An Interview with Mr Peter Mahy of Howells LLP who represented S and Marper at the European Court of Human Rights

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Abstract

Mr Peter Mahy, Partner at Howells LLP and the lawyer who represented S & Marper in front of the Grand Chamber at the European Court of Human Rights was interviewed by Katina Michael on the 10th of October 2009 while she was studying towards a Masters of Transnational Crime Prevention in the Faculty of Law at the University of Wollongong. In 2010 Peter Mahy received the Legal Aid Lawyer of the Year award for his contribution to the field. Mahy received his honours law degree from Sheffield University and a Masters in Criminology from the University of Cambridge. He did his Legal Practice Course at the University of Northumbria, Newcastle and joined Howells in 1996, qualifying in 1998.

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Katina Michael: Peter, thank you for the opportunity to conduct this interview with you. I will begin by asking you to distinguish between the collection and storage of DNA samples as opposed to DNA profiles? Or do you see both collection types are ‘equal’ in value?

Peter Mahy: I do distinguish between DNA sampling and DNA profiling. And in fact, the UK government is now also distinguishing between DNA samples and
profiling, stating in their consultation paper, *Keeping the right people on the DNA database*, that samples will be destroyed. I think there is a particular distinction in that there is a fear with how samples may be used in the future, and how they might be analysed into the future. However to me personally, I think the collection and storage of DNA profiles as opposed to DNA samples is marginal and that both are of a huge concern.

**Katina Michael:** So the UK government has now publicly stated that they will destroy all samples on their national database?

**Peter Mahy:** Yes. So what they are saying now is that the DNA sample will be destroyed once it has been uploaded to a profile.

**Katina Michael:** Could you make a general comment about the British Police and Criminal Evidence (PACE) Act 1984 and how it has changed since its introduction?

**Peter Mahy:** So prior to 2001, the UK took the position that if you had your DNA taken on charge then it could be kept but if you were acquitted or the charge was not continued then it had to be destroyed. That was changed in 2001, so that DNA could be retained even after acquittal or if charges were dropped. And then the law again changed so that a DNA sample could be taken just on arrest, not charge. So the PACE in terms of the collection of DNA was significantly watered down.

**Katina Michael:** Is it true that PACE has been watered down so much that it has been applied to the collection of DNA samples for what society generally considers petty misdeeds? Was DNA collected first for violent crimes alone, and then later due to changes in PACE for minor misdemeanors?

**Peter Mahy:** So what has happened now, is about police powers with respect to recordable offences. And so every 6-12 months, the notion of what constitutes a recordable offence is redefined, and each time it gets redefined more offences are introduced into PACE, including more lower level crimes. So there has been a widening of the definition on what constitutes a recordable offence, to include more minor offences.

**Katina Michael:** Some analysts, early on (e.g. Ireland 1989) have argued that PACE did a good job of balancing the right of an accused person against the need for police to have adequate powers for law enforcement. Do you agree?

**Peter Mahy:** I think the problem in the UK is that you see an increasing amount of criminal legislation. There has been 3000 changes to acts of parliament related to criminal legislation since the Labour government has been in, so there has been a creep to the erosion of civil liberties, a hemming in if you like, and so it seems to be a constant battle to keep the rights that were enshrined in PACE and the Human Rights Act.
Katina Michael: Do you see then, that the increase in police authority and powers represents a commensurate loss in the individual rights of UK citizens?

Peter Mahy: So I think there is sort of a constant creep against civil liberties, and a constant battle to preserve them. And it is not clear cut. The UK enacted the Human Rights Act which was a massive step forward but that is under threat at the moment. There is a conservative party here that is saying they are going to take away the Human Rights Act. This could be seen a battle between the left and right all the time, trying to keep the rights that have been hard fought for.

Katina Michael: As a solicitor representing persons in cases to do with civil liberties, how do you feel about the collection of DNA samples for crimes such as: petty misdeeds such as begging, or being under the influence of alcohol, and acting in a disorderly fashion?

Peter Mahy: I think an interesting issue in this whole case and this whole debate is that no one has really grappled with why DNA has been taken from a person at all. If a person is presumed innocent, I mean, why should you take their DNA on arrest or on charge? That lead into the question really. Is it right to take the DNA of a person for very low level offences? I think that no one has really grappled with this, of when do you draw the line and when should it be taken?

