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Digital Triage Device (Cyber Kiosk) Reference Group

MINUTE OF THE MEETING

DATE:	Thursday 10 January 2019
LOCATION:	Nellis/Collins Conference Room Scottish Crime Campus, Gartcosh
CHAIR:	Richard Whetton (Head of Partnership and Collaboration, Police Scotland)
SECRETARIAT/ MINUTES:	DC Grant Wilson

MEMBERS IN ATTENDANCE:

Mr Richard Whetton	CHAIR Head of partnership and collaboration
DSU Nicola Burnett	(NB) Police Scotland, Head of Cybercrime
DCI Iain Craib	(IC) Police Scotland Cybercrime
DI Stuart McAdam	(SM) Police Scotland Cybercrime
DI Michael McCullagh	(MM) Police Scotland Cybercrime
Dr Duncan Campbell	(DC) Advisor to Open Rights Group (VTC)
Dr Megan O'Neill	(MO) Dundee University
Dr Liz Aston	(LA) Edinburgh Napier University
Mr Diego Quiroz	(DQ) Scottish Human Rights Commission (VTC)
Mr David Freeland	(DF) Information Commissioners Office
DC Grant Wilson	(GW) Secretariat

1. INTRODUCTION AND WELCOME

Chair opened the meeting and thanked members for their attendance at this meeting of the Cyber Kiosk Reference Group.

The Chair initiated round the room introductions.

2. VALUES STATEMENT

CHAIR reiterated the values of Police Scotland to the group stating, *Integrity, Fairness and Respect are the values of Police Scotland. All decisions which we make must reflect 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 received from the following members;

DCS Gerry Mclean, Head of Organised Crime and Counter Terrorism Unit, Police Scotland – represented by DSU Burnett

CI Iain Moffatt, Police Scotland, Strategy and Innovation

Mr Aamer Anwar, Aamer Anwar and Co

Ms Scarlett Kim, Privacy International

Mr Aillidh Callander, Privacy International

4. MINUTES OF PREVIOUS MEETING

CHAIR proposed the minutes of the previous group allowing an opportunity to raise any amendments on each page of the published minutes, no objections or amendments were raised by the members.

5. ACTION LOG

CHAIR provided members with an overview of the current outstanding actions seeking and update from action holders.

Action 5/18, NB updated that this action remains on-going meantime. **NB** informed that a letter has been submitted by PSOS to COPFS and any subsequent response shall be shared with the group. **ACTION ON-GOING**

LA questioned whether this also addressed the request from Justice Sub-Committee on Policing (hitherto referred to as JSC) who also wished clarification of legal basis.

NB explained that this was to clarify the legal basis for the group and also JSC.

LA asked if the point in relation to data being transferred by victims or witnesses in another way other than giving up their phone was being looked at.

NB updated that it was.

Action 6/18, MM updated that the legal basis remains in draft form at this stage. **MM** updated that a presentation shall be provided to this group in this meeting in relation to this. **MM** updated that this has not been circulated to the group ahead of the meeting as the intention was to wait for the draft to be finalised prior to circulation.

NB added that all points and considerations from members of this group have been considered and incorporated appropriately. **ACTION ON-GOING**

Action 10/18, NB updated that the link was circulated with the papers for this meeting to all members. **ACTION COMPLETE**

Action 11/18, SM provided members with a PowerPoint presentation of the Digital Forensic Examination Request Form (ERF) describing each stage and intended changes moving

forward. **NB** explained that due to the on-going changes this has not been circulated to the group at this stage. **ACTION ON-GOING**

A PowerPoint presentation was delivered to members on the ERF form process by **SM**.

NB added that this form would be completed by any requesting officer (all devices) for digital examination of devices, explaining that the intention is to utilise this process for Cyber Kiosks also.

LA clarified, Cyber Kiosks or Cyber Hubs.

SM informed that this form shall be amended to differentiate between gateway requests or kiosk requests ensuring explanation of necessity, proportionality and justification from the officers throughout the form.

