



Public Interest Litigation in Northern Ireland

Jen Ang | Lawmanity
September 2024


 Lawmanity

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Please cite this report as:

Jen Ang (2024) 'Public Interest Litigation in Northern Ireland,' September 2024.

About the author

This report is authored by Jen Ang, for [Lawmanity](#), a legal and strategic consultancy, based in Scotland, which aims to tackle inequalities in the law by working with people-led movements to secure positive change.

Unless otherwise stated, the opinions, interpretations and conclusions expressed are those of the authors and do not necessarily reflect the views of PILS or the individuals or organisations who contributed to this report.

Design and layout by [Bag of Bees](#).

Acknowledgements

PILS would like to extend sincere thanks to the Community Foundation of Northern Ireland (CFNI) Social Justice Fund for supporting this research.

The author would also like to thank the core PILS team for their contributions: Maria McCloskey, Emma Cassidy, Kate Barry and Hilary Perry, as well as to PILS Chair, Fiona Doherty KC, and the entire PILS Board.

PILS and the author would like to extend a special thanks to all the individuals and organisations who have generously given their time to support this research, through attendance at half-day workshops held in Belfast and participation in 1-2-1 stakeholder interviews.

Finally, PILS would like to acknowledge the significant contribution of the entire PILS network of NGOs, solicitors and pro bono lawyers who have collaborated with PILS and supported their work since 2009.



This project has been supported by the Community Foundation for Northern Ireland through the Social Justice Fund.

Foreword from the Chair

Back in 2006, The Atlantic Philanthropies commissioned research to look at the public interest litigation (PIL) landscape in Northern Ireland and identify any barriers that existed to such litigation.

PILS (Public Interest Litigation Support) was born out of that research.

I have been a PILS Board member since its inception in 2009, taking over as Chair of the Board in 2023. I have had the privilege, not only of helping to establish the organisation, but of watching it grow into the thriving legal hub that it is today.

In 2023, PILS experienced a dramatic surge in applications for support. We wanted to find answers to some critical questions: do the same barriers to public interest litigation, as identified by the initial research, still exist today? Are there any additional barriers? Are we channelling our resources in the best way? And how, given our limited resources, can we be more impactful in the the public interest litigation space?

In addition, as this year marks 15 years of PILS, we considered it an appropriate time to revisit the public interest litigation landscape in Northern Ireland to assist us in planning for the next phase of our work.

We were conscious that many of our partners and collaborators are trying to achieve the same end goal as we are: a society in which people have equal access to the legal system and where human rights and equality are protected and realised.

Thanks to Community Foundation for Northern Ireland, we were given the opportunity to take a further look at these questions. At the end of 2023, supported by the Foundation's Social Justice Fund we commissioned research into the public interest litigation landscape in Northern Ireland as it is today.

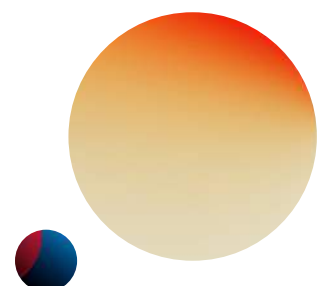
After a tender process we appointed Jen Ang, Director of Lawmanity, to conduct the research for us. Jen has considerable experience of working in strategic litigation in Scotland before her move into consultancy work. Jen's involvement also had the benefit of providing a fresh perspective from outside this jurisdiction.

It is our sincere hope that, through Jen's research, the key recommendations will be of as much benefit to partners, key stakeholders and others, as they will be to PILS. This report is published at a key point in PILS' development given the recent launch of our strategic framework for the next three years.

We have been using sector-wide collaborations in some of our priority areas of work over recent years and we have seen, first hand, how effective and important such collaborations can be. We truly believe that helping organisations think strategically about how to build cases from the earliest opportunity will have more far-reaching and positive impact on the communities and groups they serve in the longer term. I am delighted to say that this report shows us PILS is on the right track. There is, however, no place for complacency, there is no doubt that more must be done – both by PILS and stakeholders in this field – to break down barriers and plug gaps for those who most need to access the justice system. We look forward to nurturing existing relationships as well as creating new ones as we work towards that common goal. We hope that you, our partners, will gain as much from this report as we have.

On behalf of the PILS Board, I want to thank Jen Ang for her work and the production of this research report and the many individuals and organisations who took time to meet with her to share their thoughts and experience. Finally, thanks are due, as always, to the indefatigable and talented PILS staff team – Maria McCloskey, Emma Cassidy, Kate Barry and Hilary Perry.

Fiona Doherty, K.C.





1.
Introduction

1. Introduction

1.1 About Public Interest Litigation Support (PILS)

PILS is Northern Ireland's first and only legal project dedicated to helping local NGOs and legal professionals to build public interest litigation.

These are life-changing legal cases that create positive impact, not just for one person, but for communities across Northern Ireland.

Founded in 2009, PILS is the central hub for public interest litigation in Northern Ireland, connecting 102 NGOs, 71 solicitor firms and over 100 Pro Bono Register lawyers in a spirit of collaboration.

1.2 Purpose and aims of the report

PILS has commissioned this report to research the public interest landscape because of its recognition, in 2023, that we are living through a turning point in access to justice in Northern Ireland (NI).

Austerity measures and the cost-of-living crisis continue to have a devastating impact across the region. In March 2022, the Department of Justice and the Department of Finance in Northern Ireland announced plans to significantly reduce the justice budget. In a joint response, the Law Society of Northern Ireland and the Bar of Northern Ireland warned that "it has the potential to cause generational harm to the Justice System to the detriment of some of the most vulnerable people across society."¹

PILS was established in 2009 out of a recognition that public interest litigation can play a crucial, strategic role in ensuring access to justice for people suffering discrimination, disadvantage, marginalisation and other harms. The key barriers that PILS was established to tackle – cost and lack of access to legal information/representation – were identified by research commissioned by the funder Atlantic Philanthropies and carried out by Deloitte.

Fifteen years on, PILS has commissioned this research, thanks to the support provided by the Community Foundation of Northern Ireland (CFNI), to review the public interest litigation landscape in Northern Ireland as it currently stands.

In the coming years, PILS want to maximise their resources and make sure they are using them in the most strategic way possible for those who are seeking to access justice.

They also hope the report will create an opportunity to develop new strategies across the legal, NGO and human rights and equality sectors in Northern Ireland, and that the report itself can be used by others to support their own work, as well as informing NI-focused grant makers and funders, and help streamline and maximise efforts to breaking down the real barriers to change.

1.3 Scope and methodology

This report focuses on the use of public interest litigation in Northern Ireland to secure systemic change.

For purposes of this report, **public interest litigation** is defined as legal action:

- that provides an opportunity to **clarify, develop or change the law**
- designed to serve a **broader public interest or concern** than the interests of an individual client or litigant.

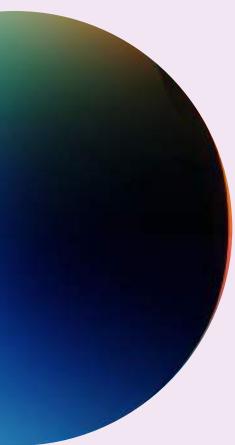
The following methodologies were used to produce this report:

- Desk-based legal research
- One facilitated workshop with all four members of the PILS staff team (March 2024)
- Two in-person half-day facilitated workshops with a total of 14 key stakeholders, located in Belfast (March 2024)
- 16 individual 1-2-1 online interviews with a range of key stakeholders, located in NI, the Republic of Ireland (ROI) and across the UK (April-June 2024)

PILS staff identified key stakeholders, including a range of legal professionals who are directly engaged in public interest litigation in Northern Ireland, as well as other professionals (like academics, NGOs, funders and regulators) who are engaged in taking, or supporting, public interest litigation in Northern Ireland.

These stakeholders also included legal professionals in Northern Ireland in different areas and types of practice, including at private law firms, law centres, NGOs and both of Northern Ireland's independent human rights and equalities monitoring bodies. Interviews were also conducted with legal professionals involved in bringing public interest litigation in the Republic of Ireland (ROI), England and Scotland, to gather insight into similar challenges faced in these other jurisdictions, as well as potential solutions to some of those common challenges.

A full list of the organisations that have supported this research as stakeholder participants appears at **Appendix 1** to this report.



The background is a complex geometric composition. It features a central vertical axis and a horizontal axis intersecting at the center. Several large circles are arranged vertically along the central axis. The topmost circle is dark blue. Below it is a red circle, which is partially obscured by a larger, semi-transparent red circle. Further down is another dark blue circle, followed by a red circle at the bottom. The background is filled with a gradient of warm colors, from light yellow at the top to light orange at the bottom. There are numerous small black dots scattered across the space, some connected by thin lines, suggesting a network or data visualization. The overall aesthetic is clean, modern, and abstract.

2. Background and context

2. Background and context

2.1 Mapping the current political, legal, economic and social context

Strategic litigation in Northern Ireland has developed in a unique political, legal, economic and social context, which must be held in mind when considering the current situation, as well as how we frame recommendations for change.

