

# Business Case for the Creation of an ACPO Criminal Records Team



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## **1. Terms of Reference**

To provide the cohesion and support to ACPO and the Home Office, concerning the elements of police data management relating to DNA, fingerprints and PNC. Creating the focal point for handling relevant technical, policy and legal developments and other emerging issues.

In doing so to ensure that opportunities to detect and prevent crime are identified, improved and fully exploited consistent with the police reform agenda.

To achieve significant efficiency gains in these areas, including cost savings to crime investigations and improved public protection, leading to greater public reassurance. To take full account of the needs of all stakeholders, including members of the public, in balancing business needs with relevant legislation, particularly ECHR compliance.

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## **2. Executive Summary**

**2.1.1.** Increasingly, it is recognised that the use of a person's name alone as a central anchor point within the criminal justice system has shortcomings. In acknowledgement of this fact and through better use of DNA and fingerprints the Government has made substantial investments to improve the biometric identification of persons who come to police notice. The Forensic Integration Strategy (FIS) under the leadership of the Forensic Science and Pathology Unit, linking into the Forensic Science Committee, is designed to improve crime detection through improvements in this and other areas of forensic science.

**2.1.2.** Changes to a simple procedure concerned with taking forensic samples from arrested persons has repercussions, for local custody systems, national systems, business processes, legal challenges and importantly the ability to measure success in areas of crime detection and prevention. In some cases simple changes have the potential to substantially affect information management within the police service. Introduction of new initiatives such as Penalty Notices for Disorder, Conditional Cautions or Bad Character references have all created implications for forensic sampling or custody processes that require support at force and national levels, if the benefits are to be successfully realised.

**2.1.3.** When the use of police information by non-police agencies is introduced to this complex backdrop there is potential for legal challenges to undermine police procedures. In recent years there have been several legal challenges to the police use of information, which are likely to continue. The police service needs a national mechanism for responding to such scrutiny.

**2.1.4.** There is also increasing public debate about the legitimacy of retaining the DNA profiles of young persons on a national database. This was reported on extensively in the media during the early part of 2006 and was the subject of numerous Parliamentary Questions. Such an examination needs to be considered against several factors beyond the legal constraints and appropriate strategies then require building. A resource that is able to provide an ACPO and Home Office response is vital to maintain legitimacy.

**2.1.5.** The ACPO DNA and Fingerprint Retention Project Team has been strategically responsible for the implementation of Sections 9 and 10 of the Criminal Justice Act 2003, concerning DNA and fingerprint sampling. This work has enabled the detection of serious crimes and saved millions of pounds in police time, reducing risks to the public from dangerous offenders, deterring criminals and providing the early elimination of the innocent. It has also informed ACPO responses in significant high profile Court cases, answers to numerous Parliamentary Questions and media enquiries. It has been well positioned to identify emerging issues and provide ACPO with an effective strategy, such as the Exceptional Case Model, which deals with record removal.

## **2.2. The Requirement**

**2.2.1.** The establishment of a full time unit tasked with providing the cohesion and support for ACPO and the Home Office, co-ordinating the elements of police data management, relating to DNA, fingerprints and the Police National Computer (PNC). To create a focal point for handling relevant technical, policy and legal developments

and other emerging issues. To ensure that sufficient resources are in place to evidence future benefits and provide an effective communication strategy.

**2.2.2.** Ongoing work streams that require servicing include; the implementation of the Retention Guidelines, securing the technical changes and advising on business processes; providing Exceptional Case advice for Chief Officers and establish a library of reviewed cases; researching and identifying business benefits; rationalising the conviction records, which sit in the NIS microfiche library; managing a BRC project to deal with the acquittal records, which have been weeded from the PNC since May 2001 and retained locally in forces; and managing the European Union conviction exchange process, as the Central Authority on behalf of ACPO.

**2.2.3.** The ability to recognise and deal with emerging issues also provides significant benefits, which are discussed in the 'Emerging Issues' section. Having a core group, who are familiar with the issues and have the contacts and the expertise readily available, enables very timely and flexible responses to be implemented. The ability to manage risks and exploit opportunities is also enhanced through better environment scanning.

**2.2.4.** Examples of such areas under consideration include, the Exceptional Case Model, EU sharing of fingerprints, research into the benefits of retention of under 18 year olds samples, in Government strategies relating to Identity Cards and the use of biometrics in employment vetting.

### **2.3. Benefits**

The benefits associated with this proposal include the following;

- Increased crime detections
- Direct police savings through speedier investigations
- Quicker apprehension of dangerous offenders
- Early elimination of suspects
- Greater victim reassurance
- Improved identification of UK Citizens who offend abroad
- A greater ability to inform legal and Parliamentary scrutiny
- Improved system efficiency and coordination of technical changes
- Negotiating expertise for ACPO and Government
- Ability to deal with emerging issues more effectively

### **2.4. Funding**

**2.4.1.** The funding requirement for this proposal represents excellent value for money, when measured against the savings and efficiency gains that are being realised. The savings generated by speeding up just a few large murder or rape investigations will sufficiently pay for the annual budget. Examples are included in the 'benefits and cost benefit analysis' section of this report and show how early detection, in one case alone, saved £145,000. The total annual cost of this proposal is £472,000.

**2.4.2.** The Forensic Science and Pathology Unit and ACPO have jointly provided funding for the DNAFRP in previous years. This has always been on an annual basis, and whilst this has been welcome, a permanent funding stream should now be identified. The annual renewal of 12-month contracts is inappropriate, given the level

of responsibility attached to this work. In order to ensure the retention of appropriate skills and continuity of expertise a long term funding commitment is required.

**2.4.3.** Some areas of work, which include the use of police data for vetting which include access to PNC data by non-police users, are capable of generating an income. A self-funding arrangement in relation to this proposal is therefore a realistic option for the future and should also be explored during the next twelve months. This is discussed in more detail under the 'Emerging Issues' section.

**2.4.4.** A spreadsheet, at Appendix A sets out all the business areas together with the staffing requirements and associated costs. Other general costs such as office accommodation and IT are also included in this document.

**2.4.5.** Details include; the business area as described within the body of this report and the staffing requirements to include short term needs where applicable. Office requirements form part of the overall office costs, where as IT, Desks and travel and expenses relating to the role have been itemised alongside the relevant business areas.

**2.4.6.** A number of areas will utilise staff based upon a shared responsibility between roles. For example, the acquittal BRC work and the microfiche project will be resourced by staff that also have other linked responsibilities within the Unit. This would for example include work connected to the Forensic Integration Strategy, the Researcher Role and the Exceptional Cases advisor.

## **2.5. Governance**

**2.5.1.** The governance for the Project work has been provided by a Board chaired by DCC Adrian McAllister (Lancashire) who holds the ACPO Records and Disclosure portfolio. With a move to a new arrangement, DCC McAllister has agreed to provide governance pending any formal arrangement, which might be established during the creation of the NPJA.

## **2.6. Risks**

**2.6.1.** The risks associated with failing to address these important areas of police business include;

- Failure to identify violent and dangerous sex offenders.
- Costly and inefficient investigations
- Failure to achieve early elimination of suspects
- Greater potential for miscarriages of justice
- Substantial litigation cases
- Uncoordinated system development in business areas
- Incomplete national work streams

## **2.7. Conclusions**

**2.7.1.** To fulfil the requirement identified in this paper, it is necessary to establish a dedicated team. The team will need to be full time and capable of handling the numerous issues as they arise. Acknowledgements of the DNA FRP achievements since inception have reinforced the view that the expertise and knowledge gained should not be lost (See stakeholder survey, Appendix B).

**2.7.2.** The existing resources and expertise of the DNA and Fingerprint Retention Project should be transferred to a newly established team and to properly

reflect the evolving role it would be helpful to refer to this team as the ACPO Criminal Records Team (ACRT).

## **2.8. Recommendations**

**2.8.1.** An ACPO Criminal Record Team should be established within the shadow NPIA, utilising the resources and experience of the existing Project Team.

**2.8.2.** The new unit should be permanently funded by in order to realise the business benefits, manage the identified risks, and handle the associated emerging issues effectively.

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### **3. Introduction**

**3.1.1.** The requirement has emerged during the lifetime of the DNA and Fingerprint Retention Project (DNAFRP). In accordance with the Project Plan the work of the project team is due to be completed by the end of 31 March 2006 but there is a clear indication that the Police Service needs continuing national support in many of these areas. It should not be assumed that the IMPACT programme alone will resolve these issues, nor indeed will the Bichard Code and Guidance both of which deal with separate albeit related matters.

**3.1.2.** In many police business areas, there are recurring elements that require co-ordinated attention. Broadly this includes identifying business needs, securing technical changes, linking to operational requirements, managing legal demands and working with all relevant stakeholders under the appropriate ACPO governance.

**3.1.3.** Information management has become an increasingly important and high profile aspect of everyday policing. The Bichard Inquiry has highlighted this fact and whilst the areas linked to the Bichard Code and MoPI Guidance<sup>1</sup> are significant, they do not represent all the new requirements to apply a greater strategic focus on information management.

**3.1.4.** Police forces in England and Wales require national support on many issues connected associated PNC DNA and fingerprint records. This report makes the case for setting up a dedicated unit, which will provide substantial improvements in this area. It deals with certain specific and important aspects of information management business, with clearly defined parameters and makes important links to areas of forensic information, including DNA and fingerprints. Many of the benefits from this proposal will be transferable to related business areas.

