

**RUNNYMEDE TRUST WRITTEN CONSULTATION RESPONSE TO:****Keeping the Right People on the DNA Database: Science and Public Protection****7 August 2009**CHAIR  
Dr Samir Shah OBETRUSTEES  
Aaqil Ahmed  
Dr Claire Alexander  
Barbara Cohen  
Dr Kate Gavron  
Farzana Hakim  
Clive Jones CBE  
Hitesh PatelA Company  
Limited by Guarantee  
Registered Company  
(England)  
No. 3409935Registered Charity  
No. 1063609VAT Reg. No.  
GB 340 5813 76**Contact details:**  
The Runnymede Trust  
7 Plough Yard  
London EC2A 3LP  
Tel: 020 7377 9222  
Email: [info@runnymedetrust.org](mailto:info@runnymedetrust.org)  
Web: [www.runnymedetrust.org](http://www.runnymedetrust.org)

We welcome the opportunity to submit our thoughts and views on the National DNA Database (NDNAD). The lack of public debate on the database in the 14 years of its existence has been lamentable, and we commend the Government for seeking to correct this state of affairs with a wide-ranging consultation. This is a timely and important review and we have read its proposals with interest, but do have some concerns and recommendations that we outline below.

Runnymede was founded in 1968. In the past 40 years Runnymede has worked to provide research intelligence, influence policy, and build partnerships with others in order to promote a successful multiethnic Britain. Over those years Runnymede has responded to the political and social climate; adapting its style of work to meet the needs of the time. Our work has included groundbreaking research and policy engagement on the arrival of Ugandan Asian refugees in the UK in 1972, race relations legislation from the 1976 Act onwards, policing in the early 1980s, housing policy in the late 1980s, anti-Semitism and Islamophobia in the 1990s and, at the turn of the millennium, the far-sighted Commission on the Future of Multi-Ethnic Britain. Since 2000, our work has covered policy and practice in education, governance, European policy, social cohesion, new migrant communities, criminal justice, and youth engagement through the arts.

Our mandate is to respond to the latest challenges in race equality and race relations, new demographic trends, and the potential for new patterns of engagement with individuals, communities, civil society, and government.

## Summary

- We are concerned that there are no measures to address the disproportionate presence of black people – and particularly young black men – on the database.
  - 10 years on from the Stephen Lawrence Inquiry, it is clear that there are still unequal outcomes for different ethnic groups in the criminal justice system. The gross over-representation of black people on the NDNAD is one of the many serious consequences of this. At present, no Race Equality Impact Assessment has been conducted.
  - The criminalisation of black people in Britain has a long and ugly history, and the extreme over-representation of black people on the NDNAD represents yet another weight on the scale. We are alarmed at the total lack of consideration given to this issue in the consultation document.
- We are apprehensive about the poor evidence base on which the Home Office is proposing to establish its retention policy.
  - The proposed policies undermine the most basic principle in criminal trial – that everyone is innocent until proved guilty.
  - The use of evidence in the consultation document implies that the Government regards a substantial part of black children, and the overwhelming majority of young black men, to be potential criminals.

## Over-representation of black people on the National DNA Database

- The Home Office is no doubt aware of the statistics relating to the over-representation of black people on the DNA Database, but it is worth summarising these<sup>1</sup>:
  - 27% of the entire black population is on the NDNAD.
  - 42% of the male black population is on the NDNAD.
  - 77% of young black men are on the NDNAD.
  - 9% of the Asian population is on the NDNAD.
  - 6% of the white population is on the NDNAD.
  - 57% of innocent DNA samples taken in London are from the black population.
  - According to GeneWatch UK, 23% of all black children aged 10-17 are on the NDNAD.
- We accept that the gross over-representation of black people on the NDNAD is not due to an intrinsic fault within the database itself. Yet the striking nature of these statistics is impossible to ignore.
- Given the discrimination black people are subjected to in the CJS as a whole – e.g. police stop-and-search practices where black people are 7 times more likely to be stopped and search than white people,<sup>2</sup> or sentencing where black defendants are less likely to be convicted of a crime than their white counterparts – disproportionality of innocent black people on the NDNAD was both inevitable and foreseeable. 10 years on from the Stephen Lawrence Inquiry, it is clear that there are still unequal outcomes for different ethnic groups in the criminal justice system. The gross over-representation of black people on the NDNAD is one of the many serious consequences of this. Nonetheless, no Race Equality Impact Assessment has been conducted to date.
- We are concerned about the lack of justification for retaining DNA samples of innocent people, and the lack of consideration of its effect on race equality or community cohesion. The consultation

