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Digital Triage Device (Cyber Kiosk) External Reference and Stakeholder Groups

MINUTE OF THE MEETING

TIME/DATE: 1000 Hours Thursday 21st November 2019
LOCATION: JOC, Scottish Crime Campus
CHAIR: Dr Liz Aston, Scottish Institute for Police Research (SIPR)
 Deputy Chair - Duncan Campbell – Open Rights Group

SECRETARIAT

/MINUTES: DC Craig Stamp / DC Stewart Woodhouse

MEMBERS IN ATTENDANCE:

Dr Liz Aston	CHAIR Scottish Institute for Police Research
Duncan Campbell	(DC) DEPUTY CHAIR, Open Rights Group
ACC Angela McLaren	(AMc) Police Scotland, Assistant Chief Constable
DSU Nicola Burnett	(NB) Head of Cybercrime, Police Scotland
DCI Stuart McAdam	(SMc) Cybercrime, Police Scotland
DI Michael McCullagh	(MM) Cybercrime, Police Scotland
DS Anna Ripley	(AR) Cybercrime, Police Scotland
DS Barry Friels	(BF) Cybercrime, Police Scotland
Iain Logan	(IL) COPFS (VTC)
Alice Stewart	(AS) Information Management, Police Scotland
Claire Dobson	(CD) Information Management, Police Scotland
Heather MacDonald	(HM) Scottish Police Federation
Joanne Holmes	(JH) Corporate Communications, Police Scotland
Megan O'Neill	(MO) Scottish Institute for Police Research (VTC)
Tatora Mukushi	(TM) Scottish Human Rights
Maureen Falconer	(MF) Information Commissioners Office

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Iain Jeffrey	(IJ) Policing Values and Professional Ethics
Jenny Brotchie	(JB) Information Commissioners Office
Julie MacLeod	(JM) Information Management, Police Scotland
William Falconer	(WF) HMICS
Sally Ann Poole	(SAP) Information Commissioners Office (VTC)
Camilla Graham Wood	(CG) Privacy International (VTC)

1. WELCOME AND INTRODUCTIONS

The Chair opened the meeting and thanked members for their attendance at this joint meeting of the Cyber Kiosk Stakeholder and Cyber Kiosk External Reference Groups.

The Chair initiated introductions around the room and teleconference.

2. APOLOGIES

Apologies were received from the following members:

Inspector Stephen Tidy, HMICS
Andrew O'Neill, Corporate Communications, Police Scotland
Susan Duncan, SPA Forensic Services
Robert Hayes, SPA
Sandy Brindley, Rape Crisis

3. MINUTES OF PREVIOUS MEETING

CHAIR proposed the minutes of the previous meeting and invited any objections or amendments.

DC highlighted that paragraph 5 of the minutes required clarification.

CHAIR advised that minutes would be re-circulated to all members for review, with a 7-day return period requested so that they can thereafter be published.

4. POLICE SCOTLAND – CURRENT POSITION

AMc introduced herself as the new Assistant Chief Constable and Senior Responsible Officer for the project and recognised the importance of the journey to date. **AMc** expressed her sincere thanks to all members for their continued involvement and recognising the quality of engagement and that the progress made will act as a foundation and influence future Police Scotland activity.

NB provided an update regarding the ongoing programme activity within Police Scotland in preparation for 'go-live'. **NB** highlighted two principle activities 1) articulating the legal basis for device examination, specifically in relation to consent and for victims and witnesses of crime, and 2) to provide increased information to the public regarding the examination process.

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NB explained that Police Scotland had held productive meetings with the Information Commissioners Office regarding the digital examination process and the articulation of the legal basis.

NB outlined that the developed material to-date would be public facing documents and that the Data Protection Impact Assessment (DPIA) and Equality and Human Rights Impact Assessment (EqHRIA) had been reviewed by Police Scotland's Legal Services department and approved.

NB highlighted questions from the Scottish Human Rights Commission which required clarification regarding the legal basis and documents discussed at Justice Sub Committee by Detective Chief Superintendent McLean.

NB sought to clarify the questions posed by **TM** regarding internal legal advice provided to Police Scotland.

