

# The PILS Project



Impact Report **2019**

## The Public Interest Litigation Support (PILS) Project

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A digital version of this report will be available on the PILS website.

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## ► About PILS

### The Public Interest Litigation Support (PILS) Project is Northern Ireland's access to justice organisation supporting vital public interest cases.

Since 2009, PILS have been helping to advance human rights and equality by empowering groups to use legal tools in a smart, strategic way.

We are a membership organisation and our membership is comprised of both non-governmental organisations (NGOs) and solicitor firms from across Northern Ireland. We provide them with legal and financial assistance for public interest cases – these are cases that will create positive change for vulnerable or disadvantaged groups of people in Northern Ireland.

Our goal is to break down many of the barriers that prevent people from accessing justice. We offer a range of free services to our NGO and solicitor members to help them take strategic cases that have human rights or equality concerns at their core.

This support comes in several forms. PILS can:

- **share legal information and advice**
- **source more detailed legal opinions, research or training sessions through our network of supportive legal professionals (called the Pro Bono Register)**
- **facilitate meetings between members on specific areas of public interest work**
- **provide direct legal representation ourselves by acting as instructing solicitor in a case**
- **give financial assistance**

All of this is available to PILS Project members free of charge.



## ► Acknowledgements and thanks

The term ‘public interest litigation’ can conjure up lots of mental images – many of them involving bewigged judges or barristers and solicitors wading through reams of court documents.

However, at the core of every piece of strategic litigation is a person or group of people that chose to say ‘this can’t be right’. The PILS Project want to take this opportunity to thank all the people at the heart of the cases we have collaborated with our members on over the past 10 years.

We would also like to acknowledge the dedication and support we have received since the PILS Project became a reality in 2009.

We owe a huge debt of gratitude to

- **all our NGO and solicitor members**
- **the legal professionals who volunteer their time as part of our Pro Bono Register**
- **everyone who has served on our staff and board teams**
- **and our funders, friends and supporters**

**You make this work possible.  
Thank you.**

## ► Introduction

In civil society circles, impact is a word we hear a lot about. So much so, that it can feel like the word ‘impact’ has lost its own impact somewhere along the way. Talking about the ultimate effect that your organisation’s work has can be a tough ask, depending on what your aims are. At the PILS Project, we deal with terminology like strategic litigation, pro bono and public interest law, and try to wrestle those terms into plain English. It can often be tricky to distil what we do and why we do it into a neat 30-second ‘elevator pitch’.

As an organisation that can provide legal or financial support to the NGOs and solicitor firms that make up our membership, we often end up adapting our approach to our members’ needs on a case-by-case basis. This multiplicity of

options can often make explaining how we work a real challenge.

This report goes behind the scenes of 10 years of the PILS Project. We are defining **impact** as the **difference** that having PILS involved (in a **big or small** way) made to our members’ work. This effect should be **positive** and have resulted in change that reaches beyond one person, for a **wider transformation**.

Added to all of these factors is time. This report also recognises that several of the stories in this report are not finished yet. Litigation by its very nature can be a long and drawn out process. It can be a little bit harder to quantify the impact of a piece of legal work, as often the change it creates takes time to reveal itself. Powerful

judgments need to be elevated off paper and into people’s lives and this again takes time.

This impact report will hopefully demonstrate what advancing human rights and equality through public interest legal work looks like in practice. And the best way to do that is for us to let our members’ experiences tell the story.

PILS want this report to be an honest reflection of the work we have been doing in NI over the past decade. If we were going to win an Oscar, it would be for a supporting role and our work behind the scenes. We see ourselves as part of a broader movement to achieve positive social change in Northern Ireland. To do that, we play a very specific role.

We can’t take on individual cases like a solicitor’s firm can, and our remit is focused on public interest cases that will yield wider impact for more than just one person. But by playing that precise role as effectively as we can, we are creating a climate where the work of human rights activists complements each other. There is too much human rights work to be done; we cannot waste time reinventing the wheel or duplicating work.

Law might not always provide an easy answer. It might not be the most strategic time to bring a legal challenge. But when it makes sense to go to court, PILS will always seek to mobilise our resources and network of committed legal professionals across NI to achieve the most impact. Our members might need us to act as a solicitor for them in a complex judicial review or they might need a couple of hundred pounds to lodge papers at court themselves. But those few hundred pounds could be the difference between a legal journey unfolding and the case stopping dead in its tracks. PILS are about stepping in at the critical moment, to make sure that our members

are supported and that, together, we can see that vulnerable groups are helped and justice is done.

We hope that this report can dispel some myths about using the law to achieve social change too. It’s not only about the headline-grabbing cases that fill our social media feeds and newspapers with commentary. It is also about equipping human rights activists with the information they need about a new law so that they can support their local communities. It’s about connecting lawyers who have specific expertise with the organisations who are meeting people with real, lived experience of injustice. It’s about arming organisers with another tool to dismantle discriminatory systems. Ultimately, it’s about breaking down barriers that prevent people from obtaining access to justice.

The stories contained in the pages of this report demonstrate these principles. We hope you enjoy reading them.

## ► How we created this report

After 10 years of work, the PILS Project have built a strong network of over 120 members. Our NGO and solicitor members all come from very different backgrounds, meaning that the type of issues they raise, and consequently the type of projects we collaborate on together, are diverse. As we have already alluded to in this report’s introduction and the ‘About PILS’ section, we offer more than one service to our members (from initial legal advice to training and financial support with casework) so members have options in how to interact with us.

This is a very positive scenario for us as a membership organisation designed to support public interest litigation, but presented us with a challenge when it came to compiling a concise report. The Impact Report is intended to give readers a flavour of the work we do. It isn't supposed to be a Top 10 collection and it's definitely not a value-based judgment on which interactions with members are the 'most important'! We couldn't fit every example into the report and the staff team had to make decisions on what to include. We used the following criteria to help guide our choices

- **Numbers**
- **Members**
- **Type of interaction**

In relation to numbers, we gave us ourselves a limit of 10 examples, simply to mirror the number of years we are celebrating at this anniversary. We wanted to make sure that there was a selection of our work from throughout the life of the project, not just the 10 most recent examples.

In the early days of the PILS Project, our membership was only made up of NGOs. In 2013, the organisation decided to open the option of membership up to local solicitor firms too. The thinking behind this decision was that public interest cases could appear in any high street firm in front of an under-resourced sole practitioner or a small practice without the necessary expertise. These firms could also need extra assistance to advance public interest litigation and several practitioners had already approached PILS for support. Now PILS have over 50 solicitor members and we wanted to include examples of how they have accessed our support since becoming part of the Project's membership.

