



Home Office

NDNAD Delivery Unit (NDU):

The NDNAD Strategy Board Policy for Access and Use of DNA Samples, Profiles and Associated Data

Authorised by: Kirsty Faulkner

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Job Title: Head of Unit

Shaded areas denote changes from previous version.

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document_control_ndnad@homeoffice.pnn.police.uk

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Identification

Policy Title: The NDNAD Strategy Board Policy for Access and Use of DNA Samples, Profiles and Associated Data

Reference Number: CUSTP-GP-029

Ownership

Department Responsible: NDU Management

Distribution

Forensic Service Providers & Police Forces, NDNAD Strategy Board

Revision History

Issue Number	Issue Date	Summary of Changes
1	27/03/2009	New Document
2	16/12/2010	Complete Redraft
3	02/10/2012	Total review and rewrite of document, taking account of the implications of the Protection of Freedoms Act
4	01/11/2013	Review taking account of the amendment to the Anti-Social Behaviour, Crime and Policing Bill 2013
5	10/02/2014	Clarification of guidelines regarding release of profiles for Criminal Paternity, and of use of NDNAD to identify victims
6	31/12/2015	Review of the CPIA requirements for volunteer samples

1. GOVERNANCE

This policy is issued by the Home Office on behalf of the National DNA Database (NDNAD) Strategy Board. The responsibility and accountability for the accuracy and intended meaning of the document resides with the NDNAD Strategy Board and as such may only be varied or amended with their explicit consent.

2. OBJECTIVE

This document describes the specific conditions, permissible purposes and the level of authority required to access DNA Samples taken under the Police and Criminal Evidence Act 1984 (PACE) (including all subsequent amendments and variations), Volunteer samples and crime stain samples; the DNA Profile derived from DNA Samples and the Associated Data.

The document also specifies the permissible purposes for which the DNA Data may be used once accessed.

3. SCOPE

This policy applies to all DNA Samples and corresponding DNA Profiles and Associated Data (collectively referred to as DNA Data), taken in England and Wales for the intended purpose of loading to, searching or comparing against records held on the NDNAD or where such DNA Data is utilised in authorised research undertaken to increase the understanding of the impact and/or potential uses of the NDNAD. This applies to;

- DNA Samples taken under PACE, for the detection, investigation and prevention of crime where the resulting DNA Profile is intended to be loaded, searched or compared against the NDNAD – including Reference and crime scene samples
- Vulnerable Persons DNA Database (VPDD)

This policy does not cover;

- the legislative provision for taking a DNA Sample
- the use of DNA in direct casework comparison

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- access and use of the Missing Persons DNA Database or Police Elimination Database¹ as these are covered by separate policies
 - DNA Samples taken in the other UK jurisdictions, i.e. those taken under Scotland or Northern Ireland legislation, where governance falls to the Scottish Police Authority and the Department of Justice (Northern Ireland) respectively.

4. SOURCE MATERIALS

In preparing the overall policy for use of DNA Data, due regard has been given to certain legal and policy provisions including, but not limited to, the following:

- Police and Criminal Evidence Act (PACE) – particularly Part 5:
 - (a) CJPOA 1994: reclassified non-intimate samples
 - (b) CEA 1997: retrospective sampling
 - (c) CIPA 2001: removed obligation to destroy DNA samples
 - (d) CJA 2003: increased scope of sampling to those arrested for recordable offence
 - (e) SOCPA 2005 increased scope to allow speculative search of unidentified human remain for identification
 - (f) Crime and Security Act 2010; defining qualifying offences and provisions to sample individuals convicted of a recordable offence where a sample has not been previously taken
 - (g) Protection of Freedoms Act 2012; defining retention periods for samples and associated records
 - (h) Anti-Social Behaviour, Crime and Policing Act 2014 (ASBC&P) which provides for samples that fall under the Criminal Procedure and Investigations Act 1996 (CPIA) and its associated Code of Practice. Under this, both DNA and non-DNA samples are not required to be destroyed under PoFA if they may be needed for use in court proceedings (including any possible appeal) and fall under CPIA. This Act also allows for resampling if an investigation is restarted. If an arrested person is sampled and no further action is taken, PACE as amended by PoFA requires both the DNA sample and profile to be destroyed; if the investigation is later restarted, the police previously had no power to take another sample of the same type. This power is now provided.
- Human Rights Act 1998 – particularly the rights under Articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- Data Protection Act (DPA) 1998
- Freedom of Information Act (FOIA) 2000.
- Home Office Circulars:
 - 16/95 National DNA Database

¹ The Access and use of the Central Elimination Database when it becomes operational

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- 47/96 cross search England & Wales with Scotland, Northern. Ireland, Channel Isles etc
 - 27/97 DNA sampling of prisoners
 - 25/01 CIPA 2001
 - 70/02 retaking of non-intimate samples
 - 20/04 CJA 2003
 - 58/04 charging on basis of DNA match
 - 28/05 SOCPA 2005
 - 1/2006: The Application for Access to a DNA Profile for Paternity.
 - The Criminal Procedures and Investigations Act 1996
 - The Forensic Science Regulators Codes of Practice and Conduct 2014
 - Court judgments in particular the Court of Appeal's judgment in X v Z (2015)

5. DEFINITIONS

Associated Data - the information contained on the DNA card, the DNA sampling kits and any information recorded on the NDNAD in relation to the profiles held on the NDNAD. This information identifies the specific offence for which the sample was taken in relation to and/or the individual to whom the DNA Sample and its corresponding DNA Profile relate.

