



The Ethics Group: National DNA Database Annual Report

April 2009

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FOREWORD



The Ethics Group (EG) has had another busy year in which there has been continued public, political and media interest in the use of DNA for forensic purposes. Waiting for and then interpreting

and responding to the S & Marper judgment of the European Court of Human Rights has been a dominating factor. This at first inhibited and then subsequently promoted proposals for change within legislation and the criminal justice system.

It is of considerable regret to the EG that following the S & Marper judgment, secondary rather than primary legislation is to be used to manage the consequences of this verdict. Whilst understanding the limitations on parliamentary time for the introduction of legislative change following the S & Marper verdict, primary legislation would have allowed a much more open debate and a greater opportunity to introduce fundamental change. Other issues currently affecting the regulatory landscape are proposed modifications to the governance of forensic practitioners and the preparation of a Forensic Science White Paper.

When the EG was formed, there was no definitive route through which its recommendations could be effected. I am pleased to be able to report that this has now been established in the first instance as being through the National DNA Database Strategy Board (NDNADSB) and then

subsequently through other agencies such as the National Policing Improvement Agency (NPIA) and the Forensic Science Committee, which is overseeing the Forensics21 Programme at the NPIA. This procedure gives an operational aspect to the EG which, as well as increasing its need to take responsible decisions, differentiates it from a simple lobby group with no responsibility for the consequences of its output. So far this has worked well and as will be seen in the main report, over half of last year's recommendations are being processed in this way. It is however important for the EG to remain an independent body which reports directly to the Home Office at ministerial level to ensure that its deliberations are taken note of and acted upon. Indeed, those of its recommendations outwith the purview of the NDNADSB have continued to be advocated through the Home Office Sponsor and directly at ministerial level.

As the work of the EG had developed and broadened, it has required the formation of subject leads and sub-groups to develop policy for presentation to the full EG. I would publicly like to thank all members of the group who have responded willingly to this increased workload and given freely. It is also pleasing that in response to increased confidence in the EG's method of working a possible expansion of its remit into other forensic areas other than DNA will be debated over the coming months.

During the year we have had good support from a variety of sources but would

specifically like to thank the Chair of the NDNADSB and our Home Office Sponsor, the Forensic Science Regulator. In addition I need to record the assistance we have enjoyed from the Forensic Science Committee, the Database Custodian and his team, the ACPO Criminal Records Office, the NPIA and the Information Commissioner.

Outside the government sector, the Ethics Group has been in contact with all the political parties, a number of human rights groups and a variety of organisations and individuals who are active in debating the boundaries between individual freedoms and protecting society. A major reason for our acceptability within these groups has been the publication of our meeting notes on the Home Office website. These have always been published without any redactions and are set out so that the arguments and proportionality attached to each recommendation can be clearly seen: this gives a reassurance of openness and a confirmation of the Group's independence in the public eye. Although there was some initial nervousness surrounding this modus operandi I would like to thank the Home Office for having faith that we would not use our privileges without discretion.

This will be the last Annual Report I will be preparing on behalf of the Group because I am retiring from the Chairmanship. It has been a great pleasure to take part in the establishment of the group and to oversee its activities: it has brought me into contact with many people and organisations I would

never otherwise have met. If I have forgotten to mention any person or organisation I can only apologise in advance, and I adopt full responsibility for any errors or omissions in this report.

As I said in the first report, the EG depends for good decision making in having input from many different sources, so whoever you are, if, after reading this report you have something to add, we would be pleased to hear from you.



Prof Peter Hutton

Chair, Ethics Group: National DNA Database

CHAPTER 1.0:

SUMMARY

Since the publication of the first Annual Report the Ethics Group (EG) has met formally on five occasions. One of these was a specially convened meeting to consider the consequences of the S & Marper judgment of the European Court of Human Rights. In addition there have been additional working meetings of sub-groups and continued liaison with external bodies.

There has been a good response to the recommendations of the first Annual Report. As will be seen in the main report, over half of them are now accepted and in established work streams of the National DNA Database Strategy Board (NDNADSB) and the National Policing Improvement Agency (NPIA). The group is pleased that the NDNADSB has become the main route through which recommendations are processed and implemented. The group does, however, remain concerned about the inadequate statutory basis of the National DNA Database (NDNAD), the blanket rules with respect to retention, the powers of chief constables over ownership of profiles and samples, and the lack of a simple appeals process which is easily accessible to the public.

