

UK Supreme Court Debate Day

Information Pack

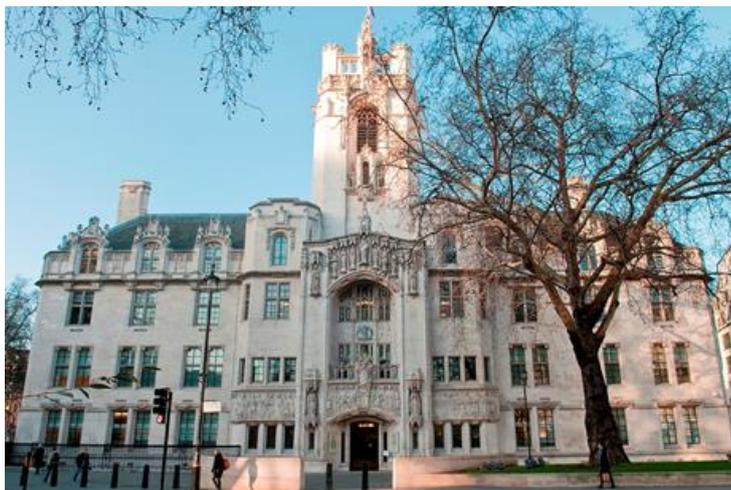


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1. The UK Supreme Court

The Supreme Court is the highest court in the United Kingdom. It is the final court of appeal for all civil cases in the UK (including Scotland) and for criminal cases in England, Wales, and Northern Ireland, excluding Scotland. Any decisions made in the Supreme Court sets the precedent for all of the lower courts.



The Supreme Court is also the final court of appeal for devolution issues, where its role would be to see whether Scotland, Northern Ireland, and Wales are acting within their powers. These cases used to be heard by the Judicial Committee of the Privy Council.

The Supreme Court was established in the Constitutional Reform Act of 2005 which sought to establish a clear separation of powers between the executive, the legislature and the judiciary. It also aimed to create a more transparent and accessible judicial process.

It was in October 2009 that the judges or Law Lords were finally moved out of the Appellate Committee of the House of Lords (the former highest court of appeal) and into the newly renovated Supreme Court.

There are twelve Supreme Court justices, but they do not sit on cases at the same time. Each case is usually heard by a panel of five justices. This can be increased to seven or nine justices depending on the importance or complexity of the case. There are always an odd number of justices on a case to ensure that a majority decision can be reached. Very occasionally, eleven judges may sit on a case.