Katina Michael: I agree. I am actually interested in this very question. And perhaps more specifically I am interested in why more citizens do not speak up about the collection and long term storage of their DNA samples and profiles. Is it that citizens feel powerless? Or that they do not know how to fully participate in such a process of questioning?

Peter Mahy: I think that what has been absolutely amazing in this case is that when this case started out it was pretty much just me challenging the law. There was so little interest in the divisional courts, little interest in the Court of Appeal. Even at the House of Lords, the media was not really interested, not at all, so there was really no profile. When we got called from the European Court of Human Rights things began to get a little bit more exciting. And then there was the Nuffield report that was big publicity. And after the European Court there seems to be something on DNA in the press every day, and I think now it has a high profile. When you listen to documentaries on television here, or question time which is very popular, there is just about something on this every week because this really is a big issue now and it has come as a result of the stand that we took. And it seems that this is a major issue. In terms of people challenging government and taking it forward- I understand that Chief Constables are virtually inundated with daily requests at the moment and citizens voicing and demanding their rights.

Katina Michael: That is great to hear. And I do hope it sets an example for
others to follow, causing a ripple effect through the Europe, and the rest of the world. Does the UK government actually have about 9% of all UK citizen DNA samples?

**Peter Mahy:** Yes it does. The figures that we have over here are that there are just over 5 million samples on the DNA database with about a 60 million population in the UK, so it is roughly between 8%-9%. I mean it is a particular problem here because these are the statistics that we have been given over the years by the Government, but they seem to change a lot and are quite unreliable, and that is one of the key problems. So I am rather skeptical about the UK figures that they are putting forward but it seems to be around the 5 million mark.

**Katina Michael:** So when you compare the percentage of the UK population that has had their DNA sample stored (about 9%) on the national DNA database with other countries in the world (about 2%) do you believe that the collection is ‘grossly disproportionate’? Are we to believe that crime rates are so high in the UK, or there are other historical reasons to describe this kind of sampling?

**Peter Mahy:** I think the UK in the last few years has become fairly obsessed with crime and it has been a policy of the government to focus on this. And the government was particularly proud in this case to say that they were the vanguard of DNA and of the biggest database and therefore they would be able to conduct crime detection but without really thinking about the implications. So it was actually the Government who wanted to have the biggest database. I think the government also saw it as a cheap way of fighting crime, and cutting costs and trying to keep the public happy.

**Katina Michael:** And are the retention laws in the UK, post S & Marper bound to change?

**Peter Mahy:** This is quite a difficult question. The government has been doing as little as possible to comply with the judgment but the Council of Ministers is ensuring that they do comply with the judgment. So although to date, they have been doing as little as they can, in the end they are going to have to comply.

**Katina Michael:** Could you elaborate on the main issue the ECtHR case identified which was to do with the principle of “proportionality” and an individual’s right to respect for private life? Was this the key finding? What were some of the other findings from your viewpoint?

**Peter Mahy:** I think one of the important things to realise is that in the UK courts, we traveled from the Divisional Court, the Court of Appeal, and the House of Lords, and while in the UK it was stated that Article 8(1) the ‘right to private life’ was probably not even engaged. The feeling in the UK was very much that this was not a very important issue and why are you here for. And we had a fairly rough ride in the UK courts, some even commented that they could not see any
basis for the case at all. In the E CtHR, they said clearly that article 8(1) was engaged and that was an important finding, from the UK point of view certainly that these rights have to be taken seriously. I think the other major finding was identification from the court that there was no independent system in the UK for review, and so you have to ask the Chief Constable to remove your DNA and simply that is not fair. That is something that the UK Government has tried to whitewash a bit, saying that well, we are going to keep that, and the Council of Ministers are saying well that is not good enough. So the finding that you should have the opportunity to have somebody else make the decision was important. But the main findings from the European Court were what is called the Article 8(2) right, which is the proportionality argument. They said that they were struck that in the UK there was a blanket policy so that everybody’s DNA was retained until they were 100 or until they died, no matter who they are or what offence they committed. And they found that the UK had overstepped what is called the margin of appreciation, that is the right for each country to determine its own laws and try to strike a fair balance. So all in all, they found that not only was Article 8(1) engaged but that Article 8(2) on proportionality where states have a lot of leeway that the UK had just gone too far and were adopting a blanket one-for-all policy.

