



Security Classification:	OFFICIAL
Contents may be seen by:	
Author:	DS Jane McCourt
Organisation:	OCCTU
Telephone:	01236 818140
Date Created:	10 th September 2019

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

MINUTE OF THE MEETING

DATE: 1130-1530 Monday 9th September 2019

LOCATION: Nellis/Collins Room Scottish Crime Campus.

CHAIR: Dr Liz Aston- Scottish Institute for Policing Research (SIPR)
DSU Nicola Burnett- Head of Cybercrime, Police Scotland

SECRETARIAT/
MINUTES: DS Jane McCourt

MEMBERS IN ATTENDANCE:

Dr Liz Aston	(LA) Chair- Scottish Institute for Policing Research
DSU Nicola Burnett	(NB) - Chair Police Scotland, Head of Cybercrime
DCI Stuart McAdam	(SM) Police Scotland Cybercrime
CI Claire Dobson	(CD) Police Scotland Information Management
DI Michael McCullagh	(MM) Police Scotland Cybercrime Capability Programme
Inspector Iain McPhail	(IMc) HMICS
PS James Sinclair	(JS) Police Scotland
Robert Hayes	(RH) SPA
Tatora Mukushi	(TM) Scottish Human Rights Commission
Andrew O'Neil	(AO) Police Scotland Corporate Communications
Iain Logan	(IL) COPFS (VTC)
Leila Ritchie	(LR) Police Scotland – Cybercrime
Matthew Rice	(MR) Open Rights
Maureen Falconer	(MF) Information Commissioner's Office
Jenny Brotchie	(JB) Information Commissioner's Office
Alice Stewart	(AS) Police Scotland – Information Management
Dr Duncan Campbell	(DC) Adviser to Open Rights Group (TC)
DS Jane McCourt	Secretariat

1. INTRODUCTION AND WELCOME

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

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

Dr Megan O'Neill	Scottish Institute for Policing Research
Dr Sandy Brindley	Rape Crisis
Ann Hayne	Gender Based Violence Services NHS Lanarkshire
Inspector Stephen Tidy	(HMICS) Represented by Inspector Iain McPhail
Craig Donnachie	SPA Forensics

4. MINUTES

The Chair proposed the minutes of the last meeting of the Cyber Kiosk Stakeholder and Reference Groups 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. TERMS OF REFERENCE

NB updated that Terms of Reference have been amended to include new members who are representative of victims groups and highlighted that Police Scotland continue to liaise with COPFS on matters of digital forensics to continue to identify opportunities to improve and in addition that the SPA had established a Digital Forensic Working Group.

NB highlighted that there are broader issues beyond implementation, which go beyond the terms of reference for the Groups. It was imperative to broaden the membership of the Reference Group to attract critical input with respect to consent and engagement with victims.

6. SUMMARY OF POSITION

NB thanked the Groups for attending, stating that she appreciated the on-going engagement which has been critical to implementation by allowing views and opinions to be considered.

NB provided an overview of position; the DPIA and EqHRIA continue to be developed with a view to finalising both documents prior to implementation. Engagement continues with interested groups the primary focus being on the articulation of legal position.

NB highlighted the Principles of Use document has been submitted to Police Scotland Legal Services and ACC Angela McLaren as Senior Responsible Officer and includes digital forensics. A response is expected in 4-6 weeks

NB sought the opportunity to thank every member of the Groups, stressing the significant learning gained will shape how an organisation engagement with interested parties will take place going forward.

In respect of the Toolkit- training has been completed for the 410 identified officers, developed using the learning gained from the two debriefs involving the officers. The learning gained has shaped the Toolkit which will be published on the internal website for users. There will be particular focus on roles and responsibilities.

There continues to be a wider conversation regarding consent which will be updated under agenda item 7.

NB updated in terms of the Justice Sub Committee on Policing, John Finnie MSP sought clarity in respect to two matters; confirmation of roll out/implementation of digital triage devices in the summer and the scope for a post incident review. Police Scotland have submitted in draft the proposed; Post Implementation Review. The implementation of digital triage devices has been deferred to later in the year to ensure all matters arising from ongoing consultation are considered.

NB updated the Group that ACC McLaren, DSU Burnett and the Information Commissioner's Office had teleconference with regards to the outstanding UK wide ICO investigation into cyber kiosks.