(Speaking of changes, another way in which PILS has changed since its foundation is the type of financial support it can provide to casework. Initially, PILS

considered requests for assistance with professional legal fees as part of applications from our members. Since October 2016, professional legal fees are only considered and granted support from PILS in very exceptional circumstances. Some cases referred to in the report dating from before 2016 will mention professional legal fees being covered by PILS and it's important to note this change to avoid any confusion! The PILS Litigation Fund is used as a 'funder of last resort', providing money to protect applicants against costs in case they lose, to enable court fees to be paid, or to cover travel or other costs associated with a case. By altering our approach to professional legal fees, PILS have not only acknowledged the growing pro bono culture in Northern Ireland but also ensured the longevity of the Litigation Fund.)

Finally, the PILS team wanted the Impact Report to be an accurate reflection of the work that we do – not only to do justice to the members who we have worked closely with, but also to encourage more members to reach out to the staff. Using the law in a strategic way to benefit the public interest can seem like an intimidating prospect. But it doesn't have to be, with the right support. By showcasing a range of our work, PILS want to show our members that strategic legal tools can be part of your work, without ever having to step inside a courtroom! That's why you'll read about the power of quick legal opinions, the impact of third party interventions and how to weave a judge's ruling into a wider public awareness campaign in the coming pages. These examples stand alongside the long-running judicial review legal challenges and are equally important to the communities they benefit.

The PILS Project invite you to browse these stories. They might light a spark! If you are an NGO or solicitor firm in NI, working on human rights issues, that would like to use the law to bring systemic change, then we'd love to hear from you.

## ► Glossary

### **Indemnity**

An indemnity refers to a sum of money committed to a public interest case to protect the applicant against possible financial loss. The money is to cover the other party's legal costs in the event that the applicant's case is not successful.

### **Judicial review**

Judicial review is the name of a particular type of court action where an individual/group challenges the decisions or actions of a body performing a public function. Judicial review is not an appeal and is a remedy of 'last resort'.

### **Outlay**

This is expenditure involved with taking a court case that is not related to the professional legal fees charged by a solicitor or barrister. For example, this could include the cost of obtaining an expert report or any court fees charged.

### **Pro bono**

Pro bono is legal work, voluntarily undertaken by legal practitioners and without payment. Although pro bono is normally taken to mean representation before the courts and tribunals, PILS understand there are a number of other ways practitioners can contribute their expertise on a pro bono basis (for example carrying out legal research or delivering a training session). The term comes from the Latin phrase pro bono publico ("for the public good").

### **Pro Bono Register**

The Pro Bono Register is a list of legal professionals interested in sharing their knowledge with PILS Project members who are working on public interest issues. The Register is managed by PILS staff. This group of legal professionals – barristers, solicitors and legal academics – are ready to lend their specific expertise

to PILS members free of charge. This can include (but is not limited to) legal advice, legal opinions, training, legal research or representation.

### **Professional legal fees**

These are fees that a solicitor and/or barrister charge for legal advice and representation before courts and tribunals.

### **Protective Costs Agreement**

This is an agreement, made between the parties to legal proceedings, limiting the costs awarded against one or more parties.

### **Protective Costs Order**

This is a court order that imposes a limit on the costs that can be awarded against an unsuccessful applicant who brings a court case which addresses public interest issues.

### **Public interest litigation**

Also referred to as PIL, public interest litigation is the use of the law to advance human rights and equality, or raise issues of broad public concern. These types of cases seek to clarify or establish new points of law. By focusing on the wider impact of law beyond one single individual's situation, strategic public interest cases help to advance the cause of vulnerable and disadvantaged communities.

### **Third party intervention**

Third party interventions are arguments related to a particular case that are made by another individual or group, not the applicant who is taking the challenge. This mechanism allows other interested people or groups with specific expertise to make relevant arguments and share information that could be useful for the judge during their deliberations.

# The Uncharted Territory

## Problem

The June 2016 referendum on the UK's membership of the European Union posed one question to the UK's electorate – but the result and its ongoing aftermath have raised many more. While 52% of voters across the UK opted to Leave, it became apparent that this view was not shared equally by all of the UK's constituent parts. The 'Leave' majorities in England and Wales sat in stark contrast to the decision of voters in Scotland and Northern Ireland, where greater numbers supported staying in the European Union.

The question of 'what happens next?' wasn't easy to answer either, as the UK government initially claimed it could trigger Article 50 of the Treaty on European Union (TEU) and formally start the exit process without the consent of Parliament. Conversations about the government's powers under 'royal prerogative' began. There was also a query about what role the devolved governments should play in the process of leaving the EU.

## How the PILS Project got involved

In the summer of 2016, many voices from across the political spectrum and civil society were expressing concern that Northern Ireland's unique position was being overlooked. A legal challenge appeared to be the most viable option to highlight the negative human rights impact that EU withdrawal would have and the specific experience of people and families in NI. The case became known as 'Agnew' as Steven Agnew, MLA and Green Party leader at the time, was one of a number of applicants, including other politicians and civil society activists who got involved in the case.

A challenge of this magnitude could incur very high costs if unsuccessful. The solicitors acting for the group of applicants - PILS member Jones Cassidy Brett - contacted the PILS Project. Two of the NGO applicants in the case were also PILS members (Committee on the Administration of Justice and the Human Rights Consortium).

Having considered the strategic nature of the case, as well as the overarching public interest issues at stake, the Project pledged a five-figure sum as an indemnity to protect the applicants. Not only was the issue at the core of the case completely unpredictable, this significant indemnity was among the highest amount ever offered by our Litigation Fund.

## Outcome

The judicial review application to the High Court in Belfast challenged the UK government's proposed approach to Article 50, arguing that the use of royal prerogative to start the exit process was inconsistent with the UK's constitutional provisions and the Good Friday Agreement. This challenge was dismissed by the High Court in October 2016. However, the NI Attorney General intervened and in November 2016, the NI High Court referred a number of devolution issues to the Supreme Court.

The majority 8-3 Supreme Court decision was handed down on 24 January 2017.

Ultimately, the Supreme Court decided that an Act of Parliament was required to authorise ministers to give notice of the UK's withdrawal from the EU. The Court also held that the question of whether the devolved institutions should have any role in the process of notification was a political one, rather than a legal one.

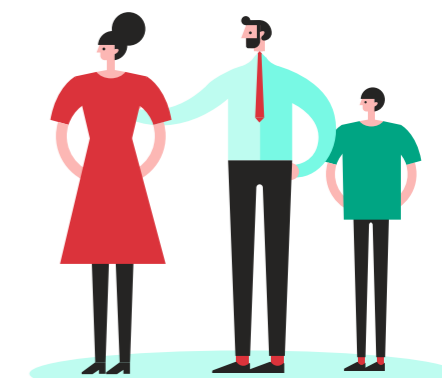
## What happened next?

