



## National DNA Database Strategy Board

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Author & Warrant/Pay No	Gary Pugh
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### Redacted Minutes of Meeting

15<sup>th</sup> January 2009

10.30 a.m.

5<sup>th</sup> Floor Conference Room, New Scotland Yard

#### 1 ATTENDANCE

##### 1.1 Attendees

Mr Gary Pugh (Chair)	Association of Chief Police Officers (ACPO)
Mr Jim Munro	Home Office representing Stephen Webb
Mr David Money	Association of Police Authorities (APA)
Professor Steve Bain	Human Genetics Commission
Dr Simon Bramble	Head of the Police Science & Forensics Unit, NPIA
Mr Eric Downham	Forensic Science Regulator representing Mr Andrew Rennison
Professor Peter Hutton	Chair DNA Ethics Group
Ms K Faulkner	NPIA NDNAD Delivery Unit, deputising for Dr Mike Prior
Dr Doug Pearston	Scottish DNA Database Manager
Mr Ian Miller	Information Commissioners Office (observer)
DI Stacey Dibbs	ACPO DNA Staff Officer
Ms June Guinness	NPIA DNA Quality Adviser
Ms J Ashworth	Forensics21 Programme Manager, NPIA (guest)
Mr M Carling	Senior Policy Officer, NPIA (guest)
Mr N Apps	ACPO Criminals Record Office (guest)
Mohammed Hussain	Minutes



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### 1.2 Apologies

Mr Stephen Webb	Home Office
Mr Keith Mannings	Association of Police Authorities
Professor Sarah Cunningham-Burley	Human Genetics Commission
Mr Andrew Rennison	Forensic Science Regulator

Mr Pugh informed the meeting that Mr David Shaw had been promoted to Deputy Chief Constable at West Mercia but will continue in his role as the project executive for the physical transfer the NDNAD from FSS to NPIA. Mr Shaw attended the Board as the chair of the DNA Operations Group which under the restructuring of the ACPO forensic portfolio had been disbanded. Mr Pugh said he was satisfied that the structures and work programme within the ACPO/NPIA Forensic21 would cover all of the functions previously undertaken by the DNA Operations Group but he would consider whether a second ACPO representative was appropriate.

**Action 01/09: Mr Pugh to consider whether a second ACPO representative is required on the Board.**

## 2 MINUTES

2.1 Mr Pugh asked for members to respond to Stacey Dibbs by 16<sup>th</sup> January if Board members have any comments on both the Open and Redacted minutes for the September meeting.

2.2 Mr Pugh proposed that the following process should apply for producing the open minutes and publishing the redacted minutes.

- Both sets of minutes will be produced and will be issued for review before the next board meeting.
- The minutes will be reviewed and agreed at the next Board meeting or if members have not had time to consider the minutes then a deadline will be set for corrections of factual accuracy.
- The redacted minutes will then be published a week after the Board meeting or the deadline for corrections.

2.3 Mr Pugh apologised for sending the papers out later than he would have liked.



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### 4 MATTERS ARISING AND ACTIONS SHEET

Mr Money said that there are clearly pockets of really good work being done in various places and he was keen to ensure is that the work is progressed and that the Board can be assured that progress is being made.

Prof Hutton requested that the electronic version of the supporting papers was such that all members of the Board could access the papers on their current office systems

**Action 02/09 DI Dibbs to ensure that all documents are either '.doc' or '.xls' and that the number references for the papers are consistent**

Mr Pugh reviewed the current action sheet from previous meetings and updated the outstanding actions. The updated Action Sheet will be circulated with the minutes.

### 5 GOVERNANCE, POLICY AND LEGAL ISSUES

#### 5.1 ECHR S & Marper Judgement

Mr Pugh described the current position with regard to the judgement that was handed down on 4<sup>th</sup> December 2008. The judgement had gone against the UK in that it was found that there had been a violation of Article 8 (right to respect for private and family life). The Government would need to respond in the first instance to the Council of Ministers in March 2009. Mr Pugh outlined the work that is been undertaken to consider the implications of the judgement.