MF stated that there appeared to be a misunderstanding in terms of status of current ICO investigations. She confirmed that the formal report did not come out in the summer and that the investigation remains on-going. There has been consideration given by the ICO with respect to different legislative frameworks. Scotland and Northern Ireland are separate jurisdictions and it is anticipated that this will now be dealt with by means of separate reports.

RH queried dependencies in report and asked what the timescales are? RH highlighted from Police Authority perspective view to be working with unknown timescales is unhelpful.

MF answered that timescales are unknown at present

RH queried if this had been communicated to the Chief Constable and the Justice Sub Committee in terms of the time slippage.

MF confirmed that ICO were providing a response to Justice Sub Committee by 25th September

RH highlighted that the ICO is seen as critical stakeholder and the investigations and subsequent reports are important considerations for SPA and Police Scotland

NB queried if there was anything to identify any specific issues or concerns at this stage?

MF highlighted that the investigation is an ICO investigation, if the timescales do not work for Police Scotland consideration should be taken as to whether the results of the investigation would be nice to have rather than a crucial factor in the implementation.

RH asked since it was highlighted publically to the Justice Sub Committee, would a time frame be made available?

MF confirmed it was a matter for the investigating team based in Wilmslow.

NB highlighted that David Freeland was asked if Police Scotland would be active part of the investigation. David had agreed to write to the Chief Constable regarding the status of Police Scotland.

MF assured she will liaise with the investigating team.

MR sought clarification with respect to the document version.

MM confirmed it was 014 as circulated.

LA queried whether the Group had sight of the latest version of the Principles of Use and Tool Kit.

NB confirmed that the documentation was previously circulated. Police Scotland is confidant in the position regarding legal framework supporting the use of Digital Triage Devices. The opinion with regards to what is currently understood is supported by COPFS and independent legal opinion

7. CHAIR CIRCULATION: ACTION 002/19 FOR DISCUSSION

LA highlighted the paper was circulated to allow an opportunity for amendment. If the Group was comfortable consideration could be given to publishing the document. The document aims to capture the views of External Reference Group

NB thanked the Group for their contribution and added in respect to point 1, if the legal framework is unclear adding that Police Scotland are confident in the legal framework underpinned by independent legal opinion and COPFS which has been submitted to Justice Sub Committee. Police Scotland's work within the law has been taken as far as it can be as an Organisation.

MR highlighted Police Scotland cannot implement legislative changes this would be for Scottish Government to consider.

NB confirmed Police Scotland is in final stages of developing DPIA and EqHRIA documents and added it would be useful for the Groups to consider any necessary amendment required to be made, cognisant of what is under the control of Police Scotland, as an Organisation to change. From a Police Scotland perspective we are satisfied we have done as much as reasonably practicable by taking on the views of Groups.

NB stressed her disappointment at the use of terminology such as "secret roll out "and reiterated that Police Scotland has strived to be open and transparent throughout the process.

NB highlighted that it was hoped with the level of engagement Police Scotland would have provided a confidence in how Police Scotland seek to go about our business, which is providing an improved service to the citizens of Scotland. Minutes are published to ensure the implementation would be transparent.

TM highlighted with reference to Item 1 on the draft summary, the Scottish Human Rights Commission had not seen draft legal basis shared with Groups the presentation of which had been at different meeting. The position of SHRC has been articulated in circulations and evidence sessions.

TM further added that risk assessments, policies and the safeguarding part of the process had been asked for but still outstanding although other documentation have been received.

LA confirmed that a year ago the understanding of the legal framework was not clear, when the initial documentation was circulated. Legal advice is important for underpinning processes information from COPFS.

DC commented that the Open Rights Group would rebuff the wording used from their perspective the examples of openness have been exemplary.

NB confirmed it was Privacy International who had referred to a “secret rollout”.

DC highlighted that this was the wording used by Privacy International and not Police Scotland ,that would be unfair, the cyber hub is regarded as an avenue to explore but it is a historical reference.

IL highlighted there was nothing to add from a COPFS perspective as the position was conveyed in letters to ACC Johnson and Justice Sub- Committee which set out the position of COPFS.

NB confirmed the Police Scotland opinion of legal framework has been what has been articulated today.

TM highlighted that it would be useful to see what the advice was pre dating Murdo Macleod’s legal opinion.

