

LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES GUIDELINES ON THE CONDUCT OF VISUAL IDENTIFICATION PROCEDURES

Introduction

'Identification Procedures', for the purposes of these guidelines, comprise of witnesses being given the opportunity to identify a suspect or accused persons visually in either a video identification parade, identification parade or related procedure. Such parades and procedures are designed to test the ability of a witness to identify the person(s) seen on a previous occasion and to provide safeguards against mistaken identity. Every precaution should be taken to ensure visual identification procedures are conducted in a manner that excludes any suspicion of unfairness or risk of erroneous identification. Where the identification procedure is known to be principally for the purposes of voice identification only, a 'voice' identification parade should be held. Procedures for the conduct of such identifications are detailed at Appendix G.

Types Of Visual Identification (formal and informal)

- Showing Of Photographs

Where the witness is shown a photograph of the suspect along with photographs of 11 other persons who resemble the suspect – see appendix A.

- Informal Identification

Where the witness identifies a person to the police normally near to the place and shortly after a crime has been committed – see appendix B.

- Video Identification Parades

Where the witness is shown a video image of a suspect or accused person(s) together with video images of other people who resemble the suspect or accused – see appendix C.

- Identification Parade

Where the witness physically views the suspect or accused person(s) in a line of other people who resemble the suspect or accused – see appendix D.

- Group Identification

Where the witness views the accused person in an informal group of people – see appendix E.

- Confrontation Identification

Where the witness directly confronts the accused with no other stand-ins present. This procedure should only be considered when the accused is in custody and it has not been possible to arrange a video identification parade, identification parade, covert video identification parade or group identification due to the accused refusing or failing to comply with the requirements of such identification procedures. It is extremely undesirable that any form of confrontational identification takes place by a child, vulnerable or intimidated witness – see appendix F.

Decision to hold Identification Procedures

Subject to the requirements of the Procurator Fiscal, the decision to hold identification procedures should normally rest with the officer-in-charge of the case or their supervisory officer. In all cases where identification may be an issue or where it is envisaged that it may be necessary to lead evidence of prior identification e.g. due to the anticipated use of a live television link in a subsequent court case by a child or vulnerable witness, the police should normally arrange an identification procedure.

If a suspect or accused person or his/her legal representative requests that an identification procedure is held and the police are in any doubt, the request should be referred to the Procurator Fiscal for instruction. Notwithstanding this, Section 290 of the Criminal Procedure (Scotland) Act 1995 provides that a Sheriff may, on application by an accused at any time after the accused has been charged with an offence, order that, in relation to the alleged offence, the Procurator Fiscal shall hold an identification parade in which the accused will be included.

When an identification procedure is required it must be held as soon as practicable in the interests of fairness to the suspect or accused person and witnesses. In addition, it is highly desirable that the suspect or accused person is legally represented at each stage of any formal identification parade.

Selecting The Identification Procedure

If a formal visual identification procedure is to be held, the officer-in-charge of the investigation may choose between a video identification parade and an identification parade. During this decision process the officer-in-charge of the investigation shall consider all aspects of the case, including whether it is anticipated that witnesses will be able to identify the person on the basis of appearance only or whether there is a strong likelihood that witnesses will require the suspect or accused person to speak, adopt any specific posture and/or move, aside from turning left or right to allow a side profile to be viewed. In addition, the officer-in-charge of the investigation shall consult the officer conducting the parade to determine which of these two options is the most suitable and practicable in the particular case e.g. an identification parade may not be suitable or practicable because of factors such as the witnesses state of health; travelling requirements; availability or vulnerability of the witness due to age. A video identification parade would normally be more suitable if it could be arranged and completed sooner than an identification parade.

A suspect or accused person who objects to the identification procedure selected shall be asked to state their reason for objection. The suspect or accused person and/or legal representative shall be allowed to make representation as to why another procedure should be used. A record shall be made of the reasons for the suspect or accused objecting and of any representation made. After considering the reasons given and any representation made, the officer conducting the parade shall, if appropriate, offer an alternative identification procedure if it is considered suitable or practicable in the circumstances. If the officer conducting the parade decides that it is not suitable or practicable to offer an alternative identification procedure the reason for that decision shall be recorded.

Identification Parades Involving Child, Vulnerable Or Intimidated Witnesses

The attendance of a child, vulnerable or intimidated witness at a video identification parade, identification parade or formal group identification parade requires advance planning and liaison between the officer who has knowledge of the witness and the officer conducting the parade. A video identification parade should always be the preferred means of identification in such cases.

Children under 16 years of age, vulnerable or intimidated witnesses should be accompanied to any such identification parade by a responsible adult or support person who is not, nor is likely to become a witness in the case. Additionally, an appropriate adult must accompany a witness who has a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia.

A balance has to be struck between the interests of the suspect or accused person and the interests of the child or vulnerable witness. Officers conducting the parade should consider deviation from the standard procedures to accommodate the needs of the witness. However, care must be taken to ensure that the procedure remains fair to the accused.

Explanation about the purpose of the identification procedure and the wording of instructions during the procedure itself should be considered ahead of time and tailored to the level of understanding of the witness.

If the witness has particular communication difficulties or requires an interpreter, arrangements should be made to have a person attend who can communicate with the witness. If the witness does not recognise numbers, consideration should be given to the use of symbols/pictures to distinguish participants. As far as is practically possible the symbols/pictures must not have any special meaning for the witness.

Verbal identification is the best evidence, but if the witness is unable to speak or it is likely that he/she will be unable to speak the witness should be advised that it is acceptable to point. If the witness uses spectacles, contact lenses or hearing aids these should be used during any identification procedure.

Cases Where The Accused Is 'Not Available'

An accused person is deemed to be 'available' if he or she is immediately available to take part in the procedure or will become available within a reasonably short time. If accused persons refuse or fail to take part in a video identification parade or subsequently in any identification parade or refuses or fail to take part in the only suitable or practicable option thereafter, or take steps to being seen by a witness in any such procedure, or there is a strong likelihood that their actions during such a procedure would result in them becoming particularly conspicuous, they may be treated as being 'not available' for the purposes of identification.

