Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice Bill: PSNI Briefing

18 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Easton
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

Chief Superintendent Ivan Farr	Police Service of Northern Ireland
Assistant Chief Constable George Hamilton	Police Service of Northern Ireland
Chief Superintendent Mark Hamilton	Police Service of Northern Ireland

The Chairperson: I welcome Assistant Chief Constable George Hamilton, Chief Superintendent Mark Hamilton and Ivan Farr, Chief Superintendent head of scientific support. The session will be recorded by Hansard, and the transcript published in due course on the Committee's website. At this stage, I will hand over to ACC Hamilton.

Assistant Chief Constable George Hamilton (Police Service of Northern Ireland): Good afternoon, Chair and members; thank you for inviting us to this session. You will be aware that the Criminal Justice Bill deals with matters of sex offenders, human trafficking and the retention of DNA and fingerprints. Those are important matters for the Police Service, and we have engaged fully with the Department as the legislation has been developed.

The Criminal Justice Bill's provisions on sex offenders address four distinct areas. If it is helpful, I will briefly outline them and our position on them. First, the review of indefinite offender notification requirements came about as a result of a court ruling in what is known as the F and Thompson case, which raised human rights issues surrounding the indefinite notification requirement. As a result, any sex offender who is required to notify indefinitely — those who are sentenced to 30 months' imprisonment or more — will now have the right to ask for that notification requirement to be removed. As with other UK jurisdictions, this will be 15 years after the individual has been required to notify after leaving prison, or eight years for a person who was under 18 when convicted. The Police Service has been liaising with the Department on the appropriate mechanism for such a request and the

subsequent appeals mechanism. It is envisaged that the current assessed risk will be used primarily in any decisions regarding notification.

Secondly, there is the ending of notification requirements for acts that are no longer an offence, which would make us consistent with UK legislation and would reflect changes in legislation, for example a lowering of the age of consent. The Police Service supports those changes as it does not wish to criminalise individuals for acts between consenting adults of an appropriate age according to the legislation.

The third area is offences committed in a European Economic Area state other than the UK. That came about by the Police Service requesting such legislation from the Department following research carried out by the Police Service of Northern Ireland and an Garda Síochána as part of their intergovernmental working group on public protection around the harmonisation of legislation. Currently, if the Police Service of Northern Ireland becomes aware of a qualifying sex offender — that is someone convicted of a like offence outside the United Kingdom — taking up residence in Northern Ireland, we must first apply to the court to require them to notify a register in the United Kingdom. In the Republic of Ireland, any such offender must register with an Garda Síochána within seven days; failing to do so means that they would commit an offence.

Finally, there are proposed changes to the sexual offence prevention order (SOPO). Again, that has been requested by the Police Service as it will assist in the risk management of sex offenders. Currently, SOPOs can only contain prohibitions. The PSNI wishes to place a positive obligation on some sex offenders by making it contain positive orders as well.

I turn now to human trafficking. It is, by its nature, a hidden crime and has quite rightly been referred to as modern-day slavery. Trafficking for sexual exploitation remains the most significant detected form of trafficking, although concerns regarding forced labour are increasing. Sexual exploitation largely involves foreign national females in off-street prostitution. The victims will generally be recruited in their home countries, having either been tricked or deceived into travelling to Northern Ireland, where they will be forced into prostitution, or women who work in the sex industry who travel willingly but who are exploited when they arrive. Over the past three years, there has been an increase in the number of victims identified year on year, and although that cannot be attributed to an increase in trafficking, it may be an indication of increased awareness and detection.

The PSNI works closely with an Garda Síochána and a number of non-governmental organisations to increase awareness of trafficking. The PSNI and an Garda Síochána undertake joint training for investigators. The Police Service of Northern Ireland has introduced an online training package for front-line officers to assist in the recognition of signs of trafficking. More than 2,800 officers have completed that training, which is the highest percentage of officers in any police service in these islands. The organised crime branch has introduced additional training for some district officers to enhance investigative skills.