The following summary is necessarily brief, and also subjective, but seeks to capture key points raised by stakeholders as significant to them, in evaluating the opportunities and challenges faced in bringing public interest litigation in Northern Ireland:

Northern Ireland did not have an Executive for long periods of time; this has acted as a constraint on legislative reform (for example, of legal aid or administrative judicial processes) and has also shaped the creative ways that lawyers, NGOs and civil society organisations in Northern Ireland have turned to strategic litigation as a tool to achieve timely and effective change.

Northern Ireland now has, at the time of writing, an executive government (which history has shown to be fragile) and a positive feature of the current landscape is a re-engagement with some of the long needed reforms, for example, a recent Department of Justice consultation on reform of the legal aid regime. However, we still await a finalised (non-draft) Programme for Government, setting out the intended direction of the new government on a range of issues material to access to justice and the environment for public interest litigation.

The UK constitutional settlement in Northern Ireland has yielded specific constitutional legal arrangements which present both challenges and opportunities. The Good Friday Agreement, together with Article 2 of the Windsor Framework, mean that there are avenues for raising novel arguments to protect and preserve human rights in Northern Ireland, which legal actors have been exploring with some success in the past year ([See case study on p.14](#)).

Whilst the land border that Northern Ireland shares with the Republic of Ireland has posed challenges for negotiating some legal issues arising post-Brexit, with

the potential to create diverging legal standards in some areas, this challenge has fostered a determination to cooperate across borders and led to innovative joint strategic planning, such as work by climate justice activists on all-island public interest litigation strategies. (For more on this, [see p.21](#)).

For NGOs and civil society organisations, including law centres and not-for-profit legal organisations, the impact of Brexit and the cost of living crisis has significantly reduced the capacity of all advice agencies to meet rising public needs. Statutory bodies have signalled that there is no more funding to support this work, with the Department of Justice stating: “we are in a very critical situation and 2024/25 is the most challenging year we have ever had,”² and NGOs and civil society organisations facing deep cuts in statutory funding, sounding the alarm bell and highlighting the risk of complete closure of many key services.

Finally, the UK General Election which took place on 4th July 2024 has resulted in a Labour majority in the UK Parliament, with the potential for resetting some central government policies. Crucially, for NGO and civil society organisations, this could include a change of policy with respect to allocation of funding for human rights, the advice sector and the legal and justice systems, as well as increased respect for the exercise of devolved authority powers, which may create new opportunities for enhancing the landscape for public interest litigation in Northern Ireland.

Whilst it is too early to tell where these opportunities lie, and how they can best be grasped, it is hoped that this report will be an aid to others, as they form their own views on how best to widen access to justice and achieve positive change through public interest litigation in Northern Ireland.



2. Background and context

2.2 Literature review

There has been very little research on the environment for public interest litigation in Northern Ireland, or indeed the impact of public interest litigation over the last two decades, this being a relatively specialist area of interest.

NORTHERN IRELAND AND REPUBLIC OF IRELAND

The key research report in this area remains the 2006 Deloitte “Public Interest Litigation Study Report”³ privately commissioned by the funder Atlantic Philanthropies, which made the case for establishing and funding PILS.

Other relevant published reports which review and discuss the environment and impact of public interest litigation in Northern Ireland, published between 2005 and the present, have presented case studies of how public interest litigation has been used effectively in NI,⁴ as well as mapped out new strategies for the use of public interest litigation for impactful change, for example, to achieve climate justice.⁵

UK WIDE AND OTHER UK JURISDICTIONS (ENGLAND, WALES AND SCOTLAND)

There has also been limited research into the environment for, and impact of, public interest litigation across the UK and in the other UK jurisdictions over the past two decades. These reports, again, have highlighted how public interest litigation has been used as a tool of for social change across the UK,⁶ as well as focussed on specific barriers to achieving a vibrant environment in specific jurisdictions, for example, Scotland.⁷

EUROPE AND GLOBAL

Looking to other jurisdictions, a handful of reports offer cross-border and global perspectives on taking strategic litigation, barriers and risks, and also factors which will or could impact the likelihood or success of achieving social change through litigation,⁸ as well as focusing on the track record of change in specific areas, for example, in influencing corporate behaviour.⁹

Summary

In summary, the present report sits in a sparse landscape of research on the impacts of strategic litigation to drive social change in human rights and equality law, across the UK in general, and within Northern Ireland, in particular.

For this reason, among others, PILS felt it was of overriding importance that the present report be shared publicly and widely, and written with the goal of benefiting stakeholders across the legal, NGO, and human rights and equality sectors engaged in bringing impactful public interest litigation in Northern Ireland.



3.
Mapping the landscape for
public interest litigation

3. Mapping the landscape for public interest litigation

3.1 Key actors

This section will outline key actors who play a role in creating the landscape for public interest litigation in Northern Ireland, as well as summarise how they perceive their role in the wider public interest litigation ecosystem.

Legal Sector

The legal sector in Northern Ireland consists of some 6,000 solicitors on the Roll of Solicitors maintained by the Law Society of Northern Ireland, of whom over 3,000 are estimated to be working in Northern Ireland.¹⁰ They are joined by around 700 barristers also practicing in Northern Ireland.¹¹

There are not reliable figures for the number of solicitors and barristers who specialise in human rights and equality, or social justice, work – either on a paid or pro bono basis.

However, it is possible to differentiate between different types of actors within the legal sector who might be directly involved in taking public interest litigation: law centres, private law firms, barristers, independent human rights and equalities monitoring bodies, NGOs and civil society organisations, academic institutions and research networks, funders, government and the judiciary, and finally, press and the wider public.

- 3. Mapping the landscape for public interest litigation
 - 3.1 Key actors
 - Legal Sector

Law Centres and Not-For-Profit Legal Practices

These are not-for-profit legal practices in Northern Ireland which, like PILS, undertake public interest litigation but tend to focus that work on certain areas of law. These include: [Law Centre NI](#), the [Children’s Law Centre](#), and [Housing Rights](#). They also include initiatives like the [Centre for Environmental Justice](#), based in Dublin and Limerick) which focuses on climate justice issues that also impact people living in NI.

Some of these legal practices hold waivers to the application of Article 28(1) of the Solicitors (N.I.) Order 1976 from The Law Society of NI, on the basis that they are a non-profit making organisation engaged in making legal aid and advice more readily available to persons in need. Each organisation holds a specific Direction from the Law Society of NI, which is also linked to specified undertakings provided by the relevant organisation.

Not-for-profit legal practices provide direct legal assistance and representation to individuals in a wide range of human rights and equality matters. Their funding tends to be based on a mix of charitable trust and foundation funding, as well as statutory funding, legal aid income and sometimes, private donor or public fundraising.

STRENGTHS

Due to their focus and funding model, not-for-profit legal practices are in an excellent position to lead public interest litigation in specialist areas of the law, where they may be the leading experts on an issue.

WEAKNESSES

As charitable and not-for-profit bodies, funding can be uncertain and these organisations are mostly small and operating at or above capacity, at all times, under threat of closure or reduction in capacity, if slim financial or staffing margins become too tight.

GAPS

Not-for-profit legal practices have developed independently and organically, which means that there are necessarily gaps around the key issues. Whilst there may be NGOs dedicated to supporting these communities, there is not, for example, necessarily a law centre that offers specialised resource in some key social justice areas, for example, violence against women and girls, racial justice, LGBT+ justice or disability justice.



Case study: Law Centre NI’s successful challenge resulting in fast-tracked payments for terminally ill social security claimants

When Lorraine Cox was diagnosed with motor neurone disease in 2018, the intricacies of the social security system were the last thing on her mind. But when the 37-year-old mother of three discovered that she was not eligible for fast-tracked access to vital social welfare payments, she chose to take her fight to court.

Law Centre NI’s legal team provided solicitor representation. PILS’ support services provided Litigation Fund resources to lodge the case in court and connected LCNI with a pro bono barrister.

While the initial High Court judgment was overturned by the Court of Appeal, Lorraine’s determination ultimately means that since 2022, terminally ill social security claimants in NI no longer have to prove that they have a life expectancy of six months or less in order to claim certain benefit payments.

Sadly, Lorraine passed away in July 2022, but her desire for fairness lives on in the pages of the Social Security (Terminal Illness) Act 2022.

3. Mapping the landscape for public interest litigation

3.1 Key actors

— Legal Sector

Private Law Firms

Northern Ireland's legal landscape includes a number of small to medium private law firms that are active in using public interest litigation to advance human rights and equality. These practitioners may focus exclusively on human rights work, or combine for-profit legal practice with some pro bono support to human rights and equality cases, or negotiate to run human rights and equality cases at significantly reduced fees.

Their contribution to the public interest litigation landscape, therefore, can be both in identifying opportunities for change and bringing public interest litigation on behalf of their own clients – or by providing pro bono advice and capacity, in partnership with PILS and others, to assess, support or take on public interest litigation that originated elsewhere.

STRENGTHS

Private law firm practitioners are recognised as holding significant expertise in using public interest litigation to bring complex cases that have had a significant impact on the landscape of human rights and equality law, in part because the political situation in NI has meant, in some circumstances, that the judicial system is more likely to yield a swifter remedy than change through legislative or executive powers. There are a small number of private law firms that have made a longstanding contribution to this sort of work in the specific context of Northern Ireland, and this should also be recognised as a distinctive feature of the legal landscape.

The market is competitive, and healthy competition can mean better choice and terms for consumers, in this

case, people and communities who are seeking to use public interest litigation to achieve positive social change.