CHAIR outlined that the concern was that internal legal advice was used to guide decisions regarding the use of Cyber Kiosks, rather than external legal advice, suggesting along with DC that Police Scotland release any internal legal advice for scrutiny by the group.

NB confirmed that clarification had been sought from legal services and that the advice given to the Chief Constable was legally privileged.

NB explained that legal advice in the form of independent Queens Counsel Opinion was sought to confirm the legal position of digital device examination in Scotland and was specifically obtained to be a public facing document. **NB** highlighted that nothing in Murdo McLeod QC's advice contradicted the internal legal advice provided to the Chief Constable.

DC advised that Police Scotland should release the document, as this would increase transparency of the process.

NB stated that there was nothing of concern within the document or that would provoke criticism and that the decision to waive legal privilege was for the Chief Constable.

DC reiterated his recommendation that full consideration be given to releasing the legal advice given. **NB** confirmed that this would be referred for consideration, however advised that the content of the legal basis had already been shared with the group, albeit not as a bespoke document.

CHAIR echoed the recommendation made by **DC** and provided that the legal basis had not at that time been provided in formal written form.

CHAIR invited **CG** to introduce the Privacy International paper, however it was agreed that this would be left for AOCB.

5. CHAIR SUMMARY DOCUMENT & POLICE SCOTLAND CAPABILITY

CHAIR outlined that the question posed to the group was to identify what was within Police Scotland's remit to address regarding the proposed go-live of Cyber Kiosks. **CHAIR** reiterated the response received from **TM** regarding the unpublished legal basis and that there was a call for development of clear legislation regarding Cyber Kiosks and Digital Forensic Hubs, however that it was recognised this sits with Scottish Government.

CHAIR indicated that the Information Commissioner Office (ICO) and others had suggested Police Scotland documents produced to date could become a Standard Operating Procedure (SOP) which would be suitable for auditing purposes and would be the natural starting point to ensure that processes are clear.

NB highlighted SOP's often become unwieldy and inaccessible, which is why Police Scotland have decided to develop different tools and documents which cover the remit of a SOP, however are kept distinct to aid accessibility and understanding. **NB** confirmed these documents will be hosted on the intranet and internet to inform Police Scotland officers, staff and the public and that they have been kept as accessible as possible to make them easy to understand. **NB** explained that whilst not called a SOP, the documents articulate the processes and procedures clearly and would be equally suitable for this purpose.

MF stated that it did not matter what the document was called, only that the contents are accessible and all the key information is present, and that the ICO were content with the approach taken.

JB advised that documents must be easy to find and not confusing to navigate – ideally presented on one page to ensure all information is easily accessible.

CD highlighted that as an organisation, Police Scotland are moving away from SOP's due to problems regarding them becoming too onerous and lengthy which makes accessibility difficult. **CD** added this is a force-wide project to make all documents accessible and easy-access.

NB stated that as well as the Toolkit, a suite of documents specifically designed for the public had been produced including Frequently Asked Questions, a Public Information Leaflet and a presentation which would all be published and accessible to the public. **NB** added that by keeping these documents distinct, they were easy to update in the event any change may be required which would be considered as part of post implementation review.

CD confirmed this was the approach being taken by Police Scotland's Policy Unit following positive feedback from officers and staff.

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MF highlighted a successful example of this approach. Perth and Kinross Council's information regarding wellbeing of children and young people was presented in the form of an interactive website which was easy to navigate.

JH added that a dedicated internet area for Digital Forensics and Cyber Kiosks was already in development, where all information would be stored together. **JH** advised that consideration was being given to developing a video product to further increase understanding of the digital examination process.

DC suggested the toolkit could be renamed to become a SOP and questioned if this would be a public document.

NB advised that other documents already addressed the content of the toolkit in a more accessible format and that the toolkit itself was very much an internal document and did not require to be public facing, adding that it was important to balance public information with information overload.

MM added that there is significant overlap between the contents of the toolkit and the document suite, and that due to the contents, the toolkit would require redaction before it would be suitable for publishing.

CHAIR sought clarification that as much content as possible from the toolkit had been included in the Digital Device Examination Principles Document.

