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NPIA
National Policing Improvement Agency

PRACTICE IMPROVEMENT

Facial Identification Guidance 2009

Produced on behalf of the Association of Chief Police Officers
by the National Policing Improvement Agency

This guidance contains information to assist policing in the United Kingdom.

It is not protectively marked under the Government Protective Marking Scheme.

FACIAL IDENTIFICATION GUIDANCE
This document has been produced by the National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO). It will be updated according to legislative and policy changes and re-released as required.

The NPIA was established by the Police and Justice Act 2006. As part of its remit the NPIA is required to develop policing doctrine, including guidance, in consultation with ACPO, the Home Office and the Police Service. Guidance produced by the NPIA should be used by chief officers to shape police responses to ensure that the general public experience consistent levels of service. The implementation of all guidance will require operational choices to be made at local level in order to achieve the appropriate police response.

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All other enquiries relating to this publication should also be addressed to the Specialist Operations Centre at the above address.

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PREFACE

This guidance has been published on behalf of the ACPO Working Group for Facial Identification. The Working Group is a technical group which manages the Police Service response for facial identification, and similar processes, as an aid to criminal investigations. The Working Group identifies and disseminates good practice, relevant case law and new technological advances.

The manual contains recommendations and guidance on using facial imaging techniques. It will be updated approximately every two years to reflect new research findings, policy changes or changes in legislation. If, in the interim, new developments occur which the ACPO Working Group for Facial Identification feels should be brought to the attention of practitioners, then a newsletter will be published.

It is the responsibility of the officer in charge (OIC) of an investigation to pursue every reasonable line of enquiry. Where witness(es) can provide a description of an offender whose identity is unknown, a facial imaging officer can advise the OIC on best practice. They can help the OIC to make an informed decision on facial imaging techniques and, where appropriate, the construction and further use of any composite image produced.

A list of regional contacts within the ACPO Working Group is available from the NPIA Specialist Operations Centre, telephone number 0845 000 5463, or on the Genesis website at **http://www.genesis.pnn.police.uk/** The regional contacts are available to help with any issues or advice relating to this guidance and to the general remit of the Working Group.

Section 1
GLOSSARY OF TERMS

This section sets out the main terms used in the process of facial identification.

CONTENTS

1.1 INTRODUCTION

A composite image is a pictorial likeness produced from the witness's recall of the suspect for the purpose of achieving a 'likeness' of the suspect. The composite image is intended to be an aid to the investigation of crime alongside other corroborative evidence.

1.2 COMPOSITE LIKENESS

The term **composite likeness** is commonly used by practitioners when referring to any facial or full-bodied image, irrespective of the technique used to produce it. This is especially important to understand when dealing with the courts and the media.

- **Composite** means made up of various parts or blended.
- **Likeness** means bearing close resemblance, or having similar characteristics to the person portrayed.

1.3 RECALL AND RECOGNITION

Within the context of suspect identification, **recall** means the process of retrieving descriptive information about a suspect from the long-term memory of a witness. This process takes place in the absence of the suspect or their photograph or other image. **Recall** involves retrieving associated and disassociated details, which are likely to be stored in different areas of the brain. The witness may require several sessions using cognitive interview techniques to ensure that they have recalled as much information as possible.

Recognition is the process of matching a suspect with the mental image a witness has stored in their long-term memory. **Recognition** relies on the witness being shown an image of the suspect. The image can be the suspect in person, a photograph or a previously prepared composite likeness.

The above are simple definitions and do not take into account outside factors that will influence both **recall** and **recognition**. The processes are mutually exclusive, eg, **recognition** requires an ability to **recall** information and vice versa.

1.4 FACIAL IMAGING OFFICER

A facial imaging officer produces facial composite images using computer software and cognitive interview techniques (see also **1.7 Cognitive Interview**). They work directly with victims or witnesses.

1.5 COMPOSITE ARTIST

A composite artist sketches facial or full-bodied composite images using cognitive interview techniques. They work directly with victims and witnesses. The artist may also be able to use computer software to produce images.

1.6 FORENSIC ARTIST

A forensic artist has received specialist training to apply and combine artistic skills and scientific information. By using post-mortem images or facial reconstruction, they can make hand-drawn or computerised enhancements to images that may help with the identification of an unknown deceased person, or trace a long-term missing or wanted person. They also work in conjunction with forensic pathologists, forensic anthropologists and/or forensic odontologists to help with their interpretation of a 'facial likeness' of the deceased, as required.

1.7 COGNITIVE INTERVIEW

Cognition:

> **Knowing, perceiving or conceiving as an act or faculty distinct from emotion or violation.**
>
> *Oxford Reference Dictionary*

A cognitive interview is used to help a witness to recall an event by recreating the scene of that event in their mind's eye. This involves reconstructing the scene piece by piece so that the witness almost relives the incident through their consciousness, allowing them to see the suspect and to describe them.

Section 2
FACIAL IMAGING TECHNIQUES

This section provides an overview of the techniques currently available to enable specialist practitioners to produce a composite likeness.

