

## Full Equality Impact Assessment

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>Owner of the item being assessed:</b> NDNAD Strategy Board   Gary Pugh   Director of Forensic Services   Metropolitan Police Service	
<b>Name of assessor:</b> NPIA Equality Diversity and Human Rights Unit Alexandra Protts	<b>Contact Details:</b> 01256 602100 diversity@npia.pnn.police.uk
<b>Date of assessment:</b> November 2009 (second review)	
<b>Key Amendments:</b> <p>Substantial additions to the text of the document are shown in different colour text;</p> <p>Reducing the length of the document by linking to reports where information is contained about the DNA database rather than citing/repeating information that is readily available to the public.</p> <p>Amending the lay out of the document to improve flow and readability and to clearly link issue with impact, outcome and activity.</p> <p>Inclusion of the outcomes of the Home Office Keeping the Right People on the Database consultation, responses and proposals.</p> <p>Update on progress of the work group, consultation and activity.</p>	

## 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 profiles. 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;**
- 5. 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 alternative 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).**

**Sources of information (hyperlinks have been included where available):**

- [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 3<sup>rd</sup> Edition
- [ACPO DNA Good Practice Manual 3<sup>rd</sup> 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 2007-2009
- [S and Marper v United Kingdom 30562/04 \[2008\] ECHR 1581](#)
- [Hansard – 29<sup>th</sup> 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' \[July 2008\]](#)
- Ongoing NDNAD EIA work group quarterly meetings
- [EHRC Police and Racism: What has been achieved 10 years after the Stephen Lawrence Inquiry Report? \[January 2009\]](#)
- [Home Affairs Select Committee Inquiry Young Black People and the Criminal Justice System First Annual Report \[December 2008\]](#)
- [GeneWatch UK The Police National DNA Database: Balancing Crime and Detection, Human Rights and Privacy \[January 2005\]](#)
- [Telegraph DNA: Timeline of the national DNA database \[May 2009\]](#)
- [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' \[May 2009\]](#)
- [MOJ Statistics on Women and the Criminal Justice System \[January 2009\]](#)
- [MOJ Statistics on Race and the Criminal Justice System \[April 2009\]](#)
- [Home Office 'Summary of Responses of Public Consultation' \[November 2009\]](#)
- EIA Screening Recommendations/Outcomes can be found on the [NPIA NDNAD website](#).
- [The Bradley Report \[2009\]](#)
- [Liberty's Response to the Home Office Consultation \[August 2009\]](#)
- [Black Mental Health UK's Response to the Home Office Consultation \[August 2009\]](#)
- [EHRC's Response to the Home Office Consultation \[August 2009\]](#)
- [GeneWatch UK's Response to the Home Office Consultation \[August 2009\]](#)
- [Runnymede's Response to the Home Office Consultation \[August 2009\]](#)
- [Victim Support's Response to the Home Office Consultation \[August 2009\]](#)
- [The Corston Report: A Review of Women with particular vulnerabilities in the Criminal Justice System \[2007\]](#)
- [2<sup>nd</sup> Annual Report of the Ethics Group: National DNA Database \[September 2009\]](#)

## EIA Scope

This EIA is undertaken in relation to the NDNAD and operational policing practices on behalf of the ACPO NDNAD Strategy Board. It takes into consideration the impact that being on the NDNAD may have on some communities as well as the impact that operational policing practices involving the physical sampling of DNA may have. The ACPO NDNAD Strategy Board and NPIA are responsible for the maintenance of the NDNAD and the operational policing practices surrounding DNA in response to legislation set by the Home Office. This EIA incorporates the Home Office consultation paper 'Keeping the Right People on the Database' and the response to that paper, but is not an EIA of the consultation itself or the legislative proposals that arise from that consultation.

