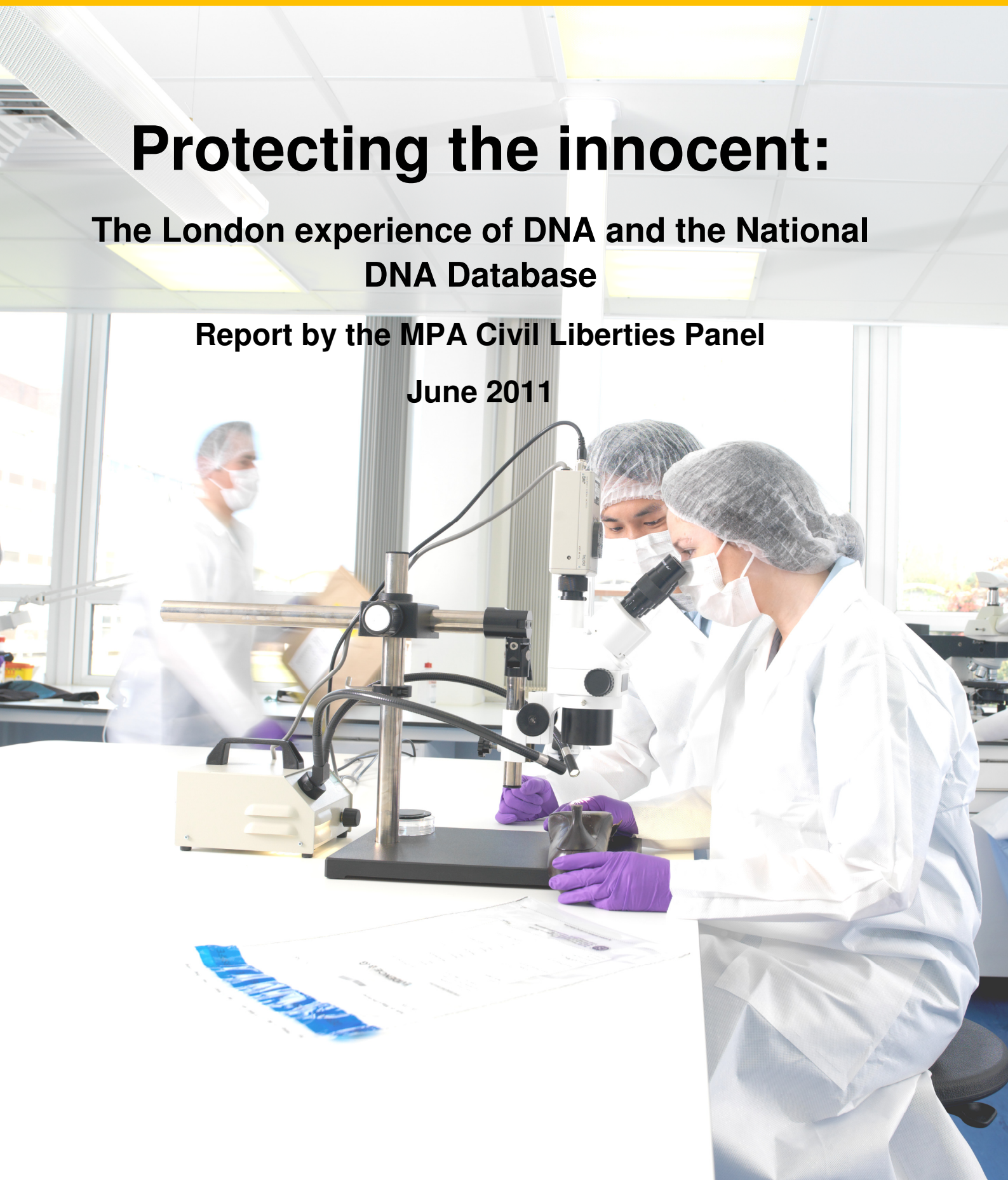


Protecting the innocent:

The London experience of DNA and the National DNA Database

Report by the MPA Civil Liberties Panel

June 2011



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Chair's Foreword



The Metropolitan Police Authority's Civil Liberties Panel, was set up in 2009 to look at whether the Met has got it right in terms of achieving a balance between reducing crime, protecting the public, and upholding civil liberties.

This report, the second published by the Panel, focuses on 'The London experience of DNA and the National DNA Database'. The review was particularly timely since it was carried out as new legislation, the Protection of Freedoms Bill, which includes the use of DNA in policing, passes through the House of Commons.


Amongst a number of new measures the Protection of Freedoms Bill includes very welcome provisions to end the indefinite retention of DNA samples and DNA profiles of those not convicted of offences. However from a crime detection viewpoint all those arrested will be checked against the database to see if they match any unsolved crimes.

"Protecting the Innocent", the theme of our report underpins the importance of DNA in helping to solve crimes and identify "who did it". It equally can show who did **not** commit the crime and DNA provides an important safeguard against false allegations and wrongful conviction.

The taking and retention of DNA samples understandably creates controversy; it is an emotive issue, involving what some see as an invasion of their privacy. However, in order to ensure the effective and willing use of this tool by the public to help the police solve crimes, a clear understanding of when and why DNA is taken and how it is used and stored is vital to ensure public confidence in this very valuable information.

We have learned from our investigation how DNA has been particularly important in solving rape cases where perhaps the perpetrator has been involved with other minor crimes over the years and then the DNA sample matches a rape scene and previous offences recorded on the national DNA database have provided the link.

DNA has been used to help identify long buried bodies in mass graves, and let families know where their missing relatives are buried, it has helped solved crimes of incest where there is uncertainty as to which family member committed the crime, and multiple rapes where there are many different samples from different perpetrators. The use of DNA has helped make sure that the right perpetrators are brought to justice.



Although within our report we highlight the implications of the Bill for policing and for civil libertarians, our focus is how the Met manages and handles DNA to investigate whether the Met has adequate measures and safeguards in place to strengthen public confidence.

The public need an absolute assurance of the robust adherence to correct procedures by the MPS, from the initial taking of the samples, their examination, storage and their deletion. This needs to run alongside a much more open explanation of the national DNA database and reassurance as to how it is used. I hope our recommendations to this effect, and the material we have gathered to explain the processes and controls in place will be valuable to those in the Met charged with this important duty as well as to Londoners themselves.

A new legal framework which seeks to balance civil liberties and public protection should be complemented by transparency and consistency in the management of DNA and through increased public engagement. We believe that there are a number of important issues which can be made clearer to the public to address their concerns.

I would like to express my thanks to all the members of the Civil Liberties Panel who have monitored the journey of a DNA sample, the operation of the database and examined the civil liberties concerns. I would also like to thank the MPA for their administration of this topic with particular thanks to Simon Efford and Shirani Gunawardena, and Melissa Pepper for the preparation and analysis of our public survey.

**Cllr Victoria Borwick AM,
Chair, Civil Liberties Panel**

Introduction

1. The MPA Civil Liberties Panel, which reports to the MPA Full Authority, was set up as a part of Met Forward, the MPA's strategic plan. It was established as a means of improving public confidence in policing and ensuring the MPS maintains public trust.
2. The members of the Panel are:

Victoria Borwick (Chair)	Jenny Jones
Valerie Brasse	Clive Lawton
Dee Doocey	Joanne McCartney
Kirsten Hearn	
3. The Panel began work in the summer of 2009, to consider issues on a priority basis and report back to the Authority. It is a standing Panel that meets as the need arises.
4. This review of the National DNA Database (which will be referred to as the 'DNA Database' throughout our report) and the use of DNA in the MPS began in 2010 and is the second review by the panel.¹

Background

5. The use of DNA in policing is arguably one of the biggest advances in crime investigation since fingerprinting was first used in the early 20th Century. DNA is also highly emotive; it is personal and unique to an individual and when taken allows a significant amount of information to be known about a person. This means the public need to be confident that the police and the government use DNA and DNA records in a way that respects their fundamental right to privacy and protects their civil liberties.
6. With this in mind, the panel have chosen to focus only on DNA that is taken from an individual by the police, for the purposes of investigating crime, including the operation of the DNA Database. Therefore, this review is not concerned with DNA that is obtained from crime scenes (for example, traces of DNA have been found on cigarette butts which have helped secure a conviction for murder).²

¹ The first topic of review was the policing of public protest, following the G20 summit in April 2009. The Panel made a number of recommendations to the MPS and continues to review their policing of public order during the lead up to the Olympic and Paralympic Games 2012.

² See <http://www.independent.co.uk/news/uk/crime/murder-accused-dna-in-cigarette-butt-2092029.html>

7. The panel does not dispute the need to take and retain DNA taken from a crime scene in order to assist with the investigation and identification of suspects, nor does it have concerns about the manner in which this is done and processed.
8. The Panel prioritised 'DNA' because of the following:
- The UK has a higher percentage (8.4%) of its population on a DNA database compared to anywhere else in the world. On 31st July 2010, the estimated total number of individuals retained on the DNA Database was 5.1 million.³
 - The DNA Database contains the DNA profiles of all those convicted for a recordable offence since 1996. However, a change in legislation in 2001 allowed for the retention of DNA on arrest. The DNA Database currently holds all DNA profiles indefinitely, irrespective of whether they have been convicted of committing an offence. Approximately 1 million people or 1 in 5 of those on the DNA database have not been convicted of any offence.
 - 16% of DNA profiles on the DNA Database are from non-white ethnic groups. The 2001 census identified that 7.9% of the UK population comprised of non white ethnic groups.⁴ Ethnicity monitoring in relation to the DNA Database is based on police ethnic appearance codes (please see Glossary for details) which require the police officer to make their own judgement of an individual's ethnic appearance on the basis of 6 categories. This differs to the self defined ethnicity codes (please see Glossary for details) used throughout the criminal justice system.
9. A total of 118,990 DNA samples were taken by the Metropolitan Police⁵ during 2009/10. Of the DNA samples taken by the MPS in 2009/10:
- 50% of these samples were taken from white people (71% of London's population is white⁶); 49% were taken from black and Asian ethnic groups⁷ (23% of London's population comprises of black and Asian ethnic groups⁸).

³ Obtained from the NPIA website available at: <http://www.npia.police.uk/en/13338.htm>

⁴ United Kingdom population by ethnic group". *United Kingdom Census 2001*. Office for National Statistics. 1 April 2001. Available at: <http://www.statistics.gov.uk/StatBase/Expodata/Spreadsheets/D6588.xls>

⁵ Available at: http://www.met.police.uk/foi/pdfs/policies/dna_policy_monitoring_report.pdf

⁶ Howes, Eileen; Finella, Giorgio (October 2003). "2001 Census: Ethnic groups in London and other districts". DMAG Briefing (Greater London Authority Data Management and Analysis Group)

⁷ Based on 'ethnic appearance codes' used by the police (refer to the Glossary for a full definition)

- The largest age group represented was 25-44yrs old (45%). Nearly 20% of samples were taken from young people aged 10-17.
10. Public concerns have been raised about the disproportionate representation of some groups and communities on the DNA Database.
 11. In December 2008 the European Court of Human Rights (ECHR) ruled in the case of *S & Marper v The United Kingdom* that indefinite retention of DNA profiles and samples on the National DNA Database was in breach of Article 8 of the European Convention on Human Rights, the right to respect for private and family life. The government has recently introduced the Protection of Freedoms Bill which sets out to balance civil liberties and the protection of the public, and in doing so address the issues outlined above. A recent decision by the Supreme Court⁹ echoes the ECHR decision in the case of *S & Marper*.
 12. Her Majesty's Inspectorates for both the Police and the Prison Service are also conducting joint inspections of police custody facilities as part of a six year programme commencing in 2008. Some of the inspections undertaken across England and Wales, including a number of MPS boroughs in London have exposed deficiencies in relation to the management and storage of DNA within custody, including DNA samples not being correctly processed and labelled and on one occasion, DNA samples being stored alongside foodstuffs.¹⁰

Purpose and Content

13. The overarching purpose of this review is to ensure that DNA is managed and handled appropriately by the MPS with the necessary safeguards in place in order to strengthen public confidence. Our review has focused on the experience of Londoners, including many who have had their DNA taken by police.
14. Our report provides an illustration of what happens to DNA when it is taken by police from an individual, through to its inclusion on the National DNA Database. As part of our review we examined this whole process in detail, focusing on the impact on individuals and on specific groups, on their perceptions, fears and concerns.

⁸ Howes, Eileen; Finella, Giorgio (October 2003). "2001 Census: Ethnic groups in London and other districts". DMAG Briefing (Greater London Authority Data Management and Analysis Group)

⁹ The Supreme Court has held that the guidelines regulating the retention of fingerprints and DNA samples on the national police database are unlawful. (*GC and C v Commissioner of Police of the Metropolis* [2011] UKSC 21, 18 May 2011.)

¹⁰ Report on an inspection visit to police custody suites in Southwark Basic Command Unit, HM Inspectorate of Prisons and HM Inspectorate of Constabulary. Available at http://www.hmic.gov.uk/SiteCollectionDocuments/Metropolitan/CUS_MPS_20080331.pdf

We make specific recommendations for the MPS on how to address these issues.

15. We look at the governance of the National DNA Database and how this might operate more effectively to focus on key issues and reassure Londoners and the wider public.
16. We also examine the Protection of Freedoms Bill, which we broadly support, which contains provisions to limit the current indefinite retention of DNA samples and profiles on the Database. We look at how this Bill addresses the concerns of the MPS, the public and civil liberty groups. Appendix 9 provides a simplified chart of the provisions under current legislation and appendix 11 provides a chart of the provisions under the Protection of Freedoms Bill.

What we did and how

17. Our review has included significant engagement with the public, community and civil liberty groups, as well as the MPS, forensic practitioners and national policing organisations through a public meeting, online survey and panel interviews. We also spoke to government groups and advisors including the Forensic Science Regulator and the Chair of the National DNA Ethics Group.
18. We have carried out visits across London and elsewhere, allowing us to physically see every part of the process in relation to DNA. We followed the life of a DNA sample as it made its journey from a custody suite in Charing Cross, to a laboratory in south west London for processing and finally to the Database custodians. Our methodology is set out at Appendix 1.

What we found

19. Public discussions with individuals, community and civil liberty groups – a crucial element of the Panel's work - revealed that there is uncertainty on when and why DNA is taken by the police, how it is used and who else would be able to access this type of personal information.
20. These discussions highlighted that the lack of clear and simple information on this matter creates a general confusion amongst the public, which is further fuelled by negative and, on occasions, inaccurate media coverage.
21. We have also heard first hand experiences about the impact of having DNA taken by the police including particular concerns about overrepresentation of ethnic minority groups on the DNA Database.

22. Some members of the public also raised concerns about the process for applying to have their DNA removed from the DNA Database, including the time taken for it to be deleted after wrongful and/or unlawful arrest.
23. Ultimately, and importantly, all of this has led to public concern about the ability of the police, including the MPS and government to manage the taking, keeping and use of DNA and to keep it secure.
24. It was reassuring to the Panel that there are a number of safeguards in place including only a very limited group of people having access to the DNA Database itself and all activity by this group in relation to the DNA Database is strictly monitored through a full audit trail.
25. With respect to the future introduction of legislation regarding the retention of DNA samples and profiles, the MPS expressed concern that this will impede their ability to solve crime and will expose the public to 'unnecessary' risk. This is a view shared by those supporting victims of sexual crimes such as rape, where DNA evidence is vital.
26. Understandably, the police are also concerned about the cost of implementing new legislation, of destroying historic samples and any additional costs of taking, profiling and deleting DNA.

Our Recommendations

27. We make a number of recommendations for the MPS which are designed to ensure the MPS deliver clear, accessible information and reassurance for those who are having their DNA taken and to reassure the wider public that robust and transparent systems are in place for the taking, retention and storage of DNA. We also make recommendations on the strengthening of MPS processes in relation to DNA in order to achieve consistency and the equality and diversity implications in relation to their use of DNA. We comment on how addressing issues in relation to communication, research and independence as well as an increased focus on ethical issues might enhance the governance structure and reassure and inform the public.

Acknowledgements

28. We would like to extend our thanks to the Director of Forensics in the MPS and Chair of the National DNA Strategy Board, Gary Pugh and to Inspector Stacey Dibbs for their ongoing support and professionalism throughout this process.
29. We would like to thank all members of the public as well as the civil liberty groups and other organisations who contributed their views and experiences to inform our review.

30. We are also very grateful to the following people for their support and assistance during our investigations:

- Alan Chalkley, MPS
- Elaine Eastham, MPS
- Kirsty Faulkner, National Policing Improvement Agency
- Commander Simon Foy, MPS
- Commander Alan Gibson, MPS
- Christopher Hughes, Chair of the National DNA Database Ethics Group
- Ian Johnston, LGC Forensics
- Keith Main, MPS
- Gail Rayner, LGC Forensics
- Andrew Rennison, The Forensic Science Regulator
- Martin Samuels, MPS
- Peter Todd, Her Majesty's Inspector of Constabulary
- Ric Treble, LGC Forensics
- Inspector Keith Watts, MPS
- Emma Westacot, LGC Forensics

Recommendations

Recommendation 1:

[section 3.3 of the report]

People who have their DNA taken should be provided with the following information in writing, at the point when their DNA is taken:

- a) Why their DNA has been taken and what this means for them¹¹:
 - for those arrested for a recordable offence
 - for those examined under Schedule 7 of the Terrorism Act 2000¹²
 - for those who volunteer to provide a DNA sample
- b) The circumstances in which DNA is retained and for how long (both the sample and the profile)
- c) Where their DNA samples will be stored.
- d) How and in what circumstances an individual can apply to have DNA removed from the Database including clear guidelines on the framework for decision making.
- e) Who has access to their DNA record and the safeguards in place to protect this information.
- f) Who has knowledge that their DNA has been taken.
- g) Authoritative sources of further information (e.g. MPS / NPIA website).

Recommendation 2:

[section 3.4 of the report]

The MPS should demonstrate through their community engagement work, how they will raise understanding of, and public confidence in, the use of DNA in policing.

Recommendation 3:

[section 3.6.3 of the report]

Where the police take an individual in need of immediate care or control to a police custody suite as a place of safety as set out under section 136 of the Mental Health Act 1983 (as opposed to the individual being arrested for a recordable offence), the MPS should ensure that their DNA will not be taken.

¹¹ The implications of a DNA sample being taken from an individual in each of the three circumstances are discussed in Chapter 1.

¹² Schedule 7 of the Terrorism Act is the principal legal power police officers working at ports use to protect the country from terrorism. Schedule 7 provides powers to stop, question, search and if necessary, detain people without suspicion. There is a legal obligation placed on the person to co-operate with these powers.

Recommendation 4:*[section 3.6.5 of the report]*

The MPS should undertake a full Equality Impact Assessment (EIA) on the use of DNA within the MPS to address the impact of the use of DNA and the DNA Database on communities within London. This should seek to identify any disproportionality and include details of specific actions the MPS will take to address issues identified. It should be reviewed on a regular basis.

