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## Digital Triage Device (Cyber Kiosk) Reference Group

### MINUTE OF THE MEETING

**DATE:** Thursday 11 June 2019

**LOCATION:** Nellis/Collins Conference Room Scottish Crime Campus, Gartcosh

**CHAIR:** Dr Liz Aston (Scottish Institute for Policing Research)

**SECRETARIAT/  
MINUTES:** DC Grant Wilson

### MEMBERS IN ATTENDANCE:

Dr Liz Aston	( <b>CHAIR</b> ) Scottish Institute for Policing Research (SIPR)
DSU Nicola Burnett	( <b>NB</b> ) Police Scotland, Head of Cybercrime
DCI Iain Craib	( <b>IC</b> ) Police Scotland Cybercrime
DCI Stuart McAdam	( <b>SM</b> ) Police Scotland Cybercrime
DI Michael McCullagh	( <b>MM</b> ) Police Scotland Cybercrime
Dr Duncan Campbell	( <b>DC</b> ) Advisor to Open Rights Group (VTC)
Dr Megan O'Neill	( <b>MO</b> ) Dundee University
Mr David Freeland	( <b>DF</b> ) Information Commissioners Office
Ms Ailidh Callander	( <b>AC</b> ) Privacy International (VTC)
Ms Karen McFarlane	( <b>KM</b> ) Gender-Based Violence NHS Lanarkshire
Ms Lillian Liesveld	( <b>LL</b> ) Assist
Ms Sandy Brindley	( <b>SB</b> ) Rape crisis
DC Grant Wilson	( <b>GW</b> ) Secretariat

## 1. INTRODUCTION AND WELCOME

**NB** opened the meeting and thanked members for their attendance at this meeting of the Cyber Kiosk Reference Group. **NB** welcomed the new members to the meeting.

**NB** introduced **LA** as the new CHAIR of the group and for the benefit of the new members attending the meeting for the first time and for **AC** on the teleconference, 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;

CI Iain Moffatt, Police Scotland, Strategy and Innovation  
Mr Aamer Anwar, Aamer Anwar and Co  
Mr Diego Quiroz, Scottish Human Rights Commission  
Ms Millie Wood, Privacy International  
Ms Anne Hayne, Gender Based Violence Manager NHS Lanarkshire  
MS Mhairi McGowan, Assist

## 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.

**CHAIR** noted that some members were late representatives to the meeting and in order to allow appropriate time to consider the minutes asked that members consider and respond with any amendments within the next 7 days.

## 5. TERMS OF REFERENCE

**CHAIR** asked members if the TOR were still correct or if any changes were required.

**DC** confirmed that no other changes had been made recently.

**CHAIR** confirmed other than membership no changes had been made.

**NB** highlighted that no deputy chair had been identified since **LA**, **NB** highlighted that she is happy to undertake the role should there be no volunteers from out-with Police Scotland.

**DC** added that he may be interested in taking the position however wished a clearer understanding of the Scottish Government and direction the group were going position before considering the role, but may be interested.

**CHAIR** stated that this point shall be re-addressed at the end of the meeting where hopefully this shall be addressed.

## 6. SUMMARY POSITION

**NB** provided a PowerPoint presentation to the members highlighting the summary of position.

**NB** updated that the question of legal basis had been answered by senior council Murdo McLeod QC and has been shared with Members, the SPA and Justice Sub Committee.

**NB** updated that engagement with JSC is on-going and the work in relation to the suite of documents is developing. With work being undertaken on the Public Information Leaflet, FAQ, Toolkit and Consent Forms.

**NB** Added that the EQHRIA/DPIA had been circulated to members of this group and the Stakeholder Group ahead of the meetings today.

**NB** informed that DCC Kerr had stated at the last sitting of the Justice Sub Committee that the intention is to roll out the Cyber Kiosks in the summer of 2019.

**NB** highlighted that it is important to understand that Cyber Kiosks are only one part of the work being undertaken by the Cybercrime Teams and it was important to reflect on the significant contribution which has been required by the team over the last 12 months in support of developing a detailed plan for roll out.

**NB** referred members to paragraph 2 of the legal opinion provided highlighting the statement 'my principal conclusion is that there is a legal basis for the use of cyber kiosks.

