

Chapter 8

Towards the Blanket Coverage DNA Profiling and Sampling of Citizens in England, Wales, and Northern Ireland

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ABSTRACT

The European Court of Human Rights (ECtHR) ruling of S and Marper v United Kingdom will have major implications on the retention of Deoxyribonucleic Acid (DNA) samples, profiles, and fingerprints of innocents stored in England, Wales, and Northern Ireland. In its attempt to develop a comprehensive National DNA Database (NDNAD) for the fight against crime, the UK Government has come under fire for its blanket-style coverage of the DNA sampling of its populace. Figures indicate that the UK Government retains a highly disproportionate number of samples when compared to other nation states in the Council of Europe (CoE), and indeed anywhere else in the world. In addition, the UK Government also retains a disproportionate number of DNA profiles and samples of specific ethnic minority groups such as the Black Ethnic Minority group (BEM). Finally, the S and Marper case demonstrates that innocent children, and in general innocent citizens, are still on the national DNA database, sometimes even without their knowledge. Despite the fact that the S and Marper case concluded with the removal of the biometric data of Mr S and Mr Marper, all other innocent subjects must still apply to their local Metropolitan Police Service to have their fingerprints or DNA removed from the register. This is not only a time-consuming process, but not feasible.

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INTRODUCTION

The Police and Criminal Evidence Act of 1984 (UK) (PACE) has undergone major changes since its inception. The PACE and the PACE Codes of Practice provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees (Police Home Office 2009). In the month of December 2008, post the *S and Marper* European Court of Human Rights ECtHR judgment, PACE underwent a review and changes were effective on the 31 December 2008, however, more changes especially on the issue of the retention of fingerprints and DNA are forthcoming. According to the Home Office the changes expected in the PACE will be to ensure that the “right balance between the powers of the police and the rights and freedoms of the public” are maintained (Police Home Office 2009). On reviewing the legal changes that have taken place since 1984 via a multitude of Acts, it can be said the United Kingdom (with the exception of Scotland) has, contrary to the claims of the Home Office, experienced a significant imbalance between the powers of the police and the rights and freedoms of the public. In the last 15 years, the rights and freedoms of the public have been severely encroached upon, and police powers significantly increased. A brief review of the major legislative impacts between 1984 and 2008 will be reviewed below. They are summarized in a timeline in Figure 1.

LEGISLATIVE CHANGES BETWEEN 1984 AND 2009

PACE was introduced in 1984, one year prior to Dr Jeffrey’s discovery of DNA. Interestingly, PACE allowed for the police to ask a doctor to take a blood sample from a suspect during the investigation of a serious crime but only with their

express consent. Thus a suspect had to volunteer or “agree” to a blood sample being taken, it could not be taken by force. Even after Jeffrey’s discovery, there was limited use of blood samples for forensic analysis as tools and techniques were still in their infancy. The Single Locus Probe (SLP) technique which was in use in early DNA examinations had numerous limitations. While new SLP technology overcame some of these limitations, “the statistical evaluation of SLP DNA evidence brought a new set of problems, perhaps even more difficult to overcome than the preceding technical limitations” (Sullivan 1998). In sections 61-65 the original PACE classified blood samples and scrapings of cells from the inner cheek as intimate in nature. Hair samples (save for pubic hair) was the only type of non-intimate DNA sample that could be retained for forensic analysis without the permission of the suspect, and this on account of an investigation into a serious arrestable offence. Although this kind of DNA cut with scissors rarely provided enough of a good sample to conduct single locus probe (SLP) profiling, it was in the late 1980s that PCR (polymerase chain reaction) profiling could amplify and type a single strand of hair (Home Office, 2004). This is when mass screenings of DNA samples were possible. To begin with there was great contention over the admissibility of DNA evidence in a court of law but this changed as commonplace errors and procedural issues were rectified, new more modern profiling techniques were introduced, and larger databases for statistical purposes became available.

A significant moment in the fight against crime in the United Kingdom came in 1993 after a Royal Commission on Criminal Justice (Hansard 2003). The Commission was set up because there was a feeling among the community that the criminal justice system was just not working well enough to convict the guilty and exonerate the innocent. Leading up to 1993, there were a number of high profile miscarriages of justice which weakened the public’s confidence in the criminal justice system,

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