

# HUMAN GENETICS

## Parliamentary Briefing No.6



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## The police National DNA Database: an update.

Since April 2004, police forces in England and Wales have been able to take DNA samples without consent from anyone arrested on suspicion of any recordable offence - including begging, being drunk and disorderly and taking part in an illegal demonstration. Both DNA profiles (the string of numbers used for identification purposes) and the DNA samples they are obtained from (which contain more sensitive genetic information) are kept permanently even if the person arrested is never charged or is acquitted.

The police National DNA Database (NDNAD) is now the largest DNA database in the world. More than 2.7 million individuals (5.2% of the UK population)<sup>1</sup>, including over 100,000 adults and 24,000 children who have never been charged or cautioned for any offence, are kept permanently on the Database.

This briefing updates GeneWatch's 2005 Parliamentary Briefing on the National DNA Database and considers evidence:

- that the permanent retention of DNA from innocent people has contributed little to tackling crime;
- that DNA profiles and samples continue to be used for controversial genetic research without consent and without any independent oversight;
- that there is growing public and political concern about the Database.

In May 2006, the Scottish Parliament rejected proposals to bring its legislation into line with England and Wales, after concerns about the implications for human rights were raised by all political parties. This decision leaves England and Wales isolated internationally as the only countries where DNA from thousands of innocent people, including children, can be kept permanently by the police. GeneWatch believes that the law in England and Wales – which was hastily adopted – now needs to be revisited.

## The DNA expansion programme: Home Office figures

The chances of matching a DNA profile from a crime scene to an individual's DNA profile (the DNA detection rate) has not significantly increased despite the number of individuals' DNA profiles in the Database expanding from 2 million to 3 million.

*"The arguments for the retention of DNA profiles of suspects who are not ultimately convicted in the interests of fighting crime need to be balanced against any potential infringement of civil liberties arising from this policy...We believe that the recent expansion of the database would make a review of the impact of the NDNAD on the detection and deterrence of crime timely".* House of Commons Science and Technology Committee, March 2005.<sup>2</sup>

*"It is arguable that the general retention of profiles from the un-convicted has not been shown to significantly enhance criminal intelligence or detection".* The Police Liaison Officer, Scottish DNA Database, 2005.<sup>3</sup>

In January 2006, the Home Office published the first detailed figures on its DNA Expansion Programme.<sup>1</sup> An analysis of the Home Office figures, published by GeneWatch UK<sup>4</sup>, shows that the number of crimes detected using the DNA Database *fell* in 2004/05, when the DNA profiles of 124,347 people who had been arrested but subsequently not charged or cautioned were first retained in England and Wales.

The analysis shows that the success of the Database is determined largely by the number of DNA profiles collected from *crime scenes*, not from individuals. The chances of matching a DNA profile from a crime scene to an individual's DNA profile (the DNA detection rate) has not significantly increased despite the number of individuals' DNA profiles in the Database expanding from 2 million (in 2002/03) to 3 million (in 2004/05). Only 0.35% of crimes were detected using DNA in 2004/05 and this percentage has stayed constant for the last three years. Most of these are volume crimes (such as burglaries and thefts). This figure overestimates the value of the Database, because only about half were new detections (i.e. had not already been made by other police work) and many detections do not lead to convictions.

The Home Office appears to accept that the retention of DNA from innocent people has had little impact on crime detection rates<sup>5</sup> and seems unable to quantify the claimed benefits.<sup>6</sup> In Parliament, ministers have repeatedly provided figures for DNA matches, rather than detections or convictions. This tends to exaggerate

the contribution of the Database and its expansion to solving crime.

DNA matches are much more frequent than successful prosecutions - they will include many matches with the DNA of victims and of passers-by. Entering profiles on the Database is useful to detect past crimes, but *retaining* profiles from innocent people is more controversial and it is this practice that appears to contribute little to tackling crime. Despite the lack of evidence on successful prosecutions, the figures on matches have repeatedly been used by ministers to justify the changes in the law<sup>7</sup> and have also been misreported as 'solved' crimes.<sup>8</sup>

### ***Retention of children's DNA***

*"I'm worried that it will scar my record for life. It might come up if I went for jobs, such as with children – not that I've been in trouble, but just that I'm known to the police."* Caitlin Bristow, aged 15, arrested in England following a counter-claim after reporting an assault.<sup>9</sup> Never charged with any offence.

More than 51,000 children who have never been charged or cautioned with any offence, including 30 under the age of 10, have had DNA samples taken by the police. 24,000 of these children are still under the age of 18. In total, about 700,000 children are on the Database.<sup>10</sup> Research has found that both parents and children also have reservations about samples being taken for petty crime and feel that there are dangers in stigmatising young people for a one-off act.<sup>11</sup>

### ***Racial bias***

More than a third of black men in the UK population are now on the National DNA Database, prompting the Black Police Association to call for an investigation.<sup>12</sup> Black people in the West Midlands are almost five times as likely as white people to have their details recorded.<sup>13</sup> The targeting of men of Caribbean origin (including police officers) for DNA samples by Operation Minstead (a hunt for a serial rapist in South London) has been particularly controversial.<sup>14</sup>

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## Research uses of the Database and samples

Stored DNA samples have been used for genetic studies of the male Y-chromosome, without the consent of the people involved, as part of a controversial attempt to predict ethnicity from DNA.

*"It is extremely regrettable that for most of the time that the NDNAD has been in existence there has been no formal ethical review of applications to use the database and the associated samples for research purposes. The recent initiation of negotiations with the Central Office for Research Ethics Committees is too little too late".* House of Commons Science and Technology Committee, March 2005.<sup>2</sup>

In March 2005, the Home Office was severely criticised by the House of Commons Science and Technology Committee for implying that it had resolved concerns about research uses of the National DNA Database by including a member of the Human Genetics Commission on its Board.<sup>2</sup> A ethics committee, which MPs were told was being discussed, has still not been established.