In such circumstances the accused must be informed by the officer conducting the parade that he/she has discretion to make arrangements for a 'covert' video identification parade. In making such arrangements the officer conducting the parade can select any suitable image of the accused, whether moving or still, which is available or can be obtained covertly, having obtained appropriate RIPSA authorisation where necessary. During this process any information, which is

required to be given to or sought from an accused or for the accused to be given the opportunity to view images before they are shown to a witness, shall not apply if, at the time the requirement arises, the accused is 'not available'. For each such requirement the record of the video identification parade shall indicate the reason why the accused was 'not available'.

When an accused is 'not available' for whatever reason and no suitable video or photographic image is available or cannot be readily obtained, the officer conducting the parade should consider group identification or confrontation identification.

Documentation – General

A record of the proceedings relating to the holding of a video identification parade or identification parade shall be made on the forms provided for this purpose. This must include the reason why the officer conducting the parade has considered it not suitable or practicable to hold a video identification parade or identification parade when either is requested by the suspect or accused person or his/her legal representative.

A record shall also be made when an accused person has refused to co-operate in a video identification parade or identification parade and, if applicable, the grounds for obtaining images to conduct a covert video identification parade.

In cases of informal identification, group identification or confrontation, officers accompanying the witness shall make a record in their official police notebook of the actions taken in as much detail as possible. The record should include: the date, time and place of the relevant occasion on which the witness claims to have previously seen the suspect or accused person; where any identification was made how it was made and the conditions at the time e.g. the distance the witness was from the suspect or accused person, weather conditions, lighting conditions and whether the witness requires corrective eyesight aids and whether they were in use at the time; if the attention of the witness was drawn to the suspect or accused person; if so, the reason for this and anything said by the witness or the suspect or accused person about the identification or the conduct of the procedure.

APPENDIX A

CASES WHERE IDENTITY IS NOT KNOWN/CONFIRMED USE OF PHOTOGRAPHS

This applies where the witness is shown a photograph of the suspect along with photographs of 11 other persons who resemble the suspect

Children under 16 years of age who are asked to view a selection of photographs must do so in the presence of a responsible adult who is not, nor is likely to become, a witness in the case. Additionally, an appropriate adult must be present when a witness who has a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia, views a selection of photographs.

As a general rule, photographs of suspects or accused persons should not be shown to witnesses for the purposes of identification if the circumstances allow for physical

identification. Notwithstanding the above, the purpose of detention is to facilitate the carrying out of an investigation. Identification of a suspect is a vital part of any investigation. Therefore, where a suspect refuses to take part in a video identification parade or identification parade or where it is impracticable to hold such a parade, the fairest means of investigating that aspect will be to show a witness a selection of photographs in accordance with the standard procedures as outlined.

Where a suspected person has not been apprehended or where he/she is apprehended and it is the only available method of identification, a photograph of the suspect can be shown to a witnesses for the purpose of identification. A witness should be shown a photograph of the suspected person along with a minimum of 11 other photographs of other persons of similar age and appearance. The photographs should bear no marks that would enable the witness to identify the suspect's photograph and the witness should not be permitted to handle the photographs if they bear identification marks on the back. The witness should make a selection without help and without opportunity of consulting other witnesses.

If a witness makes a positive identification from photographs, other witnesses should not be shown photographs but should be asked to make themselves available to view some form of identification parade as described unless, exceptionally, the suspect is 'not available' for such a process and it is necessary to show photographs to a second witness in order to provide the Procurator Fiscal with sufficient evidence to justify the issue of a warrant for the arrest of the suspect.

Where there is no evidence implicating the suspect apart from identification by photograph, the witness who has made the photographic identification should be asked to view a form of identification parade notwithstanding that they may have already made such an identification. Care should be taken that any witness who has identified a suspected person by photograph and who is subsequently called upon to identify the person during some form of identification parade/procedure is not again shown the photograph.

Prior to any further identification proceedings the suspect or accused person's legal representative should be advised of any earlier identification made from photographs by any witness(es) involved in the parade.

A record of any photographs used in the identification of suspects should be kept and the photographs should be available for production in court if called for.

APPENDIX B

CASES WHERE IDENTITY IS NOT KNOWN/CONFIRMED INFORMAL IDENTIFICATION

In situations where a person is detained or arrested as the result of a witness pointing him/her out to the police as the perpetrator (which will normally be near to the place and shortly after a crime has been committed) care should be taken to avoid, where practicable, the person detained or arrested being seen in police custody by any other witness who may be nearby. In such a case steps should be taken to prevent other witnesses seeing the person in custody and some form of identification parade should be arranged.

Where a witness has made an informal identification, there is no reason why he or she should not subsequently view any form of identification parade to have that identification tested provided that the suspect or accused person's legal representative is informed of any earlier informal identification before the witness views such a parade.

In cases of informal identification the officers accompanying the witness shall make a record in their official police notebook of the actions taken in as much detail as possible. The record should include: the date, time and place of the relevant occasion the witness claims to have previously seen the suspect or accused person; where any identification was made, how it was made and the conditions at the time e.g. the distance the witness was from the suspect or accused person, weather conditions, lighting conditions and whether the witness requires corrective eyesight aids and whether they were in use at the time; if the attention of the witness was drawn to the suspect or accused person; if so, the reason for this and anything said by the witness or the suspect or accused person about the identification or the conduct of the procedure.

APPENDIX C

VIDEO IDENTIFICATION PARADES

A video identification parade is where the witness is shown an image of the suspect or accused person together with images of other people who resemble him/her. A video identification parade should be arranged when it is decided that, given the circumstances of the inquiry/case, it is the most suitable and practicable option.

Supervision

The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification parade and the subsequent holding of a video identification parade is the responsibility of the officer conducting the parade. The officer conducting the parade and any other officers or police staff, trained and authorised in the use of the equipment, assisting him/her during the identification parade process must be entirely unconnected with the relevant inquiry/case. The officer-in-charge of the case or any other officer so connected should not be present during any part of a video identification parade process. However, this does not, as previously outlined, prevent the officer-in-charge of the case consulting with the officer conducting the video identification parade in order to determine which identification procedure is most appropriate in the circumstances.