**DC** highlighted that he had a few points to raise however caveated that all or any criticism is intended to be constructive, and highlighted that the approach taken by Police Scotland is exceptional in comparison to other forces around the UK, with the willingness shown by Police Scotland to engage in a transparent manner with partners and key stakeholders both internal and external.

**DC** informed that the Legal Counsel Opinion is not as comfortable from the outside. Adding it is whether all uses of Kiosks are legal. Search and seizure, consent and warrantless access are still an issue.

**DC** informed that he found Paragraph 15 uncomfortable as it ranged widely. Highlighting the first sentence "Additionally, as I understand it, cyber kiosks are no more intrusive than the systems that have been in existence for many years at the central Cybercrime Units" **DC** added that discussion should include the application of Public Information leaflet, Consent and Guidance Documentation to overall cyber process with Cyber Kiosks attached.

**DC** added that the cyber Kiosks are not the problem, in context of existing practices Kiosks are a vast improvement as they greatly minimise intrusion.

**DC** added that the second sentence in paragraph 15 "Although by no means determinative of the issue, from a perusal of the authorities I cannot find any Scottish case where it has been suggested, far less established, that the examination without warrant, of ICT devices at the existing Cybercrime unit, has in any way breached Convention rights." Stating that this may well be the case but not the question to be answered.

**SB** highlighted paragraph 30 of the legal opinion highlighting that the issue of consent and privacy rights of the complainers need to be separate and informed that consent needs to be specific and not general. **SB** highlighted the issues that have been faced in relation to access to medical records.

**SB** stated that there are a few concerns on this, How is consent gathered? Informed Consent? Need to be very clear on what consent has or is being granted.

**DF** informed members that he had submitted a letter from ICO for members information immediately before the meeting adding apologies that this was submitted on the morning of the meeting.

**DF** reiterated from the letter that he was disappointed that the scope of the legal advice was only on one set of individuals, warrantless searches of arrested persons. **DF** added that ICO have sought a review on the basis of the legal position in relation to each category of data subject, including victims, witnesses and third parties. **DF** added that in his opinion ECHR is still not being complied with in relation to 'in accordance with the law'.

**DF** added that his position is that the legal basis is not as clear nor as specific as is required.

**DF** informed that the view of ICO is that there is a desire for the Government to set up a framework to progress, highlighting that at the ICO is not looking solely at Police Scotland in this regard but across the UK. **DF** informed members that the report from the ICO is still under construction and would most likely be published in the next 8 weeks.

**AC** added that in line with previous comments it is their stance that the legal opinion is not as clear as it needs to be in relation to Human rights concerns.

**NB** informed members that the Justice Minister is scheduled to appear at Justice Sub Committee evidence session on the matter of Cyber Kiosks on Thursday (13 June 2019)

**NB** informed that in terms of the legal opinion, the letter we submitted on 4 June set out the requests for consideration when seeking the legal opinion which did not appear to have been considered by ICO in their most recent response to JSC.

**MM** stated that in terms of the legal opinion there is not much more Police Scotland can do and asked the group if there is anything further they believe Police Scotland can do on the matter?

**DC** stated that this concerns him, in relation to the interaction between the parties. **DC** highlighted that Police Scotland approached COPFS for assistance and guidance on what to do and didn't receive the assistance asked, that is not Police Scotland's fault.

**DC** added that it should be written into processes tasking ERF to allow officers to direct kiosk examiners to look for 'X' may be a solution.

**NB** added that this will be covered as the presentation continues. **NB** further confirmed that the main document suite was in support of Kiosk triage and digital Forensic Examination as it was recognised that to complete policy for kiosks in silo was impractical.

**CHAIR** added that it may be for this group to put forward a recommendation that further action should be taken but the focus should be on the kiosks.

**SB** added that there should be assurances provided that no further information shall be accessed during the examination.

**MM** continued the presentation providing an overview of the document set that is being progressed.

**NB** added that any additional observations or comments would be gratefully received however in the interest of progressing the documents respectfully ask that members inform of any comments in the next 2 weeks.

**ACTION – MEMBERS TO PROVIDE ANY ADDITIONAL COMMENTS ON THE DOCUMENT SET WITHIN THE NEXT 2 WEEKS (BY 28 JUNE 2019)**

**MM** highlighted that the toolkit shall be circulated shortly to members for review.

**7. CONSENT ENGAGEMENT - CONSULTATION**

**MM** provided an update in relation to the progression of the consent capture and public information leaflet, highlighting that the overarching aim is to provide better information to people.

