

Full Equality Impact Assessment

For policies, procedures, products, services or key decisions inc. projects

Name of item being assessed: National DNA Database (NDNAD) including ACPO DNA Good Practice Manual Third Edition	
Owner of the item being assessed: NDNAD Strategy Board Gary Pugh Director of Forensic Services Metropolitan Police Service	
Name of assessor: NPIA Equality Diversity and Human Rights Unit	Contact Details: 01256 602100 diversity@npia.pnn.police.uk
Date of assessment: May 2009 (first review)	
Key Amendments: Amendment to Full Impact Assessment template to reflect audit undertaken by the Equality and Human Rights Commission of the Stage 2 EIA January 2009 (April 2009); Inclusion of the recommendations made during the EIA screening of the NDNAD and NDNAD Good Practice Guide; Substantial additions to the text of the document are shown in different colour text; Inclusion of hyper links to relevant documentation, where available; Inclusion of recommendations and responses to the Human Genetics Commission Citizens' Inquiry of the NDNAD; Inclusion of the comments made by the EHRC in the Police and Racism January 2009 report;	

Section One

Identify the following:

1. **Main aims of the proposed policy/policy change**
2. **Who is supposed to benefit**
3. **The context in which the policy will operate**
4. **Any evidence that the policy is a major one, in terms of the size and significance for NPIA activities**

NDNAD: To provide intelligence information to police forces linking crime scene profiles to suspects. The National DNA Database provides assistance to the police service in solving some of the most serious crimes committed.

As well as identifying offenders, it can also eliminate innocent people from enquiries. It helps to focus the direction of major investigations, resulting in savings in police time and in building public confidence.

There are currently approx 5m profiles held on the database including those who were convicted, those cleared of charges, and volunteers.

The NDNAD is very high profile, particularly since the finding of [S and Marper](#) and the implications for the UK for retaining samples. The Agency also received many queries and Parliamentary Questions in relation to the NDNAD and the information it holds.

ACPO Guidance: The manual provides operational guidance in using DNA for the detection and prosecution of offenders. The guidance sets out current good practice for use by the police service only and is not compulsory.

The guidance is for the use of members of the police service, forensic science providers (FSPs) and the Crown Prosecution Service (CPS).

Primary beneficiaries of the NDNAD, and therefore the guidance, are:

The police service – to assist in the detection of crime by linking crime scene profiles to suspects in a scientific way;

Victims - by speeding up the detection of crime;

Suspects - by confirming the presence (or not) of suspect DNA at a crime scene, can clear innocent suspects.

Section Two

Provide details of:

1. **Information that has been collected and considered, identifying a range of relevant sources i.e. internal and external;**
2. **Analysis of information available that is logical and robust;**
3. **Qualitative and quantitative information;**
4. **Any evidence that a particular group has specific needs in relation to or is impacted by the policy;**

Sources of information:

- 1st Annual Report of the Ethics Group: National DNA Database – April 2008
- NDNAD Equality Impact Assessment Stage 1 – 17/07/07
- ACPO DNA Good Practice Manual 3rd Edition
- ACPO DNA Good Practice Manual 3rd Edition Equality Impact Assessment Stage 1 – 07/06/07
- Nuffield Council on Bioethics Report on the Use of Bioinformation: Ethical Issues
- Equality and Human Rights Commission – Letters received during 2008
- S and Marper v United Kingdom 30562/04 [2008] ECHR 1581
- Hansard – 29th February 2008, Column 1425
- Human Genetics Commission, Citizens Enquiry – July 2008
- Meeting with NDNAD Custodian – 16/07/07
- NPIA Independent Advisory Panel – Meeting held on the 22/04/08
- Politics.co.uk article – ‘Revealed: Home Office giving public’s DNA to private companies’ – 29/07/08
- Ongoing NDNAD EIA quarterly meetings
- Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report? – EHRC January 2009
- Home Affairs Select Committee Inquiry – Young Black People and the Criminal Justice System – First Annual Report December 2008
- The Police National DNA Database: Balancing Crime and Detection, Human Rights and Privacy – GeneWatch UK – January 2005
- DNA: Timeline of the national DNA database – telegraph.co.uk – May 2009
- Home Office – Keeping the Right People on the DNA database – May 2009
- Liberty-human-rights.org.uk – DNA database information pages

- NDNAD Ethics Committee response to the NDNAD Good Practice Guide – April 2009
- [Parliament.uk – search results for ‘DNA database’](#)
- [Home Office ‘Minority ethnic groups and crime: Findings from the 2003 Offending, Crime and Justice Survey’](#)
- [Sarah Teather National DNA Database – House of Commons debate – February 2008](#)
- [Fawcett Society ‘Engendering Justice – From Policy to Practice’ May 2009](#)
- [Statistics on Women and the Criminal Justice System – Ministry of Justice – January 2009](#)
- [Statistics on Race and the Criminal Justice System – Ministry of Justice – April 2009](#)

Information considered at stage 1 screening assessment of the NDNAD:

- Meeting with Mike Prior (NDNAD Custodian) 16 July 2007
- NDNAD Annual Report 2004/05,
- NDNAD Annual Report 2005/06
- Notes of meetings between Joan Ryan, Lyn Fereday, Maqsood Ahmad and Sue Mitchell 23 January 2007
- Note of meeting between Lyn Fereday and Keith Jarrett 4 January 2007
- Notes of FSPU meeting with CJS Race Unit 25 January 2007
- NDNAD Strategy Board paper Representation of BME Groups on the National DNA Database, February 2007.
- Note from Lyn Fereday to Tony McNulty re Disproportionality of BME persons on the Database 29 January 2007.
- Note from Lyn Fereday to Joan Ryan re Disproportionality of BME persons on the Database 12 February 2007.
- Liberty’s response to Home Office consultation “Standard Setting and Quality Regulation in Forensic Science” November 2006.
- Parliamentary Office of Science & Technology “Postnote” February 2006 number 258
- ACPO Exceptional Case Procedures for Removal DNA, Fingerprints and PNC Records 24 April 2006
- Hansard records of questions re NDNAD May 2006, January 2007, May 2007

