

Criminal Justice Committee

26th Meeting, 2022 (Session 6), Wednesday 26 October 2022

Recent correspondence

Note by the clerk

Purpose of the paper

1. This paper invites Members to consider several items of correspondence received by the Committee (see **Annex**), namely:

From Police Scotland

- Letter from Police Scotland in response to the Committee's letter on the **use of cyber kiosks** (both attached at page 3);

From the Scottish Prison Service

- Letter from the Scottish Prison Service on **purposeful activity** (page 13);

Action

2. **Members are invited to consider the correspondence and any suggested follow-up and discuss what action, if any, they wish to take.**
3. For the convenience of Members, the suggested follow-up for each of the letters is as follows:

Police Scotland	
<p>Letter from Assistant Chief Constable Andy Freeburn on the use of digital device triage systems, in particular whether victims of rape and sexual offences are asked for consent to hand over their mobile devices</p>	<p>To note the data on the number of devices taken in 2022 with consent from victims of rape is 84%, and from victims of sexual assault is 57%. Also, to note that Police Scotland is unable to provide data on the number of mobile phones which have been examined and the impact on reducing the number of phones sent to the hubs for fuller examination, and any reduction in the time victims have to wait for their phones to be returned. This was the justification for the introduction of the triage devices.</p> <p>In the post-implementation review, Police Scotland report to the SPA. One of the recommendations to be implemented is “a solution must be sought to enable reporting on the timescales of seizure and subsequent return of devices to a victim or witness”. This is to be resolved through the introduction of our national production and case management system, the roll out of which will be concluded in 2023.</p> <p>Members may wish to ask for details and timescales for the introduction of the production and case management system.</p> <p>Members may also wish to forward this correspondence to Rape Crisis Scotland and Scottish Women’s Aid for their view, as this was an issue that was raised in the media by Sandy Brindley.</p>
Scottish Prison Service	
<p>Letter from Teresa Medhurst, Chief Executive, what SPS define as “purposeful activity” and what plans, if any, SPS may have to ensure that those being held on remand or shorter-term sentences have access to such activity.</p>	<p>To note the contents of the letter and continue to keep the situation under periodic review as part of the Committee’s Action Plan.</p>

Letter from the Convener to Police Scotland on digital device triage systems (15 September 2022)

Dear ACC Freeburn,

Digital device triage systems

I am writing to you regarding media coverage about recently released Police Scotland data which indicates that “as many as 77 alleged victims of rape and sexual assault have had their mobiles searched non-consensually since the technology [digital device triage systems] arrived in January 2020”.

Within the media reports, Sandy Brindley from Rape Crisis Scotland raises concerns about the disproportionate nature of the consent requested, as well as the length of time phones are retained for, which could sometimes be for a number of years. Ms Brindley said, “The police should never be asking for blanket consent – it should only be sought where absolutely necessary and only for specific items such as messages relating to the incident”.

You may be aware that during the last session of Parliament, the Justice Sub-Committee on Policing carried out an inquiry into Police Scotland’s intention to introduce the use of digital device triage systems by police officers.

During its inquiry, Police Scotland informed the Sub-Committee that 15,000 devices were being submitted to the cybercrime hubs each year. This had caused a backlog, which meant that victims were waiting up to six months for their phones to be returned. The rationale for the introduction of triage devices was to reduce the number of phones being processed by the digital forensic hubs and thereby reduce the time victims of crimes had to wait for their phones to be returned to them.

The Sub-Committee’s view, which we share, is that taking a personal item from a victim of crime should always be done with their consent. In response to the Sub-Committee’s inquiry, Police Scotland introduced a consent capture form.¹ The form was to be used to record consent from a victim or witness for any devices to be the subject of digital forensics examination, including cyber kiosk triage. Deputy Chief Constable Will Kerr explained that, “It is our intention to ensure a Consent Capture Form is provided on each occasion consent is captured”.²

Could you please share with the Committee the data referred to in recent media reports and confirm what percentage of devices have been taken from victims of rape and sexual assaults without their consent since the introduction of the triage devices?