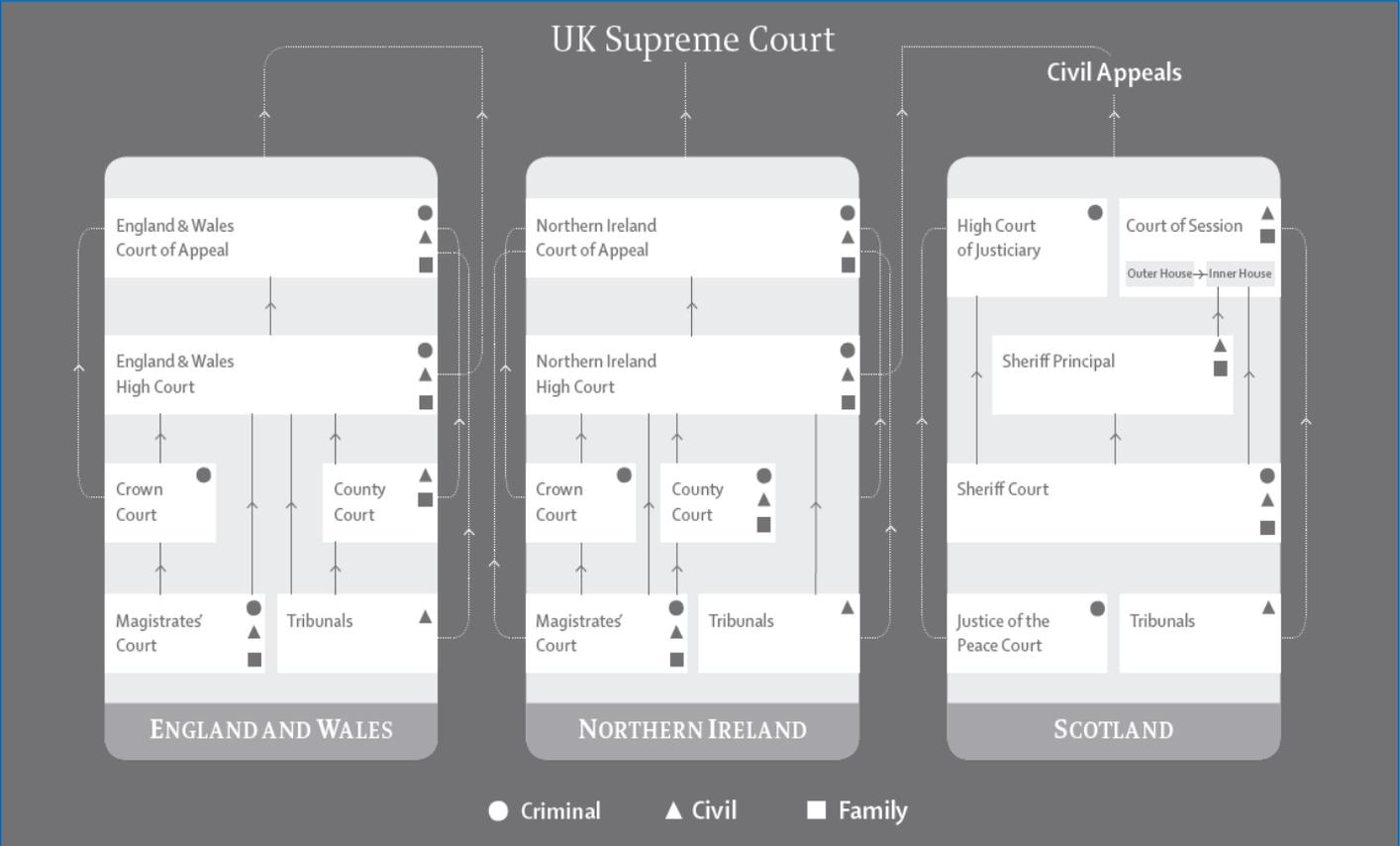
For example, during a during 'R (on the application of Miller and another (Respondents) v Secretary of State for Exiting the European Union (Appellant), a case about who had the authority to trigger Article 50, starting the process to leave the European Union, it was deemed so important that eleven judges heard the case.

Other cases have included: one about MP's expenses, one about whether letters that Prince Charles wrote to Government Departments should be published or even one about whether people should have the right to take your own life.

You can see more cases examples and the significance they have on society, on a series of videos specially made by the Royal Holloway University of London.

https://www.youtube.com/watch?v=yrLseT6RI&list=PLSegY__gUYIeCjbuO1dii9Oc4eCX2sx6D&index=2&t=0s

Hierarchy of the court system



This court chart shows the route which many cases will take before they reach the Supreme Court.

A case will have travelled through at least three courts before being heard at the Supreme Court.

Between April 2018 and March 2019, the Supreme Court heard **91** cases in total.



For more information on the Supreme Court we recommend watching our introductory video by clicking the following link:
<https://www.youtube.com/user/UKSupremeCourt>

2. Background Information

- The Police and Criminal Evidence Act 1984 (PACE) required that samples of DNA and fingerprints taken from a person in connection with a crime must be destroyed if that person is cleared of that crime.
- In 2001 the law changed, and the Criminal Justice and Police Act 2001 replaced the provision for the destruction of samples. Instead a new clause stated samples 'may be retained after they have fulfilled the purpose for which they were taken'. This was followed by guidelines issued by Association of Chief Police Officers (ACPO) providing that data should only be destroyed in exceptional cases.



Following a case dismissal by the Appellate Committee of the House of Lords (the highest court of appeal before the creation of the Supreme Court) The European Court of Human Rights in the case *R (S) v Chief Constable of the South Yorkshire Police* and *R (Marper) v Chief Constable of Police* found that the retention of DNA data and fingerprints by the Police was not justified and therefore incompatible with Article 8 of the Human Rights Act: the Right to Respect for Private and Family Life.

