

08 March 2022

This submission is presented on behalf of The Public Interest Litigation Support (PILS) Project.

The PILS Project – an introduction

The PILS Project is Northern Ireland’s access to justice organisation supporting vital public interest cases. The [Project](#) was set up in 2009 to advance human rights and equality issues by empowering organisations to use legal tools in a smart, strategic and efficient manner.

The PILS Project is a [membership organisation](#), and that membership is comprised of 140 non-governmental organisations (NGOs) and solicitor firms from across Northern Ireland. Together, this membership accounts for a depth of experience and expertise across a wide spectrum of issues and practice areas.

By providing a range of [free services](#) – comprising both legal and financial assistance – PILS collaborates with its members to make sure that strategic [public interest cases](#) make it into Northern Ireland’s courtrooms.

Our response to ‘Human Rights Act Reform: A Modern Bill of Rights’

When this consultation was first published on 14 December 2021, just days after celebratory events were held to mark International Human Rights Day, The PILS Project opened the [Ministry of Justice’s command paper](#) with trepidation.

In essence, the consultation document generally frames The Human Rights Act 1998 (HRA) as a defective piece of legislation in need of repair. Many of the suggestions contained in the consultation’s command paper will limit access to the protections currently offered by the HRA.

Regretfully, even the format of the consultation document itself appears designed to impede genuine engagement from a diverse audience.

Also, when this consultation is viewed alongside concurrent government proposals likely to restrict our ability to hold public bodies accountable [through judicial review](#), or deal with the [legacy of the Troubles](#) via a statute of limitations, PILS and many of our members in Northern Ireland are concerned.

As an organisation that believes in the universality of human rights, one that was founded to empower human rights organisations to hold public bodies to account on equality issues, and break down barriers that prevent people accessing justice, PILS has concerns about many of the proposals put forward in this consultation. This submission will outline the reasons for that in detail.

Specific consultation questions

Questions 8 & 9 - A permission stage for human rights claims

The PILS Project was created to support human rights organisations to overcome the twin obstacles of cost and a lack of legal knowledge that prevented them initiating public interest litigation in Northern Ireland. Our legal, financial and pro bono support services are all designed to increase understanding of and access to the justice system.

PILS do not support the introduction of a 'significant disadvantage' qualifying criterion at a permission stage in human rights claims. We have seen no evidence from our work with our members that would merit its inclusion. Our experience also suggests that the assertion underlying questions 8 and 9 (that the courts are inundated with human rights claims that are not 'genuine') is untrue.

No evidence base has been provided by the government to explain the rationale for these proposed changes.¹

Section 7 of the HRA already outlines who is eligible to bring proceedings against a public body. PILS share the concerns expressed by the [QUB Human Rights Centre](#) in their submission (at para. 21) that this requirement would 'adversely affect the ability

¹ (This concern has also been raised by researchers at [The Public Law Project](#) and [The British Institute for Human Rights](#) (at p.21).)

of individuals whose fundamental ECHR rights have been breached to have meaningful access' to UK courts.

Question 10 - Judicial Remedies: section 8 of the Human Rights Act

Universality is a core principle of international human rights law. Our clients are not always popular but their protection cannot be restricted by governments or other public bodies that consider them to be 'undeserving'. Human rights protections are a safeguard for everyone – particularly for groups who have been marginalised in society.² They are designed to protect individuals against state misdemeanours.

The PILS Project's work suggests that any proposal that would create a hierarchy of rights (or limit the judicial remedies available to anyone whose rights have been abused) is mistaken and ultimately unworkable.

Question 11 - Positive obligations

In relation to positive obligations, PILS agree with the views expressed on this question by our colleagues at the [NI Human Rights Consortium \(at p.6\)](#). The state's obligation not just to desist from harm but to proactively protect human rights is particularly valuable in a Northern Ireland-context (especially relating to Article 2 and Article 3 rights).

PILS do not believe any change is required to the HRA in this regard.

Question 14 - Respecting the will of Parliament: section 3 of the Human Rights Act

As an organisation set up to break down barriers between the legal profession and civil society, PILS are supportive of the creation of a public judgment database.

