

Case 04 Issue 39 – Child sexual abuse		LEARNING THE LESSONS
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Failure to seize a suspect's phone

Investigation into suspected possession of indecent images of children delayed by failing to pass on information or seize a mobile phone, raising issues about:

- *Training on making submissions to digital investigation units*
- *Knowledge of powers to seize items under Section 19 of PACE*

This case is relevant to the following areas:

Forensics and evidence gathering		Public protection	
Information management			

Overview of incident

Intelligence was received by the police from a Child Exploitation and Online Protection (CEOP) operation that an Internet Protocol (IP) address for Mrs A and Mr B's home address was using a website/forum that shared indecent images of children.

The intelligence was picked up by Mr C in the sexual crime unit at the force. Mr C carried out checks on the names listed in the intelligence report and established Mr B was a volunteer with a local group. His enquiries revealed that although access to children was not part of the volunteer role, it could not be ruled out completely.

Mr C explained to the IOPC if a suspect worked in a position of trust, the intelligence remained with the sexual crime unit to be allocated and actioned. However on this occasion, Mr C's voluntary work did not meet the threshold to remain with the sexual crime unit. Therefore, it was sent to division.

Mr C told the IOPC before the intelligence was sent to division, a KIRAT risk assessment was completed. A KIRAT risk assessment is used to assess the risk of contact offending in suspects in indecent image cases. The purpose of the KIRAT risk assessment is to assist with prioritisation of workloads. Mr C said indecent images of children investigations were becoming a "significant and increasing workload for the police."

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Mr C completed the KIRAT risk assessments for Mrs A and Mr B. Both resulted in a 'high' risk rating. Under the force protocol for the management of intelligence relating to indecent images of children, incidents which carried a medium or high risk rating required positive action within seven days.

Mr C sent the risk assessments to the division hub inbox alongside the intelligence package. He noted the potential urgency with the incident due to the fact there were children at the address and a previous incident the force had on record.

The previous incident was around 12 months previously. This was a report from Mrs A to the force stating she had found suspicious searches relating to children while using the Google search bar on the family computer. Several of the searches were recorded on the incident log by the call handler. This included the opening line "Can I have sex with a girl who has not yet gone through puberty?"

Almost a week after the intelligence was sent to the divisional hub, it was allocated to DS D as the officer in case (OIC) to progress. The following day a warrant was sought under Section 8 of the *Police and Criminal Evidence Act (PACE 1984)*. The warrant was approved by a district judge to allow officers to enter the address and seize "electronic devices, namely computers, mobile phones, any other device capable of storing data."

The day after the warrant was sought and granted, the search was made at the home of Mrs A and Mr B. The search documentation showed it lasted approximately 45 minutes. There was a list of electronic devices noted on the seizure record, including various computers and associated equipment, and one mobile phone. DS D was present at the search of the address.

DS D made a referral to social services with the information the force had received, based on the fact there were young children living at the address. She requested a social worker remain on standby while the search was carried out. The children in the address went to their grandparents while the search took place. Later that day, social services went to the house unannounced and spoke to the parents individually. A working agreement was put in place by social services stating Mr B should not have any unsupervised contact with the children until the outcome of the computer investigation.

The IOPC asked DS D whether she carried out a voluntary search of the occupants of the house, as the search documentation said happened. DS D stated due to rules relating to gender she was only allowed to search females. She said she recalled asking Mrs A if she had anything relevant on her person before escorting her to the police station. DS D recalled Mrs A did not have pockets on her clothing and did not present anything when requested. She said she could not comment on the search of Mr B but stated she must have been told this had been completed to fill out the documentation to that effect.

DS D stated she believed all potential evidence had been recovered by the search. She said she was focused on Mrs A and making arrangements for the children (aged 18, 10, nine and three years old) so had little contact with Mr B. She said "I was satisfied by what I had been told that all phones had been recovered."

