

**RATIFIED MINUTES**

<b>Security Classification:</b>		NOT PROTECTIVELY MARKED	
<b>Disclosable Under FOIA 2000:</b>		YES	
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<b>Date Created:</b>	29 March 2006	<b>Reference:</b>	DNADB030305

<p><b>ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND, WALES AND NORTHERN IRELAND</b></p> <p><b>NATIONAL DNA DATABASE STRATEGY BOARD</b></p> <p><b>OPEN MINUTES</b></p>
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<b>DATE:</b>	16 February 2006
<b>LOCATION:</b>	Lincolnshire Police Headquarters
<b>CHAIRMAN:</b>	Mr Tony Lake, Chief Constable, Lincolnshire

1. **ATTENDANCE**

CC A LAKE	Chief Constable, Lincolnshire Constabulary
ACC S HYDE	ACC, West Midlands Police
Dr A SMITH	HO Forensic Science and Pathology Unit
Mrs L FEREDAY	HO Forensic Science and Pathology Unit
Insp F IRVING	West Midlands Police
Mr K MANNING	Association of Police Authorities
Dr M PRIOR	HO NDNAD Delivery Unit
Dr R K BRAMLEY	NDNAD Custodian
Ms J GUINNESS	HO NDNAD Quality Adviser
Prof S BAIN	Human Genetics Commission
Insp K MORTON	Lincolnshire Police
Mr A GRACE	Data Quality and Integrity Team
D/Supt G LINTON	DNA Fingerprint and Retention Project Team

2. **APOLOGIES**

Mr D PEARSTON	ACPOS
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- 2.1 Tony LAKE welcomed Detective Superintendent Gary LINTON and Mr Tony GRACE to the meeting. He also thanked Bob BRAMLEY on behalf of the Board for all the work he had done for the police service over the years, and this was to be his last meeting as NDNAD Custodian.

3. **MINUTES OF THE MEETING HELD ON 15 DECEMBER 2005**

- 3.1 **Open Minutes**

- 3.1.1 The open minutes of the meeting held on 15 December 2005 were agreed, subject to some amendments.

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### 3.2 **Closed Minutes**

3.2.1 Discussed in the Closed Session.

## 4. **MATTERS ARISING**

### 4.1 Open Minutes

4.1.1 2. Custodian IT Development was an item on the agenda.

4/4.1 Alaster SMITH advised that the status of the Board would be discussed as an item on the agenda.

4/7.1 Bob BRAMLEY advised that it was not now necessary to write to suppliers in relation to the release of the supplier performance data.

4/7.3 Bob BRAMLEY advised that no meeting had been arranged between the Chair and Dave WERRETT and that this matter could be discharged.

7.1 Stuart HYDE said that he had written to ACPO in relation to load failures.

7.3 Mike PRIOR gave details of a visit to a DNA sample storage facility

8.1 Stuart HYDE advised that questions on the exception report were to be raised at DNA Ops Group meetings.

8.3 Bob BRAMLEY advised that the Annual Report for 2004/5 would be sent for printing shortly.

9. The report on the secondment to Interpol had been considered by the board members and agreed.

Mike PRIOR advised that the views of the board on the proposal by LGC in relation to an industry association had been fed back and the proposal would be forwarded to the Chair and the Home Office for consideration.

## 5. **GOVERNANCE ARRANGEMENTS**

### 5.1 **Governance**

5.1.1 Alaster SMITH had circulated a note advising that the Board would not be a legal entity as it simply discharged directions. There was also an issue in respect of legal liability. He advised that the parties involved had now met to discuss the issues and that he would be reissuing the note with an additional statement which stated that the responsibilities of the Board members would be as their constitutions permitted. This would be discussed at an APA Executive Committee Meeting on 1 March, when it was hoped that it could be agreed.

5.1.2 Keith MANNING said that he felt the meeting had been successful and a lot of issues had been discussed. He was awaiting the redrafted document and subject to that being suitable he confirmed it would go before the APA Executive Committee.

5.1.3 Tony LAKE said that he was pleased to note the progress made, and agreed that the meeting had cleared up many misunderstandings.