Private law firm practitioners rely primarily on their privately funded cases (including legally aided cases) to stay in business, which means that this is a potentially more sustainable legal sector resource than the funding environment faced, for example, by law centres, NGOs and other civil society organisations in seeking to advance public interest litigation.

WEAKNESSES

Private law firm practitioners are also, mainly, working in small to medium sized practices, with limited capacity within each practice to take on work – whether paid or pro bono. Market forces, in particular, could mean that capacity for human rights and equality cases which must be taken pro bono or significantly subsidised by a law firm, will either be reduced to nil – or that a case could be taken on but progressed with less urgency than other, privately-paid casework.

GAPS

The criteria for taking on pro bono and subsidised work – indeed, the decision to do any such work at all – is at present set individually by each private law firm, as they wish to. To this extent, capacity of this legal resource is not necessarily responsive to the scale and nature of the needs of people and communities in NI. Whilst some cases or issues might be easier to place or fund through pro bono support, others might struggle to find equal time and resource.



Case study: Successful challenge to immunity from prosecution for suspects in Troubles-related deaths

Opposed by victims' groups, regional and international human rights organisations and - in an unusual feat - all of NI's main political parties, The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 was passed by the UK government in September 2023. It prevents any new civil proceedings or fresh inquests into Troubles-related deaths and would have granted suspects conditional immunity from prosecution.

On 28 February 2024, Belfast's High Court confirmed that these controversial 'immunity' sections of the Act breach the European Convention on Human Rights (Articles 2 & 3) and the Windsor Framework (Article 2). At paragraph 187 of his judgment, Mr Justice Colton noted "There is no evidence that the granting of immunity under the 2023 Act will in any way contribute to reconciliation in NI, indeed, the evidence is to the contrary."

The judicial review, taken by individual victims as well as families who lost loved ones during the Troubles, resulted in UK legislation being disapplied (set aside) under the Windsor Framework for the very first time. A number of local solicitors firms represented the claimants in this successful challenge.¹²

- 3. Mapping the landscape for public interest litigation
 - 3.1 Key actors
 - Legal Sector

Barristers

The [Bar of Northern Ireland](#) consists of around 700 self-employed barristers in independent practice. NI barristers, together with colleagues at the English bar, play an essential role in progressing public interest litigation in Northern Ireland, whether by providing pro bono advice on the merits of prospective cases, or being instructed by NI solicitors to appear in a wide range of groundbreaking human rights and equality challenges. Similar to the position for private law firms, they may take on this work under cover of legal aid, or they may choose to work pro bono or at a heavily subsidised rate.

The [Bar Pro Bono Unit](#) provides access to advice and assistance from barristers in cases which are especially deserving or of great public importance, in which legal aid is not available. As such, they provide a valuable resource to people and communities seeking access to justice where there are gaps in the current legal aid regime.

STRENGTHS

Barristers are functionally essential within the justice system to bringing public interest litigation in higher courts in Northern Ireland, and therefore, sit at the heart of the infrastructure for public interest litigation in NI. The Bar Pro Bono Unit is positioned to serve an

important role in providing access to justice where there are gaps in the legal aid regime, and capacity appears to be adequate, although the limits of barrister capacity may yet be untested.

WEAKNESSES

Barristers are self-employed, and therefore, in a similar situation to private law firms, discussed above. As a legal sector resource, this model appears to be financially sustainable - but barrister capacity for pro bono legal work can be restricted by time or financial resource pressure elsewhere. As is the case for private law firms, this means that some types of pro bono cases might be more difficult to place than others.

GAPS

A key barrier to the function of the Bar Pro Bono Unit is a regulatory restriction which means they cannot directly represent an individual or organisation requiring assistance without the engagement of a solicitor to instruct counsel. A lack of capacity or appetite on the part of solicitors to support this work pro bono means that this resource is not being accessed as widely as it might be.



Case study: Successful legal challenges supported by the Bar Pro Bono Unit

The Bar Pro Bono Unit took a case to the European Court of Human Rights on behalf of a health worker who had received a caution for life, which had limited her prospects of employment. The question, examined in the case of *MM v UK* (App No 24029/08)¹³ was whether the retention of a caution for life constituted a breach of the individual's Article 8 respect for private life. The Court unanimously ruled against the UK government and found a violation of Article 8.

The Bar Pro Bono Unit also successfully argued for the return of a deposit paid in relation to a tenancy by a university student. This case, which was argued under the Small Claims procedure, created a precedent for many thousands of students similarly affected. Housing Rights were the instructing solicitor and PILS indemnified the student client through its Litigation Fund. For more information about this case, see *Paul Loughran v Piney Rentals Limited and F5 Property Limited* [2017] NICTy2.



3. Mapping the landscape for public interest litigation

3.1 Key actors

— Legal Sector

The Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI)

The [Northern Ireland Human Rights Commission](#) (NIHRC) is funded by the UK Government through the Northern Ireland Office and monitors and advises on human rights compliance in Northern Ireland. The NIHRC has a legal department that provides advice to individuals who have queries about human rights issues in NI, and in addition to providing legal assistance, has the power to assist individuals to bring their own court proceedings, to intervene in proceedings, and to take strategic legal cases by bringing court proceedings themselves.

The NIHRC power to take a legal case of public interest in its own name, without having to rely on an individual victim to take forward legal proceedings, is called an “own motion” power.

The [Equality Commission for Northern Ireland](#) (ECNI) is funded by the Executive Office (TEO) of the Northern Ireland Assembly and oversees compliance with equality and discrimination law in Northern Ireland. The ECNI provides free legal advice to over 3000 individuals every year who believe they have been discriminated against. Of these, 10% will go on to apply to ECNI to provide assistance to pursue a legal case, and one fifth of these will be granted support by the Commission. From this perspective, the ECNI plays a crucial role in both identifying, providing advice and representation in public interest cases and as an important funder of those cases. The ECNI have the power to intervene in public interest litigation cases in the area of equality law, and they also have “own motion” powers.

The NIHRC and the ECNI saw a recent expansion of their powers and responsibilities, arising as a result of the UK withdrawal from the European Union (“Brexit”). Under the UK-EU Withdrawal Agreement, the UK Government committed, in Article 2 of the Ireland/Northern Ireland Protocol (now the Windsor Framework) to ensuring that certain equality and human rights in Northern Ireland will continue to be protected after Brexit.

To ensure that government meets that commitment, the ECNI and NIHRC were given powers and responsibilities to monitor, advise, report on and enforce the UK’s adherence to its commitment, including the power to

bring, or intervene in, legal proceedings where there is a potential breach of that commitment.¹⁴ See the [case study on p.40](#) for an example of the use of these powers by NIHRC to challenge the implementation of the Illegal Migration Act 2023 in Northern Ireland.

STRENGTHS

The position of NIHRC and the ECNI as NHRIs funded by Government means, on the one hand, that the institutions are sustainably supported by statutory funding, and can commit long-term resource to support public interest litigation in the areas of human rights and equality law. They have unique “own motion” powers as well as the potential to make a significant difference to the landscape for public interest litigation, within their respective remits, both by taking litigation and by supporting or funding it.

WEAKNESSES

On the other hand, the funding position for both institutions also means that their capacity, to engage in or support public interest litigation can be limited if funding for these particular activities is curtailed, or if capacity pressures elsewhere in the institution preclude making full use of the power and resources potentially available. Listen to NIHRC Chief Commissioner Alyson Kilpatrick discuss this challenge in *To Be Fair NI*, PILS’ podcast here.¹⁵

GAPS

Each organisation has independent strategy and statutory criteria which determines whether and how they engage the law in their wider work, and whilst meeting the gaps in access to justice for specific communities or groups with protected characteristics could form a part of this strategy – it may not be determinative. This means that there could still be issues, or communities, that might struggle to access more than initial support or advice from these bodies for a human rights or equality matter.

- 3. Mapping the landscape for public interest litigation
 - 3.1 Key actors
 - Legal Sector
-



Case study: The Northern Ireland Human Rights Commission challenges the social housing allocation system for discriminating against people in danger for non-sectarian reasons

NIHRC used its “own motion” powers to challenge the process currently used by the NI Housing Executive (NIHE) to allocate NI’s limited pool of social housing.

When you apply for social housing in Northern Ireland, your position on the waiting list is determined by the number of ‘points’ you are awarded under the Housing Selection Scheme.

In December 2023, NIHRC issued judicial review proceedings against NIHE and the Department for Communities, arguing that – at present - the Scheme’s application is unlawful. In particular, the challenge argues that the process for awarding ‘intimidation points’ means that some people are not receiving the points they should be entitled to.

Chief Commissioner Alyson Kilpatrick summarised NIHRC’s concerns: *“Both in design and implementation, we believe the scheme does not properly consider people’s circumstances and fails to address domestic violence, gender-based violence, the intimidation of individuals from within their own community or the real impact of anti-social behaviour.”*¹⁶



3. Mapping the landscape for public interest litigation

3.1 Key actors

— Legal Sector

Non-governmental Organisations (NGOs) and Civil Society Organisations (CSOs)

NGOs and CSOs are key actors in the public interest litigation landscape, both as representatives of geographic communities and communities of interest, with the ability to participate in public interest litigation, and as influencers and allies to legal sector actors engaged in bringing litigation.