EIA Screening Recommendations/Outcomes

Issues identified at stage 1 EIA of the NDNAD Good Practice Guide:

1. Ensure that the method of recording ethnicity on the database meets the duty under the Race Relations Act and consider using the 16+1 Home Office self classification system (as per recommendations made in the Home Affairs Select Committee Inquiry *Young Black People and the Criminal Justice System*).
2. Consider revising the Good Practice Guide to provide further information about the frequency databases and how they are mapped to the ethnicity classifications of the NDNAD.
3. Officers who joined the police service before 1st April 2003, and volunteered to provide samples to the Police Elimination Database, can request removal of their profiles at anytime without giving reason. This is in conflict with the position in respect of officers who joined after that date who are required to give samples and have no option to remove their profiles. This could potentially impact on age and gender due to the fact that officers who joined before 2003 are likely to be older and that there are higher numbers of women joining now who will not be able to remove their profiles. A recommendation was made to consider analysing the age profile of the PED to ensure that there is no impact relating to age discrimination.
4. Concerns were raised about the officer who takes a volunteer sample having to make an assessment about the individual's ethnic appearance (this would also be true for arresting officers taking suspect's DNA). The EIA recommended that the Good Practice Guide should include information for police officers and staff when recording ethnic appearance and how to determine the correct category.
5. The Good Practice Guide provides that samples can be taken without consent that is not intimate, which includes hair samples other than pubic hair. This could have an adverse impact on different religious groups i.e. Sikhs for whom head hair is sacred and could also lead to intimate samples being required where individuals have no body hair. The EIA recommends that these issues are referenced in the Good Practice Guide.
6. The Good Practice Guide provides police with powers to take intimate samples, but does not refer to the need to ensure that male/female doctors or dentists are available to take such samples. This may adversely impact on different groups in particular on gender, religion and or belief and ethnic minorities. The EIA recommends that reference is made to this in the Guidance to ensure that male and female medical professionals are available to take such samples.

7. Issues were raised about how it is ensured that officers take every precaution to ensure that information given to individuals is properly understood – which could have an adverse impact on foreign nationals, ethnic minorities for whom English is not their first language and also on disabled people who may have a sensory or learning impairment. Linked into this is the ability to provide informed consent and how that can be given if people do not understand what they are consenting to. The recommendation made was that the guidance was revised to include the requirement for an appropriate adult to witness the consent and reconfirm that consent has been given during interview. Also, that consent forms should be available in large print and languages other than English.
8. The Good Practice Guide states that applications to have profiles removed from the NDNAD will be dealt with on a case by case basis under the ACPO Exceptional Case Procedure. This could adversely affect individuals in all groups in terms of who is making those decisions and how it is ensured that there is no bias against any particular group. A recommendation was made to ensure that each request is reviewed by a panel that includes members of diverse groups rather than one individual and that records should be kept of requests by group and analysed by those accepted/rejected for removal.
9. A question was raised about who was affected by DNA profiles being kept on the database despite being acquitted or not being charged with a crime for which they were arrested? This could potentially affect males from ethnic minorities but requires evidence. Recommendation that research is undertaken to analyse DNA profiles on the NDNAD for people who have been acquitted or not charged to gain evidence to determine whether any disproportionality exists.
10. The Good Practice Guide is not mandatory and failure to follow best practice may result in disproportionate outcomes as some forces may not take samples in all possible cases. Also, if samples are rejected it may not be possible or lawful to take another sample from an individual. Recommendation to undertake research to analyse submissions to the NDNAD by force and population to identify any areas of disproportionate samples being submitted.
11. There is a potential of discrimination between police officers and police staff and members of the public with reference to volunteer sampling and the opportunity to have a profile removed.
12. The Good Practice Guide makes reference to other guidance, all further guidance referred to needs to be reviewed in order to conduct a full assessment.

13. The Good Practice Guide constitutes guidance and good practice but is not a set of definitive instructions. What monitoring is undertaken to ensure that the guidance is being applied equitably and fairly in relation to diversity across all police forces? (This in particular in relation to the collection of DNA samples and explanations given at the time).
14. The Guide states that the governance is provided by the NDNAD Strategy Board but does not indicate who sits on this Board or with whom consultation on this guidance was held. Did the consultation take into account any particular diversity groups and if so which ones and was it a formal consultation?
15. Why are police records kept separately?

Issues identified at stage 1 EIA of the NDNAD:

1. Ethnicity on the NDNAD is reported by ethnic appearance as assessed by the arresting officer, and not by the Home Office 16+1 self classification system. Ethnic appearance is used for operational reasons, for example so that searches of the NDNAD can be restricted against ethnic appearance groups, so as to correlate with information on a suspect provided by a witness. The NDNAD currently has no facility to report against the 16+1 system. Future management information capability of the NDNAD should include the ability to report against the 16+1 ethnicity self classification system. However, given that a record of an individual held on the NDAND is a sub-set of the wider record held on the Police National Computer (PNC), a better approach would be for this 16+1 self classification information to be captured within the PNC and also considered as part of the requirements specification for other programmes, eg IMPACT, Police National Database and NSPIS.
2. The NDNAD is limited in its capability to produce statistics. This could result in different methodologies being utilised to extract information. For example, the ethnic appearance figures from the NDNAD Annual Report 2005/06 use 6+1 categories, but figures provided use only 3+2 categories. Similarly, the figure given for subject sample records removed from the NDNAD in 05/06 in the 05/06 Annual Report were 22,132 of which 21,748 related to Scottish samples. This leaves 384 subject samples removed. However, the figure given in the Hansard PQ [17th May 2007] was that 165 subject sample profiles were removed. There needs to be clear guidance to ensure that all statistics are gathered and reported in a consistent manner.
3. Exceptional cases – Annual Report 05/06 – Samples removed from the NDNAD are low, and are not broken down by gender, age or ethnicity. We understand that it has been

agreed that this information will be included in trend reports and should be analysed by the various equality strands.

