



<u>Policy Title</u>	Identification Procedures
<u>CCMT Sponsor</u>	ACC Specialist Operations
<u>Department/Area</u>	Criminal Justice
<u>Section/Sector</u>	Identification Units

1.0 Rationale

1.1

The identification of offenders is an important part of the criminal justice process and it is imperative that the correct procedures are adopted in order to secure evidence which is acceptable to the courts and to avoid prosecuting innocent persons.

2.0 Intention

2.1

The intention of the policy is to improve the service delivery, management and efficiency of identification procedures, including Covert procedures.

2.2

It outlines the Thames Valley Police response to identification procedures which are a necessary part of the investigation process and assist in the identification or elimination of suspects.

3.0 General Principles

3.1 Identification Units

There are three main identification units within the Force located at Milton Keynes, Oxford and Reading Police Stations. Each is equipped with VIPER recording and parade facilities, (**V**ideo **I**dentification **P**arade **E**lectronic **R**ecording). These units are staffed by Administration of Criminal Justice Department (ACJ) personnel, including a dedicated Identification Inspector for all of the sites. There are two further VIPER Units at Slough and High Wycombe/Marlow Police Stations which are staffed by ACJ and Area personnel.

3.2 Staff

3.2.1

The staff at each Identification Unit are responsible for giving advice on the following identification procedures:

- video identifications,
- identification parades,
- group identifications,
- confrontations,
- covert identifications,
- voice identifications and
- photographic identifications.

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 taken in consequence of it, to:

Superintendent Administration of Criminal Justice
Thames Valley Police Headquarters
Oxford Road
Kidlington
OX5 2NX

4.2

Independent scrutiny of this policy will be performed, as necessary, by the Thames Valley Police Authority and Her Majesty's Inspectorate of Constabulary.

5.0 Guidance, Procedures & Tactics

5.1 Responsibility

In accordance with the Code D of the Codes of Practice issued under the Police and Criminal Evidence Act 1984 (PACE), the arrangements for, and conduct of identification procedures shall be the responsibility of an officer not below the rank of inspector who is not involved with the investigation ("the Identification Officer"). Unless otherwise specified, the Identification Officer may allow another officer or member of civilian support staff to make arrangements for and to conduct identification procedures. The Identification Officer will remain responsible for the procedure.

5.2

Code D.3.11 of the Code of Practice referred to above specifically states when delegating procedures the Identification Officer must be able to supervise effectively and either intervene or contactable for advice. When allowing another person to undertake identification procedures the Identification Officer will make suitable arrangements to remain responsible for the procedure.

5.3

The following is guidance for Identification Officers on the meaning of responsibility;

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- Responsibility means that there is a duty to ensure that the procedures are properly carried out and being prepared to answer questions as to how the duty has been discharged. The duty can be discharged by ensuring that proper systems and structures are in place, and ensuring that appropriate people are carrying out the necessary tasks, rather than by doing everything oneself. For example, the Chief Constable is responsible for the effective policing of the Thames Valley, but they do not patrol the streets themselves.
- Responsibility does not necessarily mean that the Identification Officer must be present when the identification procedures are carried out.
- For every identification procedure carried out, there must be an Identification Officer who is prepared to answer questions about the procedure and how they exercised their responsibility
- The systems and structures in place must allow for an Identification Officer to monitor and review any procedures for which they are responsible.
- The Courts are likely to look at the substance of the procedure and whether it is conducted in accordance with the Code. If the procedure is carried out in accordance with the Code, it is unlikely to be ruled out on the basis that the Identification Officer was not sufficiently closely involved.

5.4

Identification unit staff will be responsible for maintaining a guidance file on identification procedures to ensure their advice and decisions are always based on the most recent legislation and case law.

5.5

They will be responsible for some decision making on, administration of, and carrying out:

- video identifications,
- identification parades,
- group identifications,
- voice identifications and
- confrontations.

5.6

At Milton Keynes, Oxford and Reading staff will generally be able to carry out procedures without the need for additional personnel except where specifically required and in these cases the ID Unit will liaise with the OIC.