Recommendation 5:*[section 3.6 of the report]*

In relation to the management of DNA within MPS custody suites, the MPS should:

- a) Agree a clear process outlining how and when DNA samples are to be taken, processed and retained within custody.
- b) Train all officers and staff responsible for taking a DNA sample to ensure the procedure is undertaken correctly.
- c) Develop an agreed chart detailing each step of the process which should be prominently displayed in every MPS custody suite (accessible to both MPS personnel and arrestees). This chart should be dated and subject to regular review.
- d) Ensure that this agreed procedure is strictly adhered to across all MPS custody suites.
- e) Ensure that any deficiencies identified through the HMIC/HMIP custody suite inspections in relation to the management of DNA are addressed.

Recommendation 6:*[section 3.6 of the report]*

For all suspects arrested following a match on the DNA database between their DNA profile and an unsolved crime stain, it is MPS practice to take a confirmatory DNA sample from the suspect on their arrest. This is resource intensive and not standard practice across all forces. Therefore the MPS should provide a rationale for this including the costs for undertaking this practice.

Recommendation 7:*[section 4.4 of the report]*

The MPS should put in place procedures to ensure the removal of personal and demographic details prior to sending DNA samples to the forensic service providers.

Recommendation 8:

[section 4.5 of the report]

In relation to volunteer samples taken for elimination purposes, the MPS should ensure forensic service providers are informed when the criminal justice process has been concluded to ensure the DNA sample and corresponding DNA profile are no longer required and can be destroyed.

Recommendation 9:

[section 6.4 of the report]

The MPS should specify how MPS budgets will be impacted by the provisions within the Protection of Freedoms Bill. This should detail immediate and ongoing cost obligations.

Glossary

ACPO	Association of Chief Police Officers
ACRO	Association of Chief Police Officers Criminal Records Office
Ancestral testing	One of three DNA tests that examine ancestral roots. It includes the most common test of ancestral origins which links an individual with studied populations and anthropological groups in various geographical areas. There are also maternal lineage test and paternal lineage test
APA	Association of Police Authorities
European Convention on Human Rights	A convention signed by all members of the Council of Europe covering the rights of all its citizens. Article 8 of the convention is The Right to Respect for a Private Life (this is a Qualified right).
CPS	Crown Prosecution Service
Crime and Security Act 2010	In response to the European Court of Human Rights judgment in the case of S and Marper v United Kingdom [2008] ECHR 1581, the Act sets out a statutory framework for the retention and destruction of biometric material, including DNA samples, DNA profiles and fingerprints, that has been taken from an individual as part of the investigation of a recordable offence.
Crime scene sample	DNA material obtained from a crime scene (Also known as a crime stain).
Crime scene profile	The DNA profile obtained from the crime scene sample .
Custody Directorate	The Custody Directorate is responsible for the strategic management of custody capacity within the MPS.
Data Controller	A person who determines the purposes for which, and the manner in which, personal information is to be processed. This may be an individual or an organisation and the processing may be carried out jointly or in common with other persons.

DNA	<p>Deoxyribonucleic acid, generally abbreviated as DNA, is a complex molecule found in virtually every cell of the human body and in all living organisms.</p> <p>DNA carries the genetic instructions in the form of a code, used for the development and function of both cells and the organism as a whole and is the mechanism whereby this genetic information is passed from one generation to the next. The vast majority of human DNA is exactly the same between individuals but small variations in the code are responsible for different physical characteristics such as height, eye colour, skin tone and hair colour etc. Half our DNA is inherited from our mother and half from our father.</p> <p>Non-identical siblings will inherit different combinations of DNA from the same parents and are therefore similar but different. Except for identical siblings, each person's DNA is unique.¹³</p>
DNA profile	A numerical representation following analysis of a DNA sample (for further information, please see the glossary entry for SGM Plus).
DNA sample	A physical sample of an individual's DNA.
EIA	Equality Impact Assessment
Elimination sample	Volunteer sample taken from known parties who have come into contact with the crime scene.
Evidential sample	A DNA sample taken from a person under PACE
Enhanced CRB check	Checks showing current and spent convictions, cautions, reprimands and warnings held on the Police National Computer and any relevant and proportionate information held by the local police forces.
ECHR	European Court of Human Rights
EHRC	Equality and Human Rights Commission

¹³ Definition taken from the NPIA website: <http://www.npia.police.uk/en/13340.htm>

Ethnic Appearance codes	<p>The ethnic appearance codes (previously known as Identity Codes (IC)) are used for ethnicity recording purposes by the police. An assessment of visual appearance is made by the police officer according to 6+1 categories. The categories are:</p> <ul style="list-style-type: none"> • Arabic or North African; • Asian; • Black; • Chinese, Japanese or other SE Asian; • White north European; • White south European <p>The '+1' refers to 'Unknown', meaning that no ethnic appearance was recorded by the officer taking the sample.</p> <p>(See also self defined ethnicity (SDE))</p>
Exceptional case	<p>Procedure outlined by ACPO which details how a person who has their DNA taken by police and stored on the National DNA Database might apply to a Chief Officer for destruction of this material.</p>
Familial searching	<p>A process used to attempt to identify a close blood relative (typically a parent, child, or sibling) of a perpetrator of a crime when the DNA profile of the specific perpetrator is not identified in a routine search of the National DNA data base.</p>
Forensic Science Regulator	<p>Independently ensures that quality standards apply across all forensic science services to the Criminal Justice System (CJS).</p>
FOSIS	<p>Federation of Student Islamic Societies</p>
HMIC	<p>Her Majesty's Inspector(ate) of Constabulary</p>
HMIP	<p>Her Majesty's Inspector(ate) of Prisons.</p>
Human Genetics Commission	<p>Government advisory body on new developments in human genetics and how they impact on individual lives. The Commission focuses on the social, ethical and legal issues and promoting and responding to public debate.</p>

Information Commissioner's Office	Independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.
Match Report	A match report is a standard report issued from the NDNAD following a speculative search. It identifies any profiles that have been found to be consistent with one another.
MetBPA	Metropolitan Black Police Association
NDNAD	The National DNA Database. The database administered by NPIA which contains DNA profiles taken by police.
NDNAD Strategy Board	Provides governance and oversight of the operation of the NDNAD.
NDNAD Ethics Group	An advisory Public Body, established to provide independent advice on ethical issues to Home Office Ministers and the National DNA Strategy Board.
NPIA	National Policing Improvement Agency. NPIA is a non-departmental public body established to support police by providing expertise in such areas as information technology, information sharing, and recruitment. NPIA is the custodian of the National DNA Database and has responsibility for the delivery of National DNA Database services and a key role in maintaining and ensuring the integrity of the data entered and the use of the data in the investigation of crime.
NPIA NDNAD Delivery Unit	Responsible for the strategic management of the Strategy Board and on behalf of ACPO. They ensure operation within agreed standards, accredit all the scientific laboratories that analyse DNA samples and oversee the contract for operation and maintenance of the NDNAD
Operation Emerald	Operation Emerald works in partnership with all London's Criminal Justice system agencies and is responsible within the MPS for ensuring the ethical, efficient and effective delivery of the Criminal Justice Service in London.
PACE	Police and Criminal Evidence Act 1984. Sections 63 and 63A of this Act and Code D to the Act allow a police officer or designated member of police staff to take a DNA sample (non-intimate sample) from a person detained at a police station

after being arrested for a recordable offence. In these circumstances a sample may be taken with or without the persons consent.

PNC	Police National Computer
Protection of Freedoms Bill	Bill presented to Parliament on 11 February 2011. It includes provisions for the destruction, retention, use and other regulation of certain evidential material.
Recordable Offence	A recordable offence includes convictions for, and cautions, reprimands and warnings given in respect of any offence punishable with imprisonment and other offences from a scheduled list defined in the National Police Records (Recordable Offences) Regulations 2000 and subsequent amendments.
Schedule 7	Section 53 of the Terrorism Act 2000 brought into effect Schedule 7 to the Terrorism Act. This Schedule provides a comprehensive control to be established under which anyone entering or leaving Great Britain or Northern Ireland or whose presence at any place in Great Britain or Northern Ireland (whether within or outside Great Britain or Northern Ireland) may be examined.
Self Defined Ethnicity	<p>Self Defined Ethnicity (SDE) codes are a set of codes used by criminal justice agencies in the United Kingdom to classify an individual's ethnicity according to that person's self-definition.</p> <p>The codes are also called "16 + 1" codes, as there are 16 of them, plus one code (NS) for "Not Stated".</p> <p>The code system originated from the United Kingdom Census 2001.</p> <p>(See also Ethnic Appearance Codes)</p>
SGM Plus	The current system of DNA profiling used in the UK, known as SGM Plus examines 10 areas of DNA plus a gender test and produces a numeric DNA 'profile' that can be loaded electronically onto the NDNAD. This contains two numerical representations of the DNA at each area examined, one inherited from the mother and the other from the father. Although each person's DNA is unique (apart from identical

siblings) DNA profiling does not examine all variations between individuals and is therefore not unique to an individual. It does, however, examine those areas of the DNA that discriminate widely between individuals and the chance of two unrelated individuals having full matching SGM Plus profiles is less than one in a 1,000 million.

Speculative search

The search of a DNA profile on the National DNA Database for the purpose of identifying a possible match with DNA from crime scenes.

**S & Marper v
The United Kingdom**

This case, decided by the European Court of Human Rights, held that holding DNA samples of individuals who are arrested but later acquitted or have the charges against them dropped, is a violation of the right to privacy under the European Convention on Human Rights.

TACT 2000

Terrorism Act 2000

Volunteer DNA samples

A DNA sample that is provided by a volunteer. All volunteers must provide written consent to enable the police to obtain a DNA sample. Further separate consent must be given by the volunteer to enable the DNA profile to be loaded and retained on the DNA Database.

There are several instances where a volunteer may provide a DNA sample to the police:

a) For elimination purposes, e.g. to ensure that non-suspects are eliminated from the investigation. Non-suspects can include victims of crime or those that provide a volunteer sample as part of a mass DNA screening in the investigation of serious crime. These are known as volunteer elimination samples.

Volunteer elimination samples are only compared to crime scene samples arising from the particular investigation and are not routinely loaded onto the DNA Database.

**Volunteer DNA samples
(continued)**

b) In very rare circumstances a volunteer sample may be provided for other purposes than those described above. For example, the police may ask offenders who were convicted of rapes and serious sex offences before the creation of the national DNA database in 1995 to volunteer to provide a DNA sample in order to eliminate them from investigations, including cold case reviews.

Volunteer samples may also be obtained from those who believe they are at risk of being victims of 'Honour-Based Violence' so that they might be identified as the victims of future offences.

For all types of volunteer, a separate volunteer DNA sampling kit is used to obtain the DNA sample. However, different record forms are used to denote the different types of volunteer as described above to ensure they are processed separately to PACE DNA samples which are loaded onto the DNA Database.

Chapter 1: Why and when a DNA sample is taken by the police

31. DNA is used by the police in order to assist with their enquiries and to bring criminal cases to court. It helps the police to link suspects to crime scenes by identifying matches between a suspect's DNA profile (obtained from the DNA sample taken by the police) and DNA left at the scene of unsolved crimes. It can also be used to eliminate suspects from enquiries.
32. The police are able to obtain an individual's DNA sample for three reasons:
 1. on arrest for a recordable offence;
 2. as part of an examination under Schedule 7 to the Terrorism Act 2000;
 3. from a volunteer
33. The vast majority of DNA profiles on the DNA Database are obtained as a result of the individual being arrested for a recordable offence. This is governed by the Police and Criminal Evidence Act 1984.

1.1 Arrest for a recordable offence

34. The law provides the police with powers to take DNA from an individual they have arrested for a recordable offence, for the purpose of loading onto the DNA Database.¹⁴ A recordable offence includes convictions for, and cautions, reprimands and warnings given in respect of any offence punishable with imprisonment and other offences from a scheduled list defined in the National Police Records (Recordable Offences) Regulations 2000 and subsequent amendments. This list includes a very wide range of offences including minor offences such as drunkenness in a public place and begging. The scheduled list is provided in Appendix 2.

1.2 Schedule 7 to the Terrorism Act 2000

35. The police situated at the UK's ports and borders (i.e. at London's airports, ports and international railway stations) have the power to obtain DNA from an individual who is examined under Schedule 7 to the Terrorism Act 2000. Schedule 7 is the primary legal power used by officers working at ports and borders to protect the country from terrorism. It provides powers to stop, question, search and if necessary, detain people without suspicion.

¹⁴ The Police and Criminal Evidence Act 1984 (PACE) allows for the retention of DNA and fingerprints from an individual convicted of an offence. The Criminal Justice and Police Act 2001 amended PACE to allow for the retention of fingerprints and DNA even if the individual isn't charged for an offence.

In 2009/10 a total of 85,557 people were stopped at ports in Great Britain under this power. 82,870 were held for under an hour and a further 2,687 for over an hour.¹⁵

36. Schedule 8 to the Terrorism Act 2000 allows for the taking of DNA and fingerprints as part of a Schedule 7 examination. There is a legal obligation placed on the person to co-operate with the exercise of these powers.
37. The DNA obtained from these examinations is loaded onto the DNA Database. It is also retained on a separate Counter Terrorism (CT) DNA database. The CT DNA database contains DNA obtained through searches, crime scenes and arrests in relation to counter terrorism.
38. Whilst there is no published data available on the proportion of DNA profiles on the DNA Database that were obtained from a Schedule 7 examination, it is revealed that nationally, from the introduction of the Terrorism Act 2000 up to 31 December 2009, fingerprints and DNA samples have been taken under Schedule 7 on approximately 1,200 occasions.¹⁶ The proportion of DNA samples taken is very small in comparison to the overall numbers of individuals stopped under Schedule 7.


1.3 Volunteer samples

39. Individuals may volunteer to provide their DNA to the police in order to eliminate themselves from a criminal investigation. These are known as volunteer elimination samples.
40. There are a number of instances when this may occur. For example, as part of the police investigation into a serious crime, the police will request volunteer elimination samples of anyone who matches the suspect's description and lives within the locality where the serious crime took place.¹⁷ For example, as part of the investigation into the serial rapist Delroy Grant, the MPS instigated one of the largest voluntary DNA screenings in 1998 which was aimed at black males residing in specific areas within south London.
41. Volunteer elimination samples can also be taken from victims of crimes. For example, a person who has been burgled may be asked to provide their DNA sample in order to ensure it is not included as part of the investigation.

¹⁵ Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches Great Britain 2009/10, Home Office October 2010

¹⁶ Lords Hansard Debates [online], (22nd February 2010 written answers). Available at: <http://services.parliament.uk/hansard/Lords/ByDate/20100222/writtenanswers/part012.html>

¹⁷ An example is provided within the following online newspaper article: <http://www.dailymail.co.uk/news/article-1191564/Police-launch-mass-DNA-screening-catch-rapist-killer-womans-body-park.html>

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42. In certain rare circumstances, it may be appropriate to obtain a DNA sample from a volunteer and the resulting profile to be compared to DNA profiles held by the police. Examples of when such a sample is taken include a registered sex offender who may have been arrested and convicted prior to the operation of the DNA Database or samples taken from vulnerable persons, such as potential victims of honour based violence.

 43. Both types of volunteer DNA samples can only be taken from an individual with their written consent. DNA profiles resulting from these samples are not loaded onto the DNA Database unless the volunteer provides separate written consent for this to happen. Once consent is given by the volunteer for their DNA profile to go onto the DNA Database, it cannot be withdrawn. However, under the Protection of Freedoms Bill, consent provided by a volunteer to retain DNA on the DNA Database can be withdrawn at any time. Volunteer profiles are only checked against the relevant crime scene profiles for a match or for the purposes of eliminating their DNA from the forensic element of the investigation.

Chapter 2: the DNA journey from the MPS to the National DNA Database

44. In order to address the concerns the public have with regards to DNA and policing, it is useful to provide a simplified summary of the journey of an individual's DNA from the police station through to its presence on the National DNA Database.

2.1 Police Custody

45. On arrest, the individual is taken into police custody. The arresting officers provide the facts of the arrest to the custody sergeant. The custody sergeant then makes a decision whether or not to authorise detention.

46. As part of the arrest process, checks are made on the Police National Computer (PNC) to check if the individual has been arrested previously and if, as part of that arrest, DNA samples were taken. If there is no record of the individual or there is already a record for that individual but no record that their DNA was taken, DNA samples are obtained at this point.

47. However, if the individual is arrested as a result of their DNA matching an unsolved crime stain, the MPS takes a confirmatory DNA sample from the individual despite their DNA already being on the DNA Database. This practice is routine within the MPS but is not general practice across the rest of the police service.¹⁸

48. DNA samples are usually obtained using cotton swabs which are wiped on the inside of the mouth by the arrestee themselves.¹⁹ Two swabs of DNA are taken, and each is placed in separate sample containers which are bar-coded and then placed in a transparent bag with a tamperproof seal (see photo below). The bag carries the same bar code as the two sample containers. This barcode is scanned to generate the PACE DNA form which also includes the following details taken from the arrestee: name, date of birth, gender, force area, and sample details such as date the sample was taken, the officer who took the sample and the police station code. Ethnicity information provided by the police who arrested the individual used to be recorded on the PACE DNA form, but this has now been discontinued.

¹⁸ Crown Prosecution Service, 2007. DNA Evidence: SCS Circular 3 of 2007 6 March 2007 [online]. Available at: http://www.cps.gov.uk/legal/s_to_u/scientific_evidence/dna_evidence/

¹⁹ If the arrestee refuses to provide a sample using a mouth swab then DNA can be obtained 'by force' (the law allows this for those who have been arrested for a recordable offence. This usually means pulling out strands of hair (the suspect is asked to indicate where on his or her body they wish the hairs to be taken). The hair is then submitted as the sample. Obtaining a sample through both mouth swabs and hair strands (apart from pubic hair) are classed as non intimate samples within the Police and Criminal Evidence Act 1984.



The contents of a police DNA sampling kit

49. For any DNA sample obtained voluntarily, the police must obtain signed consent from this individual to show that DNA was volunteered. Volunteer samples are collected using dedicated volunteer sample kits. These samples are clearly distinguished from samples taken for an individual who has been arrested for a recordable offence.
50. For DNA samples obtained as part of a Schedule 7 examination, the same process as obtaining a PACE DNA sample is followed, within the police examination room at the port of entry.

2.2 Information provided to an arrestee within police custody

51. As part of our investigations, we visited a custody suite in central London and questioned the custody sergeant on the provision of information on DNA to an arrestee when they were being processed. We were shown a brief statement that is read out to the arrestee explaining that DNA, fingerprints and photographs are taken and speculatively searched against relevant databases for matches against unsolved crime stains / crime scene fingerprints. The statement also explains that DNA and fingerprints will be retained on the relevant databases for the prevention and detection of crime and offences.
52. The custody sergeant explained that all arrestees are also given the form 3053 - 'Notice of Rights and Entitlements' when they are processed and kept in police custody. Form 3053 is basic and it refers to rights in custody such as getting a solicitor to help you and how you should be cared for.

Notably this form does not have any explicit information regarding the taking of DNA and what subsequently happens to it. A copy of this form is provided in Appendix 4.

53. The form makes reference to the Codes of Practice. This is a book which explains what the police can and cannot do while an individual is detained in a police station. The Codes of Practice do contain information about the rules governing police powers to obtain DNA. Police stated that this book is on hand and available for detainees' use.