DNA Fact

When a suspect is arrested for a recordable offence, a mouth swab and fingerprints are taken, using a sterile kit and fingerprint scanner.

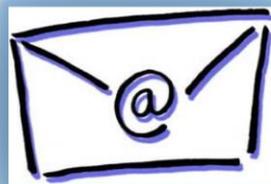
The swabs are transferred to a science laboratory where chemicals are added to turn the it into a unique DNA barcode.

This is then stored electronically in the National DNA database run by the National Policing Improvement agency.



Photograph courtesy of West Midlands Police

Every new sample put into the DNA database is automatically checked against those already there. If there is a match the police force that took the initial swab will be alerted by e-mail.



All of the DNA that is taken from crime scenes is also stored nationally. Each new sample will be automatically checked against the human DNA that has been stored to see whether there is a match.

- Section 64 of the Police and Criminal Evidence Act 1984 (PACE) required the destruction of samples or fingerprints taken from a person in connection with the investigation of an offence if he was cleared of that offence.
- Section 64(1A) of PACE, enacted by section 82 of the Justice and Police Act 2001 (“the 2001 Act”) replaced that statutory obligation to destroy data with a discretion.
- Section 64(1A) provides that samples taken in connection with the investigation of an offence “may be retained after they have fulfilled the purposes for which they were taken”.
- Section 64(1A) was supplemented by guidelines issued by the Association of Chief Police Officers (“ACPO”). These guidelines provided that data should be destroyed only in exceptional cases.

3. UKSC DNA Cases

Case Name: R (on the application of GC) (FC) (Appellant) v The Commissioner of Police of the Metropolis (Respondent)

Date of Hearing: 31st January and 1st February 2011

Background Information and Case Details:

In December 2007, GC was arrested on suspicion of common assault on his girlfriend. He denied the offence. A DNA sample, fingerprints and photographs were taken after his arrest. On the same day he was released on police bail without charge and was subsequently informed that no further action would be taken. The appellant argues that the retention by the police of his fingerprints and DNA samples was incompatible with article 8 of the European Convention on Human Rights (ECHR).

Case Name: R (on the application of C) (FC) (Appellant) v The Commissioner of Police of the Metropolis (Respondent)

Date of Hearing: 31st January and 1st February 2011

Background Information and Case Details:

In March 2009, C was arrested on suspicion of rape, harassment and fraud. His fingerprints and a DNA sample were taken. He denied the allegations. He was charged in respect of the rape allegation, but no further action was taken in respect of the harassment and fraud allegations. In the Woolwich Crown Court in May 2009, the prosecution offered no evidence and C was acquitted.

The cases came to the Supreme Court, and were heard together as they contained the same issue or ‘point of law’



They came as a ‘test case.’ A test case is a term to describe a case that tests how valid a particular law is. Test cases are useful because they establish legal rights or principles and thereby serve as precedent for future similar cases.

- In both cases, the appellants requested the destruction of the DNA data that was taken.
- Their requests were refused as there were no exceptional circumstances within the meaning of the ACPO guidelines.
- The appellants issued proceedings for judicial review (the ability to challenge a public body through the courts) on grounds that, in light of the ruling in *Marper ECtHR*, the retention of the DNA was incompatible with their article 8 rights.

- In the circumstances, the Divisional Court dismissed the applications for judicial review but granted a certificate that the cases were appropriate for a leapfrog appeal to the Supreme Court.

What does Article 8 Say?

- Article 8 protects the private life of individuals against arbitrary interference by public authorities and private organisations such as the media. It covers four distinct areas: private life, family life, home and correspondence.
- Article 8 is a qualified right, so in certain circumstances public authorities can interfere with the private and family life of an individual. These circumstances are set out in Article 8(2). Such interference must be proportionate, in accordance with law and necessary to protect national security, public safety or the economic wellbeing of the country; to prevent disorder or crime, protect health or morals, or to protect the rights and freedoms of others.

Percentage of total population on DNA database in 2005

- France 0.2%
- Germany 0.44%
- Spain 0.01
- USA 0.99
- Canada 0.23
- United Kingdom 5.23

By 2010, the National DNA Database contained computerised DNA profiles and linked DNA samples from approximately 6 million individuals in the UK, including Scotland and Northern Ireland (nearly 10% of the UK population).

