



Policy Title: DNA Policy, Procedure and Guidance

CCMT Sponsor ACC Specialist Operations

Department/Area: Crime Support

Section/Sector: Forensic Investigations Unit

1.0 Rationale

1.1 This document sets out Force policy and procedures applicable to:

- The taking of intimate and non-intimate samples of DNA for evidential purposes
- The routine taking of non-intimate body samples of DNA from people arrested for a recordable offence
- Intelligence led DNA screening
- Continuity of Exhibits and Exhibit Labels (Appendix E)

1.2 It is relevant to Senior Investigating Officers, Crime Managers and Operational staff.

2.0 Intention

2.1 The intention of this policy is to:

- ensure routine non-intimate sampling of DNA takes place in all appropriate cases
- ensure the effectiveness of DNA sampling through improved quality of sampling and submissions
- increase detections through maximising intelligence opportunities presented by the effective use of DNA

3.0 General Principles

3.1 Deoxyribonucleic Acid (DNA) is a chemical, found in almost every human cell. It has a genetic code, which is unique to individuals (except identical twins), and is capable of providing strong evidence of identification.

3.2 The profiling of DNA is now accepted as one of the most powerful techniques in the identification of offenders. It is an essential tool in crime investigation.

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3.3 Since 10th April 1995 profile details of offenders have been placed on a National DNA Database and speculative searches have been carried out against DNA profiles obtained from crime scenes.

3.4 PACE as amended by the Criminal Justice and Public Order Act 1994 provides that a non-intimate DNA sample can be taken from people Charged, Reported or Cautioned for a Recordable Offence.

3.5 The Criminal Justice Act 2003 sections 9 and 10 amends Sec 61 and 63 of PACE 1984. The police service now has the power to take and retain non-intimate DNA samples from people who have been arrested for recordable offences and whom it is decided to take no further action. These samples are referred to as PACE DNA samples and are a DNA profile of the offender.

3.6 The Criminal Justice and Police Act 2001 has allowed the retention regardless of disposal of **all** lawfully taken DNA and fingerprint samples including those taken before the implementation date of 11th May 2001.

3.7 PACE Intelligence DNA Samples

DNA Samples from suspects are now classified as:

Non-intimate samples:

- A sample of hair (other than pubic hair), which includes hair pulled with root.
- A swab taken from any part of a person's body including the mouth but not any other body orifice.

Intimate samples

- Samples of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from a person's body orifice other than the mouth.

The sampling and submission procedure is shown at appendix A and B.

3.8 When to take samples

Using a PACE DNA kit a sample may be obtained in cases where a person has been arrested for a recordable offence.

A recordable offence is normally one which is punishable by imprisonment. They are fully listed in the National Police Records Regulations 1985.

In order to maximise the potential offered by DNA sampling, every opportunity will be taken to obtain PACE DNA samples.

PLEASE check prior to sampling that you have the correct kit as conversion of wrongly used kits to the correct style is not being supported, it is not in accordance with best practice and ultimately could jeopardise the integrity of the National DNA Database and the PNC. It will jeopardise the chances of a successful prosecution in your case.

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Please note that two DNA samples **CANNOT** be taken from a subject in the course of the same investigation unless the first sample fails due to insufficient or poor quality DNA.

DNA samples taken for Evidential/Casework purposes will be considered for National DNA Database inclusion, this is coordinated by the Forensic Service Provider and the Forensic Submissions Unit. A 'New Sample' is not required.

See Appendix A and B for further information.

3.9 The purpose of taking PACE DNA Samples

The aim of submitting samples is to increase our chances of **detecting and preventing crime**. The National DNA Database (NDNADB) may provide a '**Match Report**' notification when a submitted crime stain sample hits against the database, which the Forensic Submissions Unit (FSU) forward to the Crime Management Unit on area to evaluate.

For an explanation of "Matches" see Appendix C and D.

3.10 Volunteer DNA Samples

The Volunteer sampling kit will be used for taking DNA samples from victims, for elimination purposes and from those involved in intelligence-led mass screens.

The Volunteer kit prefixes with a 5 series barcode.

The new Volunteer kit will ensure that volunteers give truly informed consent and differentiate between consent to provide a sample and written consent for loading the profile to The National DNA Database (NDNADB).

Please ensure that the correct consent is completed. Samples given voluntarily where the individual is not a suspect can now be retained on the NDNADB in accordance with the Criminal Justice and Police Act 2001.

Please note that once written consent has been given it cannot be withdrawn.

PLEASE check prior to sampling that you have the correct kit as conversion of wrongly used kits to the correct style is not being supported, it is not in accordance with best practice and ultimately could jeopardise the integrity of the National DNA Database and the PNC. It will jeopardise the chances of a successful prosecution in your case.

3.11 Intelligence Led Mass Screening

Intelligence led mass screening is used in major crime inquiries. It is vital that correct procedures and protocols are in place and everyone involved in such an operation is clear about their personal role and responsibilities and those of other officers engaged in the process.