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- 5.1.4 Alaster SMITH agreed to reissue the note the following day in order that the relevant parties could agree this.

**Action: Alaster SMITH**

- 5.1.5 Bob BRAMLEY questioned what was happening with the role of the custodian upon his retirement. Lyn FEREDAY advised that the agreement was that Mike PRIOR and another person would carry out the custodian role. Tony LAKE said that he had had a discussion with Penny FORSYTHE, the outcome of which was that the use of the word 'custodian' was to be dropped. He said that he was not in favour of that until the role of the regulator was resolved. He said that he felt the custodian should be a nominated individual who takes on the role of custodian in an acting capacity until such time as the regulator was in place. He suggested that he spoke to Penny FORSYTHE to advised who that role should rest with. Steve BAIN agreed with that proposal.
- 5.2 **Ethics**
- 5.2.1 Alaster SMITH advised that he had circulated a paper laying out the structure of the Ethics Committee and the terms of reference for consideration. Feedback had been received on that and he was following up options for formally creating and appointing members to the Committee. He added that he would need to redraft the paper with a firmer proposal which would include an outline for the structure of the Committee and its formal constitution. He said that the Committee might be an advisory NDPB in which case ministerial agreement would be needed. Funding would continue to be provided by the Home Office and link to the Cabinet Office Appointments' Committee. Alaster confirmed that he would revise the paper previously circulated with much firmer arrangements for making appointments, the frequency of meetings and the roles of the Committee.
- 5.2.2 Tony LAKE said that he had had a meeting with Alaster SMITH where he had fed back his comments on the paper, one of which was his concern that the Ethics Committee could be interpreted as making decisions on behalf of the Board. He said that the Ethics Committee were an advisory group and did not have a mandate to instruct the Board or make decisions on behalf of the Board, however they were there to give advice to the Board.
- 5.2.3 Stuart HYDE asked when the Committee would be in place as if it needed ministerial support there would be budgeting issues and it would need to go through Cabinet at some stage. This could take up to 12 months. Alaster SMITH said that he would put that information into the in the next paper. Stuart then suggested that the Board consider something in the interim. Tony LAKE agreed with that suggestion.
- 5.2.4 Steve BAIN said that this subject had first been broached five years ago, and felt that the Home Office had not come up with any suggestions. He felt it might be better to ask whether there was anything that could be done temporarily and suggested this be discussed at the forthcoming Nuffield Bioethics Conference. Tony LAKE agreed and said that the Board needed to be in a position to say what the long-term plan was, but that in the meantime there would be an interim position.
- 5.2.5 Alaster SMITH said that now that the governance issues had nearly been resolved, he would be concentrating on setting up the Ethics Committee and intended speaking to Steve BAIN in the margins to get something set up as soon as possible. He was also working on the advisory committee

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structure and that he understood the drivers but had had high-pressure interest and needed to get something set up swiftly but properly.

5.2.6 Stuart HYDE said that a realistic timescale needed to be given and an interim solution put in place. Tony LAKE said that if the Minister were to ask when the Committee would be established as things stood there was no timescale. Stuart HYDE said that the Board should agree that the Ethics Committee will be in place by no later than April 2007, but independent ethical advice would be sought in the meantime.

5.2.7 Steve BAIN suggested enquiries should be made at the Nuffield Bioethics Conference. He agreed to make enquiries with Baroness Kennedy about the best way forward.

**Action: Steve BAIN**

5.2.8 Tony LAKE said that if the Board was in agreement, then the Ethics Committee would be fully established by no later than 1 April 2007. This was agreed by the Board.

5.2.9 Tony LAKE agreed to arrange a meeting with Steve BAIN and Alaster SMITH to discuss feedback from the Nuffield Bioethics Conference, and how an interim solution could be found.

**Action: Tony LAKE**

5.2.10 Alaster SMITH agreed to circulate a proposal in advance of that meeting as to how an interim solution could be found.

**Action: Alaster Smith**

5.2.11 Tony LAKE asked that the proposals be ratified at the next Board meeting, when he would report back on the Nuffield Bioethics Conference and the details of the interim ethics committee. The Board agreed this.