While we understand the need for robust evidence gathering in all rape and sexual

¹ [Police Scotland consent for the purpose of digital device examination.](#)

² [Letter from DCC Will Kerr to the Justice Sub-Committee on Policing, 4 June 2019.](#)

offences cases, we nonetheless share Rape Crisis Scotland's view that for allegations of rape and sexual assault the length of time that a device is kept for and the information that is accessed should be proportionate and necessary. Could you please provide data on the length of time phones have been kept for in such cases, prior to and since the introduction of the triage devices? Could you also provide an explanation as to why delays are arising in returning mobile phones to victims of these alleged crimes?

During the Sub-Committee's inquiry, Deputy Chief Constable Malcolm Graham confirmed that Police Scotland would conduct a post implementation review of digital device triage devices 6 months after the roll-out. The review was to provide an overview of the implementation, evidence whether the forecast benefits had been achieved and determine if there are any lessons to be learned. It would also include the digital forensic consent capture process and include qualitative information to support the findings.³

Could you please provide the Committee with details of the outcome of this review and confirm the steps taken by Police Scotland to ensure that victims are consistently being provided with the appropriate information and relevant details about their rights by officers.

A response by Friday, 7 October, would be much appreciated.

Best wishes,

Audrey Nicoll MSP
Convener, Criminal Justice Committee

³ [Letter from DCC Malcolm Graham to the Justice Sub-Committee on Policing, 2 September 2019](#)

Response from Police Scotland on digital device triage systems (14 October 2022)

Dear Convener,

Thank you for your letter dated 15 September 2022 and for the short extension to my response time, due to operational demands over the past few weeks.

The issues raised in your correspondence are extremely important to Police Scotland, as we continue to witness a high proportion of threats, risks and harms moving to an online space. Consequently, digital material has an increased relevance in our investigations, including serious sexual offences.

We completely understand the need to ensure public confidence and appropriate safeguards in utilising such technologies, however the challenge is to balance this against our statutory obligations to keep the public safe and make best use of available technologies to assist us in this mission.

Indeed, in a number of recent UK conferences relating to cyber investigations, Police Scotland has been seen as an exemplar in not just balancing the legal implications of the police use of technology, but also the associated ethical considerations for victims and the public. This is fundamental to our considerations in applying our organisational values of fairness, integrity and respect and upholding human rights.

The use of digital device triage systems is often cited as a strong example of learning and development within our organisation, as it reinforced the need to publicly demonstrate the safeguards and systems around the police use of technology.

The value of broad consultation and stakeholder engagement and particularly the findings of the Justice Sub-Committee on Policing are now fully incorporated into the model we use to explore the introduction and application of our digital investigative tools.

We have continued to seek every opportunity for such independent challenge, scrutiny and oversight. An example of this is the recent creation of our 'Policing in a Digital World, Professional Reference Group', which is jointly chaired by DCC Malcolm Graham and Caroline Stuart (Scottish Police Authority). This forum includes external academic, public and private sector partners and the Equality and Human Rights Commission to provide a diverse range of perspectives, as we seek to grow and invest in our cyber capabilities.

I believe there are four key questions within your letter and I have sought to answer each in detail in the attached appendix. I trust that these response provides the Committee with assurance of our ongoing efforts to meet the requisite safeguards in using such technologies, whilst fulfilling our statutory obligations and most of all delivering for the victims of serious sexual crime.

I was delighted to hear that you have accepted an invitation to visit our newly opened Cyber Centre in Aberdeen and I would extend a similar invitation to the members of

the Committee to observe the operation of the triage devices or receive a more detailed briefing of our processes.

Yours sincerely,

Andy Freeburn

APPENDIX

RESPONSE TO SPECIFIC QUESTIONS FROM THE CRIMINAL JUSTICE COMMITTEE REGARDING DIGITAL DEVICE TRIAGE SYSTEMS

14 OCTOBER 2022

1. Could you please share with the Committee the data referred to in recent media reports and confirm what percentage of devices have been taken from victims of rape and sexual assaults without their consent since the introduction of the triage devices?

The table below depicts the information provided in the recent Freedom of Information request to which you refer. It indicates the number of devices taken from victims and is broken down for Rape and Sexual Assault.