NB confirmed this to be correct.

CHAIR advised the information required by a member of the public could differ considerably from that of a civic society organisation and the latter may require more specific detail.

AMc advised that Police Scotland could conduct a cross-referencing process, redacting content which is not suitable for publication and thereafter review what, if any, content remains within the toolkit which is not covered in the document set.

JB highlighted that accountability and transparency regarding how checks on standards are made are essential and how partner agencies such as HMICS and SPA act as important safeguards.

CHAIR stated that the general level of agreement within the group was that the information available addresses these issues, however sought to confirm that accountability and audit were sufficiently covered.

NB confirmed that the Digital Device Examination Principles Document contained details of audit processes.

WF advised that HMICS would not be involved in the development of any information or guidance products as this would constitute a conflict of interest.

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MF stated that the audit and accountability documents would be essential for any data breach investigation conducted by ICO and that they would want to have sight of any policies and procedures to ensure that they have been followed.

SAP confirmed that all documents are essential during the investigation process to show correct procedure is and if this has been adhered to.

HM advised that non-compliance with the contents of Standard Operating Procedures is a common occurrence in PIRC investigations, which is further complicated due to the fact that there are 'hundreds' to follow. **HM** stated that this is why ease of understanding is so important.

NB emphasised the importance that all material pass the 'three o'clock in the morning test' in terms of ease of accessibility, understanding and use for officers as well as the public information test and that this was a key consideration during the development of material.

JB highlighted the importance of minimising the gap between policy and practice and to ensure that regular reviews are conducted.

NB confirmed that all documents will be reviewed regularly and that feedback will be sought from officers and staff so that Audit and Assurance and Information Management can identify issues quickly.

SMc highlighted that robust review and audit processes are already in place, with daily and monthly audit and assurance checks conducted to ensure compliance with force policy.

CHAIR sought to clarify that policy vs. practice will be assessed following rollout.

SMc confirmed that it would.

CHAIR stated that the chairs summary would be circulated to all members and that, subject to any objections, would be shared with the Justice Sub Committee on Policing for their consideration.

6. POLICE SCOTLAND RESPONSE TO AGENDA ITEM 5

CHAIR content that this item had been covered already during discussion and suggested moving to Agenda Item 7.

7. LEGAL BASIS UPDATE

MM provided an overview of the detailed discussions which have taken place between Police Scotland and the Information Commissioner's Office regarding the legal basis and the use of consent in relation to victims and witnesses of crime, highlighting the Data Protection section of the Legal Basis document which articulated the basis in Law for data processing

NB reiterated that the final challenge regarding the legal basis had been the proposed use of consent to take possession of devices belonging to victims and witnesses of crime and that, following discussion, Police Scotland have now clarified the position and are well-placed in anticipation of Cyber Kiosk roll-out. **NB** highlighted the importance to balancing the provision of information in an easy-to-read format and ensuring the law is accurately reflected.

JB outlined that the legal basis document splits extraction of data and processing of data, and welcomed the updates made to the legal basis regarding the lawful authority used to take possession of a device, however, noted that consent only applying to the device itself may cause confusion.

CHAIR proposed that members be provided an additional week to consider the Legal Basis and provide comments.

NB proposed that this be recirculated with the minutes of the previous meeting.

CG raised concerns that consent was being used to take possession of a device but not to process the data within and asked if ICO had been consulted.

CHAIR proposed that this might be covered later in the agenda, however invited comments at this time.

SAP provided the ICO perspective, stating that data processing should not be conducted using consent as it cannot meet the all elements of consent providing that whilst potentially confusing, processing cannot be conducted using consent, however taking a device can.

CG raised concern that even if this approach is lawful, could it be considered 'dodgy' in the eyes of the public? Would the public understand that their consent is only for the device to be taken? **CG** proposed that the meaning of consent may be becoming diluted / confused and expressed concerns that the process did not 'look right'.

MM outlined that this had been a key consideration for Police Scotland, and that efforts had been made to address this within the Public Information Leaflet to avoid any potential confusion. **MM** highlighted this document had been presented at the public engagement events and no concerns had been raised regarding any dubiety when using the word 'consent'; in fact the

primary concern of the group had been the return of the device, rather than the data within.