The Supreme Court judgment meant that the UK's government could not trigger Article 50 of the Treaty on European Union (TEU) unilaterally. An Act of Parliament was required to authorise the government to do so.

Reflecting on the decision, Fiona Cassidy of Jones Cassidy Brett Solicitors said it "...was perhaps the most significant constitutional case in a century...".

However, the Court's rejection of the devolution arguments was also still at the forefront of Fiona's mind when she spoke to PILS in autumn 2019, as Brexit continued to occupy many column inches. She noted that "...one can only speculate about what the Brexit negotiations would have involved if the Court had been persuaded by the particular [devolution] arguments made in the case...".

The notification decision from the highest court in the UK was clear. Parliament had to pass legislation to give the government permission to move forward with EU withdrawal in line with Article 50. Westminster duly enacted the European Union (Notification of Withdrawal) Act 2017 and the notification was given on 29 March 2017.



# The Investigation Initiator

## Problem

To anyone who doesn't work in a financial institution, the terminology used can be dense and intimidating at times. Keeping up to date with all the technical terms and processes is taxing enough when you, as a customer, are aware of the steps involved. When a financial institution instigates a process without your knowledge, things become even more indecipherable.

Independent advice NGO Housing Rights (at the time known as the Housing Rights Service) became aware of several people who were adversely affected by a process known as consolidation or capitalisation. Capitalisation is a practice where a bank recalculates your monthly mortgage repayment to take into account existing arrears that you might have built up. If this new monthly repayment amount was calculated without the knowledge of the person, it is called unilateral consolidation. Bank of Scotland and other lenders were dealing with mortgage arrears in this way, without the borrower's consent or checking if they could afford the new amount.

This situation presented a 'double whammy' of problems for the customers involved. Not only were their monthly repayment amounts being recalculated without their knowledge, but their bank was also attempting to press ahead with repossession proceedings based on the borrower's original arrears. It seems

bizarre, but the customers were in danger of having their homes repossessed, even though their arrears had been included in a calculation that changed their monthly repayment figure to take account of them, all in a process that they knew nothing about.

## How the PILS Project got involved

Housing Rights – an NGO and PILS Project member – had heard multiple instances of this double-billing practice through their Mortgage Debt Advice Service. In 2013, their advisors identified several customers who had seen unexplained increases in their monthly mortgage instalments and three of these were selected as test cases.

In March 2014, Housing Rights reached out to PILS for financial support and we offered several thousand pounds to indemnify the client against legal costs in case the case was lost. (At the time, the PILS Project Litigation Fund did occasionally fund professional legal fees and the applicant's professional legal fees were covered. This practice was revised in 2016 and professional legal fees can now only be funded in exceptional circumstances.)

The issues around Bank of Scotland's unilateral consolidation practices were heard before the Chancery Division of the High Court on 18 March 2014.

## Outcome

When the resulting judgment was handed down on 4 August 2014, its language could not have been more clear.

Master Ellison said the practice that the bank's customers had been subjected to "... *unfairly and confusingly distorts perceptions of affordability...*".

In a judgment referred to in the subsequent BBC News press coverage as 'scathing', the Chancery Master stated that "... *unilateral consolidation with double-billing creates very real problems for borrowers, their advisers and the court. To the extent at least of the double-billing, it is unconscionable...*".

Bank of Scotland initially intended to appeal the decision but withdrew its case in December 2014.

## What happened next?

Housing Rights knew that the problem was widespread – before the judgment, their advisors were hearing stories from a significant number of borrowers in a similar position.

After the 'double-billing judgment', the UK's regulatory body, the Financial Conduct Authority (FCA) began investigating the issue.

As part of their research, the FCA estimated that 750,000 customers across the UK were affected by the practice of double-billing.

In October 2016, the FCA launched a consultation process for new guidance on how mortgage customers in arrears are treated. The consultation included a proposed remediation framework for customers affected by double billing. The FCA guidance was revised in April 2017.

The Bank of Scotland case also had a significant impact on repossession figures in NI. According to figures compiled by the Department of Justice's Analytical Services Group, in 2015, the number of applications for repossession in mortgage cases received by the High Court was 1,232. This equated to a substantial 58% decrease on the previous year.



# The Campaign Catalyst

## Problem

Many readers will remember the historic 2006 St. Andrews Agreement which established a devolved power-sharing government in Northern Ireland. It was memorable for many reasons, bringing to an end four years of direct rule from Westminster. It also inserted section 28D(1) into the Northern Ireland Act 1998.

That single sentence was a short but crucial addition for campaigners in the Irish language movement as it created a duty to adopt an Irish language strategy. In this strategy, the NI Executive was expected to outline how it would “enhance and protect the development” of Irish. However, a decade after the St. Andrews Agreement, the language strategy still had not been realised.

When a draft version presented to the Executive by the Department of Culture, Arts and Leisure was blocked in March 2016, activists in favour of an Irish language strategy began to pursue alternative approaches – including judicial review.

## How the PILS Project got involved

Michael Flanigan Solicitors (a solicitor member of the PILS Project) met with the Belfast office of Irish language community organisation Conradh na Gaeilge. They were curious to see how two sections of the NI Act that overlapped when it came to Irish language rights would be interpreted by the courts. (Specifically, the two sections were section 28D(1) - the duty to adopt a strategy for the Irish language and the procedure envisaged in section 28A(8) that required cross-community support in the absence of consensus for policies).

In June 2016, Michael Flanigan Solicitors then applied for support from the PILS Project – and the Project responded. When the legal challenge was initiated and became a reality, the PILS Project Litigation Fund pledged several thousand pounds to protect the applicants against costs if their challenge was unsuccessful.

## Outcome

During the hearing at Belfast’s High Court, Karen Quinlivan QC had argued that “... the Executive has a duty to adopt, not just debate, a strategy and to this day there’s no strategy of any kind in place...”.

Mr Justice Paul Maguire handed down his verdict on 3 March 2017. The judge held that the NI Executive had failed in its duty to implement an Irish language strategy, stating that “*In the court’s view it cannot have been the intention of Parliament that after nearly 10 years from the coming into force of the Act in 2007 this obligation would remain unfulfilled...*”.

The judgment clearly outlined the court’s reasoning for reaching the conclusion that the statutory duty had been breached. Justice Maguire referred to the fact that 10 years had elapsed since the St. Andrews Agreement was signed, that the NI Executive had more than a reasonable amount of time to act, that the statutory duty required an outcome (not merely efforts), and that the Executive “*could not escape its obligation by seeking to blame others*”.

## What happened next?

The court’s decision was reported widely in the media, generating headlines and public awareness around the core issues that Conradh na Gaeilge (CnaG) and their legal team had raised.