CONTENTS

2.1 INTRODUCTION

Facial imaging techniques as an aid to improving identifications are developing incrementally and becoming more widely available. There are a number of examples where software, currently being developed for producing and using composite images, presents exciting opportunities to help the Police Service identify suspects. The role of the ACPO Working Group for Facial Identification is to assess these developments and to provide guidance for their use.

In this regard, if any software is used under existing legislation and it matches the required technological specifications, the Working Group must consider whether current national guidance requires amendment to embrace the new technology or research.

Currently, there are a number of techniques which the Working Group has assessed.

2.1.1 COMPUTERISED FACIAL IMAGING

Both composite and holistic computer software enable the facial imaging officer, using cognitive interview techniques, to compile a composite likeness at the direction of the witness.

Image 1

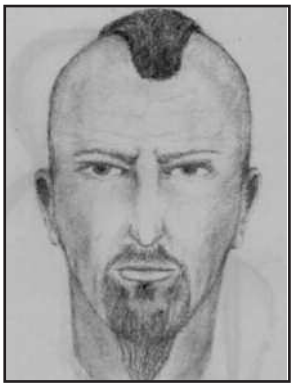
Image 2

Image 3

Holistic Composites

Image 4

Image 5



Recall Composites

2.1.2 ARTIST COMPOSITE

Image 6

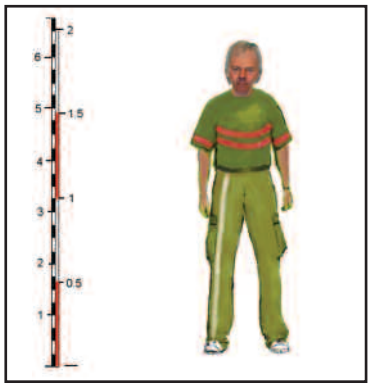
A free-hand drawing or sketch produced by the artist following a cognitive interview with, and at the direction of, a witness.

This method can also be used for full-length figures to show particular details that the witness has recalled. These may include:

- Unusual clothing;
- Deportment;
- Build;
- Unusual property;
- Furniture;
- Jewellery;
- Tattoos.

This technique should be used only where the item is particularly unusual in nature and replicas cannot be obtained for photographic reproduction.

Image 7



This image shows distinctive clothing.

Image 8

The image shows a Roman head, which was identified as distinctive property.

2.1.3 COMPUTERISED OR ARTIST'S IMPRESSION

Computerised or artist's impressions are drawings or computer-enhanced images which are produced when there are no witnesses or victims available to be interviewed.

Where an old photograph of a suspect is available, an impression can be used to update it, for example, to age, add or remove facial hair.

Image 9 is based on two composites, images 10 and 11, prepared ten years apart.

Image 9

Image 10

E-Fit made 1997

Image 11

E-Fit made 2006

2.1.4 POST-MORTEM INTERPRETATION

A post-mortem interpretation by a forensic artist is a sketch or computerised image made of an unknown person to show what the person may have looked like prior to death. This technique is used where there is injury or damage to the facial tissue of an unidentified person, eg, by physical assault or the effects of fire or water, but the damage has not caused severe disfigurement. The purpose of an interpretation is to provide a more appropriate facial image to aid identification.

Note: The post-mortem injuries in image 12 are relatively mild. A forensic artist will be able to produce artist's impressions from victims with more severe injuries, as was the case in images 14 and 15.

Image 12

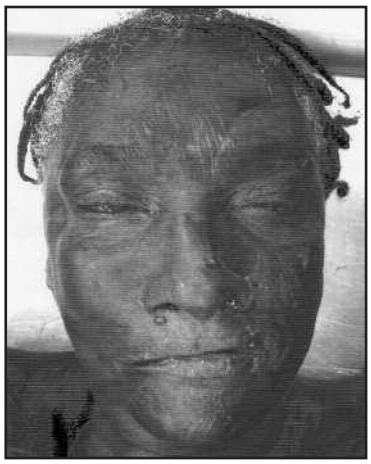


Image 13

Post-mortem photograph of victim and
artist's impression of victim in life.
(Operation Primary – Northamptonshire Police.)

Image 14

Image 15

Image 14 is an artist's post-mortem impression that helped to identify an unknown victim, and image 15 is a photograph of the victim in life.
(Hedsor Lane Murder – Thames Valley Police.)

The forensic artist should assess each case and decide whether post-mortem interpretation or facial reconstruction is the most appropriate method to use.

The criteria required for a post-mortem interpretation are shown in **Appendix 1.**

2.1.5 FACIAL RECONSTRUCTION

A facial reconstruction is based on the principle that there is a predictable relationship between the skull and the overlying soft tissues. This form of identification technique is used when the facial features are severely damaged or decomposed beyond recognition.

An exact likeness from a recovered skull can never be achieved as there are too many variables. Facial reconstruction can, however, produce a face that will look very similar to the type of face the individual had before death.

