

13th January 2010

Elizabeth Flood
Clerk
Home Affairs Committee
House of Commons
7 Millbank
London SW1P 3JA

Dear Ms Flood

Inquiry on the National DNA Database

I am pleased to enclose a copy of the Nuffield Council on Bioethics report on *The forensic use of bioinformation: ethical issues* (2007),¹ which you may find useful for your inquiry on the National DNA Database. The report was quoted substantially by the European Court of Human Rights in the *S & Marper* judgment. Some of the key recommendations are highlighted below.

Retention of DNA profiles

The report states that "there is, at present, a lack of convincing evidence that retention of profiles of those not charged with or convicted of an offence has had a significant impact on detection rates and hence it is difficult to argue that such retention can be justified. Accordingly we recommend that independent research should be commissioned by the Home Office to assess the impact of retention. In the light of the findings of that research, an informed judgment could then be made." (paragraph 4.53)

We note that the Home Office has recently published evidence to support its proposal – which is to be included in the Crime and Security Bill – to retain the DNA of all arrested but unconvicted people for 6 years.² Given the potential human rights implications of retaining the DNA of unconvicted people, we would like to emphasise the importance of this evidence being carefully and independently examined. We would urge the Committee to recommend that this takes place as a matter of urgency.

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Director
Hugh Whittall

Assistant Directors
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Other issues

In July 2009, the Council responded to the Home Office consultation 'Keeping the right people on the DNA Database'. Some of its comments are relevant to your inquiry.

The Council welcomed some of the Government's proposals, such as the pledge to destroy all DNA samples. It had concerns about a number of the proposals and set out recommendations drawing on the Council's 2007 report. These included:

- 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 (paragraph 7.55).
- There should be a far greater commitment to openness and transparency and a greater availability of documents to public scrutiny (paragraph 7.57).
- An independent body, along the lines of an administrative tribunal, should oversee requests from individuals to have their profiles removed from bioinformation databases (paragraph 7.37).

A copy of the Council's full response to the Home Office is enclosed.

We would also like to bring to your attention the Council's observation that the distinction between recordable and non-recordable offences is to some extent arbitrary (e.g. failing to give advance notice of a procession is recordable, but obstruction of the highway is not). As the status of the offence for which a person is arrested affects whether a DNA sample can be taken, we recommend that the list of recordable offences should be rationalised so as to exclude all minor, non-imprisonable offences (paragraph 4.17).

Please do not hesitate to contact me if you would like further information or assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Hugh Whittall'.

Hugh Whittall
Director

References

1 Nuffield Council on Bioethics (2007) *The forensic use of bioinformation: ethical issues*. Available at: www.nuffieldbioethics.org/forensic

2 Home Office (2009) *DNA retention policy: Re-arrest hazard rate analysis*. Available at: www.homeoffice.gov.uk/documents/cons-2009-dna-database/