During a video identification parade, another officer or member of police staff, unconnected with the inquiry/case, will assist the officer conducting the parade during the preparation stages and will witness the video identification parade. Neither the officer conducting the parade or the witnessing officer or member of police staff will leave the room the parade is being held in at any time during the proceedings.

Similarly, when officers are required to control the entry and exit of witnesses during a video identification parade, they should ensure that any witness who has viewed the parade has no opportunity to communicate in any way with any witness who is still to view the parade.

Report of A Video Identification Parade

A record of the proceedings relating to the holding of a video identification parade must be made using the standard forms entitled 'Report Of A Video Identification Parade'. Forms A, B, C and F must be completed along with a separate Form G for each witness. Forms D and E will require to be completed if recompilation video tapes/DVDs are requested.

Rights Of Suspect/Accused Persons

When a suspect is not in custody and evidence is not sufficient to justify apprehension and it is deemed to be suitable and practicable to hold a video identification parade, the suspect should be asked if he/she is willing to take part in such a parade, the purpose of which should be clearly explained. Such a person's attendance is entirely voluntary and there should be no question of pressure being exerted on him/her or any inducement to encourage his/her participation.

The Criminal Procedure (Scotland) Act 1995 does not provide for the holding of any type of identification parade for detained persons, but this does not preclude the detainee being asked if he/she is willing to take part in a video identification parade, again the purpose of which should be clearly explained, and holding such a parade if the detainee consents.

An arrested person is not entitled to refuse to take part in a video identification parade if it is the only suitable and practical option but, any compulsion, which results in him/her becoming particularly conspicuous, is obviously undesirable. In such circumstances the accused must be informed by the officer conducting the parade that he/she has discretion to make arrangements for a 'covert' video identification parade and may use any suitable image of the accused, whether moving or still, which are available or can be obtained covertly having obtained appropriate RIPSAs authorisation where necessary. On occasions where no suitable image of the accused is available it may be possible for the police to let the witness see the accused person, preferably along with others, but in the last resort on his/her own in the place where the accused person is detained.

Where the suspect or accused person is a child under 16 years of age, a person with a known mental disorder including mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter, a responsible adult, appropriate adult or interpreter (who is not and is not likely to become a witness in the case aside from in this capacity) will accompany the suspect or accused person throughout the video identification parade procedure. If necessary, such a person will assist the officer conducting the parade in communicating information and requests to ensure that the suspect or accused person fully understands what is required of him/her.

A suspect or accused person should be informed by the officer conducting the video identification parade process reading the appropriate part of the video identification parade form that a video identification parade is to take place; the purpose of such a parade; that he or she may have a legal representative present during the video identification parade process but may be liable to pay for their service unless they are met by Legal Aid. A suspect or accused person should also be informed that if desired the duty solicitor, for whose services they would not be required to pay, can represent them. When a solicitor, other than the duty solicitor, has been requested,

but declines or is unable to attend, the suspect or accused person should be given the opportunity to select a substitute. If he/she too declines to or is unable to attend, the suspect or accused person need not be offered further opportunity to have a solicitor of their own choosing present but should be reminded that they may make use of the duty solicitor. The officer conducting the parade must also inform the suspect or accused person that they and/or their legal representative has the right to object to the composition of the video identification parade or to any of the arrangements made. Any reasonable request that the suspect or accused person and/or legal representative make should be granted.

The suspect or accused person and/or legal representative must be given reasonable opportunity to see the complete set of images before it is shown to any of the witnesses. If the suspect or accused person and/or legal representative has reasonable objections to the set or images or any of the participants they shall be asked to state the reasons for the objections. Steps shall, if practicable, be taken to remove the grounds for objection.

If this is not practicable the suspect or accused person and/or legal representative shall be told why their objections cannot be met and shall be recorded on the forms provided.

The suspect or accused person will be informed that he/she or any unauthorised person will not be present when the images are shown to the witness(es). The suspect or accused person's legal representative shall, where practicable, be given reasonable notification of the time and place that it is intended to conduct the video identification parade in order that the legal representative may attend on behalf of the suspect or accused person.

Composition of A Video Identification Parade

The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification parade will be the responsibility of the officer conducting the parade.

The set of images will include the suspect or accused person and others who, so far as possible, resemble the suspect or accused in terms of age, build, dress and general appearance. It is more important that the other persons resemble the suspect or accused than that they should be like any descriptions previously given by witness(es). Similarly it is important that an identification should not be influenced by clothing or any other physical indicator e.g. if the witness said the person concerned was wearing a red pullover it would be wrong if the suspect or accused person was the only image wearing a red pullover, although the fact that he had possession of such a pullover may constitute a separate piece of evidence which should be recorded. Likewise, if the suspect or accused person has an unusual physical feature, for example a facial scar or tattoo, arrangements should be made for his/her image to be modified to conceal same and all other images in the set modified likewise.

The set of images must include the suspect or accused person and at least 5 other persons; but, justice may more clearly be seen to be done by including 6, 7 or 8 other images. The minimum number in any video identification parade should be 5 (in addition to the suspect or accused person) but where more suitable images are

available, up to a maximum of 8 (in addition to the suspect or accused person), the larger number is preferred.

Where there are two or more suspects or accused persons who are not of similar age and appearance, separate video identification parades should be held for each using different images in each set. The minimum ratio of five persons of similar age and appearance to one suspect or accused person will be maintained.

On occasions where there are two suspect or accused persons of similar age and general appearance and it is not suitable and practicable to hold separate video identification parades then the number of other images should be increased by one additional image for each suspect or accused person. Under no circumstances shall more than two suspect or accused persons be included in each video identification parade.

The images used to conduct a video identification parade shall, as far as possible, show the suspect or accused person and other people in the same position or carrying out the same sequence of movements. They shall also show the suspect or accused person and other people under identical conditions unless the officer conducting the parade believes that:

- a. because of the suspect's failure or refusal to co-operate or other reason it is not practicable for the conditions to be identical AND
- b. any difference in the conditions would not direct the attention of the witness to any individual image.

The reason why identical conditions are not practicable must be recorded on the forms provided. Provisions must be made for each image shown to be able to be identified by a number or symbol/picture.