As former Advocacy Manager with CnaG, Ciarán Mac Giolla Bhein noted in a conversation with PILS in the summer of 2019, the successful judicial review was not the end of the story.

*“...We are now in 2019 and we still don’t have a strategy. But we know that we’ve been vindicated through the law... That’s not just a simplistic ‘we were right and you were wrong’-type argument, that*

*verdict has been really powerful in the conversations we have had since then. It really strengthens our arguments and it also provides comfort to those who want to do things, to bring about progressive change in public authorities...”*

The judicial review was a distinctive and novel part of a wider campaign to generate greater understanding and support for Irish language rights in Northern Ireland, perhaps among a new audience. This judicial review complemented the existing work done by Irish language activists, including Conradh na Gaeilge and Pobal, through public initiatives like the Dream Dreag/Liofa campaign.

Mac Giolla Bhein feels the judicial review’s media exposure created a wider awareness and increased attention for the issue across society in NI:

*“A lot of that indirect benefit can be difficult to quantify but it is something tangible. It’s something you can feel, it’s something you know exists when you’re out speaking to people and we’re seeing gradually that people’s minds are being convinced...”*

The Irish language strategy judicial review challenge taken by CnaG is one example of the cumulative effect that collaborations between PILS, our legal network and our NGO members can create. Seasoned campaigners, solicitors, barristers and NGOs might not ordinarily find themselves in the same room, but when these connections are facilitated, social change can follow.

*“...PILS were with us every step of the way! From the very first point of actually investigating this to the day we were victorious outside the court and everything in between. And I know as someone who has a great passion as an organiser (but who had a lack of knowledge in terms of the law) I know that without the support of PILS, that would not have been possible...”*



# The Background Support

## Problem

Mr E was a resident at Muckamore Abbey, a hospital in Co Antrim. Operated by the Belfast Health and Social Care Trust, it provides inpatient, assessment and treatment facilities for people with severe learning disabilities and mental health needs. When judicial review proceedings were eventually commenced in 2011, Mr E had been at Muckamore since 1997. This is a significant length of time; a period of time made all the more concerning by the fact that Mr E had been a voluntary patient since 2000 and had asked if he could be resettled in the community in 2009.

The Trust had made some attempts to find supported accommodation for Mr E. Two options were examined during his stay; one of the options wasn't suitable for his needs, while the other would not have been available for several years. A group of patients who were resident in Muckamore Abbey raised their concerns about the experiences of several long-stay residents at the hospital (including Mr E) with the Law Centre NI.

## How the PILS Project got involved

The Law Centre NI, working alongside the Muckamore resident patients group, had identified several residents whose experiences could form the basis of a court case. This included Mr E.

The Law Centre wanted to challenge the Department of Health's failure to carry out a needs assessment, using judicial review proceedings. They also argued that the Department had failed to resettle patients with learning disabilities in the community within a reasonable period of time. This initial challenge was dismissed in May 2011, but the decision was appealed and the appeal was heard in June 2012.

While the Law Centre's own legal staff were able to provide legal advice and representation, they needed some financial help at this point. The PILS Project were able to quickly provide several hundred pounds that was needed to lodge the application in court. The overall amount might seem small in monetary terms, but our flexible model meant that it was available just at the right time. In this way, PILS were able to complement the legal support being given by the Law Centre and ensure the case could stay on course.

## Outcome

Mr E's legal journey ultimately returned to the High Court for resolution, where the case was reheard in 2013. In the meantime, following the initial 2011 challenge, Mr E had actually been offered a resettlement option in the community. The fact that Mr E and the Law Centre persisted with the appeal is testament to their strategic vision. The case was an opportunity to clarify the law in relation to unmet needs

in community care for patients in facilities all over Northern Ireland. Even though the person at the centre of the case had their issue resolved, the broader question around the Trust's legal duties still needed to be answered.

Following a fresh hearing, Mr Justice McCloskey found in favour of Mr E and the Law Centre.

The judge concluded that the existing orders did place the Department of Health under a duty to subject

*"...to appropriate assessment and inquiry any person within the scope of their knowledge or attention who appears to them might reasonably qualify for the enjoyment of any benefit available..."*

He went on to find that, when assessments were carried out, the Department also has a duty to provide any benefits required to patients within a reasonable time.

## What happened next?

Louise Arthurs (the Law Centre NI's solicitor, who represented Mr E throughout his challenge) had started this judicial review journey with a clear vision. *"Rather than having the Trust dispose of the issues on a case by case basis, we [Law Centre NI] decided that strategic litigation through the courts would be the best platform to highlight the broader equality and human rights issues"*.

As Mr Justice McCloskey had eluded to in his judgment, JR47's *"...resolution by the court potentially has implications for the other members – some two hundred in total..."*

That reference to 'other members' acknowledges that there were other patients and families who were waiting for this particular decision with bated breath. Several applications for judicial review, with

similar circumstances, had been stayed as it made its way through the courts system.

According to research compiled by Atlantic Philanthropies in 2015 in the wake of the court case, five pending cases were immediately settled as a result of the JR47 judgment. Louise Arthurs spoke to the PILS Project in 2016 about the overall impact of the case. She referred to the decision as a 'landmark ruling', saying that the support from PILS was crucial in achieving a positive result for their client and other patients in a similar situation.

*"Litigation of this type can be very expensive and, where public or private funding isn't available, many meritorious cases will often not even progress to court. So, having the opportunity to access alternative funding through an organisation like PILS is extremely valuable for organisations like the Law Centre. Not only does it remove the financial impediment to a case going forward but it is actually very reassuring for the client that their case has attracted the support of wider organisations like PILS."*

Speaking in 2016, Louise was also able to put the JR 47 decision into context:

*"What we can say around the impact of JR47 is that the judgment actually transcends the original resettlement community whose rights it sought to defend and actually now applies to the wider catchment of persons who may be in need of community care throughout NI."*

*I think it's fair to say that since the ruling, Trusts have been very careful to assess need in accordance with the decision. And this just shows that the duty to assess, and the judgment, and what it means for people, is really embedded into the fabric of community law and practice in NI."*

Greater clarity around the rights of long-stay vulnerable patients, affording patients dignity and allowing their families to proactively make plans for future care. All in all, a powerful result that PILS are very honoured to have played a small role in.



# The Gamechanger

## Problem

Drumragh Integrated College is a post-primary school, located a short drive from Omagh, County Tyrone. In the early 2010s, there were almost 600 pupils enrolled and the school seemed to be going from strength to strength. However, that success was at the root of the college's emerging problem.

