

## Crime and Security Bill 2009-10 Briefing

# The ethics of retaining DNA

The Crime and Security Bill updates current arrangements for the retention, destruction and use of DNA samples and profiles. In advance of the second reading of the Bill in the House of Lords on 29 March 2010, this paper outlines some of the ethical issues raised by the retention by the police of the DNA profiles of unconvicted people.

### Current law

DNA can be taken from anyone arrested for a 'recordable' offence, and retained indefinitely on the National DNA Database without their consent, regardless of the outcome of the case.

### Proportionality and evidence

In its 2007 report [The forensic use of bioinformation: ethical issues](#), the Nuffield Council on Bioethics set out how a proportionate balance should be struck between rights to liberty and privacy, and the need to restrict these rights to protect people from crime. To justify the retention of unconvicted people's DNA for any length of time, there must be convincing evidence that this has a significant impact on crime. The poor quality, or absence, of official statistics has made this very difficult to assess in the past.

### S & Marper

The [S & Marper](#) case in the European Court of Human Rights ruled that it is inappropriate to keep indefinitely samples and profiles from people who are arrested but not subsequently convicted. The Council's report is quoted substantially in the Court judgment.

### The new Bill

The Crime and Security Bill 2009-10 proposes to limit the retention of DNA profiles of people arrested but not charged or convicted to 6 years [Clause 14]. The Government has published [evidence](#) to support this proposal. The Nuffield Council urged the Joint Committee on Human Rights and the Home Affairs Select Committee to examine this evidence carefully as part of its scrutiny of the Bill. They concluded:

- "The research that backs up the proposal for a blanket six year retention period does not illustrate that the Government's approach is a proportionate one."
- "The proposal for a six year blanket retention period of the DNA profiles of people who are arrested but not charged or convicted is disproportionate and potentially arbitrary."  
[Joint Committee on Human Rights](#), 8 March
- "The current system of indefinitely retaining the DNA profiles of people who are not actually convinced of any crime is impossible to defend."  
[Home Affairs Select Committee](#), 8 March

## **Oversight and openness in forensic use of DNA**

The Council's 2007 report also recommends:

- There should be a statutory basis for the regulation of all aspects of the forensic use of DNA, with specific powers of oversight delegated to an appropriate independent body or official.
- An independent body, along the lines of an administrative tribunal, should oversee requests from individuals to have their profiles removed from bioinformation databases.
- There should be a far greater commitment to openness and transparency and a greater availability of documents to public scrutiny.

### **The 'no reason to fear if you are innocent' argument**

It is sometimes argued that innocent people have nothing to fear from being on the National DNA Database. However, this argument ignores the following points:

- If your DNA is on the Database, it could be matched to DNA found at a crime scene even if you are innocent, for example if you had been at the crime scene at an earlier date. This does not mean you will be charged, but any involvement in a criminal investigation is distressing.
- Stigma: the National DNA Database was originally intended to represent the criminal community and people may feel that being on it implies they are a criminal. The Joint Committee on Human Rights concluded that the stigmatising effect of the inclusion of the samples of innocent people on the National DNA Database has been discounted by the Government.

For further information see: [www.nuffieldbioethics.org/forensic](http://www.nuffieldbioethics.org/forensic) or contact Catherine Joynson on [cjoynson@nuffieldbioethics.org](mailto:cjoynson@nuffieldbioethics.org) or **020 7681 9619**