Katina Michael: How do you think the United Kingdom have reacted to the ECtHR ruling? And have they reacted enough and at the required speed?

Peter Mahy: What happened in December 2008 the Home Secretary, who has of course now been chucked out, said there was going to be a white paper and that the matter was going to be fully debated with common sense standards. Not soon after that, around about February 2009 time, the Government said they were going to make regulations and secondary legislation so the matter would not be debated. And that is now in jeopardy because the House of Lords Committee said that would be an unlawful. The Government then introduced the consultation paper, *Keeping the right people on the DNA database*, in May of this year, and importantly, based their statistics from the Jill Dando Institute. The Jill Dando Institute recently said that the statistics that the consultation is based on were not finished. So that puts the whole consultation up in the air. And most importantly the Council of Ministers debated this on the 15th and 16th of September this year, and looked at the UK proposals and they basically said that for most of them that if they were enacted, then they would be unlawful. So I think the UK is in a very difficult position because 10 months on they have not complied with the judgment. And that they have put proposals forward that are based on flawed statistics and which the Council of Ministers have said would probably be unlawful.
**Katina Michael:** And you have mentioned the citizen response has been to inundate the Chief Constables with requests to remove DNA samples. How have you felt about the consultative process as of May 2009?

**Peter Mahy:** Part of the problem with the consultation process from my point of view, is that for a public consultation the Government provided a very long and a very complex document. It is not the sort of document that most members of the public can easily read. It was not in an easy format. There was no sort of response leaflet that had five or six questions that you could answer and send in. There was none of that, no guidance of how to respond. I think for many members of the public that would have been difficult to respond to. We were told that there were however about 500 people that responded. And of course, it was only people who knew about the consultation and could access and understand the document and then just send their response to it.

**Katina Michael:** So S & Marper’s DNA samples were removed after the ECtHR ruling? And what about the samples of other innocents? Were they destroyed or are they still on the database?

**Peter Mahy:** Our clients’ samples were destroyed in December 2008, almost immediately after we requested destruction, after the ECtHR ruling. What has been happening in the UK is that the Government, the Home Office, have been telling forces to send a standard letter out to people who have requested destruction of their samples, saying that the law and policy in the UK has not changed and therefore they would have to wait for a change in the law or policy. And that is what the majority of the people get. And I guess for people who cannot afford to pay privately or eligible for legal aid, they think that that is it, and they do not know any different. We have had quite a lot of clients who have come to us about their situation and we have been challenging it and to date all of our clients DNA samples have been destroyed and taken off but I think the problem is that the majority of people are not fully aware of their rights and are accepting what is said. They do not know how to challenge the government in what they are saying.

**Katina Michael:** What is the next step in this process? What will it take for the UK Government to destroy the samples?

**Peter Mahy:** The Labour Government here is very reluctant and I think in truth that they are hoping that this issue is just going to go away before the general election which is scheduled for the next six months or so. I am skeptical that they are going to do anything before then but they have Europe on their back and the Conservative Government which is interestingly seen as more right wing has said that they will comply with the ECtHR judgment, and will destroy the DNA samples of all innocents as will the Liberal Democrat Party. So it all depends on who is in
power. But I think either way eventually the UK is going to have to comply with the judgment and destroy DNA samples of innocents or at least have a fairly limited retention period as they do in Scotland.

**Katina Michael:** Do you wish to comment about reports in the media that Mr S has somehow found his way back onto the DNA ‘archive’? Authorities would have us believe that Mr S’s details should never have been removed from the National DNA Database (NDNA) in the first place, but is the real story more about the ‘ease’ with which one’s DNA sample can end up on the NDNA?

**Peter Mahy:** I think in a way it is the Government trying to make the most of it, but it is a false premise really, because the point is that Mr S was arrested again, and his DNA was put back on the NDNA. But they did not need his DNA to get there, i.e., it made no difference that his DNA was taken off in the first place. As I understand it, DNA was not involved in either of the cases at all. In fact, DNA was not a feature of either case, so it would not have made any difference at all.

**Katina Michael:** So your response is basically, what is the point of collecting and storing DNA when it cannot add any value to the actual case in question?

