CAJ
Committee on the Administration of Justice

CAJ's submission to the

Home Office – Policing Powers and Protection Unit re *Keeping the Right People on the DNA Database*

July 2009

Submission No. S.239	**Submission No. S.239**
Price: £1.50	**Price £1.50**

Promoting Justice / Protecting Rights

45/47 Donegall Street, Belfast,
BT1 2BR
www. caj.org.uk
Tel: (028) 90961122
Fax: (028) 90246706
Email: info@caj.org.uk

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Committee on the Administration of Justice (CAJ) Ltd

45/47 Donegall Street, BELFAST BT1 2BR
Northern Ireland

Tel: (00 44 (0) 28 9096 1122 Fax: (00 44 (0) 28 9024 6706
Email: info@caj.org.uk Web: www.caj.org.uk

Promoting Justice / Protecting Rights

Winner of the Council of Europe Human Rights Prize

Alan Brown
DNA Consultation
Home Office
Policing Powers and Protection Unit
4th Floor Peel NW
2 Marsham Street
London
SW1P 4DF

DNAconsultation@homeoffice.gsi.gov.uk
Cc: policepowers@nio.gsi.gov.uk

28 July 2009

Re: Keeping the Right People on the DNA Database

Thank you for your letter of 7 May 2009 inviting the Committee on the Administration of Justice (CAJ) to present our views on the proposals made in the **Keeping the Right People on the DNA Database** document. As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Devolution of Policing and Justice Issues in Northern Ireland

The Committee on the Administration of Justice believes that any changes to the law dealing with the retention of DNA profiles and samples should be left until after the anticipated devolution of policing and justice powers which would allow for greater attention and analysis by local ministers and law makers.

Having said that we offer the following comments about the proposals:

General Comments

CAJ commends the Government for its intention to revise its policy on the retention of DNA and fingerprint data. **We particularly applaud the proposal to destroy all samples taken from suspects.**

However, we do not think that the proposed revisions go far enough. We recommend that Northern Ireland follow the example of Scotland in relation to DNA data retention as the law there is significantly different from that in England, Wales and Northern Ireland, and indeed is different from the proposals in the public consultation document.

Specific Comments

Bearing in mind the judgment of the European Court of Human Rights (ECtHR) in the S. and Marper case CAJ remains particularly concerned about the following aspects of the proposals:

- The consultation document proposes (section 2.4) that 'adults convicted of a recordable offence will have their profiles retained indefinitely'. It is necessary to bear in mind that while 'recordable offences' includes violent acts such as murder and manslaughter, 'recordable offences' also includes poaching, begging and 'taking or riding a pedal cycle without owner's consent'. That the DNA profile of an individual who is convicted of trespassing in search of game should be retained indefinitely seems at odds with the intention of maximising public protection. **CAJ suggests that the DNA profile of those *convicted of only the gravest crimes*, such as serious violent or sexual offences, should be retained indefinitely, although CAJ believes that consideration should be given to reducing the length of time for keeping DNA profiles of those who have been convicted**.

- The retention of the DNA profile of innocent adults for up to 12 years (determined by the crime for which they were *not* convicted - section 2.4) is clearly **at odds with the presumption of innocence** (Universal Declaration of Human Rights article 11(1). Even the title of the consultation document *Keeping the Right People on the DNA Database* implies that those individuals on the database are guilty; that the 'right people' (ie those on the database) are guilty people.

- The ECtHR judgment, which cites a report by the Nuffield Council on Bioethics,[1] concludes that the capacity of DNA profiles 'to provide a means of identifying genetic relationships between individuals is in itself sufficient to conclude that their retention interferes with the right to the private life of the individuals concerned'. The judgement states that the Nuffield report 'also expressed concerns at the increasing use of the DNA data for familial searching, inferring ethnicity and non-operational research. Familial searching is the process of comparing a DNA profile from a crime scene with profiles