## Issues Identified – Race

### Disproportionality of young black men on the NDNAD

- Although the database can only reflect those that come into contact with the Criminal Justice System (CJS), by keeping details on the system of innocent people - disproportionately 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 CJS can also have a negative impact on the relationship between the police and these communities. The debate also focuses on concerns about what happened to samples and profiles 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 post of NDNAD Analyst was established in 2006. The purpose of the role is to provide management information (MI) and data analysis on the NDNAD to key stakeholders in the NDNAD. It is the responsibility of the role holder to ensure the robustness and accuracy of the data used for MI reports on the NDNAD. The creation of the role coincided with a large increase in the numbers of requests for data and information on the NDNAD. The Analyst oversees the provision of data for these requests and ensures that all requests are answered consistently and accurately. The Analyst continually reviews all routine MI reports that are produced to ensure they are relevant and fit for purpose. The Management Information User requirement outlines all of the MI routinely produced on the NDNAD, a review of which is being carried out to identify if there are any reports which are currently

produced routinely that are not required and to identify if there are any further areas in which information is required. This review is being carried out as part of the NDNAD transition project and includes all of the relevant recommendations arising from the NDNAD EIA work.

- o A 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 CJS 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.
- o This work is yet to progress although a budget has been identified. There are still issues with the technical aspect of being able to complete the work. The EIA work group, the Ethics Group and NPIA PSFU wish to stress the need for this data and will raise the concern with the ACPO Strategy Board as a priority.
- 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.
- Concern has been raised about a lack of measures to address the disproportionate presence of black people on the NDNAD – particularly young black men and a number of organisations have expressed a belief that no race equality impact assessment has been undertaken.
  - An EIA has been undertaken and has now been ongoing for almost one year as a full EIA. Work has been identified and progress has been updated within the EIA process and these documents are available on the [NPIA NDNAD website](#).
- GeneWatch UK has identified concerns around the sampling of DNA on arrest and the disproportionate impact this can have on BME communities and vulnerable persons. The concerns are raised due to higher arrest rates for BME individuals and a belief that the routine collection of DNA could exacerbate racial discrimination in the CJS.

### **Runnymede Trust**

- In their response to the Home Office the Runnymede Trust repeated concerns already addressed in the EIA but also acknowledged that the over-representation of black people on the NDNAD is not an intrinsic fault with the database itself but do go on to say that the striking nature of the statistics is impossible to ignore.

- The issues raised by Runnymede are already highlighted in the EIA and support work that is already being undertaken such as providing better statistics in the form of 16+1 to understand the actual numbers of black people on the NDNAD. The Home Office and NPIA are also working with the Runnymede Trust on a piece of research they are undertaking about ethnic profiling and the CJS.

### Equality and Human Rights Commission

- The EHRC's response to the Home Office consultation again raises concern about the significant over-representation of black men on the NDNAD, and repeats issues raised in the EHRC Police and Racism report. The information available indicates that the NDNAD holds about a third of all black men and about three-quarters of all young black men (16-34) resident in the UK. The EHRC also has evidence to suggest that black (and also Asian) defendants are less likely to be convicted than white defendants and therefore that if profiles were retained only of those convicted, the proportion that relate to black people would be lower. The EHRC also believe that the stigma of such extreme over representation for one racial group has unknown, but possibly serious, social consequences.
  - The issues raised by the EHRC about disproportionality on the database support existing concerns about numbers of young black men on the NDNAD and the work identified above will go some way to assessing the issue and enabling a comparator with other areas of the CJS once assessment on 16+1 ethnicity, rather than 6+1 is available. There will also be an impact on this data once the removal of profiles begins.
  - In terms of addressing social consequences of the stigma of having a DNA profile on the NDNAD, ACPO and NPIA has commenced work with [Independent Advisory Groups](#) across the UK police service to identify impact. To date, visits have been planned with Lancashire Police IAG, Greater Manchester Police IAG and South Yorkshire BME IAG have already been visited (early November 2009). Other IAGs that ACPO and NPIA would like to visit are Metropolitan Police, Thames Valley, Kent, Essex, Leicestershire, South Wales, Warwickshire, West Mercia, Derbyshire, Durham, Sussex and North Wales. This will be an ongoing programme to involve these communities in the work around the operational policing element of the NDNAD. As an outcome of the first IAG meeting with South Yorkshire three key messages have already come out:

- There is a distinct issue of mistrust between the community and the police;
- There is a need for real education and information for police officers and the community about DNA and how it used – alleviating the view that is given by ‘CSI type programmes’ about what it can do.
- That a focus groups should also be held with BME individuals who have had their DNA taken but have not been convicted to find out the impact on them.

## Issues Identified – Disability

### Impact on Disability

- Research is currently being completed by NPIA 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 CJS. Further information on this aspect will be researched.