Our primary aim is to rescue men, women and children who are victims of this modern-day slavery. A major aspect of that is the provision of appropriate support upon recovery. The Department of Justice funds a support network that is contracted to Migrant Help and Women's Aid. Those two support organisations provide support, accommodation and welfare to victims of trafficking identified in Northern Ireland. Victims are normally cared for locally. However, repatriation and accommodation outside this jurisdiction is available if required.

The Police Service acknowledges the need to legislate to give effect to the Council of Europe Convention on Action against Trafficking in Human Beings. The Bill creates an offence of trafficking a UK resident within the UK who was not previously trafficked into the UK and an offence of trafficking outside the UK. The Police Service supports those measures as an additional means of tackling certain aspects of human trafficking.

DNA collection, management and retention is an important issue for the Police Service. Indeed, we have liaised with the Department since March 2009 regarding the development of legislation in the area. There is an urgent and pressing need for legislation due to the 2008 European Court of Human Rights ruling in the judgement of the case of S. and Marper, particularly as the current lack of legislative provision places police in a vulnerable legal position. Of late, that position has become even more precarious with the introduction of the Protection of Freedoms Act in England and Wales, as Northern Ireland is now the only part of the United Kingdom that is unable to comply with the S. and Marper ruling.

The PSNI recognises, however, that DNA collection and retention is an extremely complex area, and we appreciate the vital role of the Committee in ensuring that the legislation achieves the right balance between human rights, security and public protection. Indeed, I accept that getting the balance right is a political deliberation rather than one for the Police Service.

In light of that, I do not intend to make representations on what should or should not be amended in the Bill. However, from a police perspective, the Bill is a series of balances or trade-offs, and I ask the Committee to consider that every decision to destroy a profile potentially reduces the ability of the police to make a match and to detect a crime, thereby reducing the effectiveness of the DNA database as a tool in keeping citizens safe

Whatever legislation is agreed, I ask the Committee to take into account its practical application, how its costs and bureaucracy will be managed, and the risk associated with input and deletion. Whatever the Committee agrees, I ask you to consider how easy it would be for the provisions to be operationalised. I also ask you to consider the impact of any decision on our ability to share and to use information obtained from databases in other jurisdictions.

I expect that one of the significant challenges facing the Committee is the retention of the DNA of persons who have been charged or arrested but who have not been convicted. In light of that, I thought that the Committee might find it useful if I were to present some information on the DNA database, its use and its management.

The database is a tool that provides investigative leads by matching the derived DNA profiles with those that are collected at crime scenes. It is managed by Forensic Science Northern Ireland on behalf of the Police Service, and any searches of the database requested by the police are requested and carried out under strict guidelines, which are regularly audited. Moreover, the DNA profile is held on the database as a numeric code: the database does not hold a person's offending history, intelligence on the person or any other personal data.

I am trying not to bombard the Committee with statistics, but I would like to relate to you an individual account of the success of the database, and it would be useful on this occasion to provide you with some statistics relating to the performance of the national DNA database. Between May 2001 and December 2005, approximately 8,500 profiles from more than 6,000 individuals were linked to about 14,000 offences. Those offences included 114 murders, 55 attempted murders, 116 rapes, 68 sexual offences, 119 aggravated burglaries and 127 drugs supply offences.

To highlight the importance of the database, I thought that it would be useful to provide the Committee with an overview of one of the cases in which information provided as a result of the database was a key factor. You may recall the brutal murder of Sally Bowman near her London home in September 2005. At the time, the police investigation included the intelligence-led voluntary provision of DNA from 1,700 men. Despite that, the investigation drew a blank. However, almost a year later, Mark Dixie, a chef working in a pub, was arrested following a fight. Although he was not prosecuted for the fight, his DNA was taken, and when it was entered into the database, it produced a DNA match to Sally's murderer. That led the police investigating the murder to connect Mark Dixie with it, which led to his arrest and successful conviction for the murder of Sally Bowman.

Until the DNA lead, Mark Dixie had not been considered in the case, and, given that the investigation had been running for a year, it is unlikely that the murder would have been solved without the information provided from the DNA database.