This year the group has made a further set of recommendations in its Annual Report:

- 1 To ensure that the progress made on consent for adult volunteers is followed through to completion
- 2 To accept and take forward the proposals on consent for children and young people
- 3 To accept that the current data on

ethnicity stored on the NDNAD is not fit for purpose and to press the CJS to move to a standardised and uniform recording system for ethnicity data

- 4 To urgently improve the level of easily available and assimilated public information on the use of forensic DNA
- 5 To monitor the research being undertaken on longitudinal crime careers and to take note of these results in balancing the individual against the public interest
- 6 To work constructively with the Scottish CJS system in developing the rationale for retention policies
- 7 To ensure that the NDNADSB urgently reviews the need for the retention of DNA samples as well as profiles
- 8 To continue to press for an improved statutory framework for the NDNAD and its operation and for a simpler appeals process.
- 9 To support (at present) a moratorium on the use of coding section DNA for forensic purposes and to set up a short-life working group to advise on the value and consequences of extending forensic analysis into this area.
- 10 To note the judgment in the S & Marper case and to implement its rulings in England and Wales

In order to follow through on these recommendations the following work streams have been defined:

- **DNA sampling in volunteers and children and general consent issues**
- **Diversity and equality**
- **Longitudinal crime careers and predictors**
- **Consequences of the S & Marper judgment and judicial and legislative matters**
- **Research and ethics (including coding section considerations)**
- **Good practice in relation to DNA taking, sampling and handling**
- **Scottish issues and comparative practices**
- **Public information**

In addition, the group will continue to pursue links with external interested parties and, where appropriate to submit evidence and to contribute to public debate on relevant issues.

CHAPTER 2.0:

MEMBERSHIP AND ACTIVITIES OF THE ETHICS GROUP (EG)

The membership of the EG remained unchanged from the publication of the first Annual Report and at the time of production of this, the second Annual Report, stood as:

Chairman: Professor Peter Hutton¹

Members: Mrs Julia Selman Ayetey
Prof Steven Bain
Dr Derrick Campbell
Mrs Wendy Coates
Ms Madeleine Colvin
Mr Michael Menlowe
Dr Jane Pearson
Dr Clive Richards
Dr Sameer Sarkar
Ms Sarah Thewlis
Dr Suzy Walton

During the year April 2008 – March 2009, members of the EG attended an update session on the forensic aspects of DNA and associated legislative issues. They also received contributions on other occasions from the Forensic Science Regulator and the Chairman of the NDNADSB. An appraisal report on the contribution of each of the members of the EG was submitted by the Chairman of the EG to the Forensic Science Regulator as required by the Terms of Reference of the Group which were set out in last year's Annual Report.

During the year, there were 4 formal General Meetings and one Extraordinary Meeting of the EG (to consider the implications of the S & Marper judgement by the European Court of Human Rights). The notes of these meetings, published without any redactions by the Home Office, can be found on the

Home Office website via the web link below:

<http://police.homeoffice.gov.uk/operational-policing/forensic-science-regulator/ndnad-ethics-group/>

There were several additional sub-group meetings held on an ad hoc basis to develop specific prioritised work streams.

During the period of this report, the Chairman and other members of the group met with, attended and/or made contributions and representations to:

- **The Parliamentary Under Secretary of State at the Home Office**
- **The Forensic Science Regulator**
- **The National DNA Database Strategy Board**
- **The Forensic Science Committee**
- **The National DNA Database Custodian**
- **The Ethics in Policing Portfolio Working Party**
- **The DNA Best Practice Manual Working Party**
- **The Information Commissioner**
- **ACPO Criminal Records Office**
- **The Police Powers and Protection Unit (a Unit within the Home Office)**
- **The Nuffield Council on Bioethics**
- **The Wellcome Trust**
- **Genewatch**
- **The Human Genetics Commission**
- **The University of Glamorgan**
- **The Director of Public Prosecutions**

¹ The Chair demitted office on 30th April 2009 following production of the 2nd Annual Report and a new appointment is in process.