Consideration is being given to the development of a retention policy in respect to those who are arrested and unconvicted. Mr Pugh went on to discuss the approach to the development of a retention policy and the research work that is been undertaken by Prof. Ken Pease and Prof. Gloria Laycock. Mr Pugh asked that details of the scope of this work be circulated to members

**Action 03/09 DI Dibbs to circulate scope of Criminology Research Project to all Board Members**

Mr Pugh mentioned that the judgement does steer the UK towards the Scottish model. Mr Pugh felt that the Scottish model would be quite a challenge because it will require a review of individual records. He went on to mention a report by Prof Fraser on DNA profiling in Scotland.

**Section deleted for operational and policy reasons**

5.2 Draft Revision of the Governing Rules of the NDNAD

**Paper 15/01**

5.3 Role of Forensic Science Regulator and Custodian



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The meeting agreed to discuss these two items together.

Mr Pugh stated that a lot of time was spent in the previous meeting going over the issue on governance, wrestling with the issues around how we develop governance. At one level this was an updating exercise to include organisations and functions that didn't exist when the rules were written originally but it was also an opportunity to identify the strategic aims of the Strategy Board and provide a basis for the future development and delivery of the NDNAD.

Mr Pugh was mindful of the white paper that Mr Munro had referred to previously. He felt that Strategy Board should progress to a new or updated set of governance rules that members are comfortable with, but the Strategy Board needs to be aware that things may change as a product of wider Ministerial considerations around the white paper on forensic science.

Mr Downham and DI Dibbs took the Board members through the paper. Mr Pugh stated that he would welcome comments today so that the governance rules can try to arrive at a final draft in order for him to present this to ministers.

Mr Downham highlighted the key changes

- paragraph 2 has some slightly revised definitions.
- there is a revised definition in respect of the role of the NPIA delivery unit in the light of the introduction of the Forensic Science Regulator. The Forensic Science Regulator is responsible for setting quality standards and monitoring compliance of those standards so the role of the custodian has changed and this as been reflected inn the definitions.
- The Custodial function sits within NPIA and it should be the person designated by the Chief Executive of the NPIA.
- Slightly revised definition of the NDNAD Strategy Board itself
- Introduced the Ethics Group.

Mr Downham invited comments.

Professor Hutton made the comment that the scope relates to the use of the NDNAD in crime investigation but there is also a proposed missing persons database and therefore there is more than one database and should it be the "The National DNA **Databases** Strategy Board". Mr Pugh responded that this was a very valid point and was addressed in some respects by listing the databases that are covered within the Governance Rules and it was important that the DNA Ethics Group had a role in considering the ethical implications of all databases that fall within the remit of the Board.

Mr Downham responded that the databases serve different purposes and the Counter Terrorism (CT) Database was included although the extent of oversight and involvement would need to be considered.

Mr Pugh responded that this board should have an oversight of the CT database but the sensitive nature of the data would need to be recognised and there are important roles for



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the Information and Surveillance Commissioners in the setting up of such a database. The separation from the NDNAD is an important principle. Mr Pugh acknowledged that the CT forensic staff are on notice to come back to the Board with a paper that will set out the connectivity and searching between the NDNAD and CT Database, this has been logged as a piece of work in the work programme.

Prof. Hutton observed that when the Ethics Group meet with various groups they perceive everything that is held as being criminal. If the function of the group in the future provides governance to things with the same technical but different strategic objectives such as victim identification, there needed to clarity about the different elements of the governance. Mr Pugh responded that this is a point to reflect on. He went on to say that in a mass fatality incident he would look at the NPIA Delivery Unit to oversee the database and matching that would facilitate disaster victim identification.

Mr Munro raised the need for a clear distinction in roles between NPIA, the Delivery Unit and the Custodian. In his previous discussions within the Home Office, the governance rules needs to add clarity over the difference between the Delivery Unit, Custodian and the Regulator as the roles are quiet distinct. Mr Pugh agreed and felt that the current draft went a long way to doing this.