2.3 MPS DNA Central Clearing House

54. Given the scale of DNA collection across London's 32 boroughs, the MPS sends all of its DNA samples taken from an individual, to a central clearing house. Here, quality checks are undertaken to identify and remove faulty samples. These could be due to the bag not being sealed properly, only one swab being taken, barcodes not matching or it was a duplicate. Those that are found to be duplicates are destroyed.
55. Once checks have been carried out, the batches of samples are then dispatched to the Forensic Service Providers (FSPs). These are the private sector laboratories that extract the DNA profile from the sample on behalf of the police.

2.4 Forensic Service Providers

56. In the UK there are seven FSPs that have laboratories authorised to load DNA profiles onto the DNA Database. This authorisation only occurs if the company is accredited by the United Kingdom Accreditation Service.²⁰ The MPS uses the following forensic service providers for processing DNA samples obtained from an individual rather than a crime stain: LGC Forensics, Orchid Cellmark and the Forensic Science Service (note that the last is due to close down by 2012).
57. The FSPs undertake their own quality checks on arrival to ensure that the seals are still intact and that a swab is present within each of the two tubes. The barcodes are then scanned for entry onto their own system which track and provide an audit trail of the DNA sample's journey, providing details of who has accessed it and when.
58. Although two samples are taken, only one sample is usually required to obtain the DNA profile. The other sample is stored in a freezer by the FSP.

²⁰ The United Kingdom Accreditation Service is the sole national accreditation body recognised by government to assess, against internationally agreed standards, organisations that provide certification, testing, inspection and calibration services.

59. The FSPs undertake scientific analysis of the DNA sample in order to produce the DNA profile. DNA profiling targets the areas of DNA that are known to differ widely between individuals.

60. The current system of DNA profiling used in the UK is known as Second Generation Multiplex Plus (SGM Plus). It examines ten sequence areas of DNA plus a gender test and produces a numeric DNA 'profile' (a list of numbers) which can be loaded electronically onto the DNA Database. This contains two numerical representations of the DNA at each area examined: one inherited from the mother and the other from the father. Below is an example illustrating what a DNA profile may look like:

15,18; 6,9; 11,13; 22,22; 31,32.2; 14,17; 17,20; 11,12; 13,16.3; 15,16; XY

61. The probability of a random match between unrelated individuals using SGM Plus is on average less than 1 in 1 billion.²¹ The risk of a chance match will increase if the crime scene profile is a partial profile. A comparison of partial profiles from crime scene samples with full SGM Plus profiles from individuals on the DNA Database is therefore more likely to result in matches being found relating to more than one individual. Crown Prosecution Service (CPS) policy stipulates that the evidential significance of a match between a suspect and a crime scene sample must always be considered in conjunction with sufficient supporting evidence.

62. As technology advances, it is likely that the UK will shortly move onto a more advanced system of profiling which will examine up to 15 sequence areas of DNA. This will ensure an even greater degree of accuracy and will bring the UK up to a similar standard with other European countries such as Germany. Greater discriminatory powers through these advances will enhance crime solving capability. From a civil liberties point of view, this is important as the possibility of a false match will reduce even further; this is especially important for matches to a partial profile obtained from a crime scene stain where the likelihood of more than one match is higher.

63. Once the DNA profile is generated, this is submitted by the FSP to the National DNA Database which is managed by the National Police Improvement Agency (NPIA). The NPIA is the sole custodian of the Database; it does not own the data itself which is the property of the police force which submitted the original sample. The DNA samples remain at the FSP where they are stored on behalf of the police. A number of safeguards are in place to ensure the security of the DNA profiles and samples. These are discussed in Chapter 7, which covers governance and security.

²¹ Royal Society of Chemistry (2007). Fighting Crime with DNA [online]. Available at: <http://www.rsc.org/ScienceAndTechnology/Policy/Bulletins/Issue6/FightingcrimewithDNA.asp>

2.5 National DNA Database

64. The DNA Database is held electronically by the National Police Improvement Agency (NPIA), with strict controls regarding who can access this information. Police forces and their officers and staff do not have access to the Database; they only receive reports when a match has occurred (match reports).
65. The only DNA information from a person that is held on the DNA Database is the string of numbers that make up the DNA profile along with the result of the male/female gender test.
66. Alongside the DNA information, additional information about the individual is also recorded: name, date of birth and the gender of the person, as recorded when the sample was taken. As mentioned in paragraph 48, ethnic appearance was previously included in the form completed in custody and submitted with the samples. Whilst the ethnic appearance box has been removed, all profiles which were entered onto the DNA Database prior to this being removed will contain this information if this has previously been recorded on the old PACE DNA form.
67. Further information is held about the police force who took the sample, unique reference numbers which link a sample to the PNC and laboratory processing details.
68. Once loaded onto the Database, the DNA profile is automatically cross checked against all unsolved crime stains to see if there is a match. This cross checking is undertaken for all crime stains added to the Database. If a match is found for a crime stain submitted by the MPS, a match report is created and sent by NPIA to the MPS who can then access the details of the matched individual which are held on the PNC. The MPS can then follow this up as part of their criminal investigation.
69. DNA profiles obtained from a volunteer are not loaded onto the DNA Database. These profiles are only cross checked against the unsolved crime stain arising from that particular police investigation. The procedure is then that the volunteer profile is deleted and the sample destroyed once the investigation is concluded. A volunteer must provide separate consent for their DNA profile to be loaded onto the DNA Database. Once consent is given by the volunteer for their DNA profile to go onto the DNA Database, it cannot be withdrawn.

2.6 Retention on the DNA Database

70. At the moment, all DNA profiles are retained indefinitely regardless of conviction or non conviction.


71. The Protection of Freedoms Bill contains provisions that will change the retention periods depending on the type of offence and whether the offence was committed by an adult or a minor.

2.7 Removal from the Database

profiles and samples to be retained indefinitely, the only way for an individual to get their profile removed from the DNA Database is to apply to the police force where the original offence was committed through the exceptional case procedure. For the MPS, removal under this procedure includes the removal of the DNA profile from the DNA Database, the destruction of the DNA sample as well as the deletion of fingerprints and the PNC record.

73. As the name suggests, removal only occurs in exceptional circumstances and has to be approved by a chief officer who is the 'data controller' for the force. Guidelines on retention issued by the Association of Chief Police Officers recommend that when such a request is made, applicants should be sent a letter informing them that the DNA sample and profile, PNC record and fingerprints are lawfully held.²² Their request for deletion / destruction is refused unless the applicant believes the application should be regarded as exceptional. The applicant is then invited to state the grounds upon which they believe their case to be exceptional.
74. Applications are considered against set criteria and an individual's record (DNA, fingerprints, PNC record and photographs) will only be removed in the following instances:
- a recordable offence no longer exists or;
 - any part of the process from arrest through to detention was found to be unlawful.
75. Therefore those wishing to apply must write to the force concerned detailing why they believe their request to be exceptional.
76. It is important to note that under current legislation and guidelines it is immaterial whether a person is absolved of any involvement in a recordable offence, or acquitted at court. Providing a recordable offence occurred and the whole process was correctly conducted, records may be retained.

²² DNA and Fingerprint Retention Project. (2006) Retention records for nominals on the Police National Computer. ACPO. Available at:
<http://www.acpo.police.uk/documents/information/2006/200603INFPNC01.pdf>



The final decision always rests with a chief officer for the owning force, who has ultimate authority to exercise her/his, discretion on removal or retention.

77. The Protection of Freedoms Bill proposes that the DNA profiles of those arrested but not convicted for minor offences will not be added to the DNA Database, reducing the overall number of DNA profiles stored. Other arrestees, depending on the severity of the offence may have their DNA profile retained on the DNA Database for three years. Thus the number of requests for removal under the exceptional case procedure is anticipated to fall, as in the majority of cases, an individual's DNA profile will either be removed from the DNA Database after a specified period of time or never be added to the DNA Database in the first place. Furthermore as part of the Bill provisions, new guidelines are being prepared to ensure consistent application of the exceptional case procedure (or its equivalent). This Bill is discussed in greater detail in Chapter 5.

Chapter 3: The public experience of DNA and policing

78. A core part of our investigation was to understand the London experience of the use of DNA in policing. Through our public meeting and online survey as well as written submissions we were able to engage with over 650 members of the public who shared their views and experiences with us.
79. A number of issues emerged in relation to particular stages of the DNA journey detailed above and are covered within this chapter under the following headings:
- 3.1 Why DNA is taken
 - 3.2 When and how DNA is taken
 - 3.3 Information provided by the police at the point DNA is taken
 - 3.4 Information provided to the general public
 - 3.5 Being on the DNA Database: impact on the individual
 - 3.6 Being on the DNA Database: impact on particular groups
 - 3.7 Removal from the DNA Database (the exceptional case procedure)
80. This section will outline the key public concerns with each stage of the journey and our recommendations to the MPS in respect of their policy and process regarding the use of DNA.

3.1 Why DNA is taken

81. Many people we spoke to or who responded to our survey felt that the taking of DNA on arrest despite not being convicted of a crime was a violation of their civil liberties. This goes against the fundamental right that one is considered innocent until proven guilty. The following issues were raised:

- 84% (589) of respondents to our survey (615 people responded to our survey in total) thought that the DNA profile of an individual **not** convicted of a crime should not be retained on the DNA Database.
- A concern about the rate at which the DNA profiles of innocent people i.e. those who were not convicted of a crime, were being loaded onto a criminal database.
- The high numbers of innocent people whose profile is on the DNA Database is disproportionate to the low numbers of convictions secured following a match on the DNA Database to an unsolved crime stain. Some felt that this did not justify the taking of DNA at the point of arrest when a conviction / non conviction had not been determined.

82. The Chair of the Metropolitan Black Police Association gave the view that the taking of DNA was an invasive procedure that made the individual feel like a criminal:

'It is extremely personal. It is extremely invasive. It is not like taking a fingerprint. These [comments] are from people that have actually gone through this experience when they have come and spoken to me. The fact is that they feel extremely violated that they have had to go through an extremely intrusive process and prove their innocence'

(Quote from the Chair of the Metropolitan Black Police Association who attended the Public Meeting on 1st July 2010)

83. However, we also heard an alternative view that in the cases of serious crimes such as rape, the retention of all DNA profiles that are taken on arrest provide a valuable tool to the police in their investigations:

My concern was that there are a huge number of people who report rape to the police whose cases never get as far as going to court, and a lot of the time the Crown Prosecution Service would argue that it is not that they cannot prove that the person is innocent, but they cannot necessarily prove that the person is guilty. So you have somebody's DNA on the database, but you cannot say that they are innocent because they have not necessarily been proven innocent. If you take those people off the database, then the fact that they are potentially guilty then disappears.

The number of people who are accused of rape is enormous, but you cannot deny the police the opportunity to be able to use that evidence in future cases.

I think it is really hard to prove rape against somebody; it is about an issue of consent and just because you cannot build the evidence it does not mean to say that the person did not do it.

(Quote from a member of the public who attended the Public Meeting on 1st July 2010)

84. We also heard from members of the public who felt that if someone had 'nothing to hide' then there should be no issue with their DNA profile being on the database and will allow the police to eliminate them from an investigation much quicker. Therefore, the more innocent people who are eliminated from an investigation as a result of their DNA, the more time police can spend of looking for the right suspect rather than chase false leads.
85. The Protection of Freedoms Bill, if enacted, will go some way to addressing these issues, and we discuss this in greater detail in Chapter 5.

3.2 When and how DNA is taken



Police custody

86. We heard from many members of the public about their experience of being arrested and, as part of this process, having their DNA samples taken, alongside fingerprints and photographs. Feedback included:

- The taking of their DNA as part of the arrest magnified the feeling they were viewed as criminals despite not being convicted of any crime.
- Regardless of the type of crime the individual has been arrested for, DNA is taken and retention is indefinite. Therefore the process of taking DNA does not discriminate between serious and less serious crimes.
- The overall arrest experience left some feeling anxious and distressed.

87. A member of the public told us about the experience of his son who had been wrongly arrested for a broken window at a house party he had attended:

'Our 15-year old totally innocent son had to have his photograph taken, his fingerprints taken, his DNA taken. The whole process took an hour, and I am not exaggerating, he was distressed, he was traumatised; I cannot tell you how upset he was. This is the sum total of his experience of the police. He is 15.'

The interview - I use the phrase loosely - lasted six minutes; end of, off you go. His DNA data, his fingerprints and his photos remain on file and, as I understand it, indefinitely.'

(Quote from a member of the public who attended the Public Meeting on 1st July 2010)

3.3 Information provided by the police at the point DNA is taken

88. A key concern we heard was the lack of information provided to detainees within police custody about the use of their DNA by the police.
89. For those who are arrested for a recordable offence or have their DNA taken as part of a Schedule 7 examination (please see section 1.2 for details), the Panel heard that there was little or no information provided to the individual about why DNA is being taken, what would happen to their sample and how long it would be held on the DNA Database. The majority of respondents to our survey who had been through the custody process (41 out of 54) said that the police did explain what would happen to their DNA. We visited a London police station and witnessed the arrest process within custody. We heard and saw the information that is given to the arrestee.
90. We spoke to an arrestee who was having his DNA taken and asked him if he knew what would happen to his DNA sample. He thought he had been told his DNA would be destroyed if he was innocent. The custody sergeant said that this information would not have been given. This exchange highlights the fact that the process of arrest can be disorientating and confusing and this may impact on the individual's understanding of what is being told to them.
91. Our survey also revealed that most respondents who had their DNA taken by the police said that it was not explained to them what would happen to their DNA as well as their fingerprints, photographs and PNC record.
92. We recognise that there are practical challenges regarding the provision of this information which must be managed alongside the pressures on custody officers and staff to undertake their duties efficiently. However, we believe that the MPS has a responsibility to ensure that there is basic clear information provided to all who have their DNA taken as a result of being arrested or examined under Schedule 7 to the Terrorism Act 2000.
93. It is positive to note that HMIC and HMIP in their joint inspection of 16 MPS custody suites found overall that the police were respectful of individuals' rights and that PACE legislation was being applied. This legislation was specifically designed to balance the powers of the police with the rights and freedoms of the general public.

94. However, the view of the Panel is that compliance with PACE is the minimum standard and that there is a need to go beyond legislative requirements to provide more suitable information in an appropriate format so that individuals are aware of the police processes relating to the use of their DNA and their rights.

Recommendation 1:

People who have their DNA taken should be provided with the following information in writing, at the point when their DNA is taken:

- a) Why their DNA has been taken and what this means for them:**
 - for those arrested for a recordable offence
 - for those examined under Schedule 7 to the Terrorism Act 2000
 - for those who volunteer to provide a DNA sample
- b) The circumstances in which DNA is retained and for how long (both the sample and the profile)**
- c) Where their DNA will be stored**
- d) How and in what circumstances an individual can apply to have DNA removed from the Database including clear guidelines on the framework for decision making**
- e) Who has access to their DNA record and the safeguards in place to protect this information**
- f) Who has knowledge that their DNA has been taken**
- g) Authoritative sources of further information (e.g. MPS / NPIA website)**

3.4 Information provided to the public

95. The public need reassurance that the police are transparent in the way they carry out their role and exercise their powers. Central to transparency is the provision of information as well as engagement with the public to address issues of concern. The absence of information from an authoritative source can lead to misinformation, myths and ultimately a lack of trust. This is especially important as DNA is personal, intimate data that is unique to each individual.

96. Our engagement with the public revealed a severe lack of clear and simple information to the public explaining how an individual's DNA is used by the police. The provision of public information on DNA and the DNA Database is primarily provided by NPIA²³ (this organisation is due to be phased out by 2012 and as yet arrangements for the DNA Database are unknown). However, the Panel heard about the negative impact this lack of information had on the public's confidence in the Metropolitan Police to treat people fairly.
97. It is the police who operate the gateway for DNA to be loaded onto the Database and it is the police who make the decision to remove someone's DNA and other records through the exceptional case procedure. Therefore, the public face of the DNA Database remains the police force, which for London is primarily the Metropolitan Police. This is an important point that highlights the responsibility on the MPS to provide information and public education to Londoners. Our investigations revealed that basic information on the procedures for obtaining, retaining and the use of DNA by the police was not made easily available by the MPS and what was available was not specifically aimed at members of the public. Whilst MPS policy governing the use of DNA is available on the MPS website²⁴, this is not aimed at the general public and does not specifically answer their concerns.
98. The MPS undertakes a significant amount of community engagement activity within its boroughs as well as at a corporate level. It should utilise these existing mechanisms proactively to increase public awareness regarding DNA as well as addressing specific community concerns. In respect of information provision, the Panel makes the following recommendation:

Recommendation 2:

The MPS should demonstrate through their community engagement work, how they will raise understanding of, and public confidence in, the use of DNA in policing.

3.5 *Being on the DNA Database: impact on the individual*

99. A number of people who were not convicted of a crime, but have their DNA profile retained on the Database gave us their views about the wide ranging impact this had on their life – on their mental wellbeing, their employment and their perception of and

²³ The National DNA Database, NPIA. [online] Available at: <http://www.npia.police.uk/en/8934.htm>

²⁴ Use of DNA within the Metropolitan Police Service Policy, 2005. [online] Available at: http://www.met.police.uk/foi/pdfs/policies/dna_policy.pdf

trust in the police. Over half of our survey respondents who had their DNA taken by the police (31 respondents out of 54) felt it had affected them personally.

100. One member of the public who attended our open meeting spoke about the profound impact this had his life:

'When I had my DNA taken, first of all there was a change in my personality, because it damaged my good name and my record. I am not a criminal and I have nothing to do with criminality...

...Once you have your DNA taken, how then do you live your life? Most of the time you live your life fearful, because you are afraid. You could be afraid of the police using it against you. Once they stop you, the first question they ask you is, "Have you been arrested before?" If you say, "Yes" then they could try to link you up to something that you do not even know about, trying to get you into trouble'

(Quote from a member of the public who attended the Public Meeting on 1st July 2010)

The quote illustrates one member of the public's lack of trust in the police and fear that the police can access his DNA and use it for corrupt purposes such as framing him for a crime he did not commit. It helps to highlight the need for public information regarding who has access to the DNA database (i.e. the police do not have access, they only receive match reports) and the security mechanisms in place to protect this data.

3.5.1 Criminal record checks

101. When an individual applies for a position or job, some employers and organisations require that individual to apply for a criminal record bureau (CRB) check. The CRB check searches an individual's details against criminal records and other sources, including the Police National Computer. The check may reveal convictions, cautions, reprimands and warnings. There are two types of checks depending on the position applied for:

- standard CRB check
- enhanced CRB check²⁵

²⁵ Enhanced checks are for positions involving greater contact with children or vulnerable adults and for certain additional professions (for example, judicial appointments). In general, the type of work will involve regularly caring for, supervising, training or being in sole charge of children or vulnerable people. Examples include working as a teacher, or Scout or Guide leader. Enhanced checks are also issued for certain statutory purposes such as gaming and lottery licences.