- **The Jill Dando Institute**
- **The Children’s Rights Commissioner for England**
- **The Forensic Science Regulator Stakeholder Conference**
- **The British Association of Forensic Science**
- **The Police Strategic Command Course**
- **The Liberal Democrats Home Affairs Team**
- **The Council for the Registration of Forensic Practitioners**

CHAPTER 3.0:

WORKSTREAMS COMPLETED AND DEVELOPED DURING THE YEAR APRIL 2008 – MARCH 2009

Following the first year of operation, (during which the priorities for action this year were identified), the EG continued with the prepared work plan and come to consensus decisions with all members participating. However, as the year progressed and the programme of activities expanded, it became clear that the efficient use of time and resource would be improved if individual members developed portfolios and led on certain issues. This accordingly resulted in the following allocation of lead responsibilities for future work streams:

Suzy Walton – DNA sampling in volunteers and children and general consent issues

Julia Selman Ayetey – Diversity and equality

Clive Richards – Longitudinal crime careers and predictors

Madeleine Colvin – S & Marper: judicial and legislative matters

Jane Pearson – Research and ethics (including coding section considerations)

Wendy Coates – Good practice in relation to DNA taking, sampling and handling

Michael Menlowe – Scottish issues and comparative practices

Sarah Thewlis & Derrick Campbell – Public information

The work progressed to date in these areas is described below with the detail being found in the meeting minutes.

3.1: DNA SAMPLING IN VOLUNTEERS AND CHILDREN AND GENERAL CONSENT ISSUES

The first Annual Report set out the EG's views on the position of volunteers donating a DNA sample for elimination purposes. These views were re-confirmed and accepted by the NDNADSB who are now committed to separating out different consents for the different types of DNA collection. Discussions developed with the NDNADSB and the ACPO Criminal Records Office and at the time of writing, are continuing with a view to producing an appropriate set of consent forms and information documents in the near future. These will reflect the view that for a true volunteer, who is helping the police with investigations, they will retain control of their DNA sample and the information derived from it at all times.

The work on the position of children formed a major work stream through the year. Considerable cognisance was taken of the consent procedures used for children and young people in medical practice. Input was taken from a number of sources and interested parties and a full report on 'Volunteer sampling of DNA for policing in children and young people' was approved by the EG at its meeting in March 2009. The text can be found in full in the Home Office website as an addendum to the notes of the 7th EG meeting. The final recommendations were;

Recommendation 1: the guiding principle

We need to take informed written consent from volunteer children and young people aged 12-16 having DNA taken

Justification:

Because the Ethics Group advocates this for adults

Because we do so when we ask children to have medical procedures

Because to not do so contravenes rights in the UN Convention on the Rights of the Child and may contravene principles of the Children Act 1989

Because to not do so could be coercive or construed as assault

Because we can't unequivocally assure a child that their own personal interests are the first consideration vs. the interests of the state as discharged via the police

In pursuit of the above, it is recommended that:

R2: Consent for volunteer child DNA samples is always obtained – by a neutral advocate who should be a formally recognised Appropriate Adult² with specific training and noting the following caveats

10-12 years olds should only be asked to volunteer their DNA exceptionally

Normally 12 year olds should be treated as adults in their own right

Under 10s are neither legally culpable nor deemed capable of consenting. Separate research should establish the ethics of taking DNA from very young children including acceptable circumstances

A parent or equivalent should usually be present in addition to the Appropriate Adult³

The uses to which the DNA sample will be put must be stated

R3: Competence to consent has to be established

Over 16s are assumed competent

12-16 year olds *must* be assessed for 'Gillick competence'

10-12 year olds *can* be assessed for Gillick competence though it should be exceptional for this age group to be asked for DNA

Where the child is considered Gillick competent but a parent does or does not want the child to consent, the child's view prevails

Where a child is *not* deemed competent, the parent or equivalent should give or decline consent noting however that, legally, the child's *feelings* must be taken into account

² As defined in Police and Criminal Evidence Act (1984) Code of Practice C

³ Footnote 11 Page 5 of the full paper in Appendix 1 to this Annual Report covers an exception

R4: Consent is documented on a specific form:

Over 16s should use the existing volunteer adult consent form

The 10/12-16 age groups require a tailored form

a parent countersigns in the 12-16 age group to witness that the child has understood and signed either their agreement to consent or not to consent

if the parent doesn't wish to countersign the child's consent (or otherwise) is still valid

R5: The DNA volunteer sample (and profile) are destroyed at a minimum once the case is closed (as advocated for adults) or ideally once the child is eliminated from the inquiry

No volunteer child DNA profiles should be loaded onto the NDNAD

R6: An information sheet on DNA and sampling is developed.

