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Dear Diane,

THE NATIONAL DNA DATABASE

I would like to congratulate you once again on securing the adjournment debate on the DNA database on the 9th of December. The debate raised a number of very important issues around the National DNA Database. Unfortunately we ran out of time and I could not address all of the issues you raised, so I thought I would take the opportunity to do so in writing.

Following the public consultation and a detailed consideration of the responses, the Government published last month our proposals on the taking, retention and destruction of DNA, which is set out in detail in the Crime & Security Bill. Most of the DNA provisions in the Bill (clauses 14-19) are our response to the judgment of the European Court of Human Rights in the case of S & Marper. We consider that these proposals are compliant with the judgement and, in the case of destroying DNA samples, go significantly further than the Court required. We also consulted on new powers to add to the Database those convicted in the past of serious violent and sexual offences, either overseas or in the UK, and clauses 2-13 of the Bill create these powers. By helping the police to ensure that the right people are on the DNA Database, these new powers will enhance significantly the protection given to the public.

The key aim of our proposals is to protect the public from crimes, particularly serious crimes such as murder and rape, where DNA evidence is often vital in tracking down the offender, while at the same time being proportionate about how long we retain that biometric data. It is, therefore, a question of striking the right balance, and we consider that the proposals set out in the Crime & Security Bill do just that.

We discussed in Westminster Hall the system in use in Scotland for the retention of the DNA of those not convicted of an offence. Given the widespread interest in the Scottish model, we have given it detailed consideration. The first thing I should point out is that, while we have been criticised for the strength of the evidence for our

proposals, the Scottish model was put in place when no such evidence was available to the Scottish Executive or Parliament.

In addition, the Scottish model only permits the retention of DNA from those arrested for but not convicted of serious offences, whereas most criminologists agree that most persistent offenders are generalists, meaning that the seriousness of a first offence is not a good indicator of the seriousness of any subsequent offending. While this data relates to offences, and we are discussing here those who have not been convicted following their first arrest, it nonetheless serves as a reasonable approximation of risk when we consider retaining material from the unconvicted.

There is also a common misconception of the 'Scottish model', namely that material can only be held for up to 5 years: an initial 3-year period, followed by an additional 2 years on the authority of a judge. In fact, further applications can be made to the court, and further periods of 2 years authorised, leading to retention way beyond the period of 6 years to which the evidence points us.

With regard to the retention of the DNA of unconvicted children, the European Court did of course make special reference to children, and we have set out what we consider to be appropriate arrangements in the Bill. We recognise that youthful indiscretions do occur, and that is why we propose that anyone who is convicted of a single, minor offence while under 18 will have their DNA profile and fingerprints destroyed after 5 years. Those arrested but not convicted in similar circumstances will have their DNA profile and fingerprints destroyed after 3 years. We consider that these arrangements strike the appropriate balance between public protection and the particular rights of children.

Unfortunately, it is also true that some young people get involved in more serious crimes, and our proposals also deal appropriately with those circumstances. Those under-18s convicted of multiple minor offences, or a single serious offence, will have their DNA profile and fingerprints retained indefinitely, as with adults. In addition, those 16- and 17-year-olds who are arrested for but not convicted of serious offences will have their DNA profile and fingerprints retained for 6 years, again as with adults, taking account of the ages at which peak offending occurs.

We consider that our proposed regime for juveniles takes account of the findings of the European Court and the provisions of the UN Convention on the Rights of the Child, while recognising that a minority of young people do get involved in crime, and sometimes serious crime. I hope you would agree that it would be wrong to leave a hole in our measures to protect the public by excluding these young people from the database.

In the debate, I touched on the over-representation on the DNA Database of those from black and minority ethnic backgrounds, but I would like to return to that issue. As I said on Wednesday, the National DNA Database is not self-populating. Before a person's profile can be added to it, the person must have been arrested for a recordable offence, and that arrest must, in law, have been necessary. This is a significant threshold. If there is over-representation in other areas of the criminal justice system, this is likely to be reflected on the Database.

We are not complacent in any way about the fact that some people from ethnic minorities are over-represented at various stages in the criminal justice process. That is why the Government has developed tools to analyse ethnicity data, identify

unfair over-representation and develop evidence-based responses to address the issues locally. We have introduced a new target for Local Criminal Justice Boards requiring them to analyse ethnic monitoring data and identify particular issues around over-representation of particular groups at key points in the criminal justice system and, where it cannot be objectively justified, to take actions to address it. We will continue to drive forward further change by ensuring that all agencies continue to scrutinise their policies and standards, and work towards ensuring services are delivered fairly to all communities.

In many cases, DNA evidence offers a means of establishing innocence or guilt in a way that is entirely objective and leaves no room for prejudice by any element of the criminal justice system. DNA offers evidential value to victims – and potential victims – of serious crime, irrespective of their ethnic background.

In response to the claim in the Human Genetics Commission (HGC) report that the police are arresting people to obtain their DNA, I must repeat what I said on Wednesday; there is no objective evidence to support this suggestion. While the HGC Report quoted a retired police officer as suggesting that such practice is commonplace, both I and the ACPO Lead for DNA matters, Chief Constable Chris Sims, have been very clear that this is not the case. DNA samples are taken following, at a minimum, an arrest for a recordable offence, and the Government is clear that this is the right threshold for taking and retaining DNA.

You and others raised a number of constituency cases where individuals had requested the police to remove them from the National DNA Database and had not been successful; in some cases, there had apparently been no response from the police at all. As Keith Vaz commented on Wednesday, 'If we get that customer service sorted out, it could actually improve the system', and we will consider this issue further with the police.

I should point out that we have already taken significant steps to clarify the procedure in such cases. Clause 14 of the Bill would insert, amongst other things, a new section 64ZI into the Police and Criminal Evidence Act 1984, which would place a duty on chief officers to destroy proactively DNA and fingerprints where the original arrest or the taking of the material was unlawful, or where the arrest was based on mistaken identity. This is the first time that this procedure has ever been set out in legislation, and I hope you will agree that this is a significant step forwards.

We will also consider with the police service the scope for centralising much of the consideration of such applications so, while the final decision would remain that of the chief officer concerned, much of the inconsistency which was raised on Wednesday should be eliminated. As part of this process, we will work with the police service to ensure that guidance for both officers and the public is as transparent as possible.

As we move forward with these proposals, we will continue to seek the correct balance between protecting the public and individuals' rights to privacy. We believe that our approach to retaining DNA profiles is fair and proportionate, based on the best available research, which Scotland did not have when deciding their policy.

I look forward to continuing this debate when we come to consider the proposals set out in the Crime & Security Bill. In the light of the widespread interest in these issues,

I am copying this letter to all those who attended the debate and placing a copy in the Library of the House.

Yours,
Alan Campbell

ALAN CAMPBELL