4. Annual Report 05/06 – Estimated 12% of the 3,785,571 subject sample records on the NDNAD are replicates. There is no record as to which diversity strands these relate to. They can currently only be identified after the event. Consideration should be given to including reporting on replicates in trend reports and analysing by the various equality strands. Consideration should also be given to identifying these as they occur, by exception reporting in any new MI package.
5. Familial searching: Figures reported on Hansard 9th May 2006 and 17th January 2007 show that the number of these searches is increasing and this trend is expected to continue. Figures reported were 73 searches in 2004, 78 in 2005 and 115 in 2006. However, there is no inclusion of these figures in the trend reports and no breakdown by equality strands. ACPO has produced voluntary best practice guidance on familial searches but this is not publicly available.
6. The ACPO NDNAD Good Practice Guide contains information to assist policing in the UK in relation to using DNA for the detection and prosecution of offenders. Adoption of this best practice advice is at the discretion of Chief Officers. Failure to ensure that it is mandatory to adopt this guidance increases the risk that DNA samples are not gathered in a fair and consistent manner, thereby increasing the risk of disproportionality. The requirements of the NDNAD Custodian are set out by the NDNAD Strategy Board in an ACPO Statement of Requirements. This document is due for review and this will provide an opportunity to check that current priorities and the need to ensure transparency and equality. We understand that other countries e.g. Canada, have structured their DNA database so that profile records are indexed only by unique identifier numbers rather than including other demographics – such as individuals name, ethnic appearance and date of birth – which are currently part of records on the NDNAD. Moving to this method of recording would increase the inherent level of privacy of the NDNAD and such a change should be considered as part of new database architecture for the future. In such a structure information on the database distribution e.g by age or ethnic appearance would be obtained from other systems, currently PNC. An Ethics Group to support the NDNAD Strategy Board is in the course of being established. However, it is unclear if membership of this group will include representation from equality groups i.e. EHRC.

Recommendations:

1. Clear guidance should be produced to ensure that all statistics are gathered and reported in a consistent manner to produce accurate measures of the race, age and gender of samples on the NDND.
2. Current trend reporting on the NDND should include: familial search reported by ethnicity strands; exceptional cases reported by ethnicity strands and replicates reported by ethnicity strands.
3. Any new management information system for the NDND should include consideration for the need to report ethnicity by 16+1; exceptional case reporting of both applications and successful removals by ethnicity and other equality strands; familial searching reported by ethnicity and other equality strands; replicates reported by ethnicity and other strands; capability to analyse the DNA profiles on the DNA database for people who have been acquitted or not charged and to gain evidence to determine whether any disproportionality exists.
4. Compliance with the NDND Good Practice Guide should be mandatory for all police forces in England and Wales, backed up by performance monitoring for example by HMIC or PSU. Non-compliance should be reviewed and reported on.
5. The ACPO Statement of Requirements for the NDND should be reviewed to check that EIA issues are reflected.
6. ACPO should consider wider publication and/or consultation of the voluntary best practice guidance on familial searches with a view to it being published and made mandatory.
7. Consideration should be given to restructuring the NDND and its interface with PNC so that database records are indexed only by unique identifier numbers.
8. The membership of the Ethics Group should be reviewed to ensure that it includes representation from equality organisations.

Issues Identified – Race

Sarah Teather MP raised the issue of disproportionality of black people, and young black men in particular, on the NDND during an Adjournment Debate on 29 February 2008. Quoting research undertaken by the Home Office ('Minority ethnic groups and crime: Findings from the 2003 Offending, Crime and Justice Survey' she said that despite the proportion of young black men on the NDND (reflective of the population coming into the criminal justice system), it is white people who are more likely to commit crimes.

Although the database can only reflect those that come into contact with the Criminal Justice system, by keeping details on the system of innocent people - proportionately more black people - it increases the misrepresentation of black people through increasing the perception that they are more likely to commit crime.

The issue of disproportionality on the NDNAD and the perception of young black men in relation to the criminal justice system can also have a negative impact on the relationship between the police and these communities. The debate also focused on concerns about what happened to samples once the person had been released with no further action and the disproportionate number of young black men on the database compared to young white men.

A working group has been set up to take forward work on producing a more robust estimate of the number of young black men on the NDNAD. The working group comprises the Head of International and Special Statistical Projects from the Home Office Statistics Directorate, representatives from the OCJR CJS Race, Confidence & Justice Unit, NPIA Research, Analysis and Information Unit, the NPIA Police Science & Forensics Unit and the NDNAD Data Analyst.

The group has met several times since late 2007. The general approach to taking the analysis forward is a staged approach which aims to compare the profile of the DNA sampled subject population with data from other sources, for example, data from the HO Statistical Bulletin on Arrests for Recorded Crime with DNA PACE profiles loaded to the NDNAD by gender, age and ethnic appearance. The analysis carried out to date suggests that the proportions of white-skinned European and BME profiles loaded on the NDNAD reflect the proportions of white-skinned and BME persons brought into the Criminal Justice System and legitimately sampled on arrest under suspicion for a recordable offence.

The Group is now looking at other issues which may affect the accuracy of estimates of the proportion of young black men on the DNA database. These include: -

- a. profiles with no known ethnic appearance record - around one in ten of those entered on the database are of unknown ethnicity and this could have a significant impact on the estimate;
- b. the number of young men in the African Caribbean group who may classify themselves as 'mixed race' as used in the census definitions; and
- c. recent population estimates by age, ethnicity and gender that include all of England and Wales.