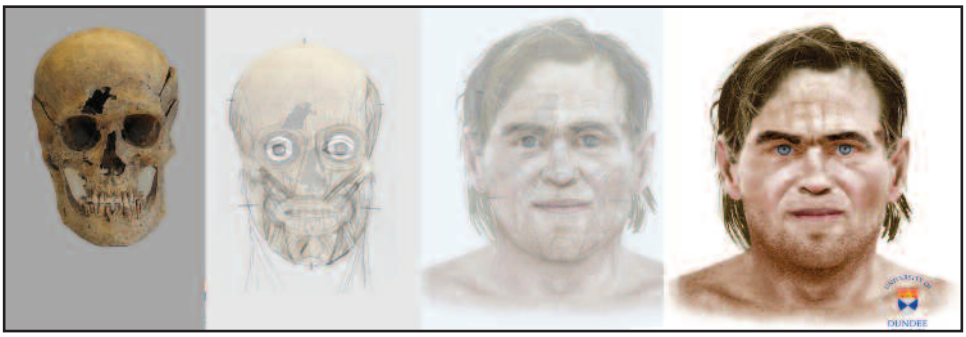
The criteria required for facial reconstruction are given in **Appendix 2.**

There are three different techniques for facial reconstruction.

2.1.5.1 Two-Dimensional Reconstruction

Image 16 is a sketch reconstruction in a two-dimensional format to produce an image of what the person may have looked like in life. It is produced by placing an acetate sheet over a life-sized scaled photograph (front or profile) of the prepared skull, which the artist then draws on using the principle explained in **2.1.5 Facial Reconstruction**.

Image 16



2.1.5.2 Three-Dimensional Reconstruction

Image 17 is a physical reconstruction in three dimensions, modelled with clay or Plasticine onto a cast of a prepared skull. Sometimes it may be necessary to use the original skull.

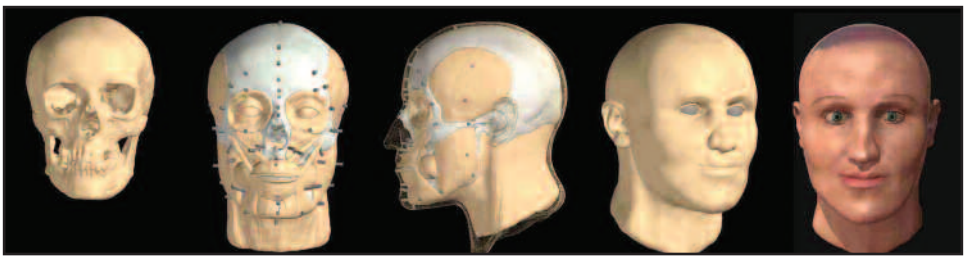
Image 17

2.1.5.3 Computerised Three-Dimensional Reconstruction

A three-dimensional computerised reconstruction can be made using computer software. The image is based on a digital replica of the skull, which is reconstructed using laser scans or CT scans. The software may be automated or based on traditional modelling systems.

Automated systems 'morph' templates of skeletal and facial morphology to fit each new skull, and can create multiple variations.

Image 18



Modelling systems produce sculptural three-dimensional models following similar methods to the manual techniques in **2.1.5.2 Three-Dimensional Reconstruction,** using virtual clay and haptic feedback (touch-based technology).

All systems allow for the addition of skin textures and surface detail, such as hair, beards, moustaches, spectacles.

Specialist practitioners in this field can be contacted through the NPIA Specialist Operations Centre, telephone: 0845 000 5463.

2.1.6 AGE PROGRESSION OF CHILDREN

Age Progression of Children is a computer software package that should be used by trained personnel only. The NPIA Specialist Operations Centre can provide a list of suitably trained age progression practitioners. Their telephone number is 0845 000 5463.

A scanned image is taken from the last known photograph of a missing child, who was at least two years old at the time they went missing, and who has been missing for a minimum of two years. These criteria are required to allow for sufficient growth to have occurred to warrant age progression. The scanned image is then developed, using age-appropriate family photographs of bloodline siblings or parents. Family traits can also be added using drawing computer software, enabling an age progression composite to be achieved.

Image 19

2.1.7 IMAGE COMPARISON

All forms of image comparison depend strongly on the quality of the material received for comparison.

Image comparison can be used for faces and other bodily features, including gait, as well as for comparison of any other object.

Facial recognition software available to the Police Service is developing incrementally. This software allows the comparison of external images against a digital custody database to assist the intelligence identification of individuals.

This process still requires human input to visually compare the resulting images, and will not meet the evidential threshold. It may, however, constitute reasonable suspicion to progress an investigation.

Facial identification by image comparison (often referred to as Facial Mapping), does, however, provide a comparison which has evidential value. This process compares the identity of an individual in two or more scaled and aligned photographic images, or demonstrates morphologically comparable features within a legal context (eg, in a similar way that fingerprint evidence is prepared for submission to court).

The technique is used to make a visual study of moving and/or still facial images in a number of formats (eg, video, digital, photographs) obtained from the scene of a crime, or other source, and make a comparison with a known suspect's facial image.

The comparison will present and demonstrate the significance of any areas or points of similarity and difference, and will include the presence or absence of a feature. It will also highlight any probability factors and likelihood of repetition. The specialist practitioner can then formulate an opinion of similarity from these comparisons.

