

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 37

## **QUESTIONS ANSWERED:**

### **Question 1: The interpretation of bioinformation**

#### **ANSWER:**

1a No comment to offer.

### **Question 2: Sampling powers**

#### **ANSWER:**

2a The police should be entitled to take samples from genuine suspects of 'substantial offences', not simply from every single person arrested. Many arrests are for minor matters and the ability to be able to take a DNA sample from an arrested person could induce a less than scrupulous police officer to make an arrest where they would not necessarily otherwise take this course, or to arrest a person when the reasonable suspicion was arguably doubtful. Maybe the offences for which DNA samples could be taken could be clearly defined just as 'Serious Arrestable Offences' have for other circumstances. Any sample taken should only serve to confirm or negate the identity of the person or his or her contact with material that serves to prove guilt or innocence. It should be regardless of physical characteristics or ethnic references. 2b No. If this happens and the police subsequently begin to over rely on scientific identification and proof, which will not alone solve all crimes, they may not be inclined to invest sufficiently in alternative methods of detection or adequate training for officers to become good detectives, to the detriment of crime solving and justice. As an analogy we only need look at how expert traffic police officers have all but disappeared from road patrols after the installation of an extensive network of 'safety cameras'. Speed (at fixed locations rather than generally) is not rigorously enforced yet equally dangerous offences are seemingly allowed to continue with greater impunity than ever before. There is no reason to believe anything other than a similar outcome is likely. 2c I believe that keeping bio information on unconvicted people is totally disproportionate to the cause of the prevention and detection of crime. The prevailing system is grossly unfair. Some unconvicted people have their DNA profiles in the database and cannot manage to get them removed; yet many other people – also unconvicted, are not presently in the system and may never be in the same database. This is inequitable. It would be (slightly) more acceptable if every citizen were required to be entered on the database at birth, without exception. Although this would be inherently fairer it is not an approach that I advocate. I do not support the retention of data in respect of the unconvicted. Please refer to my 'Case Study' in Section 6. 2d No. There has been a lot of research undertaken on aspects of juvenile justice and it is recognised that young people often offend as they pass through adolescence before going on to become 'normal' well adjusted adults for the remainder of their life. Young people are often warned or cautioned rather than prosecuted. Their caution record is not retained very far into their adulthood so they can begin their adult life with a 'clean sheet'. Providing a DNA sample that is subsequently retained for their entire lifetime goes against the informed practices of the past. I suggest that any DNA sample taken from a minor should be treated like a caution and erased on their passage into adulthood.

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### **Question 3: The management of the NDNAD**

#### **ANSWER:**

3a If a person who is subsequently convicted provides a sample then I suggest that it is proportionate to retain the sample for a long period (perhaps on a sliding scale similar to the one used for assessing when convictions become 'spent'). In the case of serious offences it is probably proportionate for the sample to be retained for life. I feel very uncomfortable about automatically retaining all samples for life because this instinctively conflicts with a person's right to privacy (though I readily accept that conflicting rights have to be balanced). My uncomfortable feeling becomes more pronounced in respect of samples retained in respect of people who are unconvicted. Given the extreme difficulty we have seen people experience when trying to get their sample removed from the database and the automatic police resistance and / or slowness to respond, I truly believe there will only be complete public confidence if the system is overseen by a completely independent oversight body which has the power to access records, inspect and make decisions that are enforceable. The power over entering and keeping records on the data base is too important to leave solely in the hands of Chief Constables and a legal challenge will be expensive, slow and based on prevailing conditions, probably fruitless. 3b No comment to offer. 3c No comment to offer. 3d Transfer of data between agencies and countries carries enormous risks. Transfer between agencies (within the same state) is risky because needs will differ and the approach to security might well vary. New and potential uses for the data will inevitably be claimed and it is realistic to anticipate that some organisations will wish or seek to use the data for presently unimagined or possibly even commercial purposes. An analogy would be the recent push for local authorities and other organisations to have direct access to search criminal records. My view is that any database should be severely restricted at the outset for use in circumstances that are clearly defined and established by statute – with severe penalties for non-compliance. This, at least, will make improper or extended use much more difficult. Where possible transfer between countries is concerned there are grounds for extreme caution. Effectively once the data is released there is no longer direct control over its use or further dissemination. I suggest that data is not released to any other country. If it is, then an international treaty between the parties involved should regulate it and any data transfer should be completely reciprocal.