NB confirmed it was an operational decision for the Chief Constable to make.

TM has suggested that there is no roll out until legal basis that is a human rights basis, is solid.

LA asked the Group if anything else needed to be added, the summary is representing several views with a summary at the beginning.

NB asked the Groups to differentiate what would be in the gift of Police Scotland to deliver and what would be wider considerations for others.

LA confirmed the admissions were clear and asked the Groups to ask what barriers and what actions have be taken before roll out may yield a similar answer

LA acknowledged Police Scotland can only do so much, the requirement would be for others to look at broader issues

TM suggested making the position clearer as it may be useful for clean readers if the information is there.

LA confirmed it could be looked at but admitted it would be within difficult time constraints

MR highlighted that the Justice Sub Committee would welcome views of the Groups and would be keen to know how Groups are progressing. MR advised checking this would be in order with Privacy International and to update the Chair when submitted

8. KIOSK AND CONSENT DOCUMENT SET UPDATE

In respect of consent, MM presented that there are three legal basis for taking the device if from a victim or witness

- Urgency- proportionate and justified to secure critical evidence
- Warrant
- Consent- required when warrant or urgency doesn't apply

NB stressed there is recognition that Police Scotland has an obligation to improve the recording of consent for victims and witnesses. At present it is recorded in an officer's notebook or captured in a witness statement. The existing arrangements are not auditable or transparent. The issue of consent for victims and witnesses has been explored across digital forensics and not just digital triage devices. This has allowed informed opportunities with respect to consent to ensure that there is better understanding for victims and witnesses. This establishes what they are consenting to in line with data protection and GDPR.

MR queried whether there is a practice if going for urgency or warrant?

NB confirmed if urgency exists the police power would be under common law which will be tested at court with regards to fairness and admissibility.

MR queried if there is urgency to seize could examination could be on hold for a device for weeks or even months?

NB confirmed if a device is subject to seizure for purposes of urgency, this would mean that the examination would be urgent. This is managed through the existing prioritisation matrix which is critical for threat to vulnerability, custody and absolutely would be prioritised.

It is the benefit of digital triage devices that once consent is secured the device will be prioritised in the hub but with a further level of triage.

IL clarified the position that when a device is seized under legal power there would not be another legal authority for examination.

NB further added an enquiry officer or SIO examination request form already exists as an established and robust process. The process has been widened for digital triage devices. The electronic request form (ERF) is submitted to the gateway team and reviewed by a supervisor who ensures that the legal framework for seizure has been adhered to, which supports the examination of the device. If seized by consent, the gateway team will ensure that this has been captured appropriately. If this is not met the examination will not go ahead. Enquiry officers require to be specific regarding what requires to be examined on the device in line with the investigative strategy, what are the objectives of examination for example specific text messages or images which will provide evidence in an investigation.

Before a digital forensic examination takes place there requires to be grounds for

examination. Examples of where urgency would apply would be, national security, threat to life or high risk missing persons.

Urgency may also be applicable if required for proving a charge prior to an accused appearing at court from custody or an SFI which is a specific instruction from COPFS to examine a device for prosecution purposes.

LA queried if seizure is not urgent could information be lost?

NB replied information could be lost if not secured.

LA asked if it would be therefore urgent to seize.

NB confirmed if circumstances dictate that it is urgent to seize a device it would be urgent to examine.

MR asked if seizure of a device is not to preserve life, but instead refers to risk of losing information could urgency still be used if it pertains to loss of information.

NB confirmed the urgency would refer to the information held on the device and the need for it in relation to an investigation, not the device itself.

NB highlighted the requirement for examination would be reviewed on a case by case basis. In broad terms even if concerned information could be lost. The requirement for urgent examination has to be broad, fluid, bespoke on a case by case basis. The purpose of the examination requires to be clear and articulate for a court to decide whether this was fair or admissible.

TM queried whether the use of a warrant could provide an extra check and balance on the process.

NB highlighted that each situation is unique and has to be judged on circumstances. NB reiterated that this is not new process for digital triage devices; it is an existing process which is used for all digital examinations in the wider forensic sphere. Officers are familiar with the process and understand their roles and responsibilities and police powers with respect to digital examination. To seek a warrant for examination would put undue pressure on the Criminal Justice system and would create delay in undertaking investigations and for the victims of crime.

LA asked if COPFS have anything to add.

