

Crime and Security Bill 2009-10 Briefing Paper

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 on 18th January 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.

The new Bill

Ministers have accepted, following the *S & Marper* case in the European Court of Human Rights, that it is inappropriate to keep indefinitely samples and profiles from people who are arrested but not subsequently convicted. The Bill proposes to limit the retention of DNA profiles of people arrested but not charged or convicted to 6 years.

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 individual rights to liberty, autonomy and privacy, and the need to restrict these rights to protect people from crime. Therefore, 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.

However, the Government has recently published [evidence](#) to support its 6-year retention proposal. The Nuffield Council has urged the Joint Committee on Human Rights to ensure that this evidence is carefully and independently examined as part of its scrutiny of the Bill.

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 Council's report also calls for a more coherent statutory basis for all aspects of the forensic use of bioinformation, and a far greater commitment to openness and transparency by the Government in this area.

The Council's report was quoted substantially by the European Court of Human Rights in the [S & Marper judgment](#).