JUSTICE SUB-COMMITTEE ON POLICING

RESPONSE TO REPORT ON POLICE SCOTLAND’S PROPOSAL TO INTRODUCE THE USE OF DIGITAL DEVICE TRIAGE SYSTEMS (CYBER KIOSKS)

WRITTEN SUBMISSION FROM THE SCOTTISH POLICE AUTHORITY

Introduction

The Justice Sub Committee on Policing published its report on Police Scotland’s proposal to introduce the use of digital device triage systems (cyber kiosks) on 8 April 2019. The Report follows an extensive period of examination of this issue and the wider development of Police Scotland’s Digital, Data and ICT Strategy, which has included the active engagement by, and the submission of a substantial body of written and oral evidence from, both the SPA and Police Scotland. The Interim Chief Officer appeared before the Committee on two occasions and senior representatives of Police Scotland on four occasions. The issue of cyber kiosks was also raised with the Chief Constable when he appeared before the Sub-Committee on 31 January 2019.

The SPA welcomes the Sub-Committee’s Report as we are always keen to reflect and learn, not least since the new arrangements for the scrutiny and accountability of policing in a post-police reform landscape in Scotland are still relatively young. We are also firmly of the view that ‘policing by consent’ is a fundamental principle which underpins policing in Scotland and so are constantly striving to ensure that every effort is made to build public confidence and trust in our police service.

As the body charged with the statutory responsibility to maintain, improve and develop policing in Scotland, the SPA is firmly committed to ensuring that our police service adapts to meet the needs of the future and to respond to changing patterns of crime. The 10 Year Strategy ‘Serving a Changing Scotland’, agreed by the SPA and Police Scotland, has set out a direction of travel which we are actively pursuing through an ambitious programme of investment and change.

We note also that the legislation is clear that operational decision making rests with the Chief Constable and that he is accountable to the Scottish Police Authority for the policing of Scotland. This is a responsibility the SPA takes very seriously.

The SPA is acutely aware that cyber kiosks, like many other new and evolving technologies, have the potential to enhance the ability of our police service to prevent and investigate crime in new and more effective ways and to keep pace with the role that digital devices now play in our society. We recognise too, however, that it is vital that such developments take place within a robust legal framework and that issues and concerns relating to, for example, data protection, privacy and human rights are properly considered and addressed.
Context

It is important to note that cyber kiosks are but one element of a major programme of investment and transformational change within Police Scotland. As outlined in the 10 Year Strategy ‘Serving a Changing Scotland’, it is vital that our police service adapts so that it is able to respond to changing patterns of crime and wider societal change.

As the Sub-Committee is aware, the requirement for police services to adapt and anticipate the changing nature of threats, risks and harms is not exclusive to Scotland but to societies and jurisdictions across the world.

The latest Scottish Crime and Justice Survey, published in March 2019, shows that the two most prevalent worries for members of the public in Scotland are having their bank or credit card details obtained, and the theft of their identity. Research by the Scottish Government also estimates that a rise in cyber-enabled criminality has contributed to more than half the rise in recorded sexual crimes in Scotland since 2013-14. Cyber-enabled crimes are both growing in scale and still likely to be greatly under reported.

Set against this backdrop, the SPA believes it is vital to accelerate progress towards enhancing Police Scotland’s digital capability and would note that a very significant effort is being made by the Authority to secure and direct the necessary investment to achieve this within a robust framework of governance and assurance.

The Sub-Committee’s Report

The Sub-Committee’s consideration of this issue over the past year has been informative and we have taken a close interest both in the Committee’s deliberations and the range of evidence and submissions it has received. We welcome the opportunity for the Chair of the Authority to give evidence on 9 May 2019.

The SPA fully recognises that the proposed rollout of cyber kiosks has raised concerns regarding privacy, human rights and other legal and ethical matters and we have been actively considering these. We believe there are lessons to be learned by both the SPA and Police Scotland in how such changes to operational policing are developed in the future.

