



The
British
Psychological
Society

**British Psychological Society Submission to the Home Office consultation on
‘Modernising Police Powers: Review of the Police and Criminal Evidence (PACE)
Act 1984’**

The British Psychological Society welcomes the Review of PACE and the PACE codes, and the opportunity to contribute to the present consultation exercise.

The Society is the learned and professional body, incorporated by Royal Charter, for psychologists in the United Kingdom, has a total membership of over 45,000 and is a registered charity. The key Charter object of the Society is "to promote the advancement and diffusion of the knowledge of psychology pure and applied and especially to promote the efficiency and usefulness of members by setting up a high standard of professional education and knowledge".

The Society is authorised under its Royal Charter to maintain the Register of Chartered Psychologists. It has a code of conduct and investigatory and disciplinary systems in place to consider complaints of professional misconduct relating to its members. The Society is an examining body granting certificates and diplomas in specialist areas of professional applied psychology. It also has in place quality assurance programmes for accrediting both undergraduate and postgraduate university degree courses.

Overall, the aims of simplifying the documents and easing the burden of police administration are laudable. Psychology research evidence, methods, and theories could be useful in many applicable areas. Examples include dealing with mentally vulnerable suspects, human-technology-interaction, and methods for interviewing suspects (and also victims/witnesses).

- In this response we focus on one area, the identification process (in CODE D) and relevant memory research. This is because the identification procedures have been changed greatly over recent years due to adopting new technologies and that, at least within the USA, there is agreement that errant eyewitness identifications are the leading cause of false incarcerations.[1] This is likely to

be true also in the UK. Further, while current procedures (particularly video parades) have many advantages over those used in other countries, there are both procedural changes and clarifications that could improve the parades. This consultation exercise provides the opportunity to make at least two procedural changes that are widely agreed to be beneficial by researchers in the area. Neither of these changes should increase police work, but both will improve the reliability of identifications.

- The most recently published survey[2] of UK identifications found that approximately 60% of witnesses chose the suspect, 20% made no identification, and 20% identified someone other than the suspect (called a *filler* or a *foil*). This final percentage shows that some witnesses do choose innocent people. There is no simple way to use data like these to estimate how often witnesses are in error, and any estimate will vary by jurisdiction. However, one estimate that is much discussed is that 15% of the time when a witness chooses a suspect the suspect is in fact not the culprit.[3] This same report estimates that most of the time when no identification is made the culprit is in the parade so has been missed. Thus, it is clear that there is room for improvement both to avoid errant identifications and to increase accurate identifications.
- Psychology research has suggested many ways in which parades could be improved.[4] Most of the documents describing improvements refer to procedures in the USA, and the UK procedures compare favourably to those used in the USA.[5] We list the two most important procedural changes and the reasons for them. We then list other important changes and some clarifications which could be useful for PACE.
- Hundreds of psychology studies have shown that if somebody knows the answer to a question, they may inadvertently and without awareness provide information to the person trying to answer the question. This is why medical research uses "double-blind" procedures when conducting experiments. If there were two conditions in a medical trial (say, a placebo and Drug X), this would involve the patient not being aware whether they received a placebo or the drug and the person administering the study also not being aware whether the patient received a placebo or the drug. The same standards required for medical research in the UK should, where possible, also be used within criminal justice procedures. Given that most UK parades are now video parades in Identification Suites, and the case officer is not involved in the parade, it should be relatively easy to implement double-blind video identifications. The same could be done with other forms of identification (when conducting a group identification, the officer could be told a description), except the confrontation procedure, which is done only as a last resort. It is important to stress that the "double-blind" procedure is being advocated not because we believe anybody is deliberately trying to direct the witness, or even that anyone is conscious of this behaviour. It is because scientific research demonstrates beyond any doubt that it is part of human

behaviour to provide information and that often people are unaware of their influence.

IMPLEMENTATION A: Double-Blind Procedures should be used where reasonable.

- Police, judges, and jurors use the confidence of witnesses to weight the reliability of their identifications. Much research has shown that confidence is not a perfect predictor of accuracy, but when an identification is made confidence is positively associated with correct identifications across a large number of tasks.[6] The problem is that if a witness is told either that they identified the suspect or that they failed to identify the suspect, their confidence is affected by this post-identification feedback.[7] Confidence (and many other measures) are contaminated if taken after the person is told the outcome of the identification. It is not possible to tell if someone is confident because they are accurate or just because they were told that they identified the suspect. Given that in many situations it will be difficult not to tell the witness the outcome of the identification (and could be viewed as discourteous to witnesses who have taken the time to help in the investigation), some measure of confidence should be taken after the identification is made, but before either the officer with the witness or the witness knows the outcome of the identification. This could be built into the video system. Given that PACE says for group identifications witnesses can be asked "how sure they are that the person they have indicated is the relevant person" this should be easy to implement for all identification types. The question used with one ID suite was: "How difficult was it for you to figure out which person in the identification parade was the person who committed the crime?" with a rating scale from 1 ("very difficult") to 10 ("very easy").[2] The exact form of the question, and if more questions should be used to improve reliability, should be considered.

IMPLEMENTATION B: A witness' confidence should be measured after s/he makes an identification, but before s/he learns the outcome of the identification.

- Several other changes can be suggested, but we wanted to highlight the two above both because of their ease of implementation and the clear unequivocal research evidence that these will improve the quality of the identification procedures. Because video parades are by far the most common, we focus on these. We list four additional concerns. We choose these for ease of implementing and how they would improve the quality of the identification.

- Further issues for video parades:
 - When there are multiple suspects, separate procedures should be done for each when video. Trying to decide if the suspects look "roughly similar" enough to put them into the same parade and then trying to interpret the different possible outcomes from these 2-suspect parades has been a difficulty for police and courts. While the probability of randomly choosing the suspect in a 9 person parade is 11%, the probability of making two choices and randomly identifying one of the suspects from a 2-suspect 12 person parade is much higher at 32% (if there are 3 suspects and 3 choices, the probability is 62%). It should be stated that different fillers should be used for each parade. Given that there are 20,000+ photos in the face databases of the systems used, this presents no problems.
 - Given that the suites all have video equipment, it should be stressed that videoing the identification should be the norm, and an explanation should be given if this is not done. Because videoing is done in all the suites we know of, this should not present any difficulties, but it is worth having in PACE. Further, in recording the outcome of the parade for the files, it is important to record identifying a filler differently than making no identification. A filler identification means that the true suspect is likely to look more like this filler than any one else in the parade, and this information could be useful to the investigating officers.
 - In several places, PACE states that efforts should be made to keep witnesses separate. In a recent survey most witnesses at an ID suite (data available on request, publication in preparation) said that the crime they observed had multiple witnesses, and most of these people said that they spoke with other witnesses about the event before arriving at the suite. Because of possible contamination, it should be recorded if witnesses spoke with other witnesses about the crime before the identification.
 - The rule that witnesses have to look at all photographs at least twice and not talk until they have looked at each twice should be replaced. There is disagreement about whether a parade should end before a witness has had the opportunity to see all the people in the parade once, but there is no scientific basis for not allowing the witness to identify the person when they first see them and no scientific basis for requiring two viewings.

References of interest:

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