It should cater for different abilities in a Q&A style that allows the keen or uninformed to drill down for more information

Over 16s should use the existing sheet

A new version for 10/12-16 years olds should be developed

Parents should see a modified version of the existing sheet as part of the principle that they should be involved

The sheet should make clear:

the purpose for which the sample will be used (and that it will not be used for familial searching)

that there are no penalties for not consenting and there is 'zero tolerance' of any behaviour on the part of the sampler that could be construed as coercion

that consenting will expedite elimination from an inquiry

that **the child can withdraw consent** and should explain the procedure for doing this

The sheet should counter DNA myths espoused by the media

Translation facilities should be available for the information which may be needed in DVD format also

The sheet should be given to the child *before* they give consent and *after* a dialogue with the Appropriate Adult about the process

Finally, some general principles are advanced:

In DNA volunteer sampling with children **we may assume that:**

- **Most children want an involvement in the consenting process**
- **Those over 16 will understand enough to consent; those aged 12-16 should understand enough but this should be actively ascertained; those under 12 (though unlikely to be asked for a DNA sample) may or may not understand**
- **In the absence of consent it is wrong to take a DNA sample; legally it could constitute assault and ethically there is no justification**
- **If the child is implicated in the case and arrested then the procedures for taking DNA of an arrestee apply**
- **Parents should be involved and should countersign for the under 16s to verify the child's understanding.**

And, finally, we must **not** assume:

- **An understanding of DNA or sampling - we must check that it is there**
- **An understanding of the *implications* - we must explain them.**

3.2: DIVERSITY AND EQUALITY

The disproportionate representation of various sections of society on the NDNAD has been a cause for public concern and many parliamentary questions for some time. It is clear that the incidence of sampling, loading and retention spans many drivers from the point of entry to the criminal justice system (CJS) to the decision on retention. The

questions posed by the EG were:

- **After arrest and/or charge, are there proportionately more BME persons entered onto the NDNAD than any other group of arrestees?**
- **Are there are higher conviction and charge rates for BME persons following arrest?**
- **What research is available to support this work?**

The initial approach to this was to request data under the Freedom of Information Act (FOI), but following discussions with the Custodian's Office and the NPIA, it became clear that this approach would not give the necessary information and the request was withdrawn. Other enquiries revealed that the information held on ethnicity and skin colour were not uniform throughout the CJS on the various databases holding it. In particular, there was no standardised taxonomy. An example of the difficulty is for instance that skin colour may be recorded from a witness to aid police investigations whereas ethnicity is now regarded as being 'what a person feels that they are' and the two may be differently recorded. Data held on the Police National Computer, the NDNAD and by the Office for National Statistics cannot be used for accurate comparison purposes. As yet, as far as could be ascertained, there is nowhere in the CJS that has a uniform 16 + 1 ethnic classification system (as used in the 2001 census for England and Wales) or alternative classification to allow comparison with other civil ethnicity data. Whilst this situation has arisen from historical reasons without any discriminatory intent, it is unacceptable and

needs urgent attention.

Following extensive exploration with the Custodian's office, it is now apparent (and agreed by the NDNADSB) that the quality of the data on ethnic appearance etc. on the NDNAD is not fit for the purposes of accurate analysis and its continued retention on the NDNAD must fall into question.

Despite these difficulties, the EG reconfirmed its determination to get better information on the disproportionate representation of various social and ethnic groups on the NDNAD and within the CJS and

- **to monitor the situation to ensure that the present deficiencies in the recording of ethnicity data are corrected.**

3.3: LONGITUDINAL CRIME CAREERS AND PREDICTORS

Despite the extensive literature that exists within criminology, the 1st Annual Report of the EG noted the absence of high quality data on the progress of longitudinal criminal careers in relation to first entry onto the NDNAD (irrespective of whether proven guilty or not). It argued strongly that such information was necessary in order to balance individual autonomy with the public interests of society.

