SCOTTISH POLICE
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Agenda Item 8.1

Meeting	SPA Policing Performance Committee
Date	26 August 2020
Location	Video Conference
Title of Paper	Digital Triage Devices Report - Evaluation Progress Report and PS Response to ICO Investigation on Data Extraction in England/ Wales
Presented By	Detective Superintendent Raymond Higgins
Recommendation to Members	**For Discussion**
Appendix Attached	No

PURPOSE

The purpose of this Briefing Paper is to provide update on the on-going introduction of Digital Triage Devices within Police Scotland in conjunction with considerations for Police Scotland Digital Forensics as a result of the ICO report on Mobile Phone Data Extraction by Police Forces in England and Wales.

Members are invited to discuss the content of this paper.

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1. BACKGROUND

1.1 In response to the increasing demands on Digital Forensics and at the conclusion of engagement with Scottish Government Justice Sub Committee and Public Consultation through external reference groups, Police Scotland commenced the phased introduction of Digital Triage Devices to the force on the 20th January 2020.

Due to the impact of COVID-19 on a variety of Policing areas including Digital Triage Devices the introduction of these devices was paused on 30th March 2020. The roll out recommenced to remaining divisions on the 13th July 2020 and is due to conclude on 17th August 2020. This report will provide detail in respect of this roll out encompassing divisional engagement and subsequent training, governance and procedural review as the phased introduction progressed.

This report will also detail the considerations for Police Scotland in respect of the recommendations from the recently published report on Mobile Phone Data Extraction by Police Forces in England and Wales by the Information Commissioner's Officer (ICO). The report on Police Scotland itself is anticipated in the near future.

2. FURTHER DETAIL ON THE REPORT TOPIC

2.1 On the 20th January 2020 Police Scotland commenced the phased introduction of Digital Triage Devices to 'C' and 'P' divisions with a total of 4 Devices being deployed across the respective divisions.

This followed significant engagement with senior management teams, identified single points of contact (SPOCs) for co-ordination of the devices and specialist training to identified operators for each division. Each of the aforementioned divisional liaisons received relevant supporting explanatory and reference documentation.

In line with the timetable for further roll out, on the 30th March 2020 a further 12 devices were deployed across 'G', 'K', 'Q' and 'L' divisions. At this time, due to the impact of COVID-19 on Police Scotland and under the direction of ACC McLaren, the roll out of further devices was paused until alternative arrangements for suitable training and engagement with the remaining divisions prior to recommencing roll out could be established.

Prior to the introduction of the devices to 'G', 'Q', 'K' and 'L' divisions, in addition to the weekly engagement meetings with 'C' and 'P' division SPOCS, in February 2020 the Cybercrime Programme Team hosted a Divisional Work Out exercise where Divisional Change Teams, Supervisors, SPOCS and Kiosk Operators were invited to discuss a number of areas covering the end to end process for digital devices which were considered for submission for examination on a Digital Triage Device.

The feedback and learning from 'C' and 'P' divisions was captured and reviewed resulting in amendments to the Gateway process being implemented by the Cybercrime Programme Team in conjunction with the Digital Forensic Gateway. This resulted in the Digital Forensic Gateway becoming the single Gateway for all ERF including those for Digital Triage Devices. This has enabled consistency in respect of examinations to be mirrored across all Digital Forensic examinations regardless of the examination taking place at a Digital Forensic Hub or within a Digital Triage Device.

Further feedback captured during these sessions resulted in a change to Digital Triage Device Operator training and the associated document set, with the Cybercrime Programme Team taking cognisance of the requirement to focus a greater part of the training on the ERF process.

Recommencement of Phased Introduction of Digital Triage Devices

As a consequence of the issues presented by COVID-19 a new and innovative method for delivery of the relevant training and information was proposed to be provided to divisions prior to the introduction of the devices by the Cybercrime Programme Team and endorsed by ACC McLaren. This focussed on the production of 8 short videos covering all areas of training and was focussed on the areas which the Divisional Work Out Day had highlighted along with the weekly meetings with the representatives of the divisions whom were already using the Digital Triage Devices.

In conjunction with the short videos, which could be accessed by any officer at any Police Scotland static or remote terminal, each division was provided with the opportunity to interactively take part in a Q & A session with specialist Digital Forensic staff which provided reassurance to officers using the devices and also confirmed that officers had viewed the videos and training material prior to being provided with their login detail for the devices.