**3.1.5.** There remain a number of police business areas, which are disjointed. They relate to the way the police manage convictions, record arrests, acquittals and many other sanctions such as Cautions, PNDs and Orders. Other areas, include the way the police respond to legal challenges, engage with the Information Commissioner and other key stake holders, the way records are linked to forensic samples, issues with a vast microfiche library and the way data is managed generally. These are all areas of concern and require a coordinated and efficient resource to remove barriers and improve policing, which is consistent with the Police Reform Agenda.

**3.1.6.** The benefits this proposal will bring to policing can be summarised as follows;

- Increasing crime detections
- Direct police savings through speedier investigations
- Quicker apprehension of dangerous offenders
- Early elimination of suspects
- Greater victim reassurance
- Managing EU integration identifying UK Citizens who offend abroad
- An ability to respond to legal and Parliamentary scrutiny
- Improving system efficiency and coordination of technical changes
- Expertise to negotiate with stakeholders on behalf of ACPO and Government
- Ability to identify emerging issues and address them early

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<sup>1</sup> Following the Bichard enquiry into the Soham murders, a new code underpinned by guidance on the Management of Police Information (MoPI) has been introduced by Government.

**3.1.7.** The proposal has the support of the police service at all levels, particularly the ACPO leads in the relevant business areas. It also receives strong support from many interested parties and stakeholders. These groups include the Information Commissioner's Office, the National DNA Database Custodian, the National Identification Service, the Association of Police Authorities (TBC), HMIC, Police Standards Unit, CRB, a number of Home Office departments and significantly practitioners and operational police officers.<sup>2</sup>

**3.1.8.** This proposal specifically excludes support to the Bichard Code, Guidance and Threshold Standards, which will be catered for by the NCPE implementation strategy. Notwithstanding that, areas such as data protection, Information Commissioner matters and other legal aspects link to both areas of work. As the Bichard requirements progress there is no reason why some ongoing support in such areas, cannot be provided by the same structure, which forms part of this proposal.

**3.1.9.** An understanding across the business areas, which pulls together the value of DNA and fingerprint retention, the management of police records and how this links to the policing benefits for operational officers, is important. At the same time an ability to demonstrate clarity in relation to Data Protection matters and the use of police data in a non-police environment is also necessary.

**3.1.10.** In some areas, record management has become out dated and is in need of urgent modernisation. An example of how the service has managed acquittal records nationally highlights this point and now needs addressing. (See the 'BRC of Acquittal Records' section). Another example is provided by the expensive archive of millions of microfiche records that are held by NIS but not available electronically on the PNC.

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<sup>2</sup> The evidence in support of this claim has been drawn from a variety of sources, which includes the stakeholder survey summarised at Appendix A. It also includes feedback obtained from forces during focus group work which has been documented and disclosed during court proceedings. Other areas include observations made during business benefits research.

#### **4. Forensic Integration Strategy (FIS)**

*“Overall, the contribution that the DNA FRP team has made demonstrates just how big a gap there was in the area of retained police data before the team came into existence. The issues addressed by the team have become even more important during the lifetime of the project in the light of the Bichard Inquiry Report, the PITO review and the increased level of public interest in the NDNAD, and in the legislation changes affecting the PNC, DNA and fingerprints.”*

*Dr Mike Prior, NDNAD Custodian, 2006.*

**4.1.1.** The DNA Database Custodian has described the DNA and Fingerprint Retention Project as “the glue, which joins all these issues together”. The creation of a permanent team will ensure the benefits of such an approach are sustainable.

**4.1.2.** Changes to legislation concerning the sampling and retention of DNA and fingerprints have significant consequences for record retention, disclosure and business processes within police forces. The areas discussed in this report are all relevant to FIS and particularly the operational police use of DNA and fingerprints.

**4.1.3.** At the same time, other changes to legislation require a link to be made with the forensic data. This includes the introduction of new initiatives, such as, PNDs or Conditional Cautions. The same might also apply to establishing the identity of a UK citizen convicted abroad.

**4.1.4.** The two areas need to be joined up, if the police retain DNA they need to know who it belongs to via their national demographic database, the PNC. If there is a challenge to DNA retention there is potentially a challenge to the police record. This affects force and national systems. Importantly, this should not be seen as solely an IT issue, although in the past it has often been viewed as such. It is an operational policing issue and must be seen in that context in order to justify the use of the techniques and derive the maximum benefits out of the forensic science.

**4.1.5.** Whilst the initial emphasis through the DNA Expansion Programme has been applied to DNA it is now beginning to broaden into other areas of forensic science. Most recently, FIS is developing areas such as footwear, facial recognition and reinforcing the value of fingerprints. The information management principles applied to DNA must also be applied across these areas.

**4.1.6.** There have been numerous examples, which have emphasised the importance of a coordinated approach in this area. They include the development of national custody systems, which fail to take account of legal changes to sampling procedures and the effect Subject Access checks can have on the long term retention of samples.

**4.1.7.** Quantifying the level of resources to provide the function described within this section is helped by the experience of the project team during the last two years. An analysis of this work shows that in a team of five persons, approximately 50% of their total time was spent in this area. One person has worked full time on such matters, whilst the researcher, who has provided documentation of the business benefits, divides his time equally between forensic and non-forensic records. The equity for the

Head of the Unit is split equally between these areas of business as is the project administrator.

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## 5. The Retention Step Model

*“The proposal for establishing a central referral point for ‘exceptions’ handling type work will be strongly welcomed by NIS. This has been lacking in the past, this is particularly relevant in maintaining a uniform approach across police forces. The higher profile of this area of business particularly emphasises the need for this”.*

*Mr Dudley Seaber, National Identification Service (NIS)*

**5.1.1.** The retention of criminal conviction data held on the Police National Computer (PNC) has been regulated for many years by the ACPO General Rules for Criminal Record Weeding on Police Systems, commonly referred to as the “Weeding Rules”.

**5.1.2.** In recent years, there have been significant changes in terms of legislation and public expectation, which call for a completely new and radical approach to this area of police activity. In particular, legislation now creates the position whereby the details of persons who have no previous offending history are held on the PNC alongside those who have criminal convictions.

**5.1.3.** A clear distinction needs to be made between the retention of data for operational policing purposes, and the use that other users or recipients may make of that data.

**5.1.4.** This has led to the development of the Retention Guidelines, which have been approved in principle by ACPO Cabinet and will form part of the Management of Police Information Guidance due to be published on the 31 March 2006.

**5.1.5.** The Guidelines contain a ‘step down model’ which replaces the current weeding regime. The concept of the model is simply to deny access for non police users of the PNC, to certain data fields, after set periods of time, whilst allowing the police continued access in support of operational policing.

**5.1.6.** An Information Tribunal Judgment published on the 12 October 2005 gave clear support for the introduction of the Retention Guidelines ‘step down model’ to provide a more sophisticated regime for the management of PNC data.

**5.1.7.** The Information Commissioner had served Enforcement Notices on 3 forces requiring them to remove ‘old’ convictions from the PNC. These 3 cases were in effect test cases which ACPO decided to appeal. The matter was subject to an Information Tribunal Hearing at the Royal Courts of Justice during May and June 2005.

**5.1.8.** The Tribunal issued an amended enforcement notice allowing the police to retain the data in question but deny access to the data, by non-police users.

**5.1.9.** The amended enforcement notice does have ramifications beyond the 3 cases to which it refers. It effectively requires a ‘police only access’ regime to be in place on the PNC. Whilst in the first instance that only relates to the 3 specific cases, it will clearly include many others in the future.

**5.1.10.** Work has commenced to establish which organisations and agencies will be considered to be part of the ‘policing family’ and allowed access to PNC.

**5.1.11.** Once the Retention Guidelines are finalised, an Implementation Strategy will be required to coincide with their publication ensuring that there is a seamless transition.

**5.2. The Implementation Strategy will cover issues such as;**

- publication of Retention Guidelines
- support to forces
- response to legal challenges
- maintenance of Retention Guidelines
- access levels
- technical implementation on PNC
- advice on Exceptional Cases

**5.3. Publication of Retention Guidelines**

**5.3.1.** The Retention Guidelines will be published in both paper and electronic formats and distributed to all Chief Constables and heads of all relevant business areas in all forces in England and Wales. In addition they will be published on the ACPO Intranet, and the Centrex Genesis website.

**5.4. Support to forces**

**5.4.1.** Experience in the implementation of other business change issues, for example the NIM, shows that there will be a need to support to all forces in interpreting the Guidelines once published. It will be necessary to employ an additional member of staff for up to a year to respond to requests for assistance / advice, and to provide an assessment of any ongoing requirement in this regard.

**5.5. Response to Legal Challenges**

**5.5.1.** Following the recent widespread media coverage relating to the retention of DNA, there will be a high volume of enquiries. That demand for such a facility is already emerging with an increasing number of data subjects requesting the deletion of their DNA, fingerprints and associated PNC records.

**5.5.2.** It is inevitable that more legal challenges will arise as the police retain more data for their policing purposes, particularly from persons against whom no action is taken. Forces will require central support to resist those challenges where appropriate. The DNAFRP have a proven track record in this area of support.

**5.6. Maintenance of Retention Guidelines**

**5.6.1.** The Guidelines will require constant maintenance to ensure that they deal with changes to existing criminal offences; sentencing policy; government policy and newly created criminal offences.

**5.7. Access levels**

**5.7.1.** Issues over access to PNC data is another matter for concern. An increasing number of agencies have sought and continue to seek direct access to PNC. It is incumbent on ACPO to ensure they have robust arrangements in place to properly assess any applications and apply the necessary audit processes to ensure compliance with agreed usage. This has to be a transparent process which is open to external scrutiny.

