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McKenzie.**

# Ten years of the Public Interest Litigation Support Project in Northern Ireland

**The PILS  
Project**

Public Interest  
Litigation Support





In 2006, the Atlantic Philanthropies commissioned research on public interest litigation and on whether they should invest in a dedicated organisation to promote human rights and equality in Northern Ireland. Their research identified a number of barriers to public interest litigation, costs being the biggest one. They also found that people who had suffered an injustice often lacked knowledge about how the law could help them.

**The Public Interest Litigation Support (PILS) Project was established as a result of this research.**

## 10th Anniversary

To mark ten years of work, PILS undertook a number of activities to help chart the growth of the Project. This included a new piece of research, carried out on behalf of PILS by Baker McKenzie.

It assessed the current landscape in Northern Ireland and noted major changes in the past 10 years. The Baker McKenzie team also interviewed stakeholders to find out how these changes have affected their work. This resulted in proposals on how to better use the law to advance human rights and equality work and how to increase the use of public interest litigation.

The points were compiled by the team at Baker McKenzie's Belfast office. All work was carried out on a pro bono basis. PILS would like to thank Baker McKenzie's staff, volunteers and everyone who took part in interviews as part of this research.

To mark the Public Interest Litigation Support (PILS) Project's 10th anniversary, law firm Baker McKenzie carried out desk research and one-on-one interviews to help PILS plan future actions to increase the impact of its work in public interest litigation. *(Please note that the text of this report was finalised in late 2019, prior to the global outbreak of the COVID-19 pandemic.)*

From this research, three key areas emerged:

- 01** Making the case for Pro Bono Costs Orders (PBCOs) in Northern Ireland
- 02** Shining a greater spotlight on successful public interest cases
- 03** Preparing for emerging themes in strategic litigation

When referencing this report, we recommend the following citation:  
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## 01 Making the case for Pro Bono Costs Orders (PBCOs) in Northern Ireland

One clear point that emerged from this research is that the cost of pursuing a case can stop people and organisations getting involved in public interest litigation. This serious financial obstacle can prevent disadvantaged people from accessing justice, holding the executive and public bodies to account, or from achieving social change.

A Pro Bono Costs Order is a court order that can be awarded when a successful party to a case is represented pro bono. In England and Wales, this can be achieved through Pro Bono Costs Orders, as set out in section 194 of the Legal Services Act 2007. (In Scotland, the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 introduced pro bono expense orders.)

This means that if a claimant wins a case that has been taken on pro bono, a costs order can be made to cover the costs of that case. (It can be awarded in cases where some or all of the party's representation was provided free of charge.) This payment is equivalent to the legal costs that would have ordinarily been awarded if a PBCO was not available.

In England and Wales, the money ordered to be paid is then provided to the Access to Justice Foundation, which in turn distributes the money to organisations that are providing pro bono free legal help to those that need it.

It is clear that PBCOs are on PILS' radar already. In 2013, PILS produced a report on their vision for PBCOs in Northern Ireland, identifying two possible models that could be used to implement these cost orders in this jurisdiction. Likewise, PILS have been active in initiating wider discussions on PBCOs. In 2017, they organised a roundtable in Belfast in order to gain a greater insight into the work of the Access to Justice Foundation and the Scottish experience with PBCOs.

It is unfortunate that PBCOs have not yet been introduced in Northern Ireland (and this perhaps goes towards a wider theme regarding the disparity between the laws of England and Wales and the laws of Northern Ireland). While PILS do not engage in political lobbying, the Project may wish to continue voicing their support for PBCOs in Northern Ireland through their own publications and via their own members (who may be more actively involved in policy development).

## 02 Shining a greater spotlight on successful public interest cases

One of the most significant hindrances to public interest litigation is that those individuals affected are unaware of their legal rights.

NGOs and their members are generally more aware of the benefits of public interest litigation and may seek out more information on how to utilise it effectively.

When interviewed by Baker McKenzie for this report, a senior lecturer at University of Ulster proposed that public interest litigation material should be published to both educate and point people in the right direction for advice.

In addition, a law lecturer in the Queen's University School of Law, Belfast also noted the benefits of public interest litigation material, stating in an interview that the monthly Update **email newsletter** published by PILS has been "fantastic" – it educates more people on the topic of public interest litigation and draws more eyes to the issues. Continuing to publish public interest litigation materials such as the PILS newsletter could help increase awareness and inform people of their legal rights.