Detailed advice and guidance on DNA intelligence led mass screening is available from the National Crime and Operations Faculty, their Help Desk

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number is: 01256 602443. Any intention to conduct an Intelligence Led Screen **MUST** be discussed with a TVP Principal SOCO to ensure systems are in place to deal with it effectively.

Chapter 16 of the MIRSAP ((Major Incident Room Standardised Administrative Procedures) Manual gives the HOLMES 2 Guidelines regarding DNA Mass Screening (see Appendix F and G).

4.0 Challenges & Representations

4.1 Any person directly affected by this policy may make representations in relation to this document, and/or any decision in consequence of it, to:

Detective Chief Superintendent Crime Support
Thames Valley Police Headquarters
Kidlington
Oxon
OX5 2NX

4.2 A complaint against an individual officer's conduct should be progressed through the Complaints against Police Procedures.

4.3 The areas covered by this policy are open to scrutiny by H.M. Inspector of Constabulary during official inspections.

5.0 Guidance, Procedures & Tactics

5.1 Use of DNA Matches in Interviews

Where it is felt necessary by an officer to introduce 'sample' evidence during interview, which indicates a previous conviction, this does not necessarily render the interview inadmissible. The ROTI can be edited later should the need arise.

The following guidelines are to assist the interviewing officer where identification is involved.

Upon receipt of a report from the NDNADB or Laboratory indicating a match between a crime scene mark and a named suspect, the suspect may be arrested on suspicion of committing the relevant offence.

On arrival at the custody suite, inform the custody officer of the grounds for arrest. The existence of DNA evidence/intelligence should not be mentioned (if possible) when giving the grounds, so as to limit reference to previous convictions. However, where this is the only evidence, then this would have to be stated. Whatever is recorded on the custody record is subject to disclosure.

Assess what information, if any should be disclosed to the suspect or legal representative prior to interview.

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If at any stage during the interview the suspect or legal representative introduces previous convictions (precons), the interview would continue as normal. Should the suspect or legal representative provoke the interviewing officer into introducing previous convictions with a question such as "Why do you think it is my / my clients fingerprint / DNA ?" the officer should respond openly and continue the interview as normal. Any reference to precons must not be excluded from the typed ROTI.

A DNA Match serves as level 1 paperwork for submission to the CPS and forms part of the case file in charged cases.

See Appendix C and D for further advice and for explanatory notes on DNA match reporting for TVP Officers, CPS Prosecutors and Defence Lawyers.

When suspects indicate that they **will not** contest the charge following sample evidence being found at the scene of a crime, the below action should be taken:

- obtain a PACE DNA sample and indicate on the outer bag SAMPLE RETAKEN FOR COMPARISON/UPGRADE.
- store the sample according to local area policy in the holding store. These samples will be sent onto the FSU for long term retention.

There is no need to request further evidence of comparisons against a new sample (post arrest), or to obtain an identification statement whilst the suspect is still in custody.

When suspects **do** contest the charge, the following action should be taken:

- obtain a DNA sample using a PACE DNA Kit and indicate on the outer bag SAMPLE RETAKEN FOR COMPARISON/UPGRADE.
- submit the sample to Scenes of Crime (SOC) with the associated laboratory submission form requesting either a level 2 abbreviated statement or a full file comprehensive statement.

If a suspect initially indicates that s/he will not contest a charge, then changes his/her mind, the stored PACE DNA sample should be re-claimed from storage at the FSU and submitted to SOC as above.

To re-claim the sample email DNASubmissions@thamesvalley.pnn.police.uk noting the subject details and indicating where you would like the sample returned to.

Once a case disposal has been made and the stored PACE DNA sample is no longer required please notify the FSU via the email address above. The stored sample will then be considered for either loading to the NDNADB or destruction depending on the subject's previous DNA status.

See SOP - DNA storage, retention and submission.

NB: If identification is contested, based on DNA intelligence, comparison samples will need to be submitted whilst the suspect is granted S.47(3) police bail. See the advice given above on DNA PACE Evidential submission and

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allow 1 week response time for a level 2 abbreviated statement and 3-4 weeks for a full file statement.

Following a PACE DNA sample submission to a forensic service provider for casework comparison a copy of the PACE card will be sent to the FSU, HQ by the provider.

The FSU will access the subject to determine whether the PACE DNA sample can be loaded to the NDNADB. The objective of this is to consider all lawfully taken DNA samples for NDNADB inclusion and unsolved crime stain comparison.

A second DNA sample on Charge or Caution is therefore **NOT** required.

5.2 Officers attending Major Crime Scenes

DNA profiling has advanced to such a degree that it is now so sensitive that contamination may occur by touching, sneezing or even just talking near an article.

Many 'mixed' profiles are being found which causes difficulty in interpretation of the suspect's profile.

The most likely person to contaminate a sample is the person that collects it. For this reason it is vital that we eliminate innocent contamination at a nearly stage in the investigation.

For these reasons the Home Office set up the Police Elimination Database (PED) for Police employees, which is administered by the Forensic Science Service.

The samples included on this database are not used for speculative searches and will only ever be checked against a particular case where contamination is suspected and the person was legitimately working at the scene.

