

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 36

QUESTIONS ANSWERED:

Question 1: The interpretation of bioinformation

ANSWER:

QUESTION: a. In your view, is the SGM Plus® system, which uses ten STR markers, sufficiently reliable for use in ascertaining the identity of suspects in criminal investigations and/or criminal trials? ANSWER: The SGM Plus® system appears to be reliable, if the likelihood of a chance match is one in a billion. This is presumably dependent, however, upon the original DNA sample taken at the scene of a crime being uncontaminated and therefore providing a full profile. With the dramatic increase in numbers of samples being retained on NDNAD in the future, however, I would like to see new, more advanced technology invented that could cut the chances down even more as there are bound to be mistakes made at some point.

Question 2: Sampling powers

ANSWER:

QUESTION: a. From whom should the police be able to take fingerprints and DNA samples? At what stages in criminal investigations and for what purposes? Should the police be able to request further information from DNA analysts, such as physical characteristics or ethnic inferences? ANSWER: In criminal investigations, DNA samples and fingerprints should only be taken once a person has been charged with an offence, and not before. The current practice of obtaining samples on arrest would appear to have a hidden agenda – that of profiling as many people in the England and Wales as possible irrespective of whether they have a criminal conviction or not. My son was arrested in December 2004 because he was mistakenly identified from a school photograph. Three police officers came to our house around 7am as if he was suspected of a terrible crime (when in fact it was the theft of a Gameboy from someone on his way home from school). He was taken to the police station on his own, with his father and I following in our car, and samples were taken without our permission. I was not even asked to be present with him whilst this took place. We spent over 4 hours at the station, mostly waiting for the duty solicitor to arrive. When my son was finally questioned he was quickly released with no charge. The arresting officers told him they believed him and that a mistake had been made. However, we were left completely traumatised. We felt as if he had been violated and were concerned that his details were to remain forever on police records, even though he had never done anything wrong. Being innocent, and he should have been able to leave the police station having the same status as every other innocent person in the UK. The experience we went through, as a family, was highly stressful and traumatic, in particular the nature of the arrest. We are concerned that, with his details being on record for the rest of his life, it is possible that another mistake could occur in the future (it has happened once so why not again?). Perhaps he might be present at a place where a subsequent crime is committed and his DNA is found. He will have to face the possibility of being arrested at any time of the day or night, at any age (possibly when he has a young family of his own) and have to go through that terrible experience again. With regards to the police being able to request further information from DNA analysts, I think this should depend on the seriousness of the crime being investigated. Where police are trying to identify murderers, terrorists or paedophiles, for example, then yes it should be allowed. However, only information that would help identify the physical appearance of a person should be provided. QUESTION: b. Should police expenditure on bioinformation

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collection and analysis be given priority over other budgetary demands? ANSWER: No it should not. Your report states that DNA evidence proved to be of use in 2004-05 of only "0.8% of all crimes recorded" (page 15 of report). To date, approximately £300 million has been spent on the expansion of the database. I do not believe this is a good use of public funds, and I am suspicious that there are numerous extra hidden costs that have not been included in this sum. QUESTION: c. Do you consider the current criteria for the collection of bioinformation to be proportionate to the aims of preventing, investigating, detecting and prosecuting criminal offences? In particular: is the retention of bioinformation from those who are not convicted of an offence proportionate to the needs of law enforcement? ANSWER: I refer to the Parliamentary Questions raised last October, and have underlined key points with relation to those who are not convicted of an offence: "9 Oct 2006 : Column 491W—continued ----- Lynne Jones: To ask the Secretary of State for the Home Department pursuant to the answer of 8 February 2006, Official Report, column 1270W, on DNA profiles, whether there is evidence that persons arrested but not proceeded against are more likely to offend than the population at large; and what estimate he has made of how many matches an average crime scene would yield if there was a national database with everyone on it. [91030] Joan Ryan [holding answer 13 September 2006]: As far as we are aware, there is no definitive data available on whether persons arrested but not proceeded against are more likely to offend than the population at large. In relation to persons on the National DNA Database, as indicated in the answer of 20 December 2005, Official Report, column 2890W, at early December 2005, there were 124,347 people with a DNA profile on the NDNAD who had been arrested and who were not subsequently charged or cautioned with an offence. New data obtained recently from the ACPO Criminal Records Office indicate that over 23,000 of the 124,347 persons had had a PNC record created prior to the arrest event when their DNA sample was taken. This indicates that these persons had been charged, reported for summons and/or sanctioned(1) for at least one other offence prior to the arrest event at which they had a DNA sample taken. No information is currently available on the proportion of the 124,347 persons who may have been charged, reported for summons or sanctioned for an offence after the arrest event when their DNA sample was taken. The Home Office, ACPO and PITO are working towards being able to provide such information from the NDNAD and PNC. Monitoring of the implementation of the powers introduced in April 2004 which enable the police to take DNA from persons who have been arrested for a recordable offence has also provided some information. Since April 2004 sampling persons who have been arrested but not proceeded against has yielded a match with a crime scene stain in over 3,000 offences. These 9 Oct 2006 : Column 492W offences include 37 murders, 16 attempted murders, 90 rapes and 1,136 burglary offences. It should be noted that this data provides intelligence, not evidence, suggesting the arrested persons as possible suspects. No estimate has been made of the number of matches an average crime scene would yield if there was a universal DNA database covering the whole UK population. The Government have made it clear on a number of occasions that it has no plans to introduce a universal compulsory, or voluntary, national DNA database or to seek to obtain a DNA sample from the entire population. No estimates have therefore been produced based on a universal database. (1) Sanctions include convictions and cautions (including reprimands and final warnings" On the basis of the above comments by Joan Ryan, I do not believe the Government has proved that the retention of bioinformation from those who are not convicted of an offence is proportionate to the needs of law enforcement. Therefore, samples taken from this category of people should be destroyed. QUESTION d. Is it acceptable for bioinformation to be taken from minors and for their DNA profiles to be put on the NDNAD? ANSWER: It is acceptable for bioinformation to be taken from minors and placed on the NDNAD. BUT, the samples should only be taken AFTER questioning when police either charge or caution

