

Meeting	SPA Authority Meeting
Date	17 January 2020
Location	John McIntyre Centre, Edinburgh
Title of Paper	Update on Digital Triage Devices and Lessons Learned
Presented By	DCC Malcolm Graham, Crime and Operations
Recommendation to Members	For Discussion
Appendix Attached	Yes <i>Appendix A – Kiosk Consultation Groups</i> <i>Appendix B – Kiosk and Consent Public Documents</i> <i>Appendix C – Terms of Reference Post Implementation Review</i>

PURPOSE

The purpose of this briefing paper is to provide a status update in respect of Police Scotland's proposed roll out of Digital Triage Devices.

Members are requested to note the content of the report.

1 BACKGROUND

- 1.1 The prevalence of digital devices in society is considerable and growing exponentially. Scottish communities now lead digitally enabled lives, placing requirements on policing to keep pace with this change. Transformation and modernisation of policing practices and capabilities are essential to ensure continued high standards of service delivery.
- 1.2 The deployment of Digital Triage Devices (Cyber Kiosks) for use by trained frontline officers will provide the opportunity to triage devices to assess whether evidence exists in furtherance of police investigations. This early identification of evidence enhances operational effectiveness and the criminal justice process. Where no evidence is found the device may be returned to the owner providing an improved service to the public. The implementation of Digital Triage Devices and an enhanced consent capture process supports the delivery of all four Policing Priorities: -
- Protecting Vulnerable People
 - Tackling Cyber Related Crime
 - Working with Communities
 - Support for Operational Policing

2 FURTHER DETAIL ON THE REPORT TOPIC

- 2.1 The intended roll out of Digital Triage Devices to enhance Police Scotland's service delivery has been ongoing for some time. During this time there has been significant interest in relation to Law Enforcements examination of digital devices with a focus on Digital Triage. Scrutiny and consideration on the matter has been widespread and continues to generate significant media coverage, in particular where devices feature in an enquiry involving rape or serious sexual crime.
- 2.2 The roll out of Digital Triage Devices has been the focus of considerations involving Police Scotland at the Scottish Parliament, Justice Sub-Committee on Policing. The Sub-Committee held five evidence sessions from May 2018 to January 2019. The Sub-Committee also received a number of written submissions from Police Scotland and various stakeholders including Crown Office Procurator Fiscal Service (COPFS), Information Commissioners Office (ICO) and Scottish Human Rights Commission (SHRC). In April 2019 the Sub

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Committee produced *“Report on Police Scotland’s Proposal to Introduce the Use of Digital Device Triage Systems (Cyber Kiosks).”*

2.3 The broad themes of consideration in the report were: -

- Trials Conducted
- Oversight & Governance
- Engagement & consultation
- Legal Basis for Use of Cyber Digital Triage Devices

2.4 In relation to this Police Scotland have acknowledged that the previous trials fell below the standard that would be expected of the service. Such trials and pilots should have been better conducted in terms of management, governance, data collection and the required assessments. Significant work has since been undertaken by the Cybercrime and Technical Surveillance Programme Team (CTSP) in terms of consultation and engagement to inform the development of policy and practice as articulated in this report.

2.5 The overt and patent consent of the people we serve is essential to public confidence and service delivery. Public engagement, communication and understanding is paramount in maintaining the trust of the communities of Scotland.

2.6 Police Scotland have worked closely with various groups, partners and stakeholders to consider the legal framework and develop procedures to support digital forensic examination and the use of Digital Triage Devices. This has included enhancement to the process and procedures that support the capture of informed consent from victims and witnesses for the purpose of digital device examination.

2.7 Significant consultation has been undertaken via the Digital Triage Devices External Reference and Stakeholder Group, National Independent Strategic Advisory Group (NISAG) and a series of public engagement events on consent and device examination (a full list of groups and attendees are included at Appendix A).

2.8 Through comprehensive engagement, legal opinion and specialist advice, all matters arising and activities to support the implementation of Digital Triage Devices are now in place. This includes the Information Commissioner Office (ICO) confirming with Police Scotland the mutually accepted legal position regarding the taking and examination of digital devices from victims and witnesses,

including the use of consent. All matters supporting transformation and business change have also been considered.