NB highlighted the importance of an active conversation between victims and witnesses of crime and Police Scotland to ensure that a full explanation is given regarding what is being consented to.

CG stated that whilst recognising the efforts made to provide clear information within the leaflet, further consideration would be required before Privacy International could commit regarding their position. **CG** highlighted concerns regarding the transparency of the Cybercrime Forensic Hubs.

NB highlighted that the opportunity to discuss both Cyber Kiosks and Forensic Hubs within the document suite had been taken to try and alleviate any concerns regarding the processes conducted within the Forensic Hubs.

CHAIR asserted that this was beyond the current scope of the group, however that it was an important point to consider going forward and thanked **CG** & **SAP** for their contributions.

8. KIOSK ROLL-OUT - POLICE SCOTLAND UPDATE

NB outlined that Police Scotland believe that they are in a strong position and are now seeking opinion from the Force Executive regarding a potential rollout. **NB** invited members to raise any specific concerns or actions as soon as possible, as all outstanding matters are believed to be addressed.

CHAIR proposed that an agenda item be added at the end of the meeting to capture any further actions required prior to rollout.

9. POLICE SCOTLAND – CONSENT – PUBLIC INFORMATION LEAFLET

MM provided an update to the group regarding the public engagement events which have been conducted regarding the recording of consent from witnesses and victims of crime and outlined the significant changes which have occurred to the document suite as a result. **MM** provided an overview of the PowerPoint presentation which will be used to brief officers and staff and confirmed that this would be public facing.

NB highlighted the point that the fact a crime has been committed does not mean that a device will automatically be examined, contrary to incorrect reports in UK media.

NB highlighted the importance of the consent engagement workshops and the essential contributions which have helped to increase accessibility and maximise understanding.

CHAIR acknowledged the importance of these events and the contributions made.

10. POLICE SCOTLAND – PUBLIC FACING DOCUMENTATION

MM invited comments from the group regarding the public information leaflet, highlighting that the prospect of an information leaflet and consent declaration as means to inform and capture consent had been well received during the consent engagement workshops.

The group discussed the wording of the leaflet and suggestions were made regarding the wording of questions 2 and 3 specifically.

DC proposed that the terminology used may be causing the problem, and suggested that 'volunteer' could be used rather than 'consent'.

SMc highlighted that the word 'voluntary' is used in the explanatory box, and suggested that this might address this concern.

MM highlighted that the document would be subject of ongoing review and is very much a 'living document'.

MF highlighted potential confusion regarding the use of 'consent', the interpretation of that word synonymous with data processing and difficulties this may cause, proposing that the word 'consent' not be used in the questions themselves.

JB indicated that the leaflet focussed on taking the device and does not provide sufficient detail regarding the processing of data which is required under data protection legislation, highlighting that the public information leaflet did not contain details of the data controller, processor and third party involvement.

NB outlined that this document was intended to be a public facing reference / information product and was not intended to replace the existing privacy notices which are already publically available.

JM proposed that reference to the existing privacy notices may alleviate this concern.

JB suggested that including data flow and data transfer processes would be beneficial.

JM suggested that the Frequently Asked Questions may be the best place for this information to be included.

NB highlighted the importance of getting the balance right and ensuring that the most important information required by victims and witnesses of crime is available at the right time.

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SMc emphasised that the Public Information Leaflet was intended to form the basis of a detailed conversation with the victim or witness of crime, and that it was not a case of handing them a leaflet and leaving.

TM queried if the officer would explain that urgency can be used and highlighted the importance of providing a full explanation of the potential change in circumstances to ensure that any consent given is transparent.

NB confirmed that this is an essential part of the conversation between the investigating officer and a victim or witness of crime, reiterating that this is designed to enhance the existing process rather than introducing a new practice.

CHAIR commented that this concern harked back to the issue of balance of power vs consent.

SMc highlighted that the public engagement events have shown a strong desire from the public to be asked (for consent) first, before any lawful authority other than consent is used to take a device for examination.

