Summary of responses to consultation on 'Access to Samples and Data for Cancer Research'

NCRI
National Cancer Research Institute

NCIN
national cancer intelligence network
Using information to improve quality & choice

onCore UK

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Executive Summary

This document summarises the range of responses received to the consultation on 'Access to Samples and Data for Cancer Research' run by the National Cancer Research Institute, onCore UK and the National Cancer Intelligence Network between August and October 2008.

The original consultation document was distributed to over 130 interested parties and a total of 61 responses were received. The responses were split between organisations (27 responses) and individuals (34 responses), with the majority received from researchers and healthcare professionals and the institutions / organisations that represent them. Only a small number of responses were received from providers of data (e.g. cancer registries) and consumer groups. These stakeholders will be particularly targeted in any follow up work.

The responses were strongly supportive of the stated aim: '*to prepare a template policy for wide consideration and use by individual funding and research organisations*'. The need for any template to be flexible to meet the varying needs of different collections and not to add unnecessary bureaucracy was also highlighted. Several respondents also recognised that the issues addressed by this consultation apply beyond the cancer research community and wished to see a broader base of users addressed. A number of respondents suggested improvements to the terminology used, generally making this more granular to recognise the wide variation in possible collection types.

Respondents were largely in favour of the widest access consistent with a collection's consent and with ensuring the ability of recipients to complete the proposed study. Access by commercial organisations was more controversial but the majority of respondents were in favour. The importance of peer review to ensure scientific merit was widely recognised and, in general, it was seen as reasonable to accept peer review carried out by funding bodies. However, respondents also considered it important to allow custodians to implement their own peer review where that already conducted is not considered sufficient (e.g. for studies funded as part of large programme grants or for very rare collections where a greater quality threshold may be required).

A flexible system that allows requests for access to be made before or after funding is secured received wide support. However, there was less agreement on the practicalities of such as system (i.e. does granting access subject to funding reserve a portion of the collection or should this still be subject to availability). Processing applications on an *ad hoc* basis or only at certain times were both considered valid options, with the choice likely to depend on the nature of each collection.

Where collections are created for a particular purpose, respondents agreed that any secondary access must not interfere with this primary purpose. However, it was expected that beyond this the collection should be made as widely available as possible and that the original consent should cover other research uses. Respondents generally believed that while the custodian must be involved in deciding when the collection is opened for secondary access, there should be some independent input into the decision.

Respondents recognised that it might be necessary to give originators priority access to their collections and also that there are justifications for not completely depleting collections (e.g. to maintain diagnostic archives). Beyond this however, many respondents felt that samples should not be stored 'in case' a new application emerges while blocking potentially valuable work now. The idea of reserving proportions of the collection for different purposes received mixed views – some felt it to be a useful mechanism and others overly prescriptive.

The importance of protecting donor and data subject confidentially was universally recognised. It was expected that recipients would agree not to attempt to identify individuals; not to link the data received with any other data sets without approval and not to disclose the identity of, or attempt to contact any individuals who might be inadvertently identified. Where consent is withdrawn, regulators' responses to the consultation provided clear guidelines for the approach. However, respondents had mixed views on whether unused samples should be destroyed by the recipient or returned to custodians to maintain an audit trail.

Most respondents believed that recipients should only be able to transfer materials to collaborators named at the time of the original request and that records of such transfers should be held by the custodian. However, a few went further, stating that there should be no onwards transfers and that all material should be received directly from the custodian.

Recontacting donors or data subjects to obtain further consent was generally not considered appropriate, with respondents preferring a broad consent to cover secondary research being obtained initially. In addition, most respondents considered it inappropriate to recontact donors or data subjects with individualised results from a study. Where the results of a study could impact a donor or data subject's care, the consensus was that this should be considered by a research ethics committee, ideally when the study is originally designed. Where contact is necessary, respondents felt it should be arranged through the team that took the original consent.

Although communicating individualised results was not considered appropriate, communication of research outcomes to both donors / data subjects and the general public was seen as important. Respondents recognised that the appropriate mechanism for this will vary depending on the study but the internet was widely seen as an effective method of achieving wide dissemination.

Most respondents believed that it is appropriate to recoup any costs incurred in supplying a recipient with data or samples and perhaps also a proportion of the cost of collection (if this was not covered by other funding). The idea of charging differential fees to recipients was more controversial and some respondents felt that

it would be hard to justify if fees were designed to recover costs. Despite this, higher fees for commercial organisations and lower fees for collaborative access in line with the primary purpose both received wide support.

Co-authorship for custodians was not considered a reasonable condition of access unless the custodian has made a significant contribution to the work. However, appropriate acknowledgement of originators and custodians was recognised as important. Submission of papers to peer reviewed journals was seen as a key element of an access policy, as was publication in open access journals where possible, although some respondents suggested a need to balance this with publication in the highest impact journals available. Publication of negative results was recognised as difficult to achieve but important in principle.

Protecting intellectual property generated from the collection was seen as important by respondents. However, the issue of whether collections themselves generate any intellectual property was also raised. An arrangement in which recipients agree to protect any intellectual property that arises but without detailed arrangements in advance was held up as a pragmatic way to avoid spending time discussing these issues for studies that are unlikely to generate any commercialisable results.

Respondents thought that a policy of openness around the uses of collections is important to maintain public trust and involvement. However, what details should be published and in what format was more controversial. Generally, there is a need to balance openness with researcher confidentiality and, potentially, with protecting commercially sensitive information.

It was widely agreed that custodians should maintain a record of all releases from the collection and of publications arising from it. Raw data (depending on the nature of the collection) could also be submitted for inclusion in the collection and made available to other users. Once again, there was less agreement on the practical details of whether such data should be publically available or restricted to a more limited group (e.g. users of the collection) and on for how long records should be maintained.

Clear governance processes were considered important for determining policies and dealing with unforeseen circumstances. The consensus of respondents was that the body making these decisions should have representatives from all stakeholders (custodian, originator, funders, independent experts, patients and the public). However, respondents emphasised that governance arrangements should also be proportionate to the size of the collection.

Some respondents saw value in encouraging competing recipients to collaborate, especially where material is limited. However, others felt strongly that the custodian should not play a role in arranging collaborations and that individual researchers are in a better position to select their collaborators.

Ensuring compliance with the terms of an access policy was recognised as a difficult area, with auditing of recipients seen as useful in theory but difficult to achieve in practice. Respondents believed that it may have to be left to institutions to ensure compliance with regulations and to annual reporting by recipients to custodians to ensure compliance with the access policy and materials transfer agreement. Although there was a wide desire for suitable sanctions to punish non-compliance it was generally recognised that this will largely be down to funders and institutions to enforce as the only real sanction available to custodians is to deny future access.

The responses outlined in this document will be used to inform the two-part resource promised in the original consultation:

(i) A template list of terms for an access policy for a specific collection of data or samples, with options for tailoring to circumstance: this will be a practical instrument for writing new access policies, and;

(ii) A template Data and Material Transfer Agreement (MTA), which can again be used by anyone as a starting point.

The intention of these resources is to provide a starting point for organisations and individuals needing to develop a policy, and a base for developing best practice, without wishing to dictate terms.

Introduction

I. Background to the consultation

1. Between August and October 2008, the National Cancer Research Institute (NCRI), together with onCore UK and the National Cancer Intelligence Network (NCIN), ran a consultation on the issue of 'Access to Samples and Data for Cancer Research'. This was stimulated by:

   (i) the need for both onCoreUK and the NCIN to develop data governance and access policies and;

   (i) a belief that currently effort is being duplicated as researchers and funders repeat the same background work each time a policy is needed for a new study or collection.

2. The aim expressed in the consultation document was: "...to prepare a template policy for wide consideration and use by individual funding and research organisations. This is not to define or impose policy and practice but rather to develop a practical instrument which: (i) reflects established principles of good practice, (ii) can be tailored to individual circumstance, and (iii) helps to avoid unnecessary duplication of effort."

3. The consultation document addressed the major areas of importance in an access policy and asked respondents for their views on both the general principles and on a series of specific elements. The original consultation document is available from the NCRI website.

4. The document was sent to over 130 interested parties and was also made available through the NCRI website.

II. Responses to the consultation

5. A total of 61 responses were received, 34 of which were from individuals and 27 from organisations. **Figure 1** shows details of the respondents, revealing the high level of interest in this issue from researchers, healthcare professionals and the institutions / organisations that represent them.

6. The figure also highlights the small number of responses received from consumer groups, data providers such as cancer registries and industry representatives. The first two of these groups will be particularly targeted for follow up work to ensure that the final outputs are not biased towards the interests of researchers.

7. The consultation was received positively, as demonstrated both by the level of response and the tone of many comments. However, in addition to reinforcing the value of a common approach to the issue of biosample and data access, the responses have highlighted areas in which there is ongoing debate within the research community.

III. Structure of this document

8. The structure of this document follows that of the original consultation. It begins with the general comments received before detailing those specific to each section. For ease of reference, section numbers from the original document are shown in brackets after each heading.

9. Illustrative comments are included throughout the document. These are identified as either individual [I] or organisational [O] responses. Where we are aware that organisations have published their full responses we have provided links on the NCRI website's access pages.

10. Since the template MTA provided as part of the consultation document was closely based on the draft policy terms, only limited comments were made and these were consistent with those made on the policy terms. For simplicity, only the policy terms are addressed in this document, although in some places comments made on the MTA are used to illustrate the range of opinions expressed.