Data Controller – the authority which determines the purposes for and manner in which sensitive personal data is processed.

Data Processor – an authority (other than an employee of the Data Controller) which processes data on behalf of the Data Controller.

DNA Data – refers jointly to the DNA Sample, DNA Profile and Associated Data and is interpreted to also cover any material or information derived or generated from them that would enable an individual to be identified from that data, including any copies of that data.

DNA Profile – the genetic interpretation of a DNA sample which is represented on the NDNAD as a series of numbers with a gender marker.

DNA Sample – the physical genetic material recovered from a crime scene or provided by an individual.

Forensic Service Provider (FSP) - an organisation granted permission by the NDNAD Strategy Board to provide forensic DNA services to LEAs; in respect of the processing of DNA samples and/or the interpretation of the results from that processing, for inclusion in, or comparison against the NDNAD.

Law Enforcement Agency (LEA) – any organisation authorised to take samples under PACE.

Management Information - information derived from the NDNAD to provide high level trend analysis on the composition of the NDNAD (e.g. the number and breakdown of profiles, the number of profile matches); and evaluation of profile data to show the effectiveness of the NDNAD.

National DNA Database (NDNAD) – The NDNAD is comprised of DNA profiles derived from DNA samples taken from crime scenes and DNA profiles derived from DNA samples taken from people who have been arrested for a recordable offence or have volunteered to have their profile held on the NDNAD; and their Associated Data.

Recordable Offence - an offence which must be recorded on the Police National Computer (PNC), and includes:

1. Any offence punishable with a term of imprisonment, and
2. A number of non-imprisonable offences have been specified by the Secretary of State in regulations as being required to be recorded on the Police National Computer (PNC).

PACE² Sample - samples taken from all individuals arrested for a recordable offence under PACE for DNA profiling and loading these records to the NDNAD. Such samples will comprise of intimate or non-intimate biological samples, such as saliva, blood, plucked/combed hair (head or pubic).

² PACE is the relevant legislation for England and Wales. For jurisdictions other than England and Wales their corresponding legislation should be adhered to.

Casework Reference Sample – samples taken from an individual via PACE, but retained under CPIA to support the investigation of a particular case, (or samples taken for elimination purposes (e.g. volunteer and elimination samples). Profiles from Volunteer and Elimination samples should not be loaded to NDNAD unless appropriate informed consent has been given by the individual or their legal representative.

Sensitive Personal Data - The Data Protection Act 1998 defines sensitive personal data in part, as any personal data consisting of information relating to the commission or alleged commission of any offence or any proceedings for any offence committed or alleged to have been committed. The Information Commissioners Office (ICO) has interpreted that DNA samples and DNA profiles are classed as sensitive personal data.

6. RESPONSIBILITIES

The Chair of the NDNAD Strategy Board is Data Controller in common with the Chief Officer (or Chief Executive or equivalent) of the LEA where the samples were taken.

It is the responsibility of the NDNAD Strategy Board to define the policy on how DNA samples, profiles and associated data taken under PACE powers or **volunteer samples** should be accessed and used. The full responsibilities of the NDNAD Strategy Board are detailed in *The Governance Rules of the National DNA Database Strategy Board* (originally issued in 2006). <https://www.gov.uk/government/publications/national-dna-database-strategy-board-governance-rules>

The NDU (part of the Home Office) are defined as Data Processors on behalf of the Chair of the NDNAD Strategy Board. They are responsible for the integrity and protection of the data held on the NDNAD.

LEAs are responsible for ensuring the continuity of evidence for each sample they have taken.

FSPs are Data Processors on behalf of the LEA where the sample was taken.

All organisations that have access to Sensitive Personal Data must manage that data in accordance with the HMG Security Policy Framework (HMG SPF) and all applicable legislation, including the Data Protection Act 1998, which requires those organisations to register with the ICO if they are acting as Data Controller.

It is the responsibility of LEAs, FSPs and any other agency or organisation acting on their behalf to comply with this policy. If there is any doubt as to whether a specific action or activity complies with this policy, then clarification should be sought from the NDNAD Strategy Board prior to commencement.

7. OVERARCHING POLICY

The Chief Officer (or equivalent) of the LEA that collects the DNA Sample is by default the Data Controller for all DNA Data linked to that DNA Sample.

Information that could identify the individual from whom the DNA Sample was obtained should not be made available to FSPs for PACE samples and it is mandatory that FSP logging systems (for example a Laboratory Information Management System (LIMS)) do not retain the unique reference defined on the PACE or CJ sampling kits but instead assign a unique processing identifier to the subjects DNA Sample. This is optional for samples taken with volunteer sampling kits.

It should be noted that FSPs will hold details of volunteer and elimination samples as the NDNAD does not receive this information from the Police National Computer.

DNA Data may not be used directly or provided to any other agency or organisation for purposes other than those listed in section 8 or those specifically authorised by the NDNAD Strategy Board.