**5.7.2.** The ViSOR links to PNC enabling the user to have direct access to information retained on a PNC record. This area requires ongoing attention to ensure that users who are no longer able to directly access to PNC through the Retention Guidelines are not able to access the data indirectly through ViSOR.

## **5.8. Technical implementation on PNC**

**5.8.1.** Dialogue has already commenced with PITO in relation to the technical implementation of the Retention Guidelines on PNC. An initial draft design specification document has been written for consideration by all parties. The early indications are that the technical changes required will take six to eight months from commencement.

**5.8.2.** One member of staff is currently engaged full time in the development of the Retention Guidelines and associated matters. Whilst this level of attention will be required to continue to provide the necessary continuity, it is anticipated that support will be needed to manage this significant area of work.

## **5.9. Exceptional Case Advice**

**5.9.1.** There has been an increase in the number of requests being made to Chief Constables for the removal of DNA, fingerprints and associated PNC records. Whilst acknowledging the responsibility of Chief Officers as Data Controllers, it is important that national consistency is achieved when considering the removal of such records.

**5.9.2.** A national procedure has been developed and approved by ACPO to deal with such requests for removal. This has been disseminated to all forces. The DNA and Fingerprint Retention Project will maintain a library of circumstances that have been viewed as exceptional cases. This will provide a bank of precedents to assist Chief Officers in their decision making process.

**5.9.3.** The Exceptional Case Unit<sup>3</sup> has been initially funded for one year by DCC Ian Readhead, Data Protection Portfolio Holder, although it is anticipated that the requirement for such a unit will continue beyond this.

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<sup>3</sup> 'The Exceptional Case Procedure' forms part of the Retention Guidelines due to be published with MoPI on 31 March 2006.

## **6. Benefits and Cost Benefit Analysis**

*“In responding to questions in Parliament or in dealing with judicial cases the information and statistics provided by the team have been extremely valuable and Ministers have in particular been very grateful for the evidence provided to support the justification for the extension of police powers to take and retain DNA and fingerprints”*

*Mr Eric Downham, Forensic Science & Pathology Unit, Home Office*

**6.1.1.** DNA and fingerprint sampling on arrest has enabled the detection of serious crime and saved millions of pounds in police time, reducing risks to the public from dangerous offenders, deterring criminals and providing the early elimination of the innocent.

### **6.2. Increased Crime Detections**

**6.2.1.** The Home Office estimate that the introduction of biometric ID cards will significantly increase the detection of serious crimes by comparing the fingerprints of all outstanding crime marks held on IDENT 1 against fingerprints taken from all citizens. The Criminal Justice Act 2003 has brought similar benefits. Taking fingerprints and DNA from persons on arrest for a recordable offence has expanded the population of both IDENT 1 and NDNAD, significantly increasing the opportunity of matching a crime scene in a speculative search.

**6.2.2.** Since the introduction of the legislation in April 2004, DNA profiles in respect of over 124,000 people have been added to the NDNAD. More than 2,000 of these persons have been linked to over 3,000 crime scenes. These crimes include 37 murders, 16 attempted murders, and 90 rapes (DNA & Fingerprint Retention Project, January 2006).

**6.2.3.** The Criminal Justice Act 2003 creates an environment where the police record all arrest events on PNC. This enables offenders, such as Ian Huntley, to be linked to outstanding crimes through the arrest process and patterns of suspected offending to be identified nationally on the PNC.

**6.2.4.** Home Office statistics identify that the peak age of known offending is 17 for males and 15 for females<sup>4</sup>. Over 24,000 under 18s have been arrested, DNA sampled and added to NDNAD where their DNA has not previously been loaded to NDNAD. The police need to ensure that they retain sufficient information about those identified in recognition that their age group constitutes the most prolific offending category.

### **6.3. Direct police savings through speedier investigations & quicker apprehension of dangerous offenders**

**6.3.1.** The cost benefits associated with improved efficiency requires an understanding of costs associated with police activity. By drawing upon existing Home Office and DNA FRP research, the potential financial benefits of introducing the legislation can be identified. In addition, there are the unequivocal savings for potential victims of crime.

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<sup>4</sup> Home Office Statistical Bulletin Criminal Statistics 2004, 19/05, RDS Office for Criminal Justice Reform, November 2005.

**6.3.2.** The average cost to a police force in relation to one burglary dwelling investigation has been calculated at £240. This relates, however, merely to police activity<sup>5</sup>. Further costs to the Criminal Justice System culminates to a cost of £2,300 per incident. On an annual and national scale, this adds up to a cost of £3.36 million for police investigation, and a total cost of £2.27 billion to the government. Any reduction in burglary therefore has the potential to make significant savings. The same is true across a range of crimes.

**6.3.3.** The average cost of an homicide investigation is £11,000 relating the police activity only (Home Office). The total cost per incident, which takes into account costs of Prosecution, Court costs, Jury Service, Legal Aid, and the Prison Service as examples, boosts this figure to a total cost of £1.1 million per incident. On an annual basis, the total costs incurred by all incidents of homicide are set at an average £12.1 million for police investigation, and a total figure of £1.2 billion for the government.

**6.3.4.** The costs associated with a trial at crown court are 8 times that of a guilty plea<sup>6</sup>. In 2000, Home Office statistics<sup>7</sup> asserted that 39% (37,167) of the total offenders pleaded 'not guilty' at Crown Court. Significant savings could therefore be made once the level of 'guilty' pleas increase.

**6.3.5.** The following illustrates how DNA enabled the quicker apprehension of a dangerous offender and directly reduced police activity and costs.

#### **£145,000 Saving in one Rape Enquiry**

A "Stranger" rape occurred in the South of England but there was little information in relation to the offender. Investigators suspected he came from Southampton and as there were no other reasonable lines of enquiry, decided to carry out DNA intelligence screen in that area. A DNA profile having been obtained in relation to the suspect.

Prior to this, a male had been arrested for an assault on his partner and his DNA and fingerprints were taken. He was released without charge once it became clear that she did not want to pursue a prosecution.

The DNA profile in respect of the arrestee was loaded to the NDNA and matched to the profile in the rape case. This revealed that the suspect did not live in the Southampton area. The planned intelligence screen would not therefore have identified the suspect.

A similar case in Portsmouth, which also involved a DNA intelligence screen accrued costs of around £145,000, before the suspect was identified due to the suspects DNA not being in the system. It is reasonable to assume that had the suspect in the Southampton case not been in the system similar expenditure could have taken place.

Cases such as these clearly illustrate the potential savings, which can be realised, particularly in serious and expensive enquiries, if the business processes are working effectively.

<sup>5</sup> Home Office Research Study 217, 'The Economic and Social Costs of Crime', 2000, Sam Brand and Richard Price, Research and Development Directorate.

<sup>6</sup> Calculated from work of the Department of Constitutional Affairs.

<sup>7</sup> Home Office Report, November 2001, 'Cautions, Court proceedings and Sentencing: England and Wales 2000', Katie Johnson and colleagues.

## **6.4. Early Elimination and better treatment of suspects**

**6.4.1.** The case below shows that the retention of samples enables the police to quickly and confidently eliminate suspects saving police costs and protecting the rights of the innocent.

### **£40,000 Saving from early elimination of suspects**

Significant savings are realised by DNA and fingerprint sampling persons that have been arrested for a recordable offence and detained at a police station.

A DNA profile of a rapist was obtained from a semen sample and loaded to the National DNA Database.

Two suspects were arrested for the rape but their DNA did not match that from the rape and both were eliminated immediately. This brought significant financial benefits to the police and personal benefits to the individuals concerned. It also avoided lengthy detention in police cells of up to 36 hours or even further remands in custody of innocent individuals.

The police avoided unnecessary interviews, ID parades, medical examinations and Court appearances. It is estimated that, this activity would have cost around £40,000 of police time. Additionally there would be a saving from unnecessary work carried out by a series of Criminal Justice staff and other professionals such as Doctors, by this improved efficiency.

The police in this case were able to remain focused on catching the perpetrator rather than be distracted with unproductive lines of enquiry.

## **6.5. Greater victim reassurance**

**6.5.1.** It is important that the victim of a crime, particularly a serious crime, can feel confident that the police are identifying the right suspects. Lengthy detention of the potential rapist whilst DNA checks are carried out is neither helpful for the victim or the innocent person who is detained during this process.

**6.5.2.** The family of the murdered school girl Caroline Dickinson have often expressed their dismay over the lengthy detention of the wrong suspect by French police until DNA sampling resolved the issue. The benefit of getting this area right provides for much better victim reassurance as well as better treatment of suspects, particularly the innocent.

## **6.6. Managing EU integration identifying UK Citizens who offend abroad**

**6.6.1.** ACPO have submitted a business case to become the UK Central Authority for the exchange of convictions between EU member states. The exchange of such data will bring significant benefits to both national and international policing. It will be necessary to identify the benefits derived from this at an early stage, in order to expand and develop the range of information that is shared. Once the process is in operation it might for example, extend to the exchange of information worldwide.

## **6.7. An ability to respond to legal and Parliamentary scrutiny**

**6.7.1.** Business benefits can be used to defend legal and ethical challenges and inform the future development of legislation. For example, the benefits relating to the Criminal Justice & Police Act 2001 were used during the S & Marper Case decided in the House of Lords (see Appendix C). The Criminal Justice Act 2003 figures have also been used to answer several recent Parliamentary Questions, concerning juveniles on the NDNAD and to brief Home Office Ministers on the success of the legislation (see Appendix D). They have also been published in Police and Criminal Justice journals to articulate the benefits to those working in the Criminal Justice System.