	2019	2020	2021	2022
Rape				
Number of Devices	70	157	108	93
Number of Devices (with consent)	50	131	94	78
% of Devices with consent	71%	83%	87%	84%
Sexual Assault				
Number of Devices	17	36	22	23
Number of Devices (with consent)	10	26	20	13
% of Devices with consent	59%	72%	91%	57%

2019 data is from 1 July 2019 onwards
Source: Cybercrime Case Management System

The cumulative total of all devices taken for rape and sexual assault since the advent of digital triage devices is therefore 526, of which 104 were seized through other lawful authority, i.e. in less than 20% of cases.

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This is even smaller percentage (2%), when broken down against the total number of rape and sexual assault offences being investigated by Police Scotland during this time frame, as the table below illustrates:

	2019	2020	2021	2022
Rape	2347	2126	2362	1822
Sexual Assault	3589	3265	3987	3238

Whilst we are committed to delivering a victim-centred, trauma informed approach and make every effort to obtain consent prior to taking possession of digital devices from a victim, there are some circumstances when we are unable to do so.

Within our statutory duty to investigate crime, we must secure all available evidence, whether inculpatory or exculpatory. We would seek to assure the Committee that taking such devices in the absence of consent is only conducted when the strict tests of proportionality and necessity are met.

The figures below illustrate that this happens in the minority of cases and in circumstances such as a credible counter-allegation, a Crown Office and Procurator Fiscal Service (COPFS) direction, or when material evidence within the device is reasonably believed to prove or disprove the allegation.

These are often challenging and sensitive operational decisions, however they are made by trained and accredited policing professionals, who have the interests of victims at heart and work tirelessly to bring serious sexual offenders to justice.

Therefore, Police Scotland do not use the term 'taken without consent', as on each of these occasions a legal power has been used, where it has been considered necessary and proportionate to do so.

Such circumstances generally arise where a duty is placed upon us to conduct a thorough investigation and to secure and preserve evidence. Therefore, no devices are ever taken from victims of rape or sexual assault by Police Scotland without either consent or lawful authority.

A breakdown of the various categories which have been used since the inception of digital triage devices is detailed further below:

	2019 ¹	2020	2021	2022
Rape				
Number of Devices	70	157	108	93
Number of <i>Devices (with consent)</i>	50	131	94	78

% with consent	71.4%	83.4%	87.0%	83.9%
Number of <i>Devices (warrant)</i>	3	7	6	2
% warrant	4.3%	4.5%	5.6%	2.2%
Number of <i>Devices (statutory)</i>	2	5	1	0
% statutory	2.9%	3.2%	0.9%	0.0%
Number of <i>Devices (common law)</i>	15	14	7	13
% common law	21.4%	8.9%	6.5%	14.0%
Sexual Assault				
Number of <i>Devices</i>	17	36	22	23
Number of <i>Devices (with consent)</i>	10	26	20	13
% with consent	58.8%	72.2%	90.9%	56.5%
Number of <i>Devices (warrant)</i>	0	0	0	2
% (warrant	0.0%	0.0%	0.0%	8.7%
Number of <i>Devices (statutory)</i>	1	0	1	3
% statutory	5.9%	0.0%	4.5%	13.0%
Number of <i>Devices (common law)</i>	6	10	1	5
% common law	35.3%	27.8%	4.5%	21.7%

The categories of lawful authority are explained further as follows:

Warrant: Where the device is seized under the terms of a lawful warrant at the instruction of the COPFS.

Statutory: Only in exceptional cases would statutory legislation cover the seizure of a victim's device and it usually arises in circumstances where the victim must also be treated as an accused for a serious crime.

Common Law: Where the device is seized lawfully as a production in furtherance of an enquiry.

It should also be noted that on some occasions when police have used a lawful authority to take a digital device, the victim has actually been consenting or offered no objection to the seizure.

To illustrate this point we have provided two short case studies, which illustrate the diversity and complexity of the operational considerations which investigators face.

In the first example, a device belonging to the victim of a rape was left at the home address of the suspect, where the crime occurred. It was later seized when police officers executed an evidential search warrant issued by a Sheriff. In these circumstances, the lawful authority for Police Scotland coming into possession of the device was the evidential search warrant, however the victim was aware and fully supportive of police seizing and examining their device.