IL confirmed the key interest is that the evidence provided is admissible in court.

JB suggested another basis in law may be required for the *examination* of the information held on the device in circumstances where the use of urgency in relation to the seizure of the device relates to a risk that information will be lost rather than a risk to life. This is because, in these circumstances, once the device has been seized there may no longer be an urgency to examine.

MR queried where would the check and balance come in?

NB confirmed that the supervisory check is the same for both kiosk and digital examination.

LA queried whether the legal document will be shared with the Group

NB confirmed that the document had been previously shared and will be on the public facing website.

AO confirmed there is a robust communications plan, internally there will be documentation and guidance, and all materials will be available on the internal intranet. Public information including video and key information for including Frequently Asked Questions incorporating if seized and how seized will be supported by the public facing website

NB recognised there were mistakes made with respect to some media pieces previously. To rectify the situation Cybercrime have presented some media pieces, including a demonstration of digital triage devices on Scotland Today to dispel unhelpful media coverage of what a kiosk will be used for.

NB highlighted that Frequently Asked Questions law enforcement and public information leaflets in relation to digital forensics have been developed cognisant that seizure may occur at a traumatic time in a victim's life but ensuring they are aware of principles and legal basis. Prior to Go Live there will be specific media roll out to all Local Policing areas with incremental roll out to each division. There will be active conversation with each Local Policing area to maintain confidence of officer's knowledge and that of their supervisory officer.

LA queried who would be involved video comms; stakeholder or consent workshops, highlighting that communication is essential for public confidence

NB confirmed Police Scotland have a Corporate Communication Team who are, professionally framed in relation to consultation.

LA requested that the Groups consider any barriers to implementation

MM presented the Groups with an update with regards to public engagement events in May 2019. There were 44 representatives including COPFS, Public Protection Unit and Information Management, which aimed to convey

- Understanding of what we did
- Digital device examinations and kiosks
- Consent and examination process
- DPA/GDPR
- Clarity with respect to seizure and examination
- Who would have access to device?
- What is being consented to?
- Processes which support form and supporting material different concerns feedback consent

MM updated the Groups regarding a second engagement event which focused on consent in July which has 12 representatives from various areas.

- From feedback gained there was requests to simplify the form to detail clear affirmation
- To review seizure language
- Change more processes, simplified separate leaflet and form being two separate things
- Consent capture should be standalone with clear guidance being made available to officers
- Examination process read over signature
- Consent withdrawal clear consent underpinned by leaflet and form

The events captured public expectation of what has to be delivered.

NB added there is a need for broad consultation which will continue to be public additions to FAQs. From the first conversation there has to be an understanding that there is a need to support victims.

Police Scotland welcomes informed discussions and accessibility will be looked at, including translation to community languages.

NB acknowledged the work of the teams to deliver the events.

JB highlighted that when it comes to a lawful basis for processing personal data consent is not an appropriate position to rely on. There is a high bar for valid consent. Consent must be unambiguous and freely given. The ICO would need to see forms before a clear position could be given. If withdrawal is not applicable at each stage i.e. seizing, download, triage then consent is unlikely to be valid. Has your legal basis at each stage been articulated? It may be that consent is not applied at later stages

MF highlighted that GDPR provides a more robust definition of consent. For Local Authorities it is liberation from consent for service provision. In terms of seizure, there must be clear communication to the person with regards to what will happen to their information, it is fundamental that it is a fair process

AS informed the Groups that the data flow takes process maps and could overflow the two different languages in data protection. In terms of overlaying the language of police officers and COPFS using a matrix when applicable. When it is not for main scenarios and core business obtain device under warrant. The situation of when a suspect, witness or accused, it would be useful for members of public if available. If challenged there would be a starting point which could be delivered relatively quickly

LA queried are the ICO happy that it would address mitigations of what legal counsel has highlighted is weak in victims and witnesses that assurance assists understanding of where process goes if asking for consent it is appropriate.

NB confirmed that once matrix is in place a meeting with ICO will be arranged to discuss further.

MR asked if there was progress with regards to the withdrawal of consent.

NB highlighted that there is not a specific document for when the situation arises that consent could be withdrawn it is a matter of access to justice. If the device is lawfully seized and examined and evidence reported to COPFS it is no longer applicable as part of live criminal justice procedure. It is imperative that the individual is clear what they are agreeing to. There is a need for the public to be confident that officers are not randomly looking at phones it is part of a process published publicly.