## **6.8. Improving system efficiency and coordination of technical changes**

**6.8.1.** Identifying the business benefits allows the police service to fully utilise the opportunities provided by new legislation and policy. They ensure that the operational policing requirement drives the technology requirement and that the service can respond appropriately to new Home Office initiatives and legislation.

**6.8.2.** The DNA Custodian has submitted a number of change requests to PITO, some of which aim to improve the ability to provide data to the Home Office. In particular, one relates to enhancing the interface between PNC and NDNAD which should enable the delivery of the business benefits relating to DNA more readily.

**6.8.3.** To ensure the successful delivery of these change requests, the ACRT will work closely with the Custodian continuing to articulate the benefits until the technical changes are completed.

## **6.9. Expertise to negotiate with stakeholders on behalf of ACPO and Government**

**6.9.1.** The DNAFRP have a proven ability to negotiate with stakeholders at several levels. The team have successfully secured technical changes, reviewed and revised current policy and supported all forces through the change process. This has required negotiation with numerous stakeholders including, the Information Commissioner, PITO, ACPO, the NDNAD Custodian, IDENT 1, NIS, NCS, Scottish Executive, PSNI CRB, DfES and several HO departments.

## **6.10. Ability to deal with emerging issues effectively and remove obstacles to progress**

**6.10.1.** The requirement to identify business benefits is not restricted to those derived from the introduction of new forensic powers and processes. Work has commenced to identify the benefits to be drawn from back record converting acquittal records to PNC and to scan the microfiche library held at NSY into an electronic database. Both these areas are covered separately in this report.

**6.10.2.** Proposals to undertake such work will not receive support without sound business cases evidencing the benefits. The current unit structure is capable of evidencing and articulating these benefits.

**6.10.3.** The skill base within the team also provides a mechanism for identifying and addressing obstacles to the implementation of new initiatives and legislation. By scanning the media, journals and the Internet for proposed changes to legislation and policy, required technical changes to national systems can be properly considered and scoped before they are implemented.

**6.10.4.** This preparation enables the police service to allocate the appropriate money and resources to such new measures. The implementation of the Exceptional Case Model, which supports Chief Officers when dealing with requests to remove records, is one example. Other examples include the introduction of PNDs, Simple Cautions and the new PACE DNA kit.

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## 7. Legal Challenges

*“The team provided an indispensable link to the national issues and information relating to s.82 of the Criminal Justice and Police Act 2001 – which was the subject of the challenge in S & Marper – and I have no doubt made a crucial contribution to the successful outcome”*

*Ms Sue Ross, Assistant Force Solicitor, South Yorkshire Police*

*“The existence of the Team has been extremely important in co-ordinating a uniform and consistent response on behalf of the Police Service. This is particularly the case as the problem concerned was pursued against the Police Service in a disjointed way. An uncoordinated response could have caused failings and embarrassment for the Service on what was a matter of national media attention.”*

*Victoria Pascoe, Force Solicitor's Office, West Yorkshire Police*

**7.1.1.** The requirement to retain more information about people who come into contact with the police, in a form that is accurate and can reliably identify the correct individual, creates a number of challenges. Linking records to biometric information and ensuring ethical and legal requirements are met, whilst trying to protect the public, has proved to be a legal labyrinth. In recent years there have been several legal challenges to the police use of information that are likely to continue. The police service needs a national mechanism for responding in this area as outlines in this report.

**7.1.2.** The police requirement to retain more sensitive information for longer periods of time has created a number of significant legal challenges. In particular, the removal of the requirement to destroy DNA and fingerprint samples under the Criminal Justice and Police Act 2001 was subject to scrutiny in the case of R v Chief Constable of South Yorkshire (ex parte S and Marper).

**7.1.3.** The claimants appealed against the decision to retain their DNA and fingerprint samples after they were cleared of criminal charges. It was argued that this was a breach of Articles 8 and 14 of the European Convention on Human Rights (adopted by the Human Rights Act 1998). The case was heard in the Divisional Court, the Court of Appeal and the House of Lords.

**7.1.4.** It was ruled that although there was a breach of Article 8(1), this was proportionate and justified under Article 8(2) and that there was no breach of Article 14. The case has recently been submitted to the European Court of Human Rights.

**7.1.5.** In May and June 2005, an Information Tribunal at the Royal Courts of Justice heard an appeal by three Chief Constables against Enforcement Notices, served on them by the Information Commissioner, requiring the deletion of specific conviction data.

**7.1.6.** Members of the DNAFRP provided evidence at the hearing. This covered the importance of retaining information for police purposes and included the

operational police requirement, the benefits to justice and information about the PNC<sup>8</sup>. The Information Tribunal also explored the new Retention Guidelines ‘Step Model’ and endorsed its introduction.

**7.1.7.** The resulting judgment allowed the police to retain the conviction data for long periods of time but only for the benefit of policing. Disclosure of convictions to non-police organisations needs to be managed, so as to limit the harm and distress it causes the individual concerned.

**7.1.8.** The use of police information by non-police agencies increases the potential for legal challenges to the police service. It is also recognised that the creation of a PNC record to link to fingerprints and DNA can potentially have adverse effects on an individual. An individual arrested for murder, for example, could have this fact revealed through a subject access check which is then provided to a third party. This could affect employment opportunity or the ability to obtain a Visa for extended travel or work in certain countries.

**7.1.9.** Currently some Embassies oblige an individual to obtain such a check through a process referred to as enforced subject access. Parliament have decided this practice should become unlawful but the legislation has been delayed until the CRB introduce basic checks scheduled for 2007.

**7.1.10.** It is unlikely that the Home Office would be aware of such issues when the legislation was first enacted, yet the adverse effects are potentially significant. They have the potential to unravel such initiatives to such an extent that the very benefits and public protection afforded by the retention of samples and records are denied.

**7.1.11.** To continue with a policy that has those inherent difficulties undermines the principle that “the innocent have nothing to fear”<sup>9</sup>.

**7.1.12.** Consider for example whether it is ethical for the police to hold, a DNA profile of a 14-year-old youth<sup>10</sup> arrested for a recordable offence, but not subsequently charged. Whilst the police can evidence the value of such an approach in crime detection and prevention terms, certain safeguards must exist to protect the innocent. These safeguards need to be robust, and transparent to all. If non-police use of the data through Employment Vetting, or the Visa application processes, are allowed to undermine this policy there will be numerous legal challenges. These will be difficult to defend and many of the benefits articulated by the Police and Government will unravel.

**7.1.13.** Some will argue that innocent individuals have nothing to fear by the police retention of information<sup>11</sup>. This position becomes a complex argument that needs to take account of a number of factors. Amongst them are the prevalence of recidivist behaviour and disadvantages created for people by poor record management. A proposal that fails to manage the risks, particularly with regard to young persons, whilst trying to secure the wider policing benefits would arguably be untenable. To achieve an

<sup>8</sup> Information Tribunal Judgment dated 12 October 2005

<sup>9</sup> The view that “inclusion on the database does not signify a criminal record and there is no personal cost of material disadvantage to the individual simply by being on it” has been expressed by Home Office Minister Andy Burnham and published in the media.

<sup>10</sup> *Chief Constable of Hertfordshire Police authorised the destruction of the DNA and fingerprints of Jack Saywood, reported in the national media as a case of ‘mistaken identity’.*

<sup>11</sup> Exploring Operational Policing Views Concerning the Retention of Conviction, Acquittal and Arrest History on the Police National Computer, 25 February 2005

acceptable position the service has a duty to co-ordinate and manage the competing interests, within an appropriate legal and policy framework.

**7.1.14.** Balancing the rights of individuals and taking account of Human Rights legislation requires careful and difficult judgements, when seeking to protect the public from crime. The benefits must outweigh the potential interference caused to an individual's privacy. The need to demonstrate such benefits accurately and reliably is required not only by the courts but also by Chief Police Officers before they are prepared to support, what may be considered as far reaching strategies.

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## **8. Communication Strategy**

*“It was really useful, and novel, to have a team of experts who usually had the answer or would find a solution from their wide range of contacts”.*

*Kath Mashiter, Scientific Support, Lancashire Constabulary*

**8.1.1.** During the life of the DNA & Fingerprint Retention Project a robust communication strategy has been in place to ensure that key individuals within forces, such as Scientific Support Managers, PNC Bureaux Managers and Data Protection Officers were apprised of changes. The team also published FAQs on the Centrex Genesis web-site and the ACPO Intranet.

**8.1.2.** The provision of a 24/7 telephone line has also been useful to ensure that information can be provided out of office hours if necessary.

**8.1.3.** In order to be effective the communication strategy has focussed on the ability to identify who needs to be informed as well as marketing the unit as a source of information. The importance of such a facility is well evidenced from project records. However, with the introduction of new policies concerned with the Retention Guidelines, which will be published as part of the Management of Police Information Guidance on 31<sup>st</sup> March 2006, it is anticipated that call volumes will increase significantly.

**8.1.4.** There will be an increasing requirement to maintain relevant web sites for example the Retentions Guidelines will be contained on at least 5 web sites all of which will need monitoring.

**8.1.5.** The introduction of the new retention policy will generate sufficient traffic in the first year to warrant a person dealing with enquiries on a full time basis. The newly introduced “Exceptional Case” model, and the current parliamentary interest is also generating a high volume of calls. The newly introduced post will be responsible for dealing with enquiries in both areas and funding to provide this resource has been identified to the next twelve months,

## 9. BRC of Acquittal Records

**9.1.1.** Since 11 May 2001, Sections 81 and 82 of the Criminal Justice and Police Act 2001, have allowed for the retention of the DNA and Fingerprints relating to those who are acquitted of an offence or a decision is made not to prosecute.