5.2.12 Steve BAIN said that there was a continued interest within the ethics community in relation to DNA.

## 6. **CURRENT TOPICAL ISSUES**

### 6.1 **Data Retention, Removal Criteria Guidelines and Police Management of Information**

6.1.1 Gary LINTON spoke about recent Parliamentary Questions which had been raised and gave details of the figures he had provided in response. He stated that the Team had, over the last few years, carried out work surrounding the data retained by the police which was largely surrounding convictions. He spoke about the complexities surrounding legislation on the retention of acquittal information, and that a recent information tribunal finding had been challenged by the Information Commissioner which had caused the team to provide a lot of data in relation to the benefits of retaining such data. He gave details of some of the cases which had been detected using retained data, which showed the value of this information to policing.

6.1.2 Mike PRIOR said that at the time DNA sampling of arrestees was introduced he could see the potential of questions justifying that, particularly in terms of matches, where samples were taken from arrestees who were then NFA'd. He said that through the work of Gary LINTON,

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examples of such results had been provided, although this had been done on a case by case research basis and it would be useful to move to a more pragmatic way of providing such information. This would require changes to the way PNC linked to the NDNAD, and such work should be informed by Alaster SMITH and others at the Home Office in terms of who should provide answers to future questions.

- 6.1.3 Gary LINTON said that questions arose from this. It was not a great problem to operate in the way that the team had, but the question was how could such current levels of response, in such detail, be sustained and what was the future requirement. He then spoke about the ability to make decisions about the removal of DNA from the database in exceptional cases. The team had recently taken Counsel's Advice on this who had advised that there needed to be some form of mechanism for dealing with exceptional cases and there should be a consistent approach. In light of this, ACPO had provided a resource on behalf of chief officers to create a library of cases to assist in decisions and offer advice on the basis of that knowledge. Gary agreed to circulate a letter which had been written by Caroline FLINT MP which mentioned the retention and destruction of DNA evidence.
- 6.1.4 Stuart HYDE spoke about the ACPO guidance which had recently been drafted. The Judgement (S -v- Marper) quotes "...the statutory purpose will normally favour retention of the fingerprints or samples unless there are special circumstances justifying the Chief Constable making an exception" and Stuart asked how this translated into "exceptional circumstances". Gary LINTON replied that that was an interesting point, and that the Judgment made reference to extreme cases and gave an example which illustrated that point. He said that the guidance was talking about something that was really rare. Stuart HYDE argued that the notes sent out with the Guidance on what could be removed stated the Judgement, is special circumstances, not that it was rare. He added that the guidance then went on to mention 'exceptional circumstances'. He said that there was a need to clarify this issue and make it very clear what the Judgment was saying and that he felt chief officers could afford to give a wider interpretation than 'only in exceptional circumstances'. **Gary LINTON agreed to look at that again.**
- 6.1.5 Tony LAKE said that this was a very contentious issue and that if it went to Judicial Review the acid test would be was the original decision reasonable and proportionate to the requirement of that decision. He added that some of the requests to chief constables involved some very emotive cases, perhaps where young children had been arrested because they were with an adult who had been caught shoplifting and admitted the offence etc. Stuart HYDE agreed and said that the language being used here would be considered carefully and the words 'special' and 'exception' defined, and it would always involve subjectivity and a degree of inconsistency.
- 6.1.6 Gary LINTON said that he had discussed the issue with Deputy Chief Constable Ian Readhead, who was the ACPO Lead on Freedom of Information and Data Protection, and to whom the Team were working. The point being raised was whether the guidance would stand up to legal scrutiny in terms of definition in the future and going back to the Tribunal Judgement and the actual legislation, there is no requirement for this. He said that the advice from Counsel supported the guidance issued. He acknowledged the point made by Stuart HYDE and said that every case is considered on its own merits as the circumstances surrounding each case is different, but the reality was that there were a number of issues. He

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said he would be very cautious about revising or reissuing the definition at this stage.