102. In addition to checking the Police National Computer, the enhanced CRB check also searches:

- information held by local police forces
- lists of people barred from working with children and vulnerable adults

103. As part of this process, the chief officer, acting as Data Controller for the police force, will use their discretion to provide information in relation to that individual that they judge to be relevant to the particular request. This may include information from police records about matters other than convictions.²⁶ Such non-conviction information is sometimes known as “soft intelligence”. It may include information about acquittals, or allegations that have never been the subject of the trial, or even about matters other than allegations of criminal conduct.

104. NO2ID, an organisation campaigning against the rapid growth of the ‘database state’, told the panel that the disclosure of DNA having been taken from an individual (as part of the ‘soft intelligence’ provided for an enhanced CRB) was perceived to be a bar to applying for jobs requiring this check. NO2ID argue that there are significant consequences for those applying for jobs working with children and vulnerable people despite not being convicted of a crime.

A member of the public who responded to our survey highlighted similar concerns:

It now affects the jobs I can take because the DNA and other personal information taken at time of arrest is stored on a criminal database and as such appears on CRB/ECRB checks. Anyone on the database has adverse inference drawn on them that they are a criminal.

(Free text answer provided by a respondent to our online survey, July/August 2010)

105. The Panel investigated this issue further as this contradicted the assurances provided by the MPS that the mere fact of being on the DNA Database in itself will not disadvantage an individual in any way. The MPS told the panel that for any employment check, the fact that DNA has been taken from an individual is not disclosed.

106. Furthermore, the panel were told by the MPS that it should not make any difference whether the taking of an individual’s DNA is disclosed, as it is the ‘soft intelligence’ which provides details regarding the individual on which an employer will use to inform their decision-making.

²⁶ For the MPS, this is the Head of the Strategic Risk Management and Specialist Crime Prevention Command.

107. However, the concerns we heard suggested that it is necessary for the police to provide further assurances and evidence that being on the DNA Database of itself will not prove disadvantageous. This should be included as part of the information we propose is provided to all individuals who have their DNA taken (see Recommendation 1).

3.6 *Being on the DNA Database: impact on particular groups*

108. The Panel also heard from a range of groups of people and communities across London.

109. An important and significant concern that has been highlighted by communities themselves, as well as organisations such as the Equality and Human Rights Commission and Liberty relates to the disproportionate numbers of some ethnic groups on the DNA Database who have not been convicted of a crime, in particular, young black men.

110. Exact figures and proportions of ethnic groups on the DNA Database are difficult to determine as the number of DNA profiles on the DNA Database does not equal the number of people on the database (some people are arrested more than once). Furthermore, the way a suspect's ethnicity is recorded (it is based on a visual assessment by the police officer) differs from census records (self defined ethnicity) which provide population breakdowns by ethnic group.

111. The Equality and Human Rights Commission (EHRC) have estimated using their own calculations and a range of national statistics that 30% of all black men living in Britain are on the DNA Database compared with a figure of 10% of all white men and 10% of all Asian men.²⁷ EHRC suggest that the stigma of over-representation for one racial group has unknown but possibly serious consequences.

112. The DNA Database can only reflect those who come into contact with the criminal justice system. However, we were told the current system of retaining all DNA profiles on the Database, including those who have not been convicted of a crime, given the perceived differences in treatment of particular ethnic groups,²⁸ appears to be having a serious impact on the relationship between the police and the affected communities.

²⁷ Bennetto, J., 2010. Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report? Equality and Human Rights Commission, London (p5)

²⁸ EHRC research has identified the disproportionate number of black and Asian people being stopped and searched by the police. Research from the Institute for Criminal Policy Research at King's College, London, found evidence of possible discrimination against ethnic minorities at some points in the criminal justice system including mixed race suspects were more likely to be sent to court than given a police disposal.

113. Our engagement with members of the public and civil liberties groups highlighted a number of concerns:

- The civil liberties organisation Liberty has spoken to numerous young black men and their families who felt stigmatised as a result of being on the DNA Database. In their view, whole communities are being criminalised because of their over-representation on the DNA Database despite not having been convicted of a crime.
- The disproportionate representation of black people on the DNA Database fuels perceptions that this group of people are more likely to commit crime.
- Forensic methods such as familial searching and ancestral testing (please see Glossary for details) are used by the police in very rare circumstances and only in the investigation of serious crime. However, EHRC suggest that the use of such methods fuel anxiety that the DNA Database can be misused for unethical research purposes such as trying to establish crimogenic genes in certain races.

The panel believes that the public should be given more guidance and information on how techniques such as familial searching are used, and the safeguards that are in place to guard against the misuse of data.

114. A number of community members expressed the view that such concerns are eroding confidence in the police and government and potentially undermining community cohesion.

115. The proposals in the Protection of Freedoms Bill will go some way to addressing the concerns regarding the retention of DNA profiles from those who are not convicted of a crime. However, having heard the strength of feeling from community and civil liberty groups regarding this issue, we remain concerned about MPS efforts to fully consider the equality and diversity implications of its policies and practices in relation to the use of DNA. This is especially important given the impact this is having on the confidence of Londoners in the police. We make a specific recommendation to the MPS on this issue on page 50.

3.6.1 Schedule 7 to the Terrorism Act 2000

116. Some community members expressed the view that the police use of powers under Schedule 7 to the Terrorism Act 2000 is having a negative impact on Muslim communities and Asian and African ethnic minority groups and may actually harm counter terrorism efforts. The significant use of this power is of note. Statistics provided by the Home Office show that 85,557 examinations were carried out in 2009/10 alone at ports in Great Britain. 2,687 lasted over one hour.²⁹

²⁹ Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches Great Britain 2009/10, Home Office October 2010

117. An ethnic breakdown of those examined under Schedule 7 for over an hour was released following a Freedom of Information request. For 2009/10:
- 45% were white;
 - 27% were Asian;
 - 19% were Chinese / Other;
 - 7% African / Caribbean;
 - 2% Mixed race.
118. Whilst the religion of those examined under Schedule 7 is not monitored, there are concerns that this power is disproportionately targeted at individuals based on ethnic profiling and assumptions of their religion or perceived religion. Ben Bowling, Professor of Criminology at Kings College has stated that the use of these powers ‘seem little more than arbitrary and discriminatory, especially from the point of view of the person being detained without reason.’³¹
119. A representative from the Federation of Student Islamic Societies (FOSIS) stated that the taking of DNA and fingerprints from those examined under Schedule 7 is an unjustified infringement on civil liberties as the police can exercise these powers at ports of entry without the need for reasonable suspicion. FOSIS are concerned that Schedule 7 is not targeted at the right people and call for greater accountability and more proportionate police policy regarding its use.
120. We were told by FOSIS that they had spoken to many people who had been subject to a Schedule 7 stop. Many felt criminalized as a result of being stopped without suspicion, the taking of their DNA intensifying this feeling. There is also very little information about which other databases Schedule 7 DNA data is placed on, aside from the DNA Database and how the data is shared with other agencies both within the UK and internationally.
121. FOSIS told the panel that the disproportionate use of this power is having a detrimental impact on young people, particularly Muslims in the UK. Not only does this create resentment towards the government and undermines support for the fight against terror, it also impacts on the well being of the individual stopped, leaving them feeling vulnerable and targeted.
122. As with those who have their DNA taken on arrest, those examined under Schedule 7 must be provided with the same information that we recommend is provided to those in police custody. The MPS informed us that those who have their DNA taken under

³¹ Dodd, V., 2011. Asian people 42 times more likely to be held under terror law [online]. Available at: <http://www.guardian.co.uk/uk/2011/may/23/counter-terror-stop-search-minorities>

Schedule 7 can apply through the exceptional case procedure to have all their records removed. The MPS should proactively provide information on how to apply through the exceptional case procedure for removal to all those who have their DNA taken by the police, including those examined under Schedule 7.

123. FOSIS provided further concerns in relation to Schedule 7 which are provided within Appendix 5.

3.6.2 Young people

124. A number of parents whose children had been arrested for minor offences and subsequently had their DNA taken expressed their criticisms of the MPS and the negative impact such action was having on the relationship generally between the police and young people:

'The police are managing to alienate an entire generation of young people in our area too. The story of what happened to our son went through his school like wild fire. I would like to go back two years. Just two years ago being a police officer was a genuine career option for our son. Now I do not think it is an exaggeration to say he mistrusts, loathes and would never go near a policeman at all if he could avoid it.'

(Quote from a member of the public who attended the Public Meeting on 1st July 2010)

125. Whilst the MPS undertakes a significant amount of proactive youth engagement work, this is in danger of being undermined by some young people's actual experience of the police on the streets doing the job of policing.
126. There was a view from some people that the police were deliberately targeting young people, purely for the purposes of adding them to the DNA Database. Some members of the public suggested that this may have reflected the views of the government at the time to move towards a universal database. The charity, Action for the Rights of Children, attributes this to the pressure placed on police officers to meet arrest targets and the fact that children are vulnerable to arrest for petty crimes.³² A number of parents voiced their concerns about the deliberate targeting of young people:

'I have got an 11-year-old son who was arrested for kicking a stone that happened to hit a police car. He was arrested on suspicion of criminal damage, taken to the police station and kept at the police station for six hours, and his DNA was taken... At that time, I am going back now five years, there were lots of young people that I was aware of that were being arrested for really minor things, playing in the street that was then charged with a public order, because public order offences are a bit, you know,

³² Action for the Rights of Children, 2010. Children's DNA on the National DNA Database [online] Available at: http://www.archrights.org.uk/index.php?option=com_content&view=article&id=15&Itemid=43

difficult. You can get anyone really on something like that. So I can give you lots of examples where I believe that. In that case with my son being an 11-year-old I do truly believe that he was arrested for the purpose of getting his DNA, and I do believe that had he have been a white child doing exactly the same thing he might have got a telling off but he would not have been arrested.'

(Quote from a member of the public who attended the Public Meeting on 1st July 2010)

127. Whilst we fully accept that there is no policy direction from the MPS specifically to target young people, the parents we spoke to perceived this as the reality on the streets of London, as it was borne out by their personal experience. Not only does this undermine confidence in the police, there is a body of research to suggest that early exposure to the criminal justice system is harmful and counter-productive.

3.6.3 Mental health

128. The charity Black Mental Health UK (BMH UK) who attended our public meeting, has grave concerns about the use of police custody as a place of safety for those detained under Section 136 of the Mental Health Act 1983.³³ BMH UK have received anecdotal evidence to suggest that the police are treating these individuals as though they have been arrested on suspicion of committing a crime, including obtaining their DNA. BMH UK told us that people have felt 'traumatised' by the experience at a time when they are at their most vulnerable. They are often also ill equipped to deal with the police service or try to obtain information about how they can apply to have their DNA removed from the Database. BMH UK explained that this is a particular issue for black communities. Department of Health research indicates that people from African Caribbean communities are 44% more likely to be sectioned under the Mental Health Act than their white counterparts,³⁴ this is despite the fact that the prevalence of common mental health problems is fairly similar across different ethnic groups.³⁵
129. The Panel questioned the MPS on this issue and we were told that very few stations are now used as a place of safety. The MPS disputed the claim that those held in custody as a place of safety had their DNA taken as a matter of course.

³³ Part of the Mental Health Act 1983 (section 136) details removing a mentally ill person from a public place to a place of safety. It details police powers and the rights of someone in this position. A place of safety could be a hospital or a police station. A police station should only be used in exceptional circumstances, such as a serious threat of violence or danger to people providing care or support.

³⁴ Count me in: Results of a national census of inpatients in mental health hospitals and facilities in England and Wales, 2005 Commission for Healthcare Audit and Inspection. Available at: http://www.cqc.org.uk/db/documents/Count_me_in_census_2005_Results_of_the_national_census_of_inpatients_in_mental_health_and_learning_disability_services.pdf

³⁵ K Spronston and J Nazroo, Ethnic Minority Psychiatric Illness Rates in the Community (EMPIRIC) – Quantitative Report, (London, The Stationery Office, 2002)

130. However, they also explained that this is a difficult area as there may be some instances where it is not immediately obvious that an individual is experiencing a crisis. For example, an individual may be experiencing a crisis episode and during this may injure a passerby. In this kind of circumstance the individual would be arrested and processed which would include taking DNA. If it is then established that the arrestee is mentally ill, they may not be charged, though under the current legislative framework the resulting DNA profile would still be retained because they were originally arrested for a recordable offence.
131. The Panel is aware that Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMIP) joint inspections of Police Custody did focus specifically on the use of custody for those detained as a place of safety. An analysis of the inspections undertaken in London between April 2008 and November 2010 reveals that out of the 15 MPS boroughs inspected, 13 did not use police custody to detain an individual under the Mental Health Act. One borough did use custody for this purpose but only if the individual was under the influence of drugs or alcohol, pending regaining fitness for assessment. The inspectors were unable to ascertain the use of custody for section 136 detention for the remaining borough, as no central records were kept.
132. The inspection programme, at the time of writing, has covered just under half of London's boroughs. However, it is encouraging to note that the vast majority do not use police custody for this purpose. In such cases, if custody is used, this is rare.

Recommendation 3:

Where the police take an individual in need of immediate care or control to a police custody suite as a place of safety as set out under section 136 of the Mental Health Act 1983 (as opposed to the individual being arrested for a recordable offence), the MPS should ensure that their DNA will not be taken.

3.6.4 Gender: *The use of the DNA Database in the detection of sexual offences*

133. Whilst the majority of evidence we received pointed out the negative implications of the Database retaining the profiles of those who are innocent, we heard an important alternative perspective from a representative of the London Havens, centres which provide specialist help and support to those who have been the victim of rape and sexual assault. Her view is that the value of the DNA Database in terms of securing convictions for rape and sexual offences cannot be over estimated.

Given the disproportionate numbers of women and vulnerable people who are victims of such crimes, the DNA Database is a crucial tool for protecting these groups.

134. DNA is an invaluable tool in cold case reviews undertaken by the police into historical, previously unsolved sexual offences. Within the MPS this is the responsibility of the Sapphire Cold Case Investigation Team. Appendix 6 provides examples of convictions secured by the team during 2010/11.
135. According to NPIA's Equality Impact Assessment (EIA) of the DNA Database, an estimated 3 million women are victims of rape, sexual assault, domestic violence, sexual violence, sexual harassment, forced marriage, trafficking or other forms of violence each year in the UK. DNA evidence is a major contributor to the detection of these crimes and bringing offenders to justice by providing strong, factual evidence linking the offender to the crime. This helps to address issues of women feeling that their behaviour is under scrutiny in court and having to defend their actions. For women who are victims, the DNA Database is a powerful force for good.
136. There are a significant proportion of people who report rape to the police but whose cases never get as far as going to court. The Crown Prosecution Service, the MPS and representative from the Havens take a similar view that sexual cases are more difficult to prove and therefore, although guilt has not been established neither has innocence been proven. For that reason the Havens explicitly state that the DNA of those arrested for such offences should remain on the DNA Database to maximise public protection.
137. The London Havens representative provided an example which demonstrates the importance of the DNA Database in encouraging victims to come forward and report sexual assault / rape:

We had a woman a couple of years ago who actually reported a rape to the police; she felt that the police were wholly unsympathetic to her case and so she stopped the allegation to the police and came to The Haven as a non-police referral.

We took forensic samples from her, we sent them off for anonymous testing to the police; the results came back saying that they had found DNA but it did not match the Database. So the woman then made the decision not to go back to the police because she felt there was no point at that time.

Two years later, I had a phone call from the police saying, "We have just arrested someone for a minor offence, and it has matched that woman's DNA sample and so would she now like to come forward?" So she went to the police, she made a formal allegation and the man was prosecuted and convicted.

If his DNA had been removed because she had not pursued it, and if he had not had his DNA taken for a minor offence, it would never have been matched up. So I think it is of huge benefit for women who are reporting rape to know that that DNA will be stored and to know that it will be matched, because the number of men who are accused of minor offences who then get matched up for major offences is actually quite significant.

So I appreciate your concern about your son breaking a window, but you look at Sally Anne Bowman's murderer who was arrested for what, getting drunk outside a pub? That is massive, and if you lose that because you are removing people after six years, then you lose those convictions.

(Quote from the manager of Whitechapel Haven, who attended the public meeting on 1st July 2010)

138. The Panel notes that the views expressed above are very similar to the concerns held by the police in that limiting retention periods will impact on their ability to detect crime. The Panel is sympathetic to this issue and is concerned about the lack of research and rigorous statistical data regarding both the effectiveness of the DNA Database in solving crime as well as the proportionality of the retention periods for various categories of individuals on the database (this is discussed further in Chapter 5). This lack of systematic research hampers progress in determining the correct balance between civil liberties and public safety.

3.6.5 Equality Impact Assessment on the use of DNA within the MPS

139. As a public authority, the MPS has previously had a legal duty to undertake Equality Impact Assessments (EIAs) of its policies and practices. The purpose of such EIAs is to systematically assess the likely impact policies on people in respect of disability, gender and racial equality. EIAs should also determine what action will be taken, where possible, to mitigate any negative and discriminatory impact.
140. A new public sector equality duty came into force in April 2011. In summary, those subject to the general equality duty must have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation
 - Advance equality of opportunity between different groups
 - Foster good relations between different groups
141. This new duty extends beyond gender, disability and race to also cover age, religion/belief, gender reassignment, pregnancy and maternity and sexual orientation (referred to as 'protected characteristics'). The new duty replaces the specific requirement to undertake equality impact assessments to a much broader requirement on public authorities to 'analyse the effects of their policies on equality'. Regardless of the changes, the principle of understanding how a policy impacts on particular groups

still remains. Guidance issued by the Equality and Human Rights Commission (EHRC) also states that decision-makers must be fully aware of the implications of the equality duty when making decisions about their policies and practices.³⁶

142. The Panel was surprised to learn that the MPS does not have an up to date equality impact assessment of its policies governing the use of DNA within the MPS. The MPS explained that it was using the national EIA that is owned by the National Policing Improvement Agency (NPIA) as the custodian of the DNA Database. However, the London experience in relation to the MPS use of DNA on ethnic minority groups, young people, those experiencing mental ill health and women, quite clearly demonstrates the need for the MPS to undertake specific activity to address the concerns identified. The fact that there are a number of areas in relation to DNA where the MPS uses its discretion to make decisions (i.e. Schedule 7 examinations and the exceptional case procedure) increases the potential for particular communities to be adversely impacted.
143. Given our earlier findings regarding the need for public information and engagement on the issue of DNA in policing generally, there is a need for the MPS to engage specifically with the communities that are disproportionately affected by their use of DNA policy. The MPS should also identify opportunities to mitigate any negative impact of the MPS DNA policy on particular groups. The MPS should monitor the implications arising from the Protection of Freedoms Bill and ensure any further impacts on London's communities are identified and addressed appropriately. Therefore we make the following recommendation:

Recommendation 4:

The MPS should undertake a full Equality Impact Assessment (EIA) on the use of DNA within the MPS to address the impact of the use of DNA and the DNA Database on communities within London. This should seek to identify any disproportionality and include details of specific actions the MPS will take to address issues identified. It should be reviewed on a regular basis.

³⁶ Guidance available at: http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/essential_guide_guidance.pdf

3.7 Removal from the DNA Database (the exceptional case procedure)

144. Through our survey and public meeting, we heard directly from those who had experience of going through the MPS exceptional case procedure in order to have their DNA profile removed from the DNA database and the DNA sample destroyed. The general feedback received highlighted negative experiences by members of the public who had applied through the procedure. There was a general belief that if you were not convicted of the crime you were arrested for, your DNA should not be retained by the police and should therefore be removed.