In 2012, Drumragh was the only integrated post-primary school in the district of Omagh. (Northern Ireland's education system has been divided along religious lines since the early 1920s, with the vast majority of children attending Catholic or Protestant schools. Integrated schools welcome students from all faiths and none.) The school's pupil numbers were capped at 580 but it was consistently receiving requests from parents and children who wanted to attend. Seeking an increase in pupil numbers, Drumragh submitted a development proposal to the Department of Education, but this request was denied in October 2012.

The Integrated Education Fund (IEF) – an independent NGO that supports integrated education in Northern Ireland – and the school wanted to challenge the Department of Education's decision. They also wanted to challenge how that decision was made – but IEF did not have a budget for legal casework.

## How the PILS Project got involved

The story of Drumragh really captures all of the support services that PILS can provide. IEF reached out to PILS very soon after the Department's rejection in October 2012.

- PILS started by sourcing a legal opinion on the merits of the case from a local barrister. We managed to do this through our Pro Bono Register – a list of legal experts willing to provide assistance free of charge.
- As the IEF told us at the early stages, this sort of legal work was “unprecedented” for them as an organisation. PILS were able to act as the instructing solicitor for IEF and Drumragh throughout the whole court process.
- The PILS Project Litigation Fund – a fund specifically focused on public interest litigation and managed by PILS - was able to provide financial support. This ranged from a couple of hundred pounds for court stamp fees, to a couple of thousand pounds to cover the fees of the barrister who argued the case before the High Court.

## Outcome

This was the first direct challenge to the Department of Education's statutory duty (under Article 64 of the Education Reform (NI) Order 1989) to encourage and facilitate integrated education.

Drumragh chose to stick with the legal process, even after the Department indicated that

the school's application to expand would be revisited - just days before the case was due to be heard in court. The school recognised the public interest value in their situation, seeing that an answer for them could also provide clarity for schools all over NI.

The judgment that followed was clear and unequivocal. On 15 May 2014, Mr Justice Treacy handed down his decision, in favour of Drumragh and IEF.

Justice Treacy noted that the Department of Education had not fulfilled its statutory duty, saying it needed to be “...alive to the Article 64 duty at all levels, including the strategic level”. The judge also noted that the planning processes followed in Drumragh's case had not been suitable, saying that “...the creation of an additional difficulty is the opposite of encouraging and facilitating”.

## What happened next?

After the landmark judgment, another major piece of work began. The decision, exciting and encouraging as its contents were, needed to be brought to life for pupils and families. This implementation work was absolutely key and needed to be done right.

A ‘Judgment Implementation Group’ was established. These meetings brought groups (including Drumragh, PILS, IEF and the Department of Education) together to talk about the practical steps involved in encouraging and facilitating integrated education.

Nigel Frith, Drumragh's principal, spoke to PILS in the summer of 2019 about the tangible impact that building this type of cooperation between the integrated education movement and the Department has had in the long term: *It was just delightful to hear other schools coming back to say ‘we got it!’ and some of them were saying ‘we know why we got it’. It was because of what the IEF and PILS and Drumragh achieved. That's been a gamechanger!*

While Drumragh did receive an initial blow as

another attempt to expand was turned down in 2015, they persisted. In February 2018, the school announced that the Department of Education had finally agreed to increase the number of student places to 645.

£500 million of capital funding from the UK government, over a ten-year period, specifically for the integrated and shared education sectors in NI, was announced in 2014 as part of the Stormont House Agreement. In March 2017, the results of an independent review into the planning, development and growth of integrated education were published. The 130-page document, prepared by researchers, contained 39 recommendations – which have not been acted on due to the absence of a functioning NI Executive at time of writing.

*“...With Drumragh, the stars aligned.”* This was the reflection of Tina Merron, chief executive of IEF, as she spoke to PILS in the summer of 2019.

*“It wasn't the first case that came along, but it was the strongest case that came along. It opened the doors for an awful lot more (successful) development proposals to come through, but it also opened the door to a change of attitude in the Department of Education which was significant. They recognised the duty to encourage and facilitate!”*

In 2015, Zara Hemphill (a sixth form student at the time) told an Education Committee inquiry that she felt that attending Drumragh was like being part of a huge family, *“instead of paying attention to the exterior of the person, you pay attention to what type of person they are inside”*.

The bottom line for Nigel Frith, the school's principal is clear – there are now more children in NI accessing integrated education. But he hopes that the legacy of their litigation in the public interest will live on for generations.

*“Ultimately, we know we played our little part in integration growing in Northern Ireland. And our vision is that this will be a stepping stone, to something far greater. And it will always be a source of pride for us that we were part of that journey...”*

# The Legacy Landmark

## Problem

The Finucane surname carries with it a significant weight in Northern Ireland. It evokes memories of a violent murder, one of the most notorious carried out during the Troubles, but it has also become synonymous with a long struggle for justice.

Geraldine Finucane has been trying to secure an independent public inquiry into her husband Pat's murder since his death in 1989. The three decades since were punctuated by reviews, government promises, and a complex legal process. A public inquiry into Pat Finucane's death 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.

## How the PILS Project got involved

In February 2017, Geraldine Finucane's appeal (against Justice Steven's 2015 decision not to hold a public inquiry) was rejected by the NI Court of Appeal in Belfast. The family wanted to pursue the case further, by appealing this 2017 judgment to the Supreme Court in London. Their legal team of two solicitors and two barristers had acted on a pro bono

basis throughout the process – so did not need to turn to the PILS Project for legal assistance. They had also secured a Protective Costs Agreement at each stage of the proceedings, meaning that the Finucane family would not pay the government's legal costs, whatever the outcome of the case.

However, the realities of a court case cannot be ignored. Even if the legal professionals are acting for free, there are still fees associated with lodging an appeal and producing documents for the court that have to be paid. And with a legal path as long and complex as the Finucane case, even producing papers for the court can be time-consuming and more expensive than normal.

In total, PILS provided several thousand pounds in financial support for the Finucane Supreme Court appeal over two years. This included covering the legal team and applicant's travel costs to make sure they could be at the Supreme Court in London on the day that the decision was handed down.



## Outcome

*"...My family and I have endured three private police investigations, two confidential documentary reviews, secret government negotiations and a long and difficult court case. We have had to overcome obstacles the likes of which no other family has faced..."*

### Geraldine Finucane, 27 February 2019

On 27 February 2019, the UK Supreme Court handed down their unanimous decision. It stated that there had not yet been an inquiry into Pat Finucane's death that complied with Article 2 (right to life) of the European Convention on Human Rights. (This relates to the state's obligation to carry out effective investigations in deaths.)

The Court's five judges did not order a full public inquiry, but did note in their judgment that previous reviews had not been able to compel witnesses in an attempt to identify those responsible for Pat Finucane's murder: *"...Absent those vital steps the conclusion that an article 2 compliant inquiry into Mr Finucane's death has not yet taken place is inescapable..."*

## What happened next?

In the immediate aftermath of the judgment, Geraldine Finucane and her legal team were unequivocal about the meaning of its content.