[1] Nuffield Council on Bioethics Report: "The forensic use of bio-information: ethical issues". http://www.nuffieldbioethics.org/

stored on the national database, and prioritising them in terms of "closeness" to a match. This allowed identifying possible genetic relatives of an offender. Familial searching might thus lead to revealing previously unknown or concealed genetic relationships.' **The potential violation of the right to respect for private life remains relevant.**

- **The proposal (section 2.4) to retain the DNA profile of all children under the age of 18 who have been arrested but not convicted of a 'serious violent or sexual or terrorism-related offence' for twelve years is unacceptable.** As mentioned above in relation to adults, this is clearly at odds with the presumption of innocence which is a tenet of common law. This right is specifically guaranteed for children by article 40(2)(b)(i) of the *UN Convention on the Rights of the Child (CRC).* The *CRC* also guarantees that any child accused of having committed a crime shall be 'treated in a manner consistent with the promotion of the child's sense of dignity and worth' (article 40(1)). Retaining DNA profiles for those who have not been convicted stigmatises them and paints them with the same brush as those convicted of committing crime. Whether or not the Government agrees that such a stigma could be the outcome of DNA retention, the ECtHR judgement noted that the applicant (S.) 'emphasised, finally, that retention of the records cast suspicion on persons who had been acquitted or discharged of crimes, thus implying that they were not wholly innocent.' Subsequently, the ECtHR concluded that 'the retention thus resulted in stigma which was particularly detrimental to children as in the case of S. and to members of certain ethnic groups over-represented on the database'. Moreover, it would appear that the proposals are not in the best interest of individual children and therefore contravene article 3 of the *CRC* which states that, 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. **Retaining forensic data of children requires that due attention is paid to children's rights and that relevant legislation is in observance of international standards.**

- The statement (section 2.8): 'We have selected the retention periods of 6 years and 12 years based on the likelihood of people who have been arrested and not convicted but who may go on to commit an offence' seems to imply that those who are not convicted are nonetheless guilty or that they are likely to commit a crime.

- The statement (section 4.5): 'the majority of the active criminal population is now believed to have its DNA recorded and police forces use DNA profiles to solve thousands of cases every year' is misleading and does little but raise expectations of victims and family members of victims which may or may not be fulfilled. The Nuffield Council on Bioethics and GeneWatch UK, two institutions with significant knowledge of the scientific aspect of this debate, have been sceptical in relation to the benefit of wide-spread retaining of DNA profiles. As was cited in the judgment in the S. and Marper case, the Nuffield report 'referred in particular to the lack of satisfactory empirical evidence to justify the present practice of retaining indefinitely fingerprints, samples and DNA profiles from all those arrested for a recordable offence, irrespective of

whether they were subsequently charged or convicted'. GeneWatch UK and a coalition of other organisations have launched a new website which attempts to debunk myths about the National Database. Significantly, one myth is that 'Keeping more people's records on the DNA database will make it more effective'. In fact, research suggests that 'keeping DNA profiles from convicted criminals has been shown to be effective, as has collecting more DNA from crime scenes. But keeping DNA profiles from unconvicted people on the Database has not helped to solve more crimes: the proportion of recorded crimes detected using DNA has not increased in the last 5 years, despite 2 million more people's records being kept'.[2]

- **CAJ opposes the proposal (section 8.6) to abolish the provision within PACE which allows a person to request to witness the destruction of his or her fingerprints.**

CAJ holds that negative implications of retaining DNA profiles, which raises questions in relation to the proportionality and necessity requirement under the *European Convention on Human Rights* (article 8), outweigh the benefit of possibly increasing public safety. Again, we would hope that the Home Office and the NIO would look to the Scottish system which balances individual rights and public safety in relation to destroying records of forensic data.

Thank you again for permitting CAJ to submit our views and we look forward to seeing the Home Office and NIO analysis of the consultation submissions.

Yours Sincerely,

Jacqueline Monahan
Criminal Justice Programme Officer

cc: Northern Ireland Office
Policing Powers and Custody Branch
Policing Policy & Strategy Division
Castle Buildings
Belfast
BT4 3SG

[2] http://reclaimyourdna.org/further-information/ten-myths-about-the-national-dna-database/