### Black Mental Health UK

- [Black Mental Health UK](#) has raised issues in their [response](#) to the Home Office consultation on issues around BME mental health and the NDNAD. One concern is that there is a disproportionate amount of BME mental health service users who have had their DNA taken while in the process of accessing medical healthcare.
  - NPIA and ACPO have also raised a concern of the number of mental health service users who may be on the NDNAD. The issue arises when a person is arrested for a recordable offence (which may or may not be an effect of a mental health problem), has their DNA and fingerprints taken in custody, and is then assessed as requiring medical healthcare and receives no further action in terms of criminal justice. If someone is detained under s136 of the Mental Health Act they are not under arrest and should not be taken to custody as a place of safety. However, sometimes individuals are taken to custody due to a lack of NHS facilities but their DNA is not taken as s136 is a power of detention not a recordable offence (DNA can only be taken for a recordable offence). The [Bradley Report](#) examines, where appropriate, alternatives to prison for offenders with mental health problems or learning disabilities and makes recommendations to bring about improvement. The report specifically addresses difficulties faced by particular groups, including people

from BME groups and women. ACPO are currently working to introduce training for all police officers as an outcome of the Report and have also revised guidance on dealing with offenders who have mental health problems. Information on what steps are being taken to address the Bradley Report can be found on the [NPIA website](#). The Bradley Report also identifies the issue of lack of information available to identify the ethnicity of people with mental health problems or learning disabilities in the CJS. However, the [Count Me In](#) census in 2007 identified that BME groups are 40% more likely to access mental health services via the CJS gateway.

## Issues Identified – Gender

### Fawcett Commission

- In May 2009, the Fawcett Commission published the report 'Engendering Justice – from Policy to Practice' that labelled the CJS institutionally sexist and provided research and findings that may also demonstrate a potential for adverse impact in relation to the NDNAD:
  - a) Women who are foreign nationals or are from ethnic minorities are over represented in the CJS and therefore could be disproportionately represented on the NDNAD
  - b) 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
  - c) 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](#).
- To date, specific issues around gender have not been raised – the main concern is around removal of profiles and the impact this will have on detecting sexual violence against women. This issue is well documented in government proposals about retention on the NDNAD.

### Corston Report

- An issue was raised at one of the IAG meetings about BME women in the CJS.
  - The [Corston Report](#) highlights the issue of significant minority groups in prisons – 28% of females in the prison population are BME and they are also more likely to be remanded in custody. 45% of the prison population at HMP Holloway is BME. The Report identified measures for the CJS and third sector bodies to take in order to better support BME women.

## Issues Identified – General

### Human Genetics Commission

- 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.
  - 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 Commission are also part of the ACPO NDNAD Strategy Board.

### NDNAD Ethics Group

- The NDNAD Ethics Group produced their first annual report in April 2008. The following recommendations were made in relation to equality:
  1. 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.
    - The work group has also considered recommendations made elsewhere about communication of the NDNAD and ensuring that the public understand what the NDNAD is. This work is being taken forward by both NPIA PSFU and ACPO. A guide is also 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.
  2. 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.
- The Ethics Group also provided a memo on the NDNAD Good Practice Guide that raised four concerns – of which, the key one relevant to the EIA is of the status of the manual. Due to it being a framework forces are not required to follow it and members of the public are not able to access it – raising the concern that there is no benchmark to ascertain whether or not people have been treated fairly.
- In the Ethics Group 2<sup>nd</sup> annual report the following recommendations were made in relation to equality:
  1. To accept and take forward the proposals on consent for children and young people;
  2. To accept that the current data on ethnicity stored on the NDNAD is not fit for purpose and to press the CJS to move to a standardised and uniform recording system for ethnicity;

As an outcome of this report, a work stream has also been identified within the Ethics Group around Diversity and Equality. Within that work stream the Ethics Group posed the following questions:

- After arrest and/or charge, are there proportionately more BME persons entered onto the NDNAD than any other group of arrestees?

- Are there higher conviction and charge rates for BME persons following arrest?
- What research is available to support this work?

These questions have highlighted the issue of ethnicity data stored on the NDNAD and support previous EIA findings that demonstrate that 16+1 self-defined ethnicity data would provide a better comparison with other CJS data than what is currently held (6+1 officer defined).