**NB** added that the consent capture form will support the active communication between the officer and the person being interacted with, this will be further supported with FAQ's being developed.

**MM** informed members that Police Scotland Cybercrime Capability Programme hosted a consultation event on digital device examination and consent capture. The invitation for the event was broad with numerous national bodies invited and 15 attending. Attendance for the events included numerous organisations representing all protected characteristics and victims of crime including domestic abuse and rape. The event sought to engage the public regarding their understanding of device examination identify key concerns and discuss the challenges and potential solutions to consent capture.

**MM** played a video to members of the recent appearance by DCC Kerr at the Justice Sub-committee evidence session on Cyber Kiosks.

**NB** added that Police Scotland are not changing policies or doing anything new just trying to do it better. It's about a better more transparent process and providing support to victim service improvement.

**NB** highlighted that it is really important to note that contrary to the headlines, we are not doing digital stop search or digital strip search. The Police need to be investigating a crime or incident and the digital device needs to be identified as a reasonable line of enquiry.

**AC** asked if this would be free consent, adding that the video from the Justice Sub Committee appearance suggested that other methods would be used should there not be consent to the examination.

**MM** informed that it shall be freely given, unambiguous consent.

**NB** added it is key function of the Police to keep people safe and the investigation of crimes. If the person refuses consent that doesn't mean that we won't investigate. As with all crimes the Police will continue to investigate all reasonable lines of enquiry.

This issue isn't a new issue faced by policing, take for example a Serious Assault where the complainer (victim) is non-compliant we don't just walk away we look for other ways to investigate and prove the incident (offence) its our duty as police officers and a police service.

**CHAIR** asked that given the time constraints can the presentation be continued and any further comment be kept until its conclusion.

**MM** continued with the presentation to members.

**MM** highlighted the objective of the event that was held on 29 May was "This is about you and who you represent. Your concerns define our requirements."

**MM** highlighted the focus on the consent concerns seeking suggestions on potential capture mechanisms. **MM** provided the members with an overview of the questions posed to the attendees and the background of consent in England and Wales where a 9 page consent form currently exists, asking if this is the correct was forward or is there a better way to articulate the consent requirements.

**MM** provided an overview of the 3 main powers explored, With Consent, Under Warrant or Urgent examination.

**MM** informed that the feedback from the attendees was collated on the day. **MM** explained that the event was 4 hours long and following the feedback Police Scotland are looking to deliver a full day event on 5 July.

**MM** informed that the overriding feedback from the event was that the attendees were focussed on getting the device back rather than the issue of the data that may be contained on the device and wanted to ensure that they got their devices back as quickly as possible.

**NB** added that this feedback had been surprising, the question had been posed by attendees of “why can’t you just take the data and give me my phone back.” “Take what you want to do your investigation just give me my device back and let me move on”.

**NB** further stated that the access and management of data was clearly critical as was device retention and both issues continued to be considered and discussed with COPFS as to how we might improve this area within criminal justice.

**NB** added that one of the attendees at the event was COPFS which was of benefit to allow an understanding of the feedback and position taken.

**NB** highlighted the focus going forward clearly should be community engagement and devising a suite of information, which is underway with the document set, this should be an on-going communication to and with the public on digital forensics.

We should be looking to get the information out for awareness and not just in response to an incident.

**SB** highlighted that device seizure was the biggest issue taking their devices when they need them most and feel at their most vulnerable and they may be without them for 2 years in some circumstances.

**SB** added that on the issue of consent this needs to be simple and clear what people are being asked to consent to. Consent shouldn’t be sought straight away but let the victims go away and think about it. Are there specific parameters to the consent?

**SM** added the point that there may be a need for consent for a full image of the phone to allow protection of the victim but also for the enquiry, the victim or device holder may not know everything that is on the device at the point of contact. There may be further information that comes up at a later date and if it’s not captured at the time then it may be lost.

**SB** would everything be disclosable.

**SM** What we are trying to do is identify reasonable lines of enquiry in each specific case and ensure that the search parameters of a device are set accordingly. The data extracted from within the parameters will be reviewed to assess what is relevant and should be revealed to COPFS who would ultimately make the decision of what is disclosed to the defence in each case.

**SB** that is into difficult territory in relation to Article 8.

**SM** we need to image the full device but we only then search data as per the agreed search parameters. This protects everyone involved.

