

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.

The Forensic Science Society

1. The interpretation of bioinformation

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? *Yes, with the caveat that profiles produced from Low Copy Number DNA be considered with caution and advice from a DNA scientist/ reporting officer. We don't advocate "ascertaining identity" but consideration of probability of match.*

2. Sampling powers

a. From whom should the police be able to take fingerprints and DNA samples? *Any person reasonably suspected of committing a crime, where such suspicion is supported by other evidence, or samples of the appropriate type have been found at the crime scene.*

At what stages in criminal investigations and for what purposes?

At all stages of a criminal investigation in order to determine whether the individual may be linked to the crime and also to be entered on the NDNAD to be compared to profiles collected in respect of unsolved crimes.

Should the police be able to request further information from DNA analysts, such as physical characteristics or ethnic inferences?

Only from unsolved crime stains for intelligence purposes if reliable published and peer reviewed techniques are available to do so. Police should be told and understand the limitations of this approach. Legislation should strictly control divulgence of genetic or medical conditions.

b. Should police expenditure on bioinformation collection and analysis be given priority over other budgetary demands?

This is a consideration for the budget holders, it is not possible to comment without details of the other budgetary demands. Decisions should be driven by the investigative needs of each case and not by budgetary policy.

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?

Yes, subject to the issues raised in question 3.

d. Is it acceptable for bioinformation to be taken from minors and for their DNA profiles to be put on the NDNAD?

Yes, from minors involved in criminal activity subject to the laws regarding the age of criminal responsibility.

3. The management of the NDNAD

a. Is it proportionate for bioinformation from i) suspects and ii) volunteers to be kept on forensic databases indefinitely?

Suspects data should be kept on file indefinitely with their knowledge. When a person volunteers to have their profile placed on the database, for example, as a consequence of their employment, it should only be kept on file indefinitely with their knowledge and consent.

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Should criminal justice and elimination samples also be kept indefinitely?

Yes for CJ samples. Elimination samples supplied on a case by case basis (family members, victim, partners etc) should not be retained unless donor gives consent. Elimination samples (e.g. from law enforcement personnel) should be held in a separate elimination database.

How should the discretion of Chief Constables to remove profiles and samples from the NDNAD be exercised and overseen?

It should be subject to judicial oversight by the High Court.

b. Is the ethical oversight of the NDNAD adequate?

It is prudent that the Home Office is currently establishing an Ethics Committee to advise the NDNAD Strategy Board on new proposed uses of the database and research proposals, and to review the decisions that it makes. With a properly constituted Ethics committee in place adequate ethical oversight should be present.

What, if any, research on NDNAD profiles or samples should be permitted?

Research on NDNADB data should always be reviewed and approved by a properly constituted research ethics committee (with consideration of the Human Tissue Act). NDNAD profile data should be available in an anonymised form for research purposes. Care should be taken to ensure that research and operational use of the NDNAD is suitably sandboxed.

Who should be involved in the oversight of such databases and granting permission to use forensic DNA profiles or samples for research?

Consideration should be given to a research ethics committee/ sub committee with suitably qualified academics, specialist advisors and lay members.

c. Who should have access to information on the NDNAD and IDENT1 databases and how should bioinformation be protected from unauthorised uses and users?

Police and security service use only with secure recording of all accesses for audit purposes.

Should forensic databases ever be made available for non-criminal investigations, such as parental searches, or the identification of missing or deceased persons?

The Human Tissue Act specifies the use to which material derived from tissue can be put. Specific informed consent of the donor must be obtained.

The identification of missing or deceased persons may be suitable for consideration on a case by case basis. Parental searches should only be carried out on the order of a High Court Judge (family Division).

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?

Similar issues to coherence of EU data protection legislation and requirement to demonstrate compliance with minimum acceptable standard of protection. One issue identified is no data should be transferred to a state where the transfer of the data might put a detained person at risk of being subject to the death penalty.

4. Ethical issues

a. Is the use of DNA profiles in 'familial searching' inquiries proportionate to the needs of criminal investigations?

Yes.

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Do you consider the use of familial searching may be an unwarranted invasion of family privacy?

No, as long as the information is treated for intelligence purposes only and as sensitive information with adequate consideration before the information is disclosed to a potential family member identified.

b. Certain groups, such as ethnic minorities and young males, are disproportionately represented on forensic databases. Is this potential for bias within these databases acceptable?

It is unlikely that these individuals will be disadvantaged, with the discriminating power of the forensic analysis there are unlikely to be adventitious matches. This is a topic that has the potential to be researched

c. Is it acceptable that volunteers (such as victims, witnesses, and mass screen volunteers) also have their profiles retained on the NDNAD?

With their consent, Yes.

Should consent be irrevocable for individuals who agree initially to the retention of samples voluntarily given to the police?

No.

Are the provisions for obtaining consent appropriate?

Yes, apart from withdrawal of consent provision and a simple explanation / guide.

Should volunteers be able to withdraw their consent at a later stage?

Yes.

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?

The Forensic Science Society represents the views of its members which are likely to reflect those of the general public and therefore requires a more discursive response than is possible at this time without wider consultation with our members.

Would the establishment of such a population wide forensic database be proportionate to the needs of law enforcement?

As above

What are the arguments for and against an extension of the database?

As above

5. The evidential value of bioinformation

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?

There are a variety of considerations here, a number of which are part of proposed research activities in the understanding of forensic evidence. Research into serving jury members knowledge and understanding is not possible due to current restrictions and would be a valuable exercise to inform the provision of suitable support, if required. Coupled with this should be the assessment of the 'CSI' effect and the potential negative impact. Lack of understanding and/or misunderstanding should be explored.

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Educational literature and appropriate accessible education, training and immediate specialist support may be real options for the public and police/ legal personnel, but controlled studies investigating the different delivery methods and their impact & effectiveness need to be conducted.

b. How much other evidence should be required before a defendant can be convicted in a case with a declared DNA match?

Sufficient to place the assessment of guilt beyond reasonable doubt, properly and fairly presented to the trier (e.g. magistrate, juror) of fact.

Should a DNA match ever be taken to be sufficient to prove guilt in the absence of other evidence?

No. The evaluation of DNA evidence is based on statistical methods and results in estimated probabilities. It is still necessary to examine the method by which the sample found at the crime scene was deposited and whether the deposition event has any relevance to the incident under investigation.

6. Other issues

a. Are there any other issues, within our terms of reference, which we should consider?