145. The MPS provided figures for the number successful applications under the exceptional case procedure. For 2009 and 2010 (calendar year), 104 and 77 applications respectively were successful.

146. Many respondents to our survey said that their requests to have their DNA profile removed from the DNA Database had been refused or 'stonewalled'. People also felt they were seen as an inconvenience and 'difficult' for asking to have their DNA removed. The following examples demonstrate the frustrations felt by those applying for removal:

- An attendee to our open meeting explained that his son was arrested after attending a house party where a window was broken. A description of the culprit was provided which did not match his son yet the police continued with the arrest process including the taking of his DNA, fingerprints and photograph. The case was later not proceeded with, yet the father was told it would take at least a year to consider the request for removal.
- A respondent to our survey currently going through the exceptional case procedure told us that it is extremely laborious and lacks transparency. The respondent felt that the fact all requests to remove DNA are rejected by default is extremely offensive particularly since it fails to properly discriminate between those convicted on one hand and people who are completely innocent on the other.

147. A number of participants at our public meeting spoke about the absence of information provided to individuals at the point their DNA is taken, specifically on how they can apply to have their DNA removed from the DNA Database. A suggestion was made to simplify the application process in order to promote transparency:

'A few years ago the BPA went and campaigned in a particular investigation to have just a simple form that [had an additional box that] actually said, "Delete", on the form, so if it turned out that in fact that it was not the suspect they were looking for they simply ticked the box, and then they received a letter from the Metropolitan Police Service confirming that their DNA had been removed. It is amazing that the law seems to be geared to deal with perpetrators but it does not actually cater for the innocent, and that is where it needs to go.'

(Quote from the Chair of the Black Police Association who attended the public meeting on 1st July 2010)

148. A proactive approach was particularly encouraged in cases which were not proceeded with:


'Once an inquiry is dropped and they have taken DNA you would think the best practice would be automatically to issue a leaflet or an information sheet saying, "If you wish the DNA to be removed" you know, no guarantees, of course we know the system but, "This is how you go about it". You would think that that would be automatic if a case, particularly if a case is not proceeded with. I think there are slightly different issues if there is a not guilty verdict in court, I know where I stand, but I can understand counter arguments, but where a case is not even proceeded with I think you should be given information automatically about removing the DNA.'

(Quote from a member of the public who attended the public meeting on 1st July 2010)

3.7.1 Police and public expectations

149. It was clear to the Panel that there is a disconnect between the expectations of the public and the police. The public view this procedure as a removal process, and the fact that they have not been convicted of a crime means they are innocent and there is therefore no need for the police to keep this information. The public perception is that a non conviction, no further action or wrongful/unlawful arrest should automatically be eligible for DNA profile removal under the exceptional case procedure.
150. However, non conviction, no further action and wrongful/unlawful arrest is not viewed in the same way by the police. Indeed, the guidelines provided by ACPO to police forces are called 'Retention Guidelines.'³⁷ Current legislation is based on the fact of arrest (regardless of charge or conviction) and allows for the indefinite retention of DNA. Therefore, police processes are geared up to retain **all** records unless there is an exceptional reason why they should be removed and, by definition, such cases will be rare.
151. The examples provided within the ACPO guidance as potential cases for the exceptional case procedure include cases where it is established beyond doubt that no offence existed or cases where the original arrest or sampling was found to be unlawful.
152. The Protection of Freedoms Bill makes provision for the automatic deletion of DNA of those who have not been convicted of a minor offence and those not convicted of a serious offence will be removed from the Database after a set period of time.

³⁷ DNA and Fingerprint Retention Project. (2006) Retention records for nominals on the Police National Computer. ACPO. Available at:
<http://www.acpo.police.uk/documents/information/2006/200603INFPNC01.pdf>



All DNA samples from which the profiles were obtained will also be destroyed immediately. It is anticipated that the number of requests for removal will fall as there will be less people on the Database itself and the limiting of retention periods will also reduce the number of exceptional case requests.

153. However, the exceptional case procedure (or equivalent) will still need to be in place for a number of instances, for example, where it is established that a recordable offence no longer exists or any part of the process from arrest through to detention was found to be unlawful. In this regard, the Panel would like to see the MPS undertake a proactive approach to such cases, where there is a clear case for removal.
154. Recommendation 1 addresses the need to provide an individual with information in relation to the police use of their DNA and their rights in respect of this.

Chapter 4: MPS policy and practice

155. During the course of the review, a number of other findings emerged from our visits and interviews with police and key stakeholders. These focused on how the MPS manages the use of DNA internally. This prompted us to seek assurances that the right policies and procedures are in place, that they are being monitored appropriately and officers and staff have the guidance and support required to do their job properly.

4.1 *Management of DNA within Custody*


156. We spoke to HMIC who have, since 2008, undertaken joint inspections with HMIP of police custody suites across England and Wales, including a number of London boroughs (16 boroughs at the time of publication). These inspections are largely focused on treatment and conditions of detainees. DNA is addressed within the 'individual rights' theme of the inspection.

157. HMIC told us that their expectation in relation to DNA and forensics is that there are 'robust mechanisms for ensuing continuity of evidence'.³⁸ In undertaking the inspection programme, the scale of problems regarding DNA and forensics was unexpected and occurred in virtually every force and borough across the country. HMIC provided examples such as finding DNA samples for sexual offences and murder being stored for up to 5 years with no explanation and DNA samples being stored alongside food. HMIC expressed a concern that such instances of poor management could lead to a potential miscarriage of justice and impact negatively on public confidence in the police.

158. In relation to the inspections of MPS boroughs, HMIC found varied performance across London and provided examples of areas for improvement:

- Fridges and freezers within some custody suites are of poor quality;
- On one occasion, DNA samples being stored alongside food;
- DNA samples stored within some custody suites had not been processed or submitted to the MPS DNA central clearing house. The reasons for this were unclear;
- In some suites, it was unclear who was responsible for the overall management of DNA within custody.
- Instances where staff were confused and unsure of when DNA should be taken as well as how many samples should be taken (HMIC provided us with a poster that had been on display at one of the MPS custody suites they inspected. A copy of this poster is provided in Appendix 8).

³⁸ Expectations for police custody: Criteria for assessing the treatment and conditions for detainees in police custody, HM Inspectorate of Prisons and HM Inspectorate of Constabulary. Available at: http://www.hmic.gov.uk/SiteCollectionDocuments/Joint%20Inspections/CUS_FWK_20100121.pdf

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159. At the start of the HMIC/HMIP inspection programme in 2008/2009, inspections of Lambeth, Southwark, Tower Hamlets and Enfield highlighted serious concerns in relation to the labelling, storage and processing of DNA samples in custody. Within the inspection report of Lambeth, a specific recommendation was made to address the ongoing issues across the whole of the Metropolitan Police Service. This concerned the taking, storing, submission and security of forensic and DNA samples. HMIC stated that this should be addressed as a matter of urgency and in consultation with the Forensic Science Regulator.
 160. HMIC found that since their earlier inspections of MPS custody suites, clear improvements have been made and good practice is being shared. This includes corporate instructions regarding who has responsibility for the supervision of DNA samples and ensuring they are correctly labelled, packaged and entered onto police systems. HMIC acknowledge the work undertaken by Operation Emerald (please see Glossary for details) in conjunction with the MPS Directorate of Forensic Services has resulted in considerable improvements in the handling and storage of forensic material.
 161. However, we do believe that there is room for improvement in terms of the overall management of MPS forensics across London's 32 custody suites to ensure a level of consistency and compliance with the MPS Standard Operating Procedures. The panel shares the concerns raised by HMIC regarding the clarity of guidance provided in the posters displayed within police custody on when to take a DNA sample from an arrested person.
 162. Whilst the MPS Central Clearing House undertakes quality checks of the DNA samples being sent to the forensic service providers, the same level of quality control must be applied to the DNA processes in police custody.

Recommendation 5:

In relation to the management of DNA within MPS custody suites, the MPS should:

- a) Agree a clear process outlining how and when DNA samples are to be taken, processed and retained within custody.**
- b) Train all officers and staff responsible for taking a DNA sample to ensure the procedure is undertaken correctly.**
- c) Develop an agreed chart detailing each step of the process which should be prominently displayed in every MPS custody suite (accessible to both MPS personnel and arrestees). This chart should be dated and subject to regular review.**
- d) Ensure that this agreed procedure is strictly adhered to across all MPS custody suites.**
- e) Ensure that any deficiencies identified through the HMIC/HMIP custody suite inspections in relation to the management of DNA are addressed.**

4.2 Confirmatory DNA samples

163. For all suspects arrested following a match on the DNA database between their DNA profile and an unsolved crime stain, it is MPS practice to take a confirmatory DNA sample from the suspect on their arrest. This is despite their DNA profile already being on the Database and the fact that their identity is further confirmed through fingerprints. The MPS told us that a DNA profile from a confirmatory sample is only obtained if the individual is charged with the offence.

164. We asked the MPS why this additional sample was taken and were told that this is as a result of direction given by London Crown Prosecution Service (CPS), yet CPS on their website state the following.³⁹

'As many prosecutors and Designated Caseworkers (DCWs) will know from discussions I have had with them, the MPS has decided to revert to the practice of taking a PACE DNA sample from every detained suspect arrested following a Database hit whether or not they have a confirmed DNA field on their PNC.'

³⁹ Crown Prosecution Service, 2007. DNA Evidence: SCS Circular 3 of 2007 6 March 2007 [online]. Available at: http://www.cps.gov.uk/legal/s_to_u/scientific_evidence/dna_evidence/

Accordingly, in the event a case is to be contested and the DNA match disputed, a forensic comparison will be made, on request, between the crime stain DNA and the PACE DNA sample taken from the detained suspect following arrest, to confirm the Database match. An appropriate Criminal Justice Act witness statement covering this analysis will be provided for service on the defence in the normal way.

It is important to emphasise that requests to obtain confirmatory evidence of the DNA Database match is very resource intensive and must only be made where it is clear that the match is in dispute. Prosecutors should liaise with the relevant Borough Forensic Manager where confirmatory evidence is being sought.'

165. Noting the view from CPS that taking an additional DNA sample is resource intensive, the Panel does not understand why the MPS employs this practice and are concerned about the cost implications.

166. In relation to MPS policy and procedure regarding the taking of confirmatory DNA samples, we make the following recommendation:

Recommendation 6:

For all suspects arrested following a match on the DNA database between their DNA profile and an unsolved crime stain, it is MPS practice to take a confirmatory DNA sample from the suspect on their arrest. This is resource intensive and not standard practice across all forces. Therefore the MPS should provide a rationale for this including the costs for undertaking this practice.

4.3 Sharing of demographic information with FSPs

167. We were surprised to learn that the forensic service providers (FSPs) receive demographic information (name, date of birth and gender) with each DNA sample. The FSP we spoke to said that this is a quirk of the system and were categorical in saying that they did not want or need this information. They explained that there are other unique references such as the summons number from Police National Computer which could be used instead. The Panel is absolutely in agreement with this. Whilst the FSPs do not use the demographic information in any way, its removal before being sent to them will help in providing reassurance to the public that these companies are unable to link personal details with personal DNA samples.

Recommendation 7:

The MPS should put in place procedures to ensure the removal of personal and demographic details prior to sending DNA samples to the forensic service providers.

4.4 Volunteer elimination samples

168. Through our discussions with a FSP we were also informed that in cases where a volunteer sample has been taken in order to eliminate them from the investigation, the forensic service provider is not informed when the criminal justice process has been concluded and the sample and profile can be destroyed. It is therefore likely that the sample and profile continue to be being retained by the FSP on behalf of the police force for no purpose.⁴⁰ This is contrary to the consent forms signed by the individual providing an elimination sample, which state that the sample and profile will be destroyed at the conclusion of the criminal justice process. The FSP estimated that the number of such samples is around 10,000 per year.
169. The panel believes that procedures must be put in place in order to address this discrepancy.

Recommendation 8:

In relation to volunteer samples taken for elimination purposes, the MPS should ensure forensic service providers are informed when the criminal justice process has been concluded to ensure the DNA sample and corresponding DNA profile are no longer required and can be destroyed.

⁴⁰ The early destruction of all samples is addressed in the Protection of Freedoms Bill

Chapter 5: Legislation

170. Throughout this investigation we have found a broad recognition of the benefits of having a national DNA Database which contains the DNA profiles from crime scenes and from those convicted of serious offences. There is also a consensus that searching the DNA profiles of those arrested (for recordable offences) against the Database (i.e. against profiles from unsolved crime scenes) is an acceptable balance of civil liberties and protection of the public.
171. Where opinions divide is whether DNA profiles of those arrested and not convicted for recordable offences should be loaded onto the DNA Database, and for how long they should be retained on the DNA Database.
172. Internationally there is significant variation in legislation regarding the taking and retention of DNA samples and DNA profiles. Within Europe for example, France and Norway enter a subject's DNA profile onto their respective DNA Databases only in relation to specific offences. In Sweden, Portugal and the Netherlands, uploading of DNA profiles onto their DNA Databases is dependent on the potential length of sentence for the related crime. There is also variation between nation states in terms of when DNA profiles might be removed from their respective DNA Databases.⁴¹
173. In respect of legislation in England and Wales, senior officers in the MPS told the Panel that their preferred position is the current one, where all DNA profiles of those arrested remain on the Database indefinitely.
174. The Panel sympathises with the views of senior investigating officers in the MPS, because their priorities are to link potential suspects and crime scenes to progress investigations, and ultimately to keep the public safe. However, the balance between policing objectives and public safety, and individual civil liberties must be addressed in order to maintain confidence in policing.
175. In response to the ECHR ruling, the government has proposed the implementation of specific legislation. Legislation regarding the current provisions concerning DNA, the Crime and Security Act 2010 and the Protection of Freedoms Bill are illustrated in the following appendices which show the 'the DNA journey' in each case.
- Appendix 9: The current position (Under PACE and various amendments)
 - Appendix 10: The Crime and Security Act 2010
 - Appendix 11: The Protection of Freedoms Bill provisions

⁴¹ European Network of Forensic Science Institutes Survey on the DNA Profile Inclusion, Removal and Retention of member States' Forensic DNA Database, 2009. [online] Available at: <http://www.enfsi.eu/page.php?uid=98>

176. Whilst some sections of the Crime and Security Act relevant to DNA have commenced, the Protection of Freedoms Bill has been introduced to instigate further changes to the DNA Database.

177. The Panel note that this Bill is the first of its kind to be put online for comment so the government can get detailed public opinion to help them as they debate the Bill in the House. While we think that this is a sound approach, we are concerned that the detail of the Bill and the complexity of language may limit the scope of public response.

5.1 The Protection of Freedoms Bill

178. The Protection of Freedoms Bill⁴² (see appendix 11 for summary) sets out provisions to end the indefinite retention of profiles of those not convicted of offences or not proceeded with, but has particular caveats in the case of more serious offences. These include those that are sexual, violent or terrorism related. In these instances (in most cases) whether an adult or a minor, the DNA profile will be kept for 3 years, irrespective of whether the individual is found guilty or not. There are also limits to the length of time a child (under 18) can have their DNA retained on conviction for a first minor recordable offence.⁴³

179. Additionally the Bill provides for the following:

- the destruction of all DNA samples within six months;
- consent provided by a volunteer to retain their DNA profile on the DNA Database can be withdrawn at any time;
- continued speculative searching of all DNA profiles obtained following arrest against the National DNA Database;
- extending the retention of DNA profiles on the DNA Database for further two year periods on the basis of 'national security grounds';
- DNA profiles obtained from individuals as part of a Schedule 7 examination will be retained for a maximum of six months (for individuals with no previous convictions).

5.2 The views of civil liberties groups and the public

180. This Bill is based on the law and protections which are currently operating in Scotland and broadly speaking has met with a positive response from civil liberty activists and the public in general. GeneWatch, a civil liberties group who have lobbied on this issue for many years have asked the public to support this Bill and have written:

⁴²Protection of Freedoms Bill: Chapter 1 [online]. Available at http://www.publications.parliament.uk/pa/bills/cbill/2010-2011/0146/cbill_2010-20110146_en_1.htm

⁴³ 5 years retention is proposed for a first offence with indefinite retention for a second offence.

*“The Freedom Bill will bring the law on the retention of computerised DNA records and fingerprints in England, Wales and Northern Ireland into line with Scotland’s. This would mean that most people who are found not guilty or have no further action taken following arrest would have their records taken off the DNA Database immediately. A minority prosecuted for violent or sexual offences would have their DNA records retained temporarily. This is a significant improvement compared to the previous approach, which allowed the DNA records of all innocent people who had their DNA taken on arrest to be kept indefinitely”.*⁴⁴

181. There are a number of provisions in the Bill which directly address public concerns, as heard by the Panel. Five key issues which are particularly relevant are:

Destruction of all DNA samples: DNA samples contain detailed information about individuals and there is significant public concern about how these samples might be used both now and in the future. The destruction of these samples within six months irrespective of guilt or innocence will address this concern.

Non loading of profiles from those not found guilty of an offence: The principal issue of contention we heard from the some members of the public was the fact that DNA samples of those not found guilty of an offence are loaded onto the DNA Database, and retained permanently. This clause will reassure the public that their profiles will only be loaded if found guilty.

Deletion of existing DNA profiles of those not found guilty of an offence: Similarly, deletion of these historic profiles from the Database directly addresses a primary public concern as heard by the Panel. This will mean about 1 million profiles will be deleted from the DNA Database.

Speculative searches: The continued speculative searching of all DNA profiles on the database regardless of the type of offence (both minor and serious crimes) will provide reassurance to those representing victims of sexual and other serious offences where DNA evidence is vital. Whilst the retention of DNA profiles for those not convicted will be limited (or not retained at all for minor offences), speculative searching will allow the police to cross check the profile against all unsolved crime stain profiles on the database at that point in time, with the potential for a match.

Temporary retention of DNA taken from those arrested for serious offences: This will reassure victims of violent and sexual offences and the public in general.

182. It is likely that the issue and definition of ‘national security grounds’ will cause some concern with civil liberties groups and the public and will require more specific

⁴⁴ Genewatch, 2010. The DNA Database: Contacting your MP [online] Available at: http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/DNA_action.pdf

clarification of what this means. Additionally, the extent of 'independence' of any oversight body such as the 'Commissioner for the Retention and Use of Biometric Material' may cause concern and will require further clarification.

183. The retention of DNA profiles from those stopped under Schedule 7, albeit for a maximum of 6 months, is also likely to be a matter of contention on the grounds of proportionality, because this is a stop 'without reasonable suspicion' and may not result in an arrest.

5.3 A police perspective

184. Gary Pugh, Chair of the National DNA Database Strategy Board and Director of Forensics for the MPS has expressed some concerns to the Panel and Parliamentarians about this Bill. Mr Pugh told us that:

"There is evidence to suggest that moving to this [the Scottish] model would impact upon our ability to investigate and detect crime, as well as introducing a significant administrative burden".