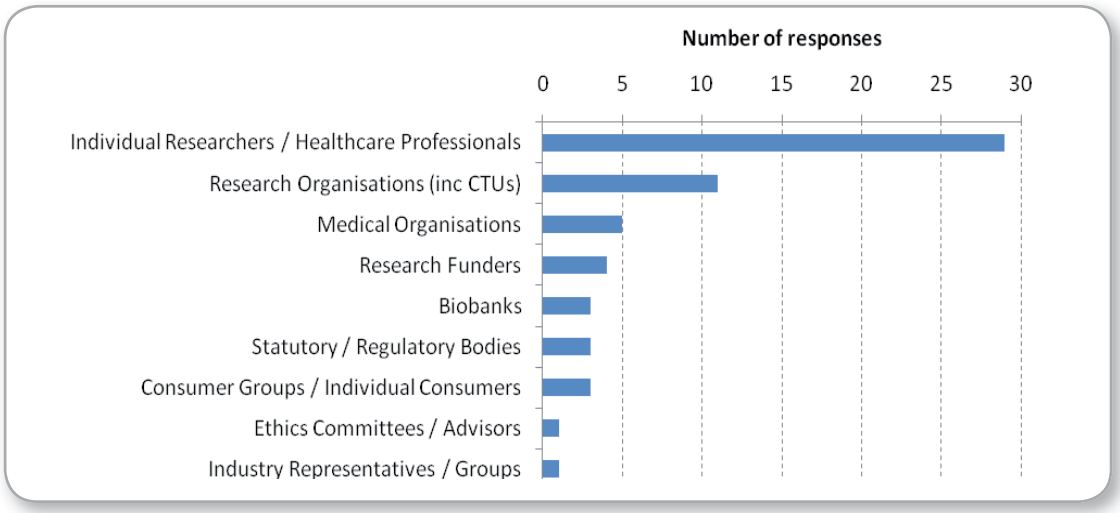

Figure 1. Breakdown of respondents

IV. General comments on the policy terms

Background to the consultation [Section 1.1]

11. The importance of the issues addressed by the consultation document and the potential value of a common template for policy development were widely recognised.

> *"Managing diverse agreements is a significant overhead on the research community and inhibits resource reuse. We therefore strongly support the development of templates which reflect agreed principles and explicitly define acceptable conditions of access and are also likely to set global standards across the various research communities participating in the field." [O]*

> *"The proposed template could have significant value for those who hold cancer collections that could be shared for added benefit. It will encourage researchers to think through access and governance arrangements in a structured manner, and promote wider discussion of these issues and development of best practice in the cancer research community. We therefore strongly support the NCRI and its partners in taking forward this initiative." [O]*

12. However, many respondents highlighted that any template should be adaptable to meet individual circumstances and should not add extra bureaucracy. In recognition of this, the explicit aim of this exercise is to act as "a starting point for organisations and individuals needing to develop a policy, and a base for developing best practice, without wishing to dictate terms which may need to be tailored to individual needs".

> *"...in my view it is important that they allow flexibility wherever possible to reflect individual circumstances." [I]*

> *"If a set of regulations are introduced, enforced, which create a further bureaucratic burden for those who seek to establish collections for their own research (commonly site specific or subject specific collections) or if their right to retain access to them and to benefit scientifically from their hard work is in any way reduced, then I do think the initiative could be counter productive and reduce successful sample collection." [I]*

> *"We would suggest that the guidelines should have a clear up-front statement on the need to ensure that access procedures are established in a manner proportionate to the nature of the resource and associated level of risk. The imposition of unnecessary or over-burdensome access procedures would be counter-productive, and could be particularly detrimental to smaller specialist collections."[O]*

> *"Many of these recommendations have substantial resource implications and there is no indication of how this exercise will be administered and funded." [I]*

Scope of the template policy terms [Section 1.2]

13. One respondent raised the issue of setting up a collection and the importance of considering access issues at an early stage. The intention of the original consultation document was not to suggest that access issues are unimportant during the set up of a collection but that the proposed resource will not address the other requirements of setting up such a collection. This point will be clarified in the published resource.

> *"The clear implication is that the guidelines are not of relevance to those establishing new collections, which we do not believe should be the intention. Indeed, this section could usefully clarify that, where a new collection is to be established that could have value for secondary research use, issues of access should be considered from the earliest possible stage." [O]*

14. One respondent raised the issue of public private-partnerships. Although these were not directly addressed in the consultation document, it is hoped that the resource produced will be of value to any organisation considering access to biosamples and data.

> *"Public-private partnerships should be included esp in light of Innovative Medicines Initiative" [I]*

15. Research access to diagnostic samples held in NHS pathology departments was also highlighted. Although not explicitly covered by the consultation, it is expected that the same principles can be applied and that the suggested policy terms and template MTA will be of use for these collections. The NCRI has also established a short-lived task force to explore this issue and identify areas where action is required. This task force is due to report in mid 2009.

> *"One scenario which appears to be outside this scope relates to the collection of tissue samples that were taken originally for diagnostic purposes from patients who subsequently took part in prospective randomized clinical trials. The samples do not have a single Custodian. Rather they are held in NHS pathology departments at many different centres. These samples are often extremely valuable for research, given the availability of long-term prospective clinical outcome data, and the opportunity to evaluate the predictive*

role of molecular biomarkers. The use of such samples for research raises a number of issues particularly around the possible need for individual patient consent, but also with regard to sample anonymisation, patient confidentiality and payment to pathology departments. It would be helpful if these issues could be addressed." [O]

16. The importance of linking this work with other initiatives and building on work that has already been completed was highlighted by a number of respondents. Wherever possible, the example policy terms and template MTA will be consistent with other resources and will reference them as appropriate.

"Significant work has already been undertaken in this area; this should be capitalised and developed further rather than being re-invented.

Other agencies have already made significant progress on developing guidance and non-disclosure agreements e.g. NRES have developed Research Ethics application forms for data and tissue banks; the Information Centre et al have developed non-disclosure agreements to prevent onward transfer of data and ensure data are not linked with other data inappropriately.

It is important therefore, that the NCRI, and other organisations doing similar work, collaborate with these organisations and others to ensure that where possible agreed, standard documents are used." [O]

"It is important to recognise that a large amount of work has already been undertaken to develop best practice principles in relation to the governance and access issues associated with biological resources, most of which is applicable to cancer collections. The proposed template should build upon this work, and might usefully include a list of existing resources and guidelines of this type." [O]

17. A number of respondents also pointed out that work in this area is applicable beyond cancer research. The potential value of making the proposed resource more widely available, together with the importance of consistency across different research areas is recognised. The NCRI is investigating ways to make the resource broadly applicable and available to the wider research community.

"While I recognise the reality that the cancer community is mainly concerned with itself, I think that policy development needs to be undertaken in a broader context. For example, the UK Biobank prospective study will generate some 25000 breast cancers eventually. UKBB in turn will be linking its samples to Collecting for Health in England and with the Welsh and Scottish equivalents. Without a broad consensus on access policy across the whole of sample-based biomedical research we are likely to make policy that may make us look inept. Once in place, this kind of policy is difficult to modify." [I]

"If arrangements for access to samples and data are extended for cancer, the [organisation] would be interested to see whether these arrangements would apply for other non-cancer research." [O]

"In many fields, researchers engaged in the storage of tissue for research purposes face similar challenges to those working on cancer. There are no apparent structural dividing lines other than those that the NCRI are seeking to address in this consultation. It would therefore seem likely that, in principle, consensus on many of the key issues can be achieved." [O]

Environmental context [Section 1.3]

18. In addition to the points expressed in this section, both the difficulties of access to samples at present and the importance that samples and data are used once donated were highlighted by respondents.

"Currently many researchers within the [organisation] find there are major difficulties in accessing tumour tissue which is a great waste of this resource. It is also reducing the number of studies that people do because of the difficulties in accessing the tissue on all levels." [O]

"While the [organisation] takes patient confidentiality very seriously, concern has been expressed amongst members of the [organisation] involved in primary care research that there is a lack of appropriate access to data for use by bona-fide researchers." [O]

"The main issue for most cancer patients is that they are anxious that their samples should be used and not stored and eventually disposed of. Most are very happy to provide samples." [O]

19. One respondent requested evidence for some of the statements made in the consultation document. The need for this is acknowledged and the revised document will contain appropriate references for this section.

"I would challenge the Elements of Policies document to provide evidence to back up some of its many unsupported assertions (e.g. page 1 section 1.3 para 1 "There is growing awareness....") One could equally state that given the background of " government leaks" that the taxpayers expect data to be kept secure. This document seems to be arguing for short cuts which could increase the risk of disclosure." [I]

Terminology [Section 1.4]

20. A number of respondents suggested that the wide variety of possible collection types would require varying access policies. To help define where variation might be necessary, a more specific set of terminology (often also suggested by respondents) will be defined in the final resources.

> *"The consultation document sets out a range of detailed questions on specific operational aspects of access policies, most of which would need to be considered on a case-by-case basis depending on the nature of the collection in question. In particular, access considerations will necessarily depend upon the size of the collection, the type of material or data in question (including, for samples, whether it is a limited resource), the level of sensitivity, and the likely level of value for secondary research use. In addition, it might be appropriate for a single collection to establish a range of different access conditions. For example, it is likely in many cases that the process for accessing samples might be different to that for the data derived from them, and that access provisions might vary for different data types." [O]*

21. A key difference is between 'research collections', created for a specific study, and 'service collections', which are created prospectively as a resource for the community. This distinction was widely recognised by respondents and will be used throughout this document.

> *"This conflates "Research Originators" and "Service Originators". Research Originators collect for an approved investigation. Service Originators collect for a potential investigation. These two categories need to be further sub-divided: Research Originators may link samples to descriptors (disease phenotypes and genotypes) that have a service origin in whole or in part. Service Originators may link samples to descriptors that arise from research." [I]*

> *"1) Surplus Material: Data and samples that are obtained as a matter of course for other purposes, such as diagnostics or treatment. Consent to use this material is often obtained as part of routine management procedures, often outside the context of a particular research project.*
>
> *2) Targeted Collections: Data and samples that are obtained specifically for research. Consent and sample management in this category is often overseen by a principal investigator, often in the context of a particular research project." [O]*

22. The differences between depletable / non-replenishable and non-depletable collections were also considered important in determining access.

> *"1) Easily replenished: The material is either inexhaustible (data), abundant, or easily replaced.*
>
> *2) Rare and depletable: The material is both rare and liable to be used up in a foreseeable timespan." [O]*

23. One respondent suggested that the document should distinguish between the roles of 'Access Controller' and 'Resource Manager'. It is acknowledged that these may be separate roles but the more general term custodian is used to reflect the variety of organisational arrangements that are possible.