**9.1.2.** Whilst the DNA and fingerprints have been retained in these cases, the PNC Nominal record has continued to weed from PNC.

**9.1.3.** In June 2001, the then Chief Constable Gunn (ACPO Crime Portfolio), wrote to forces advising them of the action they should take in complying with the legislation. Part of the advice was that:

"In respect of fingerprint acquittals, Forces MUST RETAIN the hard copy tenprint form, together with the Force source input document for subsequent back-record conversion, as soon as the technical capability to do that on PNC is achieved."

**9.1.4.** Although the retention of fingerprints was allowed from 11 May 2001, they did not cease to weed from the NAFIS database (now IDENT1) until 17 August 2003. That backlog has been addressed by forces on a selective basis. This has been primarily by way of retaining only 'first time to notice' acquittals (because other 'convicted' tenprint sets were already on the system).

**9.1.5.** In respect of DNA samples, the link between PNC and the NDNAD was not effected until 05 November 2001. Since that time, the profiles linked to acquitted Arrest Summons Numbers have been retained. They are flagged on the NDNAD by way of a Retained Acquittal (RA) marker.

**9.1.6.** One of the objectives for the DNA and Fingerprint Retention Project is;

"To devise and implement a solution for the restoration of weeded records held by Police Forces under the authority of the Criminal Justice and Police Act 2001".

**9.1.7.** However, until PITO had completed a request for change to cease the weeding of acquittal records from the PNC it was impossible to commence these workstreams. That work was completed by 4th December 2005 and the acquittal records no longer weed.

## 9.2. Requirement

**9.2.1.** With the work undertaken by PITO to stop the weeding complete, there is a need to assess the scale of the back record conversion (BRC). The BRC will represent a significant challenge to the police service.

**9.2.2.** The requirement is to BRC records which have continued to weed from the PNC since May 2001. Indications are that there could be as many as 800,000 records across the 43 forces in England and Wales. Where forces have followed the advice from CC Gunn, the records are retained in formats varying between paper, microfiche, or electronic.

### **9.3. Methodology**

**9.3.1.** If the BRC is to be done by forces individually then there are likely to be considerable costs involved. One force has already carried out a feasibility study of its requirement to BRC approximately 20,000 paper records. The cost is likely to be in the region of £200,000, the bulk of which is the estimated cost of manually researching and re-inputting the court result. If that sort of cost is carried over to all forces then the likely cost of dealing with all the records will reach £8 million.

**9.3.2.** Options to resolve the issue have been under discussion with PITO who have said it is likely to require substantial work. An electronic solution from the centre may not be possible and cooperation with forces could be required.

**9.3.3.** Decisions need to be made on what part(s) of the weeded record need to be reinstated. It may be that it is only acquittal records relating to persons who have no existing record on the PNC which are reinstated. This was the case for the BRC programme for reinstating fingerprints, in 2004. This is not the ideal solution and may well take as long to do as all the records when taking into account the amount of research required. There are also likely to be legal implications, which could influence this decision.

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## **10. BRC Microfiche**

**10.1.1.** The National Identification Service (NIS) has an historic archive of approximately 5.3 million records held on microfiche. The data on fiche starts from 1918 and ends in May 1995.

**10.1.2.** The fiche contains arrest and other criminal conviction information together with personal details and police intelligence such as associates and modus operandi. For some records there may be more than one fiche.

**10.1.3.** Prior to 1995, police forces sent this information to the NIS in paper format. It was then entered onto PNC and filmed for storage as microfiche. Since May 1995, forces have entered their own information onto PNC and the NIS is no longer involved in that process.

**10.1.4.** Over 4 million of these records have already been BRC'd by NIS to the PNC. This exercise has included inputting the arrest and disposal detail to PNC but does not include the MO or any warning signals for example. Effectively this means that records created between 1981 and 1995 have already been back record converted to 'conviction level'. Convictions recorded pre 1981 are still only available from microfiche unless an individual has subsequently come to the notice of the police, or the CRB, through the employment vetting process or when an individual has applied for a subject access check. In such cases the BRC process has been applied.

**10.1.5.** On a daily basis police forces from around the country request the information held on these records to be manually extracted for analysis following the arrest of a suspect. The NIS provides a 24/7 service to police to supply information from (or copies of) the microfiche.

## **10.2. Requirement**

**10.2.1.** The NIS strategy is to remove the microfiche library from New Scotland Yard (NSY) within the next 3 years. A full BRC programme would ultimately mean that the space that the library occupies could be freed up at NSY and that alternative storage does not need to be considered.

**10.2.2.** A recent Information Tribunal at the Royal Courts of Justice heard an appeal by three Chief Constables against Enforcement Notices, served on them by the Information Commissioner, requiring the deletion of specific conviction data. The resulting judgment represents the latest development in a series of legal scrutinies concerning the management of police data. ACPO recognises that the tribunal outcome has presented an opportunity to improve the management of police information, including that held in the microfiche library.

**10.2.3.** The longer-term goal is to provide the foundation and potential to provide all police forces with direct access to the microfiche data via the PNC. Given the scale of the work, it is recognised that any proposal will have to be based on a phased approach clearly identifying and addressing the risks.

**10.2.4.** A successful project has the potential to significantly assist the police service operationally by facilitating direct access to the conviction data and save millions of pounds currently spent employing staff at NIS to carry out the BRC function. The CRB also has the potential to make significant savings on the staff they fund carrying out BRC at NSY.

**10.2.5.** A proof of concept pilot was undertaken, at the request of Chief Constable Paul Kernaghan, the then Head of Records for ACPO. In February 2004, the final report was published recommending the option for full digitisation of the microfiche library. Although the pilot was a success, the overall proposal was too expensive. It would take at least 6 years to complete, at a cost of £12M and did not offer a complete solution by entering the data on PNC. The proposal was rejected.

**10.2.6.** ACPO have tasked the current DNA FRP with the task of implementation of the Information Tribunal directions. Resolving the microfiche issue, as set out in this report, is seen as integral to this work. On that basis the Project Team has been working with NIS to identify and implement a solution.

**10.2.7.** A business case that significantly improves the data management aspects for the police service, produces substantial cost savings for the HO and space savings for the Metropolitan Police, will be produced.

**10.2.8.** This problem has been evident for over 10 years and is now becoming critical. The position has been compounded by the Information Tribunal observations and more recently by pressure from within the Metropolitan Police to downsize the NIS and their responsibility to this police area.

**10.2.9.** The recommendations in the business case present an excellent opportunity to deal with these matters on all fronts and can apply the links to all the relevant areas of information management, which need to be considered. It also has the full support of NIS and would be achieved as a partnership arrangement.

**10.2.10.** Funding for the work will need to be considered against the significant savings and efficiency gains that will be realised when the library has been removed. Early indications are that the work may be achieved for the costs of running the current resources over 1-2 years, which may provide a sound business case.

## **11. International Conviction Exchange**

*“The point of contact within DNA FRP to act on behalf of ACPO has been extremely useful in focussing our discussion”.*

*Mr Ed Millicent, International Directorate, Home Office*

*“A business plan for the setting up of a Central Authority to handle criminal record information has been extremely helpful”.*

*Ms Linda Ward, Judicial Co-operation, Home Office*

**11.1.1.** A Council of the European Union Decision, to improve the exchange of extracts of conviction history, is under consideration by Government. On behalf of ACPO, a case has been made to set up a small unit of two people (later expanding to three) to satisfy this requirement.

**11.1.2.** A function such as the one proposed has a number of potential benefits to policing in the UK. Not least that information about UK residents, who commit offences elsewhere in the European Union, can be considered by police officers during domestic investigations. Such a facility will be particularly useful during paedophile inquiries, as well as investigations into drug trafficking, people smuggling and terrorist related offences. It also provides an opportunity to explore the exchange of biometric information, particularly fingerprints, in support of accurate identification of individuals.

**11.1.3.** It has been recognised that there is potential for such a scheme to facilitate employment vetting checks. The CRB are keen to exploit the position and work in close partnership with ACPO. Advanced discussions are now underway between the two organisations and the police leadership and forces unit of the Home Office.

**11.1.4.** A key obstacle to progress in this important area has been a lack of ownership and desire to manage the facility. Prior to the current proposals, approaches were made to a number of agencies and departments, including NIS, Interpol and PITO. None of who were prepared to take on the role, either because it did not align with their current business or their terms of reference.

**11.1.5.** On that basis and due to the timings of the EU proposal, which needed satisfying within a short time frame ACPO have been bold enough to draw up a business plan that will address the EU requirement. Full details are contained in the business case at Appendix E, which has been welcomed by the Home Office and is now under consideration by the Minister. It is sensible to commence the facility as part of the existing DNA and Fingerprint Retention Project structure, which has all the relevant expertise and connections to the appropriate stakeholder.

## 12. Emerging Issues

**12.1.1.** The business of police information management is increasingly dynamic with new aspects emerging on a regular basis. This proposal recognises that it is important to have an awareness of emerging issues whilst dealing with the subjects areas contained in this report.

**12.1.2.** The previous work of the DNAFRP has required an ability to recognise new requirements or obstacles at an early stage and put appropriate risk management strategies in place.

**12.1.3.** In some respects, this aspect of the work is about risk management and a good example, which demonstrates how this has operated, is the creation of the Exceptional Case Model. The team were able to work with ACPO and Government to identify a requirement at an early stage, draft policy, secure funding and implement a successful strategy to cater for this requirement. This was all achieved ahead of considerable media interest and parliamentary scrutiny concerning data retention by the police.