Conduct of A Video Identification Parade

A video identification parade should be held outwith the view of the general public and no unauthorised persons should be present.

Where the witness is a child under 16 years of age, a person with a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter, a responsible adult, appropriate adult or interpreter (who is not and is not likely to become a witness in the case aside from in this capacity) will accompany the witness. If necessary, such a person will assist the officer conducting the parade in communicating information and requests to ensure that the witness fully understands what is required of him/her. The responsible or appropriate adult or interpreter must not however be allowed to influence the witness, in any way, in arriving at any decision involving identification.

The officer conducting the video identification parade will have the responsibility for the arrangements for the witnesses, will ensure that they have been briefed appropriately and their safety and welfare needs are met during the course of the video identification parade. A copy of an explanatory leaflet should be made available to every witness before the video identification parade commences.

The arrangements for entry and departure of witnesses should be such that the officer conducting the parade will have full control of the proceedings. This includes making the appropriate arrangements to ensure that, before witnesses view the set of images, they are not able to communicate with each other about the case. While it is recognised that the police have no power to prevent such discussion, consideration should be given to either segregate the witnesses before the parade, if practicable, or alternatively a police officer should be present in any assembly room with a view to inhibiting any discussion of this nature. It is equally essential that witnesses who have viewed the parade should have no opportunity to either have contact with or be overheard by witnesses still to view the parade.

When more than one video identification parade is to be held involving the same suspect or accused person the officer conducting the parade will stress to witnesses that they should refrain from discussing the composition of images shown to any other persons, especially witnesses who have still to view the video identification parade, and the consequences of what may be interpreted as collusion. Additionally, there must be no discussion between police officers or support staff and witnesses about the composition of the set of images or as to whether they or any other witness has made any identification.

When more than one composition video tape/DVD has been produced, prior to any witness entering the room, the suspect or accused person's legal representative will be given the opportunity to choose which composition will be shown to the witness(es). Details of the selection made shall be recorded on the form provided. On occasions when the legal representative does not, for whatever reason, make such a selection, the officer conducting the parade will select one of the video tapes/DVDs and record his/her choice on the appropriate form.

Only one witness must be admitted to view the set of images at a time. Immediately before the images are shown the witness shall be read a statement, which is appropriate to the circumstances taking account of the witness's age, capacity and terminology previously contained within the witness's recorded statement. An example for an adult would be 'the person you referred in your statement to the police, who on 24 April 2003 in Canongate, Edinburgh exposed his penis in your presence may or may not appear in the images shown' where a more suitable statement for a child witness may be 'the man you told the police about who on the 24 April 2003 in Canongate, Edinburgh showed you his private parts, may or may not be on the screen'. When there is any deviation from the standard video identification parade forms they must be amended to show exactly what statement was made or question asked.

The witness shall be advised that at any point they may ask to see a particular part of the set of images or have a particular image frozen to study. Furthermore, it should be pointed out that there is no limit on how many times they can view the whole set of images or any part of them. Witnesses should, however, be asked not to make any decision as to whether the person they saw is in the set of images until they have viewed the whole set. Care must be taken not to direct the witness's attention to any one individual image or to give any indication as to the identity of the suspect or accused person.

The witness should normally view the whole set of images at least twice before confirming that he or she does not want to view the images or any part of them again. Only where the identification is unequivocal at the first viewing, and further

viewing is likely to cause distress to the witness, should this practice be departed from. The accused's legal representative should be fully informed of this decision.

The witness shall be asked to say whether the individual he or she saw on a previous occasion has been shown and if so identify him or her by number or, in the case of young children or persons with a learning disability, symbol/picture. The witness will then be shown the image to confirm the identification. A record will be noted on the form provided.

If the witness is unable to make a positive identification, he or she should be asked a second question – Is there anyone on the video tape/DVD who looks like the person(s)? If so, tell me the number(s)/symbol(s)/picture(s) that appear on the screen with the person(s)'. Any response should be noted and each image shown separately for clarification. Additional open questions such as 'In what way does he/she look like the person?' which is designed to clarify the witness's evidence as to identification should be asked for each image selected and the witnesses response, if any, should be noted on the form provided.

The witness should then leave the viewing room and must not be allowed to view the images again.

Record of Proceedings

A record of the proceedings during the preparation stage and video identification parade will be kept using the standard 'Report of A Video Identification Parade' forms A – G and will include:

- Awaiting consultation re draft video parade forms

The officer conducting the parade will record full personal details of any person acting as a responsible or appropriate adult or interpreter. In addition, he/she will arrange for a witness statement to be noted from any appropriate adult and ensure that the statement is forwarded to the Procurator Fiscal.

Image Security and Destruction

Arrangements must be made for all relevant material containing sets of images used for video identification parades to be kept securely and their movement accounted for and recorded. No one involved in the investigation/case involving suspect or accused persons shall be permitted to view the material prior to it being shown to any witness.

Section 18 of the Criminal Procedure (Scotland) Act, 1995 as amended by the Crime and Punishment (Scotland) Act 1997 prescribes the taking of relevant physical data from arrested or detained persons and the subsequent retention or destruction of such. For the purposes of sections 18 (as amended) 'relevant physical data' means any-

- a) Fingerprint
- b) Palm print
- c) Print or impression other than those mentioned above of any external part of the body

d) Record of a person's skin on an external part of the body created by a device approved by the Secretary of State

In relation to a video identification parade the capturing of a video image should be treated in the same way as a print or impression referred to in (c) above.

Section 18 (3) of the Criminal Procedure (Scotland) Act, 1995, as amended, directs that all record of any relevant physical data taken shall be destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or absolute discharge.

Notwithstanding the above, Section 18(4) highlights that the destruction shall not apply if the record, sample or information in question is of the same kind as a record, sample or information lawfully held by or on behalf of any police force in relation to that person.

APPENDIX D

IDENTIFICATION PARADES

An identification parade is where the witness views the suspect or accused person(s) in a line of other people who resemble him/her. An identification parade should be arranged when it is decided that, given the circumstances of the inquiry/case, it is the most suitable and practicable option.

