

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 Royal College of Nursing

1. Introduction

With a membership of over 390,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

The RCN welcomes the opportunity to respond to the Nuffield Council on Bioethics "*Consultation on the forensic use of bioinformation*"

The consultation Process:

The RCN asked its members for views on the issues raised by the consultation document, which was sent to Specialist Forums and Advisory Panels within the organisation. These groups are made up of elected, specialist nurses in practice, education, research and management from the four UK countries. This response is an attempt to present an accurate reflection of these RCN members' views.

General Comments:

Overall this consultation document was welcomed by RCN staff and members as it was felt to offer an effective and comprehensive overview of the ethical and legal implications of the forensic use of bioinformation.

Responses to list of questions:

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?

We believe that the *SGM Plus[®]* system, using 10 markers is sufficiently reliable for use in ascertaining the identity of suspects in criminal investigations and/or criminal trials. Whether there is a better system available with more reliability is not clear, and our response should therefore be viewed in the light of lack of information on this point.

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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?

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

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?

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

2.a. It appears logical that the same guidelines and regulations should be used both for the collection of fingerprints and of bioinformation. It is clear that this issue presents a dichotomy between the right of the individual to privacy and society's interest justice. Providing DNA or other bioinformation for exclusion purposes during an investigation must be undertaken on a strictly voluntary basis. Our members believe that the police should not be able to ask for ethnicity-related information from DNA analysts.

2.b. The degree of financial priority placed on the collection and analysis of DNA should be proportional to the degree of success it confers on the gathering of evidence.

2.c. We feel that current criteria for the collection of bioinformation are proportionate to the aims of preventing, investigating, detecting and prosecuting criminal offences. The retention of samples from those found not to be in breach of the law may be disproportionate to the aims of law enforcement. If the reasons for obtaining the samples no longer exist, then the justification for the retention of such samples also ceases to exist.

2.d. We feel that it is acceptable for bioinformation to be taken from minors in relation to the investigation of serious offences. However, the long-term implications of retaining such information should be carefully considered, therefore the placing of DNA profiles of minors on the NDNAD should not be a routine process.

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

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?

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?

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?

3.a. We believe that if the circumstances for which justification was gained for the collection of the data from suspects and volunteers ceases to exist, so does the legitimacy of the storage of said data. Ongoing retention of data raises concerns regarding individual privacy.

The removal of information from the NDNAD should be guided by the ethical recommendations of an Ethics Committee advising the NDNAD strategy board. The process should be as transparent and open to public scrutiny as security will allow, for reasons of public confidence in the application of police powers.

3.b. The formation of an Ethics Committee to oversee the NDNAD is recommended. Research on NDNAD profiles should be governed by the same restrictions as those that control access to and use of personal data for medical or scientific purposes.

3.c. We believe that access to information on the NDNAD and IDENT 1 databases should be restricted to persons with legitimate need to be in possession of such data. Searches of the database should only be used for issues of law enforcement or other police procedures. This could extend to the identification of missing or deceased persons. The storage of DNA on any database has serious implications for personal privacy and therefore access should be strictly limited.

3.d. Only where requesting countries/agencies conform to similar ethical restrictions as the UK should data be shared.

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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?

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?

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?

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?

4.a. We do not believe that the use of familial searching is proportionate to the needs of criminal investigations and that the use of familial searching would be an unwarranted invasion of personal and family privacy.

4.b. Certain groups of persons are disproportionally represented on forensic databases because the proportion of those persons questioned or arrested for offences are also disproportionate. We feel that the placing of time limits on the retention of information could positively assist this problem but we also acknowledge that this would be only of limited assistance.

4.c. As to our response to 3.a (above) the retention of data on the NDNAD is not proportional where persons have already been excluded from investigations. The consent offered by volunteers should not be irrevocable. Volunteers should be able to give *informed consent* when giving samples. This means that efforts must be made to ensure that witnesses etc. are fully aware of how their information will be used and at what point it will be erased. If samples are erased as a matter of course, when such persons are no longer relevant to an investigation, issues of continued consent are not applicable. Persons excluded from an investigation should be able to expect that their DNA has been deleted from the NDNAD.

4.d. The collection of DNA samples from everyone at birth would be disproportionate to the needs of law enforcement. The taking of samples with no justification not only has implications for the security of such a large amount of information, but also of personal privacy and resource allocation.

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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?*
- 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?*

5.a. Similar to our response to 4.c., efforts must be made to improving understanding amongst all who may be required to utilise forensic bioinformation. This may be assisted by improving the availability and quality of education to all in this area.

5.b. We believe that DNA evidence should only ever be supportive of a prosecution, never the sole basis for it. The presence of DNA is insufficient to prove either motive or intent.

6. Other issues

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

Where bioinformation is no longer needed for legal proceedings, there is an issue of ownership, in the same way as exists for the removal of samples, tissue etc in other settings, for example medical research. It is logical that ownership can be transferred to the police for justified reasons, such as investigation by the criminal justice system. We question, however, who should have ongoing ownership of this bioinformation.

Conclusion

We hope that our response to this consultation document is of assistance and look forward to hearing from you with the outcome of the consultation in due course.