Clarity was sought over the last sentence “**assisting profiles of known individuals and DNA profiles of individuals retrieved from scenes of crime**”. Mr Pugh agreed that this would be considered in the next version.

Ms Ashworth asked whether there should be reference made to the Police National Databases (PND) Board. Mr Pugh responded that there was no need to reference it in the governance rules and that he had discussed this with Mr Ian Johnson who was to chair the PND Board and they had agreed that the NDNAD is separate from the other national police databases and the NDNAD Strategy Board needed to continue in its current form not least because it has a broader representation and a longer existence.

Mr Money suggested that the objectives in section 4 should end as “**and no other**”.

Prof Hutton asked whether other databases are involved **under item 3**. He suggested adding that the NDNAD Strategy Board could be asked to undertake over sight of other functions. Mr Pugh responded that he was very nervous in straying into civil applications of DNA. Following clarification from Prof. Hutton, Mr Pugh concluded that there needed to an addition to say subject to a request from Ministers.

There was a group discussion on Item Number 5. Mr Downham explained that there was the core membership given that this board was originally conceived as a representing the tripartite structures that provided the oversight for policing in the UK. He has tried to make a distinction between the three core members and other members.



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There was then a discussion about the voting rights of members.

The group agreed that observers or experts who might be invited to come along from time to time, but should not have voting rights.

Mr Pugh stated that in his opinion that Board should be made up members who represent organisations or groups rather than the current arrangements of lay membership, he highlighted the DNA Ethics Group and Forensic Science Regulator and Human Genetics Commission. The question of voting status was discussed with some members outside of the tripartite group expressing concern about this. Mr Pugh was keen that membership of the Board was meaningful and that it seemed appropriate going forward that the range of organisations proposed to make up the Strategy Board should have a stake in shaping the future use of the NDNAD and he welcomed their involvement. He did not think that the role of the Board would be such that there would be many occasions if any where a vote was taken but his needed further thought and consideration.

The position of other UK jurisdictions was discussed and Mr Pugh stated that his preference was for Scotland and Northern Ireland to be members of the Board on the basis described where they agree to the conditions outlined in the Governance Rules. He has briefly discussed this with some representatives from Scotland and Northern Ireland and would progress this further.

Dr Bramble asked about clarity around ownership of data and in section 81E, bottom of page 7, we talk about data controllers. He asked for clarity in the responsibilities.

Mr Pugh responded by saying the individual samples are taken under the authority of Chief Constables and the responsibility for the individual samples and the data rests with Chief Constables. However, the Chair of the Strategy Board as member of ACPO has a role as data controller in common. This is by virtue of his nomination by ACPO and his responsibilities to ACPO Cabinet and Council. He said that his responsibilities were in respect of looking at the NDNAD as a whole and the policies and procedures that applied to it.

Mr Miller confirmed that Mr Pugh was acting within the law and that a data controller in common is someone who determines the purpose or manner in which data will be processed.

The Governance Rules should make clear that the responsibility sits with the Chair of the Strategy Board rather than the Board as a whole for the reasons outlined.

Mr Munro asked what role the board sees in new developments in DNA profiling. Mr Pugh responded that new developments and innovation particularly if they apply to the database need to come through this board, an example being DNA boost.



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Mr Pugh thanked the Board members for their helpful comments and asked that any further thoughts or consideration be passed to Mr Downham and DI Dibbs, who would produce a further revision for the next Board meeting.

**Action 04/09: Further comments and observations on the Governance Rules should be sent to Mr Downham and DI Dibbs.**

### 5.4 Removal of persons U10's from NDNAD

**Paper 15/02**

Mr Pugh updated the meeting upon an announcement that the Home Secretary made before Christmas that she would be taking immediate steps to remove those under 10's from the DNA national database. He had interpreted this to mean those individuals who have provided volunteered samples with parental/guardian consent but were below the age of criminal responsibility i.e. under 10. Mr Pugh has been working with the NDNAD Delivery Unit to put in place a mechanism for removal of these samples.