- 6.1.7 Tony LAKE said the issue did not just relate to DNA, and that in the interests of having the most reliable and comprehensive database there needed to be a safety valve on the basis that decisions could be revisited. He asked that on the basis of that would Gary's Team get further legal advice and revisit the issue.
- 6.1.8 Stuart HYDE suggested that the DNA Ops Group revisit this with Ian Readhead, and it would be useful if Gary LINTON could send a summary of what had been removed from the database so far. He also suggested looking at the issue at the Nuffield Bioethics Conference which would give people confidence that the NDNAD has value, is open for scrutiny and is being used.
- 6.1.9 Gary LINTON said that every chief officer applied their own background and ethics to any decision whether to retain or destroy DNA samples. He agreed that he would ensure that a summary of those already removed would be forwarded to Stuart HYDE and Tony LAKE as soon as possible. Tony LAKE asked if this could be done by the following week so that it could be used at the Nuffield Conference.
- 6.1.10 The Judgment was discussed, and Tony LAKE, Stuart HYDE and Lyn FEREDAY asked for a full copy of it. Gary LINTON agreed to forward this on.

**Action: Gary LINTON**

- 6.1.11 Lyn FEREDAY said that a written ministerial statement on these issues was being laid before the House today and it would be difficult if the guidelines were going to be changed. Tony LAKE said that the guidelines were available as a public document and that they should always contain the best advice possible.
- 6.1.12 Steve BAIN said that from his perspective, it was important that a member of the public meeting in the relevant circumstances should be able to have their DNA removed from the database, and that there should be a facility for that to happen. He felt it was unreasonable to put down every possible scenario.
- 6.1.13 Gary LINTON then went on to talk about the Information Management Briefing Note he had circulated, which linked the many pieces of business. He said that the note opened up a whole issue about the sharing of police data, and the increasing desire to receive data.

### 6.2 **Data Quality: Ethnicity, Gender, date of birth**

- 6.2.1 Tony GRACE from DQIT spoke firstly about ethnic appearance data on the NDNAD. The team had been looking at records and had spoken to forces about the way ethnic appearance was being entered on the PNC system but was not getting onto the NDNAD. A project was to be put together to find out where the problems were.
- 6.2.2 In terms of gender, while he team had been looking at the ethnic issues on NDNAD, they came across a large number of 'unknowns' on the database where sex had not been transmitted from the PNC. This would be tied into the appearance project. He said that the main problem was how to fix this as it was very labour intensive. He hoped that a technical solution could

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- be found.
- 6.2.3 Tony GRACE said that dates of birth were also been entered wrongly onto the PNC and this was causing a lot of errors on the NDNAD. The team had been working on this problem and had been in touch with forces to make sure the correct information was being entered onto the PNC. Out of an initial 413 alleged under 10's on the database, this number had been reduced to 42 where no paperwork could be found that gave details of the correct age. Tony believed that the majority of these would be over 10 years' old, but the forces involved could not help further.
- 6.2.4 He went on to say that three reports would be sent to the DQIT on a monthly basis initially, but moving to a weekly basis, looking at dates of birth and the demographics, so the problem could be resolved early.
- 6.2.5 Tony LAKE, on behalf of the Board, thanked both Tony GRACE and Gary LINTON for the work they were doing for the NDNAD Strategy Board in providing information for answers to PQs. He said that it was important to get the quality of data from people who were dealing with prisoners right and potentially embarrassing when such questions could not be answered correctly or in a timely manner. He stressed the importance of data quality and the need to highlight where data quality was below standard and leading to inefficient data.
- 6.3 **Historical Load Failure Report**
- 6.3.1 Stuart HYDE said that the backlog had now been completed and that the staff who had worked on this should be congratulated. The Report had been circulated and the Board thanked Paul HACKETT for assisting in resolving this issue.
- 6.3.2 Mike PRIOR said that a delay had been discovered in getting the DNA profiles from volunteers, many of whom were registered sex offenders, onto the NDNAD and it was important these be loaded on as soon as possible. He was working with the FSS to expedite this and the action was in hand.
- 6.4 **Update on Parliamentary Questions/Media/Freedom of Information**
- 6.4.1 Alaster SMITH said that the Home Office had published the report on the DNA Expansion Programme on 4 January 2006 and this had created a lot of debate on the subject of DNA. Questions on legislation and retention, policing and practice had been asked. There were issues raised in relation to ethnic appearance statistics on the database which reflected an underlying disproportionality of the ethnic minorities and one of the key issues surrounds the broader disproportionality on local policing and retention of all records rather than simply being about DNA. Stuart HYDE said he had spoken with Peter FAHY about the subject of ethnic disproportionality on databases and he had said that it is a reflection of the wider criminal justice environment. The NDNAD stands alone and should be ethnically neutral, and Mr FAHY had said that in his opinion it was part of a broader remit and DCC Craig Mackey had agreed to take this issue on. Steve BAIN said that it would be useful to have some figures giving the percentage of overall activity versus the overall database to make sure that there was no targeting of individuals to get samples and not others.
- 6.4.2 Bob BRAMLEY said that he would like to see a mechanism where all requests for information, PQs, media enquiries and the like were centrally