5.7 Decision Making and Documentation

The circumstances in which an identification procedure must be held are as follows:

Whenever:

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- (i) a witness has identified a suspect or purported to have identified them prior to any identification procedure having been held; or
- (ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any ID procedures

5.7.1

In considering whether an identification procedure is required, in addition to the provisions of Code D, the following matters will be considered:

the nature and seriousness of the offence, generally ID procedures will not be considered for Theft under a value of £100, Criminal Damage under £300, Common Assault and Section 4 and 5 Public Order Act unless there are aggravating circumstances or the suspect is a **PYO** or **PPO**. (Each individual case can be discussed with the ID Unit and the merits of the case will be considered.)

- whether it is necessary for elimination purposes,
- witness credibility,
- whether the witness is able to identify the offender (e.g. have they seen the offender's face - as determined in the case of R v Turnbull),
- whether the witness will attend a procedure,
- whether there is any corroborative evidence,
- the force Prosecution Policy.
- CPS requests for ID procedures

5.7.2

To ensure consistency the decision making process about whether to carry out an identification procedure will be as follows:

5.8 Suspect arrested for offence:**5.8.1**

The officer in charge of the investigation will consult the Identification Unit or an Inspector unconnected with the investigation.

5.8.2

The ID Unit or Inspector will consider whether there is a Police and Criminal Evidence Act 1984 Code D requirement to carry out an identification procedure. If there is, s/he will take into account the criteria above to decide

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whether to serve Identification Procedure forms (as detailed in PACE Code D) on the suspect - local form PAC23.

5.8.3

If s/he identifies the potential for an identification procedure, s/he will serve the PAC23 forms, but will warn the suspect that the decision to serve the forms will not necessarily mean that such a procedure will be carried out.

5.8.4

These forms can be served by ID Unit staff, custody officer or any other officer not involved in the investigation of the case against the suspect if;

- It is proposed to hold an identification procedure at another date and
- An inspector is not available to serve them before the suspect leaves the station where they are detained.

5.8.5

While the suspect is in custody CPS Direct may make a decision that ID procedures are required, in this case the OIC is to ensure that the PAC23 is correctly served on the suspect and the ID Unit are informed as soon as possible. (PAC 23, copy statements and details of what was said in interview and copy of CPS advice to be forwarded to ID Unit)

5.9 Suspect not arrested for offence:**5.9.1**

The local File Quality Manager/Case Director will assess the file and decide whether there is a Police and Criminal Evidence Act 1984 Code D requirement to carry out an identification procedure and whether it is appropriate considering the criteria listed above.

5.9.2

The Identification Officer in determining which procedure to adopt will consult with the Officer in the Case and consider any representations made by the suspect, although Video Identification is now the nationally accepted procedure to conduct in the first instance.

5.9.3

When deciding whether to hold group identification in a public place or a covert identification procedure the potential to interfere with article 8 (Right to Respect for Private and Family Life) of the Human Rights Act 1998 must be considered.

5.9.4

All decisions taken in consequence of this policy will be made in compliance with the provisions of the Police and Criminal Evidence Act 1984 and the Human Rights Act 1998, in particular Articles 5, 6, 8 and 14. They will take into account the operational principles of safety, lawfulness, necessity,

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proportionality and will be the least intrusive to achieve the purpose. All decisions will be fully documented on the forms provided.

5.10 Administration**5.10.1**

The protocols to be followed in respect of arranging the various types of identification permitted under Code D are contained in the document "**Identification Procedures - A Users Guide**".

5.10.2

The officer in charge of the investigation must ensure that the Identification Unit staff have the necessary case papers as soon as practicable, PAC23, copy statements, details of what was said in interview and copies of any CPS advice.

5.10.3

Identification Unit staff are responsible for all identification procedure administration from the point of booking until the procedure is concluded. This includes conducting a risk assessment for the procedure and producing performance information.

5.11 Priority Identification Procedures**5.11.1**

Identification Procedures for Persistent Young Offenders (PYOs) and other identified priority groups will be held as soon as practicable. The target will be to carry out a procedure within 7 days of a request. **Staff booking such a procedure must ensure it is clear that it is required for a PYO.**

5.11.2

When an identification procedure is required after a person has been charged with an offence, it will be held prior to pre-trial review whenever practicable.

