

LIBERTY

Bridges v South Wales Police **PSED reflections**

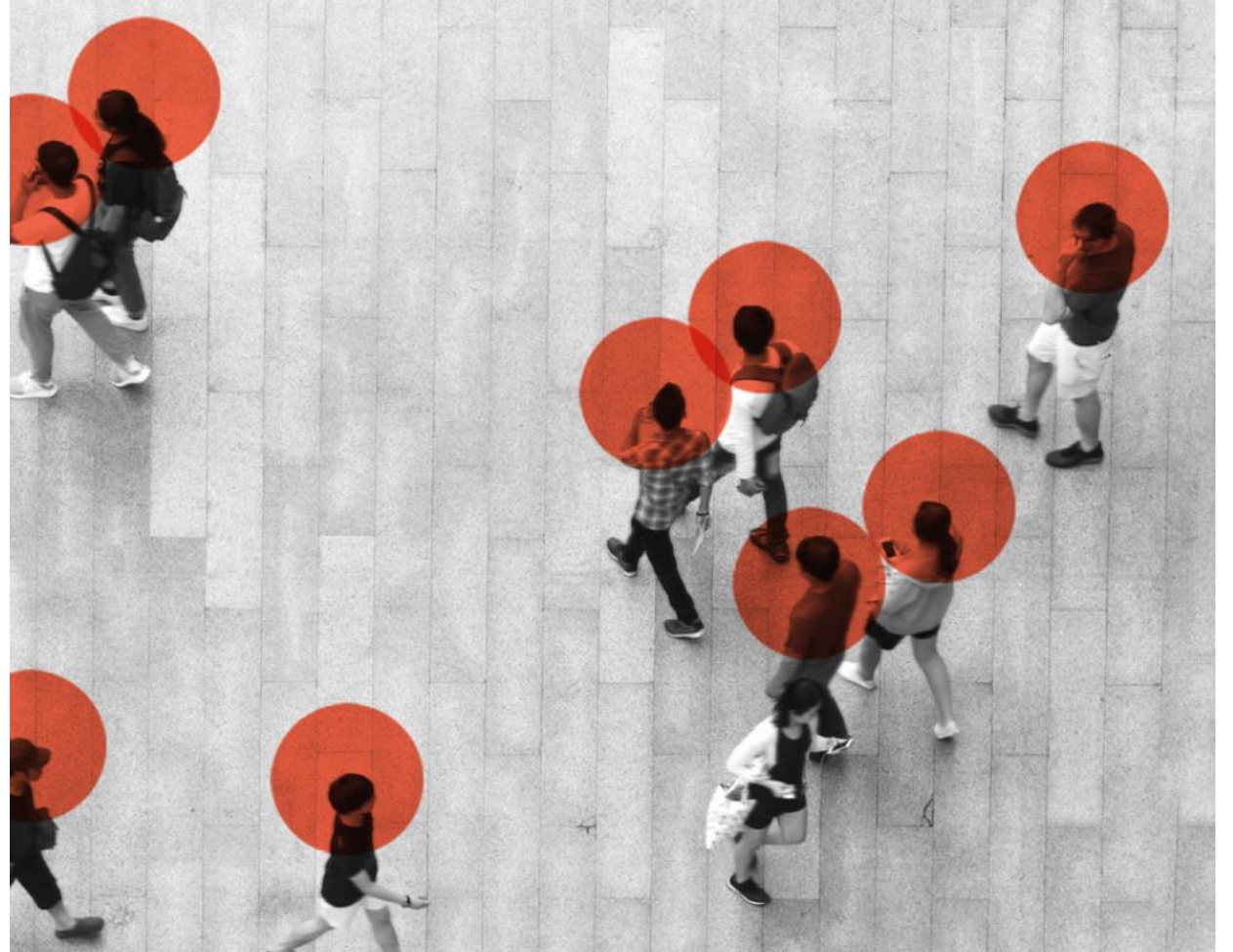
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BACKGROUND

- 70 deployments by South Wales Police
- Ed was scanned twice, incl at protest
- JR challenge
 - Privacy (Art 8 ECHR)
 - Data protection
 - PSED (s149)
- PSED
 - No 'due regard'
 - Higher rates of misidentification
 - No access to info from manufacturer; no proper testing
- 2019 – DC dismissed claim
 - PSED – no recognition of potential for discrimination
- 2020 – CA allowed appeal
 - DC wrong to find compliance with PSED



CA JUDGMENT – PSED (1)

1. Public authorities cannot rely on a lack of evidence/info to discharge PSED

- Lack of evidence when trial started
 - “*Cart before the horse*”
 - Purpose of +ve duty → “*not inadvertently overlook information*”
 - Enquire and ascertain
- Private manufacturer refusing to release info
 - “*Non-delegable*” duty
 - Can’t rely on broad assurances

“*SWP have never sought to satisfy themselves, either directly or by way of independent verification, that the software program in this case does not have an unacceptable bias on grounds of race or sex.*”
[199]

CA JUDGMENT – PSED (2)

2. PSED requirements no less stringent for trials

- DC → OK to review events against PSED criteria
- CA → trial no different; if anything, more important

3. PSED requires proper process

- DC → ‘human failsafe’
- CA → insufficient; not material as matter of principle
 - PSED was “*a duty as to the process which needs to be followed, not what the substance of the decision should be*” [185]

“We would hope that, as AFR is a novel and controversial tech, all police forces that intend to use it in the future would wish to satisfy themselves that everything reasonable which could be done had been done in order to make sure the software used does not have a racial or gender bias.” [201]

CONCLUSIONS FROM CA JUDGMENT ON PSED

- **Appeal!**
- **Robust defence of duty**
- **Must investigate bias when manufacturers refuse to help**
- **Rejection of SWP's compliance claims**
- **Can't say 'trial' and all fine**

FINAL THOUGHTS FOR PRACTITIONERS

- **Expert evidence**
- **Limits still to PSED**
 - **Negative obligations in EA – direct/indirect discrimination**
 - **Procurement / publication of testing?**
- **CoP draft guidance – no guidance**

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STAND UP TO POWER