Similarities of features and facial proportion do not necessarily prove identity, although differences may prove non-identity. However, as the number of similarities increases, the number of people who share that particular combination of features and/or proportions decreases. This will add weight (to whatever degree) to the assumption that the persons being compared are the same.

2.1.7.1 Techniques

There are a number of techniques used in facial image comparison. The following highlight some of these, but this list is not exhaustive.

a) Illustrating comparisons by overlaying grid patterns allows a study of (relative) facial geometry between two images, when viewpoints match and when lighting conditions are similar.

b) Demonstrating areas or points of similarity or difference includes a feature-by-feature analysis involving a number of methods, such as:

- Drawn or electronically produced indicators or grids;
- Transposed outlines (produced by hand or by computer);
- Split or composite images (one or any portion of an image is overlaid on the second image to check or confirm correlation);
- Video overlays or wipes (eg, changing the images from one to the other to make a comparison) on a frame-by-frame basis;
- Facial proportions or spatial distribution of features;
- Observation and search for textural detail (eg, scars or any other skin anomaly in a unique position) may be undertaken to identify comparative information (depending on the quality of the material received).

Note: Currently, no standard scale of conclusion has been adopted by all practitioners, however, work is ongoing in this area.

2.1.7.2 Practitioner Background and Experience

The expertise of a practitioner in this field should be researched prior to their appointment. The OIC should be aware that comparison relies heavily on the quality of the material to be used for comparison, and the available technology.

Facial image comparison practitioners should have the following skills and experience:

- Sound knowledge of human facial anatomy, anthropometry and physiology together with an in-depth knowledge of photo interpretation and image analysis techniques, including capture, process and output media.

- Be able to demonstrate an ability to compare facial morphology and facial proportions, observing the spatial relationships of features and facial landmarks between images, from more than one source.

- Be aware of the significance of probability factors, likelihood of repetition and likely range of variation in images, thus demonstrating awareness and an ability to analyse the effects of distortion caused by perspective, camera angle, motion blur, lighting and translation of data formats.

- Be familiar with relevant Home Office guidelines and current research in this field.

The NPIA Specialist Operations Centre is able to provide a list of practitioners in this field who can discuss the strength of available evidence, based on the Criteria for Submission given in **Appendix 3.** The NPIA Specialist Operations Centre telephone number is 0845 000 5463.

2.1.8 MORPHING

A morphed composite is an additional image produced by a computerised process. It combines facial composites from two or more different images of the **same suspect**, giving equal weighting to each.

The morphed composite reinforces consistent features and the relationships between features.

Note: The investigating officer **must** be satisfied that there is evidence to support the fact that the composites to be morphed are of the **same suspect**. If there are substantial dissimilarities between the original composites, the morphing process **should not** be undertaken.

2.1.8.1 Methods

A morphing practitioner will position a set of corresponding 'landmarks' on the facial features of each composite. There should be sufficient landmarks to ensure that the features are aligned correctly.

The software uses the corresponding landmarks from the original composites to produce a single morphed composite that represents an average of all the original composites. (That is to say it produces average feature shapes, average relationships between features, and average feature 'textures' or intensities.)

2.1.8.2 Practitioner Background and Experience

Only a morphing practitioner who has received recognised training or has expertise in the use of morphing software should carry out this process.

The full criteria required for the production of a morphed composite are given in **Appendix 4.**

Section 3
TRAINING

The ACPO Working Group for Facial Identification recommends that all facial imaging officers and composite image artists used by forces are appropriately trained, as detailed in Lord Dainton's Report on Forensic Science, October 1997.

CONTENTS

3.1 MINIMUM STANDARDS

3.1.1 FACIAL IMAGING OFFICERS AND COMPOSITE IMAGE ARTISTS

All facial imaging officers and composite image artists must have undertaken relevant training and assessment prior to their appointment. As a minimum, they must have achieved the relevant National Occupational Standards set by Skills for Justice, which cover:

- Appropriate interview techniques;
- Production of a facial image and related documentation;
- Evidence handling and preparation.

In addition, facial imaging officers and composite image artists should be aware of the guidance contained within this manual. Regional representatives of the ACPO Working Group for Facial Identification can provide further advice. They also hold a list of all facial imaging officers and artists within their region.

3.1.2 FORENSIC ARTISTS

Forensic artists must have proven artistic competence and have received formal training in basic facial anatomy and the effects of human decomposition in order to be able to produce post-mortem and facial reconstructions.

The NPIA Specialist Operations Centre can provide a list of suitably trained forensic artists, telephone: 0845 000 5463.

Section 4
WORKING PRACTICES

This section sets out a number of working practices which practitioners must take into consideration when preparing facial images.

CONTENTS

4.1 EXHIBITS

4.1.1 PRODUCTION OF ORIGINAL EXHIBITS

Investigating officers are reminded that when requesting a composite image, irrespective of the technique used, they are, in fact, asking for a **pictorial statement** from a witness.

In all cases, any notes and sketches made during the production of an image are subject to disclosure under the Criminal Procedure and Investigations Act 1996 (CPIA) and should be treated accordingly.

