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Digital Triage Device (Cyber Kiosk) Stakeholder Group

MINUTE OF THE MEETING

DATE: 1300 Hours Thursday 10th January 2019

LOCATION: Nellis/Collins Room Scottish Crime Campus.

CHAIR: DSU Nicola Burnett

SECRETARIAT/
MINUTES: DS Jane McCourt

MEMBERS IN ATTENDANCE:

DSU Nicola Burnett	(NB) Police Scotland, Head of Cybercrime (Chair)
DCI Iain Craib	(IC) Police Scotland Cybercrime
DI Michael McCullagh	(MM) Police Scotland, Cybercrime
Inspector Steven Tidy	(ST) HMICS
Iain Logan	(IL) COPFS
Alice Stewart	(AS) Police Scotland Information Management
Roslyn Rooney	(RR) Police Scotland Corporate Communications
DS Jane McCourt	(JM) Secretariat

1. INTRODUCTION AND WELCOME

The Chair opened the meeting and thanked members for their attendance to this meeting of the Cyber Kiosk Stakeholders Group.

The Chair updated the Group with respect to the document set

- Toolkit
- Public Information Leaflet
- Frequently Asked Questions which would apply to devices being seized across digital forensic examinations. In terms of the EqHIRA and DPIA, after consultation these documents are almost complete.

The Chair provided the Group with an overview in relation to the meeting of the External Reference Group.

The Chair highlighted the main thrust of the meeting was a finding a way to articulate the legal basis with a requirement to ensure the understanding is presented in a readable and user friendly way.

PSOS Legal Services have not notified any issues or queries to the negative and whilst there continues to be discussions as to confidence in the legal basis to date there have been no submissions to PSOS articulating that the use of digital forensic triage is not supported by current Scottish legislation.

The document set was put out to consultation with Reference Group, Stakeholders and NISAG to consider from an equality and diversity perspective, before internal sign off.

The Chair provided that since last Justice Sub Committee it is still the case that PSOS await a reply from COPFS as to correspondence regarding legal bases.

The Chair updated that ICO are investigating a complaint made by Privacy International regarding UK Law Enforcement Use of Cyber Kiosks, and were recently provided with a demonstration of a kiosk.

AS confirmed that there was a letter from ICO with the Chief Constables Office. This letter detailed the status of the current investigation and made specific requests for PSOS to provide documentation relative to the use of cyber kiosks.

The Chair highlighted that no timescales had been specified today but previously it was expected the investigation would be concluded in the summer, the investigation is not looking at all 43 forces but a snapshot. There is no opinion at this point as it is an information gathering exercise at this stage of the investigation.

AS confirmed that the ICO do have the powers to suspend activity in extreme circumstances but to date have not elected to do so, the notice would be specific to the relevant Chief Constable

2. VALUES STATEMENT

Chair *stated the values of police Scotland to members namely; Integrity, Fairness and Respect are the values of Police Scotland. All decisions which we make must reflective our values and be able to withstand scrutiny when judged against them. Accordingly, our values will be the touchstones in all decisions we reach within this forum.*

3. APOLOGIES

Apologies were submitted prior to the meeting by

Inspector Heather Macdonald	Scottish Police Federation
Craig Donnachie	Forensic Services SPA
Robert Hayes	SPA

4. MINUTES

The Chair proposed the minutes of the last meeting of the Cyber Kiosk Stakeholders group for consideration and any amendment.

COPFS have provided minor adjustments to the previous minutes which have been amended accordingly.

The Chair highlighted that in order to be transparent and open in our approach to the roll out of cyber kiosks and the consultation process that has been undertaken the minutes of the previous meeting of the External Reference and Stakeholder Groups have been published on the Police Scotland public facing internet site and the minutes of this meeting, including previous, shall be uploaded to the page unless there are any objections to their publication.

No objections were raised to the publication of the minutes of this group.

5. **Debrief of Cyberkiosk Training- Phase 1**

IC provided the Group with an overview of Phase One Training which took place in the East and the debrief of Phase 1 training which aims to increase public confidence and provide a timely opportunity by highlighting what we are trying to achieve and the reasons for that.

IC highlighted that 410 officers will be trained in North, East and West. Training is rolling out in West Command this week, with a view to commencing training in North Command in February/ March this year.

DC Karl Brunger and DC Graeme Whittaker provided an update to the Group with respect to the recent training they attended.

KB and GW highlighted that the training was well delivered; both found it was extremely worthwhile having a subject matter expert delivering the training. The material was user friendly.