TM queried the possibility of selective recording of data, rather than the device itself being taken by Police Scotland.

NB advised that this practice already existed, with screenshots and other forms of evidence capture being used where appropriate. **NB** explained that there is an ongoing conversation with the wider justice system regarding how this can be continued in future, advising that Police Scotland will always attempt to secure the best evidence available, however will consider other information wherever possible.

IL commented that the Crown Office and Procurator Fiscals Service already consider this approach in a number of cases and are trying to expand this where they can. **IL** stated that in many circumstances the device itself is required to provide context and to allow defence agents fair access prior to trial. **IL** advised that COPFS are actively exploring this issue to address concerns victims and witnesses have regarding being without their devices.

The group discussed potential confusion regarding the interpretation of the word 'consent' and how this might impact the perception of the public regarding data protection legislation.

SAP clarified that consent is an inappropriate lawful basis for conducting data processing in terms of Section 35 of the Data Protection Act 2018 as this cannot meet the test for consent under the General Data Protection Regulations. **SAP** continued that sensitive data, such as biometric information or information regarding gender, can only otherwise be processed with consent, which cannot be used for the reasons outlined. **SAP** sought to clarify what members sought to achieve regarding the discussions surrounding the lawful basis; be that obtaining consensus as to the content or identifying points where further clarity was required.

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CHAIR invited members to consider this question during a recess.

Session ends.

BREAK

Session resumes.

CHAIR invited **JH** to provide an update regarding Police Scotland's Corporate Communications progress.

JH advised that all existing internal communication channels would be utilised to provide information to officers and staff in advance of roll-out. **JH** advised that Senior Management Team (SMT) briefings were scheduled for all ranks above Chief Inspector, which included question and answer sessions and key points surrounding the use of Cyber Kiosks within their respective command areas.

JH provided an overview of the briefing material to be used to brief officers and staff including a dedicated intranet area, face-to-face briefings and a video which would also be public-facing.

JH advised that due to anticipating high media interest at the time of any go-live announcement, the Chief Constable was fully aware of all developments and a comprehensive communications plan is in place.

CHAIR sought to clarify that given the inaccurate information surrounding Cyber Kiosks which had been reported in the media previously, would there be enough time for engagement with public between any go-live announcement and operational roll-out. **CHAIR** queried if Police Scotland would be pro-active in addressing the media to ensure that accurate information is provided wherever possible.

JH advised that bids had already been received from media companies such as the BBC and that contingency for a spokesperson to be available is included in the communications plan.

DC asked whether the work of the group would be referenced in the communications and **JH** confirmed that it would.

CHAIR invited responses to invitation from **SAP** regarding what the group sought to achieve from the discussions regarding legal basis.

NB advised that the ask for Police Scotland was to clarify the legal basis and that is what has been done. This has supported the formation of all other documents. **NB** highlighted that the legal basis had been discussed with the ICO and they and Police Scotland were happy that the established legal basis is sound.

JM stressed the importance that Police Scotland are not using consent to process data, only to take possession of the device for the purposes of examination.

DC advised that this could be made clearer within the public-facing documents.

MM commented that there were no concerns raised in this regard at any of the public engagement events and the content of the documents and that they were well received; highlighting that there was no confusion regarding the meaning and use of the word 'consent'.

NB reiterated that Police Scotland believe that the documents clearly articulate that consent is only being used for taking the device, not for the processing of data.

MF commented that a number of public bodies had previously used consent as the lawful basis for data processing when they should in fact have been relying on other viable alternatives. **MF** outlined that the approach of separating authorities – such as that for seizure – distinguishing between consent to a service and subsequent data processing – is acceptable to the public and an approach already taken by the National Health Service and Local Authorities, amongst others.

11. POLICE SCOTLAND – EXAMINATION REQUEST FORM

SMc reported that development and testing of the Cyber Kiosk Examination Request Form (ERF) was now complete and highlighted that supervisory approval was required.

12. MANAGEMENT INFORMATION – AUDIT & ASSURANCE

SMc provided an example of the categories of Management Information which can be obtained from the ERF case management system, including details of lawful authority used to take possession of a device, and details of any withdrawal of consent.