> *"This definition conflates "control of access" with "resource management". I therefore prefer "Access Controller" and "Resource Manager". Separation of these roles is likely to increase." [I]*

24. The original consultation document suggested that a common term for donors and data subjects might be useful. The response from PIAG explained why this would not be appropriate.

> *"Tissue can also be ascribed qualities of property and therefore can be donated for research purposes, in a way that data cannot, as there is no concept of data ownership in UK law, other than in relation to intellectual property, but rather a concept of control over personal data. Given this difference, it would be inappropriate for a commonly agreed term to be used in place of Donor and Data subject as proposed under [Section] 1.4." [O]*

25. PIAG's response also clarified the distinction between access to and disclosure of information. While this is an important point, for simplicity, the more general term 'access' will be used throughout this document to denote both access and disclosure.

> *"Access is about giving someone permission to view a range of data e.g. to view medical records, i.e. without restricting the data within the record they can view. Disclosure on the other hand requires that an individual with legitimate access to medical records passes on specified information e.g. completing a reporting form on a particular condition i.e. the individual making the disclosure controls what information is passed on. This is an important distinction in confidentiality terms as access to the whole record involves a greater breach of confidence than disclosure of specific data items." [O]*

26. One respondent also stated that "'transfer' is a defined term in the Data Protection Act 1998, meaning sending to another country". While this use of the term is acknowledged, in this document it will be used more broadly to mean the movement of data and samples whether this occurs within

the UK or internationally. It is recognised that the movement of data and samples outside of the UK poses its own issues and may be subject to legal restrictions but these are beyond the scope of this document[1].

V. Issues relating to the Requestor and the request

Who should have access to the collection? [Section 2.1.1]

27. This section asked respondents whether there should be any absolute restrictions on access to certain groups or priority access to other groups and, if so, what criteria these should be based on.

28. Many of the respondents believed that access to data and samples should be made as open as is consistent with the terms of the consent governing the collection.

> *"We recognise that this is a sensitive area but believe in minimising restrictions so that access is provided on the basis of high scientific/clinical value rather than on formal qualifications or geographical location..." [O]*

29. Parallels to the approach taken by funding bodies when considering applications were drawn by two respondents.

> *"Open access in the same way that anybody can apply to CRUK etc for a research grant. The issues around qualifications and affiliations will come out of subsequent scientific review as they do for funding organisations. If competing projects are found to have equal scientific merit then prioritisation of 'home' researchers could be applied" [O]*

> *"The issue is exactly the same as it is for major funding bodies. CR UK and the MRC allow anyone to apply for a research grant. Part of the assessment of that grant is based on whether the applicants are able to do the work or not, and this is one component of peer-review for quality of science." [O]*

30. Although openness was considered important, it was also considered vital that requestors should demonstrate the ability to complete the work and comply with relevant legal and ethical requirements.

> *"For resources containing personal information, formal qualifications are a reasonable condition of access to protect Donors and Data Subjects." [O]*

> *"Researchers with track record utilising tissues in cancer research" [I]*

> *"Formal qualifications should be consistent with the purpose of the research and an appropriate method of assessment of the Requestor's awareness of the principles and governance issues relating to patient samples and data should be incorporated" [O]*

31. To this end, institutional affiliation was seen as one method of ensuring suitable oversight and proving a researcher's *bona fides*.

> *"When access to human samples and data is considered, safeguarding confidentiality and the privacy rights of individuals will often preclude allowing public access to full data sets. Nonetheless, and with a view to enabling research, every effort should be made to share these resources within the research community. If this requires that access be granted under the terms of a formal agreement, researcher qualifications and institutional sign-off may be acceptable conditions of access." [O]*

32. The majority of respondents[2] felt that there should not be an absolute restriction on access by commercial organisations – the imperative is seen as maximising the benefit derived from collections whether this is delivered by non-profit or commercial organisations.

> *"We have discussed whether commercial organisations would be eligible and have decided yes, for 2 reasons:*
>
> *1. Commercial organisations could exploit a discovery for patient good (as well as profit)*
>
> *2. Non commercial organisations could also exploit a discovery for profit" [O]*

33. However, it was widely acknowledged that there was greater sensitivity around access by commercial organisations and greater safeguards may be necessary to protect intellectual property (IP) and to ensure that data and results are made public. Commercial organisations might also be required to pay higher fees for access (see paragraph 106 below) or be given a lower priority for access to depletable resources.

> *"The issue of commercial use is raised in several places throughout the document and we do not see a situation where this should form the sole basis for a restriction on access. It may, however, be justifiable to charge commercial users higher fees for access in some cases." [O]*

> *"I would want to know whether the requester is a profit making organisation – I would usually expect to have an agreement in place covering IP etc. This*

[1] See "The Eighth Data Protection Principle and international data transfers" available from the Information Commissioner's Office.

[2] 9 out of 13 respondents who specifically expressed an opinion were in favour of allowing access to commercial organisations, including 6 out of 7 organisational responses.

protects both the data owner and the funder plus I feel we should do this on behalf of the patients who have 'gifted' the sample." [I]

34. One respondent also expressed concerns around access by "law enforcement agencies or insurance companies" and believed that access should be denied to these groups.

35. Geographic location was not considered an important factor in deciding access and it was widely recognised that the benefits of research are not limited by geography.

"Geographical restrictions are not appropriate in themselves – the nature of the collaboration and the benefits of the research should be the important drivers." [O]

"There should be no geographic restrictions as this reduces the ability to network with however is most suitable for the study." [O]

"I am in favour of permitting the Collection to be used for non-UK research (if people donate for medical research then presumably their object is medical discoveries not chauvinism) but if so that must be made clear when seeking consent." [I]

36. However, several respondents stressed the additional controls required when transferring data and samples outside of the UK and the potential loss of control that this entails. Some respondents did believe that UK researchers could be given priority access to samples (see paragraph 38 below).

"Given that management and oversight of data becomes more difficult the further from the originator, a requestor or collaborator resides, it is not advisable for data to be processed off-shore, other than in the most exceptional of circumstances. This is particularly true of countries outside the EU, which do not have the same legislative framework, and where maintaining appropriate oversight is much more difficult." [O]

37. Collaboration with the originator or custodian of the collection was seen as beneficial but whether it was a requirement for access should depend on the nature of the collection.

"...there may be cases where access is likely to require collaboration with Originator/Custodian, for example for specialist collections." [O]

"Preference should be given to those who are willing to work in collaboration with the Originator of the collection. This will ensure that investigations will not be duplicated and therefore preserve precious resources and optimise their use." [I]

38. The majority view[3] amongst the respondents was that priority for access should be based on scientific merit. However, some respondents recognised that, when samples are limited, other criteria may be necessary to help decide between applications of similar merit.

"Preference should be given to best scientific applications" [I]

"...preference may be given to local or established collaborators if/when limited resources or conflict of interest exist." [O]

"If helpful to decision making, a hierarchy of access could be constructed (which may vary according to the circumstances of the collection). Broadly, I would expect preference for access to NHS collections to be given to non-profit organisations and those willing to work with the originator. Institutional affiliations and geography would be of less importance." [O]

"Given that sample collections are a finite resource, it may be necessary to prioritise competing applications, rather than simply judging applications against threshold criteria. Priority should be given to:

- *the originator of the collection*
- *academic institutions rather than commercial organisations*
- *applicants with links to the original collection*
- *proposals that do not completely deplete the collection*
- *UK rather than overseas applicants." [O]*

Screening for scientific and technical competence and project merit [Section 2.1.2]

39. This section asked about the extent to which custodians should review applications for scientific merit and technical competence before granting access.

40. In general respondents felt that some screening of applications for scientific merit is important, especially if the collection is rare and depletable.

"In addition to the benefits mentioned in terms of access to rare or depleted samples, peer review also avoids possible duplication by more than one group planning to address the same research question from a given collection." [O]

"In all circumstances they should. The issue is (i) is the science good, (ii) is this an appropriate use

[3] Eleven of the respondents expressing a view on prioritisation believed that it should be on the basis of scientific merit vs five who suggested other criteria.

of the samples we have, i.e. will this mean they are used for the purpose for which they are collected?" [O]

41. However, it was also stressed that processes should involve the minimum of bureaucracy and should avoid the 'double jeopardy' of unnecessarily repeating peer review.

"The originator or collection custodian should be apprised of what peer review has occurred and it should be made available to the custodians of a collection. (If this is deemed sufficient the custodian may still need to consider the amount of tissue available and what other demands there are likely to be.)

If the proposal comes from researchers with non-grant funded study proposals which might be the case with small self supported pump priming ideas or proposals from industry. Then the custodial body would need to implement a peer review process." [O]

"We consider peer review within a formally recorded process to be essential and we do not think that worthwhile studies are likely to be excluded. However, having two separate processes would appear unnecessary." [O]

"Independent scientific peer review of the research project (including the CVs of Principal Investigator and other key investigators) should be a necessary condition for access to a Collection. But if the study has evidence of peer-review e.g. funding that has been peer-reviewed then this is not necessary. Specific peer review organised by the Custodian may be required if the proposed project is part of a larger programme grant." [O]

42. Many respondents believed that peer review by funders should be sufficient assessment of scientific merit but that custodians should put in place mechanisms for prioritising applications to rare and depletable collections and for avoiding unnecessary duplication of work.

"The funder is primarily responsible for assessing the scientific quality of the research proposed, and the sponsor needs to be satisfied that an appropriate process of independent expert review has demonstrated the research proposal to be worthwhile, of high scientific quality and good value for money. However, it will be the Custodian who will have the best understanding of the nature of the Collection and is in the best position to decide whether a request for access will be an appropriate use of the Collection. However, the process undertaken by the Custodian in making this decision must be transparent to avoid suggestions of bias in access to the Collection." [O]

"The Custodian in particular if identical with the Originator should always be allowed to have their own peer review system which can overrule other peer reviews undertaking for funding purposes. This will be crucial to avoid depeletion of material due to x number of parallel requests which are only externally reviewed." [I]

"The possible need to prioritise competing applications implies a need for the scientific peer review process to have direct involvement with the Custodian of the Collection. Otherwise, it would be possible for several different funding bodies each to approve applications for different, mutually exclusive, uses of the same samples." [O]

43. Where the custodian does have their own process for screening applications, it was seen as important that this be independent and transparent.

