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.

Council for the Registration of Forensic Practitioners

Forensic use of bioinformation: ethical issues

Thank you for giving us the opportunity to comment on your consultation paper on this subject.

The paper raises important issues, not least in the light of the steady progression of the Forensic Science Service from the public to the private sectors. The need for robust ethical oversight of the use of the National DNA Database has never been greater; and we hope the debate stimulated by your work will inform and give impetus to that.

The primary concern of CRFP, as a regulatory body, is with the professional competence, conduct and behaviour of individual forensic practitioners. Wider ethical discussions are for society as a whole; and procedural matters are primarily for the courts and the police.

We note however the issues you raise in relation to your question 5, on the evidential value of bioinformation. This is fundamental to the quality of justice; and it is hard to overstate the importance of measures to minimise the possibility that juries and others may be misled by the misleading, incompetent or even dishonest presentation of such material in court.

That is one of the reasons why the Register of Forensic Practitioners was established. In assessing practitioners for admission to the Register – we do not allow automatic entry to any practitioner, however eminent – our assessors scrutinise the applicant’s casework, including reports prepared for court.

Usually, the applicant demonstrates current competence in their specialty without serious difficulty. But occasionally the assessment process reveals unsatisfactory performance. In one case a specialist in DNA analysis was found to be including, in her reports, a standard statement which included what forensic scientists refer to as the ‘transposed conditional’ and which is generally known as the ‘prosecutor’s fallacy’: a mistake which is highly likely to mislead a non-specialist audience. On further investigation the statement was found to be in standard use in the practitioner’s laboratory. We drew this to the attention of the Director, provoking a major review and remedial action to minimise the damage that might have occurred.

I mention this case simply to illustrate how easy it is for the courts to be misled, often inadvertently, by poorly presented scientific evidence. This is something of which the
justice system must be extremely wary. In particular, steps should be taken to ensure that, whenever scientific, and particularly statistical, evidence is to be presented in court, the jury and other non-specialists present are carefully advised as to the significance of that evidence and the bearing they have on the case.

That ought to be a statement of the obvious. Our experience suggests that it is a principle not universally observed in practice. And it is for us something of an article of faith that individual forensic practitioners should seek and secure registration with CRFP as a tested way of demonstrating their current competence in the specialties in which they practise. Failure to do this must increasingly raise questions about individuals' real confidence in their professional abilities; and about whether potential clients should commission work from them in the future.

We at CRFP have initiated a series of seminars on the nature of expert evidence, bringing together both users and providers of forensic practice to discuss the issues and develop understanding on both sides. We should be glad to welcome you, and other representatives of your Council, to one of these events. Please contact my office if you would be interested in this.

I hope the above comments are helpful and look forward to hearing more about your work on this subject.