We have similar cases in Northern Ireland, one of which is going through the courts. It is an historical murder dating back to the late 1990s, for which we have been able to identify, arrest and charge a suspect as a result of DNA that was taken for another offence. The result of that case is pending, so I cannot talk about the detail, but there are other examples.In both these cases, however, it is important to stress that the database does not convict people; there is always a presumption of innocence. The database simply provides the police with an investigative lead that they will explore as part of their investigation. The database is not a punishment, nor is it a measure of guilt; it is a tool for keeping people safe. DNA is simply part of the case; it is never the complete case.

Another issue that, I suspect, will pose significant challenges for the Committee is the management of DNA relating to young people, particularly given that a young person's offending history is recorded from the age of 10 and that, coupled with the provision in schedule 3 to the Bill that a caution be treated as a conviction, does, I imagine, pose a significant challenge for the Committee. In this area, achieving the right balance is of particular importance and, ultimately of course, a matter for the

Committee. However, I hope to provide you with information regarding youth cautions that may be useful in your deliberations.

As you will be aware, the Bill proposes that if a juvenile commits a qualifying offence or commits other offences, the DNA recorded from that individual will be retained. As the Bill proposes, there is a potential that the two offences may be cautions. In relation to youth cautions, I thought that it would be useful if I provided the Committee with a sample month of cautions from September 2011. During that month, the criminal record indicated that approximately 130 juvenile cautions were recorded, including assault, occasioning actual bodily harm, aggravated assault, receiving stolen goods, theft, criminal damage and possession of an offensive weapon to name but a few.

The points that I have made about the need for balance between the person's right to privacy — there are article-8 rights — and the protection of the wider community need to be properly considered here. In doing that, I ask the Committee to consider the fact that we have few juvenile offenders in Northern Ireland and fewer who will be retained on the database. There are no persons under the age of 10 on the database, just over 5,000 in the 10 to 15 years age bracket, and 6,354 in the 16 to 18 years age bracket.

The disposal for the police should be that which is appropriate for the victim, the offender and the wider public interest. Therefore, I encourage the Committee to consider the nature of the offences rather than the method of disposal. For example, cautions or penalty notices for disorder could be used appropriately and proportionately for offences such as theft, criminal damage and indecent behaviour if that is appropriate to the circumstances.

I have sought to outline the value of DNA and the consequences of swinging the pendulum too far in respect of limited retention. However, I fully respect the position of the Committee in coming to a difficult balanced judgement on those issues. The Police Service prides itself in having human rights at the core of its operational decision making and fully accepts and respects the rulings in S. and Marper regarding the need for a shift in the balance towards a more proportionate position in this jurisdiction on the issue of DNA and fingerprint retention. Thank you, Chairman. I am happy to take questions.

The Chairperson: You have covered three areas, so I will take each area in turn. If members have a question around sex offender notification, we will deal with that, and then we can come back to members if they have other issues. That is probably the best way rather than jumping between three areas.

I was going to start with the sex offender notification issue, Mr Easton.

Mr Easton: I have a question on human trafficking.

Mr Lynch: I have two quick questions. With regard to ending the notification for what were crimes but not deemed crimes any more, is it up to the individual or the Department to initiate that process? In other jurisdictions, I think that the Department just wipes it.

Assistant Chief Constable G Hamilton: We need to check that. I think that in cases where there has been a change in the legislation and it is no longer a question of criminalisation, it would automatically be removed. However, we will check and come back to you. That would be easier for us from an efficiency and a bureaucracy point of view. We will see how it is crafted.

Mr Lynch: I have another quick question, Chairman. How will the failure to notify the police after three days once an offender has stayed for a qualifying period be identified and enforced?

Assistant Chief Constable G Hamilton: How will it be enforced?

Mr Lynch: Yes; how will the qualifying period be identified?

Assistant Chief Constable G Hamilton: I am sorry. Could you repeat the question?

Mr Lynch: It is two or three days' notification now?

Assistant Chief Constable G Hamilton: It is 72 hours.

Mr Lynch: Seventy-two hours. What is it being changed to?

Assistant Chief Constable G Hamilton: I am not sure what amendment is being made to the notification period.