- The Ethics Group is a fundamental part of the EIA work group and has supported the work of ACPO and NPIA in developing an effective EIA on the NDNAD. The group continue to be involved and now that there is a specific work stream on Equality and Diversity it is anticipated that further issues can be identified and addressed. NPIA and ACPO have offered to attend Ethics Group meetings, if required, and has also involved the Group in plans to progress this work beyond the work group.
- The Ethics Group also support the use of unique identifiers on the NDNAD rather than personal biographical information.

### **NPIA Strategic Equality and Diversity Advisory Panel**

- 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 that it is validated and evaluated.
  - Since the NPIA was vested 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 included 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.
- In 2009 a review was undertaken of the different panels that were used by the NPIA and how better they could work to support the business of the Agency. In April 2009 a new panel was established that has been called the transitional Strategic Equality and Diversity Advisory Panel (SEDAP). The SEDAP will act in a similar way to IAGs in forces and provide advice and guidance as a critical friend to the NPIA on equality and diversity issues. Each member of the SEDAP has taken responsibility for a work stream and it is anticipated that once membership is increased someone will be allocated to NDNAD. At present a member is responsible for disproportionality/stop and search which has clear links to NDNAD.

## S and Marper

- 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 and profiles 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.

### Keeping the Right People on the Database

- The Home Office consultation document included recommendations that were reflective of the issues raised in the EIA.

The consultation recognised areas identified in the EIA as follows:

- a) Governance - Proposal that the NDNAD Strategy Board should be rationalised and have greater representation of independent members. This reflects recommendations/views expressed during the EIA process about independent scrutiny on both the Board and the EIA work group that is responsible for taking this work forward. It also compliments an amendment to the Strategy Board governance that makes the Board accountable for the EIA of the NDNAD.
  - b) Destruction of Profiles on Exceptional Grounds - Proposal that regulations to set out criteria for making an application for deletion of profiles should be introduced. This reflects recommendations/views in the EIA that there should be better guidelines for forces in respect of removal criteria and the appeals process should a request be declined.
  - c) Volunteer Samples and Profiles - Proposal that existing volunteer samples should be removed from the NDNAD and that future samples and profiles should be destroyed when no longer required. Issues identified in the EIA and by the Ethics Group raise concerns about the provision of consent to volunteer sampling and the inclusion of those profiles on the NDNAD, which this proposal addresses.
- The responses to the consultation provide further evidence for the EIA in respect of the proposals and concerns around race discrimination (however, they do not address gender or disability – apart from BME mental health issues).
  - All respondents to the consultation issue of disproportionality (ethnicity) pointed to high levels from the black and minority ethnic populations, particularly young black males, on the NDNAD. There was concern that taking DNA on arrest for all recordable offences impacts adversely on ethnic minority communities. Respondents pointed to particular sections of society being treated differently by the CJS and as a consequence being potentially denied the right to access opportunities. Respondents to vulnerable groups also identified that special consideration should be considered for the deletion of data for

people arrested either under the Mental Health Act or as a consequence of any mental health condition.

- Further consideration is given to these points under Race Issues and Disability Issues above.

## EIA Work Group

- A working group was established in autumn 2007 to review and take action on the recommendations from the Stage 1 EIAs and to develop a full EIA. 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.
  - The work group is currently being reviewed to ensure that it is fit for purpose now that a full EIA is completed. Proposals to continue the work of the EIA and to provide a more effective link with the operational management of the NDNAD and the NDNAD Strategy Board should be complete by the end of 2009.
- The group identified that further analysis of information on the NDNAD to provide a true reflection of the representation contained on the NDNAD had to be undertaken.
  - As detailed above, work to undertake this analysis is still awaited and the EIA recognises the importance of getting this work completed as a priority.
- The group will co-ordinate consultation with various representative groups to gain an understanding of perceptions and views of the NDNAD as well as impact on the community.
  - ACPO and NPIA are currently in the process of meeting with various IAGs (including youth, BME, disability, LGBT and strategic) to identify the impact on communities of the NDNAD as well as communicate messages about the NDNAD that IAGs can take back to their communities. Further work is being established to work with groups of people who have been arrested and sampled but who have not been convicted to identify the impact on them (this was a direct outcome of the first meeting with an IAG). ACPO and NPIA also hope to meet with [GIRES](#), [Sainsbury Centre for Mental Health](#) and [Black Mental Health UK](#).
- The group will utilise a work plan to capture the recommendations made from the stage 1 screenings of the NDNAD.