7.1. Storage of DNA Data

The NDNAD Strategy Board has deemed that DNA data **must** routinely be treated as 'Restricted'³, as defined by the Government Protective Marking Scheme. Where the aggregation of such records equals or exceeds 10,000, or the specifics of the dataset determine that the business impact level is elevated regardless of the aggregation (e.g. a release of a volunteer record data from the NDNAD where the sampling reason(s) is indicative of a highly sensitive area of investigation), the protective marking of 'Confidential' applies³.

DNA Data, **including profile records on the NDNAD and related records held by the FSPs and LEAs** must be managed in accordance with Data Protection Principles. Retention of these records must comply with legislative requirements and the accuracy of the records must be maintained.

The NDU defines the processes to meet their obligations through the following documented procedures:

- 'Standards of Performance and monitoring of Suppliers of profiles to the National DNA Database'
- 'Exceptional Case Procedure for Forensic Suppliers and the NDNAD Service Delivery Team'
- 'Procedure for the Deletion and/or Destruction of DNA Samples and Records'.

7.2. Policy for Access and Use of DNA Samples

Once obtained, DNA Samples may only be accessed by LEA staff, or parties working on behalf of a LEA. The LEA Data Controller, may define specific contractual constraints regarding the access to DNA Samples on any third party (e.g. FSP) acting on their behalf.

³ **At the point when national policing adopt the Government Security Marking scheme an assessment will be made what this classification should be.**

On receipt of a DNA Sample from an LEA, an FSP may only access that sample to;

- derive the DNA Profile(s) for the purpose of loading to, searching against or comparing against DNA Profiles held on the NDNAD or other DNA Profiles specific to the case under investigation (or an extract of a previously processed DNA Sample, where permission has been granted by the Chair of NDNAD Strategy Board) or
- destroy the DNA Sample.

Retained DNA Samples may be accessed and profiled;

- where no profile has been obtained from the initial analysis of a sample
- for alternative analysis (e.g. Y-STR or paternity analysis) if this analysis relates to the investigation of the case for which the sample has been taken and the sample is held under CPIA by the FSP.
 - NB FSP should be notified at the point of submission (or at a maximum within 6 weeks of sampling) if the sample is to be held under CPIA.
- to comply with the quality assurance programme as set by the NDU. This should include any reprocessing of a DNA Sample where it is required to establish the accuracy of the DNA Profile(s) obtained.

7.2.1. PACE samples

It is expected that in the great majority of cases, PACE samples will be destroyed under PoFA guidelines, either as soon as a quality assured DNA profile has been derived or, if sooner, within six months of the sample being taken.

However, there may be some circumstances where a PACE sample is required to be retained because challenges may be raised in court proceedings which would require it to be analysed and this could not be done if it has been destroyed. This would involve casework – i.e. expert analysis of the sample by a forensic scientist or scientists. This is regulated by the CPIA. If an LEA has an operational need to retain a PACE sample under CPIA for casework, the FSP must be notified at the time of submitting the sample for analysis or at a maximum within 6 weeks of sampling. If requests are made after the sample has been submitted, there is a risk that it may have already been destroyed.

It should be noted that the decision to retain **must** consider the appropriateness of the retention and data minimisation principle defined within CPIA, and LEAs **must evidence** the necessity of the retention. The numbers of samples being retained under CPIA will be monitored by the NDNAD Strategy Board. **In order to ensure that the retention of samples under CPIA is lawful and proportionate the onus is on LEAs to review PACE samples held under CPIA quarterly and inform the FSP when it is appropriate to destroy.**

For a sample retained under CPIA, the six month destruction provision as part of PoFA no longer applies, however any such sample can only be used for proceedings for the offence in connection with which it was taken and must be destroyed once no longer required for any proceedings or appeal relating to that offence. Samples retained under CPIA may be subject to profiling or alternative analysis even after six months. Profiles derived from these samples after six months can be used only in relation to the offence in connection with which they were taken. To explain this, two examples are given:

Example 1: a sample is taken and a profile obtained and loaded to the NDNAD within six months. The sample is retained beyond six months under CPIA and alternative analysis carried out. The profile can be retained on the NDNAD for general searching (under section 63E of PACE which permits retention if there is an ongoing investigation, or any other relevant section) as the provision relating to CPIA does not apply to it, as it was loaded within the six month period. But any searching using the results of the alternative analysis must be limited to that related to the offence for which it was taken.

Example 2: a sample is taken and no profiling carried out. The sample is retained beyond six months under CPIA. A profile is then derived. This profile is governed by the provision relating to CPIA and so can only be used in relation to the offence for which it was taken, not for general searching.

7.2.2. Volunteer samples

Elimination Samples

A DNA sample which has been taken with consent and in connection with the investigation of an offence (an 'elimination sample') should usually be destroyed within 6 months of the sample being taken or, if sooner, 6 weeks from when a DNA profile is derived (to allow for the relevant quality check to be performed). Such elimination samples may include those taken from someone who is suspected of having been the victim of a criminal offence; from

partners and relatives of the suspected victim or as part of a mass screening exercise. Any such sample must only be used for the purposes of the offence and/or enquiry in connection with which it was taken and for which consent was given and must only be retained beyond 6 months in exceptional circumstances where CPIA applies. If an LEA has an operational need to retain an elimination sample under CPIA for casework, the FSP must be notified at the time of submitting the sample for analysis or at a maximum within 6 weeks of sampling. Any elimination sample which has been retained for more than 6 months under CPIA must be destroyed as soon as its retention ceases to be necessary, as determined by the LEA.