---

<sup>1</sup> Statistics are drawn from: <http://www.theyworkforyou.com/debates/?id=2008-02-29b.1425.0>

<sup>2</sup> Rollock, Nicola (2009) *The Stephen Lawrence Inquiry – 10 Years On*. London: Runnymede Trust. Available under: <http://www.runnymedetrust.org/publications/119/74.html>

document states: “The existence of a profile on the database does not indicate innocence or guilt of the individual to whom it relates.” (p. 8) This is a subjective value judgement, and one which the Nuffield Council on Bioethics disagree with:

[T]here are reasons to believe that erroneous implications concerning ‘criminality’ may be drawn from the mere fact that a person’s profile is on the NDNAD, even if inclusion signifies only that they have once been arrested. Indeed, the explicit justification for the extent of the Database is precisely that it is intended to represent the actual or likely criminal community ... There is thus little doubt that it is not irrational for a person to object to the retention of their biological sample and DNA profile on the Database if they have never committed a criminal act in their whole life nor will ever do so.<sup>3</sup>

- Thus, the Nuffield Council on Bioethics contradicts the view that the NDNAD is morally neutral, as the consultation document implies.
- This is a particular concern to us. The criminalisation of black people in Britain has a long and ugly history, and the extreme over-representation of black people on the NDNAD represents yet another weight on the scale. We are alarmed at the total lack of consideration given to this issue in the consultation document, which seems to nonchalantly dismiss it on the basis of a supposed moral neutrality of the NDNAD.
- Again, the Nuffield Council on Bioethics is unambiguous on this point:

[T]he disproportionate over-representation of black ethnic minorities on the NDNAD is a matter of considerable concern, even if this arises from policing practice in making arrests rather than a fault with the NDNAD. Such disparities increase the risk of stigmatisation attendant on being known to have a profile on the NDNAD and can potentially lead to further alienation of whole minority ethnic communities.<sup>4</sup>

### **The National DNA Database and evidence based policy making**

- The proposal to keep the DNA profiles of those arrested but not convicted for six years is justified on the basis of a study conducted by the Jill Dando Institute (JDI). The research may have its merits, but due to its insufficient account of the methodology used – no clues are given on the nature of the sample, except that it stems from a Metropolitan Police Service area and that its size is ‘modest’ – it is difficult to ascertain how robust it is.
- We would maintain, however, that a piece of research which will have a significant impact on important policies – in this case, providing the foundation of the justification for keeping innocent people on the NDNAD – should be far more methodologically transparent, and be subjected to a peer review process **before** it informs policy.
- The consultation document admits that it is a “controversial assertion” that “the risk of offending following an arrest which did not lead to a conviction is similar to the risk of reoffending following conviction”. (p. 15) Such an assertion should not be controversial, but a matter of fact. Although the lack of methodological transparency in the JDI study impedes a sensible critique, we have reason to doubt its outcomes and their interpretation by the Home Office.