The analytical work is still in progress.

Several media reports have suggested that around 77% of young black men are profiled on the NDNAD. However, the working group has identified a number of issues that may have a considerable impact on the estimation of the percentage of the young black male population on the NDNAD and its accuracy. The actual figure is expected to be lower than this. Nevertheless, it is expected to show a higher representation of young black males than white males - although they are less likely to commit a crime than young white men.

The NDNAD has no ability in itself to be discriminatory as it is a repository for information supplied. Where there is disproportionate data, this is a result of CJS and police processes that determine whose information is obtained for recording.

The NDNAD is an information database not a criminal database and therefore the inclusion of someone's data will not disadvantage them in real terms. No checks are done on the NDNAD as they may be done on Police National Computer, local crime information systems or Criminal Records Bureau checks. However it is recognised that because an entry onto the database is always in relation to a crime, that inclusion on the database may result in a negative perception of the person by the public. As there is a higher proportion of young black men on the database, it follows that there can be a feeling of criminalisation just by having information stored here.

In January 2009 the Equality and Human Rights Commission published a report 'Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry report?'

The report included a whole chapter on DNA as follows:

The national DNA database will now need to be substantially reviewed since the landmark ruling by the European Court of Human Rights in Strasbourg in December 2008.

The unanimous decision from the 17 judges condemned the 'blanket and indiscriminate' nature of the powers given to the police in England, Wales and Northern Ireland to retain the DNA samples and fingerprints of suspects who have been released or cleared.

The judges were highly critical of the fact that the DNA samples could be retained without time limit and regardless of the seriousness of the offence, or the age of the suspect.

The Commission welcomes the ruling from Strasbourg, but continues to have reservations and concerns about the future use of the database. We believe the Government should implement changes necessary to comply with the judgment from the European Court of Human Rights as soon as possible.

We also believe that for the past 10 years the police service has failed to properly acknowledge or address the race equality impact of the database, which we believe is considerable.

The fingerprints and DNA samples of more than 857,000 citizens who have been arrested or charged but never convicted of a criminal offence now face deletion from the national DNA database (NDNAD).

The case provoked an expression of disappointment from the Home Secretary, Jacqui Smith, and the promise that a working party, including senior police officials, will report back to Strasbourg by March this year (2009) on how the Government will comply with the judgment.

It is thought that the policy in Scotland, where DNA samples can only be held for a maximum of five years and only in serious violent and sexual cases, even if the suspect was not convicted, will be one of the first options to be looked at.

The Commission will be pressing the Government to ensure that any proposed solution is in the spirit of the judgement, rather than merely complying with the ruling in the narrowest way possible.

Set up in 1995, the British DNA database which now holds the samples of 4.3 million individuals in Britain including children is (when compared with our population) the largest in the world.

The Commission voiced its opposition to the database holding DNA samples and fingerprints of suspects who have been released or cleared as recently as October 2008, when we submitted evidence to the National DNA Database Ethics Group - a Home Office appointed advisory body.

We stressed that we recognise that the NDNAD is an important crime solving tool which the Commission does not oppose in principle or seek to abolish. The database does however raise a number of equality and human rights issues, including strong evidence of a very marked over-representation within it of the profiles of black men.

Surprisingly there does not appear to be an official figure for the breakdown of ethnic minorities on the database.

By our own calculations, using a range of official statistics, in excess of 30% of all black males are on the NDNAD, compared with about 10% of white males, and 10% of Asian males.

Estimates suggest that black men are about four times more likely than white men to have their DNA profiles stored on the police NDNAD.

Some estimates widely published in the media have put the proportions even higher than our calculations. For example BBC online reported in September 2007: 'Figures compiled from Home Office statistics and census data show almost 40% of black men have their DNA profile on the database. That compares with 13% of Asian men and 9% of white men.'

With hindsight it was virtually inevitable that over-representation would be evident in profiles retained on the NDNAD following amendments to PACE under the Criminal Justice Act 2003,

which meant that police could take a DNA sample from anyone arrested for a recordable offence and retain it regardless of whether that person was subsequently charged, prosecuted or convicted.

We believe that among the potential threats posed by the over-representation of black men on the database (and remember we are talking about a third of all black men being recorded) include:

- Race patterns on the database could strengthen the tendency for 'ethnic profiling' - stereotyping black men as the prime suspects for particular offence types because of their over-representation on the database.
- The stigma of such extreme over-representation for one racial group has unknown, but possibly serious, social consequences, making justification for recording so many ethnic minorities samples a crucial issue.
- Samples or DNA records could be sold to commercial research companies, for research such as trying to establish crimogenic genes in certain races.

For the past year the Commission, and before that the CRE, has been seeking evidence that the Government is meeting the race equality duty in relation to the national database.

In March 2007 the Commission for Racial Equality (CRE) wrote to the Home Office asking for information, including ethnic monitoring data for those on the NDNAD as well as by arrest, charge, prosecution and conviction; and the results of any race equality impact assessment carried out in relation to the expansion of the NDNAD.

The matter was passed to the National Policing Improvement Agency on its formation in April 2007. The NPIA appeared to have difficulty in providing full or very substantive replies to the CRE or to the Commission when, after its inception, it renewed the enquiries in late 2007.

What was apparent from the NPIA's replies was that no race equality impact assessment (EIA) was carried out as required. The NPIA has only recently provided more detailed information about steps it is taking to meet the race equality duty regarding the NDNAD.

The Commission welcomes the fact that the NPIA has begun to consider the equality impact of the NDNAD, but it has a number of concerns about the robustness of the EIAs carried out to date, including key omissions and lack of progression to full EIAs. We are also concerned that the NPIA has yet to undertake the study on the implications of the presence of such a high proportion of the black male population on the NDNAD, as recommended by the Home Affairs Select Committee Report *Inquiry on Young Black People in the Criminal Justice System* June 2007.