The commercial company LGC, which analyses some DNA samples for the police, has retained its own "mini-database" of DNA records, despite claims that access to the DNA Database is carefully restricted and controlled.

Freedom of Information requests by GeneWatch UK to the NDNAD Board have now shown that since the year 2000, 19 research projects have been allowed and 14 refused.<sup>15</sup> The requests revealed that stored DNA samples have been used for genetic studies of the male Y-chromosome, without the consent of the people involved, as part of a controversial attempt to predict ethnicity from DNA. This type of research could also inadvertently reveal other genetic characteristics such as a man's risk of infertility. Emails supplied to GeneWatch also show that the commercial company LGC, which analyses some DNA samples for the police, has retained its own "mini-database" of DNA records, despite claims that access to the DNA Database is carefully restricted and controlled. Despite numerous requests for information, the list of research projects is still incomplete and, in addition, the decision making process remains inadequate and unclear.

## Access by foreign governments

All 519 requests for details from the Database made by foreign countries since 2004 have been granted.<sup>16</sup> Details about why the requests were made are not publicly available, nor are the number of earlier requests. The European Union has proposed a Draft Framework Decision on exchanging information between law enforcement agencies in member states.<sup>17</sup> The British Government has argued that this should include direct on-line access to the National DNA Database by other countries. MPs have raised concerns

about giving widespread access to sensitive data on so many people – for example, many more people are on the UK database compared to France (which keeps DNA profiles only from people convicted of serious offences).<sup>18</sup> There is no formal, global provision to safeguard the confidentiality of DNA profiles when they are exchanged between police forces.<sup>19</sup>

### **Public and political controversy**

*“It is important the Police maintain the support and consent of the public in order to effectively undertake their duty to investigate crime. Any proposed legislation to introduce blanket retention will serve to diminish this support”.* The Police Liaison Officer, Scottish DNA Database, 2005.<sup>3</sup>

Since the decision to retain large numbers of innocent people on the Database, there has been an increase in requests for removal<sup>20</sup> and the number of people volunteering to be included has also fallen.<sup>21</sup> Requests for removal are likely to increase: under current laws the Database is expected to expand to include 25% of the adult male population, along with about 7% of adult women.<sup>22</sup>

Controversy has raged about the inclusion of children on the Database, its bias towards the inclusion of black men, and the release of data to foreign countries. The increasing use of a new technique called Low Copy Number (LCN) DNA analysis – which allows a DNA profile to be extracted from a single cell – has led the Director of the Forensic Institute in Edinburgh to warn that innocent people may be wrongly identified as suspects as a consequence of being on the Database.<sup>23</sup> Recently, proposals to bring Scottish law in line with England and Wales were dropped in favour of a much more limited expansion of police powers.

### ***The debate in Scotland***

In contrast to the lack of debate in England and Wales, the Scottish Executive held a public consultation about proposals to change Scottish law to allow the permanent retention of all DNA taken on arrest. An amendment to implement this change was subsequently withdrawn before a vote by the Justice 2 Committee in March 2006. Concerns expressed by Committee members included

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the lack of evidence that the policy had contributed to tackling crime in England and Wales; the privacy issues associated with keeping DNA samples; and the erosion of the presumption of innocence.<sup>24</sup>

**The Scottish Parliament's decision leaves England and Wales isolated internationally as the only countries where DNA can be kept for life even if a person is never charged or convicted of any offence.**

*"The ballooning of the database in England and Wales has not produced a comparable increase in the detection and prevention of crime".* Jeremy Purvis, MSP (LibDem).<sup>24</sup>

In May 2006, the Scottish Parliament adopted a new compromise amendment, which allows the temporary retention of DNA from people charged with but not convicted of serious violent or sexual offences in Scotland, for a period of up to 5 years. Retention beyond 3 years requires the police to apply for approval from a Sheriff. The Scottish Parliament's decision leaves England and Wales isolated internationally as the only countries where DNA can be kept for life even if a person is never charged or convicted of any offence. The adopted compromise was supported by the Scottish Executive but was opposed by all the other parties, which continued to express concerns that it did not sufficiently protect civil liberties.

*"We support [the compromise amendment], which represents a sensible balance between those who believe that the police should retain all the DNA that they take and those who argue that police powers to keep DNA should be limited".* Hugh Henry MSP, Deputy Minister for Justice, Scottish Executive (Lab).<sup>25</sup>

*"A basic tenet of Scots law is that someone is presumed innocent unless proven guilty. I am afraid that keeping the DNA of a person who is found not guilty is a total contradiction of those fundamental beliefs".* David Davidson, MSP (Con).<sup>25</sup>

**A massive expansion of the Database is taking place, which has contributed little to tackling crime but risks a loss of public trust in police use of DNA.**

## Conclusions

The Government has failed to implement important recommendations made by the Science and Technology Committee and by the Human Genetics Commission, which could help to improve transparency and trust in the National DNA Database. A massive expansion of the Database is taking place, which has contributed little to tackling crime but risks a loss of public trust in police use of DNA.

GeneWatch believes the law should be changed and that more public debate is needed to determine the appropriate balance between crime detection, human rights and privacy. Necessary safeguards include:

- time limits on the *retention* of people on the Database, related to the seriousness of the offence and whether a person has been convicted;
- destroying individuals' DNA *samples* once an investigation is complete, after the DNA profiles used for identification have been obtained;
- an end to the practice of allowing companies to undertake controversial genetic research using the Database;
- the creation of an independent, transparent and accountable governing body.

**Necessary safeguards include time limits on the retention of people on the Database and the destruction of individuals' DNA samples.**

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