185. Mr Pugh caveats this comment by stating that it is, however, right for Parliament to decide the appropriate balance between human rights, and the prevention and detection of crime.
186. When we spoke to Mr Pugh and senior investigating officers in the MPS they specified a number of issues in relation to adopting the 'Scottish Model' in the UK. These include: cost, impact on detection of crime, proportionality and research into retention periods. While many of these concerns have been mitigated by the 'adaptation' of the Scottish protections, other issues remain:

187. **Impact on detection of crime:** Mr Pugh told the Panel

"Our experience has shown that retention of DNA profiles from those arrested and not convicted has led to significant numbers of DNA matches between this group and DNA recovered from crime scene or victims. A study of those charged but not convicted between May 2001 and December 2009 revealed DNA profiles from these individuals matched with DNA from a crime scene in over 14,000 offences, including murder, rape and aggravated burglary. A similar exercise was undertaken on those arrested who had not been charged or proceeded with between April 2004 and December 2005 and this revealed DNA matches between this group in over 3,000 offences"


188. The quote above refers to the legislation in Scotland. The Protection of Freedoms Bill provisions are based on the Scottish Model and the primary policing concern is that individuals will not be loaded onto the Database after arrest, thus prevents them from being matched to any future crime stains. The degree to which this will impact on

crime detection is presently unknown. Additionally, the most recent research has confirmed the variation of crimes within criminal careers, and that the seriousness of an initial offence for which DNA is taken is not a good indicator of the seriousness of any subsequent offending.

189. The DNA Ethics Group observes that there is no systematic programme of research in place to evaluate the effectiveness of the DNA Database in solving crime. The panel shares the view advocated by the Ethics Group that until there is an acceptance for the fundamental need for such research, supported by robust statistical information, the debate regarding the balance between civil liberties and public safety will not progress.
190. **The definition of serious offences:** The MPS and ACPO are concerned about the breadth of offences which fall into the 'serious' category i.e. the category where retention of profiles for 3 years normally applies. While they welcome the inclusion of terrorist offences they are concerned that other offences such as blackmail, fraud and possession of offensive weapon will not be included. A full list of serious offences is provided in Appendix 3.
191. **Research:** While civil liberties groups expressed serious concerns about the validity of the research on reoffending which led to the 6 year retention periods in the Crime and Security Bill, the MPS and ACPO have expressed concerns about the robustness of research which led to the three year retention periods within the Protection of Freedoms Bill. They state that within Scotland this retention period has not yet been fully tested and therefore should not be 'arbitrarily' adopted in England and Wales. Similarly, the Ethics Group point out the need for prospective studies to ensure that key issues of the proportionality and relevance of the various uses/categories of individuals within the DNA database are illuminated by robust statistical information. There is currently no programme of research in place to address this shortfall.
192. **Destruction of sample:** Some officers in ACPO are concerned about the destruction of DNA samples because they could not be accessed in the future. As DNA technology advances, there is the potential to gain even more information from the DNA sample which may help in the detection of crime. This will have a particular impact on cold case reviews. This view is not shared by the Chair of the DNA Database Strategy Board, Gary Pugh, who believes that the issue of civil liberties overrides the perceived need to retain DNA samples.

5.4 Panel concerns

193. In speaking to parliamentarians, civil liberty groups, ACPO and senior investigating officers in the MPS, the Panel accept that it has been a difficult task to construct a Bill that respects civil liberties whilst balancing this with the protection of communities.



What is of relevance to the Panel though, is the impact this will have on the MPS and the communities of London. We are concerned about the financial implications of the Protection of Freedoms Bill provisions and how the costs will be met.

Chapter 6: Cost implications

6.1 DNA costs to the MPS

194. The table below provides a an estimated breakdown of the DNA profiling and DNA database function costs to the MPS:

DNA: ANNUAL COSTS TO THE MPS 2009/2010		
Cost Description	£m	% of total MPS budget
Estimated total costs of DNA profiling to MPS, includes; <ul style="list-style-type: none">• Costs of National DNA Databases functions• Cost of DNA profiling undertaken in routine casework	£25.9m	1.0%
Estimated direct costs of National DNA Database functions to MPS, includes; <ul style="list-style-type: none">• DNA profiling of arrestees' samples in custody• DNA profiling of crime stains where suspect not known• MPS DNA Services Unit	£4.4m	0.2%
Estimated Total DNA costs	£30.3m	1.2%

6.2 MPS concerns

195. The MPS have expressed significant concerns to the MPA about how these costs might escalate as we move towards a change from the current position where DNA samples and DNA profiles are kept indefinitely to a position where samples will be destroyed and profiles kept for limited periods. ACPO have estimated that the deletion of profiles and destroying of samples in order to comply with the provisions of the Crime and Security Act 2010 is a one off cost of approximately £100 million for the whole police service. A similar costing exercise for the Protection of Freedoms Bill has yet to be undertaken. This will be a significant cost for the MPS bearing in mind it is responsible for policing approximately a fifth of all crime within England and Wales. In the current financial climate the panel are concerned about the implications for this and the need for additional money.

6.3 Financial implications of the Protection of Freedoms Bill

196. We identify three specific areas which the provisions in the current Bill would impact:

- Because the retention periods, as stated in the Bill, are not 'fixed' but are subject to complex decision making (e.g. a possible decision to extend the retention period by two years), FSPs will not be able to automate the process of deletion and it will have to be carried out manually. (Under the Crime and Security Act 2010, where there are fixed periods for retention and deletion, automation would have been possible). The MPS Director of Forensics explained that the administrative burden to the MPS is likely to be significant. Each profile and sample will need to be processed on an individual basis to ensure they are deleted within the correct time parameters. Furthermore this needs to take into account any subsequent reoffending by the individual as well as applications for extended retention.
- Additionally, the Bill provides that DNA profiles will only be loaded onto the National DNA Database on conviction for most offences. Therefore, if a person arrested does not have an existing DNA profile on the DNA Database, they would have their DNA taken and searched against the DNA Database every time they are arrested for a minor recordable offence, if no further action is taken. It is estimated that the cost of the process of taking and analysing the sample will be between £20 and £30 each time this occurs.
- There will also be considerable costs in deleting all historic profiles and destroying all DNA samples. It is estimated that over one million samples are stored on behalf of the Commissioner. However, there will be some reduction in future costs because the MPS will not need to store DNA samples for more than six months.

197. The current MPS expenditure on forensic services includes the costs of services provided by the FSPs. Business with FSPs is likely to increase as they will be responsible for the destruction of a substantial volume of historic samples. This is expensive due to procedural issues and additional supervision required. They are also likely have greater quantity of samples to analyse and an increased administration burden as more profiles and samples will also need to be deleted and destroyed as part of ongoing business.

However, it should also be noted that there will be fewer samples stored in total which may result in savings.

Recommendation 9:

The MPS should specify how MPS budgets will be impacted by the provisions within the Protection of Freedoms Bill. This should detail immediate and ongoing cost obligations.

Chapter 7: Governance and security

198. The question of whose DNA should be on the DNA Database and for how long, has been the subject of public debate. However, the actual management of the DNA Database itself and related security measures have not been a central focus. Although national governance does not sit directly within the remit of our review, we have examined the governance of the DNA database because of its impact on the Metropolitan Police Service and Londoners.

7.1 Governance of the DNA Database

199. The Panel is pleased that the Protection of Freedoms Bill contains provisions to put the National DNA Database and its governance on a statutory footing. We hope that this will begin the process of increased transparency and engagement, providing the public with better information about what happens to DNA; who is involved in the DNA Database management; what their roles are and how effective the security of DNA material is.

200. The core of the governance structure for the DNA Database is based on the tripartite arrangements for policing in England and Wales, with ACPO, the APA and the Home Secretary representing the Secretary of State. Operating under this tripartite structure is the National DNA Database Strategy Board. This board provides governance and oversight of the operation of the DNA Database. The Chair of the Board is Gary Pugh, who is also the Director of Forensic Services for the MPS.

201. The Panel were satisfied with the breadth of representation on the Board. The following bodies are represented; National Policing Improvement Agency (NPIA), the Human Genetics Commission (HGC), the National DNA Database Ethics Group, the Forensic Science Regulator and the Information Commissioner's Office (ICO) as an observer (See Appendix 7 for further details of the governance structure).

202. All strategic decisions in relation to the Database are made through a voting system. Senior representatives from APA, ACPO and the Home Office vote on all relevant matters. Interestingly, we were told that the Human Genetics Commission, the Ethics Group and the Forensic Science Regulator were offered voting rights but declined so they could sit as independent advisors to the board and make recommendations. We support the inclusion of an independent element within the board allowing for a greater degree of internal scrutiny.

203. Gary Pugh told the Panel that the National DNA Database has 'the most open and broad governance of any police database', but stressed the importance of a widening of the Strategy Board membership to provide a more collaborative approach in the oversight and direction of the NDNAD.

The Panel noted that although the Strategy Board Chair had already widened the governance structure, we remain concerned about how independent this structure is and how robustly it was representative of the public and reflected their concerns.

204. Significantly, the Forensic Science Regulator, the Ethics Group and the Human Genetics Commission all expressed the view that more open and independent oversight structures should be put in place to increase public confidence and cooperation. There was also a desire for regular publication of data reviews, an independent appeals process for applicants to have their subject profiles removed and an enhanced role for the Ethics Group.
205. We note that the Bill sets out the role of the Strategy Board to publish guidance to chief officers on the circumstances in which DNA profiles should be removed immediately from the Database; and that chief officers will be required to act in accordance with the Board's guidance. We also note the role of the Independent Commissioner to oversee all applications to extend retention of profiles (on national security grounds) as a vital measure to reassure the public that this power is not misused.

7.2 Security

206. The subject of DNA and its use within policing is both complex and emotive. The lack of clear information about key issues has lent itself to 'urban myths' and inaccurate media reporting. One of the basic issues for the public concerning the use of DNA by police is who has access to this data and how securely the data is kept.
207. Respondents to our survey and attendees to our public meeting frequently mentioned a lack of trust in the police and/or Government to store information securely. This concern was sometimes based on previous high profile Government data losses and 'leaks'. Some respondents were concerned about DNA data being used for other purposes such as to inform mortgage applications or health related issues or to explore possible criminal biology or genes. Some were also worried about DNA profiles being used to falsely place people at the scene of a crime. One respondent felt that the DNA database should be held securely by an independent public body.
208. Through our sessions with members of the Strategy Board and visits to the DNA Database Custodian, and to a Forensic Service Provider we were able to gain an insight into the both the processes and levels of security associated with the Database.
209. The security arrangements for the Database are the responsibility of the NPIA who operate it. These arrangements are overseen by the Strategy Board and are fully

compliant with the Security Policy Framework⁴⁵ set by government in response to high profile data loss incidents. When the Panel visited the Database Custodians we were reassured that despite being vetted they were not permitted to view the Database and were shown its function only by means of 'virtual' demonstration.

210. There are a number of significant safeguards that were evident to the Panel:

- Only 35 fully vetted staff working in a secure unit in the NPIA have access to the DNA Database and all of their activity in relation to the database is subject to an audit trail. No one else has access.
- Only police bodies, the Criminal Justice Review Commission and HM Revenue and Customs are able to utilise information from the DNA Database. These bodies are only able to receive 'match reports' and cannot access the database itself.
- All FSPs who process and load DNA onto the DNA Database have to be authorised by the National DNA Database Strategy Board. These FSPs are accredited to the UK Accreditation Service International Standards (ISO17025) as well as the Custodian Standards for the National DNA Database. The contract for these FSPs includes specific requirements for physical security, the vetting of staff and the protection of personal data.
- FSPs processing DNA for the police must comply with the provisions of the Human Tissue Act 2004 relating to consent and the holding of bodily material with the intent to analyse for DNA. The DNA samples and profiles are police property and cannot be used for any other purpose by the FSP i.e. to undertake research or be sold to other private companies. If FSPs are found to be in breach of this then it would destroy the reputation of the business.
- DNA, by law (Police and Criminal Evidence Act, 1984), can only be used for the purposes of investigation and detection of an offence, the conduct of a prosecution or for identifying a deceased person.
- Applications for research can only be made with respect to the criteria above and have to be approved by the Ethics Group and Strategy Board. Information derived from the DNA Database cannot be used for commercial purposes nor has approval ever been granted for this to happen.

211. Despite these safeguards being in operation, the public who responded to our survey expressed significant concerns about security.

⁴⁵ Cabinet Office (2010) HMG Security Policy Framework. [online] Available at:<http://www.eurim.org.uk/activities/ig/idg/SecurityPolicyFramework.pdf>

212. The majority of respondents to our survey (534 respondents representing 87%) were very or fairly unconfident that their DNA would not be shared with anyone outside those that dealt directly with it i.e. the police and specific laboratories. Some respondents stated a lack of trust in the police and government to store information securely and that the material may be supplied to mortgage companies or used for research to explore 'criminal genes'.
213. At our open session, members of the public expressed low confidence with regards to the secure storage of their personal data by the police and government, citing recent examples where a number of public bodies have been found to be in breach of the Data Protection Act by losing memory sticks and laptops containing sensitive information such as patient data.



Forensic scientist working in the laboratory

214. The Panel found that the media were also suggesting that non policing bodies have access to the DNA Database. The Guardian had an article entitled '56 non policing bodies have access to the Database including BT and the Association of British Insurers'.⁴⁶
215. Other articles and blogs also stated that this data was both unsecure and may be routinely shared with other agencies and private companies. During the course of our investigation, we found no evidence to suggest that non policing bodies have access to the DNA Database.

⁴⁶ <http://www.guardian.co.uk/commentisfree/libertycentral/2009/nov/19/comprehensive-dna-database>

216. Civil liberties groups, community groups and the public have stated that an increase in information about the Database should include a clear definition of the DNA Database and its purpose and the Panel feel that the introduction of the Protection of Freedoms Bill provides the ideal opportunity to bring this into the public domain.

7.3 Ethics in Governance

217. In terms of increasing public confidence in the DNA Database we feel that the work of the Ethics Group, chaired by Christopher Hughes is of paramount importance. The Ethics Group not only advises ministers and the Strategy Board about ethical issues, but its work addresses many of the concerns expressed by the public around the DNA Database and the use of DNA in policing. It comprises members from a broad range of organisations and professions: scientists, medical professionals, business people, ethnic minority communities and young people.

218. The Ethics Group has recommended further research into the effectiveness of the DNA Database in solving crime, statistical research into the proportionality and relevance of the various uses/categories of individuals within the DNA Database and more robust ethical considerations at all stages in its use.

219. The Panel agree with the Human Genetics Commission and civil liberties groups that the role of the Ethics Group should be strengthened. We were concerned that in a number of instances the Ethics Group makes recommendations which are accepted by the Strategy Board, but no resources are made available to address these issues. The Panel also suggest that any applications for research on the DNA Database should be made through the Ethics Group who have developed a form specifically for this purpose.


7.4 Implications to note:

220. The intention to place the DNA Database and the DNA Database Strategy Board on a statutory footing should be accompanied by a move to enhance public information, engagement and reassurance around this key area of policing. The Panel make the following suggestions for the consideration of the Home Office (Secretary of State) and the DNA Database Strategy Board Chair:

- A robust communication strategy in order to improve the level of easily available and assimilated public information on the use of forensic DNA. This should go beyond simply putting it on the NPJA and MPS websites and should include regular statistical publications, reassurances about the security of the DNA Database and the rare circumstances in which more contentious techniques such as familial searching and ancestral testing might be used.
- There is an urgent need for authoritative research into the effectiveness of the database with respect to solving crime as well as prospective research into the longitudinal criminal careers of offenders in order to inform the setting of retention periods. ACPO Criminal Records Office (ACRO) has conducted research with regards to serious crime cases in England and Wales that were matched to the DNA database from DNA profiles that belonged to individuals who had been arrested but not convicted of any crime. This may form a starting point for further research.
- The inclusion of a more independent element within the Strategy Board to act both in an advisory capacity and as a conduit for informing and reassuring the public should be considered. This may also provide central oversight with regard to chief officer's decision making on requests for removal from the Database.
- Strengthen the role of the Ethics Group, within the Strategy Board including making adequate resources available to carry out its recommendations.
- Clarify the role of the 'Independent Commissioner for the Retention and Use of Biometric Material' and her/his place within the governance structure.

Conclusion

221. It is clear that DNA and the DNA Database are effective tools for the police in the fight against crime, yet it remains a controversial issue. In the course of our review we uncovered a number of areas which should be addressed by the MPS.
222. In our discussions with forensic scientists, police officers and staff involved in the investigation of crime, the use and value of DNA is widely understood. However, our review has highlighted that the public are yet to be properly informed on this issue. This vacuum has in part been filled by sensationalist media coverage and fictional crime dramas, which have served to exacerbate myths and misunderstandings.
223. The challenge to the police, government and other organisations involved in the DNA database is to ensure that the public understand and are better informed about how, why and when the police use DNA. Those who have their DNA taken by the police must understand when and where DNA will be taken and what will happen to it and their rights. We reviewed the information given to an individual who has their DNA taken and do not believe it is effective in addressing this issue. This is crucial given the nature of DNA. It is highly personal information that is unique to an individual.
224. There is a real feeling of fear from some sections of the community that DNA may be taken and used for unethical or illegal purposes. These concerns must be taken seriously and efforts made to explain the safeguards in place. We accept this is a challenge. However, the current challenges to policing within London demand the confidence of all communities.
225. We must also be assured about the consistency and integrity of all DNA processes from collection through to the eventual storage, recording and destruction. This will help to limit the potential for miscarriages of justice and unnecessary delays to a criminal investigation.
226. Public confidence and trust can be achieved with clear and transparent processes for the management of DNA throughout its 'journey', from a DNA sample being taken on arrest to the DNA profile being retained on the DNA Database and samples stored within private laboratories, and certainty on its destruction.
227. The Protection of Freedoms Bill provides an opportunity to ensure that a greater focus on the rights of individuals is incorporated into all aspects of policing. The provisions within the Bill address many of the concerns that have been brought to our attention.
228. The balance between civil liberties and public protection can only be achieved if the legal framework is complemented by the conditions we have highlighted above – public engagement, information provision, transparency and consistency. Moreover, as the technology of forensics develops and the use of DNA in policing becomes more



sophisticated, there is a greater need for the public to understand and inform the civil liberties agenda. Whilst our review and recommendations are focused on the MPS and the implications for London, we hope that the government will consider the wider implications that we highlight in the final chapter.

What next?

229. The Panel ask that the MPS begin the implementation of our recommendations immediately. We have made it clear that our recommendations are both necessary to increase public confidence and complementary to the provisions in the Protection of Freedoms Bill. The Panel therefore request that the MPS respond to our recommendations within three months of the publishing of this report with a timetable for implementation. These will then be reviewed by the Civil Liberties Panel.

Appendix one

Methodology

Review findings have been informed by:

- desk based research;
- panel meetings
- open meeting with members of the public (approximately 50 attendees)
- panel visits
- online public survey (615 responses)
- written submissions to the panel

Information from the desk based research is referenced throughout the main body of the report.

