

## The DNA database: what next?



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GeneWatch UK welcomes the Coalition Government's commitment to introducing new legislation to bring the law on DNA record retention in England, Wales and Northern Ireland into line with Scotland's. This would mean that most people who were found not guilty or had no further action taken following arrest would have their records taken off the DNA database immediately. A minority arrested for violent or sexual offences would have their DNA records retained temporarily.

However, there are still some outstanding issues that need to be addressed before new legislation is adopted.

### **1. Will the new law ensure that people's records on the Police National Computer (PNC) are deleted at the same time as people's records on the DNA and fingerprint databases?**

In Scotland, all police records are deleted at the same time as DNA and fingerprint records. But in England, Wales and Northern Ireland the Crime and Security Act 2010 (which was adopted before the election but will not now enter into force) applies only to forensic information and requires only records on the DNA database and fingerprint database to be deleted. All records on the Police National Computer (PNC) are now being retained to age 100. This is a retrograde step: before the Act was adopted the small number of people who were successful in getting their DNA profiles deleted by Chief Constables under the 'exceptional cases' procedure (such as Damian Green MP) had their PNC record deleted too.

In 2000, Association of Chief Police Officer (ACPO) guidelines required the deletion of innocent people's PNC records after 42 days: those with cautions after 5 years; and those with single convictions for minor offences after ten.<sup>1</sup> Only people convicted of serious or multiple offences had their records kept indefinitely. By 2006, these guidelines had been abandoned in favour of retention of all PNC records, from everyone arrested for any recordable offence, to age 100.<sup>2</sup> Guidance on deletion of records on other police systems exists, but does not apply to the PNC.<sup>3</sup> The justification provided at the time was that the police needed to retain PNC records to see whether or not they had already taken a DNA sample from an arrested individual, and to help them track an individual down in the event of a DNA match.<sup>4</sup> This no longer applies if new legislation requires a person's record on the DNA database to be deleted.

It is important that new legislation covers PNC records because retention of these records can have serious negative implications for an individual. Unlike the DNA database, which has relatively restricted access, PNC records are directly accessible by all police officers and a wide range of other agencies. The information in PNC records

can be revealed to future employers as part of an enhanced criminal record check. This means that someone can be stigmatised and potentially refused a job simply because they have a record of arrest.<sup>5</sup> The US embassy now states that anyone who has been arrested must apply for a full visa, rather than using the visa waiver scheme.<sup>6</sup> Visa applicants must then pay the ACPO Criminal Records Office (ACRO) to release their record to the US embassy as part of the expensive and time consuming application process.<sup>7</sup> This has major implications for a large proportion of the population who may no longer be able to travel freely simply because they have been arrested. An estimated 25% of adult men and 7% of women have been arrested at least once.<sup>8</sup>

## **2. When does the Government expect to have the new law in place?**

Many innocent people are still waiting for their records to be deleted and their DNA samples to be destroyed. The Crime and Security Act 2010, adopted shortly before the election, requires people's DNA samples to be destroyed not later than six months after their arrest but will not now enter into force. The review of police procedures following enactment also appears to have restricted the number of people who can get their records removed as 'exceptional cases': currently this seems to be limited to people who have been unlawfully arrested or whose DNA was taken either unlawfully or on a voluntary basis. Until new legislation is adopted, this leaves people who might have previously have had all their records deleted under the 'exceptional cases' procedure worse off than before.

## **3. What will happen to people who have cautions or old convictions for minor offences? Their records used to be deleted after five or ten years but are now kept indefinitely.**

When the DNA database was first set up, Home Office guidance required DNA database records to be deleted at the same time as records on the Police National Computer.<sup>9</sup> This meant that people with cautions or convictions for minor offences would typically have all their records deleted after five to ten years (provided they had not reoffended). The ACPO decision to retain all records indefinitely had no parliamentary oversight. However, it has major implications for the rehabilitation of offenders, particularly for children, and for the right to peaceful protest. Many of the people affected by indefinite retention of their records have cautions, reprimands or final warnings: meaning they have never been convicted by a court.

A legal opinion obtained by the Equalities and Human Rights Commission in 2009 suggested that the indefinite retention of all DNA and fingerprint records from people who have received cautions and convictions for minor offences is unlawful.<sup>10</sup>

The Government should consider reintroducing time limits for how long all records can be kept for those who have not committed serious or multiple offences.

**4. Will there be a system of independent oversight to make sure that the police delete people's records when they are supposed to?**

Many people are concerned that the police will not remove their records when they are legally required to do so. This has been a problem in the past. In 2000, Her Majesty's Inspectorate of Constabulary estimated that 50,000 profiles may have been kept illegally on the DNA Database.<sup>11</sup> The new law will need to include provisions for independent oversight to ensure that it is actually being implemented.

**5. Will the Government review whether some DNA samples are being collected unnecessarily, when they are not relevant to solving the alleged crime?**

Powers to take DNA on arrest are important in some cases. However, this power was originally restricted to cases where the sample was relevant to the case under investigation. Now, most DNA samples are collected routinely on arrest in cases where DNA evidence is not relevant. The evidence suggests that this has not increased the likelihood of detecting crimes using DNA.<sup>12</sup>

This costs the taxpayer a lot of money (£30 to £40 per person added to the DNA database) and can traumatise children or people with mental health problems and also contribute to the racial bias in who is on the database.<sup>13,14,15,16,17</sup> A more restrictive policy should be considered: particularly for children, whose DNA profiles are unlikely to make a purely speculative match with the profile of a rapist or a murderer.