Chief Superintendent Mark Hamilton (Police Service of Northern Ireland): I am not sure what the question is. Sorry.

Mr Lynch: It is being changed. It is three days; it is being changed to two days. Am I right?

Chief Superintendent M Hamilton: Sorry. I am not aware of that amendment. There is notification where people register having been convicted of offences outside this jurisdiction. It is seven days in the Republic of Ireland. Are you asking how we would know that, regardless of the timescale?

The Chairperson: It is a relevant issue. The duty will be on the individual to notify the police; if he or she has not done so within three days, how will you identify them and deal with that?

Assistant Chief Constable G Hamilton: Neighbouring or other jurisdictions know that a registered offender is coming towards this jurisdiction. That information is shared with us so that we can manage the risk. At present, we do not have the notification requirements to manage the risk effectively. That is the gap that we hoped the legislation would fill.

The Chairperson: How will you enforce it? When you have identified that someone is in breach, how do you deal with it?

Assistant Chief Constable G Hamilton: We would apply the same tactics that we do currently when someone fails to notify. It is a case of communicating that to our people and working with other agencies. They might be registering with housing agencies, ports, or whatever. We will try to use old-fashioned police methods to find out where a person outstanding is. It is pretty much a tactical and operational police issue to track down a missing person.

Chief Superintendent M Hamilton: We will then arrest that person.

Assistant Chief Constable G Hamilton: Yes. When that person is found, we will arrest and detain him or her.

The Chairperson: In England and Wales and Scotland, the police can extend the eight-year period to a maximum of 15 years with regard to further reviews. We do not have similar provision. Are you content that you do not have the facility to extend the second review period beyond eight years — which, I think, is our proposal — as opposed to 15 years elsewhere?

Assistant Chief Constable G Hamilton: As I understand it, it will be 15 years in certain circumstances. Eight years is the piece for a person who is under 18 years of age upon conviction. That seems to be proportionate; we are not asking for any more than that.

Mr Easton: Thank you for your presentation. Would the inclusion of a minimal custodial sentence for human-trafficking offences in legislation, rather than leaving it to sentencing guidelines, act as an effective deterrent?

Assistant Chief Constable G Hamilton: It may do. However, from our point of view, the making of laws and penalties and the subsequent application of them and sentencing are, in the first instance, for you, and, secondly, for the judiciary. We will collect the evidence and work within it. What we are keen to do is minimise harm and manage risk. Minimal sentencing on both those fronts has a limited contribution to make in minimising harm and reducing risk because, generally speaking, in a liberal democracy, the key is not thrown away for ever. That is something for you to consider politically. It is for the judiciary to consider the application of it. We will gather evidence in the reactive phase and, post-conviction, we will do what we can to manage risk and reduce harm.

Ms McCorley: Go raibh maith agat, a Chathaoirligh. Go raibh maith agat for the presentation. What is the PSNI's view of the provision that there be non-prosecution of victims who have been coerced

into crime? Furthermore, do you feel that there should be more protection for victims in the pre-trial period, and should that be legislated for?

Chief Superintendent M Hamilton: Our view on victims is that anyone who has been trafficked into this country for the purposes of becoming a victim of sexual assault or for any other crime should not be prosecuted for that. That is very clear. We know of cases where people have no idea of where they are ending up, and they are a victim. The criminal justice system should not seek to criminalise victims; we are very positive about that approach. Can you repeat the second part of your question?

Ms McCorley: Do you think that there should be more protection for victims in the pre-trial period and during the court proceedings, and do you think that that should be in legislation?

Chief Superintendent M Hamilton: The issue of special measures for victims is one that the Police Service strongly supports on all grounds for vulnerable victims. If it needs additional legislation, we will support that. There are measures in place for vulnerable victims at present, and, we are aware of the debate on introducing special measures for victims in this case. On the principle that the criminal justice system should be victim-led, we are supportive of any measures. Whether those need to be put in statute or legislation is slightly different, but, at the very least, we are very willing to see a co-operative relationship with the rest of the criminal justice system to allow it to happen. If that could not be achieved, we would have no objections to special measures for victims.

The Chairperson: On DNA retention, Mr Wells.