SMc outlined the Management Information which will be obtained by Cyber Kiosks and how this will be used to establish how the Kiosks are being used operationally across Scotland and identify any trends in relation to crime types etc.

NB highlighted that Police Scotland has started to produce Cybercrime Management Information already to test and build confidence in the information available. **NB** outlined that Police Scotland seek to procure a new, improved, case management system for Cybercrime and that Management Information will be a fundamental component of the required specifications.

NB reiterated that just because an ERF is submitted, this does not mean that the device will be examined and that the supervisory approval process is

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fundamental to ensuring all examinations are necessary. **NB** invited feedback from the group regarding any additional information which is required.

DC highlighted the positive aspects of the Management Information and requested that electronic copies of these be shared with the group as soon as possible, adding that this transparency would help to garner support as it demonstrates the need for Cyber Kiosks.

CHAIR invited Police Scotland to consider the lessons learned from Stop and Search and to provide a broader context to the MI figures, stating that this was essential for any publically available information. **CHAIR** invited members to feedback within seven days on propositions as to what data should be included within the MI report.

NB indicated that the MI document would be circulated to the group alongside the other papers.

13. EXTERNAL REFERENCE & STAKEHOLDER GROUP – FUTURE REMIT

NB expressed thanks on behalf of Police Scotland for the support and assistance provided to date and outlined that whilst this had originally been a Police Scotland proposal, the group had expanded and now had an independent Chair and Deputy Chair whom directed activity accordingly. **NB** outlined that **AMc** had extended an invitation to the Chair and Deputy Chair to meet with **AMc** to consider the future terms of reference for the group.

CHAIR indicated that the remit of the group might extend following the rollout of Cyber Kiosks.

NB stated that the focus of this group was the development and implementation of Cyber Kiosks, however recognised the concerns raised and proposed that consideration be given to another group to consider these wider issues.

CHAIR indicated that this group could continue into implementation / rollout and that a review could thereafter take place.

MF highlighted that once implemented, as a regulator ICO are required to take a step back to avoid a conflict of interest, and therefore could not continue involvement post rollout.

DC welcomed the invitation to meet with **AMc** and outlined that the natural path forward would be for the group to consider the activity conducted within the Digital Forensic Hubs.

NB highlighted that it would be for the **CHAIR** and Deputy Chair to identify to Police Scotland what areas would be considered in future.

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CHAIR outlined that members of the group would be consulted to obtain their views.

14. REVIEW OF ACTION LOG

CHAIR stated that the only outstanding action related to **SMc** liaising with Cellebrite regarding a statement to operators of Cyber Kiosks regarding their details and activity being logged and audited.

SMc confirmed that digital forensics staff were working with Cellebrite to develop an electronic solution and there were no anticipated issues, however a contingency existed to place a hard-copy notice on each Cyber Kiosk.

15. A.O.C.B

CHAIR invited the submission of any activity members felt was required prior to roll out, within a seven-day timeframe, due to Police Scotland approaching the Force Executive for approval in the coming weeks.

DC provided a format statement on behalf of Open Rights Group highlighting concerns regarding the lack of clarity contained within the legal basis and outlining desired Management Information categories, some of which had already been addressed by **SMc**.

NB proposed that legal clarity would ultimately become a matter of opinion and sought a consensus from the group regarding whether or not lack of legal clarity was a concern.

MF stated that ICO were content that the legal basis had been articulated well however, recognised that an opportunity to present it clearer to the public may exist. **MF** confirmed that ICO are happy with the stated legal basis and that it is fit for roll-out.

CHAIR agreed to write to Justice Secretary on behalf of External Reference and Stakeholder Groups with regards to independently chaired group looking at Police Scotland use of technology which is still to be established.

16. CLOSING REMARKS

NB expressed her thanks to the group and advised that an update will be provided to all members regarding any go/no-go decision made and thereafter look to arrange a further meeting.

CHAIR thanked all members for their attendance and contribution to the meeting.

17. DATE OF NEXT MEETING

NB advised that the date of the next meeting will be provided to members in due course.