Examples of stakeholder NGOs that participated in this research, and who hold these roles in the landscape, include: [Friends of the Earth NI](#), [Conradh na Gaeilge](#), [Disability Action](#), the [Integrated Education Fund](#) and the [Pat Finucane Centre](#).

PILS is also part of a unique collective of NGOs which are jointly funded by the Community Foundation for Northern Ireland-administered NI Human Rights Fund. This time-limited fund was established as part of the legacy of the Atlantic Philanthropies investments in Northern Ireland in 2014 and core-funded the [Human Rights Consortium](#) (HRC), [Participation and the Practice of Rights](#) (PPR), the [Committee on the Administration of Justice NI](#) (CAJ), together with PILS.

Similar to law centres and not-for-profit legal practices, NGOs and CSOs tend to focus on specific geographic communities or communities of interest, and therefore, bring significant expertise on the issues that the communities they support or represent face. They are key to identifying potential issues for public interest litigation as well as crucial in their role either as litigants themselves, or in providing practical or other support to individual litigants, and evidence to strengthen legal cases.

Also similar to law centres and not-for-profit legal practices, NGOs and CSOs tend to rely on a mixture of charitable trust funding, statutory funding, private donor and public fundraising, as well as (in some cases) modest income from delivery of other services. For the same reason, they tend to be small to medium-sized organisations, with limited capacity in general, and rarely with specific funding or capacity to pursue public interest litigation as a standing, long-term element of their wider strategies.

STRENGTHS

NGOs and CSOs are crucial to the public interest litigation landscape because they are experts in the issues that affect the communities that they represent, and they are trusted intermediaries between individuals facing legal issues that could potentially lead to public interest litigation, and the wider legal sector. Because of their expertise, and long-term commitment to the communities they serve, they are also well placed to lead or support litigation for social change on issues that matter to them, an important consideration in light of the fact that public interest litigation can take many years before achieving a successful outcome.

WEAKNESSES

Similar to law centres and not-for-profit legal practices, NGOs and CSOs are generally small to medium-sized organisations with limited financial resources and capacity. Further, for any individual NGO or CSO, taking or supporting individuals to take public interest litigation is unlikely to be a strategic priority for the organisation, but rather one of a range of tools that they might be prioritising in order to create positive social change. For this reason, the proportion of resource that can be focussed on this work can vary from year to year, or there might even be a reversal of approach within an organisation over time.

GAPS

For the same reasons – strategic focus and limits in financial resource and capacity – it is likely that the range of issues where NGOs and CSOs are taking and supporting public interest litigation has grown organically, and again, there may be gaps where urgent, or significant challenges in access to justice are not being addressed by an NGO or CSO with resource to pursue public interest litigation in that area.

- 3. Mapping the landscape for public interest litigation
 - 3.1 Key actors
 - Legal Sector
-



Case study: Friends of the Earth NI, PILS and NI Commissioner for Children and Young People challenge NI Govt for failing to protect public health by enforcing air quality standards

In 2023, Friends of the Earth NI, PILS and the NI Commissioner for Children and Young People united to challenge an 18-year air quality scandal and the NI government's failure to protect public health. At the time of writing, the Department for Infrastructure is still not carrying out the legally required exhaust emissions test on any diesel cars in Northern Ireland, over five years after this failure was publicly exposed in a high-profile BBC NI Spotlight investigation.

Friends of the Earth NI, backed by the full suite of public interest litigation services (representation, pro bono advice and financial support) from PILS, began legal proceedings in February 2023. Motivated by its concerns over the harmful effects of these untested emissions, the NI Commissioner for Children and Young People also contributed to the case as third-party intervenors. This judicial review is a prime example of how multiple human rights organisations can cooperate effectively to craft public interest litigation.¹⁷

Maria McCloskey, PILS Director, described this case as “...a *fantastic case to show what a collaborative approach in this human rights space can achieve...*” in the PILS podcast's ‘Holding Our Breath’ mini-series.¹⁸

3.2 Other stakeholders

This section will outline other stakeholders who play a crucial role in creating the landscape for public interest litigation in Northern Ireland. Whilst they may not lead public interest litigation themselves, they may provide essential resources (for example, funders, or research networks) – or they may create or influence the process by which public interest litigation is taken (for example, legal regulators, government and the judiciary).

Public interest litigation is most likely to be incidental, at most, to their primary areas of responsibility, and for this reason, they may not even perceive themselves as stakeholders in the public interest litigation environment.

3. Mapping the landscape for public interest litigation
 3.2 Other stakeholders

Academia: Law Schools and Research Networks

Law Schools

Northern Ireland has 2 universities that offer the academic stage of legal education, these are: the [School of Law at Queen's University Belfast](#) and the [School of Law at Ulster University](#).

Of these, the [Law Clinic at Ulster University](#) provides pro bono legal advice and representation service to individuals in Northern Ireland, in areas where there are gaps in access to justice – for example, in challenging discrimination, and in areas of law like social security and employment.¹⁹ Whilst these cases may have strategic impact, the focus of the law clinic's work, at present, is not to identify and support public interest litigation cases.

Research Networks

The public interest litigation environment in Northern Ireland is also supported by the work of research networks, or partnerships, that work to produce evidence and strategies for more effective use of resources in coordinating public interest litigation initiatives.

These include [Social Change Initiative](#) which collaborates with activists, policy makers and funders, building bridges to create collaborations that deliver social change. [Litigating for Social Change](#) has remained a key focus of their work, and they have convened major events, commissioned research and curated resources on public interest litigation in NI, to support the sector.

An example of a specialist academic research network that has an impact on the public interest litigation landscape in NI is [Environmental Justice Network Ireland](#) (EJNI), a community of practice linking academic researchers, NGOs, regulators, lawyers and activists, with the aim of promoting environmental justice.

OPPORTUNITIES AND CHALLENGES

There are significant opportunities to support and enhance the environment for public interest litigation in NI by building stronger links to law schools, which can provide direct support in the form of clinical legal education initiatives, and to academics (whether at a law school or in other departments) with a professional interest in academic research that could build evidence and recommendations towards effective coordination of public interest litigation across a wide range of human rights and equality issues.

Whilst there could be significant untapped time and financial resource in academic institutions in NI with the potential to contribute meaningfully to public interest litigation, a key challenge might be making the case for diverting time and resource to this goal – there could, for example, be a perception of public interest litigation as quite a narrow field of inquiry, or as an approach to achieving change that might be unfamiliar or poorly understood outside of the legal sector.



Case study: Environmental Justice Network Ireland and building the strategy for all-island climate justice public interest litigation

In 2023, Environmental Justice Network Ireland (EJNI) published a report titled “Linking the Irish Environment” which focussed on the context and opportunities for all-island initiatives to promote environmental justice, and the resources that will be required to fully exploit those opportunities.²⁰ Whilst public interest litigation was not the key focus of this strategic review, it does feature as a potentially effective tool for change, and much of the foundational evidence and recommendations will, if pursued, pave the way for stronger and more effective coordination around public interest litigation for environmental justice in NI and the ROI.

In addition, EJNI hosts the digital resource [Manual for Environmental Justice](#), which again does not focus on public interest litigation but does curate a range of evidence and tools that will support better coordination of public interest litigation in environmental justice.

3. Mapping the landscape for public interest litigation
- 3.2 Other stakeholders

Charitable Trusts and Foundations

The development and success of the public interest litigation sector in Northern Ireland has been supported by a handful of private charitable trusts and foundations, key among these The Atlantic Philanthropies and the Community Foundation Northern Ireland who founded and manage the NI Human Rights Fund, respectively, as well as UK-wide funders with an interest in public interest litigation, like [The Legal Education Foundation](#) and [The Baring Foundation](#).

OPPORTUNITIES AND CHALLENGES

[See 3.3 below](#) for a further discussion of the opportunities and challenges around private charitable trust funding for public interest litigation in Northern Ireland.

Legal Regulators

The legal profession in Northern Ireland is self-regulating, and that means that solicitors are regulated by the [Law Society of Northern Ireland](#) and barristers are regulated by the [Bar of Northern Ireland](#).

Both organisations are primarily funded by dues collected from the members who they regulate and they play a dual role: as advocates on behalf of solicitors and barristers in NI as well as holding responsibilities to regulate and monitor the practice of law by their members.

The Law Society focuses in its policy work on [Human Rights and Equality](#) as a key theme, and in this area will engage on policy issues that impact access to justice, such as legal aid and reform of the civil justice system. The Bar, as mentioned previously, formally widens access to justice through its Bar Pro Bono Unit as well as through the work of its Rule of Law Committee.

OPPORTUNITIES AND CHALLENGES

Whilst both the Law Society and the Bar are proud of their role in ensuring equal access to justice for all people in Northern Ireland, and also recognise that their respective focus and efforts will have a material impact on the environment for public interest litigation and the capacity of the legal sector to provide pro bono legal advice and representation, again, for neither organisation is public interest litigation or pro bono a key part of their overall strategic focus.