Following these views being presented to the NDNADSB, there was agreement that this was an important component of ethical decision-making and policy development. Consequently, the NDNADSB commissioned the Jill Dando Institute of University College London to begin a research project to explore the future value of 'arrested only' DNA retention.

3.4: S & MARPER: JUDICIAL AND LEGISLATIVE MATTERS

The appellants in the S & Marper case were successful in their appeal to the European Court of Human Rights (ECtHR). The implications of this case and the consequences of the judgment were considered in some detail by the EG, including the holding of an Extraordinary Meeting specifically on this topic (see meeting notes available on the Home Office website). The observations of the EG on this are as follows;

GENERAL ISSUES

- **Much of the S & Marper judgment was in line with the existing EG's comments and recommendations.**
- **The judgment was concentrated exclusively on the powers of retention of DNA samples and profiles and the comparison of the UK position with other European jurisdictions.**
- **The judgment made no comments on the predictive power of retained DNA to anticipate future crime, nor did it say anything about the powers of the police to 'stop and search' and to actually take DNA samples and run them against those on the NDNAD.**
- **The judgment did not clarify the needs of children and young people. The EG has recommended that minors within the criminal justice system should be dealt with separately in relation to the justification of any retention of DNA material.**

- Whilst discussing the above, it was noted that those persons who accept a ‘fixed penalty’ (who are not required to provide a sample of DNA), form a complex group. The penalty notice is not the same as a criminal offence, but on the other hand it is counted as a sanctioned detection by police: if you don’t pay it you could go be fined or go to prison. In addition, some people will pay whether or not they are guilty because it is less hassle than going to Court to plead innocent after which you could be found guilty and have a criminal record. These anomalies demonstrate the need for better regulation within the existing system.

COMPARISON WITH OTHER JURISDICTIONS

- It was noted that the UK was ‘out of step’ with other European jurisdictions, that it did not follow the Council of Europe regulations and that it was different from Scotland. Although Scotland had received positive comments from the ECtHR for its laws on retention, the EG noted that the details of these laws need to be considered in more detail. For example, it is not clear on what evidential grounds the Scottish 3-year retention rule for those not convicted of certain offences had been reached, and the provision to extend this by application to a sheriff is not (apparently) based on any defined criteria. It is also to be noted that this law is untested with respect to extensions of retention because it was only introduced in January 2007. It was agreed that the EG should keep up

to date with developments in Scotland particularly as regards the new working group being established by the Scottish Parliament.

SAMPLE RETENTION

- The ECtHR indicated that the indefinite retention of the DNA of even convicted persons was not acceptable as a blanket policy: it therefore follows that there needs to be an agreed code of practice for removing the DNA records of convicted persons along similar lines to that supervised by the ACPO Criminal Records Office for other data held by the police such as conviction records. The EG considered that any such code of practice should preferably be statutory.
- The EG again stressed the need for cogent evidence to justify retention of the DNA samples (in addition to the profiles) for both the convicted and the un-convicted. It was agreed that the NDNAD Strategy Board should be asked to provide what information it based its decision to do this on in the past. This is a particularly important issue now that the ECtHR has ruled that samples are to be protected by data protection legislation. Up to now the UK Information Commissioner has not taken this view but this may now change.
- The EG agreed that it had still to fully debate the ethical issues relating to whether or not it was fair and proportionate to retain DNA material on any other category of persons other

than only those convicted of offences. This needs to be decided before then debating whether it is ethical to retain material on all or sub-sets of the un-convicted and, if so, for what offences and for how long.

- A statutory code of practice on retention periods
- A standard and independent appeals process

APPEALS MECHANISMS

- After discussion, the EG confirmed its earlier view that the present procedure for a person seeking removal of their DNA profile from the database and destruction of their sample(s) is difficult to access and insufficiently founded in statutory regulation. This view is supported by the judgment of the ECtHR. There should be a simpler and independent appeal system established in law. It was not clear whether the Home Office draft amendment tabled to the Police and Crime Bill will permit the establishment of such an appeals system. It should also be stressed that any appeal system must be an independent process in order to give the public confidence in decisions that are made.