As from 1st January 2016 FSPs will destroy all elimination samples once they have been processed unless they are specifically asked by LEA's to retain them under CPIA. In order to ensure that the retention of samples under CPIA is lawful and proportionate the onus is on LEAs to review elimination samples held under CPIA quarterly and inform the FSP when it is appropriate to destroy. An exercise to destroy the legacy elimination samples will be completed by May 2016.

LEAs should also ensure that the need to retain any elimination sample which they hold 'in LEA' is reviewed at least every three months and that such samples are promptly destroyed unless there is good reason for them to be retained.

Other Volunteer Samples

For DNA samples which are taken with consent, but not in connection with the investigation of an offence, such as DNA samples taken from vulnerable volunteers or from relatives of missing persons (who are not suspected to be the victims of offences), there is no legal requirement for destruction. This is because section 63R(1)(b) of PACE states that the sample destruction provisions apply to samples 'taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police' – i.e. if there is no investigation of an offence the sample destruction provisions do not apply. Examples are provided below

- Vulnerable volunteers

If a vulnerable person (e.g. a potential victim of honour-based violence) gives consent for their DNA sample to be taken, the sample is not required to be destroyed within any specific

period if no offence is suspected to have taken place at the time of the sample being provided. However, the retention of these samples must be reviewed every 2 years and they will be destroyed if it becomes apparent that there is no good reason for them to be retained.

- **Missing persons**

Where an individual has been reported missing, a relative of the individual may agree to consent to provide a DNA sample in case their relative's body is discovered at a later date. In such cases, the DNA sample can be retained until any investigation into the missing person has concluded. This retention may be beyond the life of the relative so as to allow for identification years after the person went missing. Due to the potential degradation that may occur over time to non-located bodies, alternative DNA tests (on both the body and relative sample for comparison) may be required. Once identification is made and the case is concluded, these volunteer samples must be destroyed.

In both these cases, if it later comes to light that a criminal offence has taken place, any sample(s) taken would not need to be destroyed. This is because at the time of taking the sample(s), no offence was suspected to have taken place.

In addition, in cases where DNA samples are taken from the missing persons personal belongings such as a toothbrush, these will be considered as in-direct reference samples and are also not required to be destroyed.

7.2.3. Crime scene samples

Records should be loaded to NDNAD that are appropriate e.g. in-line with this policy and measures to prevent unwittingly loading a record that does not relate to the offender should be taken. Elimination samples should be obtained from those with legitimate access to the crime scene as appropriate in the particular case. However, if the provision of an elimination sample is not possible it is permissible to load any sample record obtained from a scene of crime where it is believed to be related to that crime and has evidential value. The LEA should be aware of the risks of this approach with court disclosure of previous offences, should a crime stain profile prove to match a victim.

There should be only one copy of a particular crime scene profile held per case reference on the NDNAD; duplicate loads of the same profile should be avoided. Subsequently after loading, should a record be found that belongs to a victim, is considered not to be related to

the crime or is no longer relevant to the investigation then the sampling LEA must ensure that the record is deleted from the NDNAD as soon as possible. In these circumstances, the release of the victims profile from the NDNAD will not be automatically forthcoming without the specific, informed consent of the victim (including in the case of an NDNAD match).

This policy should not impact the ability of FSPs to respond to urgent requests and as such crime stain records can be retrospectively loaded to NDNAD by FSPs following a direct comparison as discussed through the particular case forensic strategy or more generally through their LEA Service Level Agreements.

Records from detected crimes (i.e. where there is a significant match identified from full SGMPlus profiles) should be removed from the database as soon as practicable by the LEA requesting NDU to perform such a deletion

7.2.4. Transferring samples between FSPs.

In instances where physical samples, typically the second swab from a PACE sampling kit, (subject to retention limits) are transferred between FSPs: the submitting FSP must supply all the remaining sample, the original DNA form/LEA submission documentation (which must include the date sample taken) and documented evidence of a CPIA exemption instruction (if appropriate) to the receiving FSP. The FSP receiving the sample is responsible for the destruction of the received material.

There are no restrictions on the transfer of crime stain material other than normal measures to retain continuity and any other requirements defined by the Data Controller.

7.3. Policy for Access and Use of DNA Profiles

The NDNAD will be the primary reference point for gaining PACE sample DNA Profile information, relating to any DNA Profiles included on the NDNAD. Therefore any request to release any profile that is held on the NDNAD must be made through the NDU. An exception will be made whereby FSPs will be able to release profiles out of NDU normal office hours (Mon-Friday 08:00 to 17:00 and weekend days from 09:00 to 12:00). The LEA must inform the FSP that the profile being sought is legally held at the point the request to release is made.

DNA profiles⁴ must only be used for:

- the provision of intelligence and evidence to support the investigation, detection, prosecution and reduction of crime and in the interests of national security as defined in s.63T of PACE.
- the identification of a deceased person or of the person from whom a body part came;
- the protection of an individual who has volunteered a DNA Sample as they are potentially at risk of harm

This may take the form of:

- Conducting searches against the DNA Profiles held on the NDNAD;
- Comparison against a specific case including conducting eliminations of potential DNA Profile matches (under CPIA);
- Comparison against specific profiles held on the NDNAD; or
- Performing quality checks in relation to the processing of DNA Samples as limited by section 7.2.
- Gaining Strategy Board approval should a DNA profile require permanent loading to the NDNAD

In order to use a DNA sample and /or profile for the purposes of criminal paternity investigations, a PACE sample must be collected for this offence. The subject must be informed that the sample and /or profile may be used for paternity analysis⁵.