If Article 2 has not been satisfied by the reviews and investigations that have taken place to date, and Sir Desmond De Silva's review could not satisfy Article 2 because it did not have "all the tools that would

normally be available to someone tasked with uncovering the truth of what had actually happened" (including the power to compel the attendance of witnesses), then any subsequent investigation into Pat Finucane's death must have such powers. The only mechanism currently available to the government to discharge their duty is a public inquiry pursuant to the Inquiries Act 2005.

Peter Madden, of the Madden Finucane solicitor's firm, told the BBC that *"...only a judicial public inquiry can deliver the objective, which is to uncover the truth of what actually happened..."*

Since the Supreme Court decision was handed down, Conservative MP Karen Bradley was replaced as Secretary of State for NI. In July 2019, Julian Smith took over the position and his office have said that they are considering the judgment and its implications.

The Finucane case was the focus of a public seminar in Belfast in June 2019. The event, hosted by the Bar Council and the Law Society, highlighted the role of women in the law and Geraldine Finucane's own journey was acknowledged. In a succinct observation, Fiona Doherty QC reminded us all: *"...we should not forget the women whose lives ground cases that make the law. They are the real inspiration"*.

Public interest cases deliver systemic change that multiple generations of people can benefit from, but it is vital to remember that there are individuals and families at the core of every single one of these broader issues. Strategic litigation can sometimes be a lonely place. Their determination and bravery (often in the face of significant difficulty and inequality of resources) should not be underestimated in driving equality forward.

# The Added Voice

## Problem

Until autumn 2019, abortion law in Northern Ireland sat in stark contrast to the legislative situation in the rest of the UK. The 1967 Abortion Act, which applies in England, Wales and Scotland, was not extended to Northern Ireland. The law that did exist meant that access to abortion was limited to a much more restricted set of circumstances in NI (risk to the pregnant person's life, or a permanent, serious risk to their physical or mental health).

Against this legal backdrop, a mother purchased abortion pills online for her 15-year-old daughter in 2013. The Public Prosecution Service (PPS) subsequently brought criminal proceedings; the mother responded by challenging the PPS' decision to prosecute. In a completely separate legal challenge, the NI Human Rights Commission was attempting to take a Supreme Court case questioning whether NI's abortion laws were compatible with human rights law. The mother at the centre of the case involving abortion pills wanted to share her own personal interaction with the NI legislation with the Supreme Court. This meant applying to submit a third party intervention.

## How the PILS Project got involved

Third party interventions are arguments related to a particular case that are made by an another individual or group, not the applicant who is taking the challenge. They allow other interested people to make relevant arguments and share information that could be useful for the judge during their deliberations.

There is a fee for submitting third party interventions to the UK Supreme Court. Also, travelling to the Supreme Court (if making an oral intervention) creates a certain amount of costs. The PILS Project was able to offer a few thousand pounds to cover this expenditure. This enabled the legal team to articulate and amplify the views of the mother during the court case.

## Outcome

The mother's personal experience was submitted to the Supreme Court and was considered as part of their deliberations. In handing down the Court's decision, Lord Mance noted the "distressing circumstances" highlighted by the JR 76 intervention.

The Court went on to state their majority view that NI abortion law contravened Article 8 (private and family life) of the European Convention of Human Rights. Ultimately, the judges held that the NIHRC did not have the ability to bring the case to court in its own name – in order for the organisation to do that, it would need to have a person directly affected to be part of the case, it couldn't argue the points on its own.

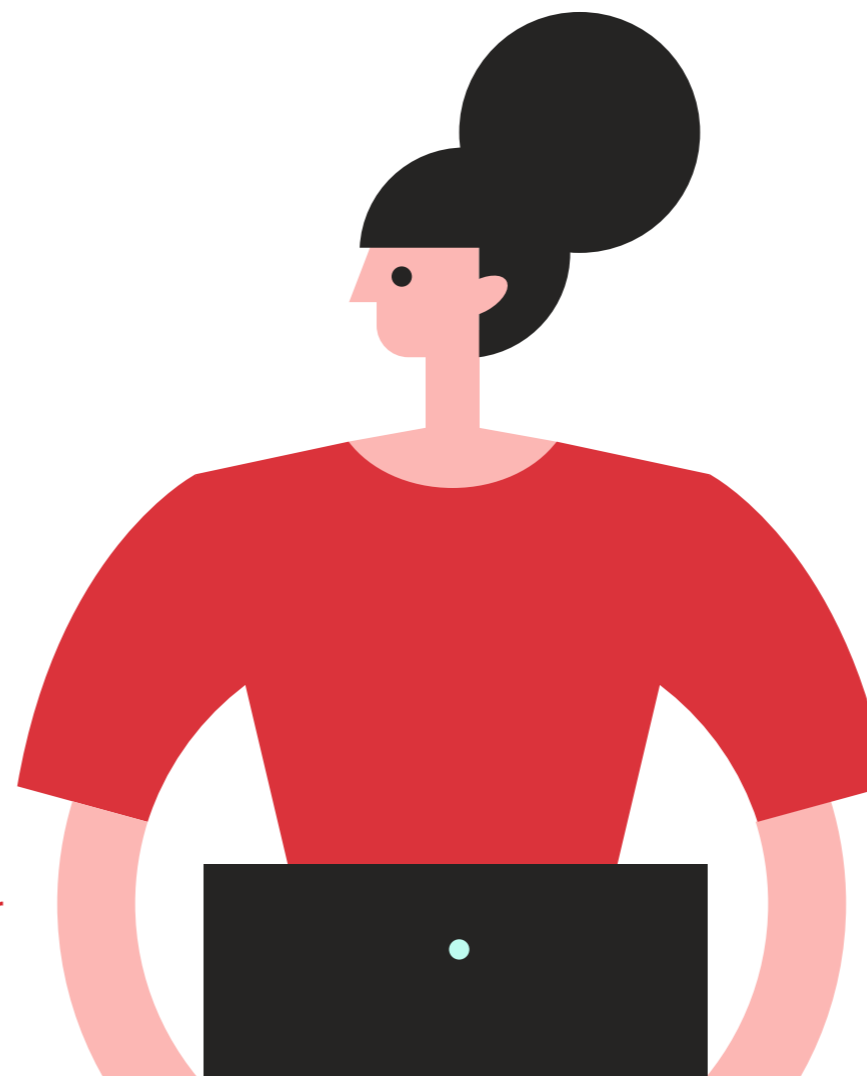
## What happened next?