- The plan has been used over the past year and has enabled the group to make progress on a number of actions. It has been agreed that the outstanding areas of work are reflected in the EIA and that a separate document, duplicating the EIA, is not required. Actions and updates on the work plan can be found at Annex A.
- The group will consider analysis to determine the effects on the database if innocent people are removed – following the ECtHR judgement in S and Marper. This may impact on disproportionality of young black men on the NDNAD.
  - This activity is reflected above in the issues arising out of response to the Home Office consultation.
- Any work that is identified to take forward the judgement should be impact assessed at the earliest stage to identify any change in impact.
  - Following the Government response to the S and Marper judgement, the changes that are proposed are focused solely on the retention policies of DNA profiles and samples. The Government will destroy all samples of DNA (from both convicted and non-convicted) people after 6 months. The Government has set out different proposals in relation to retention of profiles. The effect of the proposals set out by the Government in November 2009 on the NDNAD and operational policing practices are covered within the scope of this EIA – the actual legislative proposal is not as this has been developed by the Home Office. The work being undertaken with IAGs is intended to capture any change in impact on equality as an outcome of these proposals.
- 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.
  - This post was recruited and the individual commenced work on 28<sup>th</sup> September 2009. Over the next couple of months the Analyst will meet with the NDNAD Analyst to determine how best to analyse the information available in terms of equality and the results will be included in subsequent EIAs.
- The work of the NDNAD EIA work group 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.

- As identified above, this work has commenced and progressed.
- 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.
  - As identified above, this work has commenced.
- 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.
  - As yet, further consultation work with the EHRC has not taken place – however, their response to the Home Office consultation has been included in this EIA to support existing issues that have been raised.

## Section Three

**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

Transitional SEDAP – Introductory briefing 09/12/09

**Consultation undertaken externally with other organisations:**

NDNAD Ethics Group

NDNAD Strategy Board

South Yorkshire Police BME IAG (10/11/09)

Lancashire Police IAG (08/12/09)

Greater Manchester Police LGBT IAG (25/01/09)

## Section Four

**What monitoring is in place to address issues of impact and who is responsible for ensuring that it is undertaken and what measures will be implemented in the future to provide evidence?**

- The NDNAD Strategy Board has overall responsibility for monitoring the impact of the NDNAD and operational policing practices and implementing the outcomes of the EIA.
- 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.
  - Monitoring information from these quarterly reports will be incorporated into the EIA for early 2010 (on year from the first publication of the full EIA).

## Section Five

### What date is the Equality Impact Assessment due for Review?

November 2010

<p><b>Signed:</b></p>  <p>Alex Prottis NPIA EDHR Unit</p>	<p><b>Date:</b></p> <p>November 2009</p>
<p><b>Approved by:</b></p>  <p>Gary Pugh NDNAD Strategy Board</p>	<p><b>Date:</b></p> <p>November 2009</p>

**Annex A – Actions from the EIA Work Plan**

<p>NDNAD/EIA/ 01 CLOSED</p>	<p>Confirm whether the method of recording ethnicity (currently ethnic appearance) meets the duty under the Race Relations Act. All programmes relating to police information should include recording against the same classification system.</p>
<p>This action is split into two. The first recommendation to confirm that the method of recording ethnicity meets the duty is complete. The method of recording uses the Home Office 6+1 recommendation as per officer defined ethnic appearance on PNC and stop and account/search.</p> <p>The second part of the action reflects the wider recommendation made by the Home Affairs Select Committee on Young Black People and CJS. The report recommends that all CJS agencies should move to using 16+1 ethnicity recording methods.</p> <p>As the NDNAD ethnic appearance data originates from the Police National Computer (PNC) this part of the action will be referred to the NPIA team developing the new Police National Database for consideration (NPIA Information and Communication Technology and Science Directorate). It has been confirmed the new Police National Database will be able to collect data from forces that is in a 16+1 format – enabling the analysis of those on the NDNAD in that format also.</p> <p>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.</p>	

