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John Finnie MSP
Convener
Justice Sub-Committee on Policing

By email - justicecommittee@parliament.scot

03 June 2019

Dear John,

I am writing in response to the Justice Sub-Committee's report, dated 8th April 2019, on digital device triage systems (cyber kiosks).

I note the time the Sub-Committee has dedicated to considering this topic, and thank those who gave evidence throughout this process.

The report acknowledges that the majority of the recommendations in this area are for Police Scotland and the Scottish Police Authority (SPA), however it does raise a number of questions relevant to the Scottish Government.

I will deal with these one-by-one.

The Sub-Committee believes that a legal framework is required which 'keeps pace' with technology. The Sub-Committee recommends that the Cabinet Secretary for Justice considers whether the current legal framework enables Police Scotland to seize and search digital devices, and considers the suggestion provided to the Sub-Committee to resolve the legality issue.

I have given consideration to this important issue, including the views expressed by Sub-Committee members and the evidence provided by SPA chair Susan Deacon and senior police officers on 9 May.

All parties were very clear around the benefits of implementing the new system. The triage devices would result in a speedier return of phones, benefitting victims and witnesses, but also the faster processing of potential suspects, helping keep our communities safe.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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However, while it is absolutely vital that Police Scotland can keep pace with a changing technological landscape, they must also respect the rights of the individual.

It is, of course, for the SPA and Police Scotland to ensure that they exercise their powers in accordance with the law, and that there is a legal basis for any particular use of the technology as it stands. It is of course open to anyone who believes that a particular course of conduct is not lawful to challenge it in the courts. I am not aware of any such challenge; and the Sub-Committee will have noted the opinion given by Murdo Macleod QC and published correspondence from the Crown Office and Procurator Fiscal Service.

I am informed by Police Scotland that a six month review is planned from the commencement of implementation and I would be very interested in this piece of work and the benefits and issues that it highlights.

However, I would also acknowledge the points made around the ability of the future legal framework to keep pace with the rapidly evolving world of communications technology; and of giving confidence that, as the technology changes, our law enforcement agencies can continue to fulfil their essential functions, whilst respecting the rights of those involved

I can therefore confirm to the Sub-Committee that the Scottish Government is currently considering how it can assist on this important point ahead of giving evidence on 13 June. I would hope to say more to the Sub-Committee at that point.

Similar legal concerns regarding Police Scotland's digital forensics hubs were raised in evidence. This issue was not part of the remit of the Sub-Committee's inquiry, but would merit consideration by the Cabinet Secretary for Justice.

I appreciate the Committee noting that this issue was not part of their original remit. I am also conscious that SPA is currently establishing a Digital Forensics Working Group with a remit to review the delivery, accreditation, oversight and governance of digital forensics in Scotland, which will include consideration of "legal, ethical and human rights factors".

I would be interested to consider any issues raised by this Group in relation to the future legal framework for digital forensics.

The Sub-Committee recommends that the Scottish Government assess the scrutiny and approval process undertaken by Police Scotland and the Scottish Police Authority prior to the trials being approved and report its findings to the Sub-Committee. This should include lessons to be learned to avoid any proposed future technology being trialled by frontline officers, without the necessary safeguards being put in place, and the vital human rights and data protection impact assessments being carried out before any such technology is deployed".

Scrutiny of digital triage devices has been and continues to be a matter for the SPA. I note that both Police Scotland and the SPA have reflected on the experiences in the early days of this process and that both are learning lessons from it.

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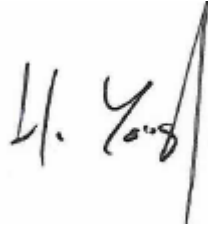
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I am reassured that the SPA chair, who was not in post at the start of this process, has also been working towards a suitable framework to implement improvements to governance within the Authority.

It would also be worth mentioning that, as part of its thematic inspection of the SPA, planned for the coming months, HMICS also intend to look at governance around these processes. I am sure any points that their report makes will be given due consideration.



HUMZA YOUSAF

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