Both officers highlighted the benefits of using Cyber Kiosks in reducing timescales when managing Registered Sex Offenders and the benefit to public protection. KB highlighted that there is a risk of losing vital digital forensic evidence, if a digital examination is not progressed quickly enough. For example if there is a house search conducted and four devices are seized with only one being relevant, by the time those phones are examined at a hub potentially there could be crucial evidence lost.

Both officers highlighted operational officers need every tool to support how they police in the digital world. There is an obligation with respect to dangerous and violent offenders who need to be risk managed, by using statutory powers afforded by Sexual Offenders Prevention Orders, the risk posed to members of the public including children can be minimised.

KB highlighted to the Group that he had been involved with the trial of Cyber Kiosks and as a direct result of using the technology; his unit were able to locate a suspect for rape. The suspect had four e-mail addresses, four Facebook accounts and four telephone numbers attributed. The suspect left behind a device and by triaging his device an associate was identified which directly led to his arrest. Failure to triage on this occasion could have led to a violent suspect being at large for longer than necessary.

KB highlighted that Cyber Kiosks are a crucial tool, it is not the fault of Cybercrime that there is such a backlog, but operational officers benefit, the quicker they can identify evidence and disregard the irrelevant, allowing them to focus enquiries. This streamlining would allow Cybercrime to have more time to go through devices in an effective way, knowing it contains evidence.

KB highlighted officers are well versed in their responsibilities with respect to collateral intrusion and proportionality. On the first day of Probationer Training at the Scottish Police College these responsibilities are emphasised, in respect to how we deal with the public and collate evidence relating to an investigation and is re-iterated on an almost daily basis. It is important to stress if officers are dealing with a domestic incident, they are only interested in the evidence to support what could be a horrible crime under investigation and to support the charges libelled.

In the example of a stalking case, the earlier that that case can be brought to court, could

potentially prevent a murder and at the very least minimise distress to a complainer.

Our responsibility as a Police Officer is to be justified in all our actions.

The benefits are immeasurable across every area of Police Scotland and every enquiry has a digital footprint and to take the pressure from Cybercrime could be a significant improvement to the Organisation.

AS queried how do you find the bureaucracy, is it a big addition?

GW replied in essence the process is no difference from what we do when we submit devices to cybercrime

IL queried in terms of seizing and examining a mobile phone, is there a proportionality assessment made?

SM confirmed that is done as part of the ERF process

GW highlighted that if a phone is asked for from an RSO due to their conditions and it is found that there are deleted messages for example, a high risk RSO could be at liberty for a number of weeks until the breach is evidenced by the Cyber Hub. They would be without a point of contact for that period of time which presents a risk to the management of that offender and the wider public. The kiosk provides proportionality as there is instant evidence of deletion and the offences can be dealt with quickly.

SM confirmed if submitted to a kiosk and there is a specific result, the device will be submitted to Cybercrime as per normal arrangements.

KB confirmed current ERF process is a good procedure which officers are familiar with. Officers use the current process regularly built into the process is supervisory and gateway checks.

The Chair confirmed the ERF process lends itself to it, to be proportionate, if submitted to hub the device will be retained as a production should further examination be required.

GW highlighted it is the same process just quicker.

AS queried at the moment the Crime Reference Number would provide a cross reference what would happen if there was no CR number?

The Chair confirmed that the ERF system is being updated to show NOCAP number, Operation Name or Incident number

6. Legal Basis

MM provided an overview on the position of Police Scotland's understanding of the legal basis as it stands at present

ST asked IL to confirm whether there had been any known challenge to information being presented in Court which had been secured from a digital device with consent of the owner of the device.

IL confirmed that he was not aware of any appeal decisions specifically challenging information which had been secured from a digital device with the consent of the owner. He outlined that any challenge would focus on whether consent had been properly or fairly obtained and in turn whether the evidence was admissible. That decision would be based on the facts and circumstances of each case.

ST queried if there was training on informed consent?

SM highlighted that it is shown in the ERF process

The Chair stressed that although it is an online package the training was delivered in a classroom environment by subject matter experts and there were additional inputs on human rights and roles and responsibilities.

ST queried if Police Scotland Legal services given input

The Chair confirmed Legal Services had provided comment which has been embedded and will be submitted to ACC Steve Johnson as SRO sign off once agreed in consultation with the three Groups.

7. Electronic Request Form

SM provided the Group with a presentation of the updated ERF process

SM highlighted that Triage Officers will not have the permissions to allow access to cybercrime forms and triaged submissions will have a K pre fix to ensure that submissions can be clearly defined.