In 2007, Baroness Scotland confirmed to the Home Affairs Committee that three-quarters of the young black male population would soon be on the DNA database.

<http://www.genewatch.org/sub-539481> 22/08/2014

More facts and information which pertain to the time the case was heard back in 2011:

Does DNA Solve crime?

Less than 1% of crimes are solved with the help of DNA profiles.

DNA comes into its own in cases where a profile recovered from a crime scene later connects a suspect to the offence.

The most obvious examples are an attacker's DNA on the hilt of a knife, a burglar's hair snagged on a window or semen recovered from a rape victim.

DNA plays a role in solving a third of cases like these, where a crime scene sample is loaded onto the database and later linked to a suspect.

What are the figures?

The database provides some 3,500 matches to crime scenes every month.

Between April 1998 and September 2009, DNA profiling provided matches to 410,000 crimes.

Between 2007- 08 police successfully gathered DNA profiles relating 83 killings, 184 rapes and a further 15,420 crimes they went on to solve.

<http://news.bbc.co.uk/1/hi/uk/7532856.stm> 20/08/14

More recently

Statistics from the National DNA Database show that as of September 2015:

An estimated total number of individuals retained on NDNAD - 4,664,260

Total number of subject sample profiles retained on NDNAD - 5,273,791

Total number of subject sample profiles retained on NDNAD from volunteers - 1,972

Total number of crime scene sample profiles retained on NDNAD - 480,129

4. Your Debate

Debate Question: 'Is it fair for police forces to keep fingerprints and DNA samples from innocent people?'



Here are some issues for you to consider when formulating your argument either for or against the debate question:

- Whether retaining DNA and fingerprints of innocent people is a good deterrent against future crime
- Whether keeping DNA and fingerprint samples is a means of protecting the public
- Whether the retention of DNA and fingerprint samples is a violation of an individual's right to privacy (Article 8, ECHR)
- Whether it is a good means for freeing individuals who've been wrongly convicted
- Whether taking DNA samples from innocent people is a good way to narrow a search for criminals and thus solve crimes



5. Debate Rules

During the Debate Day, your group will be split into three teams. **For, Against** and the **Judges**.

For: IT IS FAIR for police forces to keep fingerprints and DNA samples from innocent people.

Against: IT IS NOT FAIR for police forces to keep fingerprints and DNA samples from innocent people.

The Judges

The Judges will listen to the arguments of both sides and have the opportunity to ask questions. They will then decide which side has given the strongest argument based on how clear and concise the arguments were; how evidence has been used to support those arguments; whether the teams were able to answer the questions and whether good teamwork was demonstrated overall.

Before the Debate Day, all the teams should read and consider the case examples, the issues surrounding them in relation to this debate question.

Timetable for Debate

(50 min debate preparation)

Team A (for): 10 min

Team B (against): 10 min

Break 4 minutes

Team A: 3-minute summary

Team B: 3-minute summary

Judges 10 min to consider and deliver judgment

6. Useful Links:

For more information about the UKSC Cases:

Supreme Court website: <http://supremecourt.uk/>

A recent UKSC case judgment - *Gaughran v Chief Constable of the Police Service of Northern Ireland*:

<https://www.supremecourt.uk/cases/docs/uksc-2013-0090-press-summary.pdf>

Other Decided Cases and their Judgments:

http://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0173_Judgment.pdf

http://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0173_PressSummary.pdf

For more information about courts in the UK:

<http://www.justice.gov.uk>

Background news articles relevant to the case at the time:

Q&A: The national DNA database

<http://news.bbc.co.uk/1/hi/uk/7532856.stm>

DNA and fingerprint guidelines ‘unlawful

<http://www.bbc.co.uk/news/uk-13440012>

DNA retention judgment won’t see discriminatory policy destroyed

<http://www.guardian.co.uk/commentisfree/libertycentral/2011/may/18/dna-retention-supreme-court-police>

Other

<http://news.bbc.co.uk/1/hi/uk/8037972.stm>

<http://news.bbc.co.uk/1/hi/uk/5405470.stm>

<http://www.parliament.uk/documents/post/postpn258.pdf>