**12.1.4.** It is more than risk management however; it is also about identifying opportunities and having a resource that is well placed to develop them as part of their existing business. A good example in this area is the potential for exchanging biometric identification of offenders between EU Member States. In the case of conviction exchange (see Appendix E), there is an opportunity to link this work to fingerprint exchange. This has the benefit of improved identification for the business of conviction exchange throughout Europe, potentially enabling greater court use. It also has the added benefits of tackling cross border identity issues, which might be invaluable as a counter terrorism measure.

**12.1.5.** Other areas, which might need to be considered in this context relates to emerging initiatives, which are intrinsically linked to areas of business referred to in this report. An example that illustrates this requirement concerns identity cards. It is clear that fingerprints are likely to form at least one of the biometric identifiers as part of the identity card.

**12.1.6.** It is also clear that the CRB are likely to require those who wish to work with children to have an identity card. If a fingerprint, which is included as part of the identity card, matches an outstanding crime scene, the police will need to ensure there is appropriate integration into their process. Such a development will raise all the, now familiar, issues in respect of the use of police data. A resource that is immersed into the relevant police aspect of information management business will be vital and is a further important benefit, which this proposal provides for.

**12.1.7.** The existing team provides the capability to bring in experts to carry out discreet pieces of work on a temporary basis. Recent examples include the appointment of retired Detective Superintendent Chris Healey, who was commissioned to complete some research into the numbers of people leaving police custody without charge. Another retired Detective Superintendent David Hanna who was brought in to assist with the coordination of a Home Office EU Seminar concerning Exchanging of DNA Information between EU member states. A serving Detective Inspector is currently

working with the team to evidence the benefits of retaining DNA and Fingerprints of uncharged suspects.

### **13. Conclusions**

**13.1.1.** To fulfil the requirement identified in this paper, it is necessary to establish a dedicated team. The team will need to be full time and capable of handling the numerous issues as they arise. Acknowledgements of the DNA FRP achievements since inception have reinforced the view that the expertise and knowledge gained should not be lost (See stakeholder survey, Appendix B).

**13.1.2.** The existing resources and expertise of the DNA and Fingerprint Retention Project should be transferred to a newly established team and to properly reflect the evolving role it would be helpful to refer to this team as the ACPO Criminal Records Team (ACRT).

### **14. Recommendations**

**14.1.1.** An ACPO Criminal Record Team should be established within the shadow NPIA, utilising the resources and experience of the existing Project Team.

**14.1.2.** The new unit should be permanently funded by in order to realise the business benefits, manage the identified risks, and handle the associated emerging issues effectively.

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**Appendix A – Business Requirements and Associated costs**

POSTS	Job Descriptions	GRADE/RANK	GENERAL ROLE DESCRIPTION AND LINKS TO KEY BUSINESS AREAS	COST INC ON COSTS
Head of Unit	JD1	CH SUPT/SUPT	Ensuring the terms of reference are adhered to and delivering the service as documented on behalf of ACPO in efficient and cost effective way.	£76,164
Deputy Head of Unit & Business Development Officer	JD2	MG	Provide a deputy function to the Head of Unit and carry out the business of the unit by providing support to all E&W Police Forces and other stakeholders where relevant, producing written papers when required.	£46,274
Business Development Officer	JD3	P03	As Above	£39,826
Business Benefits Analyst	JD4	P02	Research across the relevant Business Areas evidencing benefits to operational policing.	£37,764
Exceptional Case Advisor	JD5	S01	Support to Chief Officers in all E&W Police Forces ie removal of DNA/Fingerprints/PNC Nominal records	£30,164
Finance & Office Manager	JD6	S01	Managing all finance/administration/general enquires/maintain website/comms strategy	£30,164
International Liaison Supervisor	JD7	P01	Supervising the Central Authority function and dealing with enquires from all stakeholders and development of the unit.	£35,538
International Liaison PNC	JD8	Scale 4	PNC researcher dealing with the input and extraction of EU related records.	£21,856
International Liaison PNC	JD9	Scale 4	As Above	£21,856
Overtime			Only applies to certain roles	£10,000
			<b>TOTAL ANNUAL STAFF COSTS</b>	<b>£ 349,606</b>
<b>OFFICE &amp; ADMIN COSTINGS</b>	<b>Annual Cost</b>	<b>Cycle</b>		
Office Rent & Equipment	£60,000	Annual		
Furniture	£2,000	5 year		
Travel & Accommodation	£41,000	Annual		
IT & Telecomms	£4,000	3 year		
Contingency & Development	£15,000	Annual		
			<b>TOTAL ANNUAL OFFICE / TRAVEL COSTS</b>	<b>£122,000</b>
			<b>TOTAL ANNUAL</b>	<b>£471,606</b>

**NOTES** 1) Salaries include on-costs and are budgeted for at the highest level within each of the roles but that is not necessarily the amount to be paid.  
2) The total cost includes £104,189 which forms part of the Central Authority business case for EU conviction exchange, which has already been allocated.

**Appendix B – Results from Stakeholder Survey**

	Very useful		Useful		Moderate		No value		Unknown		Total Responses
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
1. How valuable has the availability of advice provided by the DNA FRP (24/7 telephone support or e-mail) been to your area of business?	25	48.1%	13	25.0%	4	7.7%	5	9.6%	5	9.6%	52
2. How useful has the documented information provided by the DNA FRP been to your area of business?	22	42.3%	23	44.2%	5	9.6%	1	1.9%	1	1.9%	52
3. How valuable has an ACPO point of contact been for your organisation or department as provided by the DNA FRP?	20	39.2%	13	25.5%	2	3.9%	5	9.8%	11	21.6%	51
4. How valuable have negotiations with PITO, conducted by the DNA FRP, been to your area of business?	22	43.1%	11	21.6%	4	7.8%	4	7.8%	10	19.6%	51
5. How valuable has evidence of operational policing benefits, provided by the DNA FRP, been to your area of business?	23	44.2%	15	28.8%	4	7.7%	3	5.8%	7	13.5%	52
6. How valuable has the DNA FRP attendance and contribution at specialist meetings been to your area of business?	33	64.7%	12	23.5%	1	2.0%	1	2.0%	4	7.8%	51
7. How valuable has the DNA FRP support generally been to your area of business?	31	59.6%	14	26.9%	5	9.6%	0	0.0%	2	3.8%	52

**Appendix C - R v Chief Constable of South Yorkshire (ex parte S and Marper)**<sup>12</sup>

The claimants appealed against the decision to retain their fingerprint and DNA samples after they were cleared of criminal charges. It was argued that this was a breach of Articles 8 and 14 of the European Convention on Human Rights (adopted by the Human Rights Act 1998). The case has been heard in the Divisional Court, the Court of Appeal and the House of Lords. It was ruled that although there was a breach of Article 8(1), this was proportionate and justified under Article 8(2) and that there was no breach of Article 14. The case has been submitted to the European Court of Human Rights.

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<sup>12</sup> Williams R *et al*, *Genetic Information & Crime Investigation*, 2004

## Appendix D –Business Benefits of New Police Powers

### Research into effectiveness of retaining DNA under the Criminal Justice and Police Act 2001

The Criminal Justice and Police Act 2001 amended PACE, providing the police in England and Wales with the power to retain DNA samples and fingerprints, relating to persons following acquittal at court or other discontinuance of a case.

#### *Definition*

The '**RA**' flag relates to any Database record where the parent PNC record has been deleted. It has been estimated that roughly 86% of PNC deletions are due to acquittals.

As of 31<sup>st</sup> December 2005 the total number of profiles on NDNAD with an 'RA' flag was 314,770. Allowing for a 26% replication rate among acquittals, it is estimated that there are roughly 200,300 DNA profiles on the Database which would have previously fallen to have been removed before the Criminal Justice and Police Act 2001 was introduced.

**From these, approximately 8,493 profiles of individuals have been linked with crime scene stains, involving 13,964 offences. These offences include 114 murders, 55 attempted murders, 116 rapes, 68 sexual offences, 119 aggravated burglaries and 127 of the supply of controlled drugs (December 2005, NDNAD Custodian Services).**

### Research into effectiveness of DNA sampling under the Criminal Justice Act 2003

The introduction of the Criminal Justice Act 2003 has led to an increase in the number of DNA profiles held on the National DNA Database (NDNAD). This legislation amended PACE, providing the police with the power to take DNA and fingerprints from all persons arrested for a recordable offence and detained at a police station.

On 1 December 2005, there were 124,347 persons on the national DNA database who had been arrested and had a DNA sample taken and who had subsequently not been charged or cautioned for any offence. Of these, 100,179 persons were over the age of 18 and 24,168 were under 18 years of age.

Sampling persons who have been arrested but not proceeded against has yielded a match with a crime scene in over 3,000 offences including 37 murders, 16 attempted murders and 90 rapes (Home Office Minister Andy Burnham MP, 8 February 2006).

In relation to the 24,168 persons under 18s who have been arrested but not charged, 541 have matched to crime scene profiles for unsolved crimes.

# Commission of the European Communities

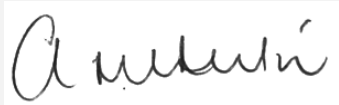
## Council of the European Union

### Decision on the Exchange of Information Extracted from the Criminal Record



### Designation of a Central Authority

### ACPO Business Case

<b>Author:</b>	Det/Supt Gary Linton	<b>Designation of a Central Authority ACPO Business Case</b>	
<b>Owner:</b>	ACC Adrian McAllister 		<b>Version: 2.0 Dated: 2<sup>nd</sup> November 2005</b>
<b>Customer:</b>	ACPO		<b>DNA &amp; Fingerprint Retention Project</b>

## **1.0 Introduction**

- 1.1 This report sets out a business case proposing that ACPO should be the designated Central Authority in the UK to improve the operation of existing mechanisms, pending the development of a computerised system for the exchange of criminal conviction information between EU Member States.
- 1.2 ACPO recognise they have the existing capability and functionality to meet the needs of the Council Decision within a very short timeframe and at minimal cost. This proposal will integrate into current developments relating to improved information management strategies, which form part of Bichard and other initiatives to improve the way that the police manage their data.
- 1.3 The requirement for each Member State to designate a Central Authority is brought about by the Council of the European Union Decision published on the 3 May 2005.