**Peter Mahy:** Yes, in the case of our client, what did it matter, DNA played no part at all.

**Katina Michael:** So why have the UK adopted such a stance? Are they attempting to make their statistical inferences more robust when DNA is being analysed in criminal proceedings?

**Peter Mahy:** Certainly the UK’s policy has always been that they have wanted the largest database possible. I think if it was not for the ECtHR ruling, they would have gone for a fully fledged national DNA database.

**Katina Michael:** So I gather from my reading that the motivation for such a national DNA database has to do with providing a greater probability and confidence level between the DNA evidence found at the scene of a crime and a match with the DNA sample of a suspect and to eliminate such problems linked to the need to conduct sub-group sampling?

**Peter Mahy:** Many of the commentators now- and this is where we are getting into more scientific discussion and more areas of argument- are saying that they consider four to five million samples to be the largest for an accurate DNA database. And that if your database size goes over five million that your chances of getting false hits and false readings increase. I was reading one article that was discussing how the chances of false hits is now increasing as a result of increasing records on the NDNA.

**Katina Michael:** What do you think the ‘Father of DNA’ thinks about all this?

**Peter Mahy:** Well in fact, Alec Jeffreys has gone on record over the last few years saying that the DNA samples of innocents should not be kept and should
Katina Michael: Could you make a comment about the collection of DNA samples from:
 a) Children?
b) Persons under the age of 18?
c) Or of particular ethnic/racial/familial backgrounds and what impact this might have in a court of law?

Peter Mahy: This was something we relied on the UN Convention on the Rights of the Child and the European Court certainly saw that as a big issue, and that children are entitled to special consideration. And we also made the discrimination argument that there are so many more people of ethnic backgrounds than Caucasians as well. But in the end the ECtHR did not need to rule on that matter at all, as they ruled on the importance of a right to private life. Personally, I am not sure that there is a huge difference, and personally I think that the same rules should apply to everybody. If you are innocent, then it should not really matter what age you are, or what background you are from.

Katina Michael: So how is the Government proposing to change DNA retention laws by age and type of offence?

Peter Mahy: So there are proposals from the Government to that end. For a serious violent, sexual or terrorism-related offence, the DNA of a child would be retained for 12 years. For children between the ages of 10 and 18 years who are arrested but not convicted on one occasion, DNA is retained for 6 years then deleted on the 18th birthday, whichever happens first. And if a child is arrested on 2 occasions, their DNA is retained for the full 6 year term. So yes, a different regime for the retention of DNA for children.

Katina Michael: What would it take to raise the profile of the importance of removing DNA samples from public databases, especially in the European Union or Council of Europe states? Will it take more cases like S & Marper to front up to the ECtHR or various EU states to remove samples from databases? What strategy would you adopt?

Peter Mahy: I think we now have the judgment and it is now in the political debate and the Government will have to respond to the consultation submissions shortly. And after the ECtHR judgment the Government has been under constant pressure. There will be more test cases from people like me. I see the next test case could be somebody who tries to have their DNA destroyed only to be told by the Chief Constable that it cannot. At the moment the Chief Constable is relying on guidelines from 2006 which says the House of Lords ruling is the law. And I think that that is just crazy. The Government is not even taking into account the ECtHR judgment really. I think there would also be an interesting test case on
whether it is lawful to take DNA on arrest given that there is no evidential threshold at that stage and I think there is going to be another test case on the issue of keeping DNA for ever and for minor crimes. I think there is going to be lots of test cases as well as the Council of Ministers driving the political debate, so altogether really.

Katina Michael: Could you make a comment on the collection and exchange of DNA data as a result of the Prüm Treaty? Do you see this as magnifying the problem of collecting DNA samples of innocents and those acquitted?

Peter Mahy: To be honest, we never got to the bottom of how this works in practice. For instance, if someone has their DNA sample taken in the UK and a DNA profile is exchanged between EU states and then a request for deletion is made and granted in the UK, who knows where your information has been saved? Has it been saved in different places all around the world? I am not sure even the Government has a handle on what they have been doing with this information.

Katina Michael: Yes the loss of information is a critical issue for such sensitive databases.