**Section deleted for operational and policy reasons**

Mr Pugh agreed to report back to the board on this issue.

### 5.5 Paper - Confidentiality, Integrity and Security of Data

**Paper 15/03**

Mr Pugh noted that NPIA are taking steps to ensure the integrity of the data. He acknowledged the physical movement of the database. He noted that there has been an acknowledgement that there is further work to do. All systems need to have an impact assessment. He expected the NPIA to report back as part of transition project.

### 5.6 Paper -16+1 Ethnic Recording System

**Paper 15/04**

The Board considered the paper on this item.

Mr Pugh expressed his concerns around the collection of ethnicity data as part of the process of DNA sampling and the potential for incompatibility with other approaches that were user defined and collected on the 16+1 basis.

Ms Guinness clarified that in NDNAD data provides information on the physical appearance of the individual. The 16+1 system that is proposed is the recommended by the Home Affairs Select Committee. Prof Hutton observed that some organisations are required to record ethnic data and he was under the impression that the police service was required to do so.

Mr Pugh expressed his concern that on the basis of the unreliability of the current approach, its incompatibility with wider police databases and no obvious purpose for collecting the data in connection with DNA sampling it should be stopped immediately.

Ms Faulkner commented that there is a need to understand the impact before we stop as the data is not separated from any other element of the data format. This would also need to consider the impact on Freedom of Information Act questions and the communication



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strategy. Mr Miller stated that from a data protection point of view is it necessary and if so it should be accurate. Prof. Hutton commented that this would be a fundamental but ethnicity data on the PNC should be more accurate.

Mr Pugh concluded that if the Board has acknowledged that the 6+1 is not reliable then the principal going forward should be that 'ethnicity' information will not be recorded as part of the DNA sampling process; we should draw the information from the PNC via the 16+1 move quickly to this position. He invited the NPIA Delivery Unit to consider the practical implications of this and report back.

**Action 05/09 Ms Faulkner to consider the implications of not recording ethnicity data and report back to the Board.**

### 6 OPERATIONAL UPDATE

#### 6.1 DNA Work Programme Review

##### 6.1.1 Overview of DNA Work Programme

**Paper 15/05**

Mr Pugh and DI Dibbs presented the overview of the work programme that lists all the projects that are taking place that the NDNAD Strategy Board has an interest in. This would need to be devolved further but Mr Pugh felt it was important that the Board were sighted n developments and projects that impact on the current and future sue of DNA profiling.

**Action 06/09 Mr Pugh asked Prof. Hutton to consider an ethics lead for relevant projects.**

##### 6.1.2 Volunteer Sampling Reports

###### 6.1.2.1 ACRO Volunteer DNA Project

**Paper 15/06A**

###### 6.1.2.2 Ethics Group Scoping Paper

**Paper 15/06B**

The Board considered two papers: the paper presented by ACRO and the paper from the Ethics Group. It was recognised that this project appears in the work program.

Mr Pugh thanked both parties for the work they had undertaken on this subject and noted that the DNA Ethics Group report had highlighted some significant weaknesses in the current arrangements for dealing with volunteers. He suggested that there needed to be clarification and careful consideration on the whole area of volunteer sampling and retention.

On the clarification then a volunteer should be someone who provides a DNA sample for analysis and retention on the NDNAD for some useful purpose connected with the operation of the NDNAD. Mr Pugh then challenged the retention of profiles taken from victims of honour based violence. He asked for clarification as to the agreement and purpose of retention. Mr Pugh asked Prof Hutton as to whether the Ethics Group had considered the ethical issues around the victims of honour based violence and their entry on the database. Prof Hutton responded that they had not, but went on to say that this does not mean this decision is wrong.