The SPA Chair has asked the Chief Constable to provide a further report to the SPA Board regarding his proposed plans for the rollout of cyber kiosks in light of the concerns raised and which sets out the legal basis for the use of this technology. A report will be considered by the SPA’s Strategy, Policy and Performance Committee at its next meeting on 8 May 2019 and this matter will be considered further by the SPA Board at its next meeting on 22 May 2019.

While recognising that there are always lessons to be learned around our own approach to scrutiny and oversight, we would note that, since this issue was first considered by the SPA, significant improvements in the Authority’s approach to governance have taken place. These improvements have been acknowledged by Audit Scotland, HMICS and Parliamentary Committees.
The SPA notes the recommendation directed by the Sub-Committee to the Scottish Government in respect of overseeing SPA governance. It is however for the Authority to continue to assess and develop its scrutiny and approval processes for the future and learn any subsequent lessons. It is the role and responsibility of the Scottish Government to set the strategic priorities for policing, to sponsor the Authority and to appoint its Chair and members, but not to direct its scrutiny. That arrangement and relationship is very clearly set out in the policy intentions of the Police and Fire Reform Act and it does so to ensure that there is a suitable separation between policing and political influence.

**Timeline of SPA Governance and Decisions**

As the Sub-Committee is aware, the decision to proceed with the initial limited trial of the cyber kiosks in 2016 was taken by Police Scotland. The decision to procure the devices was also taken by Police Scotland in line with the agreed system of financial governance in place at the time between the SPA and Police Scotland which permitted Police Scotland to undertake purchases up to the value of £0.5 million without seeking the Authority’s approval. The purchase of the cyber kiosks fell within that category of expenditure.

As previously set out in written and oral evidence and in correspondence, there were a number of specific SPA milestones and touchpoints with the cyber kiosks proposal as part of the Authority’s consideration of:

- a) the Policing 2026 implementation plan
- b) Police Scotland’s Digital Data and ICT Strategy

- A presentation was given by Police Scotland to SPA Board Members on the elements of the Policing 2026 three-year implementation plan, including an element on cyber kiosks, in September 2017.

- The overall three-year implementation plan was subsequently considered by the full Board at both its April and May 2018 meetings and formally approved by the SPA Board on 2 May 2018 alongside a three-year financial plan.

- On 31 May 2018, the SPA Board considered and gave its broad approval to Police Scotland Digital Data and ICT (DDICT) Strategy and vision. The introduction of cyber kiosks features as one element of five within the work to enhance Police Scotland’s cyber capability and capacity, with specialist cyber solutions, one of more than 30 broad project areas identified within the strategic outline business case. The SPA Board subsequently approved the Outline Business Case for the DDICT Strategy at its meeting in September 2018.

- Most recently, the Authority’s Strategy Policy and Performance (SPP) Committee requested and considered an update report from Police Scotland on cyber kiosk proposals at its meeting on 5 February 2019.

- As indicated earlier in this paper, the SPP Committee will further consider Police Scotland’s plans now and going forward on 8 May 2019 and the Chair of the Authority will provide Sub-Committee members with an update from that meeting when she attends the Sub Committee the following day. The full SPA Board will consider this matter further at its meeting on 22 May 2019.
• In addition, the SPA has been represented on the Stakeholders’ Group established by Police Scotland in June 2018.

We note the Sub-Committee’s views that the Authority should have done more to critically assess the detail of the cyber kiosk proposal at various points. We will reflect further on this with regard to our future practice as we continue to strengthen and develop our scrutiny and governance arrangements and, through our ongoing process of Board Member development.

Financial Oversight and Delegation

The SPA and Police Scotland operate within a Governance Framework and related scheme of delegations which set out how and where decision-making and responsibilities lie. Shortly after her appointment, the SPA Chair wrote to the Justice Committee in January 2018 on the guiding principles for the development and improvement of the SPA, including simplification, transparency and clarity around the SPA’s governance processes.

A revised SPA Governance Framework was approved by the Board in June 2018, and further updated in October 2018 to reflect the development of the SPA Committee structure. This Framework embeds the standards and practices which should be expected of a major national body such as the SPA.