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the child, or possibly feel strongly that the child is guilty but have no other supporting evidence to charge. Furthermore, the samples should only be taken in the presence of the child's parent or legal guardian. Any samples taken, and any records on the PNC, should be retained for a limited period, dependent upon the crime committed. Currently, samples are taken on arrest. If the Government insist on retaining this right, I feel strongly that if a minor is not charged then his/her details should be destroyed within 3 months. That would give police more than sufficient time to check their records for any unsolved crimes where DNA has been detected to see if there is a match, and to take any further necessary action. The current system of retaining details of innocent people who are arrested but never charged, particularly in the case of mistaken identity, is unfair and unjust.

Question 3: The management of the NDNAD

ANSWER:

QUESTION a. Is it proportionate for bioinformation from i) suspects and ii) volunteers to be kept on forensic databases indefinitely? Should criminal justice and elimination samples also be kept indefinitely? How should the discretion of Chief Constables to remove profiles and samples from the NDNAD be exercised and overseen? ANSWER: (i) Suspects : as already stated, if a suspect is never charged then his/her details should be removed completely within 3 months. I think the system that has been implemented in Scotland is fair, whereby details can be retained for certain offences for periods up to 2 years – longer if permission is granted. The UK should implement a similar system. (ii) Volunteers : the bioinformation from this category of people should be removed completely within 3 months. Retaining the details forever could lead to many people not coming forward to provide samples. My own experience of trying to get my son's details removed has been unsatisfactory. I first wrote to the Police in January 2006 requesting his details be removed. I heard nothing until 7 July and was finally told in October that my request had been denied. I have not given up, however. Throughout this time, my own MP has been in support of my claim, and I have been given information by an MP in another region that he has had 3 of his constituents' details removed under similar circumstances to my son's. My investigations show that Chief Officers can make their own decisions as to whether or not to retain DNA samples, without having to refer to the specialist unit, ACPO (refer to Parliamentary Questions 9 Oct 2006 : Column 491W, Joan Ryan). Consequently, there is inconsistency in the decisions being made and one Chief Officer may authorise the removal of details for mistaken identity for example, where another may not. I would like to see the following implemented: § That information is provided to EVERYONE who is arrested but not charged as to the procedure to have their details removed. § ALL requests for the removal of DNA should go through a Central Unit so that the same criteria be applied to all. § The reasons should be made clear if an application is rejected, not simply that your case is not deemed "exceptional". § The list of precedents set where details are removed should be available to the public via the Internet. QUESTION c. Who should have access to information on the NDNAD and IDENT1 databases and how should bioinformation be protected from unauthorised uses and users? Should forensic databases ever be made available for non-criminal investigations, such as parental searches, or the identification of missing or deceased persons? ANSWER: c. Primarily, the only people that should be able to access the information on NDNAD should be the police for the investigation of criminal investigations. Those with access should be authorised users only, whose use of the database can be fully traced and who have been properly vetted. The amount of information available to any one individual should be limited so that no leaks of confidential information that can identify a person can be made to any other body. In the case of missing or deceased persons, then I think permission should be obtained from their next of kin, and from a supervisory body beforehand. Any positive results should be checked over

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first to ensure no “sensitive” information is revealed. QUESTION d. What issues are raised by the transfer of bioinformation between agencies and countries? How should such transfers be facilitated and what safeguards should be in place for the storage and use of transferred data?