Another officer present at the search was DC E. He stated it would have been either him or another male officer that searched Mr B because it is force policy for male officers to search males where practical. However, he acknowledged he did not recall a search of Mr B taking

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place. IOPC investigators asked DC E if any officer asked the occupants of the address the location of any mobile phones. DC E stated to the best of his knowledge, he did not ask this.

The children at the address were spoken to by social services after the search but no disclosures were made.

DS D did not believe there was sufficient evidence to arrest either Mrs A or Mr B so they were invited for voluntary interviews under caution at the local police station. DS D stated that following the search, Mrs A and Mr B were content to attend as voluntary interviewees. They travelled to the local police station in the back of an unmarked police car.

During their respective voluntary interviews, Mrs A and Mr B denied any knowledge of what the intelligence suggested. The interview DC E conducted with Mr B was visually and audio recorded. A review of this footage showed DC E asking Mr B about his mobile phone. Mr B removed a mobile phone from his pocket and began using it in front of DC E. DC E did not challenge this. The mobile phone was not seized, either in interview or afterwards.

IOPC investigators asked DC E why he allowed Mr B to operate the phone in front of him. He replied "I could not physically intervene at this stage as I would have been committing assault.... The phone was face up in his hand, in my eyesight and at no time did I see anything inappropriate or believe he was deleting any content from the phone. I did not consider it to be an issue as he quickly put down the phone..."

He also said Mr B told him the phone was shared with his wife. DC E said "Had there been any inappropriate content on the phone his wife would have also seen it. The fact he produced it in front of me also led me to believe there was nothing on the phone otherwise why would he have disclosed it."

IOPC investigators asked DC E about his powers to seize the phone. He said it was his honest held belief at the time that he did not have the power to seize the phone because Mr B was a visitor to the police station and was not under arrest or a detainee. He said although Section 19 of PACE is a general power of seizure, it refers to being "lawfully on the premises". DC E stated PACE did not define what premises were and therefore he believed it to be anything other than a police station.

Section 19 Police and Criminal Evidence Act (1984)

"(1)The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises..."

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing –

- (a) That it has been obtained in consequence of the commission of an offence; and
- (b) That it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing –

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- (a) That it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) That it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

Find out more: [Police and Criminal Evidence Act 1984 \(legislation.gov.uk\)](https://legislation.gov.uk)

The electronic equipment seized by the officers was submitted to the force digital investigation unit (DIU) on the day of the search. The submission was made as a “standard” (routine) submission. DS D stated the reason it was made as a “standard” submission was because there was a lack of evidence to make any arrests and no indication of risk to the children. Any risk to the children was being managed by social services, therefore the submission did not meet the threshold for an urgent or critical submission.

The submission was accepted by the DIU around ten days later. Five days after this, Mr F emailed DS D to say due to increased demand in the DIU they would have to be “as focussed and proportionate as possible with what exhibits we accept.”

Almost one month later, DS D replied to Mr F identifying one exhibit as having the highest probability of having images as it was used exclusively by Mr B.

Mr F stated at the time of the submission he was not aware of Mr B’s volunteer work, the ‘high’ KIRAT risk assessment, or Mrs A’s call to the police a year previously reporting suspicious internet searches. Mr F told the IOPC he would have expected to be informed about Mr B’s volunteer work and the information behind the risk assessment. He said both pieces of information would have caused him to contact DS D to request more information. He also said had he known about Mrs A’s report the previous year of suspicious internet searches, it would have changed the way the submission was dealt with by the DIU and would have been handled more urgently with more resources.

DS D was asked why she did not highlight this information in her submission. She said she had received no formal training on how to make a submission to the DIU. She stated she was never told what should or should not go into a submission. Instead, she had learned ‘on the job’.

In respect of the KIRAT risk assessment, she said this was not something she had ever heard of or been trained in by the force. In respect of Mr B’s volunteer work, DS D said while she recognised the importance of this with regard to safeguarding, she would not usually put that information in a submission and had never been asked for information about Mr B’s volunteer work by the DIU.

