

Children's Rights Alliance for England

PRESS RELEASE

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Police DNA database violates children's privacy rights says European Court

The European Court of Human Rights today gave a landmark ruling on the UK police retention of fingerprints and DNA samples.

The case was brought by two Britons, 'S' and Michael Marper, who had both been arrested and had fingerprints and DNA samples taken under police powers introduced in the Criminal Justice Act 2003. S was aged 12 when he was arrested.

Both individuals were acquitted some months later and then applied to have their personal information destroyed. This was refused and the claimants brought judicial review proceedings in the UK courts, claiming that the retention of their data violated their right to privacy under article 8 of the European Convention on Human Rights. Their case went all the way to the House of Lords, where it was dismissed. They took the case to Strasbourg, where it was heard in February 2008.

Today's European ruling overturns the UK courts' decisions and has implications for thousands of individuals whose personal data is currently held on police databases, as well as future Government policy in this area. The Court pointed to the higher level of protection afforded to children through the UN Convention on the Rights of the Child, and outlined the particular harm caused to children by privacy infringements.

Katy Swaine, CRAE's Legal director, says:

'This judgment is a 'wake up' call for Ministers who are habitually disregarding children's privacy rights. Action must now be taken to remove the profiles of thousands of innocent children from police databases. The Government has proposed many more intrusions into individual privacy in its new legislative programme. We will use this ruling to oppose unjustified intrusions as well as claiming back privacy safeguards for children in contact with the police and courts.'

The Criminal Justice Act 2003 gave the police additional powers to retain the DNA samples of anyone arrested for a recordable offence without the person's consent. This covers most criminal offences. The sample is retained indefinitely regardless of whether the police take any further action or the person is subsequently acquitted by the courts of any offence.

The European Court noted that England, Wales and Northern Ireland *'appear to be the only jurisdictions within the Council of Europe to allow the indefinite retention of fingerprint and DNA material of any person of any age suspected of any recordable*

offence and found that this *'blanket and indiscriminate'* retention of data without any time limit violated article 8 of the ECHR.

The Court recognised the importance of biometric technology in the detection of crime but found that UK Government policy has not struck *'a fair balance between the competing public and private interests'*.

Referring to article 40 of the UN Convention on the Rights of the Child, the Court noted that *'the retention of the unconvicted persons' data may be especially harmful in the case of minors ... given their special situation and the importance of their development and integration in society'* and emphasised *'the need for the protection of their privacy at criminal trials'*. The Court referred to research by the Nuffield Council of Bioethics and agreed with its findings that the risk of stigma associated with the retention of biometric data was *'particularly detrimental to children ... and to members of certain ethnic groups over-represented on the database'*.

The Home Office has previously acknowledged that if this case succeeded the DNA database of 4.5 million samples could be affected by the removal of profiles of people without any criminal convictions.

More details

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Notes for editors

1. The Children's Rights Alliance for England (CRAE) is a coalition of over 380 voluntary and statutory organisations committed to the full implementation of the United Nations Convention on the Rights of the Child. Our vision is of a society where the human rights of all children are recognised and realised.
2. The Grand Chamber's judgment of 4 December 2008 in the case of *S and Marper v The United Kingdom* (Applications nos. 30562/04 and 30566/04) can be found at:
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionid=16772708&skin=hudoc-en>
Liberty made submissions in the case.
3. Article 40(1) of the UN Convention on the Rights of the Child protects *'the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'*. The UK ratified the Convention in 1991.
4. Home Office estimates indicate that the police currently hold DNA profiles of up to 360,000 children. Of these, up to 82,000 are of innocent children and around half relate to those who have received reprimands or warnings for low-level offences, not a finding of guilt in law.

5. A parliamentary question in March 2008 revealed that, as of 31 January 2008, the national DNA database held the profiles of 44 children under the age of 10 (UK-wide figures). Although children under 10 are below the age of criminal responsibility and cannot be charged or arrested with an offence, the Minister explained:

If police think a child under 10 might have committed a crime they might decide to take a DNA sample to establish whether they have done it or to eliminate them from investigations. A child under 10 might also have DNA taken to eliminate their profile because they were a victim or present at the crime scene.

(House of Lords written answer 17 March 2008: Column WA19)

6. In Scotland most samples must be destroyed if the person is not charged or convicted.

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