

# **LIBERTY**

## **LIBERTY'S SUMMARY OF EVIDENCE TO THE "TECHNOLOGY AND THE LAW" PUBLIC POLICY COMMISSION ON THE USE OF ALGORITHMS IN THE JUSTICE SYSTEM**

**JANUARY 2019**

## **ABOUT LIBERTY**

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at [libertyhumanrights.org.uk/policy](https://libertyhumanrights.org.uk/policy).

## **CONTACT**

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## **INTRODUCTION: OUR RIGHTS AT RISK**

The Law Society’s “Technology and the Law” Policy Commission has invited evidence on the topic of algorithms in the justice system. The following is a summary of the oral evidence to be given by Hannah Couchman, on behalf of Liberty, at the Commission’s third evidence session on 14 February 2019.

Liberty emphasises the need for a detailed consideration of this topic within a rights-based framework. Rights under threat in this context include our rights to privacy, freedom of expression, freedom of association, fair trial and freedom from discrimination – and this is exacerbated by the normalisation of big data, an expanding web of surveillance, a lack of transparency around the use of algorithms and the flawed notion of a “human in the loop”. The Commission has identified three key examples of algorithms in the justice system, serving as a useful framework for the examination of the rights implications. Detailed background in relation to each technology is not rehearsed here, and concerns apply outside these specific examples.

## **DURHAM POLICE AND HART**

**Bias and discrimination:** Individual risk assessment programs encourage an approach to policing based on discriminatory profiling. In the US, research carried out by Pro Publica<sup>1</sup> in 2016 found that COMPAS, a risk-assessment program, routinely overestimated the likelihood of black suspects reoffending, even when the suspect’s race wasn’t included in the dataset, and underestimated the likelihood of white people reoffending. In the UK, in April 2018, it was revealed that the police data fed into the HART system was supplemented with an Experian dataset called “Mosaic”, produced through profiling each of the 50 million adults in the UK.<sup>2</sup> Mosaic classifies people into offensive groupings and even links first names to stereotypes.<sup>3</sup> Running this data through programs such as HART entrenches discriminatory associations between factors such as family circumstances and the propensity to commit crime.

**Privacy and freedom of expression:** The use of risk assessment programs, along with the related use of data and increased surveillance, has the potential to interfere with our right to free speech, along with the right to form and join associations or groups. As predictive policing of this type is normalised, we may begin to self-police as concerns grow around the level of data being gathered about us, what it is used for, how it is shared and what predictions might be made about us. This may have a chilling effect on what we to say, where we go and who we to associate with.

**Transparency:** While human decision making in the criminal justice system is intrinsically biased, the nature of decision making by machines means there is no option to challenge the process, or hold the system to account. While police officers should be expected to justify why they have made a certain decision, and have their reasoning open to scrutiny and challenge, there is a much more complex process at play when a predictive policing program has been used. Police forces may claim that humans have oversight of predictive policing programs and are charged with making final decisions. While the idea of having human involvement or oversight of an algorithmic decision-making process may sound reassuring, there is a lack of evidence as to our ability as humans to provide meaningful intervention over algorithms and decisions made by machines.

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<sup>1</sup> Angwin et al, 2016, *Machine Bias*, ProPublica, Available at: <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

<sup>2</sup> Big Brother Watch, 2018, *Police use Experian Marketing Data for AI Custody Decisions* [Press release], 6 April, Available at: <https://bigbrotherwatch.org.uk/all-media/police-use-experian-marketing-data-for-ai-custody-decisions>

<sup>3</sup> Experian, 2018, *Mosaic – Data Profile*, Available at: <https://www.experianintact.com/content/uk/documents/productSheets/MosaicConsumerUK.pdf>

## **KENT POLICE AND PREDPOL**

Kent Police began using PredPol in 2013 and ceased use in March 2018 – but with a view to researching lower-cost programs or developing an internal version of the program. Similar programs are in use by other police forces.

**Bias and discrimination:** The 2014 manual provided by PredPol<sup>4</sup> boasts that the PredPol program is comparable to the “broken windows” policing strategy, which saw stringent targeting of low-level crime based on the theory that visible signs of crime, anti-social behaviour and civil disorder create an environment that encourages more serious crimes. The widely criticised strategy, now accepted as ineffective, was notorious for leading to the over-policing of BAME communities.<sup>5</sup> Predictive mapping programs have been shown to spark a “feedback loop” that leads to officers being repeatedly sent to certain neighbourhoods – typically ones with a higher percentage of BAME residents – regardless of the crime rate in that area.<sup>6</sup>

**Privacy and freedom of expression:** As with use of individual risk assessment tools, the use of mapping programs may have a chilling effect on the places where we choose to spend time as people become more aware that they are being watched – or think that they might be watched.

**Transparency:** Where a police officer makes a decision to pay particular attention to a specific area, the local community can ask questions and hold them to account for their strategy. When the decision has been made by a predictive policing program, this open dialogue and debate is very difficult – particularly when the police are not open about their use of predictive policing programs.

## **SOUTH WALES POLICE AND FACIAL RECOGNITION**

**Bias and discrimination:** Studies have shown facial recognition technology disproportionately misidentifies the faces of women and BAME people – so they are more likely to be stopped by police as the result of a “false match”. Liberty also has concerns about discriminatory decision-making around the locations targeted by facial recognition technology.

**Privacy and freedom of expression:** Facial recognition violates the general public’s right to privacy by indiscriminately scanning, mapping and checking the identity of every person within the camera’s range, capturing personal biometric data without consent. Its use could also have a chilling effect on people’s attendance of public events and peaceful protests. The technology can be highly intimidating and affect people’s behaviour by sending the message that they are being watched, and can be identified, tracked, and marked for further police action.

**Transparency:** There is a deeply concerning lack of transparency and public awareness around the deployment of facial recognition. An academic evaluation of South Wales Police’s use of facial recognition found that “neither the police utilising [the algorithms], nor the evaluation team, really understand how they function”.<sup>7</sup>

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<sup>4</sup> PredPol, 2014, Best Practices and Training Guide, Available at: [https://www.muckrock.com/foi/elgin-7770/foia-elgin-police-dept-predpol-documents-51858/?utm\\_content=buffer6144c&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer#file-190432](https://www.muckrock.com/foi/elgin-7770/foia-elgin-police-dept-predpol-documents-51858/?utm_content=buffer6144c&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer#file-190432)

<sup>5</sup> See: Harcourt et al, 2005, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, University of Chicago Public Law & Legal Theory Working, Paper No. 93 Available at

[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2473&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2473&context=journal_articles)

<sup>6</sup> Ensign et al, 2017, *Runaway feedback loops in predictive policing*, Available at <https://arxiv.org/abs/1706.09847>

<sup>7</sup> Davies et al. 2018. *An evaluation of South Wales Police’s use of automated facial recognition*, Available at: <https://crimeandsecurity.org/feed/af/>