"The decision regarding access to collections should not be left entirely to the Custodian. That would be tantamount to providing the Custodian with exclusive access. Rather there should be an independent element of governance." [O]

44. Those respondents who raised the issue of commercial applications that will not have been peer reviewed generally felt that pressure for funding in commercial organisations requires studies to be of good quality and that independent peer review of scientific merit should not be necessary (except for rare and depletable collections where additional peer review might be required for all applications).

"In practice the vast majority of projects will have been peer-reviewed for funding purposes anyway. If this is introduced as a 'must', it will exclude some commercial requests for samples, which usually need to be considered quickly." [O]

"Public sector researchers often consider it desirable to peer review science conducted in the commercial sector based on some presumption that scientific integrity, merit and competence is somehow lower and that funding for projects is easier to come by. My experience in industry tells me that this is not the case and that if a project has company backing, including the provision of funding and resources, it must have been through an internal review process that could be considered a surrogate of the more familiar review process. Therefore, my opinion here is that if the requester can demonstrate that a review process has taken place it need not be repeated." [I]

45. It was generally felt that custodians must satisfy themselves that requests have appropriate ethics and regulatory approval before releasing samples but that it is the responsibility of the recipient to comply with these.

"The Custodian should have the responsibility of being satisfied as to the technical competence of those planning to use sample collections. However, it would be difficult for the Custodian to monitor adherence, eg to the Human Tissue Act, especially internationally." [O]

"This will be totally impractical to do! Responsibility for compliance with UK and international law rests with the researchers, and this should be made clear under the terms of a MTA." [O]

Timing of access approval [Section 2.1.3]

46. This part of the consultation document asked about whether access requests should be considered before or after funding was secured and whether requests should be considered on an *ad hoc* basis or only at specific times.

47. The question of whether funders would accept grant applications where approval to use samples is uncertain received different responses from two of the funding bodies that commented.

"[Organisation] currently considers applications for funding where access to samples has been agreed in principle. A pre-application 'letter of intent' system whereby the Requestor obtains approval in principle from the Custodian before seeking funding would facilitate the process and provide reassurance to funders."

"[Organisation] will, where access to a particular resource is essential to a research proposal, make our funding conditional on the researcher attaining the necessary approvals to use the resource. We believe that it is important to maintain a degree of flexibility and allow for the fact that it is not always appropriate for access to be considered before funding has been obtained."

48. A flexible system, where a letter of intent could be obtained if the application was made prior to funding, gained wide support, although it was recognised that this level of flexibility might be more difficult for smaller collections.

"If use of the material is a key part of a grant application, it would be appropriate to have a pre-application system that would approve in principle the use of the material." [O]

"We agree that it would expedite the approval process to have a pre-application 'Letter of Intent' system, by which a Requestor obtains approval in principle from the Custodian, prior to seeking funding and regulatory approvals." [O]

"Access should be considered both prior to and after securing funding. Access can be granted on principle before funding is secured as this confirmation may help a funding proposal. A pre-application 'Letter of Intent' system is a useful mechanism to expedite access." [O]

"We believe that it is important to maintain a degree of flexibility and allow for the fact that it is not always appropriate for access to be considered before funding has been obtained. It is clearly sensible for requestors to at least establish the feasibility with the custodian of accessing a particular resource which is integral to a research proposal before applying for funding. However, we would have reservations about the imposition of a 'letter of intent' system – there is a question once again of proportionality here, and a danger this could create an unnecessary bureaucracy and burden on smaller-scale collections." [O]

49. The idea of a 'letter of intent system' raised the issue of whether such a letter would guarantee access to samples. The respondents who considered this had varying views and this is likely to be an issue for consideration by individual collections.

"This would clearly imply that such approval could not be withdrawn once funding has been obtained, otherwise the investigator is left in the invidious position of having secured funding under essentially false pretences." [I]

"It is important, especially for smaller collections, that this letter does not represent a guarantee of availability, and that no other warranties or representations are made." [O]

"If 'Letter of Intent' is issued then how long would the Originator have to hold those samples just in case that research was funded? Perhaps a proviso along the lines of 'samples are currently available. The Requestor will be informed for a period of x months (I'm not sure what a standard amount of time for a funding application is) if a competing request is made to the Originator." [I]

50. In general, respondents recognised that the decision of whether to accept requests on an ad hoc basis or only at specific times is likely to depend on the nature of the collection, the level of interest and the sensitivity of requests. It was also recognised that this may change over the lifetime of a collection.

"We recognise the benefits of considering ad hoc requests electronically. This has the potential to enable a flexible system to operate that can review requests as and when received, and meet the Requestor's needs in a timely fashion. However, this might not be practical if the number of requests received is high, in which case a system of

organising meetings at specific times to consider the requests might be more appropriate. Furthermore, meetings might be required in cases of sensitive requests where careful deliberation is needed. We acknowledge that this will, however, have time and cost implications for the Custodian as well as time implications for the Requestor." [O]

"I consider it appropriate for custodians to operate an ad hoc application system or to issue open calls in order to stimulate the use of the resources they maintain. Both have merits and the decision to use one or other is very circumstantial to the individual collection." [I]

Purpose limitation and priority for usage [Section 2.1.4]

51. The consultation document made it clear that access must be limited by the original consent and then asked whether there should be any prioritisation of access or limitation of use beyond this.

52. A number of respondents commented on the need to provide originators with an incentive to collect, and felt that prioritisation of access might be an appropriate way of doing this.

"In many cases, priority of access for the Originator may present an important incentive to embark on a collection project. Consequently, in collections of surplus material that are easily replenished the need to incentivise an Originator – if such a person can be identified – is much diminished." [O]

"It is important that any solution recognises the rights and contributions made by the individuals who generate a collection of data or samples. This is an onerous, time consuming and energy sapping exercise and it would be counter productive to suggest that individuals who have carried out this work would not retain the right of access subject to appropriate regulation.." [I]

53. Many respondents were in favour of the suggestion that the proportion of the collection available for different uses could be defined, although it was recognised that defining these proportions should not be left to originators alone.

"It would make sense to define up front the % of a collection that could be used for different purposes. Some system would be required to ensure that originators did not simply say a very large % was exclusively reserved for their own use to exclude collaboration." [I]

"Seems acceptable to have X% of any sample available for use by the Originator; up to Y% for external use for primary purpose; up to Z% for other purpose, ensuring a protected amount left for long term storage but you never know what request you are going to get so if used perhaps these should be in principle at start and then flexible." [I]

54. However, other respondents felt that such a system could be overly bureaucratic and that, if quotas are put in place, there should be systems to override or revise them is necessary.

"The originator should also have the flexibility to overrule and allow others access to all of the samples if appropriate." [O]

"Any quota system which divides a tissue bank into categories for access by the originator or other purposes is likely to frustrate, at some point, the optimal science being done and I would not be in favour of a quota being stated for this purpose." [I]

55. A few respondents thought it reasonable to require requestors to investigate alternative collections and justify their choice. Others felt that the small number of collections available would make this unnecessary.

"I don't think this is an issue. Is there really that much high quality tissue and data available? Maybe looking at 2 sources would be sensible and feasible. "[I]

"It is highly relevant that any requester should review all prospective tissue banks that might be available to them and should make a case for why the request is made to a specific tissue bank." [I]

56. Access by commercial organisations was not generally expected to receive a lower priority so long as the work was likely to be of value.

"No, good science is good science whatever sector it comes from" [O]

"No so long as the data from the commercial partner is freely available but this latter point is important" [I]

57. However, there was recognition of the sensitivities around this and the potential requirement for more careful consideration of the access arrangements with commercial organisations (see paragraphs 33 above and 106 below).

"There have to be well worked out arrangements for commercial access – as the samples are most likely very valuable to the scientific community , maybe all the data forthcoming from the samples have to be made available publicly immediately – so the academic community gains." [I]

"I would favour as a general principle giving priority to non-profit organisations for access to publicly-funded data- and charging higher fees for commercial users." [I]

58. The issue of whether a collection should ever be completely depleted is complicated by the number of possible collection types and is likely to need resolving by individual originators in conjunction with funders and ethics committees.

59. Where collections are rare and depletable (i.e. cannot easily be replaced), it was generally considered beneficial to retain some portion of samples.

> *"We would agree that it will often be beneficial to retain a small portion of each sample in perpetuity. We recognise, however, that this raises questions of long-term sustainability." [O]*

60. However, many respondents felt that this should not be a barrier to potentially valuable research.

> *"In my view, we should not block the depletion of a collection since this would be a perpetually frustrating position. Under these circumstances the last portion of a collection could never be released since some novel technology in a decade or two or longer might arise which would allow it to be used. Samples should be released as long as the case for science has been made and if the tissue bank is then exhausted one would accept that the best judgement for use of that tissue has been made." [I]*

61. The point was also made that Human Tissue Authority (HTA) approval requires that samples are stored for a purpose and that any long term retention is for a specified purpose.

> *"We need to prove to the HTA that samples are being held for a purpose so therefore it is feasible that every sample could be issued. However, this can be off-set by the accumulation of data linked to those samples e.g. images of IHC on FFPE samples even if the samples are no longer available." [I]*

62. Suggested circumstances under which samples could be retained in the long term included NHS Archives and where tissue is 'surplus' from pathology departments but may be of use in patient care.

63. Other respondents highlighted that retaining samples 'in case' new approaches or applications are developed requires a difficult judgement of when to release the samples. Finally, the imperative that donated samples are used rather than stored for the future was also raised.