The panel undertook the following meetings and visits:

1. 26th March 2010: Meeting with Gary Pugh, MPS Director of Forensic Services and Chair of the National DNA Database Strategy Board.
2. 12th May 2010: Meeting with Commander Simon Foy, SCD and Gary Pugh, MPS Director of Forensic Services and Chair of the NDNAD Strategy Board.
3. 16th June 2010: Visit to MPS DNA Central Clearing House, Clapham Police Station to observe
4. 1st July 2010: Open meeting with members of the public, City Hall
5. 13th July 2010: Visit to the National Police Improvement Agency as Custodian of the National DNA Database.
6. 20th July 2010: Meeting with Gary Pugh, MPS Director of Forensic Services and Chair of the NDNAD Strategy Board in order to follow up the public concerns and issues discussed at the Open Meeting.
7. 13th October 2010: Meeting with Peter Todd, Assistant Inspector at Her Majesty's Inspectorate of Constabulary to discuss the findings of their joint inspections of police custody conditions.
8. 21st October 2010: Visit to Charing Cross Custody Suite to observe the taking of DNA within police custody
9. 5th November 2010: Visit to a Forensic Service Provider, LGC Forensics, to observe the processes undertaken by an FSP in relation to DNA they receive from the police.
10. 8th November 2010: Meeting with Andrew Rennison, Forensic Science Regulator and Christopher Hughes, Chair of the DNA Database Ethics Group.

Organisations who took part in the public consultation process:

1. ACPO Criminal Records Office
2. Big Brother Watch
3. Black Mental Health UK
4. Brent Community Safety Board
5. Federation of Student Islamic Societies
6. Hammersmith and Fulham Community Safety Board
7. Harrow Community and Police Engagement Group
8. Hillingdon Independent Advisory Group
9. Information Commissioners Office
10. Kensington and Chelsea Community and Police Engagement Group
11. Liberty
12. Lioness Ladies
13. Metropolitan Black Police Association
14. NO2ID
15. South Westminster Police Community Consultative Group
16. Waaberi Community Development Association
17. Whitechapel Haven

Appendix two

List of additional offences specified in the schedule to the National Police Records (Recordable Offences) Regulations 2000

DNA samples are currently taken from anybody arrested for a recordable offence. A recordable offence includes convictions for, and cautions, reprimands and warnings given in respect of any offence punishable with imprisonment and other offences from a scheduled list defined in the National Police Records (Recordable Offences) Regulations 2000 and subsequent amendments.

The list below provides details of the other offences specified in the schedule to the National Police Records (Recordable Offences) Regulations and subsequent amendments:

1. Giving intoxicating liquor to children under five (section 5 of the Children and Young Persons Act 1933);
2. Exposing children under twelve to risk of burning (section 11 of the Children and Young Persons Act 1933);
3. Failing to provide for safety of children at entertainments (section 12 of the Children and Young Persons Act 1933);
4. Drunkenness in a public place (section 91 of the Criminal Justice Act 1967);
5. Touting for hire car services (section 167 of the Criminal Justice and Public Order Act 1994);
6. Purchasing or hiring a crossbow or part of a crossbow by person under the age of seventeen (section 2 of the Crossbows Act 1987);
7. Possessing a crossbow or parts of a crossbow by unsupervised person under the age of seventeen (section 3 of the Crossbows Act 1987);
8. Failing to deliver up authority to possess prohibited weapon or ammunition (section 5(6) of the Firearms Act 1968);
9. Possessing an assembled shotgun by unsupervised person under the age of fifteen (section 22(3) of the Firearms Act 1968);
10. Possessing an air weapon or ammunition for an air weapon by unsupervised person under the age of fourteen (section 22(4) of the Firearms Act 1968);
11. Possessing in a public place an air weapon by unsupervised person under the age of seventeen (section 22(5) of the Firearms Act 1968);
12. Throwing missiles (section 2 of the Football (Offences) Act 1991);

13. Indecent or racist chanting (section 3 of the Football (Offences) Act 1991);
14. Unlawfully going on to the playing area (section 4 of the Football (Offences) Act 1991);
15. Trespassing in daytime on land in search of game, etc. (section 30 of the Game Act 1831);
16. Refusal of person trespassing in daytime on land in search of game to give his name and address (section 31 of the Game Act 1831);
17. Five or more persons being found armed in daytime in search of game and using violence or refusal of such persons to give name and address (section 32 of the Game Act 1831);
18. Being drunk in highway or public place (section 12 of the Licensing Act 1872);
19. Obstructing an authorised person inspecting premises before the grant of a licence etc. (section 59(5) of the Licensing Act 2003);
20. Failing to notify change of name or alteration of rules of club (section 82(6) of the Licensing Act 2003);
21. Obstructing an authorised person inspecting premises before the grant of a certificate etc. (section 96(5) of the Licensing Act 2003);
22. Obstructing an authorised person exercising a right of entry where a temporary event notice has been given (section 108(3) of the Licensing Act 2003);
23. Failing to notify licensing authority of convictions during application period (section 123(2) of the Licensing Act 2003);
24. Failing to notify court of personal licence (section 128(6) of the Licensing Act 2003);
- 24A. Keeping alcohol on premises for unauthorised sale etc. (section 138(1) of the Licensing Act 2003);
- 24B. Allowing disorderly conduct on licensed premises etc. (section 140(1) of the Licensing Act 2003);
- 24C. Selling alcohol to a person who is drunk (section 141(1) of the Licensing Act 2003);
- 24D. Obtaining alcohol for a person who is drunk (section 142(1) of the Licensing Act 2003);
- 24E. Failing to leave licensed premises etc. (section 143(1) of the Licensing Act 2003);
- 24F. Keeping smuggled goods (section 144(1) of the Licensing Act 2003);
- 24G. Allowing unaccompanied children on certain premises (section 145(1) of the Licensing Act 2003);

- 24H. Selling alcohol to children (section 146(1) and (3) of the Licensing Act 2003);
- 24I. Allowing sale of alcohol to children (section 147(1) of the Licensing Act 2003);
- 24J. Purchasing alcohol by or on behalf of children (section 149(1), (3) and (4) of the Licensing Act 2003);
- 24K. Consumption of alcohol on relevant premises by children (section 150(1) and (2) of the Licensing Act 2003);
- 24L. Delivering alcohol to children (section 151(1), (2) and (4) of the Licensing Act 2003);
- 24M. Send a child to obtain alcohol (section 152 (1) of the Licensing Act 2003);
- 24N. Allowing unsupervised sales by children (section 153(1) of the Licensing Act 2003);
- 24O. Making false statements (section 158(1) of the Licensing Act 2003);
- 24P. Allowing premises to remain open following a closure order (section 160(4) of the Licensing Act 2003);
- 24Q. Obstructing authorised person exercising rights of entry to investigate licensable activities (section 179(4) of the Licensing Act 2003);
- 25R. Making false statement in connection with an application for a sex establishment licence (paragraph 21 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982);
27. Falsely claiming a professional qualification etc. (article 44 of the Nursing and Midwifery Order 2001);
28. Taking or destroying game or rabbits by night, or entering any land for that purpose (section 1 of the Night Poaching Act 1828);
29. Wearing police uniform with intent to deceive (section 90(2) of the Police Act 1996);
30. Unlawful possession of article of police uniform (section 90(3) of the Police Act 1996);
31. Causing harassment, alarm or distress (section 5 of the Public Order Act 1986);
32. Failing to give advance notice of public procession (section 11 of the Public Order Act 1986);
33. Failing to comply with conditions imposed on a public procession (section 12(5) of the Public Order Act 1986);
34. Taking part in a prohibited public procession (section 13(8) of the Public Order Act 1986);

35. Failing to comply with conditions imposed on a public assembly (section 14(5) of the Public Order Act 1986);
36. Taking part in a prohibited assembly (section 14B(2) of the Public Order Act 1986);
37. Failing to comply with directions (section 14C(3) of the Public Order Act 1986);
38. Failing to provide specimen of breath (section 6 of the Road Traffic Act 1988);
39. Penalisation of tampering with vehicles (section 25 of the Road Traffic Act 1988);
40. Kerb crawling (section 1 of the Sexual Offences Act 1985);
41. Persistently soliciting women for the purpose of prostitution (section 2 of the Sexual Offences Act 1985);
42. Allowing alcohol to be carried on public vehicles on journey to or from designated sporting event (section 1(2) of the Sporting Events (Control of Alcohol Etc.) Act 1985);
43. Being drunk on public vehicles on journey to or from designated sporting event (section 1(4) of the Sporting Events (Control of Alcohol Etc.) Act 1985);
44. Allowing alcohol to be carried in vehicles on journey to or from designated sporting event (section 1A(2) of the Sporting Events (Control of Alcohol Etc.) Act 1985);
45. Trying to enter designated sports ground while drunk (section 2(2) of the Sporting Events (Control of Alcohol Etc.) Act 1985);
46. Unauthorised sale or disposal of tickets for a designated football match (section 166(1) of the Criminal Justice and Public Order Act 1994);
47. An individual subject to a banning order failing to comply with the requirements determined by the enforcing authority and made of him by a police officer on the individual's initial reporting at the police station (section 19(6) of the Football Spectators Act 1989);
48. A person subject to a banning order knowingly or recklessly providing false or misleading information in support of his application for an exemption from a reporting requirement of his banning order (section 20(10) of the Football Spectators Act 1989);
50. Loitering or soliciting for purposes of prostitution (section 1 of the Street Offences Act 1959);
52. Taking or riding a pedal cycle without owner's consent (section 12(5) of the Theft Act 1968);
53. Begging (section 3 of the Vagrancy Act 1824); and
54. Persistent begging (section 4 of the Vagrancy Act 1824).

Appendix three

List of 'serious' offences for purpose of taking and retaining DNA/fingerprints - as proposed by the Protection of Freedoms Bill. (The offence of Robbery was added later).

Offences at common law

- Murder
- Manslaughter
- False imprisonment
- Kidnapping

Serious Violent Offences

- Conspiring or soliciting to commit murder
- Making threats to kill
- Wounding with intent to cause grievous bodily harm
- Malicious wounding
- Attempting to choke, suffocate or strangle in order to commit or assist in the committing of any indictable offence
- Using chloroform etc. to commit or assist in the committing of any indictable offence
- Maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm
- Maliciously administering poison etc. with intent to injure etc
- Assault occasioning actual bodily harm
- Burglary
- Aggravated burglary
- Aggravated vehicle taking involving an accident which killed a person
- Arson
- Cruelty to persons under 16
- Causing or allowing the death of a child or vulnerable adult
- Serious Explosives/Firearms Offences
- Causing explosions likely to endanger life or property
- Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property
- Possession of a firearm with intent to endanger life
- Carrying a firearm with criminal intent
- Possession of firearm with intent to cause fear of violence
- Use of a firearm to resist arrest or possession of firearm at time of arrest for a specified offence

Serious Sexual Offences

- Taking, distributing, publishing etc indecent photographs of children
- Abduction of a child by a person other than the parent

- Rape
- Assault by penetration
- Sexual assault
- Causing a person to engage in sexual activity without consent
- Rape of a child under 13
- Assault of a child under 13 by penetration
- Sexual assault of a child under 13
- Causing or inciting a child under 13 to engage in sexual activity
- Sexual activity with a child
- Causing or inciting a child to engage in sexual activity
- Engaging in sexual activity in front of a child
- Causing a child to watch a sexual act
- Child sex offences committed by children or young persons
- Arranging or facilitating commission of a child sex offence
- Meeting a child for sexual grooming
- Abuse of position of trust: sexual activity with a child
- Abuse of position of trust: sexual activity in the presence of a child
- Abuse of position of trust: causing or inciting a child to engage in sexual activity
- Abuse of position of trust: causing a child to watch a sexual act
- Sexual activity with a child family member
- Inciting a child family member to engage in sexual activity
- Sexual activity with a person with a mental disorder impeding choice
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
- Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
- Causing a person, with a mental disorder impeding choice, to watch a sexual act
- Inducement, threat or deception to procure sexual activity with a person with a mental disorder
- Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
- Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
- Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception
- Care workers: sexual activity with a person with a mental disorder
- Care workers: causing or inciting sexual activity
- Care workers: sexual activity in the presence of a person with a mental disorder
- Care workers: causing a person with a mental disorder to watch a sexual act
- Paying for sexual services of a child
- Causing or inciting child prostitution or pornography
- Controlling a child prostitute or a child involved in pornography
- Arranging or facilitating child prostitution or pornography
- Causing or inciting prostitution for gain

- Controlling prostitution for gain
- Administering a substance with intent
- Committing an offence with intent to commit a sexual offence
- Trespass with intent to commit a sexual offence
- Sex with an adult relative: penetration
- Sex with an adult relative: consenting to penetration
- Exposure
- Voyeurism
- Intercourse with an animal
- Sexual penetration of a corpse

Human Trafficking

- Trafficking into the UK for sexual exploitation
- Trafficking within the UK for sexual exploitation
- Trafficking out of the UK for sexual exploitation

Serious Terrorist offences:

- Hijacking an aircraft or ship
- Membership or support of a proscribed organisation
- Fund-raising etc or money laundering for the purposes of terrorism
- Failure to disclose information about acts of terrorism
- Weapons training
- Directing terrorism
- Possessing things and collecting information for the purposes of terrorism
- Inciting terrorism outside the United Kingdom
- use of noxious substances or things
- encouragement of terrorism
- preparation and training for terrorism
- Making and possession of devices or materials of a radioactive nature
- Misuse of radioactive devices or material and damage of nuclear sites
- Terrorist threats related to radioactive devices or material and nuclear sites
- Certain offences committed outside the United Kingdom for the purposes of terrorism in respect of which there is extra-territorial jurisdiction.

Ancillary Offences

- Ancillary offences in respect to any of the above
- Assisting an offender (in relation to an offence of murder)

Appendix four

Form 3053 Notice of Right and Entitlements (given to detainees within police custody)

Form 3053

Notice of Rights and Entitlements

The following rights and entitlements are guaranteed to you under the law in England and Wales and comply with the European Convention on Human Rights.

Remember your rights:

1. Tell the police if you want a solicitor to help you while you are at the police station. It is free.
2. Tell the police if you want someone to be told that you are at the police station. It is free.
3. Tell the police if you want to look at their rule-book called the Codes of Practice.

You will find more details about these rights inside.

Special Times

Getting a solicitor to help you

There are some special times when the police can ask you questions before you have talked to a solicitor. Information about these special times is given in the Codes of Practice. This is the book that sets out what the police can and cannot do while you are at the police station. If you want to look up the details, they are in paragraph 6.6 of Code C of the Codes of Practice.

There is one special time when the police will not let you speak to the solicitor that you have chosen. When this happens the police must let you talk to another solicitor. If you want to look up the details, they are in Annex B of Code C of the Codes of Practice.

Telling someone that you are at the police station

There are some special times when the police will not allow you to contact anyone. Information about these special times is given in the Codes of Practice. If you want to look up the details, they are in Annex B of Code C of the Codes of Practice.

Breath tests

If you are under arrest because of a drink drive offence, you have the right to speak to a solicitor. That right does not mean you can refuse to give the police samples of breath, blood or urine even if you have not yet spoken to the solicitor.

Independent Custody Visitors

There are members of the community who are allowed access to police stations unannounced. They are known as Independent custody visitors and work on a voluntary basis to make sure that detained people are being treated properly and have access to rights. You do not have a right to see an independent custody visitor and cannot request that an independent custody visitor visit you. If an independent custody visitor does visit you while you are in custody they will be acting independently of the police to check that your welfare and rights have been protected. However, you do not have to speak to them if you do not wish to.

People who need help

- If you are under 17, or you have learning problems or a mental problem, then you should have someone with you when the police do certain things. This person is called your "appropriate adult".
- Your appropriate adult must be with you when the police tell you about your rights and tell you why you are being kept at the police station. He or she must also be with you when the police read the police caution to you. He or she must also be with you if you are interviewed.
- The police might also need to do one of the things listed below while you are at the police station. Your appropriate adult should be with you for the whole time if the police do any of these things:
 - Interview you or ask you to sign a written statement or police notes
 - Review your case
 - Remove more than your outer clothes
 - Carry out anything about an identification parade
 - Change you with an offence

You can speak to your solicitor without your appropriate adult in the room if you want to.

Getting an interpreter to help you



- If you do not speak or understand English the police will arrange for someone who speaks your language to help you.
- If you are deaf or have difficulty speaking the police will arrange for a British Sign Language/English interpreter to help you.
- When police ask you questions the interpreter will make a record of the questions and your answers in your own language. You will be able to check this before you sign it as an accurate record.
- If you make a statement to the police, the interpreter will make a copy of that statement in your own language for you to check and sign as correct.

People who are not British

If you are not British you can tell the police that you want to contact your High Commission, Embassy or Consulate to tell them where you are and why you are in the police station. They can also visit you in private or arrange for a solicitor to see you.

MP 141305

Criminal Defence Service



The Law Society

More information for people arrested by the police

Please keep this information and read it as soon as possible. It will help you to make decisions while you are at the police station.

If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.

1. Getting a solicitor to help you

- A solicitor can help and advise you about the law.
- If you want a solicitor, tell the Police Custody Officer. The police will help you get in touch with a solicitor.
- The police must let you talk to a solicitor at any time, day or night, when you are at a police station. It is free.
- If you do not know of a solicitor in the area or you cannot get in touch with your own solicitor, you can speak to the duty solicitor. It is free. The police will help you contact him or her. The duty solicitor is nothing to do with the police.
- You are entitled to a private consultation with your solicitor on the telephone or they may decide to come and see you at the police station.
- Usually, the police are not allowed to ask you questions until you have had the chance to talk to a solicitor. When the police ask you questions you can ask for a solicitor to be in the room with you.
- If you ask to speak to a solicitor it does not make it look like you have done anything wrong.
- If a solicitor does not turn up, or you need to talk to a solicitor again, ask the police to contact him or her again.
- If you tell the police you that you don't want to speak to a solicitor but then change your mind, tell the Police Custody Officer. The police will then help you contact a solicitor.

2. Telling someone that you are at the police station

- You can ask the police to contact someone to inform them that you are at the police station. It is free. They will contact someone for you as soon as they can.

3. Looking at the Codes of Practice

- The Codes of Practice is a book that tells you what the police can and cannot do while you are at the police station.
- The police will let you read the Codes of Practice but you cannot read it for so long that it holds up the police finding out if you have broken the law.
- If you want to read the Codes of Practice, tell the Police Custody Officer.

Getting details of your time at the police station

- Everything that happens to you when you are at the police station is put on paper and is called the Custody Record.
- When you leave the police station, you, your solicitor or your appropriate adult can ask for a copy of the Custody Record. The police have to give you a copy of the Custody Record as soon as they can.
- You can ask the police for a copy of the Custody Record up to 12 months after you leave the police station.

How you should be cared for

These are short notes about what you can expect while you are kept at the police station. To find out more, ask to see the book called the Codes of Practice. Inside its back cover you will find a list of where to find more information about each of these things. Ask the Police Custody Officer if you have any questions.

Keeping in touch

As well as talking to a solicitor and having a person told about your arrest you will usually be allowed to make one phone call. Ask the police if you would like to make a phone call. You can also ask for a pen and paper. You may be able to have visitors but the Custody Officer can refuse to allow that.