The Governance Framework represents an important step on that journey of change rather than the culmination of it. Work remains outstanding to consider the complementary schemes of delegation that underpin and flow from it. While the SPA notes the recommendation of the Sub Committee to specifically review the £0.5 million threshold within which Police Scotland has a delegation to spend, we do not believe that the approach taken by the SPA and Police Scotland to capital and ongoing revenue costs in this regard is novel. It is the view of the Authority that this aspect of delegation should be considered within ongoing work to review and develop schemes of delegation and not in isolation.

Future Governance and Oversight of Changes to Policing

The SPA fully supports and endorses the view of the Sub-Committee that in any case where change in policing, technological or otherwise, has human rights or privacy impacts, the SPA should scrutinise the policy impacts irrespective of the financial size of contracts.

That is why, as part of the raft of governance improvements put in place over the past year, early oversight of key policy changes in policing has been written into the terms of reference of the recently established Strategy Policy and Performance Committee, including:

“Consider significant proposed changes to operational policing prior to implementation and provide assurance to the Board in relation to associated opportunities and risks, including in relation to impact on communities…”
We note the Sub-Committee’s reflections, informed by a number of external contributors during its evidence gathering, that the legal and ethical issues being discussed around cyber kiosks have wider implications for other aspects of policing and the investigation of crime. These are matters being actively considered by the SPA and we are currently exploring how the research and evidence base can be developed to inform future decisions regarding cyber and digital developments as they affect operational policing.

The Authority is also, given our direct responsibility for the Forensics service, currently taking forward a significant piece of work, together with a range of stakeholders, to consider the future delivery and governance of digital forensics.

On the overall Digital Data and ICT Strategy, the SPA Board’s scrutiny and approval of the Outline Business Case (OBC) in September 2018 enables the production of a range of detailed Full Business Cases for each of the projects within the ‘umbrella’ of the single OBC. These will be prioritised against the limited capital funding available to policing, the relative inadequacy of which has already been highlighted to the Sub-Committee in previous SPA evidence. Those DDICT business cases that can be progressed in the short and medium term will thereafter be scrutinised by the SPA for which we will in turn be subject to independent scrutiny by Audit Scotland and thereafter to the appropriate structures of the Parliament, notably the Public Audit and Post-legislative Scrutiny Committee.

The SPA has invested considerable time over recent months, through a dedicated Working Group, to examine how the scrutiny and oversight of Police Scotland’s Transformation Portfolio, and the range of programmes and projects within it, can be further strengthened, not least given the need to accelerate the pace of change and improvement within the service. We have also worked closely with Police Scotland to develop a new Performance Framework and will be continuing to monitor this and develop improved performance reporting in the months to come.

We hope that this range of work, which we would be pleased to report further on as it develops, will provide confidence and reassurance to the Sub Committee that the SPA is continuing to improve its governance practices and, in so doing, to provide effective oversight to changes within policing. Our aim is to develop scrutiny and oversight which is both effective and proportionate while at all times remaining focussed on the need to adapt policing in order to keep people and communities safe.

We recognise the Sub-Committee’s interest in these matters and will continue to engage constructively with the Parliament and its Committees when invited to do so. We are keen also to develop new and better ways of informing the Parliament of the range of work which is underway within the Authority, not least to avoid unnecessary duplication of police time and reporting across the scrutiny landscape.

We are mindful too that an essential element of the Parliament’s decision to create a Scottish Police Authority, as stated in the Policy Memorandum to the Act, was to provide a clear separation between the Scottish Ministers and the police service and to ensure that the Chief Constable is free from undue political influence in making decisions about the investigation of crime. We recognise that some of these
boundaries have been blurred during the early years of police reform not least because the SPA was insufficiently active or effective in this role. We believe considerable progress has been made to address this and trust that this will enable the boundaries, roles and responsibilities envisaged in the Act to operate more effectively in the future.

SPA
3 May 2019