Peter Mahy: I do not know if you heard but in the UK last year, there was a database of DNA profiles with known sex offenders sent from the Dutch police to the UK). Somehow the disc was misplaced and found over a year later. There has been a whole history here in the UK of data going missing, including prison inmate details, bank account details etc. The point is that mishandling of such information is possible. The matter seems to have gone quiet now but this seems to be a huge issue. It seems to me however that there are even more fundamental issues. Say for instance we are sharing DNA profiles with country X who is currently considered our ‘friend’ and then 10-20 years down the track they become our ‘enemy’. This then becomes a serious terrorist threat. These DNA samples and profiles can then be used against us and to cause huge threat against us.

Katina Michael: Given my background is in information technology, I do read so many articles on the losses of data such as disks left behind at train stations and airports, unencrypted data being intercepted, and the theft of laptops of very important persons. But I really had not gone to that next step to consider the way in which DNA profile data in particular, could be used to attack and to make the most of a potential terrorist act. That is fascinating-

Peter Mahy: Yes, it is pretty scary… You could just imagine that even on 5 million samples in the UK getting into the wrong hands and from those records you could determine which type of chemical or biological warfare could wipe out 90% of the UK population but would allow other states to be somewhat unaffected. There would be a significant danger.
**Katina Michael:** When government authorities quote statistics related to the number of cold cases solved using DNA evidence/samples, or the number of successful convictions based on the process of matching DNA profiles, are we really to believe them?

**Peter Mahy:** Well, again, the government statistics are extremely unreliable. I think an important thing to note is that from the Council of Ministers discussion a couple of weeks ago, the information they have actually been given from the Government themselves is that of the 850000 or so samples that are potentially from innocent people that 350000 are from people who have been convicted or acquitted. And from those 500000 samples that are left they do not know what happened to those individuals. So when you have a database with 10% of samples of which the Government has no idea of whether those people were convicted or innocent then I think that just shows how very statistically unreliable the data sources are.

**Katina Michael:** I would like you to comment on the use of force in obtaining intimate and non-intimate DNA samples without the suspect’s consent? What does ‘refusal without good cause’ actually mean in the United Kingdom with respect to PACE? Do you know of any cases where this has occurred and innocent person has not been incriminated? The exact phrase that is used in s. 62(10) is: “Where the consent by the detained person is refused without ‘good cause’, the court, and the court and jury, may draw inferences that may amount to corroboration of any evidence against the person in relation to the refusal s. 62(10).”

**Peter Mahy:** I can answer that in a slightly different way using an example of a case that I recently dealt with where I had a very well respected client in the community, who with his wife was arrested for stealing their own car. At the police station they were asked for their DNA sample and they refused and it was taken by force. We have been battling to get that DNA destroyed for 2 years or so, and only post Marper and only recently, in fact only in the last month or two, we finally got it destroyed. And to those people I think that the whole way it was approached by the police initially in taking the DNA sample by force from somebody who clearly had not committed an offense and who were not charged at the police station and were let go after that, simply to boost the number of people in the database, is horrific and unnecessary. And the battle for 2 years after, alienates people and I think that is why the Government has gone wrong on this issue because you should be policing by consent rather than by coercion. Those two clients before this ordeal were engaged helping the police and very appropriately will now be very reluctant to help the police and there are hundreds of thousands of other people who feel the same way.
Katina Michael: Perhaps it is a good time now to ask you about initiatives such as the Innocence Project in the United States (1992) and the Innocence Network in the United Kingdom (2004). Do you believe that increasingly DNA evidence is rightly being used as a critical component of many judicial proceedings? Or do you think it is being overused? That is, DNA evidence can be used to both inculpate and exculpate a suspect; that DNA evidence has the power to convict the guilty or exonerate the innocent in criminal litigation. Do you have any thoughts on this process?

Peter Mahy: Well, I can see that DNA is very useful in a criminal case and it may solve a crime or prove that somebody is innocent. In the UK now, DNA is routinely used in family cases related to issues of paternity. In fact, DNA is used routinely in immigration cases. But it seems to me though that the essential issue to grapple with is when DNA should be taken without consent because that is an interference of people’s rights, and so should it be taken on arrest or should it be taken when you are charged, or only voluntarily? And that is just the dividing line. I think there is a big mix up and a lot of false prophecy in the UK in how DNA should be used. The UK Government has always proclaimed the importance of DNA, but this question was also answered in the European case. Well that is not disputed. The question is, when you should take DNA from people who do not wish to give it?