Looking forward, the proportion of black people (and to a lesser extent Asian people) on the database is likely to lower once the bulk of the non-convictions are removed. This is because the

data available suggests that black and Asian defendants are less likely to be convicted than white defendants.

The Home Office publication, *Statistics on Race and Criminal Justice 2006-07* reported that in magistrates' courts the proportion of white defendants found guilty was 60%, for black defendants it was 52% and for Asians it was 44%. Admittedly this is based on a narrow sample of courts in only seven police force areas out of the 42, due to very incomplete submission of data from the remainder (a matter which the Commission is urgently pursuing with the Courts Service).

In the two years from 2005-07 figures from the Crown Court also show a higher conviction rate for white defendants than black defendants (75% compared with 70% in 2005/06), based on the 16 areas of the 42 where data were usable, and 75% compared to 71% in 2006/07, based on 22 areas.

This being the case, it is regrettable that the Government did not conduct a race equality impact assessment *before* passing the change into law in 2003 that allowed the retention of profiles from non-convicted people.

This apparent lack of rigor in obtaining data on the possible race bias within the national database appears to be a re-occurring theme within the police service and associated agencies. The Commission believes that the police have shown little or no interest in examining the possible race equality aspects of the national DNA database, and instead have simply focused on the obvious advantages it gives in aiding investigations.

While the police are quite rightly putting their priority on preventing and solving crimes, it is disturbing to note that the police service appears to have given very little thought to how recording people arrested, rather than just convicted, might have an impact on the racial make-up of the database. This gives the impression that the police service - at least in connection with the database - consider the race equality commitments as something they can ignore.

Official figures make it is clear that there is clear race inequality in the national DNA database. In particular the NDNAD Annual Report 2005/06 gives data from which it can be calculated that 187,648 men identified visually by police officers as 'Afro-Caribbean' had their profiles on the database, compared with a total Black population which was a little over half a million in 2001 and feasibly cannot yet have reached 600,000.

It must therefore be the case that by 2006 something in excess of 30% of all Black men had their profiles on the NDNAD. It is also apparent that the corresponding proportions for Asian and White men in 2006 were not far off 10%.

Issues Identified – Disability

Research is currently being completed by EDHR to identify potential impact on disabled people in relation to the NDNAD. So far, Changing Faces, a large disability charity have been involved in looking at impact, and potentially there could be an adverse impact due to the number of people who suffer mental health distress or have learning disabilities that bring them into contact with the Criminal Justice System. Further information on this aspect will be researched.

Issues Identified – Gender

In May 2009, the Fawcett Commission published the report 'Engendering Justice – from Policy to Practice' that labelled the criminal justice system institutionally sexist and provided research and findings that may also demonstrate a potential for adverse impact in relation to the NDNAD:

- Women who are foreign nationals or are from ethnic minorities are over represented in the criminal justice system and therefore could be disproportionately represented on the NDNAD
- There is still inequality in the way that women are treated once in police custody and this may also include the taking of DNA samples, although this isn't specifically mentioned in the report, there are low numbers of female forensic medical examiners and designated detention officers in custody centres
- Estimates that 3 million women are victims of rape, sexual assault, domestic violence, sexual violence, sexual harassment, forced marriage, trafficking or other forms of violence each year in the UK. This could indicate potential positive impact of the NDNAD on females in terms of detection of these crimes and bringing offenders to justice by providing strong, factual evidence linking the offender to the crime and therefore helping to address issues of women feeling that they are under scrutiny in court and having to defend their actions rather than the perpetrator of the crime.

As at January 2009 there were 4,039,500 male profiles and 1,062,340 female profiles on the NDNAD database (approx 20% of profiles). However, the number of profiles is not the same as the number of individuals due to replicates being stored. This can arise where an individual has had their profile loaded more than once onto the NDNAD and has given different details on each occasion of arrest. The estimated number of individuals on the database is 3,502,247 male and

921,049 females (there are an estimated 33,900 individuals where gender has not been recorded).

Statistics on Women and the Criminal Justice System show that approximately 83% of people arrested are males, and 17% female which reflects the numbers of estimated individuals on the NDNAD.

[Home Office Statistics on Women and the Criminal Justice System](#)

Issues Identified – General

A Citizens Enquiry into the forensic use of DNA and the National DNA Database was launched by the Human Genetics Commission (HGC) in December 2007 with a final report published in July 2008.

A panel of citizens with varying backgrounds and reasons for their interest in the NDNAD came together for an intensive introduction to the database and the affect it can have on people. The group made a number of recommendations based on their findings. All recommendations were voted on by the citizens' panel, and there are a number of recommendations made that the panel had mixed views on, however, there were also recommendations made that the panel voted on **unanimously**, these recommendations are:

1. There needs to be a nationwide public awareness campaign for all sectors of the population. The campaign should be just the facts. There should be no bias, then more informed decisions can be made by the public. It's focus should be on:
 - a) the wider implications of DNA
 - b) the fact that you only have to be arrested to have your DNA taken
 - c) the fact that the DNA profile is held indefinitely
 - d) what the DNA sample and profile are and what they are used for
 - e) how the system works
 - f) logistics / procedures
2. The information campaign should be in all of the following formats to reach a wider group of people:
 - a) Website – with information about everything
 - b) Facebook, MySpace, Bebo etc
 - c) TV

- d) Accessible leaflet explaining rights
 - e) Posters and leaflets at clinics, hospitals, libraries etc
 - f) Expert talks in schools
3. The police need educating about human rights. The police should be forced to give information when DNA is taken. People should be allowed some time to access information concerning compulsory taking of samples before the sample is taken.
 4. There must be a committee or a commission that publishes an annual report on the NDNAD and other important related matters.
 5. Membership of the commission must be defined by law and should include people from all walks of life.
 6. This commission must be specifically for the National DNA Database. It must oversee that the database is run satisfactorily. All safeguards regarding the database should be rigorous and assessed by this independent body.
 7. Juries need independent guidance about DNA before hearing from adversarial scientists.
 8. Scientists should be must more involved in education; there should be more people involved with education to help understand more about DNA and raise public awareness.
 9. A full explanation of what being on the DNA database actually entails should be given before a child's DNA is taken. There should be a counselling discussion with the child and parent/guardian.