---

<sup>3</sup> Nuffield Council on Bioethics (2007) *The Forensic Use of Bioinformation: Ethical Issues*. Cambridge: Cambridge Publishers Ltd. p. 33-34

<sup>4</sup> *Ibid.*: p. xvii

- By the study's logic, those who are currently on the NDNAD are more likely to commit a crime than the general population. However, the over-representation of black people on the database directly contradicts this view. In spite of the over-representation of black people in the CJS, there is evidence to suggest that black people have lower offending rates than white people: 42% of white people **commit an offence** in their lifetime, compared with 28% of black people; 21% of white people **commit a serious offence** in their lifetime, compared with 14% of black people. Thus, should the conclusions of the JDI institute be valid, we should expect an *under*-representation of black people on the database.
- In this respect, we would alert the Government to two serious implications for citing this piece of research.
- Firstly, the outcomes of the study, and the way the Government is using it to justify keeping DNA samples from innocent individuals, amounts to a severe challenge to the principle of presumption of innocence. Those who are arrested but not convicted are no longer **innocent until proven guilty**. Rather, they are treated as potential criminals. Should the Government wish to undermine this most basic principle of criminal trial – as affirmed in article 11 of the Universal Declaration of Human Rights and article 48 of the Charter of Fundamental Rights of the European Union – and adopt a policy of pre-emption, we suggest that this should be done on a more solid evidence base.
- Secondly, using the study to justify keeping the DNA samples of 23% of all black children and 77% of young black men amounts to saying that 23% of all black children and 77% of young black men are likely to commit a crime – in other words, that the Government regards a substantial part of black children, and the overwhelming majority of young black men, to be potential criminals. This is clearly an unacceptable position, for the simple reason that it is empirically false; in the year 2003–04, over 92% of young black people were not subject to disposals in the youth justice system.<sup>5</sup>
- Bizarrely, the JDI study has nothing to say on race and ethnicity, except that an analysis by ethnicity was impossible. Given the massive over-representation of innocent black people on the database – especially in London, from where the study sample was purportedly drawn – we find this highly questionable and indicative of serious methodological short-comings.
- For these reasons, we cannot presently accept the findings of the Jill Dando Institute research, and we recommend that it should not be used to inform policy until it has undergone a process of peer review.

## **Conclusion**

- We urge the government to tailor its response to the ruling by the European Court of Human Rights in spirit of the judgement, rather than attempting to comply with the ruling in the narrowest legalistic way possible.
- The commissioning of the JDI research seems highly suspect. There is a vast criminological literature on re-offending rates, ignored both by the author of the study as well as the consultation document. We cannot escape the impression that the Home Office is cherry picking evidence to suit its policies.

---

<sup>5</sup> Home Affairs Select Committee (2007) *Young Black People and the Criminal Justice System*. London: The Stationary Office Ltd.

- The over-representation of black people on the NDNAD is emblematic of the discrimination black people are subjected to in the CJS as a whole. Home Office must take a holistic approach in reducing the number of innocent black people who are subjected to disposals in the CJS. The first step is to acknowledge the continuing role of institutional racism in the CJS.
- Official statistics for the breakdown of ethnic minorities are not readily available. We recommend that statistics on the NDNAD should form part of the minimum s95 data set, and should be reported regularly to the Home Office or other central departments.
- It is clear to us that the over-representation of black people on the NDNAD is unacceptable and in breach of the Race Relations (Amendment) Act. Reducing this should be a priority. We fail to see how the proposals in the consultation document will meet the Government's duty set out in the Race Relations (Amendment) Act, particularly to eliminate unlawful discrimination and to promote good race relations. Given the link between over-representation throughout the entire CJS and over-representation on the NDNAD, the only solution we can see is to remove all innocent people from the database.

Thank you for considering our response and the concerns and issues we highlight. We look forward to learning the result of the consultation process and the next steps the government intends to take on the National DNA Database.

If you would like to discuss any aspect of this response, please contact Rob Berkeley (Director) at the Runnymede Trust, 7 Plough Yard, Shoreditch, London EC2A 3LP Tel: 020 7377 9222.

The Runnymede Trust  
07/08/2009

*Further information about the Runnymede Trust can be found on our website: [www.runnymedetrust.org](http://www.runnymedetrust.org)*