

Keeping the Right People on the DNA Database: Science and public protection

Black Mental Health UK Written Consultation Response

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1 Introduction

Black Mental Health UK (BMH UK) was established to work toward a new model of health promotion to address the social exclusion and stigma associated with mental illness within minority communities. BMH UK's focus is on equipping African Caribbean communities to engage with legislators, policy makers and service providers on equal terms with a view to improving the Black service user's experience and reduce the over representation of people from these communities at the coercive end of psychiatric care, in custodial settings and on the National DNA Database.

2 Race Equality Impact Assessment

This Government consultation on the law governing the retention of innocent DNA on the National DNA Database, although long overdue, is welcome. However the Home Office's decision to omit publicising this consultation or the issue of the DNAD among minority groups has led to an absence of BME voluntary sector and key agencies within from African and Caribbean engaging with this process.

All public sector institutions have a legal duty to fulfill the requirements of anti-discrimination and equalities legislation and promote equality. The need for this to be upheld over this issue is of particular importance given the disproportionate impact that any decision that comes out of this consultation will have on Britain's black communities.

BMH UK point to the need for a robust Race Equality Impact Assessment, which will shape both primary legislation and policy on the DNAD. The consultation process also needs to include stakeholders from African Caribbean communities from London and every other major city where significant numbers of people from this group live.

The majority of key stakeholders from these communities are currently are not even aware of the disproportionate impact that the DNAD is having on Black Briton. There is the concern that the continued exclusion of black groups from his process is likely to damage community relations and reinforce the perception that the DNAD is an attempt to criminalise this group by stealth.

'The decision of the Minister to delay the deletion of records of people found innocent of certain crimes is unfortunate and does not take into account the disproportional effect that this will have on sections of society. A simple equality impact assessment would reveal that Black communities and Black men in particular are not being fairly treated with this decision. We hope that after hearing all the main points, the Minister will reconsider this position and move more in line with the European court ruling,' - Olu Alake, President, 100 Black Men of London.

3 Mental Health

African Caribbean service users and the DNAD

The Stephen Lawrence Inquiry exposed the institutional racism within the Metropolitan police service across England and Wales and also acknowledged that the police, particularly custody officers, do not have adequate training to be able to sensitively manage a situation when a person is distressed and causes disturbed behaviour¹.

However the police remain first point of contact for a person in a mental health crisis¹ and police cells are routinely used as a place of safety for anyone detained under section 136 of the Mental Health Act. An estimated 11,500 people were detained in police custody as a place of safety in 2005 and 2006¹.

Unpublished research by the Metropolitan Police suggests that 15% of incidents officers deal with on a daily basis are mental health related¹.

Department of Health research indicates that people from African Caribbean communities are 44% more likely to be sectioned under the Mental Health Act than their white counterparts¹, this is despite the fact that black people have a similar prevalence for mental illness as any other ethnic group¹.

Officers dealing with such cases are not equipped to be able to distinguish between a vulnerable service user in crisis and in urgent need of health care and an offender. Research is not currently available on the numbers of mental health service users who have had their DNA taken while in police custody. However there is an extensive amount of anecdotal evidence, which indicates that there are large numbers of innocent mental health service users who had their DNA taken while in the process of accessing mental healthcare¹.

Current practice has effectively criminalised this already stigmatised group and the suggestion of removing innocent DNA from the criminal database after six or 12 years only if an individual is not rearrested will be of no benefit to this group. This is because many service users have repeatedly found themselves in police custody in the process of accessing mental health care.

'Part of justice is that you are considered innocent until proven guilty. This practice blurs that boundary and begs the questions, why are people on the database if they haven't committed any crime. People needing mental health care are vulnerable and when people are vulnerable it is important to protect them. Part of the freedoms and civil liberties we have in this country is that we are able to keep what belong to us, and there is nothing more personal than our DNA,' Rev Paul Grey, pastor of Nuneaton branch of the New Testament Church of God and former service user¹.

4 Race equality

British society is both multicultural and multiracial and from this comes the need for primary legislation on the DNAD that reflects and acknowledges vital issues around 'culture' and 'race' and counteracts institutional racism¹.

The Home Affairs Select Committee report has revealed that racism is within the police force is still a problem¹, and the over representation of innocent people from African Caribbean communities on the DNAD is further evidence of this. BMH UK note with concern the absence of any consideration given to the issue of racial equality in the Home Office consultation document.

The disproportionate numbers of innocent people from African Caribbean communities who have their DNA on the criminal database is a matter of considerable concern, and arises from policing practice rather than criminal activity on the part of black people. It is important to note that people from African Caribbean communities have lower offending rates than their white counterparts¹, but the current disparities of this group on the DNAD poses a danger of further alienating a whole section of society. The Government would be wise to note that their proposed plans will have serious consequences for community relations and community policing.

BMH UK concur with the recommendations made by the Human Genetics Commission recommendations that the DAND should be taken out of the control of the police and the Home Office altogether and note their warnings that it's current use is one step too far towards a totalitarian state¹. BMH UK would like re-emphasis that the fault of the lies in making arrests rather than with the DNAD.