The environment for public interest litigation could be significantly changed if either or both of these legal regulators were to support reforms to increase pro bono capacity or widen the permissible scope of practice – for example:

- Supporting either an optional or a mandatory professional requirement to provide a minimum number of pro bono hours annually
- Addressing barriers such as the lack of available solicitors to instruct pro bono barristers, by resourcing a pro bono solicitor project at the Law Society or amending regulations restricting direct representation by barristers in certain pro bono matters

Challenges will again include making the case that access to justice, and within that broad goal, public interest litigation and pro bono should be a priority for these organisations, which hold wide remits and will – in both cases – also require support of their membership, the NI legal sector as a whole, in order to successfully make significant reforms.

- 3. Mapping the landscape for public interest litigation
- 3.2 Other stakeholders

Government and the Judiciary

The UK Government, the Northern Ireland Office, the UK Parliament, the Northern Ireland Assembly and the judiciary in Northern Ireland are also stakeholders with influential roles to play in shaping the regulatory and administrative environment within which public interest litigation operates.

The parliamentary bodies are responsible for primary legislation which set out the rights, obligations and procedures upon which public interest litigation is very often based, and the executive bodies, primarily in this case through the Department of Justice, are responsible for secondary legislation, regulation, legal aid funding and conduct of judicial proceedings. The independent judiciary in Northern Ireland adjudicate public interest litigation cases and make determinations based on these rules.

OPPORTUNITIES AND CHALLENGES

Whilst we did not interview stakeholders representative of these functions, all stakeholders did recognise the importance of engagement and the potential to achieve reforms by effective engagement, where possible, with these bodies.

Areas where the government could significantly improve the environment for public interest litigation in Northern Ireland include:

- Widening access to civil legal aid for public interest litigation
- Reviewing the court fees and costs regime to reduce barriers to public interest litigation – for example, by allowing conditional fee arrangements, supporting pro bono costs orders for civil society litigants, or qualified one-way cost shifting (QOCS) for certain types of cases
- Reforming civil justice procedure to allow group actions for public interest litigation cases
- Widening access to justice in human rights and equality cases by reducing procedural barriers such as short time bars (the period after an event within which a claim must be raised) and exploring the impact of current rules on standing (who has a right to raise a claim), as well as reviewing the experience of raising claims for litigants (individuals and organisations) with a view to making this more accessible for all

Areas where the judiciary could improve the environment for public interest litigation in Northern Ireland include:

- Exploring the judiciary's role in making the experience of raising claims for litigants (individuals and organisations) more accessible for all – including potentially reviewing the system of training and support in place for members of the judiciary on accessibility, inclusion and human rights-based approaches to work.

3. Mapping the landscape for public interest litigation
 - 3.2 Other stakeholders
-

Press and Public Opinion

Press and public opinion play an important role in shaping the environment for public interest litigation in Northern Ireland.

Although no stakeholders were interviewed representing this group, again, stakeholders recognised the importance of press and public opinion, both in terms of raising awareness of the issues litigated as well as having a positive impact on the success of fundraising for public interest litigation activities.

Stakeholders also mentioned generally positive attitudes towards human rights public interest litigation in NI as a factor that has made it easier within NGOs and CSOs to persuade governing bodies and their membership to pursue public interest litigation as a tool for social change.

Whilst press and public opinion were largely mentioned in positive terms by stakeholders, it is worth reflecting that we have also seen challenging practice in recent times, where for example immigration lawyers engaged in human rights public interest litigation have been framed by UK politicians negatively as “activist lawyers” and this type of work has been portrayed as against the public interest.²¹

This counter example suggests that press and public opinion are an important factor that can either support or threaten a positive environment for public interest litigation in Northern Ireland, and that any strategy aimed at widening access to public interest litigation for individuals and community groups should also include actions to engage with press and cultivate positive public narratives around public interest litigation.

3.3 Funding and resources

A key requirement for a vibrant environment for public interest litigation is adequate funding and resources, and the lack of either of these will act as a constraint on the volume, and quality of public interest litigation that can be brought in a jurisdiction.

Even where we recognise that previous groundbreaking public interest litigation has been brought on limited budgets and with significant dedication of pro bono resource by NGOs, and the legal sector, there is widespread recognition that this is not a sustainable model or even an approach to making positive social change that is itself grounded in human-rights based values.

In this section, we briefly outline common sources of funding for public interest litigation.

3. Mapping the landscape for public interest litigation

3.3 Funding and resources

Legal Aid

Some public interest litigation cases can be taken by individuals with the support of civil legal aid funding, administered by the Legal Services Agency Northern Ireland. The Department of Justice is currently consulting on reforms to civil legal aid, starting with a call for evidence from legal practitioners, civil society organisations and children and young people which closed in June 2024.²²

STRENGTHS

Where available, civil legal aid is in many cases, the most suitable form of funding for public interest cases because it covers reasonable fees and expenses, as well as reduces risk of adverse costs to the litigant. Public legal aid is also, arguably, an important mechanism for the state to meet its own international human rights obligations to ensure access to justice in key areas, some of which may give rise to public interest litigation cases.

WEAKNESSES

To qualify for civil legal aid, a public interest litigation case must meet both a means and a merits test. This means that both the financial resources of the individual, as well as the merits of success of the case, must meet certain thresholds.

For this reason, many strategic public interest litigation cases may not be eligible for legal aid under the current regime. Whilst there is a means to apply for a waiver of the means threshold in certain cases, as well as to apply for legal aid funding in relation to cases that raise human rights issues but do not fall within the usual types of cases for which funding is available, the core eligibility criteria still operate to restrict the number of public interest litigation cases that can be funded from civil legal aid.

Further, whilst there may be other individuals impacted by a potentially strategic case who do meet the means test, they may be unwilling, for various reasons, to serve as the litigant in the case.

OPPORTUNITIES AND CHALLENGES

There are opportunities under the current legal aid review to support the environment for public interest litigation:

- Raising the means threshold, so that a greater number of people are eligible for legal aid
- Widening access to legal aid for certain types of cases (human rights and equality cases or certain group actions) when acting in the public interest
- Widening the scope of who can act as a litigant to include NGOs, CSOs and community groups, when acting in the public interest
- Offering block grants of legal aid funding to further public interest litigation, or a specific fund for public interest litigation available on application
- Permitting conditional fee arrangements
- Introducing pro bono costs orders, so if at the end of a civil case, a losing party would be liable to pay the costs of the winning party, but if the winning party was represented pro bono, the fee the winning party would have incurred if paying their own costs can be recouped, and potentially used to make grants to give free legal help or to support other pro bono work²³

A key challenge will be making a convincing argument for some of these reforms in a context of limited or reducing public budgets. It will be important to be able to bring both convincing arguments grounded in the legal obligation of the state to ensure access to justice, as well as evidence on the potential costs and savings that could be generated, in order to present a persuasive case for reform.

- 3. Mapping the landscape for public interest litigation
 - 3.3 Funding and resources
-

Pro Bono Support

Pro bono support by members of the legal sector (solicitors, barrister and law students) is not itself a form of funding, but it can and should be seen as an activity with significant financial value for individual litigants, the public interest litigation sector and society, more broadly.

STRENGTHS

Where available, direct pro bono support meets gaps in access to justice with expert legal capacity. The operation of PILS' model since 2009 has yielded many examples of how efficient and effective this approach can be.

WEAKNESSES

However, as discussed above, most pro bono legal sector providers are privately employed or self-employed, and that means that economic pressures can reduce time, attention and focus available for pro bono matters. Due to the wide range of circumstances, skills and experience of legal sector actors, pro bono models may not meet all gaps, with no suitable or accessible form of pro bono support for some types of cases or specialist areas of law.

OPPORTUNITIES AND CHALLENGES

There are opportunities to significantly widen the capacity for pro bono support in the NI legal sector, including by deepening the commitment of the legal sector as a whole through a voluntary or mandatory pro bono pledge, and by building on opportunities at law schools and large private law firms and other corporate organisations.

Challenges include recognising that pro bono models designed for students or trainee solicitors may require both an initial investment of resource as well as continuing support that can in itself be costly, and the possibility that a campaign to expand commitment to pro bono beyond members of the legal profession who have voluntarily given their time might meet resistance, and so should be carefully planned to build support across a wide range of legal professionals in Northern Ireland.

3. Mapping the landscape for public interest litigation

3.3 Funding and resources

Charitable Trusts and Foundations (Funders)

As covered above, private charitable trusts and foundations have played a significant role in supporting public interest litigation, both by core funding legal organisations engaged in public interest litigation, such as law centres and PILS, as well as supporting NGOs and CSOs that use public interest litigation as a tool for change.

These funders have pursued this approach both through direct funding of individual organisations engaged in public interest litigation, and by contributing to pooled funds, such as the NI Human Rights Fund and targeted funds, such as [Law for Change](#), which support public interest litigation.

STRENGTHS

Charitable trust and foundation funding, particularly when awarded as core or unrestricted funding, or targeted to support public interest litigation and related activities (like advocacy, legal casework and pre-litigation research) directly supports impactful public interest litigation and allows funded organisations to spend their time strategically and where needed to achieve change.

Private charitable trusts and foundation funding is also independent of state and corporate influence, which can also be helpful where organisations also funded by the state are seeking to challenge state or corporate interests, and require to demonstrate they are pursuing public interest litigation by means of independent funding.

WEAKNESSES

Charitable trusts and foundations are independent organisations, each operating within their own constraints and in line with their own strategies.