Katina Michael: I have just finished reading Ron C. Michaelis, Robert G. Flanders and Paula H. Wulff, *A Litigator’s Guide to DNA: from the Laboratory to the Courtroom* (2008) who state on p. 99 that the “ideal DNA database would contain the profiles of every person in the country” [United States]. But they go on to claim that “[a] database such as this will obviously never be compiled, so forensic analysts must use the data that have been collected, from a tiny portion of the population, to estimate the frequency of an allele in the larger population.” Do you believe as Michaelis et al. do that the UK will never seek to implement a national DNA database? Is the idea as far-fetched as it might seemingly initially appear?

Peter Mahy: I think if we had not won the S & Marper case that this would have happened in the UK. There was mention in the UK courts that the Government was mostly relying on the principle that DNA was taken at the police station, that it was a historical fact and that it was not a big deal. And there were some reports that suggested that DNA samples should be taken from babies at hospitals when they were born because at that point the procedure could be done fairly easily. And of course, you would not need to do it for everybody because of the capability to conduct familial searching with DNA. For instance, 15 to 20 million samples would probably be enough to identify almost anybody in the UK. It might
not be that person but it might be their brother. And that clearly was attractive to
the UK and I think that that might have come. But now because of the ECtHR
judgment that is clearly in retreat now. I mean the Government here is proposing
Individual cards with biometric data on them. I think that is on very shaky
ground now. My best guess now is that the Government is not going to go ahead
with that, apart from the fact that they are fairly bankrupt. So initially yes, I think
the idea was of a blanket coverage DNA database and that probably would have
happened but I think now it is unlikely.

Katina Michael: Do you see the collection and storage of biometric data like
fingerprints to be equally harmful as the collection and storage of DNA samples
or profiles?

Peter Mahy: I do not see fingerprints as being as big an issue as DNA. I think
with DNA it is the fear of future uses that worries people and people do not
understand exactly what DNA is and what it could be used for. Whereas
fingerprints are seen more as a signature and that less pieces could be extracted
from it. But I think generally, especially with my clients, they are less concerned
about fingerprints or a photograph than they are about DNA.

Katina Michael: I have a PhD student that is co-supervised by me and some
one from the medical school that is working on the secondary uses of patient medical
data including for instance the use of blood samples to aid in the discovery of
cures. Her main aim is to develop a patient consent matrix. What I can say I am
witnessing is a major push by the medical field, including medical practitioners
and associated suppliers of medicines such as pharmaceutical companies to
gain access to large amounts of what was once considered confidential
databases in the hope that they can create medical breakthroughs. And there are
also now quite a few health databases that contain hundreds of thousands of
records and have been created voluntarily by the community adding their
personal details to registers. Is it possible that we get to the point that the
medical field almost overtakes the criminal/civil proceedings collection of DNA
samples?

Peter Mahy: I was talking to some doctors in Leeds about this very topic earlier
in the week. Doctors in hospitals are collecting blood samples every day for one
thing or another. And I think there is a very important distinction they mentioned
to me is that they have to ask the person if they consent at the start. And they
also have the right to withdraw their consent and their details and samples taken
off entirely in the future. And of course what we are talking about here is taking
the DNA without consent and keeping them forever never bothering to take them
off. But to me it seems that the big difference is consent.

Katina Michael: And how we would achieve true consent? Would you ask the
individual periodically whether they consent to their DNA data being stored on a medical database for medical discovery? Do you ask them every three months? This is a question we are finding hard to answer.

**Peter Mahy:** In the medical field of course, it may be, I do not know, say in three or four years time that they decide that DNA samples are going to be sold to insurance companies who are very interested in this data especially if you are going to be ill down the track. But at that stage a person might think, I do not want to be on that medical database anymore and I want to be taken off. I think those are the sort of scenarios that will cause the major development because then they could withdraw their consent. For instance, imagine a company who obtains this data and later turns out to be engaged in unethical practices, how would you then withdraw your consent. Again, to me, a major issue here is that you may give your DNA to a limited company who then sends it abroad. I do not really see how you can really control it and to ensure that if you withdraw consent at a later date; that you can indeed really get your DNA back or get it destroyed from the database?