The Court of Appeal judgment in *X v Z* (2015) states that biometrics collected under the evidence gathering powers in Part 2 of PACE (such as crime scene samples) are subject to

⁴ This will primarily relate to the use of the offender's DNA and not the victim's. Profile release of the victim would only occur in exceptional circumstances through authorisation by the Chair of the NDNAD Strategy Board, even where a match report has been generated from the NDNAD.

⁵ Profiles from PACE samples must only be sought where *the profile will assist the investigation*; for example in a criminal paternity investigation, if the suspect has denied contact with the complainant, DNA would assist in supporting (or opposing) this proposition. If the suspect admits intercourse but maintains it was consensual, DNA cannot address this proposition. The profile in this second example would need a deeper review to determine if the profile could be used under PACE: if required, a casework reference sample should then be sought. See also Home Office Circular 1/2006 "The application for access to a DNA profile for paternity"

the same constraints on the purposes for which they can be used as biometrics taken from arrested persons or volunteers under Part 5 of PACE. Specifically this court of appeal judgement found that DNA profiles derived from samples taken from a crime scene could not be used for paternity testing.

7.4. Policy for Access and Use of Associated Data

The data associated with DNA samples and their corresponding profiles must only be used to:

- Evaluate the result from a search performed against the NDNAD
- Identify a DNA Sample or DNA Profile to confirm the integrity of the DNA Profile held on the NDNAD
- Used to restrict the search parameters of a non-routine speculative search of the NDNAD
- For subject samples only - Identify a sample or profile when being transferred between FSPs for DNA Profile comparisons where there is a link to an individual. Best practice is to use two separate identifiers; usually the sample identifier barcode and one other identifier e.g. date of birth.

Data Controllers and Data Processors must ensure any transfer of subject records complies with legislative requirements. No transfer of data from records deleted from the NDNAD is permitted. Any data originally transferred from a subsequently deleted record must also be deleted, with the exception of those records transferred to the Missing Persons DNA Database, where they are retained under CPIA.

7.5. Control of Access to the NDNAD

No LEA or FSP is authorised to have direct access to the DNA Data held on NDNAD.

A small number of staff who are responsible for the day to day management of the NDNAD have access to the NDNAD, as appropriate for their role. The designated NDNAD Information Asset Owner ensures that only staff with a legitimate reason for accessing the NDNAD have access and that their access is regularly reviewed.

Members of the public may request access to an NDNAD record directly relating to them. All such “Subject Access Requests” must be made through the Data Protection Officer of the LEA that originally obtained the DNA Sample. The record will only be provided to the individual making the request or an authorised third party representing them.

7.6. Provision of Management Information Derived from the NDNAD

No DNA profiles or direct personal identifiable information may be shared through the provision of Management Information.

NDNAD Management Information data is based on a snapshot of the NDNAD at a given time. To ensure the accuracy of the information supplied and to identify any applicable caveats, all management information is subject to quality assurance procedures prior to release.

The NDNAD Strategy Board requires that high level trend analysis management information is available as and when requested to do so. Such information is routinely published in the NDNAD Annual Report and through the NDNAD website.

The NDU may routinely access NDNAD management information to assess the effective performance of the NDNAD.

The production and use of management information for Parliamentary Questions (PQs) and FOI complies with the Home Office guidance on answering Parliamentary Questions, Freedom of Information Act and Data Protection Act requirements.

Members of the public may access further management information via a freedom of information request in line with the Freedom of Information Act 2000 or through the website: <https://www.gov.uk/government/organisations/home-office>.

7.7. Use of DNA Data for Research

The NDNAD Strategy Board supports, in principle, the use of DNA Data for enhancing the criminal justice, academic and public understanding of the use and impact of the NDNAD. All requests for accessing DNA Data for such purposes must be specifically authorised by the NDNAD Strategy Board. Decisions will be made on a case by case basis based on the proportionality, necessity, impact on privacy and perceived value of the proposed research. **Early consideration of the ethical impact of this research is encouraged.**

In order to apply for the use of DNA Data to support this principle, research requests should be submitted using form CUSTP-GF-002; *Request For Release And Use Of DNA Samples, Profiles And/Or Data For Research Purposes*.

The NDU shall maintain a register of all research applications and the corresponding NDNAD Strategy Board decisions.

7.8. Requests to Extend the Use of DNA Data

PACE, as amended, contains statutory restrictions on the uses of DNA Samples and DNA Profiles. Any queries regarding current use, or application for permission to change or extend the use of DNA Data, or, if no relevant procedure exists, should contact either the NDU Head of Unit or the Chair of the NDNAD Strategy Board.

7.9. Records and Audits of Access and Use of DNA Data

The NDU FSPs and LEAs are required to maintain records and audit their access and uses of DNA Data.

FSPs are required to demonstrate their compliance to this policy. Although this is primarily achieved through third party auditing by the United Kingdom Assurance Services (UKAS) against the international standard for testing laboratories, ISO 17025 and the NDNAD specific standard LAB32⁶, FSPs must provide such records to the NDNAD Strategy Board, NDU and/or the Forensic Science Regulator on request.