Your cell

If possible you should be kept in a cell on your own. It should be clean, warm and lit. Your bedding should be clean and in good order. You must be allowed to use a toilet and have a wash.

Clothes

If your own clothes are taken from you, then the police must provide you with an alternative form of clothing.

Food and drink

You must be offered 3 meals a day with drinks. You can also have drinks between meals.

Exercise

If possible you should be allowed outside each day for fresh air.

If you are unwell

Ask to see a doctor if you feel ill or need medicine. The police will call a doctor for you and it is free. You can ask to see another doctor but you may have to pay for this. You may be allowed to take your own medicine but the police will have to check with a doctor first. A nurse may see you first, but they will send for a doctor if you need one.

How long can you be detained?

You can normally be detained for up to 24 hours without being charged. This can be longer but only if a Police Superintendent allows it to happen. After 36 hours only a court can allow more time without your being charged. Every so often a Senior Police Officer has to look into your case to see if you should still be kept here. This is called a review. You have the right to have your say about this decision, unless you are not in a fit state.

When the police question you

- The room should be clean, warm and lit.
- You should not have to stand up.
- The Police Officers should tell you their name and their rank.
- You should have a break at normal meal times and a break for a drink after about two hours.
- You should be allowed at least 8 hours rest in any 24 hours you are in custody.

Please turn over

Appendix five

Further concerns regarding police powers under Schedule 7 to the Terrorism Act 2000

A representative from the Federation of Student Islamic Societies raised the following concerns with the panel in addition to the issues covered within chapter three:

The Protection of Freedoms Bill

The Protection of Freedoms Bill contains provisions regarding the retention of DNA and fingerprints obtained from a Schedule 7 stop. The proposal is to keep these DNA and fingerprints for six months. This compares with the provision in the Bill for *immediate* removal of the DNA profiles of those who have been *arrested* for a minor crime. Whilst this is a significant reduction compared to the current arrangements of indefinite retention, this is still an infringement of civil liberties which goes beyond the arrangements for arrest. Should an individual who has been stopped arouse suspicion as a result of the initial encounter, there are other provisions within legislation that allow for the taking of biometric data (e.g. a person can be arrested under Section 41 of the Terrorism Act and DNA /fingerprints obtained as a result of the arrest)⁴⁷.

⁴⁷ Section 41 of TACT 2000 provides the police with the power to arrest and detain a person without charge for up to 48 hours if they were suspected of being a terrorist. This period of detention could be extended to up to seven days if the police can persuade a judge that it is necessary for further questioning. This was a break from ordinary criminal law where suspects had to be charged within 24 hours of detention or be released. This period was later extended to 14 days by the Criminal Justice Act 2003, and to 28 days by the Terrorism Act 2006. The Protection of Freedoms Bill proposes to return to a maximum detention of 14 days without charge.

Appendix six

Sapphire Cold Case Investigation Team

The article below has been taken from the MPS website. It provides examples of the convictions secured by the MPS Sapphire Cold Case Investigation Team.

Sapphire secures long terms for historic offences (8th April 2011)

Over the past 12 months, investigations by the Sapphire Cold Case Investigation Team have led to 105 years' imprisonment being secured in connection with 14 rape convictions.

The cases, all historical, previously unsolved offences, include a man who raped a babysitter after forcing his way into the property, and a second defendant who raped an elderly victim as she lay in her bed.

The cold case team works closely with Forensic Service Providers and the Crown Prosecution Service to review the most serious unsolved rape investigations to identify any new evidential opportunities which could support a prosecution.

Detective Superintendent Jason Ashwood, of Sapphire, said: "This has been a remarkable year for the Cold Case Team who have demonstrated exceptional detective ability during their relentless pursuit of these suspects. Most importantly, the team's carefully considered approach has ensured that their victims, who have lived with such harrowing experiences for so long, have finally been able to see their attackers brought to justice."

Case study one - Dunston Crichlow: sentenced to nine years imprisonment

In 1989 Crichlow forced his way into a home where a 19-year-old female babysitter was looking after a baby and a two-year-old child. Crichlow raped the victim whilst the two-year-old child hid under a table nearby, then tied the victim up and left. The Cold Case Team undertook a three-year investigation during which they focused on the potential of combining swabs to gain sufficient DNA material to make a suspect identification. The case involved experts who came to the UK from the USA to unsuccessfully challenge the forensic findings which led to Crichlow's conviction.

Case study two - John McGlynn: sentenced to 15 years imprisonment

In 1987 McGlynn broke into the home of an 88-year-old woman, got into her bed and raped her. She was then handcuffed and bound, before McGlynn burgled the house and continually sexually assaulted her. He left her tied and handcuffed. A re-investigation and review of exhibits led to the identification of McGlynn's DNA. However, the victim had died in 1995 so the team had to identify people who knew the victim at the time of the attack in

order to support the prosecution. This assisted when McGlynn attempted to claim that he and the victim had been involved in a consensual relationship. The judge commended the officers and publicly stressed the importance of Sapphire's contribution to policing.

Source: MPS website: <http://content.met.police.uk/News/Sapphire-secures-long-terms-for-historic-offences/1260268809849/12572467457566>

Appendix seven

The National DNA Database Strategy Board

Role of the Strategy Board

The National DNA Database Strategy Board provides governance and oversight of the operation of the NDNAD.

It operates under the tripartite arrangements for the governance of policing, comprising members from the Association of Chief Police Officers, the Home Office/ NPIA and the Association of Police Authorities.

The Chair of the Board is Gary Pugh, who is the Director of Forensic Services of the Metropolitan Police. Lay representation at meetings is provided by members of the Human Genetics Commission (HGC).

Membership

The **Association of Police Authorities** (APA) represents police authorities across England and Wales.


Association of Chief Police Officers (ACPO) is a private limited company that leads the development of policing best practice in England, Wales and Northern Ireland. ACPO provides a forum for chief police officers to share ideas and best practice. It coordinates the strategic operational response and advises government in matters such as terrorist attacks and civil emergencies. ACPO coordinates national police operations, major investigations, cross border policing, joint law enforcement task forces.

The **Home Office** is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.

The **Forensic Science Regulator** independently ensures that quality standards apply across all forensic science services to the Criminal Justice System (CJS). The Forensic Science Regulator is accountable to the public.

The **NDNAD Ethics Group** is an advisory public body, established to provide independent advice on ethical issues to Home Office Ministers and the strategy board. The Ethics Group is accountable to Ministers.

The **Human Genetics Commission** is a government advisory body on new developments in human genetics and how they impact on individual lives. Focuses on the social, ethical and legal issues, promoting and responding to public debate. The Human Genetics Commission is accountable to Ministers



On behalf of ACPO and through the Strategy Board, the **NPIA NDNAD Delivery Unit** is responsible for the strategic management of the National DNA database. They ensure operation within agreed standards, accredit all the scientific laboratories that that analyse DNA samples and oversee the contract for operation and maintenance of the DNAD.

The **Information Commissioners Office (ICO)** is an independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO attends the Board as an independent observer.

Appendix eight

Copy of the flow chart on display within MPS custody suites

DNA SAMPLING OF ARRESTED PERSONS

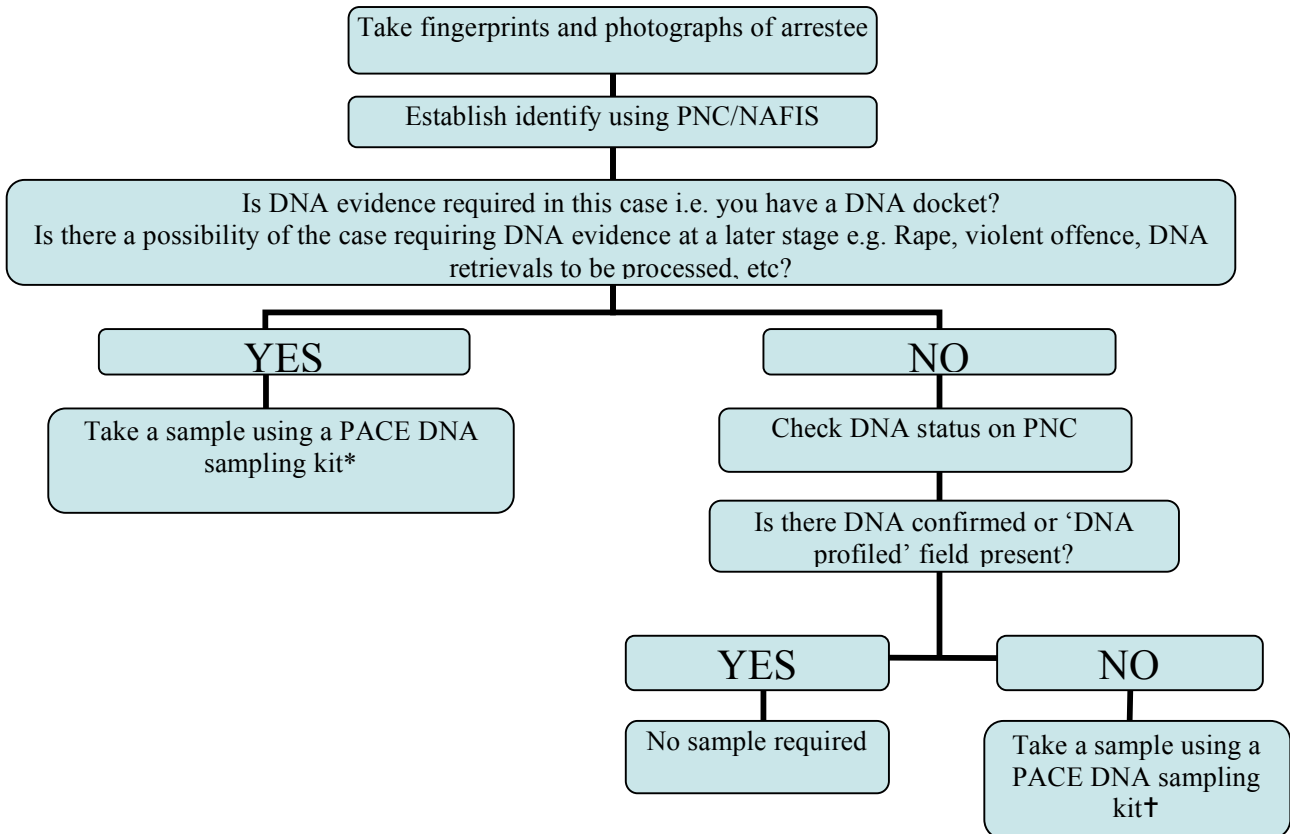
Arrestee in police detention

(As a result of being arrested for a recordable offence)

If unsure always take a sample and speak to your Borough Forensic Manager before submitting.

Very Important:

**PACE only allows for the taking of one DNA sample per arrest.
If NSPIS entry shows more than one sample taken for that arrest,
ALL samples will automatically be destroyed.**



*The sample must clearly be endorsed in a black field pen on the front with the word 'EVIDENTIAL'. Failure to do this may result in the sample being destroyed as it may be treated as a database entry in error. Complete continuity records and place for despatch in the designated freezer.

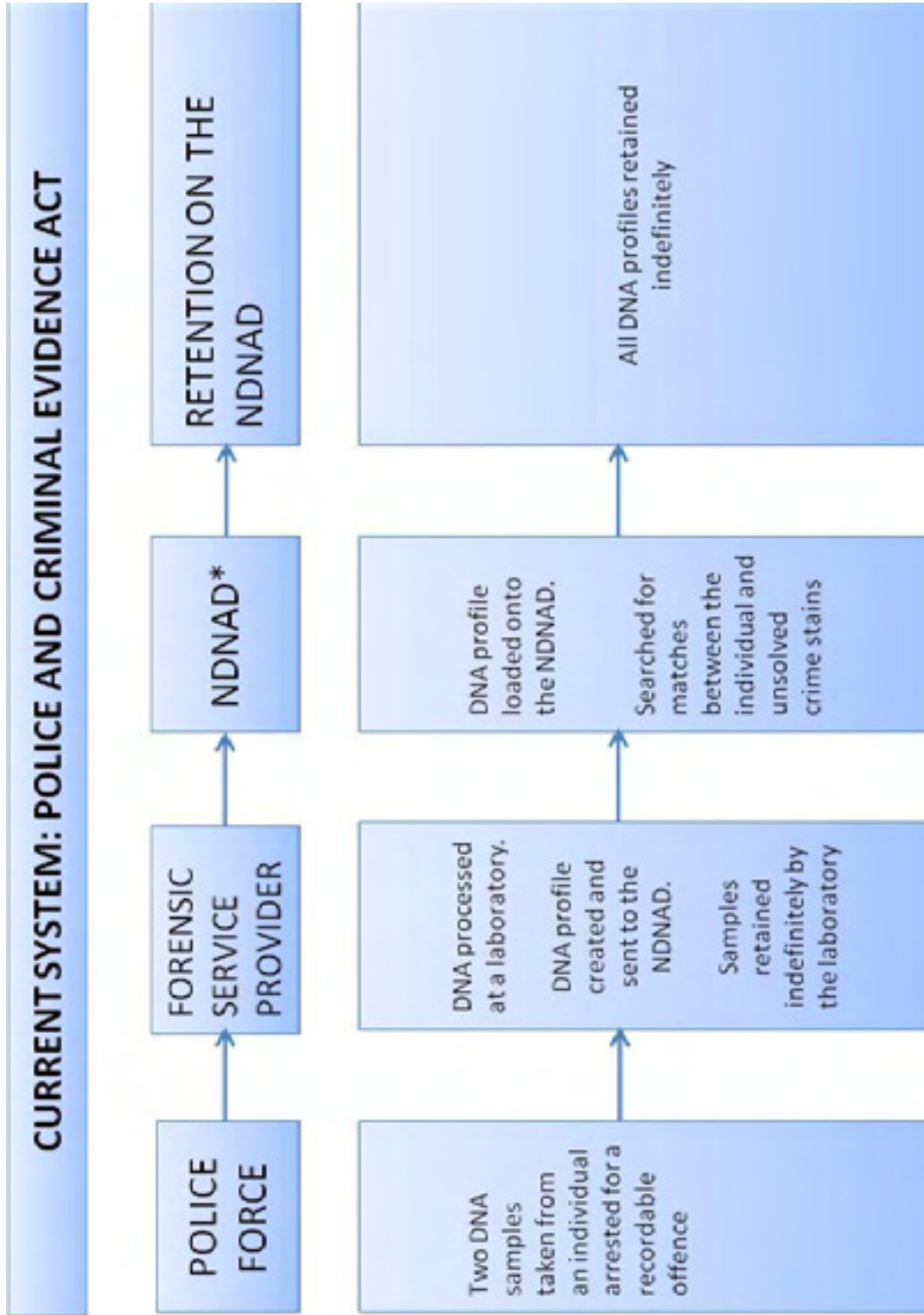
Complete a DNA proforma statement (copies in custody) and hand to the OIC. This will be required by CPS for a charging decision.

†Do not endorse the outer package as 'evidential'. This sample will be used as the database entry for the individual. Complete continuity records and place for despatch in the designated freezer. A DNA proforma statement may be required at a later date.

All unused, part used or error kits must be sent to the DNA unit for central destruction

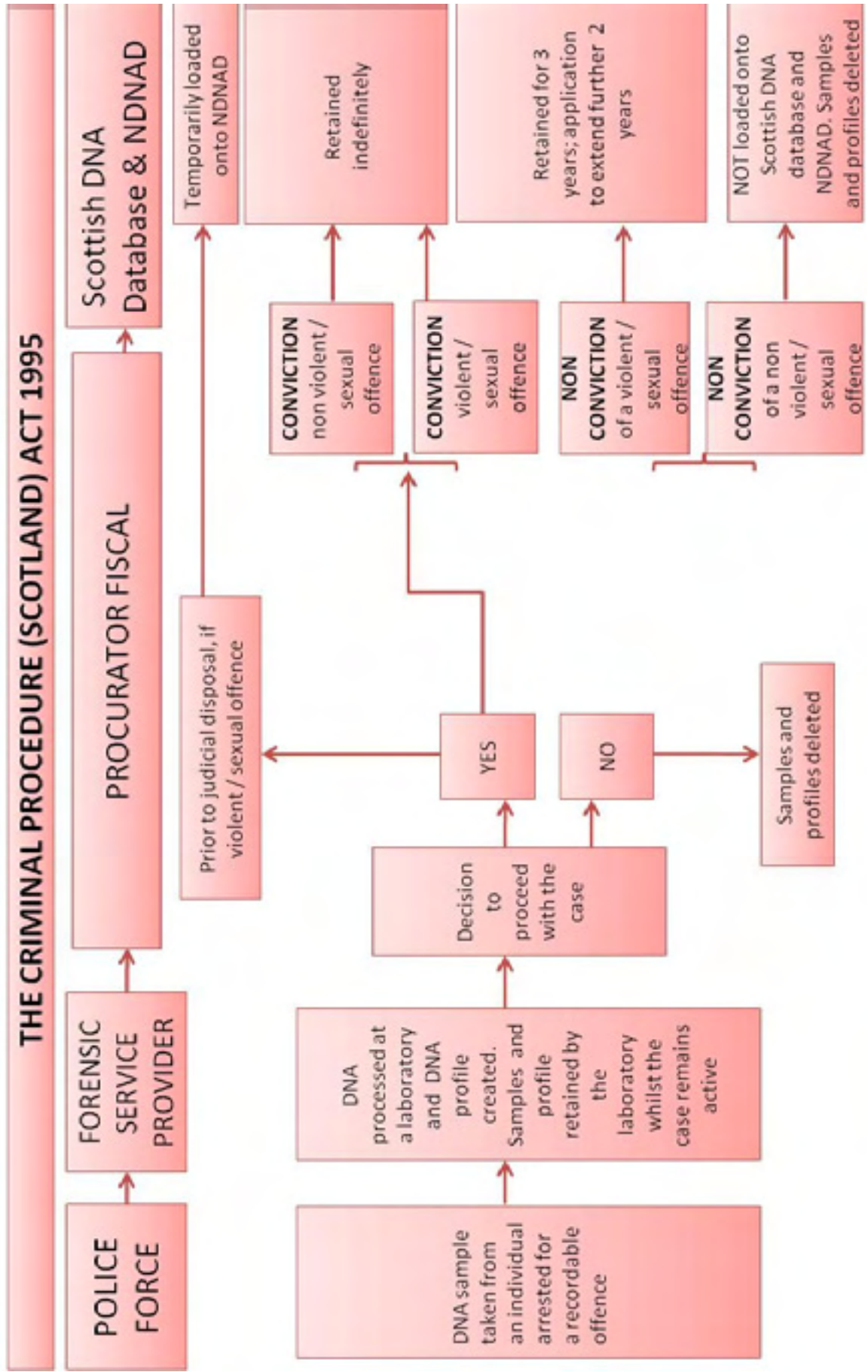
Appendix nine

Flow chart of the DNA journey under current legislative arrangements



Appendix ten

Flow chart of the DNA journey under the Crime and Security Act 2010



Appendix eleven

Flow chart of the DNA journey under the Protection of Freedoms Bill provisions as presented to Parliament on 11th February 2011
 (NB: This may be subject to amendment following parliamentary debate)