STATUTORY BASIS FOR THE NDNAD

- The EG confirmed its previous decision that there should be a proper statutory basis for the NDNAD: that which exists at present is not fit for purpose. It was also agreed that the principles for the operation of the database needed to be clearly stated. The EG decided that it should explore these issues in detail when responding to the White Paper but at this stage agreed that the legal provisions should include:

THE GOVERNMENT'S RESPONSE TO THE JUDGMENT

- The Government's response to the judgment should be published by the Committee of Ministers (part of the ECtHR) this spring (2009). This will include the Government's commitment to undertaking a consultation on the implications of the decision in a White Paper on all aspects of forensic science later this year. In the meantime, in order to take advantage of the legislative timetable, the Home Office has tabled an amendment to the Police and Crime Bill which will allow regulations to be made as to 'the retention, use and destruction' of DNA material including the setting up of a new regulatory body.
- The EG is critical that these changes will not be made in primary legislation which allows a full debate and consideration of all the relevant factors: despite the limitations on parliamentary time, the use of secondary legislation to effect a 'quick fix' is very regrettable and could result in unintended consequences.
- The EG is disappointed and concerned that the legislative proposals give no details of the new regulatory body which will oversee the use of forensic DNA, and no details have been given of its ambit or powers.

3.5: RESEARCH AND ETHICS

As will be seen below, the recommendations of the EG in relation to ethical approval to use the NDNAD profiles and samples were accepted and are in the process of implementation.

3.6: GOOD PRACTICE IN RELATION TO DNA TAKING, SAMPLING AND HANDLING

The EG had previously commented on the need for robust process systems to be in place during the sampling, analysis and retention of DNA samples and profiles. During the current year, the EG had been represented at the working group which was revising the DNA Good Practice Manual and had suggested several modifications to the text. It is particularly concerned to ensure that the rights of victims are fully taken into account as well as the need to ensure effective policing.

3.7: SCOTTISH ISSUES AND COMPARATIVE PRACTICES

The developing position in Scotland is now a regular agenda item and consideration was given to the Scottish Government's response to the Professor Jim Fraser report on Acquisition and Retention of DNA and Fingerprint data in Scotland. Although Scotland's position on the storing of profiles and samples had been mentioned favourably by the ECtHR in the S & Marper decision, it was noted that the Scottish practice of further retention on request by the police had not yet been tested. The EG agreed that it was important to keep in touch with developments in Scotland and to request that

a member of the EG should be an observer in the working group in Scotland that is looking at retention and other matters.

3.8: PUBLIC INFORMATION

In its 1st Annual Report the EG commented on the lack of suitable public information on forensic DNA. Whilst there is considerable information available from written literature and websites on DNA and genetics generally, none of it meets the needs of a person specifically searching for information on the relevance of DNA to police investigations, to knowledge about an individual's genetic code, and to an individual's rights under human rights and human tissue legislation.

A repeat trawl was made which re-confirmed this situation. The EG confirmed the need for this to be corrected. At the time of writing, joint working on public information is being established with the NPIA.

3.9: OTHER MATTERS CONSIDERED

THE CODING SECTION OF DNA

Consideration was given to the question 'Is it ethically right that all use and research on existing DNA samples and profiles on the NDNAD be limited in the immediate future to the non-coding section of the genome?'. Following discussions (and bearing in mind the potential role for the careful storage and possible full analysis (including the coding section), of crime scene DNA belonging to unknown persons, one or more of whom may be the perpetrator(s) of the crime), it was decided that for the present:

So unpredictable were the ethical and social consequences of coding section analysis that they should be scoped and studied before forensic scientists start to use the coding section for crime detection.

The EG recommended that the interests of the public would be best served if;

- **At the present time, only the non-coding section of the DNA was used in crime detection**
- **There was a moratorium on forensic research being carried out on the coding section of DNA samples until the consequences of this had been better studied and**
- **That a short-life working party of experts should be set up to advise on the value and consequences of forensic coding section analysis.**

The strength of the latter recommendation is that it would pre-empt a situation of having to react retrospectively to an unexpected use of DNA obtained for forensic purposes.