FSPs failing to comply with this policy will have their authorisation to load profiles to and receive data from the NDNAD reviewed.

⁶ LAB32 is the requirements for accreditation of suppliers to the NDNAD

8. SUMMARY OF ACCEPTABLE USES, AUTHORISATIONS REQUIRED AND PROCEDURES TO BE USED

	Use	Authorisations required and procedures to be used	Linked Policies / Procedures
1	<p>Operational: Routine casework: Including:</p> <ul style="list-style-type: none"> • Profiling DNA Samples • Loading DNA Profiles to the NDNAD • Searching partial DNA Profiles against the NDNAD • Comparison of partial or suspected mixed DNA Profiles against specific DNA Profiles held on the NDNAD • Searching of crime stain profiles against the Central Elimination Database <p>This will primarily relate to the use of the offender's DNA and not the victim's. Profile release of the victim would only occur in exceptional circumstances.</p>	<p>All FSPs working on behalf of an LEA must be authorised for carrying out such work by the NDNAD Strategy Board. The FSP must abide by all applicable legislation and conditions set by the NDNAD Strategy Board or agencies working on its behalf, such as the NDU.</p> <p>The defence representative in any prosecution must apply for DNA data via the charging LEA, who will then notify the Crown Prosecution Service (CPS).</p> <p>Profiles will not be released in civil paternity cases; even including cases wherein the subject is deceased.</p> <p>Profiles will not be released in lieu of an elimination sample being obtained (under exceptional circumstances and with informed consent from the donor, a PACE profile may be used, but justification must be presented to the NDNAD Strategy Board as to why an elimination sample could not be taken).</p>	<p>CUSTP-GP-004; <i>Standards Of Performance For Suppliers Of Data To The National DNA Database</i>, CUSTP-GS-003; <i>Technical Standards For Processing Samples For Inclusion On The National DNA Database</i>, CUSTP-GP-006; <i>Match Reporting Policy For The National DNA Database</i> CUSTP-GP-032; <i>Non-Routine Speculative Search Policy For The National DNA Database</i>, CUSTP-GS-024; <i>Policy For The Release Of Profiles For Intelligence Purposes</i>, CUSTP-GP-036; <i>NDNAD Strategy Board Policy and Management of FSS Electronic DNA Archive data</i></p>
2	<p>Operational: Specialist Searching Access to NDNAD for specialist searching techniques in support of routine casework.</p>	<p>FSPs must have additional authorisation from the NDNAD Strategy Board to carry out such searches. Additionally FSPs may be subject to specific contractual conditions with the NDU to carry out such searches.</p>	<p>CUSTP-GP-032; <i>Non-Routine Speculative Search Policy For The National DNA Database</i></p>
3	<p>Operational: Familial Searching Access to NDNAD for routine (casework) familial searching - one-off speculative searches of the NDNAD to identify potential relatives of a subject (e.g. offender) whose profile is not on the NDNAD.</p>	<p>Each search must have explicit authorisation by the Data Controllers in common. (An NPCC rank Police Officer (or equivalent) of the LEA that collected the DNA Sample and the Chair of the NDNAD Strategy Board).</p> <p>Any international familial search requests will be considered on a case by case basis and in line with the International Policy for profile releases.</p>	<p>Specific contracts for the Provision of Specialised DNA Search (Familial), CUSTP-GP-032; <i>Non-Routine Speculative Search Policy For The National DNA Database</i></p>
4	<p>Operational: Access to retained samples for alternative analysis (e.g. mitochondrial DNA, Y-STR).</p>	<p>Following the commencement of the Protection of Freedoms Act, alternative re-analysis of a PACE sample once profiled is not permitted unless for the purposes of upgrading a DNA profile. Therefore a further sample will need to be obtained, where the law allows, for carrying out any alternative analysis.</p>	

		Samples retained under CPIA can be processed using alternative DNA techniques as long as the analysis relates to the investigation of the case for which the sample was taken.	
5	Operational: Upgrading Re-profiling DNA Samples to obtain a more discriminating DNA Profile (commonly referred to as upgrading)	FSPs have standing authority for access to retained samples (in accordance to legislative requirements) for re-analysis when requested by an LEA to upgrade a DNA Profile to the most recent profiling chemistry or to improve a DNA Profile when previous analysis has yielded a partial profile. Samples retained under CPIA can be upgraded using alternative DNA techniques as long as the analysis relates to the investigation of the case for which the sample was taken. (These <i>cannot</i> subsequently be used for loading to the NDNAD, but can only be used for the purposes of the case only).	Determined by individual LEA policy
6	Operational: Access to retained intelligence DNA Data for evidential purposes	Access to data obtained from Subject samples taken for intelligence purposes for use evidentially requires authorisation by an NPCC rank Police Officer (or equivalent), endorsement by a CPS Lawyers and authorisation by the Chair of the NDNAD Strategy Board.	CUSTP-GS-023 ; <i>Process And Request For Use Of Retained Subject (CJ) Samples For Evidential Purpose</i>
7	Operational: International Outgoing from UK: Request for the release of, or a search of, a subject or crime scene DNA Profile obtained in the UK against international databases.	Any crime scene DNA Profile may be searched internationally at the request of an LEA. Any subject DNA Profile leaving the UK must be authorised by the Chair of the NDNAD Strategy Board. All DNA Profiles must be obtained from the NDNAD (if held on NDNAD) and must only be circulated abroad via an authorised route.	CUSTP-GP-010 ; <i>International DNA Searching Policy for the United Kingdom</i>
8	Operational: International Incoming to UK: International data request to perform searches of the UK NDNAD	All requests must be received by a nominated authority and have a justifiable purpose for searching the UK DNA databases. Named subject searches and any search not meeting the qualifying criteria for such searches will be considered on a case-by-case basis, being referred to the Chair of the NDNAD Strategy Board for authorisation	CUSTP-GP-010 ; <i>International DNA Searching Policy for the United Kingdom</i>
9	Operational: Counter Terrorism The searching of DNA Data from search profile obtained, processed and held under the Terrorism Act 2000.	DNA Profiles obtained under the legislation will not be permanently loaded to the NDNAD but may be searched against it on request. However, where an individual has committed a recordable offence then the profile should be loaded to the NDNAD via the usual mechanisms.	CUSTP-GP-032 ; <i>Non-Routine Speculative Search Policy For The National DNA Database</i>