It is worth highlighting that such a database could be created without any change to the HRA.

We believe that this data would assist in dispelling some of the unhelpful myths around the HRA. It would also call into question the UK Government's allegation that rights are incrementally expanding 'without proper democratic oversight'.

² This point is echoed by the [Women's Policy Group NI](#) submission to this consultation (at p.10)

PILS also endorse The British Institute for Human Rights' view ([at p.34](#)) that, if created, any database should be maintained by a well-resourced, independent body.

Question 19 - Application to Wales, Scotland and Northern Ireland

It is very disappointing to note that the possible impact of rewriting the HRA on devolved nations is not considered before page 74 of the consultation paper, and is limited to one single question.

PILS believe that the impact of any proposed changes to the HRA on Northern Ireland (or any devolved nation) should be comprehensively assessed. As PILS pointed out in our [2021 IHRAR submission](#): The Human Rights Act, and the protections it enshrined in national law, has a particular historical significance in Northern Ireland.

Section 6 of the [Belfast/Good Friday Agreement 1998](#) includes specific commitments by the UK Government to incorporate the ECHR into Northern Ireland law. The Human Rights Act 1998 fulfilled this commitment. PILS do not agree with the UK Government's assertion (at Chapter 1, para. 37, of the consultation) that changes to the HRA would not undermine the GFA.

Convention rights, by virtue of their inclusion in the Good Friday Agreement peace settlement, forms part of Northern Ireland's constitutional DNA (and the symmetrical protections in the Republic of Ireland). The PILS Project would have serious concerns about any changes to the operation of the Human Rights Act that would contravene the UK's Government obligations under the GFA.

The current consultation is also silent on how the commitment made in the GFA to an NI-specific Bill of Rights would sit practically alongside the proposed rewriting of the HRA or a 'UK Bill of Rights'. Chapter 1, para. 40, of the current consultation references the government's belief that changes to the HRA "*will have no adverse impact on any future developments towards a Northern Ireland Bill of Rights*". No additional information is provided to illustrate this belief.

(It is also worth noting that, despite decades of [committed advocacy](#), the goal of a [Bill of Rights for Northern Ireland](#) has still not been realised. This could provide a note of caution for the UK Government; creating a 'UK Bill of Rights' may not be the simple task they envisage.)

Question 29 - Impact

The following case is a very well-known example of the Human Rights Act's positive impact in action in public interest litigation supported by PILS.

- *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)*

Solicitor Pat Finucane was murdered in front of his family at their home in 1989 in what became one of the most notorious killings of the Troubles. The PILS Project provided one of our solicitor members – Madden & Finucane – with financial support for the Supreme Court appeal.

A public inquiry into his death (along with another four collusion incidents) was recommended by Judge Peter Cory in 2004. However, in 2011, then prime minister David Cameron announced that a review would take place into the death of Pat Finucane, not a full inquiry.

Sir Desmond de Silva carried out this independent review into whether there was state involvement in the murder of Pat Finucane, publishing his final report in December 2012. He concluded that he was '*...left in significant doubt as to whether Patrick Finucane would have been murdered by the UDA in February 1989 had it not been for the different strands of involvement by elements of the state...*'.

On 27 February 2019, the Supreme Court held that there had not yet been an investigation into the death of Pat Finucane that fulfils the obligations contained in Article 2 (right to life) of the European Convention on Human Rights. The Court's five judges did not explicitly order a public inquiry in their judgment. However, the [unanimous judgment](#) did acknowledge that the previous hearings ordered by the British government into the death of Pat Finucane were not fully human rights compliant.

Alternatives to the current proposals

In his introduction to this consultation, Justice Secretary Rt Hon Dominic Raab refers to the need to '[restore public confidence](#)' in the Human Rights Act. This mirrors the arguments for reform presented in [February 2016](#) by Mr Raab and his colleague Michael Gove (when they were Parliamentary Under-Secretary of State for Justice and Lord Chancellor respectively).