**Katina Michael:** I am really interested in the role that self-interest groups have had in the S & Marper case from the very beginning to the present time. I have come up with the following groups, and I would like you to let me know if any are missing to your recollection. In no order of importance I have come up with the Nuffield Council on Bioethics, Liberty, GeneWatch, StateWatch, the Genetic Interest Group, and the NDNA Ethics Group, Amberhawk, and Where is Your Data.

**Peter Mahy:** There is a letter that was written by the interest groups to the Council of Ministers about a fortnight ago. And I think that all of these groups are important because they will influence particular decisions. You should add to your list Privacy International UK, Black Mental Health UK, Action on Rights for Children, and No2ID.

**Katina Michael:** One thing I am trying to do is to look at the S & Marper case from the view of different stakeholders- the government and policymakers, the citizens, the media, the academic papers that have been written on the S & Marper case such as case comments and notes, and of course, the self-interest groups that are lobbying on behalf of the rights of citizens.

**Peter Mahy:** To be perfectly honest what happened, is that while we were taking the case through the courts in the UK, we were on our own. In the Divisional Court there was little media interest, and nobody was interested. In the Court of Appeal, Liberty tried to intervene but they could not come to the hearing. In the House of Lords, again, Liberty intervened and they were threatened by the Government that if they did and they came to the hearing there would be costs
against them and Liberty was fearful of that. So in fact, Liberty did not come to the House of Lords. So we were really the only ones against the Police and the Government and we were hugely outgunned. It was not until we got to the European Court that Liberty put some submissions in, and importantly Privacy International UK put in some really good work but for the actual ECtHR hearing we were on our own again. There was seriously little back up then, but now that the judgment has come to pass there is a lot of interest from interest groups who are doing good work. Non-government organizations have a right to participate in the Council of Ministers debate, and that is why now they actually have some power.

Katina Michael: Peter, could you tell me how to describe your exact role on the S & Marper case?

Peter Mahy: The solicitor, who acted for the claimant in the S & Marper v United Kingdom case.

Katina Michael: And can I ask, why Mr S and Mr Marper? How did it come to pass that you chose these two individuals? Had they approached Howells LLP?

Peter Mahy: So the reality was that South Yorkshire Police had written a letter to all solicitors saying that because the law had changed they were going to keep all DNA samples of people. In other words they were saying- “[s]top asking for the DNA samples to be destroyed.” And then when the email came around and I read this letter, I immediately thought, well that does not really sound right and we should challenge it. And very quickly I had Mr S and Mr Marper in the office who had written to the police asking for destruction of their DNA samples. I think till that point, I do not really think anyone else had really thought about it as the legislation in the UK was just out, and few perhaps saw it as an issue and worth challenging.

Katina Michael: Just as a final summary Peter, what were the tangible/intangible or explicit/implicit impact(s) of the ECtHR ruling on the United Kingdom?

Peter Mahy: Tangible is that the ECtHR ruling has created change and at the moment there is a lot of debate, a lot of talking between parties here. I think in a way it has drawn a line in the sand, and hopefully in the next 10-20 years we will look back and say that was an important case. That that was a case, where we took a good look at what was going on in the UK and put a stop to the erosion of rights.

Katina Michael: Any final comments that you might have on this S & Marper case?

Peter Mahy: I think one thing that is important to mention is how poorly funded we were. We were granted some legal aid from the European Court which was 2,613 euros. That was for myself and the barrister and included traveling
expenses. So we were probably looking at something like 600-1,000 euro for the both of us, some 200-300 pounds each. It was an immense amount of work-boxes and boxes of documents. But at the same time, the Government lawyers were probably getting paid about 200-300 pounds per hour for the case. And we expect that the UK Government spent hundreds of thousands of pounds, if not millions of pounds just on the hearing. We made a request to freedom of information from the UK Government and they refused them, on the basis that this information was commercially sensitive. I think this just highlights the inequality of people trying to win a case versus the Government and the State. And now that we won the case we got paid fairly reasonably but we are sure, nothing like what the Government got paid. I think it shows the importance of people taking a stand but it is very difficult to communicate that lesson.

Katina Michael: Well, I for one, having researched this case over the last 12 months, am quite in awe of what you have achieved. And I am unsure if you perceive the great importance of S & Marper for other nation states, but this case ruling will set a precedent for others to follow. Thank you for conducting this interview with me.