Recommendations that the **majority** voted in favour of:

1. The government should fund the NDNAD but not own it. It should be owned by an independent body accountable only to the general public. Lay people should be recruited into the independent body through equal opportunity process.
2. The independent body should be made up of delegates from all the following bodies or groups: the government, the police, scientists, the general public and an ethics group. Only a small number of people should have control to make it easier to be secure.
3. Legislation should be passed to define who can access the database and to restrict its purpose and use to:
 - a. Police: for crime detection only. Access is only permitted to seek matches for a profile from a crime scene.
 - b. Support defence or prosecution cases.
 - c. The commission to audit and test the robustness of security and access control.

4. The NDNAD ethics group should play a prominent role (have more influence) in the legislative process of the database development.
5. Legislation governing both Scotland and England should be the same. A compromise would be to adopt the Scottish system but lengthen the time limit for profiles to be kept on the database. Retention of profiles in England and Wales should be the same as in Scotland, where they take innocent people off and they do not record ethnicity.
6. There should not be a universal DNA database.
7. There should not be an international DNA database or sharing of DNA samples and profiles.
8. An independent body must control the international sharing of DNA data. Crime stains should be shared but profiles should be considered on a case by case basis.
9. If there is an international DNA database, an agreement should be signed between countries which include a shared agreement on safeguards, security and how the database and related information is used.
10. We recommend that all police officers, as part of initial training, should be extensively trained and educated on policies concerning the NDNAD and should relay the information to those it affects.
11. We recommend there should be an independent agency to regulate and monitor the procedures of collecting DNA. Specially trained police officers should take the sample.
12. The police should have the rights to take samples by force, but only in instances where there is sufficient evidence to suggest criminal involvement. Innocent individuals, and those picked up for minor offences like breach of the peace should not have their DNA forcibly taken.
13. There is a need for a well-publicised and strictly applied procedure. If force is required very clear/witnessed procedures must be applied so that people do not feel abused.
14. If someone refuses to give their DNA sample, they should be given a warning that the action is compulsory. They should be given an information pack with detailed information about the process of converting the sample into a profile, as well as the facts and statistics about the database, for example who looks at it and what other uses the database has.
15. Scientists concerned with the database should be independent and from multiple funders. This includes for the processing of crime stains and samples, auditing labs and controlling access. There should be known and qualified eligible scientists in these processes. These scientists should also advise on future legislation so that it is monitored properly.

16. Experienced scientists should not give opinions and should report factual findings.
17. Scientists should not be biased. Thus in a court of law there should be scientists from more than one lab. Both sides should be represented by scientists.
18. In serious cases we need more than just the two adversarial experts: one extra independent scientists (possibly two in very difficult cases).
19. If a person whose DNA has been loaded on to the database is found to be innocent or is released, the DNA sample must be destroyed and the profile removed from the database by law. Innocent people on the database should now be removed.
20. The DNA sample should not be stored regardless of whether the person is charged or not. The original DNA sample should be destroyed once the DNA profile has been loaded on to the database. It should be made illegal to retain it.
21. Samples should not be stored. However, because they are at the moment, they should be stored at the laboratories they are sent to. There should be better security and restricted access so that it is illegal to use to use these samples for any other purposes.
22. The length of time the DNA profile should stay on the database should be proportionate to the severity of the individual's crime or a minimum of five years – whichever is longer. The principle of proportionality is similar to that of sentencing for criminal offences.
23. DNA should never be taken as evidence on its own, except in exceptional circumstances. Convictions should be made on multiple forms of evidence, for example circumstantial evidence, fingerprints, witnesses.
24. We recommend that a person's ethnicity should not be recorded.
25. If a serious crime takes place, irrespective of their age the person who committed the crime should be placed on the DNA database.
26. If children commit a minor offence, they should be on the DNA database but only for a short amount of time. They should only remain on the database if they are repeat offenders or it is a serious offence, for example violent crimes and sex offences.
27. A sample of everyone's DNA should not be taken at birth.

ACPO are responding to this report as its main focus is around DNA not equality. The EIA will take forward any supported recommendations that are related to equality issues as and when directed by ACPO.

The NDNAD Ethics Group produced their first annual report in April 2008. 10 recommendations were put forward:

1. There needs to be a better and more transparent classification of DNA profiles and samples which are provided voluntarily: public understanding of the term 'voluntary sample' would benefit from a closer definition and separation into specific categories.
2. For those members of the public who are believed to be innocent at the time of sampling and voluntarily donate their DNA to help the police with their enquiries, the presumption should shift to an expectation that these samples will be used only for the case under investigation, that the profile will not be loaded onto the NDNAD, and that the samples and all data derived from them will be destroyed when the case has ended.
3. There should be a specific consent form for competent adults who are not suspected of the crime under investigation when they agree to give a volunteer DNA sample.
4. The consent form enclosed in Appendix C, Annex 1 is proposed as a template for the purposes of Recommendation C.
5. There is an urgent need for better information for the public, the police, volunteers and custodial subjects on the use and limitations of forensic DNA analysis. Where relevant, this should accompany the sampling process.
6. The identification and process control of DNA samples and profiles should be reviewed with a view to ensuring that confidentiality and individual privacy are preserved as far as possible and within clear controls
7. A clearer, simpler and less cumbersome process needs to be put in place to enable those who wish to appeal against the decision of a Chief Constable to retain their DNA profile on the NDNAD.
8. Consideration should be given to reviewing the definition of 'exceptional circumstances' and ensuring that the reasons for the retention of data and samples are aligned with data protection legislation, human rights legislation and the concept of proportionality.
9. Consideration should be given to further public clarification of the role of the NDNAD and reinforcement of the message that it is intended only to be used for criminal intelligence.
10. Consideration should be given to formally announcing publicly that the NDNAD will only be used for the currently described purposes (i.e. criminal intelligence) and will never transform into a repository for the whole nation's DNA characteristics.