The Police (Amendment) Regulations 2002 came into force 1 August 2002 and makes the following amendments. Regulation 20A is inserted. This regulation requires members of a police force to provide a sample upon appointment (other than in case of transfer between police forces) from which a DNA profile can be derived.

The decision of a police employee engaged in crime scene work not to be included in the PED has the potential to seriously hamper any major crime investigation as a mixed profile may reduce the chances of identifying a suspect. Where employees feel unable to provide a sample for elimination purposes it may be advantageous to minimise their presence at a major crime scene.

5.3 Retention and Destruction

The Criminal Justice and Police Act 2001 allows the retention of all lawfully taken DNA and fingerprint samples, including those taken before the

implementation date. This excludes the PED. Samples on the PED are destroyed at the request of the staff member, or when that staff member leaves the employ of the police.

6.0 Communication

6.1 Links to Police National Legal Database Other

No links

6.2 Communications Strategy

The Policy Management Unit (PMU) will publish this policy on the policy and procedures intranet and internet sites. The PMU will also advertise the policy in Managers Briefing and an All User E-mail.

7.0 Compliance and Certification

7.1 Human Rights Certification

This Policy has been drafted in accordance with the Human Rights Act 1998.

(i) Legal Basis

The legal basis for this document is derived from:

- Police and Criminal Evidence Act 1984
- Criminal Justice and Public Order Act 1994
- Criminal Justice and Police Act 2001
- Criminal Procedure and Investigations Act 1996

This list is not exhaustive.

(ii) Human Rights Articles Engaged

It is acknowledged that this policy has the potential to engage the following Articles:-

- Article 3 Prohibition of Torture
- Article 5 Right to Liberty and Security
- Article 6 Right to a Fair Trial
- Article 8 Right to Respect for Private & Family Life

In the event that an Article of the Convention is engaged, then the legitimacy for the engagement is usually provided within the text of the Articles.

- Article 3 Prohibition of Torture. There is no legitimacy for engagement of this article as it is expressed in unqualified terms. It includes degrading treatment, which has been defined as “treatment that arouses in the victim a feeling of fear, anguish and inferiority capable of

humiliating and debasing the victim and possibly breaking his or her physical or moral resistance". It is possible taking DNA samples could be claimed to be degrading treatment, but the European Convention of Human Rights is interpreted to take into account "notions currently prevailing in democratic states". It is very unlikely that DNA sampling would be deemed degrading as it is sanctioned by the Police and Criminal Evidence Act 1984. It is therefore highly probable that DNA sampling would be deemed to be acceptable.

- Article 5 Right to Liberty and Security. Article 5 (3) (c) provides that this right can be interfered with: "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing having done so".
- Article 6 Right to a Fair Trial. It applies in its entirety when a person is detained/arrested/charged.
- Article 8 Right to Respect for Private and Family Life. A public authority may interfere with the exercise of this right in accordance with the law and as is necessary in a democratic society in the interests of:-
 - national security
 - public safety or the economic well-being of the country
 - the prevention of disorder or crime
 - the protection of health or morals
 - the protection of rights and freedom of others

(iii) Prohibition of Discrimination

By engaging any of the aforementioned Articles, there is the potential to engage Article 14 of the Convention. The enjoyment of the Rights and Freedoms set forth in the European Convention of Human Rights shall be secured without discrimination on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Actions taken as a consequence of this policy will be applied fairly and impartially, having due regard to natural justice and human rights.

7.2 Diversity Impact Assessment

You will need to complete the attached Diversity Impact Assessment as much as you can. The Equality Schemes Co-ordinator, Dee Singh (700 6577) is available to provide advice and you should send your completed document to him to quality assure.

7.3 Diversity (Human Resources)

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In the application of this policy, the Force will not discriminate against any persons regardless of their gender, sexual orientation, race or ethnic origin, religion, age or disability.

7.4 Data Protection

Personal data processed in compliance with this policy will be managed in accordance with the provisions of the Data Protection Act 1998

7.5 Freedom of Information Act

This is a publicly available document (excluding Appendices A - G) and will be made available on the Thames Valley Police website and by written request to:

Detective Chief Superintendent Crime Support
Thames Valley Police Headquarters
Kidlington
Oxon
OX5 2NX

Appendices A - G will not be made available to the public on the grounds that they disclose police methods of working.

7.6 Protective Markings

This policy has been assessed as NOT PROTECTIVELY MARKED.

7.7 Health & Safety at Work

No Risk

8.0 Monitoring and Review

9.0 Links to Best Value/PPAF/Priorities/Performance Indicators

This policy supports the following Corporate Priority:

1. Investigating crime

10.0 Review Process

This policy document will be reviewed annually. The review will take into account the following criteria:-

- Changes in legislation
- Court rulings – Domestic, European and Human Rights
- Examples of good practice from other Forces or other organisations
- Changes in Home Office Circulars

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- Developments with ACPO Policy Unit
- Representations made by individuals and relevant organisations
- Relevant diversity data