## **2.0 Background**

- 2.1 In all Member States criminal convictions are recorded by a variety of procedures in specific registers. There are exchange mechanisms to facilitate the transmission of this information between Member States, in particular under the European Convention on Mutual Assistance in Criminal Matters of 1959.<sup>13</sup> But an analysis of their operation reveals that they contain gaps and function randomly and slowly, no longer meeting the needs for judicial cooperation in a frontier-free area such as the European Union. Recent tragic paedophilia cases have also highlighted the serious malfunctioning of systems for the exchange of information on convictions between Member States. Likewise, the demands of the fight against terrorism are such that the quality of these exchanges must be improved quickly.<sup>14</sup>
- 2.2 The aim of this proposal is to improve the operation of existing mechanisms pending the adoption of a computerised system of information exchanges on criminal convictions between Member States. The Commission will shortly be presenting proposals for such a system, but its establishment will require major technical and legal work and it will be several years before it can become operational. This proposal accordingly does not set out to amend the nature of the obligations imposed on the Member States but only to make practical improvements to the current system, without prejudging the results of future work. That is, moreover, the reason why the Commission considers that recourse to a Decision, which does not involve approximation of national legal provisions, is the most effective means of achieving a rapid improvement of current practices.
- 2.3 The proposal provides for each Member State to designate a central authority and contains two major elements supplementing Articles 22 and 13 of the 1959 Convention.

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<sup>13</sup> Council of Europe, European Treaties Series, No 30.

<sup>14</sup> See on this point the conclusions of the European Council of 25 March 2004 and the Commission communication to the Council and Parliament of 29 March 2004 on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information (COM 2004 (221)).

- 2.4 The first part of the proposal aims to ensure that the criminal record in the Member State of the person's nationality is as complete as possible at the earliest opportunity, so that exhaustive information is quickly available on a Community national's criminal convictions in the territory of the European Union. The 1959 Convention already establishes an obligation for the Contracting Parties to the Convention to inform each other of convictions of their nationals, but the information is transmitted only once a year. This proposal would require the information to be transmitted without delay, as soon as it reaches the competent authorities of the convicting Member State. For the reasons given above, it does not change the nature of the obligations imposed on the Member States, and in particular it does not provide for any obligation for the convicting State also to inform the State of residence, which would have been conceivable for non-Community nationals or for Community nationals who reside in a State other than the State of their nationality. These situations will be addressed when the computerised information exchange system referred to above is set up.
- 2.5 The second part concerns requests for information extracted from the judicial record, currently governed by Article 13 of the 1959 Convention, and replies to these requests. The proposal pursues several objectives. Since the 1959 Convention specifies no deadline for transmitting the information requested, the proposal supplements it by providing that a request for information extracted from the criminal record must be satisfied within a maximum of five days. To facilitate the exchange of information, it provides for standardised request and answer forms. These forms, available in all the languages of the European Union, should considerably lighten the burden of translation work.
- 2.6 In an area where persons enjoy freedom of movement, the improvement of the quality of information exchanges between Member States, in particular on criminal convictions, makes for a general increase in the level of security throughout the territory of the European Union. This objective can be achieved only by coordinated action in the European Union. This proposal merely seeks to improve the current convention-based mechanisms without fundamentally calling them into question. In that respect it complies strictly with the principles of proportionality and subsidiarity provided for by Article 2 of the Union Treaty and Article 5 of the EC Treaty.

### **3.0 Current Situation**

- 3.1 The Council Decision identifies that the current exchange mechanisms contain gaps, function randomly and slowly, and no longer meet current judicial cooperation requirements.
- 3.2 The aim of the proposal is to improve the operation of existing mechanisms pending the adoption of a computerised system of information exchanges on criminal convictions between Member States.
- 3.3 The situation in the United Kingdom reflects the issues identified in the Council Decision.
- 3.4 Several departments are currently involved in work relating to the exchange of criminal conviction data;

- The UK Central Authority (UKCA) for Mutual Legal Assistance (MLA) is responsible for processing requests to and from other countries for evidence in criminal investigations/prosecutions and for service of process. Letters of request are transmitted from UK courts or prosecutors to central authorities or other judicial authorities abroad, and vice versa.
- The National Criminal Intelligence Service (NCIS) have responsibility for receiving all notified criminal convictions of UK Nationals, or foreign nationals domiciled in the UK, for offences committed throughout the 184 member countries of Interpol. They process only certain specified offences. They are also responsible for notifying other member countries of convictions recorded against foreign nationals in the UK.
- The National Identification Service (NIS) is currently responsible for entering details of UK nationals convicted abroad onto the Police National Computer (PNC). They also have a limited capability to notify the relevant authority of other member states of criminal convictions in respect of nationals of those Member States entered in the criminal record.

- 3.5 Despite the efforts of these three bodies there are known gaps in the current system for the exchange of criminal conviction data.
- 3.6 Various measures are already in place in the UK to improve the quality and timeliness of data entered onto the PNC, including conviction data. A Code of Practice for the PNC was introduced in January 2005, aimed at setting achievable targets for data entry.
- 3.7 The PSU and HMIC are both engaged in programmes of support and inspection aimed at bringing about sustained improvement in performance in areas directly affecting PNC data quality and timeliness.
- 3.8 The Code and Guidance for the Management of Police Information will also influence future developments in this area of police business.
- 3.9 In the longer term the introduction of the NPIA and a central police operational function will be at the forefront of ensuring that improvements relating to the management of police data are delivered throughout the police service.

#### **4.0 Exclusions**

- 4.1 It is vital that no confusion arises in relation to the naming of this unit, and that it is seen as being entirely separate from the UKCA. Nothing in this proposal is intended to affect various functions of the UKCA.
- 4.2 With the exception of providing conviction extracts to other member states, nothing in this proposal is intended to replace any operation carried out by Interpol. Enquiries requested by other member states which relate to conviction information, but extend beyond the parameters of the decision will continue to be the responsibility of Interpol.

#### **5.0 ACPO Central Authority for the Exchange of Criminal Record Extracts**

- 5.1 Initial research indicates that, in England and Wales, there would be less than 2000 records to be entered onto the PNC. It is acknowledged that this figure contains data from countries outside the EU and that this figure is likely to rise as awareness of this function grows.
- 5.2 Not all offences are capable of multilateral 'read across' to align them with appropriate offences across Member States. Work is already being undertaken by five Member States regarding this issue. The ACPO Central Authority should be an integral part of the work in the future.
- 5.3 In the first instance it may be that only certain categories of offences will be processed through the ACPO Central Authority. For example, terrorist offences, serious sexual and violence offences and offences relating to the illegal trafficking of people.
- 5.4 It is anticipated that ACPOS and PSNI, will wish to receive and process data applicable to their own nationals. Business processes will be agreed to ensure that both parties receive the appropriate data in a timely fashion via the Central Authority.
- 5.5 It has not been possible to accurately identify the number of requests for criminal conviction information sent out on 'own initiative' from the UK to other Member States. It has been suggested that around 2,500 transactions take place annually. Whether that is an accurate figure or not, it is anticipated that there will be some growth in the future.
- 5.6 The receipt, transmission, and processing of fingerprints, where available and appropriate, will offer real opportunities to correctly identify individuals who might otherwise seek to deceive the authorities. In England and Wales, arrangements will be made for fingerprints to be loaded onto IDENT1.

## **6.0 Business Benefits**

- 6.1 Drug trafficking, people smuggling, international paedophilia as well as terrorist related offences are crimes which are trans-national by nature. Exchange of criminal records will enable patterns to be more readily identified facilitating the appropriate operational response.
- 6.2 There will be an increased opportunity to identify wanted / missing persons. This will lead to the apprehension of offenders denying them the opportunity to commit further often serious crime.
- 6.3 It will be easier for law enforcement agencies to identify emerging offending patterns, as in the case of Montes <sup>15</sup>, and intervene at an earlier stage.
- 6.4 The ability to identify offenders such as Fourniret <sup>16</sup> who commit serious crime in one country, and who later move to, and continue to commit crime in another country.
- 6.5 When investigating Terrorism and Organised Crime the police can make greater use of intelligence markers to trace and monitor suspects.
- 6.6 Details of UK nationals who have committed serious crime elsewhere, such as the recently deported convicted paedophile Robert Excell will be entered onto other national databases such as ViSOR.
- 6.7 Courts will be able to take account of a convicted person's complete offending history when considering sentencing.
- 6.8 By having a dedicated unit it will be possible to ensure greater accuracy in the creation and updating of records. The unit will also be able to ensure consistency in identification of the offender by encouraging the exchange of fingerprints, (and later DNA), to prove identity.
- 6.9 The timely creation of full and accurate conviction information on PNC and other national databases in support of policing purposes.
- 6.10 Employment disclosure will be more effective due to the increase in numbers of records being added to the PNC.
- 6.11 Strategies to create full and accurate records of offending will support the CJIT exchange development programme.

## **7.0 Legal Constraints**

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<sup>15</sup> Francisco Arce MONTES, 55 was convicted of the murder of Caroline Dickinson in 2004. He had previously been arrested for numerous sex offences in Germany and Spain.

