

3 March 2021

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 an array of different groups to use legal tools in a smart, strategic and efficient manner.

The PILS Project is a membership organisation, and that membership is comprised of over 130 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 vital public interest cases make it into Northern Ireland's courtrooms.

The IRHRA and JCHR Inquiry

This document is being submitted to both the Independent Review on the Human Rights Act and the Joint Committee on Human Rights' Inquiry, to inform the work that the Committee intends to carry out alongside the independent review.

The relatively short timeline of 7 weeks for IRHRA submissions is a cause for concern, given the capacity pressures already being exerted on community and voluntary organisations, grassroots activists, the advice sector and legal practitioners by COVID-19 – the very groups who have vital lived experience of the Human Rights Act to share.

PILS are aware that other organisations in the human rights sector, such as the [British Institute for Human Rights](#), have also raised this concern as part of their submission.

PILS' interest in this call for evidence

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 and these are cases that will create positive change for vulnerable or disadvantaged groups of people in Northern Ireland. As the cases supported by PILS over the past 11 years have had human rights concerns at their core, our organisation is motivated to share our experiences as part of the IRHRA and JCHR calls for evidence.

The official eight questions posed by the call for evidence do not allow for much elaboration on the practical impact of the Human Rights Act over the past twenty years outside of the courtroom. PILS believe it is important to share a more holistic collection of experiences from across the UK, reflecting the Independent Review's own desire in its call for evidence to encourage "*...the widest possible range of views from the public and interested parties in its consultations...*".

In particular, we believe it is important for the Independent Review panel to consider the unique role that the European Convention on Human Rights (ECHR) and the associated Human Rights Act play in Northern Ireland.

The Human Rights Act in Northern Ireland

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. Convention rights, by virtue of their inclusion in the Good Friday Agreement peace settlement, forms part of Northern Ireland's constitutional DNA.

More recently, human rights protections in Northern Ireland have been discussed in the context of the UK's withdrawal from the European Union. The Ireland/NI Protocol that forms part of the [UK/EU Withdrawal Agreement](#) acknowledges that the GFA '*...should be protected in all its parts...*'. It also states that the '*...United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity...*' will occur as a result of its decision to leave the European Union.

Although the Independent Review call for evidence makes clear that any examination of the substantive operation of the Human Rights Act is outside its remit, 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.



Examples/case studies

The following cases are two recent examples of the Human Rights Act in action in public interest litigation supported by PILS.

- *In the Matter of an Application by Lorraine Cox for leave to apply for Judicial Review*

In 2020, Lorraine Cox applied for leave to challenge the legal definition of terminal illness, represented by the legal team from the Law Centre NI (an NGO member of the PILS Project). PILS assisted the Law Centre NI with this case through our Pro Bono Register and our Litigation Fund.

Lorraine was diagnosed with motor neurone disease in 2017 at the age of 37 and had initially been turned down for an enhanced PIP payment because of the six-month life expectancy rule.

Under the [Welfare Reform \(NI\) Order 2015](#), a person who has made a Personal Independence Payment (PIP) claim on the basis that they are terminally ill will be considered to be terminally ill if they are suffering from a progressive illness and “...*the person’s death in consequence of that disease can reasonably be expected within 6 months*” (Article 87).

Lorraine’s case challenged the compatibility of the Welfare Reform (NI) Order 2015’s six-month rule and Regulation 2 of the Universal Credit Regulations (NI) 2016 with human rights law (Article 1 Protocol 1 and Article 8 ECHR read alone/in conjunction with Article 14 ECHR).

The application for judicial review was heard at the High Court in Belfast on [18 and 19 June 2020](#).

On 8 July 2020, the [High Court](#) ruled that this difference in treatment was ‘manifestly without reasonable justification’. This was considered to have breached Article 14 of the European Convention of Human Rights in conjunction with Article 8 and Article 1 of Protocol 1. Subsequently, Lorraine was awarded damages for the upset and distress caused to her by the six-month rule.

- *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.

As [Geraldine Finucane concluded](#) on the steps of the Supreme Court: "*Our many friends and supporters know, as we know, that this is a step on the way to our goal: the full truth behind the murder of Pat Finucane. The judgment of this Court is not the end of that journey, but it represents great progress towards our goal...*".

Conclusion

The Human Rights Act has been in operation in the UK for 20 years. These cases are included to illustrate how its principles have been relied upon by families and communities in Northern Ireland to defend their human rights. The PILS Project believe that human experiences should be included in any examination of the Act's operation.

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