Karen Quinlivan QC reflected on the intervention submitted by the family involved in JR 76 during a conversation with PILS in the autumn of 2019. The NIHRC Supreme Court case involved several third party interventions (including JR 76's situation). These were vital, as Karen Quinlivan noted, as they "*filled a vacuum before the Court in terms of the impact of NI abortion law on real women*".

As the NIHRC case questioning the compatibility of NI abortion law was taken in its own name, without an actual victim, it was the third party interventions that ensured that the lived experiences of women in NI were represented before the Court. In Karen Quinlivan's mind, one clear practical legal benefit of the JR 76 third party intervention was that, by placing their experiences before the court in the NIHRC case, the intervention could also assist the interveners in their own judicial review proceedings.

Not only was the intervention useful from a legal perspective, but it also brought with it a deeply personal benefit. The mother involved in the JR 76 proceedings watched the Supreme Court case unfolding. According to Karen Quinlivan, being able to hear her own perspective being shared in the courtroom was very important to her. It was a moment of validation, of feeling that she was being listened to and that her voice was part of the process.

The outcome of the case does not detract from the importance of having the third party intervention submitted on behalf of the JR 76 interveners in the first place. Having your voice heard, your experiences listened to by the highest court in the land, and being able to access such opportunities without barriers – these are fundamental points that should not be underestimated.



# The Test Case

## Problem

Anyone who has searched for a property to rent in Northern Ireland is probably familiar with the concept of letting fees. In 2014, a Queen's University student called Paul Loughran started renting a flat near the university. He had been charged £30 by the letting agents Piney Developments Ltd, which the company referred to as an 'administrative fee'. He had also been charged a similar fee by F5 Property Ltd.

There is no guarantee that prospective tenants will be granted a tenancy after paying these fees, so someone could be charged several times before they are successful in their hunt for accommodation – if they are successful at all. Paul Loughran went to the Small Claims Court in an attempt to get the fee returned from Piney Developments, hoping for a written judgment. Judge Brownlee, viewing the situation as a 'test case' or an opportunity to clarify the law for many people in the same situation, referred the decision to Belfast County Court in 2017.

## How the PILS Project got involved

Paul Loughran had initially approached NGO Housing Rights about his experience with Piney Developments Ltd. Their solicitor was happy to provide their services in the case, and there were two barristers also working on a pro bono basis. However, Housing Rights did not have a budget to fund casework.

So, they got in touch with the PILS Project. Our Project was able to provide the missing piece of the puzzle – an indemnity of approximately one thousand pounds to protect Paul Loughran in case the decision did not go his way and the fee required to apply to add F5 Property Ltd as a party to the case. (This would allow the court to consider the practices of both property management companies as part of the same case.)



## Outcome

In December 2017, Judge Gilpin called on Piney Developments to return the fee to Paul Loughran. In the Court's opinion, the payment was void under the terms of The Commission on Disposals of Land (Northern Ireland) Order 1986. This was followed up in July 2018 by a similar decision from the same court. Belfast County Court ordered that F5 Property Ltd should also return their £36 fee to Paul Loughran.

At the time of the judgment, Housing Rights called the practice of letting fees 'unhealthy' and said that it was "...anticipated that these judgements will now benefit many tenants living in or seeking to access private rented accommodation; and it is hoped that the decision may result in a change in the practices adopted by many local letting agents."

Any tenants, who had been charged fees during the process of securing a rental property, in the six years prior to the judgment, could potentially use this decision to reclaim their money.

## What happened next?

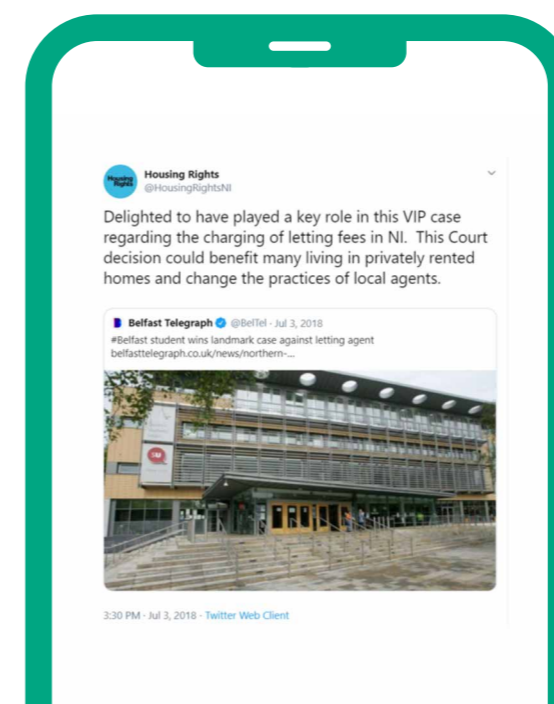
The verdict was greeted with optimism by the parties involved, including Housing Rights.

Chris McGrath, Housing Rights solicitor, wrote in the days after the judgment that the decision identified that some of the tenants "with evidence that they have paid letting or associated fees in the last six years could seek to have the charges refunded". It's important to note that the decision applies to fees charged to prospective tenants during the process of securing a rental property. It does not apply to any or all fees charged by a letting agent at other stages of their tenancy.

The Housing Rights team did acknowledge that it would not be a silver bullet for all tenants and that the overall effect of the Loughran judgment could not be immediately predicted.

Speaking to PILS in the summer of 2019, the current staff team at Housing Rights confirmed that the full impact of Loughran has yet to be fully realised. However, Housing Rights' staff had observed that, in spring 2019, the widely used Property Pal website had added an information section to pages where fees were referred to in addition to rent. It references the Loughran decision, outlines the relevant law, and advises tenants who have been charged upfront fees during their rental search to contact Housing Rights for advice in challenging these charges. In addition to this, the Department of Communities issued guidance on letting in January 2019 for both landlords and tenants, in reaction to the Loughran cases.

This case illustrates that patience is a key component in any process involving strategic litigation. Even when a court judgment is handed down, the story often is far from over.



# The Tight Deadline

## Problem

In the spring of 2017, investigative journalists working with Northern Ireland's non-profit news platform The Detail uncovered information on the deaths of children at mother and baby institutions, including Nazareth House and Nazareth Lodge in Belfast. The Detail Data team's research included an analysis of burial records, which revealed that many of the children who died at Nazareth Lodge and House were suffering from malnutrition.

The editorial team believed the facts were in the public interest but before they could proceed with a series of articles, they needed to know whether or not they could publish the burial records in full. The Detail's data journalists needed solid legal expertise, on a traumatic and sensitive subject, with the added pressure of copy deadlines.

## How the PILS Project got involved

Time was really of the essence with this particular request for assistance. The Detail joined the PILS Project as a member in February 2017 and several months later, a legal query arose during their investigation into the treatment of unmarried mothers and their children at institutions in Northern Ireland.

