

**LEDS Open Space Non Paper**

## **LEDS Open Space:**

### **Custody Images – Part III**

**v1.0**

**30 April 2019**

#### **Discussion Document**

This Document has been written with the aim of stimulating discussion on management of custody images, particularly within the context of the introduction of the Law Enforcement Data Service (LEDS). It is not intended to be viewed as current Home Office policy. It is to be circulated to and viewed only by members of the LEDS Open Space.

## Purpose

1. The purpose of this paper is to outline a plan for addressing outstanding issues in relation to police use of custody images. This paper provides an update to the activities that have taken place since the last Open Space meeting in February 2019.
2. This paper will be discussed in the LEDS Open Space on 14 May 2019. The aim is to provide further information in due course, picking up any concerns raised at the meeting and future developments.

## Summary

3. The RMC and FJ v MPS and Home Office high court decision requires different treatment for images of those who have not been convicted. This means implementing a regime that at least deletes images of those found not guilty. The future state will see automated deletion to address the RMC judgement and to implement the outcome of the new Custody Image Review.
4. Automated deletion is difficult, but achievable, the problem will need to be solved in LEDS and in local police systems. Detailed planning is required to achieve this outcome in addition to being impact assessed across the whole LEDS plan and local systems.
5. The automation deletion of images is dependent on two key pieces of information; the arrest event (ASN), and identifying the person arrested (CRO). PNC then uses the ASN and the CRO to track the individual through to an outcome and manage the automated deletion of the Fingerprint and DNA records according to the PoFA rules.
6. The Home Office committed during a discussion on custody images in Workshop 4 in February 2019 to come back to the Open Space in Workshop 5 with further details on progress. This paper outlines Home Office plans to review the ongoing issues and concerns from civil society, the Information Commissioner's Office (ICO) and others in relation to police retention of custody images.
7. We have started the work needed to begin the review the 2017 Custody Image Review (CIR) currently scheduled for 2020. We intend this review to be conducted in collaboration with the National Police Chiefs Council (NPCC) and the Association of Police & Crime Commissioners (APCC). We intend this review to start this month and report this year.
8. In addition to working with NPCC and APCC we stated in February 2019 that we will consult with;
  - the LEDS & HOB Open Space (the Open Space),
  - the Biometrics & Forensics Ethics Group (BFEG),
  - the Law Enforcement Facial Images and New Biometric Modalities Oversight & Advisory Board (the Face Board),
  - and the Independent Digital Ethics Panel for Policing (IDEPP).This grouping will form the stakeholders referred to below.

## Key outcomes of the discussion on this paper

9. Open Space members have a chance to explore the implications of Custody Image Retention from a Policy, Programme, Policing perspective including against the timeline in Annex A.

### Key questions for discussion from this paper

- a. Do Open Space Members need more information in relation to the proposed plan in terms of the timeframe? (Are members content that they understand the issues offered around automated deletion)
- b. Do Open Space Members feel that matching the images to the other biometrics deletion as under the Protection of Freedoms Act would be beneficial?
- c. Do the Open Space Members feel the risk-based deletion approach is appropriate for manual deletion?

## Custody Images – Part III

### Background

10. The Open Space held a discussion in December 2018 on custody images where the Home Office committed to deleting custody images; i.e. to implement the RMC judgement. An additional discussion on custody images at Workshop 4 in February 2019 provided a further update committing the Home Office to review again the custody image retention regime “in 2020 and the intention to bring this review forwards to conclude by the end of 2019. The review will seek to consolidate policy regarding custody image retention, assess the local (and national) technological implementation of this policy by policing and identify an appropriate resolution for legacy data, with answers to the following areas, these form the draft scope for the next Custody Image Review.

- A. Review the retention regime for custody images, including recent court decisions – This would take the form of substantive analysis of the operational use of custody images and their retention and deletion, setting out the operation case for retention against the legal and ethical case for deletion and arriving at a proportionate settlement between the two,
- B. Review the implementation of the CIR retention regime by operational partners – this is to understand the actual outcomes against the intended to determine what lessons could be learnt and carried forward, and,
- C. Review the pre-existing custody image store in the Police National Database (PND) and, its connectivity to local systems. This is to determine that the central architecture will be able to accommodate the outcome of the review and what work will be needed within local force systems to achieve an end to end compliant solution.

### Update

11. The last update on Custody Images at the beginning of April identified that the Minister was writing to the Science and Technology Committee to confirm that automated deletion of Custody Images would be implemented when this was possible. Since that time further work has been undertaken to identify when a full implementation of a computer system to facilitate the automatic deletion of custody images of convicted individuals could be delivered.
12. Whilst a firm commitment can't be given at this stage an early assessment suggests it will be possible to have a deletion capability within the LEDS test environment from 2022 and full live automated deletion from early 2023. However, this timeframe still needs to be subject to rigorous impact

assessment across the LEDS programme. The workstream to establish this rigorous assessment will begin work later this month.

13. Recognising that 2023 is significantly in the future a programme of manual deletion is being worked through. This will rely upon labour effort by police forces to manually review and where necessary manually delete custody imagery on local systems as well as the PND. As the previous update identified this interim manual deletion approach will aims to follow a risk-based person centric approach in terms of retention, implement manual deletion of images to bring compliance with case law and include the manual review and deletion of incomplete records.

14. The presentation to the Open Space on 14<sup>th</sup> May

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15. This will provide the opportunity for Members to explore the implications of the complexity of deletion and the timeframe required to achieve manual deletion in the first instance and automated deletion.