**SB** Left the meeting due to having another obligation to attend which had been intimated to **CHAIR** at commencement of the meeting.

**AC** added that this needs to be based on law.

**SM** highlighted that in order for a full image of the device to be captured this requires submission to the Hub, the kiosk doesn’t capture anything from the device.

**MO** added that the feedback highlighted from the event shows the position just take my data, will that change what we are trying to achieve in relation to consent?

**NB** replied there are clearly wider matters to be considered by the criminal justice community in terms of evidence in a digital world.

**MO** that is why we need informed consent.

**MO** added that in relation to the circulated flowchart there needed to be a clear mechanism for the capture of consent depicted on the flow chart.

**MM** consent may need to be supported by a suite of documents

**NB** informed that the point **SB** made in relation to keeping the consent element simple and short was understood however there were others who desired a bigger form to include protected characteristics and different victims groups, which is why we are looking at FAQ to support the products to allow informed consent.

**MM** updated that a further event shall be held on 5 July.

**DC** asked, when you engaged during the event did you ask 'how would you feel if we captured all the data just in case we needed it later but would continue to liaise in relation to consent to allow you to get your phone back?'

**MM** Yes however that could cause difficulties in terms of how people interpret "give us all your data and we will give you your phone back." However it should be clear that the emphasis has to be on honesty and transparency.

**CHAIR** reiterated that he Kiosks examination only steers the investigator and will only be through the hubs that an examination of the device can be captured.

**NB** stated yes, it's about the layers of consent for the different examinations.

**DF** updated that supports my view take them through the stages, they need to understand that you may come back.

**LL** added we got a preview of how it works it's a way of letting people understand if their device is of use and understand each stage

**MO** stated that in terms of the flow chart informed consent needs to be reflected at the different stages and show where consent factors in and should be sought.

**MM** public will inform that requirement, the vast majority will by-pass the kiosk to the hub.

**DC** asked if there had been any intimation from COPFS of whether it would be acceptable to hand the device back to the owner subject of the data being obtained.

**NB** informed that COPFS policy are considering that at present, and active conversations are on-going. The consideration is around best evidence test and that is for COPFS to advise on.

**DC** added that the benefit would be Police Scotland evolve towards what would be best practice

**MO** left the meeting at this stage.

**NB** stated the main thing is we want to be able to demonstrate the capture of consent and ensure that it is consistent and accountable.

## 8. TOOLKIT & PROCESS

**SM** provided members with an overview of the cybercrime gateway process flowchart, highlighting that this process ensures that the basis for seizure is legal, necessary, proportionate and justifiable.

**NB** highlighted that it was important to that this is a recognised existing process that has been updated with Kiosks.



**CHAIR** asked if there were any questions? No questions were presented at this stage

**SM** Continued the presentation providing members with an onscreen demonstration of the Examination Request Form (ERF).

**NB** informed that the management information will be tested to ensure that it will be robust and stand scrutiny.

**NB** updated that there shall be very limited Management Information available from the Kiosks as there is very limited information retained on a kiosk, highlighting;

Who logged on

How often the kiosk is used,

**NB** highlighted that the Management Information that shall be captured from the process overall is;

- Crime Group/Type
- Reason/Purpose of Examination
- Region/Unit/Division/Kiosk
- Status of Owner
- Device type
- Power of Seizure
- Declined Forms/Reason

**NB** highlighted that the desire is to get to the point where the MI can be published.

**DF** asked would that show to Kiosk Level or Divisional Level?

**NB** informed that the options were still being explored for publication but would probably be geographically.

**SM** added that this would probably be monthly.

**Chair** highlighted that due to the time and members requiring to leave it was the intention to not cover the rest of the agenda items and move onto the Action Log.

## 9. REVIEW OF ACTION LOG

**CHAIR** provided members with an overview of the outstanding action log and sought updates as below;

**5/18 – NB** updated that COPFS are currently looking at this and shall advise. **NB** suggested and sought the member's approval to moving this action to the action log for the Stakeholders meeting as COPFS sit there. **Chair** agreed, **DF** stated that this was acceptable so long as Police Scotland continue to update this group on the progress. **ACTION CLOSED**

**06/18 – NB** requested that this action be considered for closure due to Police Scotland's continuous engagement with all organisations including privacy international. – **CHAIR** agreed **ACTION CLOSED**

**11/18 – NB** proposed that this action be considered for closure as this has been covered in the presentation today. **DC** asked for assurances that this shall be subject of on-going review, **NB** stated that it was, **Chair** agreed for closure – **ACTION CLOSED**



## 10. AOCB

**CHAIR** invited any AOCB matters from the members.

**NB** updated that Police Scotland are attempting to roll out Kiosks and have legal opinion on the legal basis, however noted the wider discussion.