A second case study, involves a device belonging to a victim of rape which was lost by the owner prior to the circumstances of the incident being reported. The device was subsequently found by a member of the public and handed to Police as found property. The victim could not provide consent due to being hospitalised and was therefore seized using Common Law powers in order to progress the investigation as there was the reasonable belief that it contained evidential material relating to the ongoing investigation. The victim was later aware that the device had been recovered and was fully supportive of police examining their device.

As a final point to this question, once a device has been taken, either by consent or lawful authority, the principles of necessity and proportionality still apply and the examination is limited to the strict requirements of the investigation. This is governed by a robust process, which is double-locked by two systems of internal oversight. The Senior Investigating Officer of the investigation provides a justification for the examination of the device which is supplemented by supervisory scrutiny and oversight of the officer who is actually using the digital triage system.

2. Could you please provide data on the length of time phones have been kept for in such cases, prior to and since the introduction of the triage devices?

Police Scotland do not possess such direct comparison data as, due to the safeguards which have been put in place, the triage devices only conduct an initial, visual examination and do not capture, record or store this data.

As is seen in the aforementioned figures, the percentage of devices requiring examination in cases of this nature is extremely low (2%). Following examination, in cases where nothing of evidential value is found on the device, these devices can usually be returned to the owner immediately. There are some occasions where further forensic work such as full digital examination or DNA and fingerprint examinations may result in the device being retained for longer.

It should be noted that if Police Scotland used the full capabilities of the cyber kiosks, we could print or download relevant product at triage stage meaning that the majority of devices could be returned to the owner immediately, even if evidential material was found. To introduce such a change in policy would require additional impact assessments and broader consultation, to ensure that this convenience for victims was balanced against broader equality and human rights considerations.

The length of time a device is retained for evidence purposes also varies significantly and is dependent on what material has been found on the device and the instructions of the COPFS.

If the initial triage indicates there is content of an evidential nature, the device is submitted to a Digital Forensic Laboratory for a full examination and the timescales for these examinations can also vary greatly, depending on the content, risk and views of the COPFS.

To provide some context of the timescales, Police Scotland have recently conducted a dip sample of 20 rape cases from 2019 through to 2022 and the average length of time for the examination of the victim device to be completed is 25 days.

We are acutely aware of the impact on a victim of not having possession of their device and endeavour to examine devices by arranging an appointment with the victim and return their device within 24 hours where circumstances allow.

Police Scotland regularly review this data and aim to identify good practice, and any mechanisms available to return devices more quickly or provide alternative devices, ensuring that they are never retained unnecessarily or without consultation and direction from COPFS.

It is not currently possible to provide details regarding when devices are authorised for release by COPFS. This will be resolved through the introduction of our national production and case management system, the roll out of which will be concluded in 2023.

3. Could you also provide an explanation as to why delays are arising in returning mobile phones to victims of these alleged crimes?

It is accepted that, when there is a need for devices to be seized and examined, the timescales can vary depending on the evidential content on the device and the instructions from the COPFS.

Individual circumstances are always considered with the objective of returning devices to victims as soon as practicable.

Where it is not possible to return a victim's device for an extended period of time, we seek to work with their mobile phone service provider with the victim's permission, in an attempt to minimise any impact.

This may include pausing contracts so unnecessary charges are not incurred or providing replacement SIM cards and handsets.

4. Could you please provide the Committee with details of the outcome of this review and confirm the steps taken by Police Scotland to ensure that victims are consistently being provided with the appropriate information and relevant details about their rights by officers?

Following the introduction of Digital Triage Devices, a post-implementation review was commissioned and has been regularly reported through the Scottish Police Authority, Policing and Performance Committee. This review identified six

recommendations, four of which have been completely discharged and the remaining two are still in progress.