5.12 Volunteers**5.12.1**

The National Viper Volunteer database is administered by The National VIPER Bureau, West Yorkshire and comprises of volunteers nationwide. ID Units have the ability to use volunteers from outside the Thames Valley Police area if the offence requires this.

5.13 Showing of photographs**5.13.1**

In addition to showing photographs in accordance with annex D of Code D of the Police and Criminal Evidence Act 1984, still photographs from Closed Circuit Television (CCTV) are often shown to police officers to identify a suspect.

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Showing of CCTV stills must be carried out in accordance with Code D and **Appendix B** of 'ID Procedures A Users Guide'

5.14 Covert filming of Detained Persons for Identification Purposes**5.14.1**

When a suspect will not co-operate in the making of a video film for identification purposes or fails to attend an arranged procedure on an agreed date or it is not possible to obtain a suitable moving image of a suspect, PACE Code D allows:

- (i) The use of available images, whether moving or still (video witness is the preferred option when a suspect will not co-operate), or
- (ii) Covert filming of a suspect. The procedure for covert filming is recorded below.

5.14.2 Covert filming can take place if:**5.14.3**

If the Officer in the case presents information to the identification officer and there are reasonable grounds for believing that the suspect will take steps to avoid being seen by a witness after being given the information required by the Code D of the PACE Codes of Practice, the following procedure will be followed:

- The Officer in the Case must present his evidence to the Identification Officer at the identification unit where the procedure would normally take place.
- The Identification Officer will consider the application and, if he agrees that the necessary criteria are met, will endorse the relevant section in form PAC23 and may then arrange for images suitable for use in video identification procedures to be obtained before giving the information and notice to the suspect.
- If the suspect later agrees to provide images for a video identification, or to participate in an identification parade, the images obtained covertly will not be used but will be retained on the case file.

5.14.4

Having been given the information required (by service of forms PAC23) the suspect does not consent to taking part in an identification parade, co-operating with group identification, or the making of a video film. In this case the following procedure will be followed:

- The Identification Officer must consider whether the criteria for a covert filming are met.

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- If they are, the Identification Officer must apply for an authority for directed surveillance in accordance with normal RIPA (Regulation of Investigatory Powers Act 2000) procedures if images other than Video Witness images are to be used

5.14.5

In either case the Identification Officer must liaise with the Technical Support Unit (TSU) to check feasibility and availability of staff and equipment. They will agree a suitable method to obtain the necessary images.

5.14.6

Section 37 PACE details the circumstances in which a Custody Officer may detain a suspect and Custody Officers must bear in mind that an Identification Officers decision to arrange a covert video identification is not an additional ground for detaining a suspect.

5.14.7

The use of covert filming must not be recorded on the custody record as this could lead to interference with the course of justice. The authorisation and decision making process is accurately recorded via the RIPA and PACE (PAC23) procedures.

5.14.8

Covert filming within a Custody Suite must take account of the relevant Custody Risk Assessment. In the unlikely event of filming taking place elsewhere, a PER 72a Risk Assessment Form must be completed prior to filming.

5.15 Voice Identification Procedures**5.15.1**

There are no statutory procedures in relation to voice identification. Voice identification must not be regarded as proof of identity. However, in rare cases, it can provide additional evidence against an accused.

5.15.2

Prior to any procedure being conducted the Crown Prosecution Service must be consulted to determine the likely evidential value of such a procedure. Voice identification is only likely to be carried out for serious offences.

5.15.3

A voice identification procedure must be conducted in accordance with the spirit of Code D of PACE. This may be done by an expert comparing the voice of an offender taped during the commission of an offence (e.g. an extortion demand) with, for example, a taped interview by adapting the confrontation procedure. Consideration could also be given to a person who knows the suspect's voice very well (e.g. a family member, close friend) listening to the offenders voice on audio tape.