> *"Yes, after all it was donated to be used!" [O]*

> *"How would we know when the new technology is sufficiently 'new and exciting' to warrant the allocation?" [I]*

> *"It is useful where possible to keep a small proportion of the samples for possible new technologies, but this should not be at the expense of valid, current research. It follows that there are circumstances where it is necessary to completely deplete a collection. Patient concern is more directed at the non-use of their samples." [O]*

64. Respondents were clear that secondary usage should not interfere with the primary purpose. Beyond this, however, it was felt that samples and data should be made as widely available as is consistent with the terms of the original consent.

> *"I think it appropriate to provide prioritisation of access in certain circumstances. For example when the collection is primarily made for a predefined purpose or project, those involved in that purpose or project should be given priority access until their purpose or project has been fulfilled. Thereafter I would not consider that priority access would be justifiable." [I]*

> *"Where data and samples have been collected for cancer research in the first instance, secondary usage should give preference to cancer research, however, non-cancer research applications should also be considered individually on merit and any studies that require access to data only should be considered." [O]*

65. To ensure that samples can be used for the widest possible benefit, respondents believed that the consent obtained should be as broad as possible (see also paragraph 92 below).

> *"To facilitate the use of valuable relevant material in research, the HTA advises that consent should not be taken solely for use in a specific research project: if consent is given for a broad range of research, this removes the need to go back to the participant following completion of the specific project, and is preferable to developing complex systems for keeping the samples unlinked. Researchers should attempt to anticipate and explain the purpose for which tissue could be used to avoid the need for seeking repeated consents." [O]*

Stage (of maturity/development) of the collection at which Access for Secondary usage can/may be considered [Section 2.1.5]

66. This section discussed the question of when collections created for a specific purpose should be opened for secondary research. The commentary acknowledged that there could not be a single rule and that some case-by-case decisions would be required. Respondents were asked to comment on how these judgements could be made.

67. Although a minority of respondents felt that the decision on when a collection should be opened for secondary use could be left to the custodian, the majority of respondents

felt it would be inappropriate to leave this decision to a single individual.

> *"By custodian or representatives because they are in best position to judge whether samples and trial data are suitable and can prioritise a good external project over a mediocre internal one." [O]*

> *"This should be largely decided by the custodian of the collection, given the proviso that this custodian should not be a single individual. It is worth restating here the guiding principle of tissue banks should be in, my view, custodianship via the trial steering committee or some management group to avoid individuals claiming ownership which is inappropriate. If the custodian is defined as a group of individuals, it should be possible for these individuals to seek external advice from funding bodies or other scientists where any element of conflict arises. Independent governance advice should be sought from consumers and potentially external experts." [I]*

> *"We take quite a firm stance that decisions on access requests should be made independently of the principal investigator (although the group making this decision may often draw upon their expertise and advice)." [O]*

> *"I would be wary of allowing the custodian to decide when a collection was available for secondary usage." [O]*

68. Only a few respondents directly addressed which groups might form the independent elements of a governance body. However, this issue was covered more fully in paragraph 138 below.

> *"The Steering Committee should comprise representatives of the various expertises (technical, scientific, quality, database) and stakeholders, including patients, with an independent Chair, and be made up of people capable of being 'neutral' rather than being 'mafiosi' for vested interests." [I]*

69. The research funders who responded to the consultation were clear that it is important for governance arrangements for secondary access to collections to be put in place before the funding is granted.

> *"We are supportive of funders requiring appropriate governance arrangements to be defined before providing funds for studies that will generate a Collection for secondary usage." [O]*

> *"We ask applicants to detail their proposed governance and access arrangements and assess these as an integral part of the funding decision. Similarly, in considering funding renewals for resources, we will review their access arrangements as a key part of this decision. Where we feel access provisions are not sufficient, we will ask applicants to revise these before a funding decision is made." [O]*

70. Among those respondents who considered the issue of collaboration with the originator or custodian, this was generally not considered necessary for access but recognised as potentially beneficial (see also paragraph 37 above).

> *"I think it reasonable for requests that offer collaboration with the originator or custodian of the collection, to be favoured." [I]*

> *"I do not think it reasonable for secondary usage to require collaboration with the originator or custodian. However, in some circumstances it is clearly desirable for the requester to seek such a collaboration. However, I think it would be only in exceptional circumstances that a forced collaboration with an originator or custodian would be a condition of access. Whilst I can understand the instinct of some originators and custodians who might seek this requirement I would still question the validity of their arguments." [I]*

71. A small minority of respondents felt that it is acceptable for the Originator to have the right of veto to block (within reason) external access that may be competitive.

> *"Yes – but a very good reason needs to be provided" [I]*

> *"If similar research question, similar technique and scarce samples possibly. If similar research question but different technique, may be in interests of study to have independent validation. Could give originators a head start, ie. No release for x months until originator has started on work." [O]*

72. In general, it was recognised that exclusive access to a collection may be justified for a time but that this should be limited and that there is an ethical duty on originators and custodians to make samples and data available as widely as possible.

> *"[Organisation] believes that a limited period of exclusive use of data for primary research is reasonable, according to the nature and value of the data and the way they are generated and used. We recognise that the period of exclusive access would depend on the specifics of the research project but the Originator/Custodian should provide an approximate time at which the Collection is anticipated to become accessible in research proposals/MTAs." [O]*

"Exclusive access until results from first major study have been published." [I]

"The samples are donated for research and it makes ethical sense (and economic sense) for as much use to be made of the samples as possible. Once an Originator has completed a study they should be expected to pass their collection to a custodian then they would lose exclusive rights. The funder and the 'patients' also have rights and the originator should accept that their samples should be put to best use both for the original study and any further studies by them or anyone else." [O]

73. In support of this, one respondent highlighted the Fort Lauderdale Agreeement, which aims to balance the rights of data producers with the benefits of rapid data access.

"Investigators may be reluctant to share resources, for example when "pre-publication data release might conflict with a fundamental scientific incentive - publishing the first analysis of one's own data." Provisions which give researchers confidence that they will still gain appropriate credit for their work, such as "rights to first publication" discussed at Fort Lauderdale[4], are widely considered to be necessary to encourage earlier data and sample release." [O]

Data identifiability [Section 2.1.6]

74. This section asked respondents to comment on the safeguards required to ensure that data provided in an unidentified form remains so.

75. Many respondents highlighted the importance of using anonymised or pseudonymised data wherever possible, although it was recognised that some work requires identifiable data.

"Data should not be released from which individuals could be identified by the recipients. However, the custodian should be able to reverse the anonymisation so that findings can be linked back to the original datasets at the custodian site." [O]

"Identifiable Data should only be held when absolutely necessary and with the consent of those concerned. Again this will need to be made explicit in detail on both the REC and funding applications. I think that where it is truly necessary to hold identifiable data, this should be the case." [I]

76. Several respondents suggested that recipients must sign an agreement that they will not attempt to identify any donors or data subject and that, should they believe that they have inadvertently identified an individual, they should not record this or attempt to contact the individual concerned.

"As a standard provision in material transfer agreements, a specification should be included that the Recipient may not seek to identify the Donor from the Material." [O]

"Recipients should undertake not to attempt to derive identifiable information from the data or samples supplied." [O]

77. To reinforce this, PIAG suggested in their response that all recipients should sign a non-disclosure agreement even where data is anonymised.

"It is the PIAG view that whilst the MTA sets a baseline, it is not sufficient in and of itself if it relates to patient identifiable information that has been disclosed without patient consent. In order to establish appropriate safeguards, all recipients should be required to sign a non-disclosure agreement irrespective of whether the data are identifiable, linked anonymised or even perhaps fully anonymised (because of the small risk in some instances that data have not been adequately anonymised if linked with other data)." [O]

78. In the event that a recipient does believe that they have identified an individual, one respondent believed that they should be required to report the circumstances to the custodian to allow the circumstances to be assessed and preventative measures put in place to prevent any recurrence.

"Recipients should also agree to inform the Custodian of any inadvertent identification of Donors, and Custodians should monitor such disclosures and assess whether it is possible to place safeguards in place to prevent further disclosure." [O]

79. A factor seen as key in avoiding inadvertent identification of donors or data subjects was a requirement that recipients agree not to link data sets received from different sources.

"As indicated in the commentary of the document, with respect to linked anonymised data (pseudonymised data) caution needs to be exercised as such information could become identifiable through receipt of data from multiple data sources or via inadvertent data linkage." [O]

"Researchers need to sign an agreement that prohibits the deliberate linking of anonymised data so as to ascertain a patient's identity. Should such

[4] Sharing Data from Large-scale Biological Research Projects: A System of Tripartate Responsibility, Report of a meeting organised by the Wellcome Trust and held on 14-15 January 2003 at Fort Lauderdale, USA, January 2003, p2.

a linkage arise inadvertently, then there is a primary duty of confidentiality to the patient; it may also be possible to consider this as equivalent to a 'breach of a clinical trial protocol' that should be recorded and investigated by the employing organisation." [I]

80. Finally, one respondent highlighted that the responsibilities of an originator as a data controller can extend even to anonymised data and that this should be considered when releasing information.

"I think it is important to acknowledge that the 'originator' (to use your terminology) or his/her organisation will have responsibilities as Data Controller under the terms of the Data Protection Act (DPA). A recent case in the House of Lords has indicated that even essentially anonymised data are defined as personal data under the terms of DPA, in some circumstances" [I]

Ethics approval and consent [Section 2.1.7]

81. This section began by asking whether research funders and other bodies such as NHS trusts accept the HTA view that generic REC approval for a collection can cover studies carried out on that collection.

82. This position was accepted by the funding bodies and NHS organisations that responded to the question.

"We would accept that a project does not require REC approval for use of samples from a bank with generic REC approval for its Collection on the proviso that it is compliant with HTA regulations and in accordance with the bank's ethical approval." [O]

"Arrangements have been established for a Collection with generic REC approval to release tissue or data for individual research projects, under conditions agreed with the REC, without the requirement for researchers to apply individually to the REC for approval." [O]

83. The second part of the section covered the handling of withdrawal of consent by donors or data subjects.

84. For biosamples, the HTA provided a response and gives further information in its code of practice on consent[5] which states that, "the withdrawal of consent to any further use does not mean all existing information has to be withdrawn from the research project."