Overreliance on this form of funding can be risky, because funder strategies can change, leading to sudden reduction or loss in funding, and therefore, overdependence on trust and foundation funding alone, is not a sustainable solution for organisations engaged in public interest litigation.

OPPORTUNITIES AND CHALLENGES

Funders can contribute to a vibrant environment for public interest litigation in Northern Ireland by:

- Supporting pooled funding that provides multi-year, unrestricted core funding for organisations engaged in public interest litigation and funding for communities that might engage in public interest litigation, such as NGOs, CSOs and community organisations that provide advocacy, legal casework and advice and support to public interest litigation litigants
- Supporting initiatives that build and strengthen networks to support public interest litigation, like the Environmental Justice Network Ireland, which brings together academic researchers, policy makers, lawyers and activists to support development of public interest litigation strategies in other areas where there may be gaps in access to justice, for example, poverty, violence against women and girls, racial justice or disability justice

Funders have overlapping and sometimes, contradictory, remits and this can be a challenge in creating a pooled fund or in aligning funding in ways that support a wider strategy and reduce duplication.

Few funders specifically focus on funding access to legal advice in general, or prioritise public interest litigation as a tool for change in their strategies. Whilst there are significant opportunities to widen access to funds by persuading funders who traditionally focus on subject areas like poverty and disadvantage, discrimination and social exclusion to fund this type of work, it will require a compelling illustration of the change that is achievable by public interest litigation in order to make a successful case.

3. Mapping the landscape for public interest litigation
3.3 Funding and resources

Crowd funding and Private Donations

In recent years, crowd funding and private donations have increasingly become a viable means of funding impactful public interest litigation. Online platforms like [CrowdJustice](#) and [GoFundMe](#) – together with the rise of social media networks – have made it easier to connect potential donors with communities of interest, making fundraising from the public quicker and more accessible than ever before.

Some public interest litigation organisations, such as [The Good Law Project](#), have made crowd funding and private donations a key part of their fundraising strategy – allowing them to respond independently and flexibly as public interest litigation opportunities arise, with sufficient financial resources to fund their work as well as cover to reduce the risks of adverse costs.

STRENGTHS

Crowd funding is potentially the quickest way to raise independent funding for a specific public interest litigation case, with low costs to accessing this form of funding. Even where crowd funding meets limited financial success, launching a crowd funder can also increase the profile of the case, which can also be an objective for an organisation engaged in public interest litigation.

WEAKNESSES

A key weakness of crowd funding is that success will rely on how fundable a particular case is – whether there is a community of interest with sufficient funds to contribute or whether the case is the type of case that people feel compelled to support. To this extent, there will be

impactful and important public interest litigation cases that are harder to crowd fund for successfully. Another common risk is that a case may be crowd funded at initial stages, but following an adverse decision in a lower court, may be harder to crowd fund at appeal stage, or beyond.

OPPORTUNITIES

Whilst crowd funding is traditionally used to raise funds for a specific case, it is possible to crowd fund in order to defend or progress rights in an area of law – for example, LGBT+ rights or women’s reproductive rights. It may be worth exploring this type of fundraising strategy for areas of law where there are gaps in capacity for public interest litigation in Northern Ireland.



Case study: No Gas Caverns and the challenge of funding strategic climate justice litigation

No Gas Caverns is a campaign group based in Islandmagee in Northern Ireland who, together with Friends of the Earth NI, have been campaigning to protect their area from fossil fuel infrastructure which would impact their natural environment, wildlife, and contribute to longer term reliance on fossil fuels.

In 2023, the group took the Department for Agriculture, Environment and Rural Affairs (DAERA) to court to challenge the decision to allow seven enormous (skyscraper-sized) gas caverns to be drilled under the seabed in Larne Lough. Initially unsuccessful, the Court of Appeal then found in favour of No Gas Caverns on 17 June 2024. In declaring the decision to grant marine licenses to Islandmagee Energy unlawful, Lady Chief Justice Keegan said [at [para. 97](#)] that “...approving the project had the effect of potentially locking in fossil fuel dependency for 40 years... which potentially conflicts with a climate policy directed at net zero by 2050...”.

No Gas Caverns used a range of methods in order to fund this litigation, from running a successful crowd funder on CrowdJustice, hosting in-person fundraising events, applying for funds from Law for Change, and relying on PILS’ litigation capacity – an illustration of how public interest litigation by communities can be effectively supported by the modest contribution of many, where the issue is compelling and the public is given accessible and immediate opportunities for engagement and support. ²⁴



4.

Building a vibrant and
supportive environment for
public interest litigation:
Gaps and barriers

4.1 Does the current environment adequately support public interest litigation in Northern Ireland?

We asked stakeholders to evaluate whether the current environment adequately supports public interest litigation in Northern Ireland – specifically, we asked them to describe the significance of public interest litigation and evaluate how supportive or obstructive they felt the environment to be towards bringing impactful public interest litigation cases.

Public interest litigation as a creative tool for change, in the face of political stasis

The majority of stakeholders opened by acknowledging that public interest litigation has played a significant role in ensuring human rights and equality protections in Northern Ireland, particularly in light of the unique political situation, which has made it more difficult to push for progressive change by other means, for example, legislative change or policy reform.



“There’s example after example through our court system of quite effective strategic interventions across a range of areas, right up to recent months, where you will have seen the NI Human Rights Commission has effectively used Article Two of the Windsor Framework to essentially take down for Northern Ireland purposes, aspects of the Illegal Migration Act. So this reflects quite an effective movement of people here who know how to achieve legal reform, and then at the far end of that, know how, then to operationalise those legal reforms when they’re achieved.”

– LEGAL ACADEMIC

4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers
 4.1 Does the current environment adequately support public interest litigation in Northern Ireland?

Public interest litigation as a credible threat

A number of stakeholders also described a unique landscape for public interest litigation which arises from the interrelated work of the organisations supported by the [NI Human Rights Fund](#): the HRC, PPR, CAJ and PILS.

They describe the public interest litigation work of PILS as a key component of a unified “package” of human rights focused activity and an essential component. The feeling is that, even if litigation is not necessary

to resolve an issue, it is important that the human rights and NGO sectors, collectively, draw support from organisations like PILS, law centres, not-for-profit legal practices and private law firms that can bring the credible threat of litigation, as a final resort.



“We always say as an organisation, that litigation is your last choice... We work incredibly hard on finding resolution before litigation, but if you look at it in a linear way, if you’ve already invested so much time in an issue and you’ve come to a stage where through democratic processes or from advocacy or lobbying or public pressure you’ve almost reached a dead end, then litigation is a smart option. It’s your chance to get [the issue] over the line....[And once you’ve taken litigation] it moves you from an organisation that organises community events, to one that is taken incredibly seriously around advocacy, monitoring and accountability.”

– NGO STAFF MEMBER

A sound start, but not yet flying

Most stakeholders have reflected that there is considerable expertise in the public interest litigation sector in Northern Ireland, supplemented by a wider network of solicitors and barristers who also practice in the Republic of Ireland and in England, as well as across Europe – to support creative and impactful litigation.

However, they have identified a range of areas where more can and should be done to dismantle barriers to public interest litigation, with the goal of ensuring a wide range of types of impactful litigation can be brought with positive impacts for more disadvantaged groups in NI.

These included:

- Barriers in funding legal advice and representation and litigation costs
- Gaps in legal capacity
- Lack of coordination between key actors
- Gaps in NGO and public confidence to take litigation
- Challenges for litigants in engaging with the legal system

We provide below further detail in relation to each of these gaps, as well as some recommended steps that can be taken to build a more supportive environment in each of these areas.

4.2 What does a vibrant and supportive environment for public interest litigation in Northern Ireland look like?

We asked stakeholders to describe what a vibrant environment for public interest litigation in Northern Ireland might look like. Their responses varied, but stakeholders presented a vision for a future Northern Ireland where:

- Litigants are adequately funded to meet the costs of legal advice and representation, as well as the costs of litigation
- The legal sector has adequate legal capacity and expertise to ensure equal access to public interest litigation for NGOs, CSOs, communities and individuals across sectors and areas of law
- There is clear evidence of strategic coordination between public interest litigation actors
- NGOs, CSOs, communities and the public are knowledgeable about and confident to use public interest litigation to uphold and enforce rights
- There are effective mechanisms for enforcing judgments and securing change after litigation
- Public interest litigation that advances human rights and equality is covered in mainstream media as a success, with positive impacts for society

We discuss below recommendations that can be taken to build a more supportive environment in each of these areas, consistent with the vision articulated by our stakeholders.

4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers

4.3 Funding for public interest litigation

Stakeholders focussed on gaps in funding for public interest litigation as a key barrier to a flourishing environment for public interest litigation.

Public interest litigation cases vary widely, and therefore it is difficult – near impossible – to generalise about the total costs of bringing any individual action; however, it is possible to divide the financial costs of bringing litigation into stages and to examine funding models and barriers at each stage.

The diagram below outlines, from the perspective of an NGO or litigant, the costs that might be incurred in pursuing social change through public interest litigation.