Mr Wells: In a nutshell, Chief Constable, sorry, Assistant Chief Constable — *[Laughter.]*

The Chairperson: That is a Freudian slip.

Mr McCartney: What have you heard? Matt Baggott resigns?

Mr A Maginness: Instant promotion.

Mr Wells: You said that the change in the law on the retention of DNA will hamper the PSNI in its investigation of serious crimes.

Assistant Chief Constable G Hamilton: We need to go where the research and evidence take us. If the DNA profile is not on the database, we cannot use it. However, the timescales in the legislation are supported by research that shows that the retention of DNA profiles on the database is likely to be of most use for a period of between three and five years. However, if the profiles are not retained, we cannot make use of them because we do not have them.

Our view is based on working pragmatically within the jurisprudence that has come out of Europe and on proportionality principles. We respect that, and we do not see the need to resist it. In the S. and Marper case, for example, the European Court of Human Rights quoted the practice in Scotland as being compliant with what the court saw as being proportionate. The performance on keeping people safe and locking up bad people is no worse in Scotland than it is in other parts of the United Kingdom, for example, so I am not too pessimistic about the limitations that this will place on us. It is accurate to say that if a profile is not retained, it cannot be used. That is a statement of fact.

Mr Wells: Without wanting to stigmatise any group of individuals, is it true that criminals have to start somewhere and that they often start young? If they start young with antisocial behaviour and only receive a caution, many of them could go on to perform more serious crimes. Therefore, if the database is there, the chances of catching the person are much higher.

Assistant Chief Constable G Hamilton: The wider the scope of the database and the more material on it, the greater the chances of catching people. That is just probability. I would be careful on the issue of escalation of offending by young people involved in antisocial behaviour through to more serious offences. Some young people in their teens will do foolish things that we now label as antisocial behaviour, but they will not go on to engage in a life of crime or, even worse, in more serious offending.

Mr Wells: I agree. However, a serious hardened criminal is unlikely to have been an angel between the ages of 10 and 15.

Assistant Chief Constable Hamilton: I accept that.

Mr Wells: It is unlikely that he was a Sunday school choir member between the ages of 10 and 15 and, suddenly, in his later teens, he went down the route of crime. The chances are that they were already involved in antisocial behaviour at a young age and then moved up to higher things.

Assistant Chief Constable G Hamilton: It is fair to say that. I am not an expert in criminology, but, through our experience, we have seen an escalation from minor offending to more serious offending. That is our experience as police officers.

Mr Wells: Therefore if a caution is given and DNA is retained, there is a very good chance that if that person goes on to commit more serious crimes, he or she can be caught.

Assistant Chief Constable G Hamilton: That is right. It is why I made the point in my opening statement that the proposition that we put to the Committee to consider is not the method of disposal but the nature of the offending. We want to increase the use of non-court disposals. They are more proportionate for offenders, and, more important, they bring greater victim satisfaction because they get speedy justice; it feels as if something the system is doing something for them. Our concern is that if a differentiation were to be made on retention simply because of the method of disposal, helpful material would not be retained.

Mr Wells: Would that not make the Police Service move towards a more rigorous form of disposal rather than a caution?

Assistant Chief Constable G Hamilton: I said in my concluding comments that we pride ourselves in having human rights at the core of our decision making; therefore it would be rather perverse to change the method of disposal just to get a DNA sample. We would not do that, but I understand the meaning behind your question.

Mr Wells: Frankly, this is an absolutely daft proposal. I just cannot understand the logic of it, apart from the fact that we are apparently being forced into doing this. Is there an argument that the Police Service of Northern Ireland is so well supervised, controlled and invigilated by so many bodies — there are so many protections for human rights in Northern Ireland; way above any other police force in western Europe — that any concerns that people may have about the retention of DNA in Northern Ireland have long since passed because there are so many other mechanisms to protect human rights?

