

The forensic use of bioinformation: ethical issues

September 2010 update

In September 2007, the Nuffield Council on Bioethics published a report, *The forensic use of bioinformation: ethical issues*, which considers the ethical issues raised by the use of DNA and fingerprints in the criminal justice system.

Since this report was published, there have been a number of developments in this area, including changes to legislation regarding the use of the National DNA Database.

This document gives a brief summary of events that have held significance in this debate, and the changes in legislation that have occurred.

1. Case of S and Marper v UK

In December 2008 the European Court of Human Rights forced a change of policy in its decision in the case of *S and Marper v UK*

Using very similar reasoning to the Council's report, the Court held that the blanket policy in England, Wales and Northern Ireland of holding DNA profiles/samples and fingerprints, regardless of the outcome of arrest, was disproportionate.

The Council's report was used in the submissions to the European Court on behalf of S and Mr Marper, and was cited several times in the judgment.

See:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=843941&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

2. Changes to legislation

In May 2009 the (then) UK Government responded to the European Court judgement by issuing a set of proposals for changes in the law. This included a proposal to keep the profiles and fingerprints of non-convicted individuals on the National DNA Database for up to twelve years (six years for minor offences), which many felt did not go far enough.

Following a period of consultation and subsequent revision of the proposals, the Crime and Security Act was passed in April 2010, shortly before the general election. It introduced the following changes in law:

- DNA profiles of individuals of non-convicted individuals to be kept for a maximum of 6 years (3 years for under 18s)
- All biological samples to be destroyed
- DNA profiles of volunteers no longer added to the database
- DNA of children under the age of 10 no longer to be held on the database, with steps taken to remove the approximately 70 profiles already loaded

However, in May 2010 the new coalition Government announced its intention to “adopt the protections of the Scottish model” in its *Freedom (Great Repeal) Bill*, thus meeting the Council’s recommendation in full.

See:

<http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-freedom-great-repeal-bill-50647>