The diagram above highlights that the costs of bringing public interest litigation go far beyond the cost of legal fees and court fees and include significant investments of time on the part of individual litigants in liaising with legal advisors, participating in the legal process, making the case for litigation (for NGOs, CSOs and community groups) and taking responsibility for press and communications around the litigation – including keeping members or the public updated on progress, and linking this work to wider campaigning goals.



“Finding clients can sometimes be a difficulty because there is always that cost exposure potential plus, because strategic litigation can be quite complex, and we’re maybe not hugely well resourced, and the ideal client would be an NGO. And some of them are relatively kind of risk averse, which is fine and understandable and their boards have decisions to take about protecting their organisations and that sort of thing.”

– NGO LAWYER

4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers

4.3 Funding for public interest litigation



“I know for a rock solid fact in Northern Ireland that a number of significant issues have not been challenged because of the prohibitive fear of the cost implications of taking forward cases, and that is an ongoing, difficult problem... The courts and law at the minute are becoming the preserve of people with money and power. And that’s a deeply, deeply disturbing trend, which is not simply true of Northern Ireland. It’s true of many, many places.”

– LEGAL ACADEMIC

Key barriers to achieving stakeholders’ vision

- Litigants are not adequately funded to liaise, gather evidence and participate effectively in litigation
- Litigants cannot meet the cost of legal advice and representation
- Litigants cannot meet the cost of court fees or carry the risk of litigation
- Even after successful litigation, litigants can face delays or further challenges in enforcement

4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers

4.3 Funding for public interest litigation

Recommendations for change

GOVERNMENT

- Widen access to civil legal aid for public interest litigation
 - Raise the means threshold, so that a greater number of people are eligible for legal aid
 - Widen access to legal aid for certain types of cases (human rights and equality cases or certain group actions) when acting in the public interest
 - Widen the scope of who can act as a litigants to include NGOs, CSOs and community groups, when acting in the public interest
 - Offer block grants of legal aid funding to further public interest litigation, or a specific fund for public interest litigation available on application
- Review the court fees and costs regime to reduce barriers to public interest litigation
 - Permit conditional fee arrangements
 - Introduce pro bono costs orders
 - Consider qualified one-way cost shifting (QOCS) for certain types of cases

FUNDERS

- Support pooled funding that provides multi-year, unrestricted core funding for organisations engaged in public interest litigation and funding for communities that might engage in public interest litigation, such as NGOs, CSOs and community groups that provide advocacy, legal casework and advice and support to public interest litigants
- Support initiatives that build and strengthen networks to support public interest litigation, like the Environmental Justice Network Ireland, which brings together academic researchers, policy makers, lawyers and activists to support development of public interest litigation strategies in other areas where there may be gaps in access to justice, for example, poverty, violence against women and girls, LGBT+, racial or disability justice

NGOS, CSOS, COMMUNITY GROUPS AND LEGAL SECTOR

- Explore crowd funding for strategic public interest litigation in key areas as an alternative source of financial support

4.4 Legal capacity

Stakeholders also prioritised lack of legal capacity to take forward meritorious public interest litigation as a barrier to bringing a wide range of impactful litigation.



“[In Northern Ireland] we do have a historical context that speaks to a strength in terms of using strategic litigation but it is a fragile thing. [Our legal sector] is still small, so we have limited capacity and very few lawyers who work in NGOs, and that presents a challenge because there’s only so many cases that can be taken. And turning to our friends in private practice...they may very generously agree to do pro bono work, but that pro bono offer can obviously only come after they have sufficient paying cases.”

– NGO LAWYER



“And I see the way in which the legal sector is resourced here, in terms of salaries, I think you could see in 10 years’ time that you won’t have social justice lawyers.”

– RESEARCH PARTICIPANT

Key barriers to achieving stakeholders’ vision

- There is an absolute lack of legal capacity at frontline legal advice stages, which means many meritorious cases are never identified as legal issues or brought into the public interest litigation ecosystem
- Key legal actors in the public interest litigation landscape have specific remits, this means excellent legal capacity and expertise in some areas, such as children’s rights, but gaps in legal capacity in other areas, for example, disability justice, poverty and homelessness, health and social care as well as Irish travellers’ rights
- Pro bono legal capacity can be uneven, with economic pressures resulting in gaps in capacity and prioritisation of some cases over others

4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers

4.4 Legal capacity

Recommendations for change

LEGAL REGULATORS

- Build a culture of pro bono by leading a campaign for voluntary or mandatory commitments to pro bono across the legal sector
- Find a solution to the challenge faced by the Bar Pro Bono Unit in accepting direct instructions from potential public interest litigants, whether by means of a Law Society programme, or a reform to how barristers are regulated in pro bono matters

LEGAL SECTOR, NGOS, ACADEMICS AND RESEARCHERS

- Work together to increase pro bono capacity
 - exploring opportunities to expand pro bono commitments at large private commercial firms and other corporate organisations
- – expanding opportunities for pro bono at law schools through law clinics and promotion of social justice legal careers at law schools
- Systematically identify areas in which there are gaps in legal capacity in some areas and organise proactively to increase legal capacity in underserved areas or with those communities to meet access to justice gaps (for example, a specific strategic focus to build pro bono legal capacity in certain areas and prioritise strategic cases in particular areas), or coordination on a funded project basis or otherwise on a bespoke solution to meet those gaps
- Continue to advocate with the government, the Legal Services Agency and with funders to create specific funding arrangements to meet key gaps in the legal advice sector

4.5 Strategic coordination between actors

Stakeholders have reported that aside from a few key areas – climate justice (where coordination has been independently funded) and Irish language cases (where a single NGO has led most of the public interest litigation), there is not strategic coordination in public interest litigation within sectors.

Whilst there are occasional events focusing on public interest litigation, and a good culture of interpersonal relationships that can lead to building a successful public interest litigation case, there is a gap in terms of formal networks to support strategic thinking and coordination on public interest litigation to progress positive change on human rights and equality issues.



“There are insufficient forums in Northern Ireland to bring together lawyers to do any strategic thinking and any strategising around particular thematic areas have largely come about through a sort of almost organic coming together of individuals on an ad hoc basis, depending on the issue.”

– LEGAL ACADEMIC

Key barriers to achieving stakeholders’ vision

- Public interest litigation tends to be taken independently by many disparate actors, and this can lead to inconsistent or contradictory law, or undesirable outcomes
- Public interest litigation taken by multiple actors without coordination can also lead to unnecessary duplication of effort, and therefore, waste of critical resources

- 4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers
- 4.5 Strategic coordination between actors

In contrast, the following case, a challenge to implementation of the Illegal Migration Act 2023 in Northern Ireland, is a positive example of how different actors in the public interest litigation ecosystem can work together effectively.



Case Study: Working together to successfully challenge the implementation of the Illegal Migration Act 2023 in Northern Ireland

On 13 May 2024, the High Court in Belfast held that certain provisions of the Illegal Migration Act (IMA) 2023 must be disapplied in Northern Ireland. Mr Justice Humphreys' judgment declared other sections of the IMA to be incompatible with the European Convention on Human Rights.

The case, heard over three days in January 2024, was the first taken by NIHRC against the UK Government under Article 2 of the Windsor Framework. In the related case of JR295, a 16-year-old asylum seeker from Iran had challenged the legislation's effect on unaccompanied children who are seeking asylum in Northern Ireland, represented by local law firm Phoenix Law.

One of the arguments that NIHRC put forward was that many of the countries on the UK's so-called 'safe list' were far from places of sanctuary for many people seeking protection. As it built its case, NIHRC proactively engaged with civil society organisations, including an NGO working group co-chaired by the Human Rights Consortium (HRC) and PILS.

During these conversations, it became clear that having objective evidence on the current situation faced by certain groups of asylum seekers in a specific country would reinforce NIHRC's case. The HRC applied to PILS' Country of Origin Report service and PILS commissioned tailored Country of Origin Information reports from international law firm Clifford Chance on a pro bono basis. These detailed reports were then shared with NIHRC's legal team, bolstering their evidence and emphasising the real-life impact of the legal arguments they submitted to the court. ²⁵

Recommendations for change

LEGAL SECTOR, NGOS, CSO, COMMUNITY GROUPS, ACADEMICS, FUNDERS

- Continue to seek opportunities to informally coordinate between public interest litigation actors on issues of common interest, as illustrated in the case study above
- Support initiatives that build and strengthen formal networks to support public interest litigation, like the Environmental Justice Network Ireland, which brings together academic researchers, policy makers, lawyers and activists to support development of public interest litigation strategies in other areas where there may be gaps in access to justice, for example, poverty, violence against women and girls, LGBT+, racial or disability justice.

4.6 Limited knowledge, understanding and confidence of NGOs and public

Stakeholders described public interest litigation as quite an unfamiliar concept for the public, including staff, trustees and members of NGOs, CSOs and other community groups that might benefit from using public interest litigation as a tool for social change. It is crucial to increase knowledge, understanding and confidence of both NGOs, CSOs and community organisations, as well as the wider public in order to reduce this barrier to accessing justice by means of public interest litigation.



“I think there is still a fundamental problem, which is that despite all the great work of legal NGOs and the many high profile human rights cases we have seen here in Northern Ireland, there are still too many individual people in communities who are suffering human rights breaches and small NGOs and community groups who do not know how to recognise a strategic legal case or where to go for help.”

