



National DNA Database Strategy Board

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Open Minutes of Meeting

4th December 2014

10:30 – 13:00

Recreation Room, Home Office, 2 Marsham Street, London, SW1P 3DF

Present:

Name	Organisation
Jo Ashworth (JA)	Director of Forensic Science, East Midlands region
Fiona Douglas (FD)	Scottish Police Authority
Ann Fairweather (AF)	Home Office
Kirsty Faulkner (KF)	Home Office
Anthony Harbinson (AH)	Northern Ireland Department of Justice
Chris Hughes (CH)	DNA Ethics Group
Carl Jennings (CJ, secretary)	Home Office
Graham Kissock	PSNI
Brandon Langley (BL)	West Midlands Police
Alastair MacGregor (AM)	Biometrics Commissioner
Shaun Mallinson (SM)	Home Office
Meagan Mirza (MM)	Information Commissioners Office
Katherine Mitchinson (KM)	Office of the Biometrics Commissioner (OBC)
Gary Pugh (GP)	Metropolitan Police Service (MPS)
Chris Sims (CS) (in the chair)	Association of Chief Police Officers (ACPO)
Richard Small (RS)	Head of Forensic Services, West Midlands Police
Andrew Tremayne (AT)	Association of PCCs
Gill Tully (GT)	Forensic Science Regulator

Apologies:

Name	Organisation
Simon Bramble	Home Office
Alan Pratt	Home Office

1.0 Welcome and Introduction

1.1 CS welcomed everyone to the meeting and asked them to introduce themselves.



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2.0 Apologies

2.1 Apologies are noted above.

3.0 Previous Minutes

3.1 FD said that the reference at 7.8 to DNA-17 being accredited for use in Scotland should read DNA-24. GK also noted some changes required in this section with regards to the NI position with DNA-17.

4.0 Action Register and Matters Arising

a. Action Register and Matters Arising

4.1 KF presented the Action Sheet (Paper 4.0). It was agreed that action 19/14 relating to a request that research should be carried out into the effectiveness of PoFA should be kept open until a reply had been received from the Home Office.

4.2 GT requested a copy of the gap document relating to the Central Elimination Database.

Action Point 1: KF to supply GT with this document [This was done after the meeting]

b. Annual Report

4.3 CJ presented the National DNA Database Strategy Board's Annual Report for 2013-14 to the Board under cover of Paper 4.1, which explained the changes made since the version presented to the previous meeting. The main change was that where percentages were given, the figures from which they were derived were also now provided. The Board agreed the Report could now be published. CJ said a submission was about to go to Ministers proposing that this Report should be published on 16 December, together with the Biometrics Commissioner's and Surveillance Camera Commissioner's Annual Reports.

c. Court Cases – crime scene DNA & Gaughran

4.4 CJ presented a report on two court cases involving the use of DNA (Paper 4.2).

4.5 The Supreme Court had heard the case of Gaughran on 16 October. The Police Service of Northern Ireland (PSNI) was the respondent, and the Home Office the intervener, in the case. The appellant had argued that indefinite retention of his DNA profile and fingerprints following conviction for driving with excess alcohol breached his rights under Article 8 of the European Convention on Human Rights. He had also argued that as the obligation to disclose the offence had lapsed under the legislation relating to rehabilitation of offenders he should be considered to be rehabilitated and so his DNA profile and fingerprints should no longer be retained. CJ reported that the Court had been critical of this argument. They had however pursued another unexpected line of questioning, querying whether DNA and fingerprints taken for one purpose should be retained for other purposes. They had requested a note on this which had been provided on 18 November.

4.6 The case of 'Z'. In July, the Family Division of the High Court had ruled that a crime scene profile could be used to determine paternity, as the statutory limit on the purposes for which profiles could be used applied only to profiles taken under PACE powers or with consent. Both the Home Office and the Metropolitan Police are appealing the ruling. The Court of Appeal will hear the case on 9-10 December. The MPS are arguing that because of human rights considerations the purposes should be read as applying to crime scene profiles, and the



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Home Office are arguing that the High Court did not give sufficient weight to the public policy reasons for limiting the use of crime scene profiles. GP said that the MPS view was that if we lost the case, legislation would be needed.