Supervision

The arrangements for obtaining and ensuring the availability of suitable stand-ins and the subsequent holding of an identification parade is the responsibility of the officer conducting the parade. The officer conducting the parade or any other officers assisting him/her during the identification parade process must be entirely unconnected with the relevant inquiry/case. The officer-in-charge of the case may be allowed to be present, but if so, he/she must remain in the parade room throughout the proceedings and take no active part.

Another officer, unconnected with the inquiry, should control the entry of witnesses to the parade room and witness the parade. Neither the officer conducting the parade nor the witnessing officer will leave the parade room at any time during the proceedings.

A further officer, unconnected with the inquiry, will control the exit of witnesses and, in particular, should ensure that they have no opportunity to communicate in any way with any witness who still has to view the parade.

Report of an Identification Parade

A record of the proceedings relating to the holding of an identification parade must be made using the standard forms entitled 'Report Of An Identification Parade' Forms 1/6-6/6 and B 1/3 and 3/3 must be completed with a separate Form B 2/3 for each witness.

The officer conducting the parade must read out, within the hearing of the suspect or accused person and his legal representative, all entries on the parade forms with the exception of the name and address of the witness. In cases of child, vulnerable or intimidated witnesses or any other witness who may not wish their home address disclosed, for the purposes of identification parade forms, their address can be indicated as a care of address i.e. c/o Strathclyde Police, Coatbridge Police Station, Coatbridge.

Rights of Suspect/Accused Persons

When a suspect is not in custody and evidence is not sufficient to justify apprehension and it is deemed to be suitable and practicable to hold an identification parade, the suspect should be asked if he/she is willing to take part in such a parade, the purpose of which should be clearly explained. Such a person's attendance is entirely voluntary and there should be no question of pressure being exerted on him/her or any inducement to encourage participation.

The Criminal Justice (Scotland) Act 1995 does not provide for the holding of any type of identification parade for detained persons, but this does not preclude the detainee being asked if he/she is willing to take part in an identification parade, again the purpose of which should be clearly explained, and holding such a parade if the detainee consents.

There has been an occasion where, due to the serious nature of the crime and given that no other means of identification could be employed, a warrant was granted to compel suspects (not accused) to take part in an identification parade. The validity of the warrant was the subject of an appeal to the High Court but held to be a competent procedure in the circumstances (*Archibald v Lees* 1994 SCCR 97).

An arrested person is not entitled to refuse to take part in an identification parade if it is the only suitable and practical option, but any compulsion, which results in him/her becoming particularly conspicuous, is obviously undesirable. In such circumstances the accused must be informed by the officer conducting the parade that he/she has discretion to make arrangements for a 'covert' video identification parade and may use any suitable image of the accused, whether moving or still, which are available or can be obtained covertly, having obtained appropriate RIPSA authorisation where necessary. On occasions where no suitable image of the accused is available it may be possible for the police to let the witness see the accused person, preferably along with others, but in the last resort on his own in the place where he/she is detained.

Where the suspect or accused person is a child under 16 years of age, a person with a known mental disorder including mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter, a responsible adult, appropriate adult or interpreter (who is not and is not likely to become a witness in the case aside from in this capacity) will accompany the suspect or accused person throughout the identification parade procedure. If necessary, such a person will assist the officer conducting the parade in communicating information and requests to ensure that the suspect or accused person fully understands what is required of him/her.

A suspect or accused person should be informed by the officer conducting the identification parade reading the appropriate part of the parade form that an

identification parade is to take place; the purpose of such a parade; whether or not it is intended that a one way vision screen will be used; that he or she has the right to object to the composition of the parade and may have a legal representative present during the identification parade process but may be liable to pay for their services unless they are met by Legal Aid. A suspect or accused person should also be informed that if desired the duty solicitor, for whose services they would not be required to pay, can represent them. When a solicitor, other than the duty solicitor, has been requested but declines or is unable to attend, the suspect or accused person should be given the opportunity to select a substitute. If he/she too declines to or is unable to attend, the suspect or accused person need not be offered further opportunity to have a solicitor of their own choosing present but should be reminded that he or she may make use of the duty solicitor. Any reasonable request, which the suspect or accused person or legal representative may make before hand, should be granted. The suspect or accused person should also be informed that he or she can take up any position in the parade and can change position after each witness has viewed the parade and before the next witness enters, but neither they nor their legal representative may otherwise interfere with the conduct of the parade.

The suspect or accused person and/or legal representative must be given the opportunity to view the stand-ins prior to the commencement of the parade. If the suspect or accused person and/or legal representative has reasonable objections concerning any of the participants they shall be asked to state their reasons for objection. If reasonable and practicable the officer conducting the parade shall take steps to remove the grounds for objection. If not, the suspect or accused person and/or legal representative shall be told why their objections cannot be met and the reasons recorded on the forms provided.

Composition of An Identification Parade

The arrangement for obtaining and briefing suitable stand-ins for an identification parade is the responsibility of the officer conducting the parade.

The suspect or accused person should be placed beside persons of similar age, height, dress and general appearance. Steps should be taken to accurately measure the height of the suspect or accused person and all stand-ins before the parade to ensure consistency in subsequent recordings. It is more important that the stand-ins should resemble the suspect or accused person than they should be like any descriptions given by witnesses. Similarly it is important that clothing should not influence identification. If, for example, the witness had said that the suspect was wearing a yellow pullover, it would be wrong if the suspect was the only person on the parade wearing a yellow pullover, although the fact that he possesses such a pullover, or that he or she was wearing one when invited to attend the parade, would constitute a separate piece of evidence which should be recorded.

Where the suspect or accused person has an unusual physical feature, for example a facial scar, tattoo or distinctive hairstyle or colour which cannot be replicated on the stand-ins, steps should be taken to conceal the location of that feature on the suspect or accused person and stand-ins if the suspect or accused person and/or legal representative agrees. This can be done, for example, by the use of a plaster or a hat so that all members of the identification parade resemble each other in general appearance.