"Consent for research may be withdrawn at any time. However, this does not necessarily mean that the sample or samples have to be removed or destroyed as the consent may allow for the material to be stored for use for another scheduled purpose i.e. education or training relating to human health." [HTA]

85. For data, both the Information Commisioner's Office (ICO) and PIAG provided detailed responses. Both of these recognise that, although consent can be withdrawn at any time and that data must be deleted or anonymised, it may not be possible to undo the consequences of the consent and that research results based on that data may be retained.

"It is widely accepted for DPA98 purposes that where an individual gives consent it is capable of being withdrawn. Your paper clearly accepts that consent can be withdrawn. This does not mean in our view, however, that the consequences of the initial consent can be immediately undone, or even that further consequences can necessarily be prevented. Therefore, if data has been used in research and helped to provide certain results it would be odd if there were any suggestion that the contribution of data relating to an individual who has subsequently withdrawn consent could be, as it were, removed from the results. Further, where research is under way it may involve wholly disproportionate effort to extract the relevant data from the research sample." [O]

"Withdrawal of consent is a key issue in relation to identifiable data. PIAG considered this issue at its meeting in September in relation to the National Research Ethics Service Research Database Application form and guidance. This covers circumstances where linked anonymised (pseudonymised) data have been released to a researcher, and the patient subsequently withdraws consent. This has led to considerable discussion over the best approach to serve the patient's interest and what is reasonable to carry out. PIAG has not yet achieved consensus on this issue. The options considered were:

1. *That in order to comply with Data Protection principles, it would be necessary to identify the researchers and instruct them to destroy the data provided it would not mean having to start the analysis process again.*

2. *Another approach could be for the research database to destroy the identifiers, thus rendering the information provided to the researchers effectively anonymised.*

3. *Another option and the most balanced approach would be that where information has been released to a recipient, within a reasonable limited timescale, the researcher should be traced and asked to destroy the data. If data*

[5] HTA, *Code of Practice - Consent*, 2006

had been disclosed prior to this specified time period, then anonymisation (such as that in option 2) would be sufficient. PIAG agreed that this was a balanced approach and the most legally defensible but did not reach a view on what an appropriate time period would be, but rather felt that this should be judged on a case by case basis, rather than applying a blanket rule. In part, this also depended on the level of distress caused to an individual if their data was not removed where this was practicable." [O]

86. The question of whether samples should be destroyed by the recipient or returned to the custodian for destruction received mixed responses, with a slim majority in favour of returning samples to the custodian[6]. This is likely to be an issue for individual collections to decide based on their circumstances.

"Samples should be returned to the Custodian and subsequently destroyed with the permission of the donor / data subject." [O]

"If the sample has already been passed on to a recipient and it has not yet been used, then best practice would be for the sample to be returned to the custodian for destruction." [O]

"Impossible to do this once 'samples' start to be processed, on gels/in TMAs which can have the samples of 100s/1000s of patients. The only thing that you might be able to do in this situation is 'withdraw' the clinical data which is required for analysis. That might make the sample un-analysable." [O]

VI. Conditions relating to the request once agreed

Limitation of onward transfer [Section 2.2.1]

87. This section asked about the restrictions that should be placed on onwards transfer of samples or data by recipients.

88. The responses were consistently in favour of recipients being able to transfer samples or data to collaborators named in the original application, but against any other onwards transfer without a further application to the custodian.

"Onward transfer of data or samples should be limited to named collaborators at the time of application, unless a further application is made." [O]

"A recipient of data or tissue should only be allowed to transfer such data or samples to further parties only if in the original collaborative agreement contains an agreement that the samples and/or data can/will be passed to a named third party. Any modification of the primary agreement where new collaborators become involved or where transfers of data to a separate study are required should be referred to the custodian group and approved by them before any further transfer takes place." [I]

89. Based on the requirement to apply to the custodian before any transfer occurred, most respondents were in favour of the custodian holding the records of such transfers.

"HTA regulations specify that records must be kept to allow traceability of human samples. Therefore, in line with this, we would expect the Custodian to maintain a record of all transfers in order to ensure that a complete audit trail is held in one place although we do acknowledge that there will be cost implications associated with this." [O]

"Amendments could be made but only with proper documentation - to prevent data leaking out all over the place. All recipients (custodians) would be duty bound to read (and sign?) a data use agreement." [I]

"If subsequent collaborations arise, the recipient should submit an amendment of the project for approval by the custodian before samples are released to further parties." [O]

90. Some respondents went even further and suggested that reciepients should not be allowed to transfer samples or data but that collaborators should apply directly to the custodian.

"Under no circumstances should they transfer samples. Raw data should be available to the custodian, to whom 3rd parties can apply with permission of the original researchers." [O]

91. The issue of transfer outside of the UK was also raised by some respondents but this was considered a situation that could dealt with on a case by case basis.

"This can be taken care of in the normal course of process for any data going outside the UK, or identifiable data is concerned." [I]

"If transfer of data or tissues across international boundaries is an issue, again I would consider that to be the responsibility of the current custodian of the tissue. Provided there is confidence that the tissue is going to a respectable lab in a respectable regime I see no problem." [O]

[6] Fourteen respondents in favour of returning samples to the custodian for destruction vs 11 in favour of destruction by the recipient.

Recontacting people to whom the data and samples pertain [Section 2.2.2]

92. This section asked respondents to comment on the conditions under which donors / data subjects could be recontacted. The responses considered three general scenarios for recontact:

1. To obtain further consent.
2. To provide individual results.
3. To provide summarised results.

93. Recontacting donors or data subjects to obtain further consent was generally considered undesirable and most respondents felt that secondary uses should be considered at the start of a study to ensure that the original consent is sufficiently broad.

> *"We don't think recontact should ever be desirable or necessary if the consent was done properly in the first place." [O]*

> *"Ideally generic, enduring consent should be gained up front." [O]*

94. If recontact is required, this should be done by the originator or person responsible for the original contact.

> *"Good practice follows the "no surprises" rule, so recontact should, wherever possible, be made by a healthcare professional that the Donor would expect to know about the donation. Where someone from the original care team who collected the original data and/or samples is no longer available, someone from an appropriate care team (e.g. the consultant who had taken over from the Originator) should make contact, giving a clear explanation of their role in relation to the original donation." [O]*

95. In general, it was not considered appropriate to recontact individuals about their results and most respondents felt that this should be made clear in the original consent.

> *"When consented it could be made clear that the individual patient will not be able to find out the outcome of the research. If they don't like this they don't need to consent." [O]*

96. Where the findings of a study could have a direct bearing on the donor / data subject's health then respondents expected this to be considered by a REC, ideally when the study is first approved.

> *"There is established ethical guidance on those cases where scientific research brings up indications that may have a direct bearing on individual donors. The possibility of averting harm, the right to know and not to know need to be carefully assessed for each individual case. Such cases should be brought before a REC. Where a project is likely to yield such results but is not set up to ever feed back individual reports, this should be stated categorically on the consent form." [O]*

> *"Only when agreement with the Ethics committee – need to undertake benefit/ harm analysis" [I]*

> *"One may envisage special circumstances where specific research outcomes may have impact on the donor or their family such as high genetic risk in which case an ethics committee may authorise an exception to contact the donor." [O]*

97. One respondent expressed the desire that donors should be able to access genetic information obtained from their samples.

> *"With the development of targeted therapies, particularly in the area of brain tumour treatments, we believe that donors (patients) who provide their own tissue or blood primarily for research purposes should have the right, if they wish to exercise it, of freely (without cost to them) obtaining information about their own genetic material if they (the donors) believe it may assist them in choosing to access new therapies based on the genetic characteristics of their tumour, and if the recipients (the researchers) have identified such information." [O]*

98. It was widely recognised that the communication of research outcomes is good practice and may help to increase participation in research. The internet was highlighted as a relatively easy and cost effective way to do this.

> *"Generally feedback should be encouraged and a lay summary may be the most appropriate means. However, it should be recognised that this may be logistically difficult and time consuming. This may be possible in future through better use of websites eg linked to Cancer Research charities." [O]*

99. It was not generally considered necessary (or even desirable) to recontact individuals with lay summaries unless this was promised in the original consent.

> *"Contact with research outcomes – only make specific contact if agreed in original consent. Otherwise research outputs should be put in the public domain by the organisation/funding body." [I]*

100. However, it was seen as appropriate for long-term cohort studies to have a newsletter to keep in contact with participants.

> *"Larger projects should be encouraged to budget for a newsletter. As a basic step, it may be good practice to send a lay summary poster to participating hospitals and other organisations." [O]*

Fees [Section 2.2.3]

101. This section asked respondents for their views on what fees might be appropriate for access to a collection.

102. Almost all recipients felt that it was reasonable for the custodian to cover their costs of retrieving, processing and dispatching samples.

> *"We feel it would be legitimate for the Originator/ Custodian to seek to recover costs from Recipients for retrieval, processing and dispatch to the Recipient but not for original costs of collection or maintenance." [O]*

> *"Costs of retrieval, processing and dispatch should be charged to the Recipient as appropriate. Contributions to maintenance of samples are also valid." [O]*

103. However, recovering the original costs of collection was only considered appropriate if this was not covered by other funding.

> *"Issues arise where costs are sought for activities which are publicly funded. Funding bodies need to ensure that the issue of whether or not costs will be charged is addressed and agreed on" [O]*

> *"Whether or not recipients should also be charged for original costs of collecting and maintaining the samples and/or data depends on the fiscal arrangements under which a particular tissue bank operates. If these costs are covered by the infrastructure funding of the bank then there is no justification for passing them on to the recipient. If these costs are not part of infrastructure funding then one can make a case for passing them on to recipients." [O]*

104. Some respondents felt that it would be difficult to assign these costs, especially where a collection has been created as part of a larger study.

> *"It would be difficult to determine and assign specific costs of sample collection and maintenance. If funding for the bank was not available, then it could make reasonable charge, provided this was stated up front and was only such as to recover costs." [O]*

105. The issue of differential fees was more controversial. Some respondents felt that if costs are being recovered then differential fees would not be justifiable, since the costs are similar for all recipients.