Assistant Chief Constable G Hamilton: The level of scrutiny, accountability and answerability that we experience here is greater than in other places, but that does not allow us to duck the jurisprudence and the need for proportionality and necessity to be applied to our decision making. We are already, in practice, exercising significant discretion on who we take DNA from. DNA is taken only from people who have been arrested. There are provisions for post-conviction if they have not been arrested and so on, but, generally speaking, we take DNA from people who have been arrested. The principles of necessity and proportionality are already considered by a police officer when they make the arrest, and they are quality assured, generally within minutes or a very short space of time, by the custody sergeant, who applies the same principles of proportionality and necessity before authorising detention. We have confidence in our current practice that we are applying the principles of necessity and proportionality anyway. Most cases that go through the criminal justice system do not start their life in the system by way of an arrest; just over 30% of cases that end up in courts start off as an arrest. The others can be reported without arrest and through other mechanisms. We need to be careful not to give the impression that there is mass taking and retention of DNA in a way that does not have any proportionality at the moment. I am satisfied that our current practice has those tenets of necessity and proportionality attached to it. We are happy to work with you on the requirements of the Bill.

Mr Wells: The Children's Commissioner was in with us last week. She said that a young person who had been cautioned and had their DNA taken and retained would be stigmatised, and even traumatised, for the rest of their life by having the burden of their DNA being retained. Do you have

evidence of many traumatised young people going around the streets of Belfast and Northern Ireland with that awful burden on their shoulders?

Assistant Chief Constable G Hamilton: No.

Mr Wells: My DNA was taken after a minor car accident 11 years ago, and I certainly do not feel burdened, traumatised or stigmatised by it. *[Laughter.]*

Mr A Maginness: Your behaviour discloses the fact.

The Chairperson: I wanted to ask about one point. There is a different approach to juveniles here compared with Scotland, which has an indefinite retention period for fingerprints and profiles. We are proposing to have what exists in England and Wales, which is an exception for juveniles if they are convicted of an excluded offence. In such cases, they will have a retention for five or 10 years, depending on the sentence. Are you comfortable with our having that exception for juveniles when Scotland does not?

Chief Superintendent M Hamilton: I think that we are broadly comfortable. We are looking for balance. We were not necessarily looking to replicate everything in every other jurisdiction, but, obviously, the Bill mirrors very closely the protection of freedom. We are happy that it is not indefinite retention for juveniles.

I take the point raised by Mr Wells. There is a balance between juveniles who stop offending and those who go on offending. There is no doubt that many adult offenders will have had some sort of offending behaviour when they were juveniles; however, many juveniles stop offending when they are juveniles. We are comfortable with having a balanced approach, which identifies differences in offences and retention periods.

If there are two cautions, and the second one is not for a recordable offence, the proposal is that it will be indefinite. Therefore the first one is for five years, and the second one is indefinite. We are comfortable with that.

Mr McCartney: I made this point to the officials when they were in. One of the consultation documents that guided this was 'Keeping the Right People on the DNA Database'. It gives a sense that there is a right type of person to be on the database. I think that that is where some of the issues around this develop. In your presentation, you said that 123,000 people here are on it. That is a high proportion, compared with anywhere else in Europe. Do you agree?

Assistant Chief Constable G Hamilton: I have not done a comparative analysis.

Mr McCartney: There are 123,000 people on it, and no one under the age of 10. I assume that there are not too many 10 to 15-year-olds on it. It is a high proportion.

Chief Superintendent Ivan Farr (Police Service of Northern Ireland): There are six million on the national database, and the list is growing every day. They keep adding to it for benchmarking purposes, but I am not aware of actual research into the figures.

Mr McCartney: That brings me to the next point. There is a current case and judicial review over retention. There is always the fear that you get a European Court ruling, we go back to it, we get the minimal requirements, and, then, in two or three years' time, there will be another challenge, and we will be back at this.

I move now to cautions. Have you any view on the fact that people, particularly those who are practitioners working with children, think that the two-caution rule is excessive? Do you have any view on that?