The final composite image should be signed and dated by the witness and the practitioner. Original notes of the description made by the practitioner during interview should also be signed and dated by both parties. The witness must be given an opportunity to read, or have read to them, the notes before signing.

A declaration must be attached to the composite image to warn anyone who handles or releases the composite image to public gaze, that:

> To alter, add, tint, colour or change any details within the pictorial statement would amount to tampering with evidence.

The signed and dated composite image will become an exhibit which will be referred to by the witness during any subsequent trial.

If a computerised system is used to produce a composite image, the image should be secured onto an appropriate medium, eg, CD-Rom, in a read-only format. This should then be stored securely and continuity maintained by the operator.

It is also advisable to download the image onto a 'working disc' to enable further copies to be made if required.

These items will become exhibits which the operator will refer to in any subsequent trial.

If the interview is visually recorded, a master recording should be signed, dated, sealed and securely stored.

This master will become an exhibit and be referred to in any subsequent trial by the person who operated the recording equipment.

4.1.2 PRODUCTION OF SECONDARY EXHIBITS

As new software is developed, the opportunities for a suspect to be identified are likely to increase in the future. New software may also provide opportunities for original composite images to be enhanced. Any additional material produced as a result of these developments should be exhibited and referred to separately by the operator who produced it. **The witness must not participate in this process**.

All material (eg, original documents including composites, notes, statements, digital data and any other relevant documents) created during the facial imaging process should be retained in accordance with current force policy. Retention periods are set out in ***ACPO (2006) Guidance on the Management of Police Information (MOPI)***, hereafter referred to as ***MOPI***. Consideration should be given to the medium that material is stored on so that it can be retrieved at a future date.

4.2 DISCLOSURE

The CPIA and its Code of Practice issued under Part II of the Act set out rules for the disclosure of material in criminal proceedings.

4.2.1 MATERIAL

This is defined by the CPIA Code of Practice as:

> Material is material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be relevant to the investigation; Material may be relevant to an investigation if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case.

All police officers and staff have a duty to **record**, **retain** and **reveal** any material gathered during a criminal investigation, whatever the source.

Officers are reminded that the prosecution must inform the defence of the existence of any composite image or unfinished image, irrespective of the technique used, and any notes made. The composite image and notes must, therefore, be retained and the witness may be called upon to produce them in any subsequent proceedings.

4.2.2 RETENTION OF MATERIAL

National guidance contained within ***MOPI*** specifies minimum time limits for the retention of material.

Force policy will also specify the procedures for the management of material in an investigation. A copy of ***MOPI*** can be downloaded from
http://www.npia.police.uk/en/11948.htm

4.3 MULTIPLE IMAGES

Where there has been more than one witness to a single incident, each witness should be assessed individually on their ability to provide details from which an image could be produced.

Where more than one witness is able to describe accurately what appears to be the same individual, composite images can be produced from each witness as long as the following conditions are met:

(a) Each witness provides an individual image separately from all other witnesses.

(b) The witnesses do not work together in producing their own composite image and are not shown other composite images during the production of their own image.

(c) A different facial imaging officer is used for each witness, where practicable, to avoid cross-contamination of the images.

Where more than one composite image is available, and it is certain that they are of the same person, the investigating officer may consider whether it is appropriate to use the composite images singularly or in combination when circulating the images or conducting appeals for information. It may also be appropriate to morph the composite images to produce a single morphed composite for circulation or appeals. The facial imaging officer or composite artist can provide guidance on when this may be appropriate.

4.4 SECURITY VIDEOS AND STILLS

Where security videos and stills are available, investigating officers should not normally request a composite image to be produced. However, if the security videos and stills are of poor quality and considered unusable for identification purposes then a composite may be compiled.

4.5 INTELLIGENCE CIRCULATION

Nothing in this guidance precludes the internal circulation of a composite image across the Police Service and other law enforcement agencies for the purposes of intelligence briefings.

4.6 AUTHORITY TO CIRCULATE COMPOSITE IMAGES TO THE MEDIA

When considering the release of a composite image to the media, the investigating officer should first obtain authority from a senior officer in accordance with force policy.

Where national media coverage is thought to be appropriate, the investigating officer should obtain authority from a senior officer and should also liaise with the force press office.

A warning message should be attached to the composite image prior to release stating that the image **must not** be altered or amended in any way by the media.

Section 5
WITNESS CONSIDERATIONS

The witness is integral to the facial identification process; this section sets out some key witness considerations.

CONTENTS

5.1 VIDEO RECORDING THE FACIAL COMPOSITE PROCESS

Where the witness is a vulnerable adult or child, the facial composition process should be video recorded as it may form part of the evidence-in-chief. This is in accordance with existing force procedures and can be found in ***CJS (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures.***

5.2 WITNESS AVAILABILITY

Investigating officers should ensure that a witness is willing to devote sufficient time to complete a composite image. The level of concentration and time required for this can be demanding for some people. If the witness is distracted, for example, by an imminent appointment or busy work schedule or environment, it may be necessary to arrange a more suitable time and place.