- 2.9 Police Scotland's Legal Services and Information Management Departments have been involved throughout this process, including seeking Opinion of Senior Counsel. A comprehensive document suite articulating policy, practice and procedure has been developed during this comprehensive consultation process. To ensure transparency, several of these documents will be available to the public via the Police Scotland Website. A list of these documents is included at Appendix B.
- 2.10 With all matters now concluded, approval was granted at Police Scotland's Strategic Leadership Board on 11th December to begin the roll out of Digital Triage Devices commencing 20th January 2020. This roll out will be incremental, starting in Forth Valley and Fife Divisions, with a total of 41 devices being rolled out across all Divisions by May 2020.
- 2.11 Approval was also granted to commence the roll out of the enhanced consent capture process with effect from 6th January 2020. From this date, where consent is the authority used to take a digital device, officers will provide the victim / witness with a copy of the 'Digital Device Consent Public Information Leaflet'. This leaflet, which was designed with the public, contains relevant information ensuring any decision made by the victim/witness to provide the device is adequately informed. This process is relevant to the seizure of devices whether they will be triaged or not. Other information products have been developed and will be available to the public online in order to provide victims and witness a fuller understanding of the consent process and considerations involved in device seizure and examination. A list of these public documents are also included at Appendix B.
- 2.12 Whilst the input from partners, stakeholders and interest groups has been invaluable in assisting with the development of processes and policy, it is clear the use of personal data as a key resource for law enforcement comes with the tension between intrusiveness and the need to maintain public consent. Data Ethics is recognised as an area of growing importance across UK Policing and is under active discussion within the National Police Chiefs Council (NPCC). Police Scotland are party to this work and are also in the process of establishing a Data Ethics Governance Framework. This will ensure

we balance the need to comply with data protection and privacy regulations, ensure fair and reasonable data usage, maximise the use of data for public good and ensure legitimacy of the police service. This will remain of strategic importance as data continues to grow exponentially.

3 GOVERNANCE

- 3.1 Progress of the roll out of Devices will continue to be monitored by the Cybercrime and Technical Surveillance Programme. Lessons learned workshops will be run approximately 6 weeks following initial operational roll out in Forth Valley and Fife Divisions. The workshops will form part of the Post Implementation Review (PIR) and inform best practice for the remaining Divisional roll outs.

A PIR Terms of Reference (Appendix C) has been drafted to support the review of implementation and use. This will be supported by the collation and review of Management Information (MI) gleaned from the Digital Triage Devices and the Case Management System.

4 FINANCIAL IMPLICATIONS

- 4.1 Finance/Procurement – In April 2018, 41 Digital Triage Devices and associated licences/support were purchased at a cost of £370,684 (excluding VAT). Police Scotland has made a significant investment in support of service delivery in this area and the transformation that this capability will achieve.

5 PERSONNEL IMPLICATIONS

- 5.1 The use of this technology enhances service delivery and supports investing in our workforce. 410 Frontline officers have been trained in the use of this technology and will continue to have access to support the use of the devices (including training resources and access to Cybercrime Digital Investigators).

6 LEGAL IMPLICATIONS

- 6.1 It remains the opinion of some agencies including Scottish Human Rights Commission and Privacy International that the legal basis for device examination is not sufficiently clear, foreseeable or accessible and new legislation is required. It is anticipated that representation will be made by agencies and some members of the External

Reference Group to the Scottish Parliament, Justice Sub-Committee on Policing requesting a review of the law.

- 6.2 Police Scotland is confident that existing law supports the use of Digital Triage Devices. This is articulated in the Legal Basis document and confirmed by COPFS in their written submissions to the Justice Sub Committee on Policing;

“In order to conduct this “triage” the Digital Device Triage Systems will, as COPFS understands it, carry out a function which is already utilised by the Police Scotland Digital Forensic Hubs to examine information held on a device. That function will simply be carried out at an earlier stage in the investigative process in order to facilitate the quick return of a device to its owner where there is nothing of evidential value.

“It is perhaps of note that Police Scotland Digital Forensic Hubs currently examine thousands of digital devices every year, providing evidence to COPFS which is in turn presented in Court, subject to legal scrutiny, and is often crucial in securing convictions in all types of cases including the most serious and complex”.

“The Police do have powers of seizure and examination which apply irrespective of whether it is a digital device or any other item. Those powers are governed by legal provisions and principles. Where a digital device is seized by Police Scotland and examined then the seizure and examination should comply with the provisions and principles outlined, failing which, any evidence secured will risk being ruled inadmissible by a Court based on it having been secured unfairly. That applies whichever process is used to examine the device, including the use of the Digital Device Triage System”.

and by Independent Counsel Opinion;

‘My principal conclusion is that there is a lawful basis for the use of Cyber Kiosks’.

- 6.3 It is clear that this matter will rightfully remain a matter of public scrutiny. Police Scotland must continue to ensure adequate capability to investigate crime whilst balancing civil liberties and the need to keep people safe. Where the consent of a victim or witness is provided, that consent applies to the taking of the device for the purpose of examination and not to any data extraction.