ANSWER As the UK has the largest DNA database in the world the benefits to the UK in exchanging this information is disproportionate to the benefits to other countries. Until countries in rest of the world decide to profile so much of its population and has caught up with the UK, I do not believe that any transfers of bioinformation between agencies and countries should take place. If such a time comes, then I believe that information should only be exchanged with a country that has passed similar legislation to ours to protect the security and privacy of that information. Sensitive data should be stored with the same level of protection as top secret Government Security data (such as that kept by the armed forces, and secret services).

Question 4: Ethical Issues

ANSWER:

QUESTION: d. Would the collection of DNA from everyone at birth be more equitable than collecting samples from only those who come into contact with the criminal justice system? Would the establishment of such a population-wide forensic database be proportionate to the needs of law enforcement? What are the arguments for and against an extension of the database?

ANSWER: Collection of DNA at birth: It is predicted that soon the NDNAD could hold samples from 32% of the population – those who come into contact with the criminal justice system. I don't believe that everyone should provide a sample at birth. For what reason? The vast majority of the population do not break the law and the financial cost of taking and keeping the samples would far outweigh the benefits to England and Wales. Keeping a database of the entire population for law enforcement purposes only is an unnecessary intrusion into people's lives. It is arrogant to want to have access to everyone's details 'just in case' they commit a crime during their life.

Question 5: The evidential value of bioinformation

ANSWER:

QUESTION: a. What should be done to ensure that police, legal professionals, witnesses and jury members have sufficient understanding of any forensic bioinformation relevant to their participation in the criminal justice system? ANSWER: Training should be provided, which should be at different levels dependent upon the person and their need to know. Witnesses and Jury members should have it explained in video/DVD format in plain, every day language and be advised of all the pros and the cons of using DNA as evidence. They should watch the video as a group, and also be able to see it at any later time. They should also have access to a DNA specialist, who again is able to communicate in a non-technical way, to whom they can ask questions and seek advice. The police should have compulsory on-going training and assessment to ensure they are up-to-date with procedures. They should also have access to specialists to seek advice and explanation. Legal professionals should need qualifications in this field with a view to setting up a body of specialists who can provide advice to other legal professionals. The general public should be made more aware of how DNA can be used and the problems and benefits associated with it in tracking and convicting criminals. This could be through leaflets available in schools, public libraries and available to download from the Internet. QUESTION: b. How much other evidence should be required before a defendant can be convicted in a case with a declared DNA match? Should a DNA match ever be taken to be sufficient to prove guilt in the absence of other evidence? ANSWER: If the samples are proven to be uncontaminated and provide a complete and definite match then the chances of a mistake occurring are 1 billion to one using the

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SGM Plus® system. If the suspect's DNA is found on or in the body of a person who has been murdered or abused then I believe that only in this circumstance should a DNA match be taken to be sufficient to prove guilt in the absence of other evidence. It is possible, however, that DNA could be found that belongs to an innocent person who just happened to have been present at the scene of a crime. He/She may have touched something, or drank from a glass or even just walked through and shed a hair. It is also possible that only a partial match can be made in the DNA samples. In these circumstances I feel further evidence must be obtained before a conviction can be secured. We should not rely on DNA evidence alone.

Question 6: Other issues

ANSWER:

I have two concerns: 1. When an arrest is made, DNA and fingerprint samples are taken, along with a photograph of the individual. No mention is made as to the use of the photograph. I was advised by a police officer that, although my son was not charged, his photo would remain on police database. He was arrested having been mistakenly identified from a school photograph. The implications of this is that when people are invited into the police station to look through the photos of people they have on record, they also see innocent people. They may recognise one of them, assume they had been convicted of something and spread rumours about them.

Alternatively, there is the chance that an innocent person could be mistakenly identified a second time. I believe this is wrong. Photographs of uncharged people should not be viewable by any person outside the police. 2. I am concerned that other agencies may be allowed access to the database in the future. For example, my son may apply for a job in the future and be denied even an interview because a search has been done and he has been found on the database, albeit flagged No Further Action. I believe that lifetime legislation should be passed to protect and prevent a person's bioinformation and police records from being accessed and used by any agencies, other than the police.