I refer to the general call for written submissions from interested parties to inform the sub-committee’s inquiry into facial recognition: how policing in Scotland makes use of this technology.

The Crown Office and Procurator Fiscal Service (COPFS) welcomes improvements in the capacity to investigate crime in Scotland and any process which enables inquiries to be appropriately focussed.

The data protection, security and retention and human rights implications of the potential use of facial recognition technology are matters on which Police Scotland, as a public authority, must satisfy themselves. The involvement of COPFS relates to the admissibility in Court of any evidential product of facial recognition technology.

Should there be an evidential product from the use of facial recognition technology, as distinct from an intelligence product only, and that evidence be submitted to COPFS, prosecutors will assess whether the evidence is admissible. Where the evidence has been recovered as a result of actions for which there was lawful authority then the evidence will be admissible, subject to any other legal rules which might apply to that evidence.

Where the evidential product is outside the terms of, or lacks, lawful authority then the evidence will not necessarily be inadmissible. In that instance, the fairness of the approach taken by the Police will be considered by prosecutors and, if prosecuted, by the courts to assess whether the evidence will be admissible. Each case will be determined on its facts and circumstances.

Anthony McGeehan
Procurator Fiscal Policy and Engagement
28 October 2019