By adopting this reformatted training due to COVID-19 and feedback from divisions, the phased introduction of the devices could recommence with robust governance of those using the devices and assurances in respect of divisional readiness for the devices prior to their respective 'go live' dates.

As a result of the aforementioned both 'E' and 'J' Divisions commenced their use of Digital Triage Devices on 13th July 2020, 'U' and 'V' commenced on 3rd August 2020, with the final divisions 'A', 'D' and 'N' due to 'go live' on 17th August 2020 which will conclude a complement of 41 Digital Triage Devices across all divisions and a total of 410 trained operators.

Considerations from ICO Report on Mobile Phone Data Extraction for England and Wales

On 24th June 2020 DCC Malcolm Graham received a letter from Mr John Finney, Convener, Justice Sub-Committee on Policing requesting information as to the considerations Police Scotland were giving in respect of the findings and recommendations of the ICO report of Police Forces in England and Wales and whether the policies and practices in Police Scotland met those highlighted by the Commissioner in the aforementioned report.

DCC Graham replied to Mr Finney on 31st July 2020 addressing the relevant areas of the ICO report which are applicable to Scotland.

The 13 recommendations contained within the ICO report cover a variety of areas in respect of data extractions from mobile phones however they broadly relate to legislative framework, lawful basis for processing, withdrawing NPCC advice and template documentation, forensic codes of practice, excessive processing, retention and review periods, privacy notices, training, Data Protection Officers, use of Data Protection Impact Assessments (DPIAs) and changes to Victims' code.

Through the governance of the ongoing rollout of Police Scotland's Digital Triage Devices a number of these recommendations have already been addressed. It should be noted that Police Scotland await the arrival of the ICO report on Scotland specifically, however there are parts of the report for England and Wales which in summary are addressed through the undernoted;

Police forces should consider the lawful basis being relied upon to process personal data extracted from mobile phones, consider the

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applicability of the Investigatory Powers Act 2016 and withdraw the existing NPCC advice and template documentation, and produce new materials.

Police Scotland procedures and guidance recognise the distinction between the lawful basis for seizure of a device and the lawful basis for any subsequent processing of personal data held on the device. Police Scotland, having consulted with the ICO, is satisfied that the lawful basis relied upon to process personal data extracted from devices is compliant with Part 3 of the Data Protection Act 2018. Police Scotland has considered the applicability of the Investigatory Powers Act 2016 and assess that the approach taken to examination of devices is in line with the legislation and are continuing to liaise with IPCO in respect of this. Our consent and advice forms were developed with knowledge of the concerns raised regarding NPCC documentation, and we remain confident these processes are fit for purpose.

Implementing and maintaining forensic codes of practice

Police Scotland are commencing the journey of ISO 17025 accreditation which will further strengthen our governance and ensure all processes are validated and reviewed regularly. This will include new technologies and processes.

Providing privacy information to all individuals whose devices are subject to MPE

Police Scotland currently rely on Privacy Notices hosted on the Police Scotland Website for provision of information to all Data Subjects, including suspects and accused. There is a suggestion in the ICO Report that provision of privacy information in this context may require direct engagement with Data Subjects (as with current Police Scotland mobile phone consent process for victims and witnesses), as opposed to generally available information. This process is currently being reviewed following this recommendation.

Implementing national training standards

Police Scotland officers and staff are required to complete annual Data Protection training. Further training has already been instigated for Advanced Detective and SIO courses. However, following this recommendation, the Cyber Crime Programme are designing a training package for delivery to all staff.

<u>Engaging Data Protection Officers and use of DPIAs</u>

Police Scotland have a Data Protection Officer and a dedicated department for oversight and consultation to ensure DPA compliance for all new data processing. All new tools undergo a DPIA assessment at the outset and a retrospective review of existing processes for compliance is ongoing.

Next Steps

By the 17th of August 2020 Police Scotland are due to complete the introduction of Digital Triage Devices. This will provide every division within Police Scotland the opportunity, through appropriate governance, policy and procedure, to establish the evidential content or otherwise of a digital device at the earliest opportunity, which, if appropriate can then be forwarded to a Digital Forensic Hub for full analysis. This capability will increase service levels to victims, witnesses, officers and stakeholders alike ensuring that only devices which are required to be retained by the force are retained.