- 6.4 Following the seizure of a device, a separate legal basis is required for the processing of data. This being the Data Protection Act 2018, with 'basis in law' being provided by Section 20 of the Police and Fire Reform Act 2012 (duties of a constable) and the Code of Practice made under Section 164 of the Criminal Justice and Licensing Scotland Act 2010 (obligation on police to pursue all reasonable lines of enquiry and to record, retain, review, reveal and where appropriate provide all information which may be relevant to the Crown).
- 6.5 ICO Investigation - The ICO has still to publish the findings of its investigation on UK Law Enforcements practices in terms of mobile phone extraction. Separate UK reports will be produced as a consequence of the multijurisdictional nature of the legal frameworks in existence in the UK. It is anticipated that a report for Scotland will be published in 2020 although specific timescales are unknown. ICO anticipate publication of the report specific to the jurisdiction of England and Wales in mid-January.
- 6.6 ICO have received full detail of the legal basis on which digital forensic activity (including Digital Triage Devices) will be undertaken by Police Scotland. Our mutually held view is that consent is appropriate for the obtaining of the device but a separate 'basis in law' provided by Section 20 of the Police and Fire Reform Act, 2012 is required for the processing of data.

7 REPUTATIONAL IMPLICATIONS

- 7.1 Police Scotland must remain relevant in a digital age. This fundamental frontline triage capability is but one element of a significant technological transformation required to ensure the Service remains efficient, effective and digitally capable. Failure to meet public expectation and compromise to service delivery in this regard hold potential reputational compromise for Police Scotland. As our communities advance their use of technology Police Scotland must evolve to address the needs of the people we serve.

8 SOCIAL IMPLICATIONS

- 8.1 Police Scotland must ensure it remains at the forefront of victim support, service delivery and continue to support effective administration of criminal justice. The provision of technological capability to meet demand and alleviate some of the pressures being

placed on both front line officers and specialist teams is imperative. Failure to provide such capability undermines Police Scotland's focus of keeping people safe.

9 COMMUNITY IMPACT

- 9.1 Police Scotland requires the appropriate and necessary capabilities to protect the citizens of Scotland – especially the most vulnerable. The use of Digital Triage Devices and the enhancement to consent capture including public facing supporting documentation (as outlined) provide improved service delivery, understanding and transparency to the public, impacting positively on Scottish Communities and relations with Police Scotland.

10 EQUALITIES IMPLICATIONS

- 10.1 An Equality and Human Rights Impact Assessment and Data Protection Impact Assessment have been completed in relation to Digital Triage Devices in consultation with the aforementioned groups. An Equality and Human Rights Impact Assessment has also been completed in relation to enhanced consent capture. No impacts considered have identified any barrier to implementation.

11 ENVIRONMENTAL IMPLICATIONS

- 11.1 The ability of frontline officers to have ready access to triage capability has a positive impact environmentally as there is the opportunity to reduce the number of digital devices being submitted and transported to Digital Forensic Units located across the country.

RECOMMENDATIONS

Members are invited to discuss the information contained within this report.

Kiosk Consultation Groups**Appendix A**

Consultation with the following groups informed the use of kiosks.

Stakeholders Group

Chair – DSU Nicola Burnett

Membership

- Scottish Police Authority
- Her Majesty's Inspectorate of Constabulary Scotland
- SPA Forensic Services
- Scottish Police Federation
- Staff Association
- Crown Office Procurator Fiscals Service
- PSoS - Information Management

External Reference Group

Chair – Dr Liz Aston (SIPR)

Membership

- Open Rights Group
- Scottish Human Rights Commission (SHRC)
- Privacy International
- Information Commissioner Office (ICO)
- Institute of Cyber Research
- Scottish Institute for Policing Research
- Academia
- National Independent Strategic Advisory Group
- Mr Amar Anwar
- Rape Crisis
- NHS Scotland
- ASSIST

The groups met on seven occasions including two joint meetings.

Public Engagement Events

There have been three public engagement events held in May, July and November 2019. These were designed to engage with communities and provide an understanding of Police Scotland's approach to digital forensics; ensuring we understood the needs and concerns of our communities regarding digital device examination and Police Scotland's approach to the capture of consent for the purpose of digital devices examination (including mobile phones). This engagement has been integral to the development of enhanced consent capture with learning incorporated into the development of products, practices and process.

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Attendees included;

- Scottish Government
- Youth link Scotland
- Equality Network
- NHS Lanarkshire
- Scottish Woman's Rights Centre
- Woman's Aid
- Council of Ethnic Minorities Voluntary Sector Organisation (CEMVO)
- Deaf Action
- Autism Network Scotland
- Central Scotland Regional Equality Council, Children in Scotland
- 5 Rights Youth Commission
- Centre for Youth and Criminal Justice
- Engender & Young Scot
- COPFS
- National Independent Strategic Advisory Group (NISAG)
- Edinburgh Women's Aid
- Who Cares? Scotland
- Central Scotland Regional Equality Council (CSREC),
- Scottish Commission for Learning Disability
- People First Scotland
- Barnardo's Scotland
- ASSIST
- Edinburgh Domestic Abuse Court Support,
- Rape Crisis,
- Barnardo's RISE (Reducing the Impact of Sexual Exploitation) Project
- Police Scotland departments including Information Management and Public Protection Unit.