The Ethics Group also provided a memo on the NDNAD Good Practice Guide demonstrating their concerns in April 2009 that provided overarching concerns of:

- a) The status of the Manual – this is a framework, forces are not obliged to follow it and members of the public are unable to access this document so have no benchmark to assess whether or not they have been treated fairly.

- b) The tone of the Manual – the crime scene is usually a place but it maybe a person and whilst the Manual emphasises the importance of early collection of DNA and the victim. However, it says nothing of how the police should work with regard to the dignity of that person if they are the crime scene or what would be an unacceptable delay for collection of DNA from a crime scene victim.
- c) Should an information sheet be provided for arrestees and if so should it cover the process or the purpose of DNA sampling or both?
- d) The intrusive nature of the DNA regime and its impact on privacy rights is not mentioned sufficiently.
- e) The Manual does not specify who does what – is this because it varies across forces?

The NPIA Independent Advisory Panel requested information on the checks that are made to ensure that the DNA and forensic training given to police officers is effective, and how it is validated and evaluated.

Since the NPIA was set up in April 2007, it has carried out a review of the forensic competency requirements of custody personnel and the forensic training currently offered in the NPIA Safer Detention learning programme (the NPIA programme for the training of Custody Officers, Detention Officers, and Independent Custody Visitors). The training materials were developed in consultation with a range of stakeholders including the ACPO working group for Safer Detention.

The review of the NPIA Safer Detention learning programme has identified some inconsistencies and gaps and a lack of standardisation in the forensic training delivered to custody personnel. The report of the review contains a number of recommendations to ensure the NPIA learning programme delivers forensic training to the level required for custody personnel. It also includes a recommendation to standardise the national level of training that custody personnel, either police staff or outsourced personnel, must achieve.

Currently forces are not obliged to deliver the NPIA training course nor specifically meet the NPIA learning outcomes. However, HMIC expect training to this level and ACPO are trying to get a national standard based on the learning outcomes of this course. The reviewed recommendations will be considered and taken forward.

On 4th December 2008, the European Court of Human Rights published their judgement in the case of S & Marper v UK 30562/04 [2008] ECHR 1581. The Court concluded that the retention

of both cellular samples and DNA profiles amounted, given the personal information contained, to an interference with the applicants' right to respect for their private lives, within the meaning of Article 8 (1) of the European Convention on Human Rights.

The retention of the applicants' samples was found to have a clear basis in domestic law. The Court also ruled that the retention pursued a legitimate purpose, namely the detection, and therefore, prevention of crime.

The Court concluded, however, that the blanket and indiscriminate nature of the powers of retention of DNA profiles of persons suspected, but not convicted of offences, failed to strike a fair balance between the competing public and private interests. The retention constituted a disproportionate interference with the applicants' right to respect for private life and could not be regarded as necessary in a democratic society. There had therefore been a violation of Article 8 of the European Convention on Human Rights.

Following the judgement, the UK Government said that it will publish its response to the Court's findings as soon as possible. At present and until then, the existing law on the taking and retention of DNA remains in place. It has set up a "contingency planning group" to consider and look into the potential implications arising from the ruling.

A working group was established in autumn 2007 to review and take action on the recommendations from the Stage 1 EIAs. The working group consists of the ACPO Chair of the NDNAD Operations Group, NDNAD Custodian, NPIA EDHR Unit, NPIA Police Science and Forensics Unit. The NPIA Independent Advisory Panel and NDNAD Ethics Committee are also represented within the work group.

It is recognised that the population of the NDNAD is reliant on how people are brought into the Criminal Justice system, and in how the DNA Good Practice Guide is implemented in all police forces.

The EHRC published a report in January 2009 titled 'Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report?' (appendix 4). In this report the EHRC stated that 'The Commission welcomes the ruling from Strasburg, but continues to have reservations and concerns about the future of the database. We believe the Government should implement changes necessary to comply with the judgement from the ECHR as soon as possible. We also believe that for the last 10 years the police service has failed to properly acknowledge or address the race equality impact of the database, which we believe considerable.

The report also stresses that the EHRC believe the database raises a number of equality and human rights issues, including strong evidence of a very marked over-representation within its profiles of young black men.

Section Four

Consider the alternatives and explain the final outcomes of the impact assessment. Where differential and adverse impact (or potential for it) is identified, provide evidence that the NPIA has done at least one of the following:

- a) Made changes to the policy that address the impact;**
- b) Considered ways of implementation that removes, reduces or mitigates the impact;**
- c) Found alternatives means of achieving the aims of the policy;**
- d) Provided reasonable justification for continuing with the policy as originally proposed on the basis that it meets the policy's objectives and can be objectively justified as meeting a legitimate aim (the justification can not be on direct grounds of race, disability or gender, unless in the case of disability this is positive discrimination).**

The following steps are to be taken forward by the NPIA:

- a. Work is being identified to provide further analysis of information on the NDNAD to provide a true reflection of the representation contained on the database.
- b. A workgroup has been set up and is ongoing to take forward the impact assessments of the NDNAD.
- c. The group with the greatest disproportionality are young black men. Therefore consultation will be undertaken with various representative groups to gain an understanding of their perceptions and views of the NDNAD.
- d. All recommendations from all sources listed, are to be contained within a work plan, and are to be considered and taken forward where appropriate.
- e. Following the judgement from the European Court of Human Rights, analysis is to be undertaken to examine the effects on the database if innocent people were removed. This may have an impact on the disproportionality of young black men.