<p>NDNAD/EIA/ 02 CLOSED</p>	<p>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 of samples on the NDNAD. [*This recommendation was amended to reflect the fact that data should be gathered and no statistics]</p>
<p>As a precursor to the transition of the NDNAD onto a NPIA platform (from Forensic Science Services) and scoping of the new generation NDNAD project, the Management Information User Requirement which outlines all the Management Information currently produced on the NDNAD is being reviewed to ensure consistency in all the data released and to identify further areas in which information is required. The anticipated completion date for the transition of the NDNAD into NPIA is late 2009. A Management Information User Requirement was produced that outlines all the management information currently produced on the NDNAD. The Requirement is being reviewed to ensure consistency in all the data released and to identify further areas in which information is required.</p>	

<p>NDNAD/EIA/ 03 CLOSED</p>	<p>Current trend reporting on the NDNAD should include: a) familial searching by ethnicity b) exceptional cases by ethnicity c) replicates reported by ethnicity</p>
<p>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</p>	

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.

<p>NDNAD/EIA/ 04 OPEN</p>	<p>Any new management information system for the NDNAD should include consideration of the need for:</p> <ul style="list-style-type: none"> <li>a) reporting ethnicity by the 16+1 self classification system</li> <li>b) exceptional case reporting of both applications and successful removals by ethnicity and other equality strands</li> <li>c) familial searching reported by ethnicity and other equality strands</li> <li>d) replicates reported by ethnicity and other equality strands</li> <li>e) capability to analyse the DNA profiles of the NDNAD for people who have been acquitted or not charged to gain evidence to determine whether any disproportionality exists.</li> </ul>
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Part a) of this recommendation repeats recommendation NDNAD/EIA/01 and parts b), c), and d) are covered in recommendation NDNAD/EIA/03. These recommendations are being incorporated into the new Management Information User Requirement that is currently being developed in line with the new NDNAD.

These parts will not be considered further in this action.

Reporting on exceptional cases by ethnicity are to be submitted to the Strategy Board and the NPIA EDHR COT Board and a briefing note has been produced in relation to familial searching as required for the Ethics Group.

This work is still on going and is contained in the full EIA within section two 'Issues Identified – Race'.

<p>NDNAD/EIA/ 05 OPEN</p>	<p>Compliance with the DNA Good Practice Manual should be mandatory for all Police Forces in England and Wales, backed up by performance monitoring for example by HMIC or PSU. Non-compliance with best practice should be reviewed and reported on.</p>
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The Good Practice Guide was subjected to an EIA and recommendations are recorded as NDNADGPG/EIA.

This work is being undertaken through the ACPO DNA Operations Group which is now disbanded and the work has been picked up by Forensics 21 who is revising the guidance.

The NDNAD Ethics Group has reviewed the DNA Good Practice Guidance Manual and provided feedback to Forensics 21.

This work is still on going and is contained in the full EIA within section two 'Issues Identified – General'.

<p>NDNAD/EIA/ 06 CLOSED</p>	<p>The ACPO Statement of Requirements for the NDNAD should be reviewed, to check that Equality Impact Assessment issues are reflected.</p>
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The group had a discussion around whether the EIA recommendation was feasible due to the fact that the ACPO Statement of Requirements set out the requirements of the NDNAD Custodian rather than the Strategy Board. The Custodian has no control over information being taken and only for data quality and integrity. It was decided that the Statement of Requirements was not the right place to incorporate requirements of the EIA and instead, the governance and terms of reference for the NDNAD Strategy Board was updated to reflect EDHR issues and accountability for the EIA.

NDNAD/EIA/ 07 CLOSED	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.
This recommendation was absorbed into NDNAD/EIA/03.	

NDNAD/EIA/ 08 OPEN	Consideration should be given to restructuring the NDNAD, and its interface with the Police National Computer, so that database records are indexed only by unique identifier numbers.
There is now a project being undertaken to move the NDNAD from the Forensic Science Services into the NPIA which will then feed into the NDNAD restructuring project which is NDNAD 2020. As part of this a business process analysis is being carried out which was to be completed in early 2009. This scoped the feasibility of removing all demographics from the NDNAD. The removal of all demographics from the supplier domain is also being looked at as a priority, as the first stages of removal will be implemented by May 2008. This issue is still under consideration and is contained in the full EIA within section two 'Issues Identified – General'.	