4.7 AM asked about the case of 'Catt and T'. CJ said that T had been issued with a letter warning her about alleged harassment, which she denied. She argued that the police should not retain a record of this letter. Mr Catt had attended a number of demonstrations, at which other demonstrators had engaged in illegal violent acts, but he had not. He argued that police intelligence records should not be kept on him. This case did not bear directly on retention of DNA profiles but it was possible there could be some indirect effects; it could also affect retention of photographs. The Supreme Court was hearing the case on 2-4 December.

c. Dept of Work and Pensions request

4.8 CJ reported that he had not been able to finalise Paper 4.3. The DWP request arose as follows. Under the Child Support Act 1991, it is possible for the alleged father of a child who disputes paternity to give a DNA sample. There is no power under child support legislation to require him to do this, but a court may draw an adverse inference if he does not. Taking of the DNA sample is done by a doctor who receives a sample kit and also photographs the person giving it. The alleged father may try to get someone else to impersonate him. If fraud is suspected, the alleged father may be arrested and a sample taken under PACE. The proposal is to do two things. First, to compare the profile taken under PACE from a person who has been arrested for suspected fraud with the profile supplied for paternity testing which purports to be from that person (which in this case can be considered a crime scene profile). This does not require a search of the NDNAD. A failure to match is indicative of an attempted fraud. Second, in the event that the two profiles referred to above do not match, the inference is that the profile supplied for paternity testing was provided by an unknown accomplice whose identity may be detected by comparing it with profiles held on the NDNAD.

4.9 CJ thought both proposed actions relate to detection and prosecution of crime and so fall within the purposes defined in section 63T for profiles taken under PACE and held on the NDNAD. CH thought the profile supplied for paternity testing purposes was a crime scene profile. The DWP could be seen as a victim of crime. CJ said the point which required more work is disclosure of the result of comparison of the two profiles in the first instance and of the search of the NDNAD in the second instance. Do these results go to the force which made the arrest for suspected fraud, or to DWP, or both, and if so is this within the terms of the policy for use of profiles/ samples? Once a worked up proposal has been developed, this will be put to the Board for consideration.

5.0 Science and Technology

Forensic and Biometric Strategy

5.1 CS provided a verbal update. The Home Office and policing are developing a forensic strategy and tactical plan respectively. These will be presented at the Forensic Policy Group on 10 December.

International Developments

5.2 AF provided a verbal update. The UK has opted back into 35 EU Justice and Home Affairs measures. As part of the negotiations around this, the Home Secretary agreed to exchange DNA records with other EU states under the Prüm model. The Home Secretary has committed to produce a detailed plan for participation in Prüm, to publish a command paper on the business and implementation case by 30 September 2015, and to hold a vote in Parliament on opting in to Prüm by 31 December 2015. To support this, MPS will perform exchanges with four countries between January and August 2015 – Netherlands from January, Spain from March, France from April



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and Germany from June. NDU will be providing a data set to be used – 10,000 subject profiles and 2,500 crime scene profiles. The 10,000 subject profiles are all of convicted persons who are thought to have a link to other EU states and are MPS subjects. The 2,500 crime scene profiles include Scottish and where possible Northern Irish records. AM said that as the records had been hand picked, they were not a representative sample of the database. GP agreed this was the case, but said that the focus was on selecting DNA profiles for the search dataset that are relevant to crimes committed across international borders. CH said this would make it hard to measure success. MM asked who held the data. GP said MPS held the data, but chief officers of the relevant forces were the data controllers. MM asked for sight of relevant documentation. AF said she would provide this.

Action point 2: AF to circulate Prüm documentation. [Note: AF circulated this on 9 December].