To assess and learn from the challenges presented during the introduction of Digital Triage Devices, Police Scotland have instigated two post implementation reviews. The first of which will be conducted by Scottish Multi-Agency Resilience Training and Exercise Unit (SMARTEU) in September 2020 focussing on the wider policing, legal and ethical issues identified and encountered which might reasonably be anticipated to be relevant to any future introduction and implementation of technologies. This review will also look to include where there may be perceived risk of collateral intrusion to personal data.

The second post implementation review, conducted by Police Scotland, Portfolio Assurance Team, is due to take place in early 2021, approximately six months after the conclusion of the roll out of the devices. This review will focus on reviewing and analysing the methods used throughout the Digital Triage Device life cycle and the subsequent impact that devices have had within Police Scotland.

Police Scotland continually review the processes associated with Digital Triages Devices influenced by internal engagement with practitioners and cognisance of external factors which impact on the digital processing of data by law enforcement agencies, such as the ICO report. This was demonstrated by the flexibility and agility in reviewing, identifying and implementing new training processes and

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Gateway governance during the challenging times which COVID-19 presented to the force. This continual review is part of lifetime management of the Digital Triage Devices.

Police Scotland worked closely with ICO representation through the External Reference and Stakeholders meetings as part of the review of Digital Triage Device introduction and wider digital forensic landscape. During this consultation it was established that the view of the ICO mirrors that of Police Scotland in respect of Police Scotland' legal basis for both consensual seizure of devices from victims and witnesses and the subsequent processing of relevant data contained within digital devices. Consequently, Police Scotland are in a strong position and are already looking to improve upon areas highlighted by the ICO for England and Wales. We look forward to the ICO report for Police Scotland and any guidance and learning that comes from that.

3.   FINANCIAL IMPLICATIONS

3.1   There are no financial implications linked directly to this paper.

4.   PERSONNEL IMPLICATIONS

4.1   There are no personnel implications linked directly to this paper.

5.   LEGAL IMPLICATIONS

5.1   During the course of the introduction of Digital Triage Devices significant consultation took place between Police Scotland Cybercrime Programme Team, Legal Services, Justice Sub-Committee on Policing, ICO, Stakeholders and a number of External Reference Groups. The purpose of this engagement ensured that Police Scotland' approach to the introduction of Digital Triage Devices was as transparent as possible in respect of the capabilities of the technology whilst reaffirming the legal basis on which digital extractions are conducted by Police Scotland.

6.   REPUTATIONAL IMPLICATIONS

6.1   There are potential reputational implications associated with the use of Digital Triage Devices and also the ICO report on Mobile Phone Data Extraction by Police Forces in England & Wales.

6.2   In respect of the use of Digital Triage Devices any improper use or deviation from the guidance and training in respect of the use of

these devices could negatively impact on the perceived ability of Police Scotland to competently process personal data. This has been mitigated through robust governance which has been introduced ensuring that any request for an examination through a Digital Triage Device is subject to three reviews prior to any examination taking place, this being a Supervisory Officer, Digital Forensic Gateway and the Kiosk Operator. The management information in respect of the use of the devices is also regularly reviewed to ensure compliance.

6.3   The governance in respect of training and the use of Digital Triage Devices is a process with is subject to continuous review ensuring Police Scotland are adhering to their internal processes whilst taking cognisance of external factors such as the most recent ICO report.

6.4   In respect of the potential reputational implications presented by the ICO report on England & Wales; having reviewed these recommendations Police Scotland, through the introduction Digital Triage Devices, have already addressed or are in the process of addressing these recommendations. It is, however, recognised that the report on Police Scotland by the ICO is currently awaited and as such the observations and recommendations on this report present an unknown reputational risk.

7.   SOCIAL IMPLICATIONS

7.1   There are no social implications linked directly to this paper.

8.   COMMUNITY IMPACT

8.1   There are no community implications linked directly to this paper.

9.   EQUALITIES IMPLICATIONS

9.1   There are no equality implications linked directly to this paper.

10.   ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications linked directly to this paper.

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RECOMMENDATIONS

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