Whenever possible, a composite artist or facial imaging officer should contact a witness as soon as practicable after an incident as this will allow the witness's level of recall to be accurately assessed. Where the witness is suffering from stress or trauma because of the nature of the incident, this may not be possible and the assessment may have to be delayed.

The strongest witness recall level is usually immediately after the event, although trauma or stress can affect the decoding process depending on the level of severity and the individual concerned.

5.3 WITNESS ABILITY TO PROVIDE A COMPOSITE IMAGE

In order to successfully produce a composite image, it is essential that the witness has seen the suspect's face and is able to recognise or recall their facial features.

Recognition is where a witness is confident of being able to identify the suspect if they saw them again. It is not the same as being able to confidently recall the facial features.

There are, however, methods which can be used to help produce a composite image, which are based on recognition as opposed to recall.

5.3.1 RECALL OR COMPOSITE METHODS

A witness should have a clear mental image of the suspect and, more importantly, be able to visually recall and describe, however simply, the facial features to be reproduced.

5.3.2 RECOGNITION OR HOLISTIC METHODS

If the witness is unable to recall the suspect's facial features in detail from memory but they would be able to recognise the suspect if they saw them again, then an holistic system could be considered. Advice should be sought from a trained operator.

See also: *R v Turnbull* [1976] 3 WLR 445, The Turnbull Guidelines.

The Turnbull Guidelines

Where a case depends wholly or substantially on the correctness of one or more witness's identification of the accused, and the defence allege it is mistaken, the judge should:

1. Direct the jury to examine closely the circumstances in which the identification by each witness came to be made using ADVOKATE
   - **A**mount of time observed
   - **D**istance between the witness and the suspect
   - **V**isibility at the time
   - **O**bservation impeded
   - **K**nown to witness or seen before
   - **A**ny reason for remembering
   - **T**ime lapse between original observation and identification
   - **E**rror in description or material discrepancy between the description and actual appearance;
2. Warn the jury of the special need for caution in relying on the correctness of identification;
3. Direct an acquittal where in the judge's opinion the identifying evidence is poor.

5.3.3 USE OF FEATURES

An individual facial feature should not be excluded from the process of constructing a facial likeness solely because the witness either does not, or cannot, describe that feature. Research (eg, *Shepherd and Ellis, 1996*) has demonstrated that people tend to find recalling and describing a face and/or its features is much harder than recognising them. Also, the ability to describe a face does not correlate strongly with recognition or identification ability (*Goldstein, Johnson and Chance, 1979*; *Wells, 1985*).

Recognition of individual features is more accurate when that feature is shown as part of a whole face (eg, T*anaka and Farah, 1993*). It is, therefore, possible that a witness who cannot recall or describe a feature may nonetheless be able to make judgements about that feature when it is shown as part of a whole face during the construction process.

In cases where uncertainties arise, the practitioner should highlight these to the OIC. They should not select a feature of their own volition, ie, without the guidance of the witness.

The operator should bring any identified limitations of a composite image to the attention of the OIC.

The publication or circulation of an incomplete composite image should be discouraged as it is unlikely to aid identification.

5.3.4 WITNESS SUPPORT

In accordance with ***CJS (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures,*** consideration should be given to having a witness supporter available to offer assistance to the witness during the facial identification process.

If a witness has learning difficulties, it is helpful to have a witness supporter available who has relevant knowledge of the witness's condition and abilities, and is able to give advice to the interviewer on this. The supporter should be made fully aware of the circumstances of the case and of any issues that may affect the structure of the interview.

Practitioners also have to be mindful of the wider duty under 21D and 21E of the Disability Discrimination Act (DDA) 1995, as amended by the DDA 2005, to accommodate the needs of all disabled people when preparing a composite image.

5.4 WITNESS CONTAMINATION

Where a suspect is known and available to the police (see Police and Criminal Evidence Act 1984 (PACE) Codes of Practice, Code D, paragraph 3.3), a composite image must not be produced.

A witness must not be shown photographs or be exposed to any form of identification procedure before being asked to produce a composite image. This will eliminate the risk, or suggestion, of contamination to the primary memory of the witness, which could affect recall.

After a composite image has been produced, it may be appropriate to consider showing the witness a photograph of a suspect. The process of producing the composite image may have enhanced the witness's recognition of a suspect.

For further information see **6.2.1 R v Virag (1969) and R v Dougherty (1973).** See also PACE Codes of Practice, Code D and Annex E.

5.5 OPERATOR CONTAMINATION

The investigating officer should brief the composite artist or facial imaging officer (operator) before they begin preparing an image. The briefing should include an indication of the point during any previous witness account when they are likely to have had the best view of the suspect.

The operator should **not** be given a detailed description of the suspect or view any CCTV recording or still pictures of the suspect. They must be able to perceive the witness's description as first-hand information in a properly focused interview. This should reduce the potential for preconceived contamination.

When beginning the identification process, the operator may need to ask the witness some questions to ensure that all the information they need to consider in assessing the witness's identification evidence has been covered, as suggested in *R v Turnbull* (1977) QB224 and embodied in the mnemonic ADVOKATE. See **5.3.3 Use of Features.**

Section 6
LEGAL FRAMEWORK

This section sets out the current legal position on the use of composite images in judicial proceedings.

