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DNA Consultations  
Police Powers and Protection Unit,  
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2 Marsham Street,  
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July 31, 2009

Dear Mr Brown

**Re Home Office consultation: Keeping the right people on the DNA database**

We are responding to this consultation as we have considerable concerns about the current proposals. This is both in relation to a wide range of children and young people who come into contact with the criminal justice system and more specifically in relation to the treatment of children and young people who display sexually harmful behaviour – where the NSPCC has substantial practice experience. Our intervention with children and young people who display sexually harmful behaviour recognises that they are likely to be children in need and some will in addition be at risk of significant harm. The purpose of our work is always to address the issues and challenge the behaviour but not to label or stigmatise the child.

With this in mind we wish to express our concerns about the proposals outlined in this consultation, in particular the lack of flexibility in relation to the collection and storage of children's DNA data which appears under the current proposals to be widespread and unrestrained. Some of the proposals outlined will mean wide ranging data collection from large numbers of children and lengthy retention periods for any child arrested for sexual offences.

Research carried out by the NSPCC has found that children themselves express considerable anxiety about the security of normal (i.e. routine and non-biometric) data that is held about them.<sup>1</sup> We consider that any data collected about children

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<sup>1</sup> Hilton, Z. & Mills, C. (2006) 'I think its about trust' Children and young peoples views of information sharing, Office of the Children's Commissioner: 2006

should be necessary and proportionate, should take into account their rights to privacy and to protection from abuse, and should be accompanied by robust procedures for maintaining confidentiality and data control.<sup>2</sup>

We have particular concerns about the collection of DNA data as it constitutes a physical intrusion into a person's privacy and can be extremely sensitive, for example if it indicates a genetic illness.<sup>3</sup> It also has serious implications for the rights of individuals within the criminal justice system – essentially it potentially reverses the burden of proof if a person's DNA is found near a crime scene, even if there may be an entirely legitimate reason for this, for example if a violent offence has been carried out in a public place where young people tend to congregate.

We are particularly concerned therefore about the proposal to broadly and routinely collect and store for long periods the DNA of children who have been arrested (even for relatively minor offences). We find it extraordinary that a child who has been arrested, but not necessarily ever charged or convicted for a crime, can have biometric DNA data about themselves kept for a period of up to six years. Given that the last few years have seen some substantial increases in arrests of children and young people for very trivial reasons we find this extremely worrying.<sup>4</sup> There appears to be no justification for this approach, which we consider to be highly discriminatory and to introduce unnecessary risk for children. We are also concerned that under these proposals the reprimand and final warnings which were introduced to divert children from the formal criminal justice system will for the purposes of DNA retention be treated in the same way as convictions

However, we have concerns about all the levels proposed in this consultation for the collection of children's DNA data. We note the proposals to retain the DNA of children who have been convicted for sexual offences indefinitely and potentially for up to 12 years even if they are not convicted. We do not agree with this approach and in general we consider there should be a presumption that the DNA profiles of children – whether convicted or non-convicted of any offence -

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<sup>2</sup> There are some circumstances where it may be in the best interest of the child to use such data include family tracing and identifying trafficking cases – see for example Save the Children: Separated Children in Europe: Position Paper on the use of Biometric Data

<sup>3</sup> Given this it is even more important that confidentiality and privacy are carefully maintained.

<sup>4</sup> During 2002 and 2006, there has been a rapid increase in children and young people being arrested. This rise is far greater than in the adult population, and is particularly marked amongst 13-15-year-olds Source: Home Office Statistical Bulletins: 'Arrests for Recorded Crime *etc.*' 02/03-05/06

will be retained for no longer than is required for the purposes of investigating the offence for which the child was arrested.

In the case of particularly serious forms of sexually harmful behaviour where children and young people are being convicted for serious crimes we consider that a court should decide at the point of sentence whether the public interest is sufficient to justify retention. This is a significant decision which potentially has an impact on the rights and welfare of the data subject. Questions of justification and proportionality of DNA data collection in cases of children under 18 should therefore be resolved by the court. It would be useful however to have more information and research about the potential usefulness and appropriateness of taking DNA evidence from children and what level of risk renders this proportionate in order to guide the court's decision.

Further, whilst we welcome and appreciate the intention outlined in this consultation document to protect the public from serious crime through the retention of DNA data we would urge the Home Office to urgently review their overall strategy for the treatment and safe management of children and young people who display sexually harmful behaviour<sup>5</sup>. We find that currently the sexual offending of children could be far more effectively addressed and the sexual abuse of other children prevented if there were a more coherent and consistent approach to tackling sexual offending by children and young people which used tried and tested methods to challenge and change such young people's behaviour.

Effective and consistent assessment and treatment for those known to present a risk would be more effective in our view than any form of blanket data collection. The NSPCC works extensively with children who exhibit sexually harmful behaviour and we have been disappointed over the years by the way in which children often receive an inadequate and inconsistent response. In particular children in contact with the criminal justice system rarely receive rehabilitative treatment.<sup>6</sup>

We know from our practice that the most successful response to these children is one which challenges and works to prevent further incidents of harm but does not stigmatise the child in the long term. Intervention with children and young people

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<sup>5</sup> A useful definition of sexually abusive behaviour is any sexual interaction that is perpetrated: against the victims will, without consent, or in an aggressive, exploitative, manipulative or threatening manner. See Ryan, S., & Lane, G., (1997) *Juvenile Sexual Offending, Causes Consequences and Corrections*, San Francisco: Jossey-Bass. There is currently no consistent data collection on young people who sexually harm at national level or local level. However, research from criminal justice statistics shows that approximately 1/3 of sexual offenders in contact with the criminal justice system each year are adolescents (Whittle, N., Bailey, S. & Kurtz, Z. (2006) *The Needs and Effective Treatment of Young People who Sexually Abuse: Current Evidence*. London: Department of Health).

<sup>6</sup> Lovell, L 'I think I might need some help with this problem', *Responding to children and young people who display sexually harmful behaviour*, London: NSPCC

who display sexually harmful behaviour must also recognise that these children are usually highly vulnerable and will often have experienced abuse themselves. Crucially the research shows that these children have specific developmental needs and vulnerabilities and that their offending behaviour is not entrenched or inevitable but with the right interventions can change as they grow and develop.<sup>7</sup>

Finally, we would strongly urge you to reconsider these proposals, and in the light of the specific needs and vulnerabilities of children, to consider taking DNA data from children only on a case by case basis decided by the court at point of sentence. We would be happy to discuss this with you further; if this would be helpful please do not hesitate to contact Zoe Hilton on [zhilton@nspcc.org.uk](mailto:zhilton@nspcc.org.uk) or 0207 825 1329.

With best wishes

Diana Sutton

Head of Policy and Public Affairs

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<sup>7</sup> Sipe, R., Jensen, E.L., & Everett, R.S. (1998) *Adolescent sexual offenders grown up: Recidivism in young adulthood*, Criminal Justice and Behaviour, 25; Worling, J.R., & Curwen, T. (2000) *Adolescent sexual offender recidivism: Success of specialised treatment and implications for risk prediction*, Child Abuse and Neglect, 24; Gretton, H.M., McBride, M., Hare, R.D., O'Shaughnessy, R., & Kumka, G. (2001) *Psychopathy and recidivism in adolescent sex offenders*. Criminal Justice and Behaviour, Volume 28