Further to this, if the suspect or accused person has some disability, such as being minus an arm or leg, the identification parade should be composed so as to conceal this, for example if the suspect has lost a leg, all members of the parade might stand behind a counter; if the suspect has lost an eye all members of the parade might wear a patch over the corresponding eye; if the suspect wears glasses all other members of the parade may be so supplied. Similarly, if the suspect or accused person is exceptionally tall or small and difficulty is being experienced in making up the parade with suitable stand-ins of similar height, it may be necessary to have all members of the parade seated.

Where the suspect or accused person is a member of a uniformed service it may be desirable to put him on parade with other members of the same service who probably share similar bearing, gait, physique, hairstyle, etc. Where a member of a uniformed service is being paraded in uniform, badges of rank and numerals should be removed or concealed.

Where it is known that the culprit must be one of a relatively small group of people, for example fire officers at a particular fire station or employees of a shop, care should be taken not to parade the suspect or accused person along with others any of whom may also be potential suspects.

In cases where it would not be possible to find locally suitable stand-ins who would not be known to the witnesses, for example in a rural locality or small town, stand-ins should be brought from another area or the suspect or accused person paraded elsewhere.

The identification parade must include the suspect or accused person and at least 5 other persons, but justice may more clearly be seen to be done by including 6, 7 or 8 other persons in addition to the accused if circumstances permit. The minimum number in any identification parade should be 5 (in addition to the suspect or accused person) but where more suitable stand-ins available, up to a maximum of 8 (in addition to the suspect or accused person), the larger number is preferred.

Where there are two or more suspects or accused persons who are not of similar age and appearance, separate identification parades should be held for each using different stand-ins on each occasion and the minimum ratio of five persons of similar age and appearance to one suspect or accused person should be maintained.

On occasions where there are two suspects or accused persons of similar age and general appearance and it is not suitable and practicable to hold separate identification parades the number of stand-ins should be increased by one additional person for each additional suspect or accused person. Under no circumstances shall more than two suspect or accused persons be included in each identification parade.

Conduct of an Identification Parade

An identification parade should be held outwith the view of the general public and no unauthorised persons should be present.

Where the witness is a child under 16 years of age, a person with a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter, a responsible adult, appropriate adult or interpreter (who is not and is not likely to

become a witness in the case aside from in this capacity) will accompany the witness. If necessary, they will assist the officer conducting the parade in communicating information and requests to ensure that the witness fully understands what is required of him/her. The responsible or appropriate adult or interpreter must not however be allowed to influence the witness, in any way, in arriving at any decision involving identification.

The officer conducting the parade will have responsibility for the arrangements for witnesses, will ensure that they have been briefed appropriately and have had the opportunity to visit the identification parade room and, where appropriate, inspect the one way viewing screen prior to the commencement of the parade. In addition the officer conducting the parade will make sure that the witnesses safety and welfare needs are met during the conduct of the parade.

It is essential that the witnesses who are to view the parade do not, at any time, have an opportunity of seeing the suspect or accused or the other parade members. Every care should be taken to ensure that the parade members are retained in an area the witnesses are unlikely to traverse within the precincts of the place where the parade is to be held.

It is undesirable that witnesses called to attend an identification parade should discuss either the case in question or the person who they are being asked to identify. While it is recognised that the police have no power to prevent such discussion, consideration should be given to either segregate the witnesses before the parade, if practicable, or alternatively a police officer should be present in any assembly room with a view to inhibiting any discussion of this nature. A copy of an explanatory leaflet should be made available to every witness before the identification parade commences. It is equally essential that witnesses who have viewed the parade should have no opportunity to either have contact with or be overheard by witnesses still to view the parade. Additionally, there must be no discussion between police officers and witnesses about the composition of the identification parade or as to whether they or any other witness has made any identification.

One-way vision screens should generally be used in the conduct of an identification parade. Such screens enable a witness to view the parade without being seen by those on parade and witnesses should be shown that this is the case prior to the commencement of any identification parade. While it is highly desirable that a suspect or accused person is legally represented when a one-way vision screen is used, the fact that a suspect or accused person has elected not to be legally represented at the parade in the knowledge that it is intended to use such a screen, shall not preclude the use of the screen. Where a one-way vision screen is employed it is essential that the suspect or accused person, who will be unable to observe what is happening beyond the screen, should be able to hear all that is said on the other side by the officer conducting the parade. Where a legal representative is present it is important that they should be able to observe the whole proceedings on both sides of the screen and hear all that is said. When a one-way vision screen is not in use, the officer conducting the parade must, at all times remain within the view of the suspect or accused person while the witness is inspecting the parade. When a one-way vision screen is used and the suspect or accused person is legally represented, the officer conducting the parade must, at all times, remain within view of the legal representative while the witness is inspecting the parade.

The suspect or accused person and/or legal representative must be given reasonable opportunity to view the composition before the parade commences. The suspect or accused person and/or legal representative should be asked if there are any objections regarding the other persons forming the parade or the arrangements for the parade. If the objection is to a stand-in and it is reasonably practical to do so, he/she should be replaced. If the objection is to the arrangements made and it is reasonable, steps shall be taken to remove the grounds for objection. Any objection and decision made shall be recorded on the form provided.

The persons forming the parade should be lined up, preferably with their backs to a wall. Each position in the line must be clearly identified by number or, in the case of child witness or a witness with a learning disability, a symbol/picture.

The suspect or accused person should be invited to choose his/her own position in the line, prior to the first witness being asked to view the parade. After each witness, and before the next witness enters, the suspect or accused person should be given the opportunity to change position. The position taken up on each occasion should be recorded on the form provided.

Only one witness must be admitted to view the identification parade at a time. When the witness is a child under 16 years of age, a person with a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter, a responsible adult, appropriate adult or interpreter (who is not and is not likely to become a witness in the case aside from in this capacity) will accompany the witness. If necessary, such a person will assist the officer conducting the parade in communicating information and requests to ensure that the witness fully understands what is required of him/her. The responsible or appropriate adult or interpreter must not, however, be allowed to influence the witness, in any way, in arriving at any decision involving identification.