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logged so that the police service, the Board, the custodian and other organisations could get access to the data provided and there would be a consistency about the whole approach.

6.4.3 Katrina MORTON suggested that Gary LINTON and his team may be the appropriate personnel to collate this information because of the nature of their work. Tony LAKE said he was happy to look at the best way of collating this information. Gary LINTON said that it was important to know that what was emerging from the Impact programme and the sharing of data, would have huge implications for the service and it would be useful to identify trends with questions. Bob BRAMLEY said that the NDNAD Annual Report was due to be published the following month and this might create further interest.

6.4.4 Alaster SMITH said that, in co-ordination with Penny FORSYTHE, he was working up a proposal for the response to questions, and it could be put out externally on the Home Office Website under the FAQ section. He agreed that there needed to be better processes put in place.

6.5 **Operation Seale – CLOSED**

7. **DNA OPERATIONS GROUP**

7.1 **International DNA Sharing (CLOSED)**

7.2 Stuart HYDE said that there had been some debate at the last DNA Ops Group around the use of the CPS and their ability to give the correct advice on charging on DNA had been taken up. They group were working on the NDNAD electronic DNA exchange which was still progressing, and there had been a number of debates about the PED. Stuart said that he felt that the PED should now be uploaded to the NDNAD to demonstrate the police confidence in the database and that there should be a debate around this.

7.3 He added that work was ongoing on retention of a second sample and the issuing of new kits. He added that there had been some good hits in relation to Northern Ireland profiles. The Police Standards Unit (PSU) was carrying out work on familial DNA and although it had started out very rapidly, the work had been changed because of an ethical issue, which had been raised. He said that he would let Steve BAIN consider the amendments to this to see if they went far enough.

7.4 Stuart said that the last DNA Operations Group had been very well attended, and had cleared up a lot of outstanding business. Tony LAKE thanked him for all the work that he and his group did over a huge area.

7.5 The DNA Ops Group had submitted an AGIS bid to develop the exchange mechanisms for DNA with Poland and the Baltics. Stuart said that the Home Office, Centrex, four countries, Europol and Interpol, were developing the initiative.

8. **POLICY ISSUES/RESEARCH REQUESTS**

8.1 **Project Proposal from Chris HOLT**

8.1.1 A paper had been circulated giving details of the project proposal from Chris HOLT. An ethical issue had been raised and needed to be considered further but the Board agreed that proposal was sensible.

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- 8.1.2 Bob BRAMLEY said that his concern was that he had not yet received a report on a similar project carried out by RDS. Gary LINTON said that work on the data regarding CJ arrestees identified that the majority of arrests came out of low-level crime. He added that the data was there and would fit SCAS, and agreed that the proposal was sensible.
- 8.1.3 Lyn FEREDAY felt that there needed to be clarity on this issue.
- 8.1.4 Alaster SMITH said that he had spoken to Andy FEIST about the report and had agreed that it should be published and released to Centrex. It was agreed that the Chair would write to Andy FEIST to ask him to write up his report and submit it to the Board to fulfil one part of the proposal, and then the request before the Board today could be dealt with.