DS D said she did inform the DIU about reports made by Mrs A the previous year about suspicious internet searches. DS D did not have any notes of this conversation or who she had the conversation with. Telephone records were not able to corroborate DS D’s account. DS D accepted in hindsight that the report from a year previously about suspicious internet searches should have been part of her written submission to the DIU.

Around a month after the property search and the submission to the DIU, both Mrs A and Mr B attended an Initial Child Protection Conference (ICPC).

An ICPC is a meeting to discuss and record all concerns about a child or children. The aims of the meeting are to consider whether a child has been harmed or is at risk of being harmed and

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the nature of the concern about the child; to assess the degree of risk to the child's health and well being, and whether the child needs protection; to decide whether the child should become the subject of a child protection plan; and make any recommendations about any further action needed to help the child.

The conference was also attended by two social workers, a health visitor, a police officer and a representative from both the secondary school and primary school of the children.

Mrs A recalled informing the ICPC what had happened the year previously when she reported suspicious internet searches to the police. She described this as a "virus" on the computer. She also recalled being advised she should not leave the children alone with Mr B. Because she said she would co-operate, they said the vulnerability was lower. She recalled by the end of the meeting they had decided the children did not meet the threshold for a child protection plan and the family could be monitored at 'children in need' level.

Miss G, from social services, told the IOPC she attended the ICPC and took over the family's case from a social services' perspective. She said at the time there was not enough evidence to confirm or discount either Mrs A or Mr B as the person who had accessed the indecent images. She said in the absence of any bail conditions or any evidence that confirmed the involvement of the parents, the ICPC voted unanimously to manage the family at 'child in need' level pending the outcome of the DIU investigation.

Miss G said the difference between 'child in need' and a 'child protection plan' is 'child in need' is voluntary and relies on the willingness of parents to engage, whereas a 'child protection plan' gives social services legal rights to see the children.

Approximately a year later, Mr B was arrested for possession of indecent images of children following the outcome of the DIU investigation. Following his arrest, two of Mrs A and Mr B's children disclosed Mr B had sexually abused them.

Type of investigation

IOPC independent investigation.

Other action taken by this police force

1. The force has completed a review of its guidance around indecent images of children cases.
2. The force has a monthly meeting about indecent images of children cases which is attended by a single point of contact (SPOC) from every division where good practice and feedback is shared.
3. The force dip samples crimes where feedback and learning is provided.
4. The force has a new indecent images of children case policy and it is in the process of being signed off by the force.

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5. The force has rewritten its training package for new detectives following learning. It now includes a paper feed exercise to assist officers in understanding the intelligence and applying for warrants based on the information held.

Outcomes for officers and staff

DS D

1. DS D was found to have a case to answer for misconduct in respect of the allegation she failed to pass on relevant information to the digital investigations unit when making a submission. A misconduct meeting was held. The conduct level was not proven and no further action was taken.

DC E

2. DC E was found to have a case to answer for misconduct in respect of the allegation he failed to seize the mobile phone from Mr B in interview and allowed him to operate the phone in front of him. A misconduct meeting was held. The conduct level was not proven and no further action was taken.

Questions to consider

Questions for policy makers and managers

1. What training does your force give to officers on the level of information that should be included in submissions to teams examining electronic equipment as part of indecent images of children investigations, including any information which could impact on the urgency of the request?
2. What training or guidance does your force give to officers to make sure they are aware of their powers to seize items under Section 19 of PACE?
3. How do you make sure officers who attend and carry out property searches make sure they consider asking occupants to volunteer electronic devices on their person?
4. How do you make sure people know how to make proper submissions to teams when analysis of electronic equipment is needed?

Questions for police officers and police staff

5. What would you do if you were carrying out a voluntary interview with the man and he took his phone out but you were not sure of your powers to seize the item?
6. What would you have done differently if you were carrying out the search at the property?