Table 1

Statistics on the NDNAD and African Caribbean communities

27 % of the entire black population are on the NDNAD¹.
42 % of the male black population are on the NDNAD¹
77 % of young black men are on the NDNAD¹
9 % of all Asians are on the NDNAD¹
6 % of the white population are on the NDNAD¹
Black people have lower offending rates than their white counterparts¹.
42 % of white people and 28% of black people have committed an offence in their lifetime¹

'Whole communities have found themselves criminalised by this system. For an innocent citizen to be expected to put up with a six to 12 year wait to have their DNA removed from a criminal database can hardly be deemed to be justice,' Matilda MacAttram director of Black Mental Health UK.

5 Children – impact of DNAD on black Britain’s under 18 population

Like adults’ children from African Caribbean communities are disproportionately represented on the NDNAD. The available information shows that the DNAD holds the genetic profiles of close to a quarter of all black children resident in the UK. In the last five years (April 2004 to March 2009) over half a million children (aged 10-17) have been added to the DNA database in England and Wales (an estimated 549,428 children) (see table 2).

This figure includes nearly 10% of all white children in the population (an estimated 9.17%, or 438,951 children) and nearly a quarter of all black children (an estimated 23.28%, or 44,557 children) (see table 2).

The stigma of such extreme over representation for the children of one racial group has grave social consequences and makes the full implementation of the European ruling calling for the destruction of all DNA samples and profiles held on the DNAD critical.

Disturbingly the Home Office consultation paper does not make any attempt to deal with the issue of the over representation of ethnic minority minors. Indeed the government’s proposals are likely to enhance this problem and could effectively criminalise a generation of children from Briton’s African and Caribbean communities.

Table 2

DNA profiles from 10-17 year olds added to NDNAD per year (England & Wales)

Year	Unknown	Asian	Black	Chinese, Japanese or SE Asian	Middle Eastern	White North European	White South European	Total
2004-05	5,367	4,448	8,177	296	389	93,229	1,429	113,335
2005-06	8,736	5,830	11,392	375	589	116,343	1,769	145,034
2006-07	9,754	6,982	12,951	423	651	116,928	2,091	149,780
2007-08	5,267	6,132	9,441	475	744	98,179	1,695	121,933
2008-09	2,803	6,079	9,254	486	1,072	79,862	1,888	101,444
Total over 5 years	31,927	29,471	51,215	2,055	3,445	504,541	8,872	631,526

6 Community cohesion

The impact of the Government's current policy for collecting and storing DNA fundamentally blurs the line between innocence and guilt and has effectively criminalised the whole of the black British community living in the UK.

Every family from the African Caribbean community will have at least one member profiled on the DNAD, even though people from this group are less likely to commit a crime than a white person.

It is unacceptable for those who support the fair rule of law to condone this. The over-representation of black people on the NDNAD is unacceptable and in breach of the Race Relations (Amendment) Act. BMH UK are of the view that reducing this should be a priority.

Also the exclusion of major stakeholders from the community in this consultation is seen as indicative of racist practices which have led to this current state of affairs.

It is an intrusion for the state to hold the DNA profiles of individuals who are innocent on a criminal database, as this treats them as suspects rather than citizens. This practice is viewed as part of the government's increasing control over the very people that they have been elected to serve.

'If you want the BME communities to trust the police and the establishment then they must be open and transparent. What are the reasons for storing such large numbers of innocent peoples DNA? It undermines community cohesion and a lot of good work that has been done,' Pastor Desmond Hall, Christian Together in Brent

7 Consulting with communities on the Home Office consultation

Black Mental Health UK and GeneWatch UK organized the only public seminar on the impact of the over representation of innocent people from African Caribbean communities on the DNAD and the Home Office Consultation on Friday 17th July. This event was hosted by the Policy Engagement Network, the Information and Innovation Group at the London School of Economics.

The half day seminar was attended by well over 100 delegates many of whom knew of someone or were actually on the database themselves. It was the only event of it's kind to offer the public critical information about this consultation and the DNAD.

Black Mental Health worked with the black press and community radio to publicise this issue and the event.

All delegates requested for more information and also asked for events of this kind to be held in other cities so that those affected by this issue could get involved in the Home Office consultation. This exercise highlighted the importance of well organised stakeholder meetings that reach into the heart of these communities. Speakers at this event included shadow justice minister, David Burrowes MP, Dr Gus Hosein, visiting fellow at the LSE, Dr Helen Wallace, director of Gene Watch UK, Matilda MacAttram, director of Black Mental Health UK, Olu Alake, president of 100 Black Men of London, Alan Brown head of police powers, Home Office and Patrick Vernon, director of the Afyia Trust.