**NB** asked in terms of the roll out what is expected of Police Scotland from this group that we haven't done or is standing in the way of this group's support of the roll out?

**DC** added, I am aware that it is out with the power of this group but we can pass opinion on the process. If Police Scotland are committed to give complete clarity of legal framework then what is the reason for not deploying the kiosks now.

**DC** re-iterated that the legal issues are not going to be resolved in the short term.

**DC** deficiencies in the current practice need to be addressed but unless we close down policing then we have to allow it to continue and to evolve.

**DC** stated that his personal view on kiosks is win-win on roll out. Clearly it works to minimise intrusion and facilitates the earlier return of devices to their owners.

**DC** stated there is an outstanding political decision to address. A clear commitment from government to address the law and forum required to discuss same

**AC** reiterated these views.

**Chair** asked the member's if the group needs to proceed?

**DF** bigger question on the legal framework is for the Government to sort.

**CHAIR** does that provide a block to roll out? Or is it roll out and this is a bigger consideration?

**DF** processing of personal data has to be lawful, our report will cover that.

**DC** kiosks?

**DF** no distinction in relation to personal data.

**DC** its happening now so why does kiosks change that is there a view?

**DF** we will report in next 6 weeks what our view is, it is a decision for the chief constable.

**NB** we are committed to wider discussion and the DCC made it clear that it was to improve service.

**NB** we have an opportunity to mitigate the concerns with the Kiosks, with the kiosks being rolled out with strong support in place.

**DC** added that praise has to be given to Police Scotland and the commitment to get it right. It's of note that the documentation has enormously improved and it is recognised that it is developing.

**DC** added that in terms of the legal opinion in his opinion there is a gulf between legal counsel stating its ok and the responses of the different organisations represented. At a minimum to make this work there needs to be a code of practice which may over time progress towards new legislation. That is for the parliament. It's a matter of balancing the benefits of roll out against desire for robust legal framework.

**DC** added that the law is inadequate but it always has been, the benefits of the kiosks are clear.

**Chair** highlighted that it is recognised

**NB** Final decision is that of the Chief Constable it is an operational decision, but we have understood the need to engage to get it right and ensure public confidence.

**NB** asked members, what else can we do to get your support for the roll out of Kiosks, understanding and noting the discussion on wider legal basis?

**DC** would this group recommend not to deploy or at Chief Constables discretion?

**NB** what else does the group expect? Is there a point that you can identify that you will support?

**DC** contribution to Code of practice, process for review and policy moving more towards recognise hubs as an integrated system and that Kiosks are reflected in legal parameters.

**NB** highlighted that Police Scotland will continue to engage but need to keep planning for the proposed roll out of the kiosks.

**NB** again asked members, what is the point we need to get to get support?

**DF** stated, my hands are tied by the report we are writing so I can't commit to anything today.

**LL** added that rolling out the kiosks will help the lives of our clients but it doesn't mean we support the wider position, but could go ahead with the kiosk roll out.

**Chair** asked members to reconsider the earlier request for a deputy chair to be identified.

**DC** stated he would be happy to take up the position.

**NB** asked if the secretariat support was required going forward to support **CHAIR** and **DC** as deputy Chair,

**Chair** yes.

**NB** can I respectfully request that responses are back to chair.

**ACTION – MEMBERS TO CONTRIBUTE WHAT IS OUTSTANDING IN WAY OF BARRIERS TO ROLL OUT OF KIOSKS AND WHAT ACTION CAN BE TAKEN TO ALLOW THE ROLL OUT TO BE PROGRESSED BY POLICE SCOTLAND.**

**DF** shall we look at a meeting of non-police members of the group to seek a common position.

**Chair** we need to support the purpose of this group to enable this to happen.

**DF** we will take this away to consider.

## 11. CLOSE

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

## 12. DATE OF NEXT MEETING

**NB** informed at this time that it is the intention to hold a further meeting at the start of September with details to follow. **MEMBERS** agreed.