10	<p>Operational: Vulnerable Persons Use of DNA Data to support vulnerable people</p>	<p>Authorisation required from within the LEA from a rank of Inspector (or equivalent), or above for the collection and profiling of the DNA Sample, with specific consent from the individual or an appropriate adult. Where an appropriate adult is not available, the Senior Investigating Officer may assess the ability of the individual to consent using by applying the Gullick Competency Guidelines.</p> <p>Vulnerable Person (VP) DNA profiles are loaded to the Vulnerable Persons DNA Database (VPDD) but remain non-searchable until such a time that specific reasoning is available to suggest that a Vulnerable Person has come to harm or is missing. Further authorisation is necessary from the NDNAD Strategy Board to enable the VP profile to become searchable.</p>	<p>CUSTP-GS-075; <i>NDNAD Strategy Board Policy And Management Of The Vulnerable Persons Database</i></p>
11	<p>Operational: Vulnerable Persons / Missing Persons Transfer of a copy of a VPDD Subject profile from the VPDD to the MPDD</p>	<p>For Missing Person DNA Database (MPDD) Submissions involving a transfer of a copy of a VPDD Subject Profile from the VPDD to the MPDD.</p> <ol style="list-style-type: none"> 1. Authorisation from the Senior Investigating Officer (SIO) or the LEA Scientific Support Manager (SSM) will first be required for a VP profile to become searchable against profiles held on the NDNAD 2. The LEA will also be required to provide further authorisation by the investigating officer to the Missing Persons Bureau (MPB) for a transfer of a copy of a VPDD Subject profile from the VPDD to the MPDD 3. For submissions received by the MPDD from the MPB involving a transfer of a copy of a VPDD Subject profile from the VPDD to the MPDD, this can be carried out by the MPDD without any routine requirement for authorisation from the NDNAD Strategy Board, provided there is assurance that the correct profile copy is being transferred and that the VPDD Subject Profile status on the NDNAD is searchable and authorisation from (1) above is held. 	<p>CUSTP-GS-075; <i>NDNAD Strategy Board Policy And Management Of The Vulnerable Persons Database⁷</i></p>
12	<p>Operational: Missing Persons Transfer of a copy of a NDNAD Subject profile from the NDNAD to the Missing Persons DNA Database (MPDD)</p>	<p>The LEA owning the NDNAD record is authorised to request the copying of NDNAD records to the MPDD. Any investigating LEA Officer may request such an action of the MPB.</p>	<p>CUSTP-GP-033; <i>Procedure For Adminstrating DNA Profile Comparison Service For The Missing Persons Bureau</i></p>
13	<p>Quality Assurance: Contamination Use of DNA profile data for elimination of contamination.</p>	<p>FSPs may compare DNA Profiles against staff or manufacturer's contamination databases without further authorisation. Any matches resulting from such checks must be notified to the NDU.</p>	<p>CUSTP-GS-044; <i>Potential Unsourced Contaminant Profile Procedure</i></p>