Assistant Chief Constable G Hamilton: I go back to the comments made earlier. We do not want the taking or not taking of DNA to be a factor in how we dispose of cases. From our perspective, the method of disposal is of secondary importance. The right threshold to achieve is the point at which the nature and seriousness of the offence is considered appropriate to take DNA. That is balanced judgement for you as the lawmakers rather than us to make. It is safer not to get hung up on the method of disposal, because a caution or fixed penalty notice for a disorder, or something that is less

than the full criminal record, feels to me like a proportionate way forward. It is in the interests of the offender, and, as I said earlier, the victim is very often happier, because they are getting speedier justice. We should not allow that to cloud the issue of whether DNA is taken.

Mr McCartney: The week before last, the Human Rights Commission was here. In a response to another member's question, it likened DNA to private property and used the analogy of a person's home. In limited circumstances, people do not resent the fact that their house has to be searched or that the police have to enter it. However, it is not an open front door, and none of us would desire that to be the case. It made that observation in relation to retaining DNA.

Some weeks ago, I asked a question about the Sally Bowman case. I take it that the DNA of the person convicted of her murder was not already on the database.

Assistant Chief Constable G Hamilton: No; his DNA was put on the database after he was arrested for an offence for which he was not convicted.

Mr McCartney: Therefore the retention of six million samples did not assist with that case. It would be interesting to find out the statistics for how many cases have been cleared up solely because the police were able to match a DNA sample at the scene with one they already had for the person arrested. Whatever the arguments, if there was a staggering figure for that, you would be a in better position to assess the issue. There is an opinion that samples should be collected.

Perhaps I should not admit to this, but I watched 'The Nolan Show' last night. The person wrongly arrested for the murder of Joanna Yeates was on the show, and someone sent in a text saying, "How does he feel about the fact that his DNA and fingerprints have been retained?" I assume that they have been retained. Therefore someone who was the victim of a witch-hunt but who was then vindicated still has his DNA and fingerprints retained because he was questioned about a serious offence.

Assistant Chief Constable G Hamilton: I suppose that there are two ways. There is the backward-looking and the forward-looking DNA database work. Take the Bowman case, for example. A crime was committed for which someone was arrested; their DNA was taken and sampled at the time, and that helped the police to deal with a past case.

There is also the preventative element in dealing with crime. Clearly, part of the role of the DNA database is to allow us to have DNA ready so that when a crime occurs, we can look at the database. We look for DNA recovery very early, particularly for sexual offences and so forth. If we can scan the database and pull someone's DNA off it early enough, we can stop them reoffending. The database works in both directions, and we need it to do so.

You mentioned the Jo Yeates case. Under the Protection of Freedoms Act 2012, which is being applied to the schedule, I presume that because the person has not been convicted, their DNA will be maintained for only three years maximum, plus two.

As recently as this morning, we discussed our view of the legislation, which is that it is permissive in the sense that it allows us to have discretion. We believe that we should be actively weeding out DNA in such cases where there has been a miscarriage of justice or where there is clearly no need to keep the DNA, because the circumstances under which it was gathered in the first place were possibly incorrect. However, we do not want to — to use the expression — fetter our discretion on that either.

What I will say is that this will require the Police Service to be extremely diligent in weeding out such DNA. We have a great deal on the database, and we will have to weed through it now to make sure that we apply whatever criteria are decided in the Bill in order to deal with all the historical stuff and to make sure that whatever is left is complaint with whatever legislation is finally passed. We will then have an ongoing active process of case management to make sure that all the criteria for post-conviction, non-conviction or non-charge are met and that we actively manage that. Within all that, we also have a latitude of discretion for some cases.

The difference between the way in which the old database was run and the new one will be run is two-fold. First, we had everything on the old database; it was unfettered. However, the court has decided that that is not allowed anymore. Secondly, when we were allowed to do that, there was very little active intrusion about what was and was not necessary. The new court judgment means that the Police Service will have a far more diligent management plan, which we will work on over the next 12

months to get it in place. There will be protections for people in that as well, and those are almost a byproduct of the legislation.

Mr McCartney: I have two final points. I would like you to comment again on the idea that the Human Rights Commission raised about no difference being made between a person who ends up in prison as a result of not paying their TV licence and someone who commits a serious crime. Can you say, as investigators, whether the more samples of DNA there are, the greater the clear-up rate will be?