5.3 AF went on to say that Australia had signed an MOU to allow them to interact with the NDNAD in the same manner as the existing process with the US. Canada had previously signed the MOU and are ready to carry out a test which will include use of 20 MPS records. Interpol had developed an application called Matcher which allowed more than one record to be passed through Interpol searching at one time. It had been intended to test this between the UK and Australia. However this would not now go ahead, as agreement had been obtained for crime scene profiles only, and there was no desire to progress this limited use, especially as Australia are joining the G8 MoU for data sharing.

Science and Technology

Scientific horizon scanning

5.4 SM provided a verbal update. There were a number of developments:

- King's College London and MPS were doing joint work on biosensors
- Several pilots were being conducted on DNA both in the UK and in partners abroad
- The EU has set up the Horizon 2020 Secure Societies research programme in which the Home Office is involved
- The Home Office is developing a relationship with the US National Institute of Justice
- Forces can bid to the Home Office for innovation funding for 2015-16 as in 2014-15
- The Forensic Science Special Interest Group will be holding a workshop on phenotyping. CH requested an invitation to this.

Action point 3: SM to provide CH with an invitation to the phenotyping workshop.

Forensic Science Regulator update

5.5 GT described her approach to her new role. At present she was in listening mode. She was not expecting to make any major change in direction from the approach taken by the previous Regulator in the short term. She was aware of the financial pressures on forces but this was not a reason to lower quality standards. She supports innovation but it should be done safely and appropriately. Her first task will be to write a risk assessment on the quality landscape and present it to ministers.

Future DNA Techniques

5.6 KF presented paper 5.1a on future DNA techniques. A meeting had been held on 3 October with a wide range of stakeholders to discuss strategic DNA technology opportunities, particularly DNA-20+ (a term that refers to the new generation of STR DNA tests that contain at least 20 markers), probabilistic genotyping, and next generation sequencing. The Board agreed that DNA 20+ work should be put on hold. However if costs were to move to make DNA 20+ more attractive, we should be able to move quickly. They noted that DNA 20+



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was available in Scotland and could be used by suppliers in England and Wales should the case benefit from it. The Board asked that the position be reviewed at the June 2015 meeting. It was stressed that DNA 20+ can be used for casework through existing mechanisms but not for the NDNAD on current plans, and there were significant differences between the functionality required; however the Board broadly supported the NDU co-ordinating this work. It was thought that development should be driven by a view of the costs and benefits, rather than just because the technology was available.

Ethics Group advice on Y-STR profiling

5.7 CH presented paper 5.1b on the ethical implications of Y-STR profiling. It recommended that use of Y-STR for searching a partial profile in serious cases was acceptable subject to the controls used for familial searching. The use of the technology should be monitored and an ethical impact assessment carried out in the light of that experience. If there is an intention to introduce the profiling and storage of a number of Y-STR alleles, this should be subject to public information and debate to allow an informed public consultation to take place. The Board agreed these recommendations.

6.0 Substantive Projects

HO Biometrics Programme

6.1 KF presented a verbal update. This programme involved use of biometrics for policing, border control and intelligence purposes. CC David Shaw was the police lead, particularly for the Ident1 replacement, and Brendan Crean was the programme director. Richard Small of West Midlands Police was involved due to his experience of fingerprints. The key deliverable was a replacement for the IABS and Ident1 fingerprint systems which supported borders and policing respectively.

Rapid DNA

6.2 CS said the meeting the Regulator had arranged on 27 November had been helpful in taking thinking forward. JA gave an overview of the national project. The first project board had been held – there was a lot of synergy with the discussion on 27 November. It was agreed that more detailed guidance was needed. JA referred to the gateway checklist that CPS, the Regulator and the NDU (on behalf of the Board) had produced to give SROs within forces assurance that external views had been sought.

6.3 GP reflected that this technology has been discussed since 2005. The MPS had ruled out Para DNA as it is based on different science from the other technology offerings, and have also ruled out crime scene sampling as the validations are not yet robust. They have run a pilot on 250 samples and will be performing another in December. They did not have current plans for any further work once this pilot is finished. He agreed to share the results once the pilot was complete.