> *"Where the custodian is funded by public money then there are legal implications. But if the bank is 'recovering costs' then differential charging cannot be justified. Why does it cost more to collect, process and store samples when the recipient is commercial rather than academic." [O]*

106. Table 1 summarises the responses to the various options proposed for differential fees.

Is it reasonable to charge higher fees to / for:	In favour	Against
Commercial organisations?	20	7
Researchers outside of the Originator (and Custodian?) group?	5	14
Researchers overseas?	4	15
Any other group of Recipients?	2	11
No fee (or low fee) for collaborative access for primary purpose?	14	6
Access for any secondary purpose?	2	16
Access to rare and/or depletable samples, reflecting higher replacement cost?	4	16

Table 1. Responses to potential options for differential fees

107. Many respondents felt it was reasonable to charge higher fees to commercial organisations, the only place where this was widely seen as valid.

> *"It is reasonable to charge higher fees for commercial organisations." [O]*

> *"Custodians should be able to recuperate their costs incurred, but should also be at liberty to reduce these costs when they see fit for example in research sponsored by charity rather than industry." [O]*

108. The other option that received wide support was for reduced fees to collaborators using the collection for its primary purpose.

> *"Where the primary research within the originator / custodian group has been funded in the context of tissue collection such fees may of course be waived" [I]*

> *"We charge only retrieval, processing and despatch costs for collaborative access, or for primary purpose usage. We charge the same fees for secondary purposes." [O]*

109. One respondent felt that lower fees for researchers funded by bodies who also support the collection might be appropriate.

> *"Where a funder of research funds a collection and*

financially supports the work of a custodian and then, in turn, funds the research project it might be reasonable for the costs recovered to reflect the 'pre-payment' aspect of the funders support for the bank resulting in a lower fee for the recipient funded by that grant awarding body. However, collectively the fee charged to the recipient plus the pre-payment element would be regarded as equivalent to the fee charged to a recipient who was not funded by that grant awarding body. This would, inevitably, result in an apparent differential price for commercial organisations and for researchers overseas who are not funded by any grant awarding body who supports the operation of the bank." [I]

Publication [Section 2.2.4]

110. This part of the document asked respondents about the elements that might form part of a collection's publication policy.

111. It was generally considered that authorship is not appropriate unless the custodian is a significant collaborator.

"I do not think it is acceptable for either an originator or a custodian to require co-authorship of publication as a condition of access. However, I do think it essential that custodians and where possible originators are acknowledged for their contribution. Indeed, it would be appropriate for the donor or data subject populations to be acknowledged and appreciated in general terms. There has been a poor track record of recipients appropriately acknowledging custodians, originators and donors/ data subjects." [I]

"It is not reasonable in my view for the custodian to require co-authorship of publication as a condition of access. In certain circumstances, eg if the custodian performs considerable work such as working up a new antibody, making TMAs, and/ or scoring immunohistochemical results, then an expectation of co-authorship would be reasonable." [O]

"Authorship should be in accord with the normal guidelines for authorship based on scientific contribution, not practical contribution." [I]

112. One respondent also highlighted that co-authorship would not be appropriate if fees were charged for the material.

"The custodian should clearly be co-author on collaborative interactions. Co-authorship on all projects using the collection would be inappropriate, particularly if fees are charged." [O]

113. However, a few respondents did feel that the effort involved in creating a collection does justify co-authorship of publications.

"It is in my view entirely acceptable for the custodian to require co-authorship of publication as a condition of access. This may reflect the involvement of the clinical trials group or research group in garnering the information, quality assuring it and ensuring that the clinical outcome data and pathological data is fit for purpose for the subsequent researcher." [I]

114. Some respondents felt that custodians should be involved with the preparation of manuscripts or at least receive a copy of any manuscripts prior to publication.

"Custodian should be involved in writing the paper. It should be peer-reviewed even if negative result. CTU would disseminate results. I feel results should be discussed and the custodian involved in determining which to publish. I feel a lot of translational analysis is very exploratory and hypothesis generating so they could get a lot of results (this is why statisticians e.g. one from CTU, should be involved)." [I]

115. An intention to publish results in a peer reviewed journal was seen as vital, although it was recognised that recipients can only submit their work, not guarantee its publication.

"All of the points mentioned in respect of a publication policy are reasonable, but it is not reasonable to require publication (which may not be achievable). Better to say that Recipients are expected to submit their work for publication." [O]

116. Publication in open access journals or submission of publications to open access databases was also seen as desirable or even essential by many respondents.

"A publication policy should contain a stated intention to publish results in peer group reviewed journals wherever possible, for publications to be open access wherever possible, and for results to be published in a timely manner." [O]

"It is a condition of funding that all CR-UK funded researchers deposit an electronic copy of peer-reviewed published papers in the open access UK PubMed Central database as soon as possible and no later than six months after publication." [O]

117. However, some felt that publication in high impact factor journals outweighed the importance of open access

"University researchers may need to publish in high impact journals to help their position in the RAE/REF. Likely to be less of a problem in the future." [O]

"Publication policies should contain the primary

view that data should be published in the highest impact journal appropriate for such a study. Open access should then be viewed as possible only when impact factor or perceived dissemination is equivalent or higher than that seen in non-open access journals." [I]

118. Attempting to publish negative results was considered important but it was widely recognised that there are practical difficulties in achieving this.

"We would like to encourage all research results using the Collection, including negative ones, to be made available through various methods (such as publication in peer-reviewed journals), although we do acknowledge the difficulty of publishing negative results. There are certain journals that publish negative results (i.e. BMC Research Notes), which might facilitate this." [O]

119. Delaying publication to protect intellectual property was seen as reasonable, although there was not a clear view on what length of delay would be appropriate.

"Yes. Limit the time to six months after notification of completion of the study to the Steering Committee." [I]

"Hard to see how this can be implemented although funders could reasonably ask for an indication that a paper was ready for drafting towards the end of a project. However many factors can hold up publication including the need to follow up patients for many months / years so it is difficult to propose a clear policy on this." [O]

120. Finally, one respondent felt that it was not appropriate for a custodian to define an publication policy but that good publications should be achieved by thorough scientific review of proposed projects.

"Custodian cannot insist on a publication policy. If only scientifically sound projects are approved then the likelihood of high impact publications will be enhanced." [O]

Exploitation of Intellectual Property (IP) [Section 2.2.5]

121. The protection and exploitation of IP arising from research was recognised as an important issue by the majority of respondents but received a variety of views as to how this would be assigned between the parties involved.

"We would address this very early on and would be covered in contract of release. IP should be shared. Cannot forget funder here." [I]

"IP should be split four ways between the sponsor of the parent trial (normally the employer of the chief investigator), the biobank, the research group performing the research and the funding bodies for the research and biobank." [O]

122. Some respondents raised the issue of whether a collection generates any IP in itself and, therefore, whether the custodians have any claim to IP resulting from research on their collections.

"There is no IP in collection and curation of samples. The custodians may have their own research on those samples, which could generate IP, but that is a different issue." [O]

"Difficult to require this as the act of supplying the samples holds or generates no IP. The exploitable act will be as a result of the recipient's expertise and knowledge. Therefore, it will belong to their host institution." [O]

123. Other respondents felt that these arrangements waste time for studies that are unlikely to generate any IP. The approach taken by CRUK was suggested as an example of an efficient way of dealing with this issue.

"Much time is wasted in trying to set up IP agreements ahead of research which never produces any protectable data. Better to use the suggested statement requiring the parties to exercise best endeavours to agree a joint approach." [O]

"The recipient institution should be required to share all IP with originator. CRUK have a policy which allows for the details of this to be thrashed out retrospectively if results warrant it. This has the advantage of saving time and resource coming to an IP agreement when there may be no IP to exploit in the end." [O]

Transparency [Section 2.2.6]

124. It was seen as important for collection to have a clear policy of openness with in respect of research carried out. However, it was recognised that there is a need for flexibility to allow the protection of IP and to avoid alienation of commercial organisations.

"In general yes unless there are IP issues which require secrecy for at least the early part of a study." [O]

"Transparency considerations can infringe on commercial confidentiality. This should be considered an acceptable argument in principle, but not as an outright barrier to transparency where commercial considerations play a role. Rather, where commercial confidentiality is seen to limit transparency options, these restrictions should be clearly delineated and continually re-assessed."

[O]

125. Publication on websites was a common suggestion for communication with the public and donors; another suggestion was to include lay summaries of research in annual reports (see also paragraph 98 above).

> *"It might be useful for mechanisms (i.e. newsletters or open access information on the internet) to be established to promote public awareness and understanding of how the Collection is being used and to provide research outcomes arising from it. Donors/data subjects will also have access to this information and be informed that the donated samples/data are being put to best use." [O]*

> *"A policy of full transparency and openness should be the norm. The strategy for public awareness is more problematic from an operational stand-point but at the very least should be an open access website." [O]*

126. However, which details of studies should be published and whether this should be open access or by request was more controversial. The issues of research confidentiality and even of researchers' security (depending on the collection) were both raised.

> *"It is important to have the purpose of the research in the public domain, ideally via open access on the internet. It is not necessary to publish the names of Recipients and the exact type of samples and data released." [O]*

> *"We agree that if there is to be openness in respect of research covered by this policy, the following information should be made available:*
>
> - *The type of samples / data released to individual Recipients*
> - *The names of Recipients*
> - *The purpose, as defined by the Recipient, for which the samples / data received from the Collection will be used" [O]*

> *"I am not in favour of having to provide individual donors/originators with details of samples and data released to individual recipients, the names of recipients, statistical information on samples or data released to recipients, or the purposes for which the recipient intends to use tissue. This information should all be recorded by the tissue bank and if an individual donor/originator asks for it (which will happen very rarely) then the custodian should make a judgement and usually release the information. Such detailed information is, in my view, inappropriate to send to all donors/originators in person." [O]*

127. Finally, several respondents pointed out that managing a policy of openness will impose an extra burden on custodians that must eventually be paid for by either funders or recipients.