MR stressed that the key importance is that ECHR is complied with. Sophisticated technology can change dramatically. The notion of how technology has been used should be put on consent to inform what information device allows police officer to see, this is too opaque for many people

NB confirmed that FAQs will be kept under review and updated as devices change and evolve.

MF asked the Chair if the issue about Code of Practice could be raised. There is a need for

front line officers to be guided by a Code of Practice allowing the law to be accessible easily understood and allowing officers to know this is what I need to work within

NB confirmed that consent capture and toolkit knowledge is available on the intranet which can always be accessed by officers.

LA confirmed the issue was explored at the beginning of External Reference Group it is an issue which is beyond the activity of the Group which is implementation of cyber kiosks in the current legislative framework

TM highlighted that there was working group comprising SPA and COPFS proposed by Dame Angiolini with reference to her review into police complaints which could potentially be a body with the ability to provide clarity for the police and public

NB confirmed that the External Reference Group wishes to develop provide guidance here and now internally and externally. The Justice Minister and wider Justice Sub Committee have been assured with regards. The concern would be that it would stop implementation and it would not be for Police Scotland to consider but for others.

NB suggested there could be consideration at post implementation review

TM highlighted that SCHR would welcome considering all available tools

MR suggested it may be up to courts to assess in accordance with law it cannot be forecast where and when this would be.

JB suggested that Codes of Conduct in relation to Cyber kiosk with regards to consent and examination may be relevant.

RH highlighted that both HMICS and SPA having existing oversight and governance processes in place. For example, HMICS already has primary oversight of Standard Operating Procedures and Codes of Practice, underpinned by HMICS existing inspection regime which would be appropriate rather than producing a new system of governance.

MF suggested Codes of Practice may provide a way of working to safeguard and mitigate risks.

9. MANAGEMENT INFORMATION/AUDIT & ASSURANCE

SM provided an update to the Groups, with regards to Management information and assurance.

SM highlighted that negative crime type, a Scottish Crime Recording Standards report on prioritisation forms declined and reason for it have been included in management information. In terms of audit and assurance, dip sampling, will be undertaken .Trends will be documented and there will be an ability to cross refer management information with other systems which could be shared publically in the future.

NB highlighted there will be a business case submitted for new case management system will be submitted once confident the system has been tried and tested regularly and scrutinised on a monthly basis.

TM asked if the management system was just for kiosks.

NB confirmed the management system is for the wider digital forensics and could be

considered for other areas.

MR queried whether the ERF also captures types of information searched?

NB confirmed those details would not be published

TM asked could waiting lists/ backlogs be published

NB confirmed this is being explored at the moment, once the ERF management information is finalised, the publication of management information will be explored.

10. REVIEW OF ACTION LOG

Cyber Kiosk Stakeholder Group

003/19 Update provided by DI McCullagh 09/09/19- The re-draft has been submitted to Legal Services for consideration- **ACTION COMPLETE**

004/19 Update provided by DCI McAdam 09/09/2019- This is being progressed by the Forensic Co-ordinators in conjunction with Cellebrite- **ACTION REMAINS ON-GOING**

005/19 Update provided by Alice Stewart- Information Management have liaised with Information Commissioner's Office- **ACTION COMPLETE**

006/19 the redraft has been submitted to Legal Services for consideration – **ACTION COMPLETE**

Cyber Kiosk Reference Group

001/19 The Chair updated all comments received in advance of the meeting- **ACTION COMPLETE**

002/19 This has been submitted, consideration to be taken with regards to what is and what is not in the control of Police Scotland – **ACTION COMPLETE**

11. AOCB

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

NB raised the Post Implementation Review will be circulated to the Groups and has requested feedback within seven days

IMc asked would the review include the toolkit.

NB confirmed it would include any documentation included in the process.

MR stated he would encourage management information, audit and evidence of the backlog being reduced

NB confirmed parameters would include measurements with regards to benefits of cyber kiosks and are proposed outcomes being delivered.

LA suggested including lessons learned for example impact on process changes and perceptions of staff including negatives as well as positives.

OFFICIAL: NONE

LA suggested External reference Group unite to understand the scope of individuals or collate as a group by the end of October/ November for wider communications.

12 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.