



RESPONSE TO THE ENGAGEMENT PAPER: PRO BONO COST ORDERS

RESPONSE FRAMEWORK

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1. INTRODUCTION

This submission is presented on behalf of the Public Interest Litigation Support Project (The PILS Project). The Project is based out of Community House, City link Business Park, 6a Albert Street, Belfast, BT12 4HQ, Northern Ireland; website – www.pilsni.org; email – info@pilsni.org

About The PILS Project

The PILS Project is Northern Ireland's access to justice organisation, supporting vital public interest cases. The Project is funded by philanthropic organisations and has existed since 2009. Since that time, PILS has assisted in the advancement of human rights and equality issues by empowering, and assisting an array of different groups to use legal tools in a smart, strategic and efficient manner.

The PILS Project is a membership organization, and the membership is comprised of both nongovernmental organisations (NGOs) and solicitor firms from across Northern Ireland. The PILS Project provides the members with legal and financial assistance in public interest cases – these are cases that will create positive change for vulnerable or disadvantaged groups of people in Northern Ireland. The Project has a subscribing membership of 141 different members (70 NGOS and 71 Solicitors) who together account for a depth of experience and expertise across a wide spectrum of issues and practice areas in Northern Ireland.

One of the Project's principal goals is to remove any barriers that stand in the way of a citizens accessing justice through the Courts. One of the many ways the Project achieves this is to offer a range of free services and activities to our members to help them take cases of public interest on behalf of individuals that have human rights or equality concerns at their core. This support comes in several forms:

- Provide legal information and advice
- Source legal opinions, representation, research or training sessions through our network of supportive legal professionals (called the Pro Bono Register)
- Provide direct legal representation ourselves by acting as instructing solicitor in a case
- Give financial assistance in the form of court fees, disbursements and indemnities against the costs of the respondent. A contribution towards/payment of professional fees may also be considered in exceptional circumstances.
- Facilitate and encourage meetings between members on specific areas of public interest work.
- Map the legal landscape to be proactive in shaping important public interest litigation in Northern Ireland

All of these services and activities help the Project to achieve our founding aims and mission which are to:

- Encourage adherence to the rule of law, human rights and equality, through the use of public interest litigation in Northern Ireland.
- Encourage Non-Governmental Organisations (NGOs) and legal professionals to improve communication and co-ordination in relation to public interest litigation.
- Raise awareness of and tackle barriers to public interest litigation

In its 12 years providing the above support, The PILS Project has been directly involved in cases that concerned (but not limited to): education; health; housing; Brexit, legacy issues, welfare reform, immigration; and open justice. See Impact Report <https://www.pilsni.org/impact-report-2019>

In formulating this response, The PILS Project has relied on both its own experience as an evidence base, research and conversations with relevant stakeholders throughout the years. The PILS Project is an organisation that promotes pro bono work and meets the costs relating to funding public interest cases; and encouraging the introduction

of Pro Bono Cost Orders (PBCOs) has been one of the organisation's strategic objectives since its inception, with The Project also running an event on the potential introduction of PBCOs in Northern Ireland with the Access to Justice Foundation and The Edinburgh Law School. The Project believes this unique perspective enriches and adds credence to this response.

The Project is deeply embedded in the legal pro bono profession in Northern Ireland and prides itself on being a champion of pro bono work. One of The PILS Project's flagship pro bono projects is the operation of a "Pro Bono Register". This is a list of approximately 100 lawyers, commercial firms and legal academics, who have pledged to give their time to assist our members on a pro bono basis. The assistance offered by those on the Register ranges from advice notes, initial consultations and legal opinions to representation and providing bespoke legal training. The Project also has created an impact measurement and quality assurance system that records and evaluates the impact and quality of this pro bono work. This system allows us to continuously refine our approach and ensure the most efficient and effective pro bono work that all parties are happy with.

2. SUMMARY OF RESPONSE

- The PILS Project are supportive of PBCOs.
- While The Project is realistic that PBCOs will not suit all cases and every practitioner, we believe that the court and individuals should have as many tools at their disposal as possible, in order to make litigation more accessible and break down any barriers to access to justice.
- The PILS Project agrees that any mechanism employed for managing any monies generated from PBCOs should be proportionate and any cost should not outweigh any potential funds raised by PBCOs.
- The Project would support the idea that any money raised would be best channelled to a charity or public body that meets the cost of legal representation, promotes pro bono work, or funds public interest cases.
- An impact measurement and quality assurance system should be employed to allow the appointed body or organisation to continuously refine their approach and ensure that PBCOs are being utilised in the most efficient and effective manner.