CONTENTS

6.1 INTRODUCTION

Note: The term composite in this context means any image produced by computerised systems or which is hand drawn.

With the exception of Scotland, the use of composites is subject to the provisions of PACE, in particular Code D of the Codes of Practice where they relate to the identification of a suspect by witnesses.

6.2 CASE LAW

6.2.1 R v VIRAG (1969)[1] AND R v DOUGHERTY (1973)[2]

On 8 April 1974 the Home Secretary announced in the House of Commons his decision to recommend a free pardon to Mr Laszlo Virag, who had been wrongly convicted of theft and resisting arrest with a firearm. The Home Secretary also referred to the case of Mr Luke Dougherty, whose conviction for shoplifting had been quashed by the Court of Appeal the previous month. In view of the serious questions raised by these cases, which concerned wrongful convictions based on mistaken identify, a committee was formed and chaired by The Right Honourable Lord Devlin FBA to review all aspects of law and procedures relating to evidence and identification in criminal cases.

One of the relevant observations was witness contamination; hence the recommendation that photographs and composite images (then photofits, identikits and artist sketches) would not be shown to witnesses prior to identification parades or confrontations.

6.2.2 R v PERCY SMITH (1976) CRIM LR 511

In 1976 Smith was convicted of attempted murder. The issue was identity. An artist's composite was obtained from a witness who had seen a man near the scene. This composite was admitted in evidence. Smith appealed on the grounds, inter alia, that this involved hearsay evidence. It was submitted by the prosecution that the conversation between the witness and the police officer/artist was a necessary link between the witness and the composite.

Dismissing the appeal, it was held that the witness, using her memory, had directed the sketching hand of the officer/artist and it was her sketch made through the officer/artist's hand.

In the more recent case of *R v Cook* (1987) 1 ALL ER 1049 the Court of Appeal considered that sketches and photofit likenesses made under the direction of identifying witnesses were analogous to photographs, in that they were not subject to the hearsay rule.

[1] R v Virag (1969) Unreported, Court of Appeal, Criminal Division, 17 March 1970
[2] R v Dougherty (1973) Unreported, Court of Appeal, Criminal Division 14 March 1974

6.3 SUMMARY

The issue of composite images is now provided for under the Criminal Justice Act 2003 (section 115 (2)).

> A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

This overrules *R v Cook* and similar cases, which are now treated as admissible hearsay evidence.

In view of *R v Percy Smith* (1976), the relevance of obtaining a statement from the witness producing the composite as their own exhibit, becomes apparent. The practitioner's evidence should prove continuity in the production of the composite.

Investigators should ensure that everyone involved with a case, especially prosecuting counsel, understands the function of a composite image. The composite image is a **likeness** of the suspect, **not** a **photograph**.

A composite is a pictorial record of a witness's memory and not that of the composite artist or facial imaging officer.

Note: If a court requests the composite artist or facial imaging officer to make up a composite image of a court official, this should be refused on the grounds that it is the witness's memory that is being tested, not the artistic ability of the composite artist or facial imaging officer.

APPENDIX 1 CRITERIA REQUIRED FOR SUBMISSION FOR POST-MORTEM INTERPRETATION

The forensic artist should visit the mortuary before or at the time of the post-mortem examination to make an assessment of the case, acquire feature measurements and to ensure that appropriate photographs are taken.

Photographs taken after full dissection of the face can affect a true interpretation of the position of certain features.

Before photographs are taken, adjustments to the head should be made if possible, to closely resemble the natural position of the head. The forensic artist, forensic anthropologist or pathologist can advise on this matter.

Image 20a

Image 20b

Image 20c

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Photographs should include frontal views of the face with a scale placed perpendicular to the camera lens and the lens in alignment with the facial plane – parallel to or in the same orientation to avoid distortion of the face.

If possible, mount the camera on a tripod over the body. If the face is looking straight up, the camera should be in a direct vertical line above the eyes (20a). Otherwise make sure the face is 'looking into the lens' (20b).

Photographs of lateral views should also be provided with a scale lined up with the midline of the face or at the nose (20c).

Photographs should also include close-up views of any facial detail like hairstyle and texture, hair growth or facial peculiarities (eg, moles and scars) as well as height and stature.

If the forensic artist is unable to visit the mortuary and photographic material does not provide them with sufficient information, post-mortem interpretation may have to be declined.

Any post-mortem interpretation specialist will work closely with the forensic anthropologist, forensic odontologist and forensic pathologist to establish sex, age and ethnic group of the deceased.

Ensure that anyone examining the material is aware that post-mortem interpretation may be required (this can influence the way the material is handled).

APPENDIX 2
CRITERIA REQUIRED FOR SUBMISSION FOR FACIAL RECONSTRUCTION

Before starting any such exercise it is essential that the following points should be considered to aid the practitioner and avoid loss of evidence.