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### Section deleted for operational and policy reasons

On a broader front he felt it was appropriate to review all the current categories of DNA profiles retained on the NDNAD. He asked Ms Faulkner to provide a summary of the sample classifications held on the database for further discussion with Mr Pugh

### Action 08/09: Ms Faulkner to produce a summary of the sample classifications currently held on NDNAD.

Mr Pugh then asked the Board to consider the detail within the ACRO paper and specifically the forms to be used in connection with elimination samples. He welcomed the move to separate the processes so that it would not be possible for anyone who gave a sample for the purposes of elimination to have their sample entered on to the NDNAD through the same process. He noted that this was one of the main concerns of the DNA Ethics Group and the Board endorsed the proposals with respect to elimination samples and the new forms.

Mr Apps highlighted the difficulty in that there is no defined process for removal of volunteers.

Mr Pugh stated that there needs to be a process and when he is clear about the different categories of individuals on the NDNAD this will need to be considered further.

Prof Hutton summarised the Ethics Group paper for the Board highlighting the issues with respect to children and we deal with those under 18's. Mr Pugh asked for comments from the other Board members and noted that the S and Marper judgement identifies children as a sensitive issue.

Ms Guinness commented that the NDNAD Delivery Unit gets a lot of queries surrounding the issue. Mr Carling noted that there are only a very few hits against volunteer samples including the under 18's. Mr Pugh expressed the need to develop guidance on dealing with under 18's in consultation with the bodies outlined in the paper. Mr Apps supported this but raised a concern about having different forms, one for children and one for adults. It may be more appropriate to issue guidance to police personnel.

Dr Bramble stated that NPIA would not be prepared to fund this work in the 2009/10 financial year. He asked Nick Apps to clarify the impact. Nick responded that the consultant who has been doing this work cannot continue. Dr Bramble went on to say that NPIA would consider the funding issue and whether this would fit within Forensics21.

### 6.1.3 Police Elimination Database Report

Paper 15/07

### Section deleted for operational and policy reasons

### 6.1.4 Draft Report: DNA Communications Strategy

Paper 15/08

The meeting agreed to move this agenda item to a future meeting date.



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### 6.1.5 Relocation of NDNAD

Ms Ashworth informed the meeting that after a slow start the project work was progressing well.

### 6.2 Non-Criminal Uses of the NDNAD

#### 6.2.1 Missing Persons Database

**Paper 15/09**

Mr Pugh summarised the contents of the paper and identified the immediate issue was to secure the DNA Database of body parts and unidentified body parts data is held at the FSS within the NPIA environment.

Mr Pugh made clear that any associated volunteer samples from family members should not be not searched and retained on the NDNAD.

Mr Pugh again highlighted some of the difficulties in creating a DNA database of missing person derived from samples that are taken without the individual's knowledge and consent. He could well understand the need to hold this information and its potential use in identification but he felt the legal, ethical and operational issues needed greater thought, he asked DI Dibbs to include this in her work on honour based victims and report back to the Board. A presentation from the National Missing Persons Bureau at a future Board meeting may assist

### 7. 1 Custodian Update

**Section deleted for operational and policy reasons**

On a monthly basis DI Dibbs and the Delivery Unit will meet to discuss the Trends report and review the strategic risks and through the Chair will escalate issues to the board as appropriate.

### 7.2 Research Proposals

**Section Deleted for commercial reasons**

### 8 Ethics Group

Mr Pugh said that it was important that the Board supports the implementation of the Ethics Group recommendations where it can and referred to the table produced for the previous meeting. .

### 9 Issues Relating to Scotland and Northern Ireland

Mr Pugh acknowledged that the Board meeting had not discussed the agenda item for Northern Ireland and Scotland short; the main issue is that of governance.

### 10. ANY OTHER BUSINESS

No any other business was raised



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### 11 DATES OF FUTURE MEETINGS

- 12th March 10.30am to 2pm, 5th Floor Conference Room, NSY
- 11th June 10.30am to 2pm, 5th Floor Conference Room, NSY
- 10th September 10.30am to 2pm, 5th Floor Conference Room, NSY
- 10th December 10.30am to 2pm, 5th Floor Conference Room, NSY