⁷ CUSTP-GS-075 is currently under review

		NDU will routinely carry out searches of crime stain profiles against the records retained on the Central Elimination Database	CED-P01; Policy for use of the CED
14	Quality Assurance: Data Integrity and Evidential Continuity Access retained DNA Data to assure the integrity of the DNA Profile and its evidential continuity.	FSPs may routinely access retained DNA Data for the investigation of actual or suspected data integrity events. The FSP must notify the NDU of all such occurrences.	CUSTP-GP-004; Standards Of Performance For Suppliers Of Data To The National DNA Database,
15	Validation of existing processes authorised to load profiles to NDNAD: To deliver profiles to be speculatively searched against the NDNAD or permanently loaded to the NDNAD.	FSPs have been granted authority from the NDU for access to retained (in accordance with legislative requirements) profiles and data for accreditation purposes, such as providing appropriate DNA profiling or interpretation system validations for changes or upgrades to the system(s) in use. Notification of the use of this data must form part of the validation plan submitted to the NDNAD Assurance Service. No more than 1000 samples may be used in such an exercise without requesting permission by the Chair of the NDNAD Strategy Board and NDU Head of Unit.	CUSTP-GP-004; Standards Of Performance For Suppliers Of Data To The National DNA Database,
16	Validation of a new technology: To deliver profiles to be speculatively searched against the NDNAD or permanently loaded to the NDNAD.	If there is a requirement to perform validation exercises on live data during implementation of a new DNA profiling, searching or interpretation technology, then authorisation is required by the NDNAD Strategy Board.	CUSTP-GP-004; Standards Of Performance For Suppliers Of Data To The National DNA Database,
17	Subject access requests	Any individual may access information held about them, by the Government or any of its agencies. The LEA must verify the requestors' identity before forwarding the request to the NDU who will respond directly to the LEA, which will in turn pass the information to the requestor.	LEAs policy to comply with the Data Protection Act
18	Research: The use of DNA Data for enhancing the criminal justice, academic and public understanding of the use and impact of the NDNAD.	All requests must gain approval by the Chair of the NDNAD Strategy Board.	CUSTP-GS-025; Process For Release Of Samples, Profiles And Data From The National DNA Database For Research Purposes
19	Management Information: Provision of high level trend information	The NDNAD Delivery Unit provides key NDNAD Management Information (MI) to the NDNAD Strategy Board and Home Office on the composition of the NDNAD. The MI is used in the NDNAD Annual Report, on the Home Office NDNAD website, to answer Parliamentary Questions, Freedom of Information requests etc in policy development and in a range of Government briefing material. LEAs and FSPs may request such information by contacting the NDU directly. Members of the public may access such information via Freedom of	Through the website: https://www.gov.uk/government/organisations/home-office

	Information requests. Details are on the NDNAD Website	
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9. A LIST OF LEAs PERMITTED TO TAKE AND SUBMIT SAMPLES IN ACCORDANCE WITH THIS POLICY

Police Forces and other Law Enforcement Agencies authorised to take DNA samples (in accordance with this policy) for generation of a profile record for retention on the National DNA Database

<p>Territorial Police Forces - England & Wales</p>	<p>Territorial Police Forces – Scotland⁸</p>
<p>Avon and Somerset Constabulary Bedfordshire Police Cambridgeshire Constabulary Cheshire Constabulary City of London Police Cleveland Police</p>	<p>Police Scotland</p>
<p>Cumbria Constabulary Derbyshire Constabulary Devon and Cornwall Constabulary Dorset Police</p>	<p>Territorial Police Forces - Northern Ireland⁹</p>
<p>Durham Constabulary Dyfed-Powys Police Essex Police Gloucestershire Constabulary Greater Manchester Police</p>	<p>Police Service of Northern Ireland</p>
<p>Gwent Police Hampshire Constabulary Hertfordshire Constabulary</p>	<p>Territorial Police Forces – Other¹⁰</p>
<p>Humberside Police Kent Police Lancashire Constabulary Leicestershire Constabulary</p>	<p>Guernsey Police States of Jersey Police Isle of Man Constabulary</p>
	<p>Special Police Forces and Other Organisations</p>
	<p>British Transport Police HM Revenue and Customs Service Police Crime Bureau/Royal Military Police Ministry of Defence Police</p>

⁸ PACE is the relevant legislation for England and Wales. For jurisdictions other than England and Wales their corresponding legislation should be adhered to in relation to the use of NDNAD.

⁹ PACE is the relevant legislation for England and Wales. For jurisdictions other than England and Wales their corresponding legislation should be adhered to in relation to the use of NDNAD.

¹⁰ PACE is the relevant legislation for England and Wales. For jurisdictions other than England and Wales their corresponding legislation should be adhered to in relation to the use of NDNAD.

<p>Lincolnshire Police Merseyside Police Metropolitan Police Norfolk Constabulary North Wales Police North Yorkshire Police Northamptonshire Police Northumbria Police Nottinghamshire Police South Wales Police South Yorkshire Police Staffordshire Police Suffolk Constabulary Surrey Police Sussex Police Thames Valley Police Warwickshire Police West Mercia Police West Midlands Police West Yorkshire Police Wiltshire Constabulary</p>	<p>Scottish Crime & Drug Enforcement Agency National Crime Agency</p> <hr/> <div data-bbox="715 421 1300 584" style="border: 1px solid black; padding: 5px;"> <p>Organisations authorised to Process Data to support the operation of the National DNA Database</p> </div> <p>Home Office (NDNAD Delivery Unit)</p> <div data-bbox="715 633 1300 770" style="border: 1px solid black; padding: 5px;"> <p>Organisations authorised to receive data from, and request specific searches to be performed from the National DNA Database</p> </div> <p>Criminal Cases Review Commission Royal Mail and Department of Work and Pensions¹¹</p> <hr/> <div data-bbox="715 927 1292 976" style="border: 1px solid black; padding: 5px;"> <p>Foreign Law Enforcement Agencies</p> </div> <p>Foreign law enforcement organisations may request that a comparison is made between a DNA profile from, for example, an unsolved crime scene or an unidentified deceased person in their country, and profiles on the NDNAD. Such requests are routed through the National Central Bureau and the process is defined within CUSTP-GP-10. Specific agreements for other countries allow for other data sharing and are defined through bi-lateral agreements</p>
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¹¹ Royal Mail and Department of Work and Pensions will submit samples for profiling through a Law Enforcement Agency.