

This response was submitted to the consultation held by the Nuffield Council on Bioethics on *The Forensic use of bioinformation: ethical issues* between November 2006 and January 2007. The views expressed are solely those of the respondent(s) and not those of the Council.

Anon 34

QUESTIONS ANSWERED:

Question 1: The interpretation of bioinformation

ANSWER:

In my opinion the SGM plus system has proved to be sufficiently reliable. The use of more advanced systems with a higher sensitivity would increase the chance of obtaining a match but in the same time such usage might be associated with the risk of an investigation being misled because of the identification of individuals who have not committed a particular offence but whose DNA happens to be deposited in the analysed material for instance by means of secondary transfer.

Question 2: Sampling powers

ANSWER:

a. The police should be able to take fingerprints and DNA samples from all individuals arrested for a recordable offence for purposes of prevention, detection and prosecution of crime. The police should be able to request further information such as physical characteristics or ethnicity for the purpose of a specific investigation depending on the seriousness of offence and the importance/usefulness of this type of information in solving the case. b. Research on the efficiency/effects of the forensic usage of bioinformation on crime prevention, detection and prosecution should inform whether it should be given priority over other budgetary demands. c. Most of these criteria are clearly proportionate. Only few provisions raise controversy, such as those related to the retention of DNA samples and profiles from individuals not convicted of an offence. In my view, such information should be retained only for a certain period of time providing that during these period, the individual has not been arrested for a recordable offence. d. It is acceptable considering that minors are capable of committing crimes, often serious ones, same as adults. The collection and retention of bioinformation would facilitate the identification of the suspects in case they commit other crimes in the future. Depending on the type of the offence and whether the minor has been convicted or not, the legislation could be amended in order to provide for the bioinformation not to be retained indefinitely.

Question 3: The management of the NDNAD

ANSWER:

If the volunteers expressively consent, the bioinformation may be kept indefinitely. Criminal justice samples could be removed if there has been a match with a suspect but this would make impossible a reanalysis in the case of advancements of DNA technology or when the defence requires it. In cases when the offence has not existed or sampling has been illegal, samples/profiles should automatically be removed. The current guidance on the discretion of the Chief Constables places all the burden on the interested individual and is designed to minimize the cases of removal.

Question 4: Ethical Issues

ANSWER:

a. The prudent and controlled use of familial searching for investigation of the most serious crimes is justifiable and proportionate. c. NDNAD is not a criminal database therefore where consent is given, volunteers' DNA profiles may be retained. The irrevocability of consent is unjustifiable.

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Volunteers should give the consent freely. They should be well informed on the uses of such information including speculative searches of the database and familial searching. They should be able to withdraw the consent at a later stage. d. The collection of samples from everyone at birth is undoubtedly more equitable than obtaining samples only from those who come in contact with the criminal justice system. The problems are that the establishment of such database might not be proportionate to the needs of crime prevention, detection and prosecution; it would be too expensive, slower to generate matches and would increase the chances of false matches.

Question 5: The evidential value of bioinformation

ANSWER:

a. They should be provided with information, advice, scientific support and training regarding the use of forensic bioinformation in the criminal justice system. Furthermore the effective use of pre-trial meetings would reduce the possibility of juries becoming confused and would help the clarification of scientific issues to judges, prosecution and defence. b. The Court of Appeal in *R v Adams (Denis)*[1996]2 Cr.App.R 469 rejected the proposition that DNA evidence could only be used to support other evidence holding that there was 'no principle of law that DNA evidence was in itself incapable of establishing guilt'. When DNA evidence is properly used in terms of the reliability of the sampling methodology and correct evaluation of the results, the above is a sound decision since other types of evidence arguably less independent and less reliable may support a conviction when used alone (for instance confessions). It would not be fair to base the decision solely or largely on an evidential item of questionable reliability just as it would not be right to disallow a reliable piece of evidence to support a conviction and so let a criminal go free. It is clear that no decision should be made without a careful consideration of all the circumstances of the case.