Assistant Chief Constable G Hamilton: I do not have figures to give you today on the last point, but the more DNA profiles that are available on the database increases the probability of future detections.

Mr McCartney: The Committee got statistics before showing that France is one of the lowest places as regards retention of DNA and fingerprints. I do not want to be blinded by science, but an argument would be if you were saying that your detection rate here is far higher than it is in France, but the evidence that the Committee got does not suggest that that is the case. There is no correlation between having more DNA and more crime being detected.

Assistant Chief Constable G Hamilton: France and this jurisdiction have two entirely different criminal justice systems. Even within these islands, different jurisdictions impact on detection rates, but I do not think that that undermines the utility of DNA evidence. I think that it is still a sensible thing to do within the right proportionality framework.

To deal with your point about the TV licence offender, I will go back to what I said earlier, and Mark has just reinforced it regarding discretion. First, DNA is taken only routinely for recordable offences; those offences that are listed and where the person has been arrested. Even then, the current legislation, and as it is drafted in the Bill, is permissive, not prescriptive, so we do not have to take DNA. For example, the person who defaults on their TV licence would not be an arrested person under the Police and Criminal Evidence Order; they would go straight to prison under some criminal justice order somewhere. Therefore, there would be no requirement to take that DNA routinely.

Secondly, the legislation does not currently, or in the future — unless you make some radical changes here — compel us to take DNA. We do not want that fettered. We want to make sensible, proportionate decisions to cater for the more extreme examples that you talk about where it clearly is not proportionate to be taking it.

Mr McCartney: Thank you.

Mr A Maginness: Your submission is very interesting. You are not being definitive when you come to this Committee. You are just advising us as to your thinking as police officers. You are not saying that thou shalt do such and such.

Assistant Chief Constable G Hamilton: We do not think it is our place to do that. We think that it is our place to identify to you very clearly the consequences of how far this pendulum swings. The S and Marper case gives you the jurisprudence that you are going to have to do something with. It is not proportionate to keep all DNA for ever without having some sort of review mechanism. We respect that, but we think that there are some factors that we have tried to outline in our opening statement and in this discussion that we ask you to take into account so that we can continue to do our jobs.

Mr A Maginness: That is very helpful, although it puts the onus on us to make the hard decisions in relation to defining the law a bit more clearly and getting the balance and proportionality right. I worry about the area of the cautions. When somebody is cautioned, do they admit their guilt in all circumstances?

Assistant Chief Constable G Hamilton: Yes. They cannot be given a caution without full acceptance of their responsibility.

Mr A Maginness: So, it is not a matter of a completely innocent person receiving a caution. Nonetheless, it seems to take away from the notion of a caution giving somebody another chance to behave properly. When you say that there should be retention of DNA arising out of a caution, it goes against the grain, does it not?

Assistant Chief Constable G Hamilton: If the caution and the restorative practice that often accompanies it these days has the desired effect, then the person will not reoffend. Therefore, after three years, their DNA — well, it will not be retained for ever.

There are safeguards in place. I come back to the point that DNA is not taken from every young person who is cautioned. There is a threshold or bar of necessity and proportionality around our making an arrest in the first place, and, under the current legislation and in the Bill, we only have the power to take DNA when an arrest has been made. We apply a safety net of proportionality and necessity when we make an arrest, and it will not be necessary to remove the liberty of many younger people or, in fact, many older people in that sense. We might require voluntary attendance at a police station or we might interview people in their homes in the presence of a solicitor or whatever. Only when it becomes necessary and proportionate to arrest someone would we say, if it is a recordable offence, that it is appropriate to take DNA.

Mr A Maginness: Do you have any idea of what percentage of those who come in contact with police for wrongdoing to witnesses, etc, have their DNA retained?

Assistant Chief Constable Hamilton: As I said earlier, about 30% of those who enter the criminal justice system do so by means of having been arrested, so just under a third. Not all of those will, necessarily, have DNA taken, although the majority will. I cannot give you an exact figure, but you are probably talking about a third or just under a third.

Mr A Maginness: Yes; that would be your understanding. OK. Thank you.

The Chairperson: There are no other questions. Thank you very much.