<sup>16</sup> Michel FOURNIRET, 63 was arrested for the murder of six French and 1 Belgian girl by Belgian police in 2003. Previously he had been sentenced for seven years imprisonment for rape and indecent assault on minors in France. It is thought that he may have murdered up to 40 victims.

- 7.1 Criminal records in England and Wales are currently owned by ACPO. Each Chief Officer is the data controller for the relevant data, a position that has been reaffirmed and strengthened by the recent Information Tribunal Judgement.
- 7.2 The Information Tribunal concerned 3 appeals arising from the enforcement notices served by the Information Commissioner under section 40 of the Data Protection Act 1998. The judgement which was handed down on the 12<sup>th</sup> October 2005 determined that conviction data (relating to the specific cases) be held on the PNC subject to the retention rules of any current ACPO Code of Practice and not be open to inspection other than by the data controller or by any other data controller who is or represents a chief officer of police.
- 7.3 ACPO have created a new mechanism for dealing with the retention of records for police purposes. This process, known as the Retention Guideline Step Model, makes a clearer distinction between retention and disclosure of criminal records. This creates a 'police eyes' only regime which will necessitate the determination of the 'police family'. It is likely that many of the current non-police users of PNC will have their access restricted. This approach has been endorsed by the findings of the Information Tribunal.
- 7.4 Part V of the Police Act 1997 is currently under review to accommodate the concept of the Step Model, which will restrict automatic disclosure of criminal records against strict criteria. Convictions obtained outside of the UK, which are retained on the PNC will need to meet this new criteria.

## **8.0 Staffing, Accommodation and Funding**

- 8.1 ACPO will act as the Central Authority and will identify appropriate resources and ensure that robust business processes are developed to deliver the required standards of service. They are the most appropriate body to undertake the role of Central Authority for the exchange of conviction information. Recent initiatives to manage police information and data as well as the anticipated application of the Bichard Code and Guidance ensure appropriate controls and application of relevant legislation governing retention and disclosure and other related factors.
- 8.2 ACPO, acting as the Central Authority are in a position to establish the function within very short timescales without the need for legal amendments or technical changes being required. In summary, ACPO offering the following:
- Existing knowledge of and access to PNC
  - Existing PNC training regime
  - Existing ownership and responsibility for PNC data
  - Existing ownership of data maintenance
  - Existing ownership of data management
  - Existing knowledge of the law
  - Existing formal relationship with PITO to secure changes to PNC

8.3 The Central Authority will be based within existing police estate. Research indicates that three members of staff will be required to undertake this piece of work, and additional office equipment including desks, chairs, filing cabinets, telephones and IT will be required.

8.4 **Staff**

Consultation with NIS, Interpol and others concerning likely volumes has helped determine staffing levels. It is anticipated that three PNC operators will be required, including one at a supervisory level. It is likely however that there will be a slow start-up, and initially two members of staff will be sufficient in the first year. It should be noted that two members of staff are already employed at NIS, funded by the Home Office doing similar work. Consideration should be given to the transference of these two posts into the ACPO Central Authority on a neutral cost basis. NIS has agreed to this action in principle.

8.5 **Transmissions**

Central e-mail and Post Office Box options will be explored to establish the most effective mechanism to receive and transmit data. The storage of data will be a requirement either in paper, electronic, or a mix of both formats.

8.6 **Secure Systems**

The requirement to exchange emails through a secure system can be supported if necessary via Interpol's global police communication system, I - 24/7. By December 2005, all EU member states will have the ability to transmit data on this network.

8.7 **Translation**

It is recognised that language translation may be an issue. Several options are under consideration including outsourcing to a commercial translation service. The use of a standard template as recommended in the Council Decision Explanatory memorandum will greatly reduce the requirement to translate requests.

8.8 **Budget**

The costings associated with ACPO acting as the Central Authority are contained below:

<b>Item</b>	<b>Cost</b>	<b>Comment</b>
Office	£6,000	Already established inc. annual rent etc.
Staff (3 posts)	£75,689	See detail at 8.4
Furniture	£1,000	5 yr rolling figure
IT	£1,500	3 yr rolling figure
Language	£5,000-£10,000	Options to be explored
Contingency	£10,000	Overtime and local development
<b>TOTAL</b>	<b>£104,189</b>	

## **9.0 Other Considerations**

- 9.1 This police business process is not just about the creation and updating of PNC conviction records. There are equally important issues about the use of the information in wider policing terms. Whilst for example it is important that the offending history of a sex offender returning to the UK is entered onto PNC, details must also be entered onto systems such as ViSOR. The police force in whose area the offender resides will want to be aware of his presence and ensure that opportunities to gather valuable information are not missed.
- 9.2 Identifying offending patterns across national borders is an important element in combating international criminality. For instance it may be of interest to the police to know that an individual from Belgium is committing offences in the UK, France, Germany, and Italy. That interest may increase if the offences are similar in nature, and may intensify if they suggest involvement in organised crime.
- 9.3 With a trained police data inputter it will be possible to link these similarities and pass the information on to the appropriate investigative department.

### **9.4 Employment Vetting**

ACPO recognise the opportunity to enhance the employment disclosure process. This will be achieved by providing a more accurate and complete PNC database which will include where relevant convictions of UK Nationals in other parts of the world, particularly the EU. They are keen to develop their partnership in this area with the CRB, and as the Central Authority develops, ensure that EU-wide convictions form part of the employment vetting process.

## *Article 1*

### *Central authority*

1. For the purposes of Articles 2 and 3, each Member State shall designate a central authority. However, for sending information under Article 2 and replying to requests under Article 3 Member States may designate one or more central authorities.
2. Each Member State shall inform the General Secretariat of the Council and the Commission of the authority designated in accordance with paragraph 1. The General Secretariat of the Council shall notify the Member States and Eurojust of this information.

## *Article 2*

### *Own-initiative information on convictions*

Each central authority shall without delay inform the central authorities of the other Member States of criminal convictions and subsequent measures in respect of nationals of those Member States entered in the criminal record. Where the person concerned is a national of two or more other Member States, the information shall be given to each of these Member States, unless the person is a national of the Member State in the territory of which he has been convicted.

## *Article 3*

### *Request for information on convictions*

Where information from the criminal records of a Member State is requested, the central authority may, in accordance with national law, send a request for extracts from, and information relating to, criminal records to the central authority of another Member State. All information requests shall be sent on the basis of the request form set out in the Annex hereto.

When a person requests information on his or her criminal record, the central authority of the Member State where this request is made, may in accordance with national law send a request for extracts from, and information relating to, criminal records to the central authority of another Member state if the person concerned is or has been a resident or a national of the requesting or the requested Member State.

The reply shall be sent immediately and in any event within a period not exceeding ten working days from the receipt of the request, under the conditions provided for by

national law, regulations or practice by the central authority of the requested Member State, to the central authority of the requesting Member State on the basis of the form set out in the Annex hereto. It shall include the information received in accordance with Article 2 and registered in the criminal record of the requested Member State.

If the request is made for the person concerned in accordance with paragraph (1), second subparagraph, the period referred to in the first subparagraph of this paragraph shall not exceed twenty working days from the receipt of the request

Where the requested Member State needs further information to identify the person to whom the request refers, it shall immediately consult with the requesting Member State with a view to providing a reply within ten working days of receipt of the additional information sought.

The reply shall be accompanied by a statement of convictions, under the conditions provided for by national law.

Requests, replies and other relevant information may be transmitted by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity.

#### *Article 4*

##### *Conditions for the use of personal data*

1. Personal data communicated under Article 3 for the purpose of criminal proceedings may be used by the requesting Member State only for the purpose of the criminal proceedings for which it has been requested as specified in the form set out in the Annex hereto.
2. Personal data communicated under Article 3 for purposes other than criminal proceedings, may be used by the requesting Member State in accordance with its national law only for the purpose for which it has been requested and within the limits specified by the requested Member State in the form.
3. This Article does not apply to personal data obtained by a Member State under this Decision and originating from that Member State.

#### *Article 5*

##### *Languages*

The form shall be sent by the requesting Member State in the official language, or one of the official languages of the requested Member State. The requested Member State shall reply either in one of its official languages or in another language agreeable to both Member States. Any Member State may, at the time of the adoption of this Decision or at a later date, indicate, in a statement to the General Secretariat of the Council, which are the official languages of the institutions of the European Communities that it accepts. The General Secretariat of the Council shall notify the Member States of this information.

#### *Article 6*

##### *Relationship to other legal instruments*

1. With respect to the Member States, this Decision supplements and facilitates the implementation of Articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, its additional Protocols of 17 March 1978<sup>17</sup> and 8 November 2001<sup>18</sup>, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000<sup>19</sup> and its Protocol of 16 October 2001.<sup>20</sup>
2. For the purpose of this Decision, Member States shall waive the right to rely among themselves on their reservations to Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. This Decision shall not affect reservations made with respect to Article 22 of that Convention. Such reservations may be invoked with respect to Article 2 of this Decision.
3. This Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

#### *Article 7*

##### *Implementation*

Member States shall implement this Decision as soon as possible and in any event no later than (6 months from the date of adoption).

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<sup>17</sup> Council of Europe, European Treaty Series, No 99.

<sup>18</sup> Council of Europe, European Treaty Series, No 182.

<sup>19</sup> OJ C 197, 12.7.2000, p. 1.

<sup>20</sup> OJ C 326, 21.11.2001, p. 1.

*Article 8*  
*Application*

This Decision shall take effect on the day of its publication in the Official Journal of the European Union.

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