> *"Whilst I agree with the principle of transparency in reporting who has access to tissue and what they may be doing with the respect to tissue collections, there is a challenge in terms of resourcing these sorts of polices. I think in the current environment it is unlikely that any funder will provide financial support for the infrastructure required for such a policy of openness. In this context, therefore, I am reluctant to mandate any policy that is not supported financially. That said, the principle of openness and having public access to information as how material is used is good and should be encouraged within the resources available." [I]*

Maintenance of records and enrichment of the Collection [Section 2.2.7]

128. This section asked about what records the custodian should maintain of releases and of study results.

129. The majority of respondents believed that the custodian should maintain records of all releases from the collection and this is in line with the response received from the HTA.

> *"Consent and traceability are vital for the credibility of any research undertaken on human tissue. HTA requires that all samples are traceable from consent to disposal (providing the tissue is identifiable). As far as HTA is concerned, material can be transferred providing MTAs are in place and donor consent and disposal requirements are adhered to. The original custodian should keep a record of where material has been transferred to." [O]*

130. Many respondents felt that it was a good idea to have raw data deposited and made available to others on the same terms as the rest of the collection.

> *"Only the research results, but to notify the custodian of any quality information and issues relating to particular samples as not all samples are 'good' quality" [I]*

> *"I strongly believe that the recipient should be required to deposit raw data such that that raw data can be directly linked to other data about the donors/data subjects and samples as this prevents wasteful repeat analysis and enriches future uses of samples and data within the collection. As a result, I believe that the newly deposited data would be available to other potential recipients on the same terms as the original collections." [I]*

131. However, other respondents felt that raw data would, in general, be difficult to interpret and require too great an effort to be worth collecting. Instead a database of publications or summary results could be made available.

> *"In most cases it is not realistic or appropriate to maintain duplicate records of research results or raw data at the bank level. Custodians will not usually have the capacity to appropriately index or interpret diverging types of technical data. Researchers may be unwilling to share laboratory notebooks to this extent, and it will often be difficult to extricate data derived from the materials from other types of potentially confidential) information. Unless there is a clearly delineated path for centralised data management or in cases where the Custodian is obviously best placed to integrate research results in a meaningful way, such efforts would not be productive." [O]*

> *"I do not think it would be practical for the recipient to deposit all raw data derived from research using the collection – published results or summaries of results at the end of projects are quite enough. It would be nice to make all newly deposited data available to all potential recipients but I think this would be asking custodians to go a step too far." [O]*

132. One respondent highlighted that the importance to the collection of receiving data should be considered in advance as some recipients may need to delay the release of data until after publication or until IP protection is in place and others may not agree to its release at all.

> *"Wherever possible this should be requested post publication or IP exploitation. Some commercial companies may have an issue with returning raw data depending on nature of research. The policy would need to address whether this was a deal breaker or not." [O]*

133. While it was widely agreed that records must be maintained for the lifetime of a collection there was no consistent view on how long after the collection is closed they should be held for.

> *"Records should be kept for same period as other research records (20+ years)." [I]*

> *"Records should be kept for a time after the exhaustion of the sample, e.g. five years." [I]*

134. Once again, respondents recognised that maintaining records and managing research data submitted to the collection requires resources which would need to be paid for by funders or recipients.

> *"Costs should be recovered from the fees charged when material is provided to recipient" [I]*

> *"The long term maintenance of records should be part of the infrastructure funding of the collection." [O]*

VII. Governance process

For what purposes and in what circumstances is a formal process needed? [Section 2.3.1]

135. This section asked respondents about the areas for which a formal governance process is required. As can be seen from Table 2, which shows the summarised responses, the majority of respondents believed that formal processes were required in all of the areas suggested.

Is a formal process required for:	In favour	Against
Initial determination of policy detail?	17	2
Approving the application procedure for access?	17	1
Considering and deciding on individual applications?	18	1
Interpretation of policy once it is in place?	17	1
Handling of circumstances unforeseen in the policy?	17	1
Agreeing policy changes in the light of changed circumstances?	18	1
Resolving disputes?	16	4

Table 2. Areas requiring a formal governance policy

136. However, several respondents also pointed out that the level of governance must be proportional to the scale of the collection.

> *"This needs to be scalable and proportional to the size of the study" [I]*

> *"The clinical governance policy should be kept as simple as possible. It should not consider and decide on individual applications. It should not duplicate Ethics considerations or issues which would be considered in a grant application. There is a danger of adding more bureaucracy than necessary, slowing the processes and adding cost." [O]*

Who should be represented or involved in the decision-making process? [Section 2.3.2]

137. This section asked respondents about who should be

involved in the decision making process and what other panels and processes might be required.

138. Table 3 summarises respondents' views on the suggested members of a decision making body.

Who should be represented for involved in the decision-making process?	In favour	Against
Custodian	22	0
Originator	19	1
Funder	12	3
Independent experts	19	0
Patients and public	20	2
Participants? (e.g. in cohort studies)	11	6

Table 3. Who should be represented or involved in the decision-making process?

139. It was suggested that funders should have the option of involvement in the decision making process but would probably only be actively involved in larger projects.

> *"Funders may wish to devolve responsibility for governance to the management committee." [I]*

> *"The [organisation] takes a formal role in the governance of several of the major resources we support on the basis of our level of investment and strategic importance." [O]*

140. Several respondents felt that participants could be adequately represented by lay members of any decision making body.

> *"All mandated except participants. Participants will be represented by the 'public'." [I]*

141. The majority of respondents believe that all members of a decision making body should have equal voting power, although some did believe that greater weight should be given to the custodian and originator.

> *"In our view, all representations on our Advisory Board are there on equal merit, so all have equal voting power." [O]*

> *"It would be reasonable for representatives to have equal voting power on the governance panel/ committee to ensure an equitable process." [O]*

> *"Investigator should have a strong say" [I]*

> *"Difficult to say but custodian and originator may require veto rights" [O]*

142. A scientific review panel was generally considered a good idea where expert advice is required to support decision making.

> *"Where there is a need for scientific review to provide advice on financial support for the collection, a separate committee or panel will be required for this." [I]*

> *"Yes, as the level of expertise required is too high for all cancers, and the workload would be too great for 'volunteers'." [I]*

143. Most recipients also felt that a formal appeals process was important to ensure that conflicts could be resolved.

> *"An appeals process or separate mechanism for conflict resolution is essential." [I]*

144. However, others were concerned by the idea of forcing custodians to release samples against their wishes.

> *"Unsure, I don't feel it will create a collaborative environment if originators/custodians are forced in a conflict to release samples." [I]*

145. Opinion was also mixed on how far competing recipients should be 'encouraged' to collaborate. Many recipients believed that putting these recipients in touch was a sensible solution if resources were not available to support both studies.

> *"There are circumstances where applicants have 'competing studies'. In these circumstances, if both studies are deemed of equal scientific merit and clinical relevance (see scoring system in attached documents), we have strongly encouraged them to collaborate. We have acted in a facilitating capacity rather than mandating collaboration." [O]*

> *"Competing Recipients should always be 'encouraged' to collaborate" [I]*

146. However, others felt strongly that the decision to collaborate must be left to individual investigators.

> *"There may be cases where it is in the public interest to "encourage" potentially competing Recipients to collaborate, but great caution should be exercised before such suggestions are pursued or enforced. Scientific competition is a motor for innovation. In enforced collaborations, progress may be contingent on the slowest partner or on interpersonal relationships. Researchers will often seek out collaborations where these are self-evidently beneficial. The Custodian will rarely have the organisational insight or expertise to fully assess the potential value of a collaboration. It may be helpful to provide options to facilitate collaborative ventures, but these should not be enforced as a*

condition of access." [O]

"They will already be aware of groups doing similar work. It isn't up to the tissue bank committee to tell them who to work with." [I]

Compliance [Section 2.3.3]

147. Although most respondents felt that there should be some mechanism to audit compliance with the MTA, it was generally felt that this should be as simple as possible.

"This could be a requirement on Recipients to sign a simple yearly statement stating that they have complied with the policy and the terms of the MTA. Where there is evidence of non-compliance, the Custodian should be informed and required to raise the issue with the Recipient."

148. Again, while it was recognised that funders would ideally audit Custodians and Custodians audit Recipients, this was seen as difficult to implement in practice and risking replicating existing governance arrangements.

"However, we believe that responsibilities should not be placed on funders to audit Custodians; Custodians of sample collections are already regulated by the HTA. Custodians should also not be responsible for auditing Recipients as it will be difficult to resource and unnecessarily add to their administrative workload." [O]

"Yes in ideal world but likely to be resource intensive and cost prohibitive" [I]

"Self regulation and a report to the custodians – there should already be regulation in place regarding HT use through the HTA – Institutes should be able to show they have a good compliance with the requirements of the HTA." [O]

"Again this is more time and resources. The HTA authority does a good job in auditing all holders of human tissue and this could be seen as sufficient. Funders could do sample auditing but it may well just be a duplication of the HTA authority role." [O]

149. Where respondents considered the issue of resourcing compliance monitoring, it was generally felt that funders should pay for monitoring custodians while the cost of monitoring recipients would be covered in the fees charged to recipients.

"The costs for the audit of the recipient can be recovered by the fees charged to the recipient. Funders need to also fund the required audit of the Custodian" [I]

"Funders should have the right to audit Custodians, using their own resources." [O]

150. Respondents generally felt that sanctions for non-compliance should be severe but was recognised that the only real sanction in the custodian's power is to deny further access to the collection. Other sanctions would be the responsibility of funders and host institutions to apply.

"The recipient could not apply for further samples. The funders would need to decide how they would impose penalties." [O]

"We do agree though that funders should have appropriate sanctions in place which they can use in cases where resource providers or users are failing to comply with agreed best practice principles." [O]

151. One respondent suggested that GMC registration of at least one investigator should be a requirement to ensure that suitably severe sanctions are available.

"The sanction for deliberate non-compliance should be very serious. For that reason, the recipient should ideally be registered with the GMC (so that failure to abide by these conditions could result in loss of career, not just loss of job). In almost all cases of research involving patient data, it should be possible to include a medically qualified person willing to take ultimate responsibility."