These recommendations are summarised in the table below:

<p>Recommendation 1</p> <p>It is recommended that a Lessons Learned Framework is established to share Lessons Learned at a strategic level within the wider policing community and form part of standard Governance.</p>	<p>Accepted and Discharged</p> <p>A Lessons Learned Framework has been implemented and incorporated into governance.</p>
<p>Recommendation 2</p> <p>It is recommended that Projects engage with Corporate Communications at the outset to gain their expertise and guidance on key matters associated with both internal and external communications. Creation of a Framework to allow for a streamlined process in relation to engagement of external groups should also be considered.</p>	<p>Accepted and Discharged</p> <p>Corporate Communications and External consultation groups now form part of all Police Scotland projects.</p>
<p>Recommendation 3</p> <p>It may be beneficial that officers undertaking a business orientated role within a Project should undertake the Project Management Induction Training course facilitated by PMO to provide an understanding of the Governance associated with management of a project.</p>	<p>Accepted and Discharged</p> <p>All officers undertaking a business orientated role within a Project now undertake a Project Management Induction.</p>
<p>Recommendation 4</p> <p>It is recommended that a solution is sought to resolve the technical issues identified in relation to the date fields from individual Kiosks to provide continuity in reporting and eliminate the requirement of additional manual intervention.</p>	<p>Accepted and Partially Discharged</p> <p>The Review Team noted that the Kiosks distributed geographically are stand alone and any data must be extracted manually. This data forms part of a monthly performance report to the SPA Performance Committee on a quarterly basis. The SPA Performance Committee have highlighted concerns that there is a gap in the inability to electronically extract Management Information data centrally.</p> <p>This will be addressed as part of the Phase 2 Project which aims to connect kiosks to the Police Scotland Network.</p>

<p>Recommendation 5</p> <p>Consideration should be given to the potential introduction of a roadshow throughout the Divisions to increase and maintain the usage of Kiosks going forward.</p>	<p>Accepted and Discharged</p> <p>A roadshow to all territorial and specialist policing divisions was undertaken.</p>
<p>Recommendation 6</p> <p>It is recommended that together with Networking capabilities, a solution must be sought to enable reporting on the timescales of seizure and subsequent return of devices to a victim or witness. This should be pursued within the scope of the Kiosks Phase 2 Project.</p>	<p>Accepted and Partially Discharged.</p> <p>Kiosks phase 2 project is currently ongoing and forms part of our 'Policing in a Digital World' programme. The roll out of the national crime and production management system will provide the data highlighted in this recommendation.</p>

You will note that the two highlighted outstanding recommendations (4 and 6) are both pertinent to the issues raised by the Committee. These recommendations would both be discharged through Phase 2 of the digital triage devices project. As the Committee are aware, Police Scotland face a challenging financial environment, in which funding for the continued development of our digital projects is not available at the level or pace that we currently require.

Ends

Letter from the Scottish Prison Service to the Convener on purposeful activity in Scottish prisons (6 October 2022)

Dear Ms Nicoll

PURPOSEFUL ACTIVITY IN SCOTTISH PRISONS

Thank you for your letter of 9 September 2022 in which you ask on behalf of the Criminal Justice Committee members for information on what SPS define as “purposeful activity” and also what plans, if any, SPS may have to ensure that those being held on remand or shorter-term sentences have access to such activity.

The SPS offers a range of Purposeful Activities (PA) that give purpose and structure to a prisoner's day. Under the Prisons and Young Offenders Institutions (Scotland) Rules 2011, PA should meet the interests and needs of those in our care to obtain skills and experience which will be of use to them after their release; or serve the requirements of the operation and maintenance of the prison. These may include-

- Work;
- Education of any type, including physical education;
- Counselling and any rehabilitation programmes;
- Vocational Training
- Work Placements outside the prison;

The SPS PA Framework provides the link between the PA programme of work and the need to develop supportive prison environments. This includes taking steps to maximise the potential for individual change, while recognising the differing contexts within which PA is delivered.

Considerations around PA are already underway throughout the estate. Principles such as person centred, outcome focused, inclusive, innovative, evidence based, trauma informed and therapeutic are all identified components that have been recognised as requirements to support a solid foundation for continued enhanced and evolving practice.

Establishments have already adapted their delivery to ensure that there is PA provision in place for those on remand and serving shorter-term sentences.

Examples of which are:-

HMP Grampian

Those who are serving short-term sentences can access the full range of PA, jobs and education opportunities. The establishment is also delivering a Short Term Intervention Programme (STIP) providing the opportunity to engage in an accredited programme. Staff have recently been trained in SMART recovery and delivery will be offered to all those in custody. Life skills, painting and DIY courses have been developed for those on remand (as well as those who are convicted) and a course in media skills is being rolled out in the near future. In addition there is an identified remand work party and 10% of Grampian's service jobs overall are offered to remands.

