

## Impact Assessment Template – Stage Two

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

<b>Name of item being assessed:</b> National DNA Database (NDNAD) including ACPO DNA Good Practice Manual Third Edition	
<b>Version and release date of item:</b> 05/01/09	
<b>Owner of the item being assessed:</b> NDNAD Custodian and DCC David Shaw (ACPO)	
<b>Name of assessor:</b> NPIA EDHR Unit	<b>Contact Details:</b> 01256 602358
<b>Date of assessment:</b> January 2009	

### 1 What are the main aims of the item?

**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.

**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.

The guidance is for the use of members of the police service, and for the information of 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.

**2 What further information is available to help you understand the effect this item has on people? (Please demonstrate consideration of all strands – Age, Disability, Gender, Race, Religion or Belief and Sexual Orientation.)**

**Sources of information:**

- 1<sup>st</sup> Annual Report of the Ethics Group: National DNA Database – April 2008
  - ACPO DNA Good Practice Manual 3<sup>rd</sup> Edition
  - ACPO DNA Good Practice Manual 3<sup>rd</sup> Edition Equality Impact Assessment Stage 1 – 07/06/07
  - Equality and Human Rights Commission – Letters received during 2008
  - European Court of Human Rights – Judgement on S and Marper case (upheld)
  - Hansard – 29<sup>th</sup> February 2008, Column 1425
  - Human Genetics Commission, Citizens Enquiry – July 2008
  - Meeting with NDNAD Custodian – 16/07/07
  - NDNAD Equality Impact Assessment Stage 1 – 17/07/07
  - 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
1. Research into the use of the NDNAD has been undertaken by a number of organisations and this information has been utilised for the Stage 2 EIA. Please refer to source documents (attached) for full details of the specific research undertaken that findings are based on. A summary of findings are presented here.
  2. Progress on the findings from the Stage 1 equality impact assessments forms part of this Stage 2 assessment.

3. 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.
4. The NDNAD Ethics Group produced their first annual report in April 2008. 11 recommendations were put forward.

The annual report is available in Appendix 1.

5. 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 (Appendix 2).

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 effect 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 contradictory recommendations which will need to be considered.

6. 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 & Evaluation 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.

7. Sarah Teather MP raised the issue of disproportionality of black people, and young black men in particular, on the NDNAD during an Adjournment Debate on 29 February 2009. 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 NDNAD (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 full transcript can be found in Appendix 3.

8. 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.

Several media reports have suggested that around 77% of young black men are profiled on the NDNAD. However, the Working Group referred to in paragraph 6 above, 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.

'This database makes the job of mentor, black parent and teacher who is instilling a sense of worth and value into the next generation, a lot harder. The emotional impact that someone taking your DNA from you when you are innocent should not be underestimated, as this process is telling young people that they are criminals even when they are innocent.' Melvyn Davis, director of the Male Development Service

9. 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.

10. The NPJA 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, Independent Custody Visitors etc). 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 over the next few months.

- 11.** On 4<sup>th</sup> 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.

- 12.** 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.

## **4 What amendments will be made to mitigate any negative effects?**

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 all 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.

## **5 Who have you consulted with in developing or adjusting this item? (Please also state the responses received).**

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

## **6 Please explain the final outcome and why this was agreed.**

**(Was the item adjusted or rewritten, or has the policy remained unchanged?)**

Work is underway to address all recommendations and information on progress is contained within the 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 Ethnics 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.

### **7 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.

### **8 What date is the Equality Impact Assessment due for Review? (Please refer to the Relevance Assessment table)**

January 2010

**Signed: NPIA EDHR Unit**

**Date: 05/01/09**

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**Appendix 1**

Ethics Group Annual Report

**Appendix 2**

Citizens Enquiry Report

**Appendix 3**

Hansard – Sarah Teather MP transcript

**Appendix 4**

Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report?