CHAIR invited further questions from the group.

DC informed that from the outside ERF is very important because it is the fundamental initiator for enquiries and device to be examined, adding that it also provides a mode for audit.

DC added that he thinks it is understood ERF will drive kiosk and it makes it central to kiosk and digital enquiries.

LA highlighted that the ERF form is for internal Police usage however if this is to be audited wider externally then the form requires explanation in terms of the acronyms included within.

LA sought clarity on whether the process would require a second form to be completed if the examined device needs to be further examined or whether this form would suffice for both stages.

SM explained that the reference number provided within the initial kiosk examination shall be unique to Kiosks denoted by a K reference. On moving onto the second stage if required then this K reference shall be included in the submission of that request linking the requests.

LA enquired if the notes made on the form would be made available for audit.

SM informed that this would be available as all content remains on the form.

DC enquired if as a consequence of the Kiosk examination it is required to be submitted to a hub will there be a requirement for the submitting officer to submit more information or a new ERF?

SM explained that the original kiosk request will auto populate into the hub form and still requires for this to be resubmitted to a supervisor to ensure that they are still satisfied with the requirement.

DC asked if further information can be added at this stage.

SM informed that yes further text can be to the form in relation to the further examination.

DC explained that it may be useful to have a flow diagram or info-graphic to explain the process and categories.

SM added that the toolkit will cover the new system and includes flowcharts and explanation of the process for clarity.

SM explained that the form will also allow for auditing the nature of the request e.g. witness accused etc. further adding that the power of seizure shall be added via a drop down box

allowing selection from Common Law, statutory, under warrant, voluntary.

SM added that if voluntary is selected the form will auto populate a question on whether written consent has been obtained for that device and requires a response from the officer.

SM explained further that the interrogation section of the form allows for the examiner to understand if in exceptional circumstances e.g. preservation of life, if the device has been accessed prior to receipt at the hub. This also captures if the person (device holder) in the presence of the police has interrogated the device themselves to allow a full understanding of what has happened to the phone prior to submission.

SM explained that the supervisors section shall ensure that they are satisfied that the device has been seized lawfully but also in the cases of voluntary submission that the supervisor has seen the written consent and is satisfied.

CHAIR thanked **SM** for his presentation and invited further questions from members.

MO enquired if the addition of further supervisor checks would slow the process down as it was the understanding that kiosks were meant to streamline the process.

SM assured that this would not slow down the process, as the officer would have access to the on duty supervisor and would also progress to the on duty kiosk operator.

DF sought clarity on whether the power under which the device was seized would be free text also. For example if select the drop down of statutory is there an option to explain what power at this point.

SM explained that the free text box for the reason will allow for the explanation of the power used. **SM** explained that the drop down box allows for an audit of how many statutory or common law etc. seizures have been done. Allowing for an understanding of the captured MI data.

CHAIR asked that a PDF copy of the form be circulated to member's to satisfy the action.

NB asked that time be given to make the required changes to the document and form and thereafter send to members for consultation along with the full document sets rather than sending out separately.

CHAIR agreed with this request. **MEMBERS** also agreed.

6. SUMMARY POSITION AND JUSTICE COMMITTEE

NB informed members that DCS Mclean provided further evidence to JSC in November 2018.

NB added that PSOS had provided further written submissions to JSC also.

NB informed that the outstanding matter for the JSC remains that they are seeking an update from COPFS in relation to the legal position.

NB assured that PSOS continue to be confident in the legal basis as it exists and are continuing to liaise with PSOS legal services **NB** informed that PSOS shall continue to provide updates to JSC and the SPA on the progress.

NB updated that the Cyber Kiosk Training continues explaining that a presentation on this shall be provided later in the agenda.

NB explained that work continued on the document set, explaining DPIA internal colleagues are satisfied that the high risks have been mitigated and are now either medium or low.

EQHRIA is also in the same position.

