

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.

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## List of questions

### 1. The interpretation of bioinformation

- a. In your view, is the SGM Plus<sup>®</sup> system, which uses ten STR markers, sufficiently reliable for use in ascertaining the identity of suspects in criminal investigations and/or criminal trials?

Up to a point. There have been documented cases of false results.

### 2. Sampling powers

- a. From whom should the police be able to take fingerprints and DNA samples? At what stages in criminal investigations and for what purposes? Should the police be able to request further information from DNA analysts, such as physical characteristics or ethnic inferences?

Police should only be able to take samples from a suspect that has been formally charged or from volunteers. Records of innocent volunteers should be erased after a successful conviction has taken place.

Additional information (physical characteristics, ethnic inferences, etc) from crime scene samples, due to its broad nature should be used for information purposes only and not as evidence.

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

No. Bioinformation should be a support tool only. 'Old fashioned policing' is the backbone of the service.

- 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?

No. Information on non-convicted individuals should be erased from the national database.

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

Never. The majority of minors unwittingly perform a misdemeanour at some time or another. There has to be an 'age of consent' when the individual is aware of the cultural rules.

### 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? Should criminal justice and elimination samples also be kept indefinitely? How should the discretion of

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Chief Constables to remove profiles and samples from the NDNAD be exercised and overseen?

Volunteer's information should never be placed into the database. Suspect's data should only be kept upon conviction.

- b. Is the ethical oversight of the NDNAD adequate? What, if any, research on NDNAD profiles or samples should be permitted? Who should be involved in the oversight of such databases and granting permission to use forensic DNA profiles or samples for research?

No. The database should only be used for 'public good'. The database should not be used for commercial gain. The database should be overseen by an organisation independent from the government that is publicly accountable.

Research on profiles should be anonymous so that:

- 1) The information cannot be used by anyone to motivate racial / social prejudice.
- 2) The information should not be used to identify people who are more susceptible to commit crimes.
- 3) The information cannot be used for 'social engineering' of any kind.

- c. Who should have access to information on the NDNAD and IDENT1 databases and how should bioinformation be protected from unauthorised uses and users? Should forensic databases ever be made available for non-criminal investigations, such as parental searches, or the identification of missing or deceased persons?

The database should never be used for private gain (commercial or personal) and used only for criminal investigation.

- 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?

Other countries should not be able to form a database of foreign nationals. Comparison of forensics against a database should only be performed in the country that the database is held in. This will prevent any misuse by agencies outside the legislation of the UK (for example).

#### 4. Ethical issues

- a. Is the use of DNA profiles in 'familial searching' inquiries proportionate to the needs of criminal investigations? Do you consider the use of familial searching may be an unwarranted invasion of family privacy?

Familial searching will result in a group of suspects being identified. The only way to eliminate persons from the group is to 'round up' people and take further samples. This would be very intrusive to innocent persons.

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- 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?

No. It could be argued that this indicates some sort of prejudice. If the database were limited to convictions only, then this argument is void.

- c. Is it acceptable that volunteers (such as victims, witnesses, mass screen volunteers) also have their profiles retained on the NDNAD? Should consent be irrevocable for individuals who agree initially to the retention of samples voluntarily given to the police? Are the provisions for obtaining consent appropriate? Should volunteers be able to withdraw their consent at a later stage?

Volunteer's profiles should never be retained.

- 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? Would the establishment of such a population-wide forensic database be proportionate to the needs of law enforcement? What are the arguments for and against an extension of the database?

No. A population wide database is an appalling idea. DNA contains very personal information about an individual. Collection from innocent persons should therefore be by consent only and hence not at birth.

In my opinion, there are no good arguments for a population wide database.

## 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?

The strengths and weaknesses of the system should be made clear with statistics and trends. The statistics should be independently verified using 'blind' tests.

- b. How much other evidence should be required before a defendant can be convicted in a case with a declared DNA match? Should a DNA match ever be taken to be sufficient to prove guilt in the absence of other evidence?

1) There have been documented cases of false matches.

2) Any system that involves human beings is potentially flawed.

3) There is an error rate associated with tests.

4) The DNA samples from the 'average joe' can be remarkably similar to other average persons.

So a DNA match should only be used to support other evidence.

## 6. Other issues

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

1) The DNA database contains records for a large number of persons that have been exonerated / volunteers. Many view the prospect of permanently being on a

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database for assisting the 'law' a threat to their own privacy and is beginning to change their relationship with the police.

The police in this country have a good track record when it comes to solving serious crime and have generally gained respect from the public for doing so. In a civilized society there must be a mutual respect between the public and the police. Diminishing this respect for the purposes of expediency, politics or cost reduction should not be considered.

2) The database should never be made freely available to private companies.

3) The database should not be directly available to internal government departments so that it cannot be used for political purposes.

4) Violent crime has increased since the introduction of the NDNAD and therefore the database is no deterrent.

5) Article 8 of the 1998 Human Rights Act states that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

It can be argued that DNA is private information and in the light of 4) above 'for the prevention of disorder or crime' does not apply and 'interference by a public authority' should not take place.

6) The small number of 'cold cases' that have been subsequently solved using the NDNAD do not justify permanent retention of information of innocent civilians.

7) The scheme was introduced with very little public debate.