NDNAD/EIA/ 09 CLOSED	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).	

NDNADGPG/EIA/ 01 CLOSED	Consider revising the section of the Guide to provide further information as to how the frequency databases are mapped to the ethnicity classifications for the NDNAD.
This recommendation was closed as it is not relevant to the documentation. The EIA assessor was not fully sighted on all processes and technical issues. The function of the frequency databases is technical to assess the frequency/probability of similar profiles on the NDNAD and is not relevant to specific equality monitoring.	

NDNADGPG/EIA/ 02 OPEN	Consider analysing the age profiles of the Police Elimination Database to ensure that there is no impact relating to age discrimination.
The Police Elimination Database is currently under review and this issue has been incorporated into that review. The final report on the PED has been submitted and the Strategy Board will be looking to move work forward. In terms of taking this action forward, this is now up to the Strategy Board and forms part of the overall work programme.	

NDNADGPG/EIA/	Confirm that the method of recording ethnicity meets the duty under the
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03 CLOSED	Race Relations Act and consider using the 16+1 Home Office self classification system. Include guidance for police officers and staff when recording ethnic appearance.
This is repetitive of NDNAD/EIA/01 and as such is closed and reference should be made to the original recommendation.	
NDNADGPG/EIA/ 04 CLOSED	Consider revising the section of the Guide to make reference to the need to consider any adverse impact on the grounds of religion or belief when taking samples. This is related to the taking of samples from arrestees e.g. hair samples from Sikhs.
This recommendation has been incorporated into the review of the Good Practice Guide.	
NDNADGPG/EIA/ 05 CLOSED	Taking of <u>intimate</u> samples with consent. Include reference in this section to ensure that consideration is given to ensuring that male and female medical or health professionals are available to take such samples.
This action has been closed as arrested persons have to give consent before intimate samples can be taken. If they do not consent to the doctor taking the sample then no sample will be taken and another doctor can be requested.	
The review of the Good Practice Guide will take into account cultural sensitivity around intimate samples.	
NDNADGPG/EIA/ 06 OPEN	Revise guidance to include the provision of an appropriate adult to witness the consent and reconfirm that consent has been given during interview. Ensure that consent forms are available in languages other than English.
This recommendation is included in the ongoing NDNAD Strategy Board review of sampling volunteers. Work is also being undertaken to provide guides for Custody in relation to NDNAD procedures (in the form of a leaflet/aide memoire). This will include the requirement to make information available in other formats.	
NDNADGPG/EIA/ 07 CLOSED	Each removal request should be reviewed by a panel which included members of diverse groups rather than one individual. Records should be kept of requests by group and analysed by those accepted/rejected for removal.
The removal process for the NDNAD is an intrinsic part of the S and Marper outcomes and is being progressed in a way that supports this recommendation (proposals from the Home Office about new procedures for requests for removal). The group decided that this recommendation can now be closed and monitored as per the EIA.	
NDNADGPG/EIA/ 08 CLOSED	Undertake research to analyse the DNA profiles on the NDNAD for people who have been acquitted or not charged to gain evidence to determine whether any disproportionality exists. Undertake research to analyse the submissions to the NDNAD by force and population to identify any areas of disproportionate samples being submitted.
This is being taken forward by a project proposal to run quarterly or 6 monthly data downloads from PNC to allow for analysis of those who have had their DNA taken and subsequently been cautioned or charged. (See NDNAD/EIA/04)	

NDNADGPG/EIA/09 CLOSED	Undertake research to analyse the submissions to the NDNAD by force and population to identify any areas of disproportionate samples being submitted.
<p>As with recommendation NDNADGPG/EIA/08 a project is currently being scoped to look at those who have had a DNA sample taken and who have been charged, cautioned or convicted. The aim of this work is to facilitate analysis of the numbers of young black people on the NDNAD and see if any disproportionality of uploading profiles to the NDNAD is mirrored by arrest statistics.</p>	
<p>Due to the similarity between these two recommendations NDNADGPG/EIA/09 has been amalgamated into NDNADGPG/EIA/08</p>	