DATA PROTECTION LEGISLATION AND THE STORAGE OF DNA

The EG noted the ruling of the ECtHR that DNA samples as well as profiles constitute data. It was agreed that data protection issues were very relevant to our work and that we should continue to maintain a dialogue with the Information Commissioner, the NDNAD Custodian and the NDNAD Strategy Board.

EXTENSION OF THE REMIT OF THE EG

A suggestion had been made by the Forensic Science Committee that the EG should consider extending its remit beyond DNA to review the ethical aspects of other forensic investigations (e.g. fingerprints, surveillance cameras). Although welcomed as a marker of increasing confidence in the EG, the group's opinion was that an extension in remit needed careful consideration before any decision was taken. In particular, members pointed out that they had applied for, and taken up, their positions on the basis of an estimated workload. There was concern that if this expanded significantly without appropriate additional resource and expertise, the quality of analysis might suffer. The group requested more information on its intended remit from the NDNADSB, the Forensic Science Committee and the Forensic Regulator so that it could reconsider its response in the coming months.

KNOWLEDGE LEVELS WITHIN THE EG

It was agreed that to keep the knowledge of the EG as up to date as possible with relevant developments in the forensic DNA world should be a running item on the agenda.

One of the 'unknowns' when the Ethics Group was established was how it would translate its recommendations into actions. It is pleasing to be able to report that the primary route for this has now been established as being through the NDNAD Strategy Board. In addition, in the future, subject to the discretion of the Chair of the NDNADSB, the board's minutes will be circulated to members of the EG so that

there can be clarity over the progress of the implementation of recommendations.

The first Annual Report set out a number of recommendations: they are included with this Annual Report as Appendix 1 for ease of reference. The progress made on them is summarised in the table below.

CHAPTER 4.0:

IMPLEMENTATION OF RECOMMENDATIONS IN THE 1ST ANNUAL REPORT

Recommendation	Ownership of action	Progress made
Rec A: Re-classification of voluntary samples	NDNADSB ⁴ and ACRO ⁵	This is being taken forward and a re-classification process, particularly related to elimination samples is being developed
Rec B: Non-loading onto the NDNA database of voluntary samples provided for elimination purposes	NDNADSB and ACRO	The principle is agreed and being implemented
Rec C&D: Improvement of the process for taking consent and providing a better consent form for adult volunteers	ACRO and possibly the NPIA	<p>The EG identified the need for new consent forms and supplied them with a carefully designed layout and content. ACRO has considered these and presented their versions to the NDNADSB. In the view of the EG there is still a significant way to go within the CJS in improving</p> <ul style="list-style-type: none">• the understanding of the principles of consent• the level of knowledge of those taking consent• the information available to those giving consent <p>The NDNADSB has determined that volunteers should have completely separate consent forms and that a generic form adaptable for all circumstances is inappropriate.</p>
Rec E: There is a need for better public information on the subject of forensic DNA	Ownership by NDNADSB, but also a role for NPIA	The EG remains concerned with the availability of relevant and useful knowledge for the public on the principles of use of, and the value of taking, DNA for forensic purposes. To date there has been little progress in this area, but a link has been established with the NPIA to take the work forward.

Recommendation	Ownership of action	Progress made
Rec F: It is vital to ensure the security and confidentiality of profiles and samples both within the CJS and when they are at processing laboratories.	NDNADSB and the Database Custodian	The importance of this has been agreed and work is in progress to ensure secure working practices. This is linked to improvements in the re-locating of the NDNAD and governance of the PNC ⁶
Rec G & H: The powers held by chief constables in the ownership of DNA profiles and samples and the process of removal need changing	Ownership within the Home Office. Action on this recommendation was put on hold because of the S & Marper case	To date there is no change in the position of the Home Office which is still considering its response to the S & Marper judgement. The EG remains convinced that the current policy and process for removal put innocent individuals at a severe disadvantage which is at considerable variance with the rights of individuals and the principles of 'policing by consent'.
Rec I: Better definition of the exact role and usage of NDNAD	For ministerial consideration	No progress to date. The EG believes that it would be in the public interest for the government to reinforce the message that the current NDNAD is intended only to be used for criminal intelligence ⁷ .
Rec J: Formally announcing that there will not be a universal database of the whole population	For ministerial consideration	No progress to date. The EG believes strongly for the reasons set out in its published notes that a universal database is both impractical and socially undesirable. It would also be very expensive and of questionable value to improved policing.
Rec K: That there should be a standard ethics form to be completed when applications are made to research the NDNAD	NDNADSB	This has been accepted and implementation is in hand