CYBER KIOSKS DOCUMENTATION	
Cyber Kiosk, Equality and Human Rights Impact Assessment	Using the Police Scotland Force template this document considers all relevant Equality and Human rights implications for use of Cyber Kiosks.
Cyber Kiosk, Data Protection Impact Assessment	Using the Police Scotland Force template this document considers all relevant data protection considerations and legislation which could impact on the use of the Cyber Kiosks.
Digital Device Seizure and Examination - Legal Basis	This document outlines the legal basis under which Police Scotland conduct digital forensic examination including the use of Cyber Kiosks.
Digital Device Examination Principles	This document provides parameters, legal and ethical considerations and commitments, setting the standard which will be adhered to by Police Scotland officers and staff when taking and examining a digital device and any data extracted.
Kiosk, FAQs (Frequently Asked Questions)	A series of frequently asked questions (and answers) regarding Cyber Kiosks.
CONSENT DOCUMENTATION	
Digital Device , Consent Public Information Leaflet	An information leaflet, provided to a victim/witness ensuring informed consent. Designed in consultation with the public, consisting of the most pertinent and frequently asked questions surrounding the taking of digital devices for the purpose of examination.
Digital Device, Consent Guidance – Presentation.	A PowerPoint presentation developed at public request, outlining guidance on relevant powers and the essential elements of consent, providing scenarios as to where they may be appropriate.
Digital Device Examination and Consent FAQs	A series of frequently asked questions (and answers) identified through internal and external consultation, providing a greater

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	breadth of information than could be made available in a Public Information Leaflet.
Digital Device – Journey – Flow Process	An informative Flow Diagram depicting the journey of a digital device from seizure through the digital forensic process, to its return to its owner.
Digital Device, Consent Capture - Flow Process	An informative Flow Diagram detailing the steps to be taken by officers having identified consent as the appropriate authority for taking a device.
Digital Device, Consent Withdrawal – Flow Process	An informative Flow Diagram depicting the safeguards that must be taken and the relevant interactions between the various stakeholders throughout the consent withdrawal process.
Digital Device, Examination Request – Flow Process	An informative Flow Diagram of the examination request procedure including the associated checks / authorisations required for each digital forensic examination.

Post Implementation Review

Terms of Reference

A formal Post Implementation Review (PIR) of the National Rollout of Cyber Kiosks will be undertaken in line with Police Scotland's Business Change & Governance Frameworks.

The PIR will be conducted by a Short Life Working Group; consisting of representatives from Police Scotland Portfolio Assurance, Business Change & Analysis, PMO and project teams.

Background

The Cybercrime Unit and Cybercrime and Technical Surveillance Programme are introducing Cyber Kiosks across 41 locations in Scotland.

Cyber Kiosks are an important advancement that will streamline the existing process of reviewing digital devices for evidential content. Kiosks will be less intrusive than current processes and will allow devices to be returned to their owners quicker than is possible at the moment, providing a more efficient process for frontline officers, digital forensics, the public and the criminal justice system.

Purpose

The PIR will enable Police Scotland to review and analyse the methods used throughout the Cyber Kiosks Project life cycle and assess how the devices have landed; assessing the degree of impact that Cyber Kiosks have had within the organisation.

The PIR will identify improvements required and repeatable successes for future business change.

In scope areas of focus are (*but not limited to*):

- Consultation and Engagement (Internal and External)
- Cyber Kiosk Users Selection Process and Training
- Project Implementation Plan
- Benefits Realisation Analysis
- Establishing Lessons Learned

Timing

Sufficient time is required to demonstrate operational impact within the organisation in order for an informed assessment to be made of the business benefits and to capture lessons learned.

The full PIR will be conducted within the 6-12 month period following the national rollout i.e. once all divisions have gone live with Cyber Kiosks.

Stakeholders

Key Stakeholders for this review are (*but not limited to*):

- Senior Responsible Officer (SRO)
- Business / Project Leads
- Project Team Members
- Police Scotland Governance Personnel
- Cyber Kiosk Trainers and Users

Review Methodology and Process

The Post Implementation Review will consist of (*but not limited to*):

- Internal Lessons Learned Workshops
- Key Stakeholder Interviews
- Review of Project Governance process followed
- Review of Document Sets
- Review of Communication and Engagement process
- Review of External Reference Group feedback
- Analysis of Management Information

Outputs

The final product will be a detailed report to the Director of Transformation and the Senior Responsible Officer.

Lessons Learned will be captured, centrally stored and reflected upon to add value to future Police Scotland Projects. Any recommendations made will be tracked for action by Police Scotland's Portfolio Assurance team for future adherence to the identified best practices.