8 Flawed Science – The need for evidenced 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 upon which the proposals are based has been heavily criticised due to its insufficient account of the methodology used¹. BMH UK would maintain that research which will have a significant impact on important policies and in this case and provide the foundation of the justification for keeping innocent people on the NDNAD, should be far more methodologically transparent. We also advise that such research be subject to a peer review process before it informs policy.

BMH UK Would also caution that the government are careful not to conflate risk of re-arrest with risk of re-offending. There is no direct evidence that the more DNA is retained the more crimes are solved. In terms of preventing crime there is also no evidence about the databases deterrent value. Focusing on the probability of people in certain categories offending or reoffending also tends to underplay the privacy right against which the diminution or elimination of such risk is to be balanced.

9 BMH UK's position on the NDNAD

BMH UK's view is that the government has interpreted the case of *S and Marper v United Kingdom* judgment too narrowly. Proposals to retain for up to twelve years the DNA profiles of persons arrested but not convicted are unjustified and unnecessary. If implemented, it would in effect be as disproportionate as the current blanket retention policy.

Key aspects of the Home Office's proposals lack the necessary level of proportion or lack sufficient justification to be Convention compliant and as such if it were to become law would breach Article 8 of the Convention on Human Rights Act and would open the Government up to legal action, at great expense to the tax payer.

We see believe that the collecting and storing the DNA of innocent people should end. Only if a person is convicted and sentenced should their DNA profile be put on the DNAD. If no charges are brought, and where a suspect is acquitted at trial, the DNA profile and the sample should be destroyed.

This should happen in all cases except where those suspects are accused of serious sexual or violent crimes. In this instance records should be stored for a three year period and then destroyed after that time in line with Scottish system.

- ¹ Home Office (1999) The Stephen Lawrence Inquiry, McPherson Report, Home Office.
- ¹ Sainsbury Centre for Mental Health. P. Bather, R. Fitzpatrick and M. Rutherford (2008) Briefing 36 The Police and Mental Health. Sainsbury Centre for Mental Health
- ¹ IPCC Research and Statistics Series: Paper 11, M. Docking, K. Grace and T. Bucke. (2008) Police Custody as a 'Place of Safety': Examining the use of section 136 of the Mental Health Act 1983. IPCC
- ¹ Sainsbury Centre for Mental Health. P. Bather, R. Fitzpatrick and M. Rutherford (2008) Briefing 36 The Police and Mental Health. Sainsbury Centre for Mental Health
- ¹ Mental Health Act Commission. Count Me In Census 2007, Commission for Healthcare Audit and Inspection
- ¹ National Centre for Social Research EMPIRIC Report (2002) HMSO. National Centre for Social Research.
- ¹ Black Mental Health UK. (2008) Westminster DNA database debate to highlight the criminalisation of vulnerable black patients BMH UK
- ¹ Black Mental Health UK (BMH UK) (2008) New Survey shows opposition to adding innocent mental health patients to DNA database.
http://www.blackmentalhealth.org.uk/index.php?option=com_content&task=view&id=423&Itemid=144 (2008). BMH UK
- ¹ Home Office (1999) The Stephen Lawrence Inquiry Report
- ¹ TSO. House of Commons (2009) Home Affairs Select Committee. The Macpherson Report 10 years on session 2008-09. TSO <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/427/427.pdf>
- ¹ C. Sharp and T. Budd (2005) Minority Ethnic Groups and Crime: Findings from the Offending, Crime and Justice Survey 2003. Home Office online report 33/05
- ¹ BMH UK. 2008 Human Genetics condemnation of DNA database welcomed. BMH UK
http://www.blackmentalhealth.org.uk/index.php?option=com_content&task=view&id=390&Itemid=117
- ¹ They Work For you (Feb 2008) <http://www.theyworkforyou.com/debates/?id=2008-02-29a.1425.0&s=speaker%3A11350#g1425.2>
- ¹ They Work For you (Feb 2008) <http://www.theyworkforyou.com/debates/?id=2008-02-29a.1425.0&s=speaker%3A11350#g1425.2>
- ¹ They Work For you (Feb 2008) <http://www.theyworkforyou.com/debates/?id=2008-02-29a.1425.0&s=speaker%3A11350#g1425.2>
- ¹ They Work For you (Feb 2008) <http://www.theyworkforyou.com/debates/?id=2008-02-29a.1425.0&s=speaker%3A11350#g1425.2>
- ¹ They Work For you (Feb 2008) <http://www.theyworkforyou.com/debates/?id=2008-02-29a.1425.0&s=speaker%3A11350#g1425.2>
- ¹ <http://www.theyworkforyou.com/debates/?id=2008-02-29a.1425.0&s=speaker%3A11350#g1425.2>
- ¹ C. Sharp and T. Budd (2005) Minority Ethnic Groups and Crime: Findings from the Offending, Crime and Justice Survey 2003. Home Office online report 33/05
- ¹ The Guardian 2009 A. Hirsch. DNA database plans based on "flawed science", warn experts". Available from: <http://www.guardian.co.uk/politics/2009/jul/19/dnadbatabase-crime-privacy-discrimination>. The Guardian



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