

To: Professional Standards Committee
From: Chief Constable
Date: 8th March 2010

RETENTION OF DNA

1. Background

- 1.1 The Criminal Justice and Police Act 2001 amended the Police and Criminal Evidence Act 1984, providing the police in England and Wales with the power to retain DNA samples and fingerprints, relating to persons following acquittal at court or other discontinuance of a case. Further, the Criminal Justice Act 2003 amended the Police and Criminal Evidence Act 1984, providing the police in England and Wales with the additional power to take DNA samples and fingerprints, from all persons detained at a Police Station having been arrested for a recordable offence.
- 1.2 This legislation thus allowed the Police to retain samples from those people who have been charged with an offence no matter whether they convicted or not. The latter in simplicity empowers the police to take such samples from those who have simply been arrested and no consideration as to whether the suspect has been charged or not. It is this legislation that was challenged at the European Court under the commonly known title 'S and Marper'. They successfully challenged the Criminal Justice Act legislation at the European court on the 4 December 2008, however the Home Office still have not changed the primary legislation.

2. Matters to Note

- 2.1 The Home Office advice is that we continue to comply with the powers as set out in the Criminal Justice Act 2003. We (the police service) are protected by Section 6(2) b Human Rights Act in acting under Section 44. This section provides that a public authority which is acting so as to give effect to primary legislation which can not be read in a way which is compatible with the Convention, does not act unlawfully".
- 2.2 In 2003 ACPO (Nationally) endorsed the retention guidelines that apply to records kept on the Police National Computer which includes to a degree data derived from DNA and Fingerprint samples. This was all as a result of the Bichard Inquiry, the public inquiry into the investigation of the murders of Holly Wells and Jessica Chapman in Soham.

To support the national guidelines the ACPO Criminal Records Office (ACRO) was set up to provide national guidance and support on this matter. As part of their remit the retention guidelines of DNA and Fingerprints fell to them and they have to date attempted to provide a standardised approach to records retention thus preventing a post code lottery. This is known as the exceptional case review and allows for the removal of records where the arrest may have been erroneous for a variety of reasons, eg no power, malicious complaint etc.

- 2.3 Once again ACPO (nationally) have signed up to follow such guidance and there is a detailed process in place through which requests to remove DNA and Fingerprint samples should be followed based on the advice supplied by the Home Office. However, despite the decisions that ACRO may supply the final decision sits with the local Chief Officer who is the data owner and can therefore independently remove or retain records as they see fit.

3. Cambridgeshire's Position

- 3.1 Cambridgeshire have to date fully complied with the national guidance and followed these procedures. Since 2004 we have had a number of requests (mostly since the 4th December 2008 ruling) from unconvicted arrestees wanting their samples removed. None of these have fulfilled the national criteria and as such their records have been retained national guidance.
- 3.2 However we have had a number of 'exceptional case' requests to have DNA Fingerprints and PNC records removed and these have followed the review procedure. To date we have amended eleven records, two specific arrests/ conviction data records have been removed although DNA and Fingerprints have been retained as they have other conviction history. The other nine have had their entire records removed. Examples of the exceptional rules include cases where no power of arrest existed, arrests was not appropriate and malicious complaint.
- 3.3 It should be noted that the recent media coverage has been inaccurate as to the response provided under the Freedom of Information Act. The specific question asked was how many DNA records had been deleted - answer provided 4 (This was the figure relevant at that time). The second part was how many of these took place in the first 6 months of 2009 and none of these requests were made within the time limit and so the answer provided was nil. The media have subsequently misrepresented this answer and reported that the Constabulary had four requests which we refused to remove.

4. Recommendation

- 4.1 The Committee is invited to note the report.