Immediately before the witness views the parade the officer conducting the parade will read a statement, which is appropriate to the circumstances taking account of the witnesses age, capacity and terminology previously contained within the witness's recorded statement. An example for an adult would be 'the person referred in your statement to the police who, on 24 April 2003 in Canongate, Edinburgh exposed his penis in your presence may or may not be here, but if you see him tell me his number' where a more suitable statement for a young child witness may be 'the man you told the police about who, on the 24 April 2003 in Canongate, Edinburgh showed you his private parts may or may not be here but if you see him tell me what picture he is standing underneath'. When there is any deviation from the standard identification parade form it must be amended to show exactly what statement was made or question asked.

The witness should then be invited to view the parade. Care must be taken not to direct the attention of the witness to any individual on parade or to give any indication as to the identity of the suspect or accused person.

All reasonable requests by the witness should be met and, if possible, in addition to seeing the parade from the front witnesses should, if desired, see it from the rear, in profile or with or without headgear. If a witness indicates that his/her ability to make an identification would be assisted by some factor additional to mere physical

appearance, the officer conducting the parade should ask each member of the parade, separately, to speak or walk or to do any other action requested.

When a witness identifies a person on the parade by number, symbol/picture, the officer conducting the parade should ask that person his/her name and note the name that is given. The officer conducting the parade should repeat the name to the witness within the hearing of the person identified.

Where the witness is unable to make a positive identification, they should be asked a second question 'is there anyone on the parade who looks like the person?' Any response should be noted and additional open questions such as 'in what way does he/she look like the person?', which is designed to clarify the witness's evidence as to identification, should be put to the witness and these and any answers given should be recorded on the form provided.

The witness should then leave the parade room and must not be allowed to view the identification parade again.

Record Of Proceedings

A record of the proceedings during an identification parade will be kept using the standard 'Report Of An Identification Parade' forms and will include:

- Time, date and venue of the identification parade
- The nature of the enquiry
- Name of the officer conducting the identification parade
- Name of the officer witnessing the identification parade
- Names of officers assisting with witnesses
- Name of the officer in charge of the case and whether he/she was present at the identification parade
- Name, age, address and description of the suspect or accused person
- Whether the suspect or accused person's solicitor and/or assistant were present and, if so, their names and time of arrival
- Whether or not a one-way vision screen was used
- Name, age, address or c/o address and description of other persons on the parade and the roman numeral assigned to each at the commencement of the parade
- Objections raised by the suspect or accused person and/or his solicitor/solicitor's assistant before and/or during the identification parade and any action taken
- Name, age and address or c/o address of each witness in order of viewing the identification parade
- Position of the suspect or accused person and stand-ins in the identification parade when seen by each witness
- The time each witness entered the parade room
- Question(s) put to each witness by the officer conducting the parade
- The words used by each witness
- The time each witness left the parade room

The officer conducting the parade will record full personal details of any person acting as a responsible or appropriate adult or interpreter. In addition, he/she will arrange for a witness statement to be noted from any appropriate adult and ensure that this statement is forwarded to the Procurator Fiscal.

APPENDIX E

GROUP IDENTIFICATION

Group identification is where the witness views the accused person in an informal group of people. Group identification should only be considered when the accused is, for whatever reason, 'not available' as defined on page 4 and no suitable image of the accused, whether moving or still, is available or can be obtained.

Supervision

The arrangements for group identification are the responsibility of the officer conducting the procedure who must be entirely unconnected with the relevant inquiry/case. The officer conducting the procedure will determine the location of group identification and the method by which it will be carried out. He/she will consider the number of people likely to be present at the location who will be broadly similar in appearance to the accused.

Another officer not connected with the relevant inquiry/case will assist the officer conducting a group identification procedure.

Composition

The place where group identification takes place should be one where other persons are either passing by or waiting informally so that the accused is capable of being seen by the witness at the same time as others in the group. Group identification can take place in a public place, but when the accused has been detained in custody the procedure can only take place at a police station or, where there is a specific security risk, within a prison.

When a group identification parade is to be held in a public place the area where the accused frequents and the number of other people present will restrict the choice of location and the timing of the procedure. Suitable locations may be along regular routes travelled by the accused including buses or trains or public places frequented by the accused.

Although the number, age, sex, race, general description and style of clothing of other people present at the location cannot be controlled by the officer conducting the group identification procedure, in selecting the location consideration must be given to the general appearance and number of people likely to be present. In particular, the officer conducting the identification procedure must reasonably expect that over the period the witness observes the location they will be able to see, from time to time, a number of others, in addition to the accused, whose appearance is broadly similar to that of the accused.

Group identification should take place in a police station when the accused is detained in custody. The procedure may take place in either a room equipped with a screen permitting witnesses to see members of the group without being seen or anywhere else in the police station or within its curtilage, which the officer conducting the procedure considers appropriate.

Only where the accused is detained in a prison or young offenders' institution and there is specific security concern should consideration be given to holding such a procedure within a prison or young offenders' institution. It is obviously extremely undesirable for children under 16 years of age, vulnerable or intimidated witnesses to attend a group identification procedure held within a prison or young offenders' institution and where at all possible alternative arrangements should be made.

Conduct of Group Identification

Appropriate arrangements must be made by the officer conducting the group identification procedure to ensure that before a witness attends any group identification procedure he or she has no opportunity to either view the accused or view or be reminded of any photographs or descriptions of the accused, or be given any other indication as to the accused person's identity.

Witnesses should be unable to communicate with each other about the case or overhear any other witness who has already been given an opportunity to see the accused in a group setting. In addition, the officer conducting the group identification and any other officer assisting must not disclose whether a previous witness has made any identification.

Where the witness is a child under 16 years of age, a person with a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter, a responsible adult, appropriate adult or interpreter (who is not and is not likely to become a witness in the case aside from in this capacity) will accompany the witness. If necessary, such a person will assist the officer conducting the group identification procedure in communicating information and requests to ensure that the witness fully understands what is required of him/her. The responsible or appropriate adult or interpreter must not, however, be allowed to influence the witness, in any way, in arriving at any decision involving identification.

Witnesses will be brought to the place where they are to observe the group one at a time. Immediately before the witness is asked to look at the group the officer conducting the group identification procedure shall tell the witness that the person he or she saw may or may not be in the group. The witness shall then be asked to observe the group in which the accused is to appear and clearly point out any person whom they saw on the earlier relevant occasion. If the witness is unable to positively identify any person he/she should be asked if any person in the group looks like the person.