HMP Dumfries

Short term convicted and untried can access three designated work parties as well as Life Skills; Addiction/Recovery groups; Education; Gymnasium; Library and Chaplaincy services.

HMP Perth

Short term convicted and untried have access to work parties, Gymnasium and Education. Life skills are also available to those on remand at present with a plan in place to open this up to short-term prisoners in the near future.

HMP Greenock

Short-term prisoners and those on remand can access short local programmes (Mental Health and Harm Reduction); work parties and the Recovery Café. Life skills are also available to short-term prisoners. Greenock are presently reviewing their PA opportunities, looking to move to a timetabled approach in order to increase work party sizes, maximise opportunities to all in their care and increase access to education, programmes and Physical Education.

HMP Inverness

The vast majority of work parties are filled by individuals serving short-term sentences although fluctuations in population have allowed some access by those on remand. All activities, including SMART recovery; My Relationships and My Recovery courses; Living Skills - Employability and Better Dad courses, Education; Physical Education and Library are open to both short term and remand prisoners. Moving forward, The Prison Fellowship and Chaplaincy Team will be offering the Sycamore course; a music course (previously very popular) and an Emotional Management course to all.

HMP Low Moss

All short-term prisoners and those on remand have access to Chaplaincy, Education, Library, Physical Education and the Recovery Cafe. Short-term individuals also have access to the Short Term Intervention Programme (STIP) and some work parties. Remands are offered the opportunity to work within the halls and catering although work parties are presently being reviewed to maximise these opportunities.

HMP Barlinnie

All short term prisoners and those on remand are offered the opportunity to engage in physical education including programmes; education; library; the Resource Hub (one stop shop to prepare for release (with partners/individual needs assessment)); Radio Station and the Recovery Café. STP's are offered work parties and those on remand can engage in a work party, which provides them with skills in bike refurbishment.

HMP Glenochil

No remands are held in HMP Glenochil however short term individuals are offered the opportunity to engage in work parties; a music workshop in conjunction with SMART recovery; Life Skills; Recovery Café; Smoke Cessation; Physical Education; Education; Library and Chaplaincy courses.

HMYOI Cornton Vale

All short term prisoners and those on remand have access to Education, Gymnasium, Chaplaincy, Library, Prison Fellowship and Therapets. They also have access to art and craft activities, knitting groups and gym buddies, which encourages women, who would not normally do so, to attend the gym developing their self-esteem and confidence in a gym environment. There are also work parties and Life Skills for individuals serving a short term sentence. It is hoped to implement a Recovery Café in the near future and reinstate a Music Club, which had previously been very well attended.

HMYOI Polmont

All short term prisoners and those on remand have access to Education, Gymnasium (recreational and health related activities), Chaplaincy, Library, Media Centre, Recovery Café (women), Life Skills, AA, Arts & Crafts, Performing Arts (Music, Drama,), Paws for Progress (taught how to train and rehabilitate rescue dogs for rehoming), Barnardos Youth Work and Duke of Edinburgh Awards (time permitting for those on remand).

In addition, a number of work parties have embedded support from Fife College (education provider) and allow for SQA accreditation. These include basic practical skills in H&S; joinery, bricklaying, plumbing, painting & decorating, engineering, barbering/hairdressing, and horticulture. An Employability & Enterprise work party, assists those in custody to develop employment opportunities on release and includes ID and bank account provisions.

Polmont work closely with numerous partners to engage those in custody and develop reintegration plans for young people and women including working with Shine, New Routes, Action for Children, STARS and Youth Bridges. Programmes are also available, including Ultimate Self (via assessment process) which allow women to address difficulties in their lives and understand more fully their own offending, and offending behaviour programmes also operate which identify and target the factors that have contributed to the offending behaviour of young men between the ages of 16 – 23. Parenting programmes and parenting support groups/activities are available for both populations.

Polmont are seeking to further develop their activity suite to include Hospitality training and to develop links to the community through horticultural opportunities.

I trust you will find this information helpful.

Yours sincerely

TERESA MEDHURST

Chief Executive, SPS