NB added that the toolkit will continue to be updated to include the legal basis and redeveloped ERF.

NB explained that consideration was being given as to how to best record the consent element and advice is being sought from colleagues in Criminal Justice regarding these following experiences with stop search recording.

CHAIR recognised that **NB** input also included the agenda item from Document Sets and thanked **NB** for the update. **CHAIR** invited questions from members.

LA welcomed the clarification of legal basis highlighting that it is central to the document set and informed consent.

LA added that it was her understanding that the JSC had directed that there shall be no roll out of Kiosks until the legal basis is established.

NB explained that no roll out of Kiosks have taken place. **NB** explained that ACC Johnson is the Senior Responsible Officer for the project and a Programme Board is scheduled towards the end of January, again adding there is no decision to go live at this stage.

MO thanked **NB** for the update enquiring if the described progress in documentation is specific to Cyber Kiosks or full digital package within PSOS. Is this specific to Cyber Kiosks?

NB explained;

- DPIA and EQHRIA – Specific to kiosks
- Toolkit – Specific to Kiosks
- Principles document – digital forensics in the broader sense
- Public Information Leaflet - will cover digital forensic examination whether Kiosk or hub.

MO asked is the Kiosk still viable technology?

NB clarified what was meant by viable.

MO clarified Process and hardware.

NB stated that the business need/case and benefits needs and realisation remains the same.

NB informed that officers who have been recently trained have been invited to the group and shall attend later in the meeting, to provide a more operational understanding of the purpose and why we are doing this.

SM added that the hardware remains current and the software is updated regularly.

DC thanked **NB** for the update and stated that it was his understanding that ACC Johnson will go to JSC this month in relation to kiosks.

NB informed that she is not aware of any specific formal invitation to JSC for ACC Johnson.

ACTION – NB TO ESTABLISH IF ACC JOHNSON IS ATTENDING JUSTICE SUB-COMMITTEE ON CYBER KIOSKS IN JANUARY.

DC updated that he had circulated a letter prior to the meeting to members.

DC highlighted the need for COPFS to give their version of the legal basis as otherwise this may become a stumbling block to proceeding.

DC stated that taking a holistic view of the process and the explanation of the documents set was useful and beneficial.

DC highlighted that he had raised the consideration in his letter that the TOR and document set should be expanded to include the hubs and the hubs processes?

DQ stated that the COPFS legal advice once issued should be shared with this group, but beyond this the roll out of the Kiosks should not proceed until the legal position is clarified. **DQ** also reiterated the requirement for expansion of Consent in terms of Human Rights perspective.

NB highlighted that this shall be covered in the presentation by **MM** later in the meeting and shall be expanded in the documentation that exists and shall be passed out for consultation once the updates have been completed. **NB** explained that this is viewed as a suite of documents and has to be seen in context.

NB added that PSOS continue to engage with COPFS.

LA asked if it would assist if this group wrote to Crown.

CHAIR stated that it couldn't hurt but didn't see that this would sway Crown.

NB added that PSOS is trying to be as open and cooperative as we can, however cannot require other agencies to respond.

DQ stated that he understood that however to be more proactive he understood that Police Scotland would respond to the formal letter from JSC requesting an update and will reference that position of what has been done to answer the question.

NB stated that DCC Gwynne had responded to the letter from JSC explaining that COPFS have been asked in terms of then legal basis position and PSOS have been informed that a response shall be provided in due course, stressing that that is as much as Police Scotland can comment on this area.

DQ added that the problem with the legal basis is that it's not clear as it needs to be. **DQ** added that it was his opinion that the legal basis should be a standalone document to explain where the powers have been obtained to take the action.

NB stated that it was hoped that when members see the updated documents that it is clear what powers are being used. PSOS are articulating the legal basis as it is understood by PSOS.

DC added taking a political view, the way JSC approached this is they blocked the roll out until COPFS provide advice which is not being made available to Police Scotland, it is not Police Scotland's job to pursue COPFS further as Police Scotland are agents of the Crown. The JSC should be able to bring further pressure itself.