The way in which the witness views the group will depend on the circumstances at that time, but the witness can continue to observe the group for a period which the officer conducting the group identification procedure reasonably believes is necessary in the circumstances for the witness to be able to make comparison between the accused and other individuals of broadly similar appearance to the accused.

When the witness points out a person he/she shall, if it is necessary and practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable or the witness is unable to confirm the identification he or she will be asked how sure they are that the person indicates is the relevant person.

If the witness identifies a person other than the accused, that person should be informed what has happened and asked if they are prepared to give their name and addresses, but it is acknowledged that there is no obligation upon any member of the public to comply with such a request. There shall be no duty to record any personal details of any other members of the public present in the group or at the place where the procedure was conducted.

Record of Proceedings

In cases of formal group identification the officer conducting the procedure and witnessing officer shall make a record in their official police notebooks of the actions taken in as much detail as possible. The record should include the date and location of the procedure; the time the group identification procedure commenced and terminated; the date, time and place of the relevant occasion the witness claims to have previously seen the accused; where any identification was made how it was made including the conditions at the time e.g. the distance the witness was from the accused, weather conditions, lighting conditions, estimate of number of other persons visible; whether the witness requires corrective eyesight aids and whether or not they were in use at the time; if the witness made a positive identification or commented about any individual who resembled the person.

APPENDIX F

CONFRONTATION IDENTIFICATION

Confrontation Identification is where the witness directly confronts the accused. This procedure should only be considered when the accused is detained in custody and it has not been possible to hold a video identification parade, identification parade, covert video identification parade or group identification procedure.

Supervision

The officer conducting the confrontation identification procedure will have the responsibility for the arrangements of the witnesses, and will ensure that they have been briefed appropriately and their safety and welfare needs are met during the course of the confrontation identification procedure. The officer conducting the procedure and any other officer assisting him/her must be entirely unconnected with the relevant inquiry/case.

When officers are required to control the entry and exit of witness during a confrontation identification procedure, they should ensure that any witness who has confronted the accused has no opportunity to communicate in any way with any witness who is waiting to confront the accused.

Composition of a Confrontation Identification Procedure

The confrontation should taken place within a police station, either in a normal room or one equipped with a screen permitting a witness to view the suspect without being seen. Force may not be used to make the face of the accused visible to the witness.

Conduct of a Confrontation Identification Procedure

A confrontation identification procedure should be held outwith the view of the general public and no unauthorised persons should be present.

It is extremely undesirable that any child under 16 years of age, vulnerable or intimidated witness should have to attend a confrontational identification procedure. Any decision to hold such a procedure must be thoroughly considered and carefully planned.

If a child under 16 years of age, a person with a known mental disorder, including people with mental illness, learning disability, acquired brain damage or dementia, or a person who requires the services of an interpreter has to attend such a procedure a responsible adult, appropriate adult or interpreter (who is not and is not likely to become a witness in the case aside from in this capacity) will accompany the witness. If necessary, such a person will assist the officer conducting the procedure in communicating information and requests to ensure that the witness fully understands what is required of him/her. The responsible or appropriate adult or interpreter must not, however, be allowed to influence the witness, in any way, in arriving at any decision involving identification.

Witnesses called to attend a confrontation identification procedure should refrain from discussing either the case in question or the person who they are being asked to identify. While it is recognised that the police have no power to prevent such discussion, consideration should be given to either segregate the witnesses before the procedure, if practicable, or alternatively a police officer should be present in any assembly room with a view to inhibiting any discussion of this nature. It is equally essential that witnesses who have completed the confrontation identification procedure should have no opportunity to either have contact with or be overheard by witnesses still to confront the accused.

Before the confrontation takes place the officer conducting the confrontation identification procedure will explain to the witness that the person they saw on a previous occasion may or may not be the person they are to confront. The accused will be confronted independently by each witness who will be asked 'Is this the person?' Any response made by the witness should be noted.

Record of Proceedings

In cases of confrontation identification procedures the officer conducting the procedure and witnessing officer shall make a record in their official police notebooks of the actions taken in as much detail as possible. The record should include the date and location of the procedure; the time the confrontation identification procedure commenced and terminated for each witnesses; the date, time and place of the relevant occasion the witness claims to have previously seen the accused; the conditions of the room e.g. the distance the witness was from the accused, lighting conditions, whether the witness requires corrective eyesight aids and whether or not they were in use at the time; the question posed to the witness and any reply or other comment made when confrontation took place.

APPENDIX G

VOICE IDENTIFICATION

It is well settled that an accused can be sufficiently identified by voice (Lees v Roy 1990 SCCR 310).

If the parade is known to be for voice identification only, the stand-ins should be chosen for voice and accent similarity, and the suspect's or accused's solicitor, or the suspect or the accused, should have the right to hear the stand-ins speak before the parade. The parade should be concealed behind a screen whenever possible. The instructions to the witness in the hearing of the suspect or accused should, depending on the circumstances of the case, be as follows:

"You will hear a number of people speaking. Please say nothing until you have heard them all. If you wish, you may hear them again. The man who in [Cannongate, Edinburgh] on [24 April] [snatched your handbag] may not be here: but if you recognise his voice, tell me his number".

The officer conducting the parade should, in the hearing of the witness, then, in order, identify each member of the parade by number and instruct him to speak the appropriate words. When a witness identifies a person on the parade by number, the officer in charge of the parade should ask that person his name and note the name that is given. The officer in charge of the parade should repeat that name to the witness within the hearing of the person identified. If the witness is unable to make a positive identification, he should be asked a second question: "Is there anyone on the parade who sounds like the person?" His response, if any, should be noted. Additional questions designed to clarify the witness's evidence as to identification may be put to the witness and these and any answers given should be noted. The witness should be allowed to hear the parade again if he wishes, under the same conditions. The witness should then be conducted to the dismissal room and should have no opportunity of communicating in any way with any witness still to attend the parade. A witness should not be allowed to hear the parade again once he or she has left the parade room.

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