- Ensuring quality in pro bono work is of the utmost importance; there should be no disparity between pro bono work and non-pro bono work.
- While Protective Cost Orders (PCOs) can go some way to protecting against adverse costs, the introduction of PBCOs would add another layer of protection and fight against any tactical use of pro bono status. ***PBCOs could introduce an effective rebalance of resources.***
- The Project firmly believes that pro bono work is not a replacement for legal aid or to encroach on paid work; instead it is to be seen as a healthy addition to the legal system. The Project is also mindful of the ever changing legal and socio-economic landscape, Covid being a prime example. Meaning, while there is now arguably more of a want and indeed need, than ever before, for pro bono work, the profession also need to be supported.

3. RESPONSE TO INDIVIDUAL QUESTIONS

Q1 - Do you agree that pro bono costs orders should be introduced in Northern Ireland?

The PILS Project believes strongly that PBCOs should be introduced in Northern Ireland. As a Project we see that more often than not funding is a major, if not the main, obstacle to mounting a legal challenge. While The PILS Project was established in order to “bridge this gap”, the assistance offered only goes some of the way. The PILS Litigation Fund is finite and therefore it must be managed carefully in order to assist as many public interest cases as possible.

The introduction of PBCOs would ensure that the individuals and courts have an additional tool at their disposal in order to take important litigation. Often cases where legal representation is acting pro bono involves challenging a public authority, who more often than not have more resources at their disposal to litigate; the introduction of a PBCO in matter like this, is about ***rebalancing***.

Q2 - Do you agree funds from pro bono costs orders should be allocated to pro bono service providers as in England and Wales and Scotland?

Q3 - Apart from the format in England and Wales, do you have views on how else funds might be utilised?

Q4 - Do you have any views on how a scheme could be administered to ensure the costs do not outweigh benefits?

The PILS Project agrees that any mechanism employed for managing any monies generated from PBCOs should be proportionate and any cost should not outweigh any potential funds raised by PBCOs. The Project would support the idea that any money raised would be best channelled to an independent charity or public body that meets the cost of legal representation, promotes pro bono work, or funds public interest cases.

Q5 - Should quality standards of pro bono work funded under any scheme be monitored?

Ensuring quality in pro bono work is of the utmost importance; there should be no disparity between pro bono work and non-pro bono work. As previously mentioned, The PILS Project has created an impact measurement system that records and evaluates the impact and quality of this pro bono work. A similar system like this should be employed to allow the appointed body or organisation to continuously refine their approach and ensure that PBCOs are being utilised in the most efficient and effective manner.

Q6 - Are there any other practical challenges to the introduction of orders?

The PILS Project appreciates that, like any orders, there may be initial bedding in issues. In order to mitigate this, The Project would suggest that further conversations are to be had to work out the detail of how to correctly introduce PBCOs and the practicalities about delivery and management of PBCOs.

Q7 - Are there any other ways to guard against a party using their opponent's pro bono status tactically?

Currently when a party has pro bono representation, they are open to an opponent using this tactically; they know the party is constrained by resources. While Protective Cost Orders (PCOs) can go some way to protecting against adverse costs, the introduction of PBCOs would add another layer of protection and fight against any tactical use of pro bono status. ***PBCOs could introduce an effective rebalance of resources.***

Q8 - Are there any other ways in which pro bono work could be encouraged, enhanced or supported?

Q9 - Who else should take steps to enhance pro bono work?

At The PILS Project, a pro bono culture is encouraged; the Project also encourages this type of work during our legal education work. However, The Project firmly believes that pro bono work is not a replacement for legal aid or to encroach on paid work; instead it is to be seen as a healthy addition to the legal system. The Project is also mindful of the ever changing legal and socio-economic landscape, Covid being a prime example. Meaning, while there is now arguably more of a want and indeed need, than ever before, for pro bono work, the profession also need to be supported.

Q10 - Are there any other issues relating to the costs of unrepresented or pro bono represented parties that should be considered?

Time is of the essence in relation to cost issues of unrepresented or pro bono represented parties.

Q11 - Are there any ways the evidence base on pro bono work or the likely impact of the introduction of orders might be enhanced to inform decisions?

See aforementioned impact measurement and quality assurance system example employed by The PILS Project.