**Key questions for discussion:**

- a. Do Open Space Members need more information in relation to the proposed plan in terms of the timeframe? (Are members content that they understand the issues offered around automated deletion)
- b. Do Open Space Members feel that matching the images to the other biometrics deletion as under the Protection of Freedoms Act would be beneficial?
- c. Do the Open Space Members feel the risk based deletion approach is appropriate for manual deletion?

## Annex A - Outline timeline for Custody Image Deletion

1	Identify representatives from the policing community to shape the manual deletion project and hold initial discussions	01 March '19
2	Identify representatives from the policing community to advice on data quality and deletion and hold initial discussions	01 March '19
3	Identify a preferred "candidate" approach to deletion	01 April '19
4	Circulate to Stakeholders	08 April '19
5	Circulate final draft scope of Custody Image Review 2 (CIR2) to BFEG, IDEPP, Open Space, retention/deletion project, Policing Leads – "Annex B"	07 May '19
6	Discuss Custody Image Deletion at Open Space	14 May '19
7	Start Custody Image Review 2 (CIR2)	15 May '19
8	Confirm scope to Minister / Policing leads	15 May '19
9	Home Office Project Manager identified	21 May '19
10	NLEDP – workstream on impact assessing automated deletion	01 June '19
11	Agree terms of Reference	17 June '19
12	Detailed timeline completed	24 June '19
13	Confirmation of custody images numbers subject to RMC ruling and which forces own those images	24 June '19
14	Update/Consult to Stakeholders	01 July '19
15	Devise approach to manual deletion and consult with Policing leads	July '19
16	Update/Consult to Stakeholders	01 Sep '19
17	Further work on manual deletion approach or implement as determined	Sep'19
18	Update/Consult to Stakeholders	01 Nov '19
19	Conclusions of CIR2 - circulated and presentation to stakeholders	01 Dec'19
20	Sign off complete	14 Jan'20
21	Start enhanced manual deletion regime, based upon the Custody Images Review 2 (CIR2)	Jan '20

Annex B - Draft Scope

A. Review and propose recommendations regarding the retention regime for custody images.

Issue 1: *The principles implemented in RMC must remain at the heart of the custody image retention regime and, where appropriate, more explicitly reflected.*

RMC ruled it unlawful to retain custody images without making a distinction between those who are convicted and those who are not. The CIR implements this ruling by recommending a presumption in favour of deletion is linked to:

- 1.1. Whether a conviction was achieved or not;
- 1.2. The type of offence; and
- 1.3. The age of the individual at the time the custody image was taken.

These principles remain the starting point for any updated custody image retention regime policy.

We additionally are considering whether to further areas of the RMC merit consideration, for example:

- 1.4. Chief Constables' discretionary powers to not delete custody images for which the RMC ruling recommends a strong presumption towards deletion (ie. custody images taken of individuals under the age of 18 for an offence for which they were either not convicted or convicted of a non-recordable offence); and/or
- 1.5. Amending the application requirement for individuals to have their custody image considered under the deletion regime.

Issue 2: *The retention regime for custody images must strike an appropriate balance between the use of custody images as biometrics and as intelligence.*

Custody images are currently used within policing in two very distinct ways – as a searchable biometric requiring the use of a probabilistic algorithm with officers verifying matches made by the system and, in an analogue form requiring only an officer's recognition, as a briefing or reference tool to assist police in identifying persons of interest (e.g. wanted suspects).

Any updated retention regime for custody images must recognise the difference between these uses.

B. Review and propose recommendations regarding the implementation of this retention regime by operational partners.

Issue 3: *Any updated custody image policy should seek to address challenges created from the locally mastered / nationally replicated model for custody images.*

Custody images are currently maintained (mastered) in local systems by police forces. The images in these local systems are in many, but not all, cases pushed to a central custody image store in the PND via an 'updategram'. This means the PND custody image store is capable of being a nationally-held replicated store of locally mastered data.

Any updated custody image policy must seek to address this issue to ensure that there is a nationally-recognised approach to retention for custody images across UK policing.

This remains a complex technical issue but potential ways for resolving this include:

- 1.6. Ensuring that any automatic review and, where appropriate, deletion regime applied to a national custody image store is connected into locally-held stores – either by automatically pushing a deletion demand to the local system or generating a deletion notice and recommendation for the local system to follow suit.
- 1.7. Using the recently updated Management of Police Information (MoPI) guidance to drive a consistent retention regime across all custody image stores (whether national or local).
- 1.8. Changing the mastered-replicated relationship between national and local systems by mandating that the national custody image store is the mastered data source and local custody stores must draw down from this national system.
- 1.9. Abolishing local custody stores and requiring all forces to utilise a single, nationally-held, custody image store.

C. Review and propose recommendations to address the existing custody image store in the PND and, where possible, local systems.

Issue 4: *'Custody images' as a workstream should be delivered within the programme.*

The review should consider whether or not policy and technical work to address legacy data should be treated as a distinct strand of work and potentially accelerated separately to avoid potential delays from Programme re-planning.

Issue 5: *All options for 'dealing' with the legacy custody image store should be fully assessed, including costings.*

In light of the dependency on LEDS architecture required to create the technological environment to match conviction outcome to custody image, alternative means of addressing stored legacy custody images should be considered, including costs.

This should include implications, timescales and full costs for options, including but not limited to:

- 1.10. Pre-determined plan of building LEDS architecture, importing legacy custody image store and attaching conviction outcomes to each custody image to allow the running of an automatic rule.
- 1.11. Attaching conviction outcome to custody image manually and image-by-image.
- 1.12. Mass deletion of any custody image store (national or local) which cannot transparently demonstrate compliance with RMC ruling.