In seeking to publicise the issue, The Detail's editors asked for a legal opinion on what rights and obligations did the platform have to abide by under data protection legislation. Via our network of legal professionals committed to sharing their knowledge for the common good – the Pro Bono Register – PILS were able to link The Detail up with a barrister.

In the summer of 2019, editor of investigative news website The Detail Kathryn Torney described her memory of PILS involvement: *"After liaising with solicitor PILS Melissa Murray, counsel from the PILS Pro Bono Register agreed to take on the case and provide a legal opinion. They also met with The Detail team to discuss the case.*

*Specifically, we asked for legal advice about using the full names of 63 children from two children's homes who died in 1942. Our research showed that 43 had died of severe malnutrition.*

*We felt strongly that there was strong public interest in naming children who had such tragic short lives and were buried in unmarked mass graves. Official records from 1942 show that the 'legitimate' infant mortality rate for Northern Ireland was 72 per 1,000 births - it was 157 for 'illegitimate' children.*

*The burial records were owned by Down and Connor Diocese who had directed that we should not use the children's surnames due to data protection concerns."*

## Outcome

PILS provided a comprehensive briefing on the concerns and questions raised by The Detail – and within 10 working days, their journalists had received a legal opinion from counsel.

## What happened next?

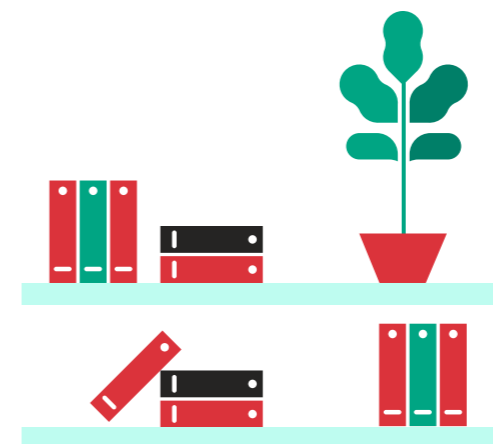
Detail Data published a series of articles on 14 June, setting out the case for a public inquiry into how unmarried mothers and their children were treated in these institutions (which existed in NI until as recently as the 1980s).

The seven articles did include references to the children and their cause of death, but The Detail did not include their surnames.

[www.thedetail.tv/articles/lost-lives-the-43-babies-who-died-from-malnutrition](http://www.thedetail.tv/articles/lost-lives-the-43-babies-who-died-from-malnutrition)

As this Impact Report was being compiled, editor Kathryn Torney reflected on the impact of the Detail's interaction with PILS, saying *"Our project was time sensitive and the Pro Bono Register counsel was able to provide their opinion quickly and thoughtfully. Ultimately, we decided that we could not publish the children's surnames but this did not diminish the emotion in the article or the importance of the children's deaths.*

*"This was a high-profile project which was reported on by many other media outlets. The deaths of the children was an important part of the project which we needed to get right and handle with the sensitivity required. Having legal advice from counsel was very much appreciated so we were delighted when they and PILS agreed to take on our case."*



# The Multi-stage Support

## Problem

The word 'legacy' implies weight in any context. In Northern Ireland, the term carries an altogether deeper meaning, referring not only to events that took place during the Troubles, but also the aftermath. Debates on how to deal with the recent shared past in a fair and just manner persist in NI political and social circles – and having access to as much information about what actually happened is crucial in achieving that aim.

Written in 1980, the Walker Report detailed how wide-ranging the powers of the intelligence division within the Royal Ulster Constabulary (known as the RUC's Special Branch) were, and how Special Branch could potentially be restructured. The very existence of the report became known in 2001. Sir Patrick Walker's report also contained information on a review of the handling of agents, informants and intelligence.

In January 2016, human rights watchdog Committee on the Administration of Justice (CAJ) asked for its contents to be published under freedom of information legislation (with any personal information redacted). This request was refused by the Police Service of Northern Ireland (PSNI), stating that the report fell under the national security exception contained in section 23(1) of the Freedom of Information Act 2000.

▶ Committee on the Administration of Justice (CAJ) v Information Commissioner

## How the PILS Project got involved

CAJ's request was turned down again, both by the PSNI's own internal review and later by the Information Commissioner in August 2017.

This chain of refusals prompted CAJ to file an appeal with the First-tier Tribunal, a move backed with financial and legal support from the PILS Project. Firstly, legal support was provided to CAJ's team, assisting with legal submission draft work. This connection was created using the PILS Pro Bono Register. CAJ then decided to challenge the decision of the Information Commissioner's Office.

This was accompanied by an offer of additional support from the PILS Litigation Fund. Several thousand pounds were pledged by PILS to protect CAJ against the other side's potential costs in case they were unsuccessful. Issues rarely come to the PILS Project fully fledged; our work alongside CAJ in the Walker report example demonstrates how one piece of legal support can cascade to generate more information and interactions between different civil society groups.

## Outcome

The appeal was adjourned before the First-tier (Information Rights) Tribunal on 1 May 2018 following an agreement between CAJ, the Information Commissioner and the PSNI. A lightly redacted version of the Walker Report was released in the summer after an embargo was lifted – a great step forward for freedom of information.

## What happened next?

At the time of the adjournment in May 2018, CAJ's deputy director Daniel Holder put the publication of the Walker report into perspective. CAJ had been determined to challenge the use of a blanket power to restrict access to vital public documents. Holder commented at the time, saying that "... the Walker Report will assist in understanding just how RUC Special Branch was tasked to operate in the 1980s at a time there were serious concerns regarding the use of informants outside the law. It is an historic policy document that should not have been withheld for so long...".

The report recommended that the RUC's Special Branch should be effectively given full control over measures to combat 'subversive crime'. Media coverage following its publication summarised its contents, saying that the Walker report revealed how the RUC were told to value intelligence over arrests and to treat informants as a 'protected species'.

Reflecting on the importance of having the vast majority of this information out in the public domain after 40 years, Daniel Holder of CAJ spoke to PILS in the autumn of 2019. One year on from its eventual publication, he said of the Walker report: "This has basically blown the lid on what was a framework for collusion. It doesn't prove collusion happened... but it shows there was a framework. There are things in this (report) that were known, things that were rumoured and things that weren't known...".

The CAJ's work on bringing the Walker report's contents out of the shadows, supported by PILS, showcases how public interest legal work can be a multi-layered process. From initial legal support, to appeal and eventual publication, the story is not over yet. The report text that was released was slightly redacted. CAJ continue to work for Walker to be published in its entirety. Watch this space.



**The PILS  
Project**



**10**  
**YEARS**  
OF ADVANCING HUMAN RIGHTS  
AND EQUALITY  
**2009 – 2019**

**The Public Interest Litigation Support (PILS) Project**

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