- f. Any work that is identified to take forward (e) above, will be impact assessed from the earliest stage to identify any change in impact.

Section Five

Provide evidence of consultation taking place with a range of relevant individuals / groups using a variety of methods to ensure that all individuals can participate.

Demonstrate that the consultation process is ongoing and has involved disabled people?

NPIA Independent Advisory Panel - Meeting held on the 22/04/08

Consultation undertaken externally by other organisations:

NDNAD Ethics Group

Human Genetics Commission, Citizens Enquiry – report published July 2008

Section Six

What monitoring is in place to address issues of impact and who is responsible for ensuring that it is undertaken?

Monitoring of the NDNAD EIA is being undertaken on a quarterly basis to take account of new information and progress on the implementation of the S and Marper judgement as well as further involvement of local communities in addressing impact.

Work is underway to address all recommendations and information on progress and is contained within a work plan for the NDNAD, which is a restricted document, to take forward actions. So far, the completed actions that have been undertaken to reduce impact are as follows:

1. *Confirm whether the method of recording ethnicity (currently ethnic appearance) meets the duty under the Race Relations Act.* This does meet the duty, as it is a Home Office recognised method of recording ethnicity as a descriptive and reflects that used on the Police National Computer.
2. *Clear guidance should be produced to ensure that all data is gathered and reported in a consistent manner to produce accurate measures of the race, age and gender samples on the NDNAD.* A Management Information User Requirement was produced, and is currently being reviewed by NPIA, that outlines all the management information currently produced on

the NDNAD and is being reviewed to ensure consistency in all the data released and to identify further areas in which information is required.

3. *Currently trend reporting on the NDNAD should include: a) familial searching by ethnicity b) exceptional cases by ethnicity c) replicates reported by ethnicity.* It is not possible to record ethnicity of familial searches as the information on the ethnicity of an offender is derived from a crime scene sample and would therefore need to come from the forensic suppliers or the police service. It was agreed that the numbers of familial searches carried out each quarter should be reported as well as feedback on the outcomes of the cases in which familial searches are used. A note on familial searching has been drawn up explaining both the process and why it is not possible to record ethnicity and is available to ACPO DNA Operations Group, NPIA Independent Advisory Panel, DNA Ethics Group and other police or government bodies). Data on exceptional cases is currently collated by the ACPO Criminal Records Office and the NDNAD custodian unit within the NPIA for both profiles actually removed and applications for removal that are rejected. It was agreed that these should be reported quarterly for both categories. Consideration should also be given to publishing these figures on the NDNAD website quarterly. In relation to replicate reporting, the key issue is whether a person is more likely to be rearrested if they are of a certain ethnic appearance. This information could be used to tackle police process issues and it was suggested that reporting of replicate trends by ethnicity should be considered when scoping the new Management Information User Requirement capabilities as it isn't currently possible.
4. *The membership of the Ethics Group should be reviewed to ensure that it includes representation from equality organisations.* The Ethics Group currently consists of eight members with good representation from equality groups. In light of this recommendation more representation was sought from religious groups and two further members have been appointed (January 2008).
5. *Recommendations made in relation to the NDNAD EIA should be prioritised in terms of impact and timescale.* All recommendations and issues are now contained within a work plan that captures all activity and updates as well as owner, originator, progress status (red – target missed or work not started / amber – work in progress and green – work completed or on schedule). Also included are due dates, although these are generally based on outcomes of other activity and sometimes have to be amended.
6. *Potential discrimination has been identified between police officers, police staff and arrested persons who could apply for their records to be removed versus volunteers who could not*

apply for their record to be removed. The Police Elimination Database is currently under review and this has been incorporated into that.

7. *A guide is being produced to provide information to members of the public about the NDNAD and what providing a sample can mean for them.* This work is being completed in conjunction with the Home Office Police Powers Unit and forms part of a larger project to make more information available about the NDNAD to the public.
8. The Ethics Group and the IAP has reviewed the ACPO DNA Good Practice Guide and will provide their comments and questions to the owner.
9. The Good Practice Guide and the Police Elimination Database are being reviewed to incorporate any recommendations made during the EIA process for the NDNAD.

Section Seven

What measures are or will be put in place to provide evidence for the future?

The NPIA are currently looking at different methods of analysing and publishing data to provide better information on the NDNAD. The Equality Diversity and Human Rights Unit has also created a post of Diversity Analyst that will provide a dedicated function to analyse equality data and provide reports to various groups.

The work of the NDNAD EIA workgroup will continue and will also address any further identified areas of impact that arise as an outcome of *S and Marper v UK*, linking in with various Boards, Strategy Groups and Work Groups to ensure that equality issues are identified at the earliest stage and measures put in place to alleviate any adverse impact.

The NPIA will also be looking to work better with members of the community to identify any issues that may not be apparent to those already involved due to the proximity of relationships to the police service. This work will also support a wider remit of informing the public about the NDNAD and making information more accessible.

The NPIA has also invited the EHRC to become involved in any EIA workgroup meetings to provide more transparency on work that is being undertaken and has been undertaken over a number of years.

Section Eight

What date is the Equality Impact Assessment due for Review?

September 2009

<p>Signed:</p>  <p><i>Alex Prott</i></p> <p>NPIA EDHR Unit</p>	<p>Date:</p> <p>31.05.09</p>
<p>Approved by:</p>  <p><i>Gary Pugh</i></p> <p>NDNAD Strategy Board</p>	<p>Date:</p> <p>20.08.09</p>