### **Question 4: Ethical Issues**

#### **ANSWER:**

4a No comment to offer. 4b No comment to offer. 4c It is acceptable for the DNA samples of volunteers to be retained on the database but ONLY if they give specific informed consent to this and still retain the right to withdraw their consent at any later time without being required to provide a reason or fulfil any conditions. 4d It would certainly be fairer and less discriminatory to take a sample from every citizen at birth (and presumably from everyone who enters the country both permanently and temporarily). This would be a massive undertaking and is very intrusive and smacks of a 'big brother' approach. Instinctively I feel very uncomfortable about this approach that impinges on privacy.

### **Question 5: The evidential value of bioinformation**

#### **ANSWER:**

5a The training for individuals involved in the criminal justice system and the rules governing the system itself should clearly acknowledge that DNA is an additional investigatory tool, which can serve to prove either guilt or innocence. As such, information should be openly available to defence and prosecution. 5b No comment to offer.

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### **Question 6: Other issues**

#### **ANSWER:**

6 Case Study I have been moved to respond to this consultation opportunity primarily because of a very unnerving and unpleasant incident experienced. My experience is most succinctly described in this extract from a letter I sent to Mr Grant Shapps MP who has been campaigning on the issue of DNA sample retention. I have added underlining in three places in this extract to draw your attention to key points. The underlining did not appear in my original letter to the MP. In my letter I explained: - **\*\* LETTER EXTRACT STARTS \*\*** I am a former police officer. I retired holding the rank of Superintendent. My final post was as Head of the Complaints and Discipline Department. Since leaving the service, I have obtained a higher degree in International Human Rights Law and I now work in the specialist field of 'Policing and Human Rights' undertaking teaching, advisory and consultancy work for a variety of international organisations, academic institutions and NGO's. Since retirement I have experienced one interesting and frightening experience at the hands of a young and inexperienced police officer. Whilst watching and taking photographs of a serious incident being dealt with by police in my home village one of the officers on the cordon threatened to arrest me for a non-existent offence. I engaged him in debate to clarify that he was not considering relying on some recent legislation that I was unaware of. He was not. I was left in absolutely no doubt that his threat to arrest me was sincere and it was unnerving. In my view this young officer has been very badly trained, wrongly advised or was exhibiting early signs of operating as a bully. I had the confidence to stand up to him and challenge his view. Most others probably would not have felt able to do this. The incident took place in 'slow time' so I had the opportunity to think carefully about my position. I felt I did not want to be any part of a situation where I was the cause of the officer removing himself from an important role at an incident. I definitely did not want to experience the indignity of arrest and I did not want to go through the related inconvenience. #S There was one other overriding consideration. I was acutely aware that even if I were wrongly arrested the police would have the power to obtain from me and retain a DNA sample. #E Whilst I have absolutely nothing to hide and I am a law abiding citizen, I positively resent and abhor the thought that I could be placed on the DNA register by default or, as your campaign puts it, by stealth. If taking and retaining samples in situations like this were clearly authorised by statute having been debated by parliament I would not disagree so strongly. To the best of my knowledge it may not have been fully debated. If a person is wrongly arrested or is arrested and not subsequently charged or accused, is it fair or right that their DNA should be placed on file for the rest of their life? (I can envisage challenges under Human Rights Law being considered.) #S In reality this means that a completely innocent individual is treated in exactly the same manner as a genuine suspect, a person accused or a convicted criminal. I feel very uncomfortable about this. #E #S As it is, even despite the very recent rules for arrest that include a 'necessity' test, tying in the right to take a DNA sample with the act of arrest provides a potential inducement for an unscrupulous officer to risk making a doubtful arrest just to obtain a sample for the DNA register. #E Now you have placed the issue firmly in the public eye you might feel it worthwhile to enlarge your campaign to include all DNA samples obtained by stealth, not only those involving young people. In this instance I was not arrested because I chose to remove myself from the parameters of the non-existent offence the officer accused me of (though a part of me was reluctant to do so). I did pursue the matter by making a formal complaint about the officer's attitude and behaviour. **\*\* LETTER EXTRACT ENDS \*\*** Had I ignored the officer's incorrect warning, and had he then gone on to arrest me as threatened, I am confident that I would have been able to mount a sound claim for unlawful arrest and detention against the Chief Constable. Even the possibility of financial gain in such circumstances is absolutely no compensation for the fact

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that my DNA sample – that of an innocent victim – could well have been added to the national database and remained there for the rest of my life. Instinctively I feel this is not right and just. [N.B. As this on-line submission does not seem to support underlined text, I have indicated the 'underlined' portions I wish to emphasise and draw your attention you by adding #S (= underline starts) and #E (= underline ends) in the three places concerned.]