the course of a Deployment; *and*
- h. Technical issues with the LFR system are always dealt with by member of the technical staff who support the Deployment of the LFR system.

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. BEDS has produced a DPIA specifically on how it will process data, this document allows the public to understand details of the:

- a. the data being processed by the LFR system, how often it is processed and whose data is processed;
- b. 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. BEDS policy for the retention and erasure of personal data for LFR processing.

Data Protection Officer:

BEDS 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 BEDS 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

As part of BEDS' 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).

The Schedule 1 DPA conditions for processing special category data require BEDS 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.

Article 9 conditions of UK GDPR are engaged:

- explicit consent;
- substantial public interest; and
- historical research or statistical purposes.

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).

Schedule 1 DPA (part 1) are engaged:

- research;
- statutory etc and research government purposes; and
- safeguarding of children or individuals of risk

Example: An academic evaluation of LFR is to be conducted with regards equitability. The sharing of data will be subject to a Service Level Agreement. Any sharing of data will be time limited via a web-based sharing platform rather than data transfer. The platform will be accessed by academic partners via a secure log on for a time limited period. The scientific research purpose is relied upon here. Where possible anonymised or pseudonymised data is used. Where members of police staff consent to the use of their images for testing or evaluation of performance of the system this is collected in accordance with recognised research ethics standards. (To note – consent collected for research does not refer to the data protection definition of consent).

Schedule 1 DPA (part 2) are engaged:

- statutory and government purposes;
- safeguarding of children

Appropriate Policy Document:

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

- a. the data being processed by the LFR system, how often it is processed and whose data is processed;
- b. 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 both for those on the Watchlist and those passing an LFR system;
- c. BEDS 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 issues by the Secretary of State (the Code) and the appointment of a Surveillance Camera Commissioner. Section 33(1) PoFA requires BEDS 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 BEDS have regard to as follows:

Code	BEDS approach
Fair processing information to data subjects	BEDS processing information publically available to data subjects. It makes information relating to the LFR and data processing available via its website. The LFR Deployments are publically disclosed with supporting information.
Appropriate retention and disposal systems	The necessary systems are addressed BEDS LFR Documents.
Suitable technological and physical security measures	These measures have been addressed by design and are also covered in BEDS LFR 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 trained personnel

	for a decision on any further action. In this way, the LFR system works to assist BEDS 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:

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

In recognition of its FOIA duties, BEDS makes significant LFR information available via its website. This includes 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. BEDS will also be responsive to FOIA requests.

10. Legal Framework and Governance Overview

Summary of existing legislation and related governance regards policing's overt use of Live Facial Recognition Technology.