6.4 RS gave a presentation about a pilot of Para DNA carried out by West Midlands Police. It was agreed that a meeting between FSR, LGC, West Midlands Police and NDU should take place to agree the next steps. RS noted that the pilot could be extended to two other forces using Para DNA and that CAST would provide a full end to end evaluation of the work performed in the first phase of the pilot.

7.0 Strategic Risk Register – Outcomes/ Updates

a.Strategic Risk Register (Paper 7.0)



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7.1 The Board agreed that the PoFA risk should be closed and a new risk had been opened relating to budget reductions which was discussed at the previous Board meeting.

b. NDU Highlight Summary Report (Paper 7.1) and MI Report (Paper 7.2)

7.2 KF presented these reports. She drew attention to the fact that following changes to the MI system to include DNA-17 information, it had not been able to produce information on deletions. It will not be possible to recover this information once the system is fixed because the records concerned no longer exist. So complete figures on deletions will not be available for the quarterly reports and the 2014-15 Annual Report.

7.3 KF reported that the enhanced quality check to look for 2 discordant events, or a discordant event and an error (NMR N-2 reports) had been delayed, but to mitigate this KF assured that board that a review would be carried out to understand the risks involved in this.

c. DNA-17 implementation update (Paper 7.3) and Centralised Elimination Database (Paper 7.4)

7.4 KF presented paper 7.3, which showed that since 24 July over 116,000 profiles had been loaded with the new chemistries. About 10% of crime scene profiles and 13% of subject profiles loaded since that date were still SGMPlus. She also noted that the NDU are seeking an independent review to be performed on the risk that the introduction of discordance adds to the criminal justice system following the on-going concerns raised by the judiciary. This review would also look at this in context with the other aspects of DNA, such as mixtures and reporting where partial profiles are gained for a case.

Paper 7.4 described progress on the creation of the CED. A pilot exercise was planned with Lancashire and East Midlands to be completed by the end of March 2015. The Board noted progress.

8.0 Ethics Group Update

8.1 CH reported that the Ethics Group has produced a report on Y-STR as described in paragraph 5.7 above.

9.0 Protection of Freedoms Act

a. PoFA Implementation Project Update

9.1 CJ reported that the PoFA Project Board which met on 10 November had formally closed the project. A PoFA Transitional Working Group, chaired by PSTU, had been set up to deal with outstanding issues, and had held its first meeting on 24 November.

b. Operation Nutmeg

9.2 CS said that he had been asked by ACRO to consider whether there was a need for another phase of Operation Nutmeg. He asked for views from the Board and it was agreed that the data should be made available to forces, but activity should not be centrally coordinated.

c. Subject sample kits – consent wording

9.3 KF said an expert group had been set up to deal with the wording of the subject sample kits, and more generally with CPIA retention processes.



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d. Biometrics Commissioner Update

9.4 AM said his Annual Report would be published on 16 December, subject to ministerial agreement with this date.

e. Early Deletion

9.5 KF said ACRO had circulated papers 9.1 and 9.2. Paper 9.1 reported on applications for early deletion received by the ACRO Record Deletion Unit in the 12 months from 31 October 2013. 76 applications were received. In 43 cases the person's biometrics had already been deleted under PoFA rules. In 21 cases the person's biometrics were deleted once the PNC record had been updated.

9.6 Paper 9.2 'Deletion of Records from National Police Systems (PNC/NDNAD/Ident1)' was agreed by the Board. However AM said he regarded the criteria for deletion as too narrow and would press for them to be revised in future.

10.0 Any Other Business

10.1 CS informed the Board that he would appear before the Commons Science and Technology Committee on 10 December to give evidence to their inquiry into biometrics, as would Lord Bates and AM.

10.2 The next meeting was scheduled to take place on Wednesday 25th March near **Birmingham**. Details of the venue will be sent in the new year.