DC added that he had become aware of an issue to highlight in relation to a European directive in relation to material and data which may have an impact.

DF added that this may be the law enforcement directive but added that Police Scotland are not seeking consent to process the data on the device. **DF** added that once you have the device then processing of any data should only be as necessary.

CHAIR confirmed they were aware of the potential issues described.

7. INFORMATION COMMISSIONER'S OFFICE INVESTIGATION

CHAIR Invited **DF** to provide an update in relation to the Information Commissioner.

DF informed members that he had represented Information Commissioners Office at the JSC recently along with Police Scotland and Scottish Human Rights Commission, highlighting that the legal basis had taken up most of the discussion and must be addressed.

DF added that a separate demonstration of the kit was also provided to **DF** and colleagues from ICO which had proved very useful to see in detail and allow pertinent questions to be asked.

DF informed that the ICO enquiry is currently on-going and they are looking at a number of UK forces highlighting that ICO are not investigating anyone in relation to breaches at this stage. **DF** informed that at this stage he can't provide an end date however as more becomes available he shall inform this group.

CHAIR thanked **DF** for his contribution and invited Questions from members.

NB sought clarity in relation to the powers of the ICO following the conclusion of the enquiry into Law Enforcement use of Kiosks, asking, at the end of the enquiry can the ICO instruct that Police Stop using Kiosks?

DF informed that the ICO do have powers to instruct however are mindful of necessity and proportionality and are alive to the consequences of doing so, but otherwise yes.

DF no orders have been issued to date, informing that the ICO enforcement order would be served on each individual Chief Constable and not a blanket across every force however none have been issued.

8. DOCUMENT SET AND TIMELINE

CHAIR informed members that the update in terms of this agenda point had been covered by the update provided by **NB**.

9. TRAINING AND EVALUATION

CHAIR invited an update in relation to this agenda item.

MM provided a PowerPoint presentation to members in relation to the legal basis element.

MM asked that the PowerPoint presentation be circulated to all members due to **DQ** and **DC** not being present.

ACTION – ODU TO CIRCULATE POWERPOINT ON LEGAL BASIS TO ALL MEMBERS

Following the presentation **NB** summarised that this was to try and show and assure how we intend to display legal basis as clearly as possible. **NB** added that this shall be progressed in terms of updating the documentation and shall be passed out to the members for consultation.

NB added that it was the intention to explore the consent process and shall continue to review.

CHAIR thanked **MM** for his presentation and invited questions from members.

LA thanked **MM** for the presentation adding that it needs to be clearly explained that if people don't give voluntary consent police can compel it, this needs to be explained further and highlighting the powers that can be used.

LA guarded against the legislative basis in relation to other mobile devices as a basis as some information and powers have changed and the law needs to catch up. **LA** added that the learning from this needs to inform digital transformation in the future.

MM added, is there room for improvement in the law? Yes. Does the legal basis exist? We believe so. Does what exists provide provisions to keep people safe? Yes.

DF added that JSC suggested there be a law reform project.

DC added that he would provide feedback after the meeting once the PowerPoint had been received.

NB informed that in terms of the PowerPoint this was just intended to allow the understanding. Adding that no feedback was sought on the PowerPoint but would be sought on the document set once completed which would prove more beneficial.

LA stated that it feeds into **DQ** point that there should be a separate document asking is this going to be covered in the FAQ?

NB FAQs are being prepared in support of all the documents.

CHAIR welcomed DC Brunger and DC Whittaker to the group explaining that these officers are operational officers who have received the training for Cyber Kiosks, further inviting **IC** to provide an overview of training to date.

IC thanked members in relation to the support provided at the last meeting to progressing training to the 410 officers. **IC** provided member's with a PowerPoint in relation to the progress that has been made in training so far. **IC** explained that the initial training has been focused on the East area and to take 110 officers have received the training across 7 X 2 day sessions.