The skull should not be cleaned or prepared prior to submission for reconstruction. All the remains on the skull, both soft and bony, should be disturbed as little as possible before they are recorded in detail. Any soft tissue, even when largely decomposed or burnt, can sometimes provide vital information (eg, shape of lips, ears or presence of hair – length, type, colour or hairline).

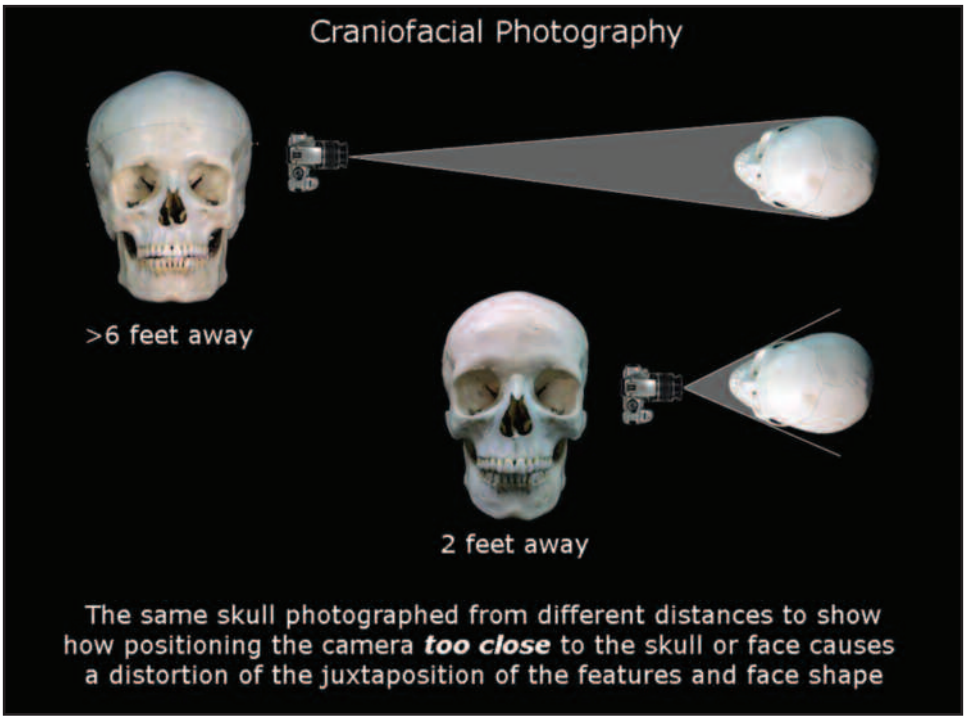
Scaled photographs, with the body in situ, should be taken of the scene showing any specific details, as well as photographs taken of the body at the mortuary prior to post-mortem.

Photographs should be taken of any other remains, eg, clothing (detail and size), jewellery (whether on body and where worn).

Ensure that anyone examining the material is aware that reconstruction may be required (this can influence the way the material is handled).

The reconstruction specialist will work closely with the forensic anthropologist, forensic odontologist and forensic pathologist to establish the sex, age and ethnic group of the deceased.

Image 21



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It is important that any photographs of the skull are taken from at least six feet away from the subject. The photograph shows the same skull photographed from different distances to show how positioning the camera too close can cause a distortion of the relationship between the features and the face shape.

APPENDIX 3 CRITERIA FOR SUBMISSION FOR FACIAL IMAGE COMPARISON

The original material as best evidence **must** be available for examination wherever possible. Working solely from copy material may compromise the integrity of any study. The practitioner's report to the requesting officer should indicate whether the findings are based on a copy or the original material and the whereabouts of the original or the reasons for using a copy.

When possible, the comparison should **not** be confined to one image from each source as this may significantly reduce the strength of the conclusions. It is essential that **all** materials (eg, video footage) relating to the suspect or perpetrator are obtained in order to aid the comparison, so that a number of viewpoints of the face can be observed.

Whenever possible, the images of the suspect or perpetrator should be obtained from the same viewpoint (ie, to match any facial views and camera perspectives that are shown in the comparative material).

Advice pertaining to the collection of photographic material of the suspect or defendant can be sought from the facial imaging comparison practitioner, if necessary.

Comparison of images must be undertaken and presented in a manner suitable for use in court, whether this is by scaling and alignment or by morphological comparison.

APPENDIX 4 CRITERIA FOR PRODUCTION OF A MORPHED COMPOSITE

It may be possible to morph composites from different computer systems and different mediums, provided they are compiled from a similar angle of view. It may not be possible to morph **some** artist composites with computer composites.

The investigating officer **must** be satisfied that there is evidence to support the fact that the composites to be morphed are of the **same suspect**. If there are substantial dissimilarities between the original composites, the morphing process **should not** be undertaken.

If a suspect is known, a morphed composite must not be produced.

An audit trail **must** be produced, detailing how the morphed composite was generated from individual composites.

The person operating the morphing programme will exhibit the morphed composite and produce a statement detailing the process used.

All original composites used in the morphing process will remain unaltered. They are disclosable together with the morphed composite.

APPENDIX 5
FURTHER READING

FURTHER READING

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