In PILS' view, the public's confidence in human rights is not the issue. Over 88% of people surveyed for a [Survation poll](#) before the 2019 general election agreed that human rights protections should apply to everyone equally.

PILS argue that even *if* confidence did need to be restored, one way that the UK Government could achieve that aim would be to promote the virtues of the HRA, set out the evidence, and for politicians to cease describing the Act as a thorny problem to be fixed.

A creative public information campaign on the benefits of the Human Rights Act would be a more pragmatic, feasible and productive use of finite government time and resources.

The IHRAR also strongly recommended that the UK Government focus on civic education on the Human Rights Act for everyone (at [Chapter 1, para. 52](#)).

An evidence base for how this could be created already exists, including audience research from [YouGov/The Scottish Human Rights Commission](#) on building a human rights culture and the Agency of Fundamental Rights' (FRA) [principles](#) for communicating human rights.

The fate of The Human Rights Act 1998 should not be based on suspicion, hearsay and pre-determined attitudes. Instead, evidence on its provisions and benefits for us all must be publicised in an honest, transparent way.³

Feedback on the consultation process itself

According to the UK Government's own [Code of Practice for Consultations](#), effective consultations should (among other things) be clear, concise, have a purpose, last for a proportionate time, and be carried out in a way that suits the stakeholders involved.

When examined against this standard, the current consultation process falls short on a number of fronts.

The command paper/consultation document is 123 pages long, contains 29 separate questions, and is not written in plain English.

³ (A point supported by [constitutional lawyer Stephen Clear](#) at Bangor University's Law School.)

It was originally published on 14 December 2021, but a text-only, easy-read version was only made available online on 24 February 2022. This has resulted in disabled people having only 12 days to respond to a lengthy, verbose consultation – a situation that led Liberty and over 140 other organisations to request a [deadline extension](#). No audio version was made available until 07 March, excluding people with visual impairments.

This lack of accessibility removes important voices from the consultation, the very voices who have experienced marginalisation in other areas of their life and have valuable perspectives to share on our human rights laws as a result.

The consultation should have been carefully informed by the work of Sir Peter Gross and the independent panel of experts that he chaired throughout 2021 but this appears not to have happened. While the Independent Human Rights Act Review panel did make a series of practical recommendations related to the workings of the HRA, overall, the panel felt that the 1998 Act “[works well and has benefited many](#)”.

In reality, this consultation displays very little evidence of taking account of the IHRAR report, departing from its recommendations to such an extent that Sir Peter Gross was left to comment that the consultation ‘[is not a response to my report](#)’.

Conclusion

Fundamentally, the problems with The Human Rights Act that this consultation claims it wants to rectify simply do not exist.

In spite of the recommendations provided by [the IHRAR panel](#) (based on months of deliberations, over 150 consultation responses and multiple roadshow events), the government appears to have ignored them. Instead, they seem determined to fit a square ‘reform and rewrite’ peg into the round hole of reality.

The Human Rights Act 1998 works well. It can probably help even more people in their day-to-day lives if its contents were commended, not condemned. The European Convention on Human Rights was drafted in 1949, as Europe emerged from the painful shadow of World War II. Its contents were shaped by a desire to never again witness such a violent breakdown of humanity.

PILS would strongly caution the UK Government against removing any human rights protections at a time when people across the UK are surviving a global pandemic,

enduring a cost-of-living crisis, while simultaneously trying to manage concerns about healthcare, climate breakdown and persistent inequality. We need more access to human rights protections '[at home](#)', not less.

Simply substituting the word 'European' with 'British' or 'UK' in a bill of rights won't improve people's lives overnight – particularly in Northern Ireland. The government should be serious in its desire to '*provide a sharper focus on protecting fundamental rights*' and PILS would encourage the government to revisit the IHRAR panel's recommendations.

Otherwise, they are in danger of reinventing the human rights wheel so much that the wheels fall off entirely.

For more information on The PILS Project or any of the information included in this submission, our organisation's contact details are: Community House, Citylink Business Park, 6a Albert Street, Belfast, BT12 4HQ, Northern Ireland; website – www.pilsni.org; email – info@pilsni.org