IC explained that Phase 2 of the training in the West and North was underway.

IC provided an overview of the Cyber Kiosk phase 1 training debrief that has been conducted.

NB added that the debrief document shall pass through the required internal senior management for sign off and shall be shared with the group once updated.

MO asked if there would be a follow up questionnaire to officers.

IC updated that there would be a 6 Month evaluation after the roll out to ensure content. Adding that the skills obtained shall be subject to a 6 monthly review also.

NB stated we don't have a roll out date so we will have to do a review of the officers at that time in any case and will take that opportunity to address any shortfalls that are identified.

MO are they physically operating the kiosks? (in training)

IC explained that it is online training.

MO I would have thought this should be on the machines themselves.

DC Whittaker added ideally yes and it was raised during the training adding.

NB added that although it is online training it in in a classroom environment the officers are not undertaking the training in isolation.

DC Brunger explained that the training is by means of a replicator scenario on a laptop, it is a simulator of the operating system but not in isolation.

DF asked would there be a test run on roll out.

DC Whittaker stated that this had been indicated during training.

IC stated that continuous support would be provided and available to the officers. Adding that an 'On-Call' provision was being considered in order to allow access to assistance from the digital forensic hub.

DC Brunger added that it is important to remember that the Kiosk is very easy to use its self-explanatory with guides at every stage.

CHAIR we have had a demonstration, and from my perspective this would provide operational advantages versus the existing processes.

DC Whittaker agreed totally with this position. Explaining that in their current role within offender management they have direct contact with sex offenders within the community. These offenders on occasion have court orders in relation to their possession and use of phones and devices. If we take their phone it can take weeks if not months depending on the demand to come back with the result of the examination. With the kiosks it gives the capability to come back that day it's absolutely in the interests of public protection to give an immediate understanding and the kiosks are a brilliant technology.

DC Brunger provided members with an example of a pilot test that he had been part of in relation to the use of a cyber-kiosk in relation to a reported rape. **DC Brunger** provided an overview of the circumstances and again highlighted that in existing procedures the devices associated with the case would take weeks if not months to come back which would lead to the loss of essential evidential opportunities. By using the kiosk on the devices an associate and suspect were identified in another part of the country and traced within 48 hours.

DC Brunger stressed that if this technology is not made available then policing would be missing out on vital opportunities to protect a vulnerable child or victim.

DC Whittaker again explained that with cyber-kiosks trained officers are able to prioritise our own work rather than relying on digital forensics to progress and decide what is a priority within the large volume submitted.

MM re-iterated the benefits that had been demonstrated in the example provided by **DC Brunger** and the essential evidence that could have been lost.

LA stated that this needs to be captured in internal and external communications to JSC and to the public.

LA added that it was essential that the manner in which the training is delivered needs to be clear as it makes a big difference.

LA further highlighted that Police Scotland needs to be more proactive in informing on the risks and benefits associated with the Kiosks.

10. AOCB

CHAIR invited any AOCB matters from the members.

NB updated that Police Scotland have purchased the devices however haven't rolled the technology out. **NB** explained that there was a requirement to maintain the licences and it was the intention to publish the fact that the licence is being renewed; highlighting that work is ongoing with communications. **NB** stressed this doesn't mean that they are getting rolled out but need to maintain the licence.

CHAIR stressed the requirement for clear communication.

CHAIR took this opportunity to inform the member's that this shall be his last meeting expressing his thanks to the members and wishing the group good luck in the progression of the cyber kiosks.

MO asked, who is taking over the chair?

NB informed that this will require discussion and **NB** shall be in contact with members.

11. CLOSE

CHAIR thanked Members for their attendance and contribution to the meeting.

CHAIR added a particular thanks to the cyber team in relation to the work that has been undertaken to date.

12. DATE OF NEXT MEETING

NB informed at this time that there shall not be another meeting of this group until after all the documentation has been updated and circulated. **MEMBERS** agreed.