**Action: Tony LAKE**

### 9. **CUSTODIAN ISSUES**

#### 9.1 **NDNAD IT Development**

- 9.1.1 Mike PRIOR had prepared a paper explaining the rationale for selecting IT projects from the previous Board meeting. He said that delivery of the projects would be achieved by the end of the financial year, although one project would carry over into the next financial year. He had also prepared two outline proposals for the first of two new projects to be commenced, and if the Board supported them he would circulate more detailed proposals.

- 9.1.2 Alaster SMITH and Lyn FEREDAY said that funding levels would most likely remain at the level they had previously been.

- 9.1.3 The Board noted the progress made on the existing projects and considered whether to approve the two outline projects. After a short discussion, **the Board approved both projects** and Mike PRIOR agreed to prepare detailed proposals with full costings for delivery to the Board within the next two weeks. He asked that the Board agree the detailed proposals once they had been circulated and any issues should be brought to his attention. It was agreed that Mike PRIOR would liaise with Tony LAKE in relation to the formal agreement.

**Action: Mike PRIOR**

#### 9.2 **Disaster Recovery and Forensic Suppliers (CLOSED)**

#### 9.3 **Exception Report**

- 9.3.1 The Exception Report had previously been circulated and was noted by the Board.

#### 9.4 **NDNAD Annual Report Update**

- 9.4.1 Bob BRAMLEY had brought with him a copy of the progress made on the Report so far to give to Tony LAKE.

### 10. **ANY OTHER BUSINESS**

- 10.1 Keith MANNING advised that David MONEY, Chair of the Devon and Cornwall Police Authority, would be the new APA representative on the Board. Keith said that he would attend the next Board meeting, together

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with David MONEY.

- 10.2 Bob BRAMLEY had received a note from Eric DOWNHAM in relation to a High Court Judgment due to be issued in relation to a request for the use of DNA of a deceased male in a paternity dispute. The Board had resisted that request at the time. Once the written Judgment had been received it would be forwarded to the Board for information.
- 10.3 Mike PRIOR raised an issue in relation to an SLA reached between the LGC and FSS on familial searching as the LGC had no facilities for familial searching themselves. It had been agreed that the FSS would run the search for LGC and feed the results back to them, and as part of that, the LGC had asked for training for their caseworkers to be provided by the FSS. The FSS had now backed away from that, but the provision of this training was specified in the SLA. LGC had received further communication from the FSS, via email, stating that they will terminate the SLA.
- 10.3.1 Alaster SMITH said that there were two concerns in relation to this. The first was the contractual issue and the second was around the protection of the running of the algorithm. June GUINNESS said that the algorithm was a stand alone programme and the Board controlled how it was used. She felt that the Board could state that they expected the agreement to be honoured.
- 10.3.2 Tony LAKE suggested that Alaster SMITH and the Custodian should look into the legality/ethics of this and forward their findings to Stuart HYDE for him to raise at the DNA Operations Group to resolve with the suppliers. If it was considered a strategy issue, then Tony LAKE would take this issue on himself.
- 10.3.3 Lyn FEREDAY said that she attended a meeting with the FSS and other Suppliers the previous year (chaired by Mr Lake) at which the FSS agreed to work with the LGC on this issue. . Alaster SMITH said that if the LGC had an SLA with the FSS which was not legally binding then this is something that should be raised through the Home Office to require the FSS to provide this service to others. Once the web interface was available, that would offer improved searching technology, but in the meantime, he would do some further work on this issue.
- Action: Alaster SMITH/Custodian**
- 10.4 Tony LAKE said that he had had a draft proposal in relation to the Regulator, which was setting out the future of maintenance and the protection of standards for the NDNAD. In the current set up the Custodian had the responsibility for ensuring that suppliers were properly accredited and the last 12 months had seen a higher level of interest in the application of forensic evidence. He said that although he had spoken to Penny FORSYTHE about the issue of a regulator, he was unable to respond for the whole of the police service as that was outside his remit. The proposal suggests where the Regulator should sit in the structure and made reference to where the NDNAD should be based. He had been advised that the paper would be put before the Minister shortly and he supported that. A further paper would be circulated for consultation on the issue of whether or not there should be a Regulator and that paper would be shared with the Board.
- 10.5 **DATE OF THE NEXT MEETING**  
Next meeting 10.30 am Tuesday 16 May 2006

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