NOT PROTECTIVELY MARKED**5.15.4**

Voice identification may also, in exceptional cases, be conducted by adapting the video identification procedure. For example, in the situation that the offender's voice is not recorded on audio tape but an important witness, who could not visually identify the offender, is confident of identifying the offender by voice characteristics. It must be carried out as soon after the offence as possible. If this procedure is proposed the following steps must be followed:

- (i) Form PAC23 must be served on the suspect after the Identification Officer and Crown Prosecution Service have agreed the procedure would be of value.
- (ii) The Identification Officer must liaise with the Technical Support Unit (TSU) to check feasibility and availability of staff and equipment. They will agree a suitable method to obtain the necessary recordings.

5.15.5

When it has been decided to conduct a Voice Identification procedure in accordance with the above, the guidance contained within the document "**Identification Procedures - A Users Guide**" must be followed. **(This procedural guidance is exempt from publication to the public under 'Exemption 31.1(a) FOIA 2000' as it contains Police tactics.)**

6.0 Communication**6.1 Links to Police National Legal Database Other**

- Link to PNLD PACE Codes of Practice/Identification Case Law
- Link to ID Users' Guide

6.2 Communications Strategy

- Intranet Policy and Procedure site
- FWO
- All users e-mail

Target audience:

- All Operational Police Officers.
- ID Unit staff

7.0 Compliance and Certification**7.1 Human Rights Certification****(i) Legal Basis**

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The legal basis for this document is derived from the Police and Criminal Evidence Act 1984 and Code D of the Codes of Practice issued under section 66 of that Act, together with relevant case law.

The covert use of video filming for the purposes of identification may only be used if the suspect fails or refuses to take part in a video identification, an identification parade or a group identification, or refuses or fails to take part in the only practicable options from that list (section 2.19, Code D of the Police and Criminal Evidence Act 1984 refers).

The policy is also governed by the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, the Police Act 1997 and the Data Protection Act 1998.

Definition of serious crime (RIPA): Section 81(3) RIPA: Conduct which constitutes one or more offences if, and only if:

- a) It involves the use of violence, results in substantial financial gain, or is conducted by a large group of persons in pursuit of a common purpose or
- b) The offence or one of the offences involved is an offence for which a person who has attained the age of 21 years and has no previous convictions could reasonably be expected to be sentenced to 3 or more years in custody.

It should be noted that certain lower level crimes might appear to fall outside the criteria. However, the merits of each individual application will be examined. For example where the offender is suspected of a series of indecencies, thefts, distraction burglaries etc. the covert video service could be used if it has potential material benefit to the investigation.

(ii) Human Rights Articles Engaged

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

- **Article 5** Right to Liberty and Security
- **Article 6** Right to a Fair Trial
- **Article 8** Right to respect for Private and Family Life

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

- **Article 5:** Right to Liberty and Security.
It applies as regards the detention of a person as a result of procedures detailed in this document.
- **Article 6:** Right to a Fair Trial.
It applies in its entirety when a person is detained/arrested/charged.

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- **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 freedoms 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

This policy has been assessed for its relevance to the six strands of Diversity and has been rated as "LOW" impact.

7.3 Diversity (Human Resources)

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 held in connection with this policy will be processed in accordance with the provisions of the Data Protection Act 1998.

7.5 Freedom of Information Act

This policy can be made available to the public via the Thames Valley Police, Freedom of Information Internet site, except for the appendices which are exempt under 'Exemption 31.1(a) FOIA 2000' as they contain Police tactics.

7.6 Protective Markings

This document has been assessed for its correct level of protective marking and is **NOT PROTECTIVELY MARKED**.

7.7 Health & Safety at Work

A risk assessment is to be carried out using Force Form PER 72 and the Force Risk Matrix as part of the pre-parade procedures and the procedure for obtaining additional staff is detailed in Appendix A.

Any accidents and /or near misses must be reported promptly using Force Form PER 10a or PER 10c

8.0 Monitoring and Review

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

This policy is designed to minimise abortive identification procedures.

It links with the Best Value Review of Crime Investigation.

This policy contributes to the Strategic Objective:

- *To improve our performance – get better at what we do*

8.2 Review Process

A full review will be carried out annually by the policy author and will examine:

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