**6. Will the new law contain tighter restrictions on how people's stored DNA records can be used?**

Existing legislation allows use of the DNA database for "*purposes related to the prevention or detection of crime*". In the past, this has been interpreted broadly to allow use of the database for genetic research without consent. The new law should explicitly prevent the DNA database being used for research on people's genetic characteristics without their consent. Research should be limited to use of anonymised data for quality assurance purposes, such as checking the number of false matches.

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## References

- <sup>1</sup> ACPO (2000) General rules for police record weeding on criminal systems.
- <sup>2</sup> ACPO (2006) Retention guidelines for nominal records on the Police National Computer. <http://www.acpo.police.uk/asp/policies/Data/Retention%20of%20Records06.pdf>
- <sup>3</sup> NPIA (2010) Guidance on the management of police information. Second edition. Page 81. <http://www.npia.police.uk/en/15532.htm>
- <sup>4</sup> The National DNA Database Annual Report 2005/06 (page 9) states: “*In support of the powers provided by Section 82 of the CJPA [Criminal Justice and Police Act] and Sections 9 and 10 of the CJA [Criminal Justice Act], it has become necessary to retain a nominal record of every person arrested for a recordable offence on the Police National Computer (PNC) to enable a link to be made between the DNA profile held on the NDNAD and fingerprints held on the national automated fingerprints database (IDENT1) to help the police identify and locate an individual following a match being obtained on the NDNAD*”.
- <sup>5</sup> Doward J (2009) Names of innocent people will stay on police database. The Observer. 20<sup>th</sup> December 2009. <http://www.guardian.co.uk/politics/2009/dec/20/dna-police-database-rights>
- <sup>6</sup> Under United States visa law people who have been arrested at anytime are not eligible to travel visa free under the Visa Waiver Program (VWP); they are required to apply for visas before traveling. Available on: [http://london.usembassy.gov/add\\_req.html](http://london.usembassy.gov/add_req.html) . See also the US Visa Waiver Wizard: <http://london.usembassy.gov/root/visa-wizard/pages/index.html> .
- <sup>7</sup> The ACRO application form is available on: <http://www.acpo.police.uk/Certificates/Application%20Form%20Version%2011%20-%20English.pdf>
- <sup>8</sup> Williams, R., Johnson, P. (2005) Inclusiveness, effectiveness and intrusiveness: issues in the developing uses of DNA profiling in support of criminal investigations. *Journal of Law and Medical Ethics*, 33(3), 545-558. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1370918/>
- <sup>9</sup> Home Office Circular 16/95.
- <sup>10</sup> Available on: [http://www.equalityhumanrights.com/uploaded\\_files/counsels\\_advice\\_dna\\_database.pdf](http://www.equalityhumanrights.com/uploaded_files/counsels_advice_dna_database.pdf)
- <sup>11</sup> Her Majesty’s Inspectorate of Constabulary (2000) Under the microscope. 1 July 2000. [http://inspectors.homeoffice.gov.uk/hmic/inspect\\_reports1/thematic-inspections/utm001.pdf](http://inspectors.homeoffice.gov.uk/hmic/inspect_reports1/thematic-inspections/utm001.pdf)
- <sup>12</sup> GeneWatch UK (2010) Submission to the Home Affairs Committee. January 2010. [http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/GWsub\\_Jan10.doc](http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/GWsub_Jan10.doc)
- <sup>13</sup> NSPCC (2009) Response to the Home Office DNA consultation. On: [http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Consultations/2009/keeping\\_the\\_right\\_people\\_on\\_the\\_dna\\_database\\_wdf67296.pdf](http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Consultations/2009/keeping_the_right_people_on_the_dna_database_wdf67296.pdf)
- <sup>14</sup> CRAE (2009) Response to the Home Office DNA consultation. On: [http://www.crae.org.uk/assets/files/SCYJ\\_HOconsultation\\_NDNAD%20090807%20FINAL.pdf](http://www.crae.org.uk/assets/files/SCYJ_HOconsultation_NDNAD%20090807%20FINAL.pdf)
- <sup>15</sup> 11 Million (2009) Response to the Home Office DNA consultation. On: [http://www.11million.org.uk/force\\_download.php?fp=%2Fclient\\_assets%2Fcp%2Fpublication%2F385%2FDNA\\_consultation\\_response.pdf](http://www.11million.org.uk/force_download.php?fp=%2Fclient_assets%2Fcp%2Fpublication%2F385%2FDNA_consultation_response.pdf)
- <sup>16</sup> Black Mental Health UK (2009) Response to the Home Office DNA consultation. On: [http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/BMH\\_UK\\_HO\\_repsponse\\_7\\_Aug\\_09.pdf](http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/BMH_UK_HO_repsponse_7_Aug_09.pdf)
- <sup>17</sup> Morris N (2008) Mother claims son killed himself after DNA taken. The Independent. 8<sup>th</sup> August 2008. <http://www.independent.co.uk/news/uk/home-news/mother-claims-son-killed-himself-after-dna-profile-taken-888387.html>