IL commented that search parameters are important for kiosks, it will be important to capture in triage statement what was and what wasn't looked at, as it could be challenged in terms of was it captured fairly and if it wasn't captured does this impact on disclosure.

ST queried who would audit in the absence of the gateway?

SM confirmed submissions would be dip sampled on a monthly basis, internally by Cybercrime at the moment

The Chair confirmed in consultation with Audit and Assurance by having comprehensive management information will allow scrutiny. Supervisors will receive Gateway training. If there are any issues identified, Cybercrime could request an audit from Audit and Assurance.

AS highlighted, SCD would carry out internal audit. Tier 2 audits would be undertaken by Information Management, however there are few resources, at present, it is risk managed if there are any concerns with regards to compliance or non-compliance a reactive audit can be arranged.

The Chair highlighted the preferred option would be for a tier two approach, however pragmatically, it will be scrutinised at the monthly management meeting and any concerns would be referred to Audit and Governance.

SM confirmed that IT is in the process of building a case management system on the basis of the information management which would be required.

The Chair highlighted with respect to Cyber Kiosks, Cybercrime would aim to publish along the similar lines to Stop Search which would decrease the potential for Freedom of Information Requests and would be comfortable and confident publication process.

MM highlighted that legal basis is a significant concern for partners.

IL highlighted a case involving an I phone 5s; the Court found that it did not consider an examination as it did not require connection with the internet. The examination of the phone which comprised of plugging into power supply and touching the screen found section 14 (7) b was admissible. However, the examination was a straightforward exam which did not explore or utilise cyberspace but it gives police comfort, power to examine within powers of arrest but not

tested further and not tested properly in that case.

The Chair agreed that as the law stands just now, legal basis is competent but it must be recognised that, there may be a challenge at any time

AS updated the Group in relation the DPIA is complete. Legal basis has been incorporated. Police Scotland have to refer any high risk issues to ICO for advice and guidance. As it stands the risks have been reduced to low/ medium at present but this may change with more consultation.

ACTION - Alice Stewart, to provide a briefing for ACC Johnson with respect to options available to Police Scotland, with regards to ICO and DPIA when final consultation complete.

The Chair updated the Group with respect to victims and witnesses , Police Scotland would be looking to adopt an auditable trail highlighting that informed consent is understood and are exploring the triplicate form utilised by Stop Search.

This would provide a two-fold approach by providing a receipt for any device whilst simultaneously providing an opportunity to capture an articulation which highlights informed consent is understood

This will be in line with NPCC, which has a working group which includes ICO who are looking at this issue.

IL highlighted the issue would be when challenged in case law, consent has to be shown to be informed and it must be clear that they understood what they were agreeing to. It would be useful if there was a form of words as there is no legal precedence. Case law does not require it to be in writing if properly explained it would just be whether consent obtained fairly

IL confirmed COPFS have received ACC Johnson's letter and are looking at the response this. The draft is with COPFS Senior Management for consideration. There is a meeting on Monday to discuss. COPFS are looking at presenting an understanding of powers to seize anything irrespective of whether it is a digital device, it doesn't say you shouldn't examine a device as there has not been challenge to date. GDPR and data protection concerns do not make something inadmissible in court it's about the fairness of how it was seized.

The Chair highlighted that once the letter is received by Police Scotland Justice Committee will expect a copy and may wish to publish.

IL conformed COPFS Senior Management are aware

The Chair highlighted that relevant points raised by COPFS will be incorporated into documentation

ACTION - Iain Logan to be updated with the dates of engagement with Justice Sub Committee on Policing

8. **DOCUMENT SET**

The Chair updated the Group in respect to the updated ERF process, the position on legal basis, flow chart for the public and engagement with local policing; she is comfortable that these are at an advanced stage.

NB highlighted in respect to procurement of licenses, there is a contractual obligation to maintain update and purchase licences which will be published

NB stressed that the Comms Plan surrounding the purchase is critical and requested RR, IC NA SM look at this issue and devise a plan prior to publication, with respect to Kiosk Users, Digital Forensic Hubs, Implementation and Training.

RR agreed that the approach should be proactive and not if asked, it is best to provide an open and honest account of what we are doing

IC added the Comms Plan should highlight the positive benefits, how it will improve service delivery, identify and tackle crime more quickly and generally Keep People Safe.
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9. **AOCB**

The Chair afforded the opportunity to raise any areas of AOCB.

No other areas of AOCB were raised by members.

10. **DATE OF NEXT MEETING**

The Chair thanked the members for their attendance and participation in the meeting and informed that suitable dates shall be circulated in due course and meeting date set.