**When speaking to Baker McKenzie about PILS, a senior lecturer at the University of Ulster noted that PILS has led the way for public interest litigation in Northern Ireland.**

PILS could utilise the media's ability to reach a wider audience. Consistently promoting examples of successful public interest litigation can help increase awareness of PILS, its work, and ultimately promote participation in pro bono work.

Some sceptics may see public interest litigation as a waste of funds or even a form of political lobbying. It is important that its role as a vital counterbalance to the State and those whose interests are sidelined is conveyed to the media so that the positive outcomes achieved by PILS are recognised and publicised.

For example, PILS' involvement in the judicial review initiated by **Drumragh Integrated College** created positive publicity. During the course of our interviews, a member of the Bar of Northern Ireland praised PILS for their work in this area, noting that PILS have made a particular contribution to the development of integrated education in Northern Ireland. Publicity surrounding such successes could help to draw attention to important issues and increase awareness of public interest litigation.

Such communication is of particular importance, especially in instances where legislative change may be required. By publishing information on issues (for example the materials and events surrounding PBCOs), PILS may have an impact on members who are actively engaged in lobbying activities.

Representatives from the Bar of Northern Ireland have also, during the course of our interviews, noted that they wish to continue to bring their independence, advocacy skills and legal expertise to public interest litigation cases they are involved in as part of their relationship with PILS. However, in order to do so, they have expressed the need to be kept abreast of emerging themes within public interest litigation. Therefore, communication on trends and emerging areas of law is key for PILS moving forward.

## 03 Preparing for emerging themes in strategic litigation

In the course of this research, the team at Baker McKenzie have identified a number of emerging trends that may influence the types of cases that PILS and the wider public interest litigation community pursue over the course of the next ten years and beyond.

We note that **legal standing** is an ever-present theme; for example, during our interview with the Rural Community Network, they noted that they had been adversely affected in pursuing a legal challenge as they could not find a citizen affected by the cuts to rural transport who was in a position to take on a legal case. Similarly, the Bar's Pro Bono Unit also raised issues of standing in the course of our interviews, noting that standing and the need for victim status under the 1998 Human Rights Act are still existing challenges.

Specifically, in terms of Northern Ireland, **legacy issues** and how the past is dealt with through our legal system was also identified by many of our interviewees as something that will remain in the legal sphere over the course of the next ten years. This may relate to legacy cases but issues of historical abuse were also raised as a current area of prioritisation by the Bar's Pro Bono Unit. Likewise, Brexit, discussed in further detail below, may bring its own unique set of legal challenges.

Friends of the Earth are focusing on key issues that affect Northern Ireland such as extractivism (extracting natural resources), air pollution, and unsustainable intensive agriculture and relate them to the health of our land, the health of our people and the systems of accountability. A representative from the Bar's Pro Bono Unit, when interviewed, also noted that they have seen judicial reviews regarding **environmental issues**, such as air pollution, as areas of prioritisation in strategic legal work. As these issues will have wide reaching impacts, it is likely that they will become the focus of public interest litigation in Northern Ireland and further afield in the future.

As the UK withdraws from the EU, the **implications of Brexit** and the challenges that will lie ahead for individuals and NGOs alike in Northern Ireland remain unclear. The political landscape as it stands is uncertain, as is the impact of Brexit on human, social and civil rights. As such, the role that PILS will have to play in the future is largely unknown.

Further, this is likely to be one key area where educating individuals as to their rights and entitlements is vital, given the complexities of Brexit are not easily understood. While interviewing a member of the Bar of Northern Ireland, they specifically referenced the impact of Brexit noting that regardless of the outcome, the impact will be felt most by the most vulnerable in our society, including asylum seekers, foreign nationals and the poorest in society. The recent complaint against Translink, submitted by the CAJ, highlights that these vulnerable members of society have already felt the implications of Brexit. In interviews with Baker McKenzie, discussing the 17 complainants who were subject to passport checks while on Translink's cross-border services, CAJ noted that

**"it seems that the hard border already exists for those who are targeted due to factors such as their skin colour or accent".<sup>1</sup>**

As such, they suggest that the implications of Brexit have to be the focus of strategic litigation in the future.

Under the EU Withdrawal Agreement, certain EU citizens must apply to the EU Settled Status scheme to maintain certain EU rights and benefits, and this is likely to be relevant to members of minority groups living in Northern Ireland. The issue of status and citizenship are likely areas of the law in which PILS may be integrally involved in the future.

<sup>1</sup> **Complaint made by CAJ** against Translink for facilitating discriminatory passport checks on cross-border buses, CAJ 17/09/19 accessed 30 September 2019





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