

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 38

## **QUESTIONS ANSWERED:**

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

#### **ANSWER:**

Probably, although I am not convinced the effects of human or system error have been thoroughly and sufficiently investigated or documented.

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

#### **ANSWER:**

a. From those who are arrested in connection with an offence but only when such evidence is needed and appropriate for the investigation of that offence. It should happen when formally arrested for the purpose of investigating any link between the individual and the crime. Further information should be requested only if there is sound evidence that such information is reliable. At the moment that does not appear to be the case. b. No. Prevention of crime should always have a higher priority than solving it. c. The current criteria are out of all proportion to the aim. There is no sensible argument for keeping for ever the records of those who have never been convicted of an offence or who have only given a sample voluntarily to help resolve a crime of which they were completely innocent. d. Yes, but only kept if they have been convicted of a crime (which should not include acceptance of a caution for a trivial offence). It would also be appropriate for samples from minors to be destroyed after the subject reach the age of 25-30 if they have not re-offended. Many juveniles make mistakes and are arrested for the most minor offences, Because someone was arrested once for drunkenness at age 18 should not be sufficient reason to maintain their DNA data for ever.

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

#### **ANSWER:**

It is not proportionate. For volunteers samples they should be kept no longer than is necessary for the immediate investigation of a specific incident and they should not be used for any purpose other than that specific incident. For suspects they should be kept until the crime is solved or for a fixed period, say 12 months, whichever of the two is the shorter. Samples should be destroyed if the person investigated is either not charged with an offence or is found not guilty of the offence. CJ and elimination samples should be kept until the crime is solved or for a fixed period, say 12 months, whichever of the two is shorter. Chief Constables should have no discretion or say in the matter whatsoever. It is completely unrealistic to expect them to be unbiased overseers of individuals' rights.

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

#### **ANSWER:**

a. familial searching - As serious crime often runs in families the use of familial searching is probably appropriate but should be limited to the investigation of the most serious crimes. b. If the data was kept only on convicted persons any bias could only be a result of bias in rates of conviction – which isn't an issue for the database but for other agencies. c. No, it is completely unacceptable and would deter many from helping in situations they may otherwise be inclined to. There should be no retention of such samples but if there were then permission should be capable

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of being revoked at will. The provisions for consent are inadequate, the police already lean on people who refuse to give such samples often hinting strongly that this will make them suspects. This *may* be considered acceptable if the samples are going to be destroyed at the end of the investigation but is completely wrong if the samples are to be retained indefinitely. There should be no retention samples from volunteers but if there was then permission should be capable of being revoked at will. c. No. It would be a ludicrous overkill. Neither the Government nor police have any right to such information in such volume. It could also lead to considerable injustice as the ease with which DNA samples can be (and have been) planted for malice at scenes of crimes would undoubtedly lead to an increase in such cases. It would lead to an individual with no connection at all to a crime becoming a suspect simply because someone left an item with their DNA on it at a crime. The only possible argument for it is the solving of more crimes. There is little objective evidence that this would lead to a significant increase as serious crimes are most often committed by those with a previous record of minor crimes – and who would already be on the database. Against extension are the obvious aspects of state interference in the privacy of citizens, the ease with which the data can be misused and the lowering of already poor investigative standards it would inevitably lead to.

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

##### **ANSWER:**

a. It is difficult to see how this could be done and for a Jury to be in a position to make an informed judgement. The appalling ignorance of simple statistics by legal professionals was clearly shown in the Sally Clarke case. Perhaps an independent expert should be required to assess the evidence and present a summary? It is well beyond the capabilities of most judges to do so and in an adversarial system both prosecution and defence will undoubtedly try to spin the statistics to suit their own case. The problem of presenting statistical information to juries is well described in the annex “Probability and Proof” by Philip Dawid, Professor of Statistics, University College London, to “Analysis of Evidence” by T. J. Anderson, D. A. Schum and W. L. Twining ([http://www.cambridge.org/resources/052167316X/2870\\_reformatted%20Appendix%20I%20for%20website.doc](http://www.cambridge.org/resources/052167316X/2870_reformatted%20Appendix%20I%20for%20website.doc).) b. It depends upon the detail of the case and I don't think a simple rule could be devised. However, in all cases there must be corroborative evidence. A DNA match alone can never be proof. Apart from the possibility of contamination of the samples and problems of ensuring the authenticity of sample materials it is far too simple to plant DNA evidence as happened in the case of Dr Falkowski.

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

##### **ANSWER:**

There seems to be a chunk of Q3 missing in this on-line survey - I've attached the questions and answers from the written version below in case this is an error. Q3b. Is the ethical oversight of the NDNAD adequate? A. No. It is wholly inadequate. A Strategic Board comprising Home Office officials, ACPO and APA is hardly going to be a staunch defender of the freedom of individuals. Putting the ethical oversight under the control of the Information Commissioner might be better. Q. and What, if any, research on NDNAD profiles or samples should be permitted? A. Any, so long as the data was anonymous. Q. Who should be involved in the oversight of such databases and granting permission to use forensic DNA profiles or samples for research? A. The Information Commissioner. Q3c. Who should have access to information on the NDNAD and IDENT1 databases and how should bioinformation be protected from unauthorised uses and users? A. The information cannot be protected from unauthorised use and users and at the same time also be an effective tool against crime. The two requirements are completely incompatible. Effective use

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requires that the database be widely available to investigating officers. Preventing unauthorised use means it must be restricted to a tiny number of identified individuals with specific clearance. The police presently do not have a single system which has not been compromised and is not capable of being accessed (and is being accessed regularly) for unauthorised purposes (even if by “authorised” users). All the evidence is that information from any police database is easily available to anyone who pays for it. In addition there is widespread misuse of police databases by police officers and civilian staff for matters not connected with crime (the most common being checking up on daughters new boyfriend and ex-wife’s new partners). Q. Should forensic databases ever be made available for non-criminal investigations, such as parental searches, A. No Q. or the identification of missing or deceased persons? A. Yes Q3d. 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? A. There are no effective safeguards which can be put in place. Transfer of information should be limited to that on people who have been convicted and samples from crime scenes alone.