CHAPTER 5.0:

RECOMMENDATIONS

1. To ensure that the progress made on consent for adult volunteers is followed through to completion
2. To accept and take forward the EG's proposals on consent for children and young people
3. To accept that the current data on ethnicity stored on the NDNAD is not fit for purpose and to press the CJS to move to a standardised and uniform recording system for ethnicity data (e.g. the 16 + 1)
4. To urgently improve the level of easily available and assimilated public information on the use of forensic DNA
5. To monitor the research being undertaken on longitudinal crime careers and to take note of these results in balancing the individual against the public interest
6. To work constructively with the Scottish CJS system in developing the rationale for retention policies
7. To ensure that the NDNADSB urgently reviews the need for the retention of DNA samples as well as profiles
8. To continue to press for an improved statutory base for the NDNAD and its operation and for a simpler appeals process.
9. To support (at present) a moratorium on the use of coding section DNA for forensic purposes and to set up a short-life working group to advise on the value and consequences of moving into this area.
10. To note the judgment in the S & Marper case and to interpret and advise on its consequences for England and Wales.

CHAPTER 6.0:

FUTURE WORK PLAN

- **To monitor the implementation of last and this year's recommendations by the NDNADSB and (where appropriate) the NPIA.**
- **To continue to develop work streams in the following areas;**
 - > **DNA sampling in volunteers and children and general consent issues**
 - > **Diversity and equality**
 - > **Longitudinal crime careers and predictors**
 - > **Consequences of the S & Marper judgment and judicial and legislative matters**
- > **Research and ethics (including coding section considerations)**
- > **Good practice in relation to DNA taking, sampling and handling**
- > **Scottish issues and comparative practices**
- > **Public information**
- **To continue to pursue links with external interested parties and, where appropriate to submit evidence and to contribute to public debate on relevant issues.**

APPENDIX 1:

RECOMMENDATIONS OF THE 1ST ANNUAL REPORT OF THE ETHICS GROUP APRIL 2008

Recommendation A: There needs to be a better and more transparent classification of DNA profiles and samples which are provided voluntarily: public understanding of the term 'voluntary sample' would benefit from a closer definition and separation into specific categories.

Recommendation B: For those members of the public who are believed to be innocent at the time of sampling and voluntarily donate their DNA to help the police with their enquiries, the presumption should shift to an expectation that these samples will be used only for the case under investigation, that the profile will not be loaded onto the NDNAD, and that the samples and all data derived from them will be destroyed when the case has ended.

Recommendation C: There should be a specific consent form for competent adults who are not suspected of the crime under investigation when they agree to give a volunteer DNA sample.

Recommendation D: A consent form is enclosed and proposed as a template for the purposes of Recommendation C.

Recommendation E: There is an urgent need for better information for the public, the police, volunteers and custodial subjects on the use and limitations of forensic DNA analysis. Where relevant, this should accompany the sampling process.

Recommendation F: The identification and process control of DNA samples and profiles should be reviewed with a view to ensuring that confidentiality and individual privacy are preserved as far as possible and within clear

controls

Recommendation G: A clearer, simpler and less cumbersome process needs to be put in place to enable those who wish to appeal against the decision of a Chief Constable to retain their DNA profile on the NDNAD.

Recommendation H: Consideration should be given to reviewing the definition of 'exceptional circumstances' and ensuring that the reasons for the retention of data and samples are aligned with data protection legislation, human rights legislation and the concept of proportionality.

Recommendation I: Consideration should be given to further public clarification of the role of the NDNAD and reinforcement of the message that it is intended only to be used for criminal intelligence.

Recommendation J: Consideration should be given to formally announcing publicly that the NDNAD will only be used for the currently described purposes (i.e. criminal intelligence) and will never transform into a repository for the whole nation's DNA characteristics.

Recommendation K: The ethics application form as set out should be accepted as a suitable template by the NDNAD Strategy Board

