

Digital Evidence Consent Forms: Guidance issued by the NPCC, CPS and College of Policing

Will all those who report a sexual offence or other crime have their digital devices examined? No. Mobile telephones or other digital devices should not be examined as a matter of course and this is very clear in our guidance to police and to prosecutors. They should only be examined in investigations where data on the device could form a reasonable line of enquiry.

Are victims of sexual offences being treated differently? No. This approach of seeking consent for digital examination applies to all crimes but will only be used where necessary and proportionate. It will not be used in all sexual offences cases.

It will most likely be used in investigations where the complainant and suspect are known to each other and past communication is a reasonable line of enquiry. Sexual offences often involve complainants and suspects who have a prior relationship with contested claims meaning digital examination is more likely in these investigations than in many other crimes. It will also be used in other cases where digital evidence may be crucial, such as malicious communications, stalking and harassment and violent crime including homicides.

Why does this focus on the devices of complainants and not suspects? When a crime is investigated, police will regularly seize devices of those accused. This is done using police powers and suspects are not required to consent. Coercive police powers are clearly not appropriate for use against complainants and access to their devices should be on the basis of specific, free and informed consent.

What happens to the information downloaded? The investigator identifies material from the phone which is relevant to the investigation.

From that relevant material, only that which is to be used in evidence because it supports the prosecution case or material which undermines the prosecution case or assists the case for the defence (the test for disclosure) will be shared with the defence.

Even once this material has been served or disclosed, there are strict legal safeguards in the trial process that prevent the complainant being cross examined about any previous sexual behaviour other than with the leave of the court. Information that is not relevant will not be used but may be held until the case has concluded.

Why is more information downloaded than required for reasonable lines of inquiry? Currently the forensic tools used by many forces mean that they will extract more data than is required for examination. However, we are clear this does not mean all data should be examined. We are piloting new technology and hope in the future we will be able to only extract the relevant information.

Will cases be dropped if consent is refused? No. Decisions about how best to proceed will be taken on a case by case basis based on the circumstances. Complainants and witnesses are given information to enable them to make an informed decision. If consent

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is not given, other reasonable lines of enquiry will be considered. However, we must also inform them that without the ability to test a reasonable line of enquiry we may not be able to proceed with the case.

How was consent previously sought? Police forces had different approaches to seeking consent, including seizing devices using police powers. The new national form seeks to bring consistency across England and Wales.

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What safeguards are in place to prevent disproportionate intrusion and to prevent inappropriate information being shared in court? Police will only investigate what could form a reasonable line of enquiry. Police and prosecutors have been given clear guidance that they should only seek access to personal data when necessary and proportionate.

Section 41 of the Youth Justice and Criminal Evidence Act 1999 places restrictions on evidence or questions about complainant's sexual history in court. Judges and prosecutors are the gatekeepers to ensuring this is upheld.