– NGO DIRECTOR



“[We need more] relationship building and resourcing to put people in contact. So if an NGO comes with an issue, [someone can help them with legal framing] and put them in touch with lawyers who can take that forward. But that will only work if the NGOs come forward, and if those lawyers have actually got the resources to take the case.”

– NGO LAWYER

Stakeholders spoke about the need for continuing investment in training for frontline advocacy workers and awareness raising of human rights law and remedies for communities of interest, in order to ensure that rights breaches are identified and individual strategic cases are referred before it is too late to bring them (before they become time barred). They also spoke about the challenge of bringing strategic cases in some areas of practice where a class of people might be adversely affected but it could be difficult to identify an individual willing and able to stand as a litigant

– and reflected that a better understanding of how organisations can establish standing, as well as perhaps a broader application of the rules of standing, might also contribute to a better environment for public interest litigation. Finally, stakeholders raised clear examples of how the judicial system and administration of the courts poses barriers for the public in accessing justice, and highlighted ways (listed below) in which a greater focus on making the courts and judicial procedure more accessible and inclusive would also increase access to justice.

Key barriers to achieving stakeholders’ vision

- NGOs, CSOs and community organisations lack confidence to identify legal issues and then to use public interest litigation as a tool for change
- Court processes are exclusionary, frightening and difficult to engage with for NGOs, CSOs and individual litigants – the burden on litigants is still too high and this is a curb on bringing public interest litigation

4. Building a vibrant and supportive environment for public interest litigation: Gaps and barriers

4.6 Limited knowledge, understanding and confidence of NGOs and public

Recommendations for change

GOVERNMENT

- Widen access to justice in human rights and equality cases by reducing procedural barriers such as short time bars (the period after an event within which a claim must be raised) and exploring the impact of current rules on standing (who has a right to raise a claim)
- Reform civil justice procedure to allow group actions for public interest litigation cases
- Review the experience of raising claims for litigants (individuals and organisations) with a view to making this more accessible for all

JUDICIARY

- Explore the judiciary's role in making the experience of raising claims for litigants (individuals and organisations) more accessible for all – including reviewing the system of training and support in place for members of the judiciary

LEGAL SECTOR, NGOS, CSOS AND COMMUNITY ORGANISATIONS

- Increase the confidence of organisations to take strategic litigation by inviting legal sector organisations to attend NGO sector meetings to discuss opportunities to pursue public interest litigation
- Create a mentoring relationship between NGOs with more experience and NGOs with less experience of public interest litigation in the same or similar areas of law

4.7 Enforcing judgments and securing change after litigation

Stakeholders with experience of using public interest litigation as a tool for change have highlighted the challenge of securing change, even after successful litigation.

This case study illustrates the challenge:



Case Study: The Integrated Education Fund and the challenge of enforcing successful decisions

During its lifetime, the Integrated Education Fund (IEF) has used judicial review and pre-litigation processes to great effect. However, the NGO (along with the schools and families they advocate for) needed to display remarkable resilience to cement those decisions in daily life.

In a landmark 2014 challenge taken by IEF and Drumragh Integrated College, the High Court found that the Department for Education had failed in its statutory duty to ‘encourage and facilitate’ integrated education (schools that are not segregated along religious lines). IEF then joined a Judgment Implementation Group to monitor the case’s outcomes, alongside PILS, the Department for Education and other education advocates.

One decade later, the ripple effect from the Drumragh case is still being felt. Backed by pro bono legal expertise and by referencing the Drumragh decision, IEF supported

[Strangford Integrated College in successfully challenging](#) then Education Minister Peter Weir’s refusal of its proposal to expand the school.

The original decision was completely reversed and the school’s dreams of growing its enrolment numbers became a reality in 2021. This is a very efficient example of what using legal tools in the wider public interest – at the pre-litigation stage – can look like in practice. From start to finish, the entire process took less than three months.

Recommendations for change

GOVERNMENT AND JUDICIARY, FUNDERS, LEGAL SECTOR, NGOS, CSOS AND COMMUNITY ORGANISATIONS

- Recognise the cost of enforcement and securing change, and
 - Ensure the costs of this work are recognised and adequately funded
 - Adequately plan so that legal sector engagement does not end immediately after litigation ends
 - Review the effectiveness and accessibility of administrative justice mechanisms necessary to enforce judgments, and ensure the costs to successful litigants of monitoring enforcement are also recognised and adequately funded

4.8 Building positive public narratives around public interest litigation

Stakeholders have highlighted that negative press coverage and also the burden of being in the public eye can be a deterrent for litigants. Conversely, they have also indicated that positive narratives around successful public interest litigation have been an aid to crowd funding and that taking public interest litigation can also promote wider awareness of important issues, a key goal for many campaigns.

Recommendations for change

NGOS, CSOS AND COMMUNITY ORGANISATIONS, LEGAL SECTOR, FUNDERS

- Coordinate a strategic campaign between NGOs, CSOs and community organisations in the human rights and equality sector and the legal sector to promote a consistent positive message around public interest litigation and to build networks on social media platforms to amplify these messages
- Support journalists who are interested to cover law and public interest litigation, providing positive factual information about the challenges and impacts



5. Summary and Close

5.1 Summary of Key Findings

In summary, this report has sought to map and scope the current landscape for public interest litigation in Northern Ireland, and, with stakeholders, to identify barriers to a vibrant landscape public interest litigation, with the goal of ensuring a wide range of types of impactful litigation can be brought with positive impacts for more disadvantaged groups in NI.

In broad terms, stakeholder participants identified **public interest litigation as a creative tool for change, in the face of political stasis** which has played a significant role in ensuring human rights and equality protections in Northern Ireland.

They have also located **public interest litigation as a credible threat** which is valued as a key and essential component of a “package” of human rights focused activity that drives positive change across a range of human rights and equality issues.

They assessed the environment for public interest litigation in Northern Ireland to be off to **a sound start, but not yet flying**.

We asked participants to present a vision for an environment in which public interest litigation in Northern Ireland would flourish. They responded:

- Litigants are adequately funded to meet the costs of legal advice and representation, as well as the costs of litigation
- The legal sector has adequate legal capacity and expertise to ensure equal access to public interest litigation for NGOs, CSOs, communities and individuals across sectors and areas of law
- There is clear evidence of strategic coordination between public interest litigation actors
- NGOs, CSOs, communities and the public are knowledgeable about and confident to use public interest litigation to uphold and enforce rights
- There are effective mechanisms for enforcing judgments and securing change after litigation
- Public interest litigation that advances human rights and equality is covered in mainstream media as a success, with positive impacts for society

5.2 Key Recommendations

We then worked with participants to identify and prioritise recommendations for change that could help to achieve stakeholders' vision. A full list of recommendations appear in [Chapter 4](#), with key recommendations highlighted below:

Government

- Widen access to civil legal aid for public interest litigation
 - Raising the means threshold, so that a greater number of people are eligible for legal aid
 - Widening access to legal aid for certain types of cases when acting in the public interest
 - Widening the scope of who can act as a litigant when acting in the public interest
 - Offering block grants of legal aid funding to further public interest litigation, or a specific fund for public interest litigation
- Review the court fees and costs regime to reduce barriers to public interest litigation
 - Permitting conditional fee arrangements
 - Introducing pro bono costs orders
 - Considering qualified one-way cost shifting (QOCS) for certain types of cases
- Widen access to justice in human rights and equality cases by reducing procedural barriers such as short time bars and exploring the impact of current rules on standing
- Reform civil justice procedure to allow group actions for public interest litigation cases
- Review the experience of raising claims for litigants (individuals and organisations) with a view to making this more accessible for all

Legal Regulators

- Build a culture of pro bono by leading a campaign for voluntary or mandatory commitments to pro bono across the legal sector
- Find a solution to the challenge faced by the Bar Pro Bono Unit in accepting direct instructions from potential public interest litigants, whether by means of a Law Society programme, or a reform to how barristers are regulated in pro bono matters

Legal Sector, Academics, Funders

- Continue to informally coordinate between public interest litigation actors on issues of common interest
- Support initiatives that build and strengthen formal networks to support public interest litigation, like the Environmental Justice Network Ireland, which brings together academic researchers, policy makers, lawyers and activists to support development of public interest litigation strategies in other areas where there may be gaps in access to justice, for example, poverty, violence against women and girls, LGBT+, racial or disability justice
- Work together to increase pro bono capacity
 - exploring opportunities to expand pro bono commitments at large private commercial firms and other corporate organisations
 - expanding opportunities for pro bono at law schools through law clinics and promotion of social justice legal careers at law schools
- Systematically identify areas in which there are gaps in legal capacity in some areas and organising proactively to increase legal capacity in underserved areas or with those communities to meet access to justice gaps
- Continue to advocate with the government, the Legal Services Agency and with funders to create specific funding arrangements to meet key gaps in the legal advice sector

Legal Sector, NGOs, CSO, Community Groups, Funders

- Increase the confidence of organisations to take strategic litigation by inviting legal sector organisations to attend NGO sector meetings to discuss opportunities to pursue public interest litigation
- Create a mentoring relationship between NGOs with more experience and NGOs with less experience of public interest litigation in the same or similar areas of law
- Recognise the cost of enforcement and securing change, and
 - Ensure the costs of this work are recognised and adequately funded
 - Adequately plan so that legal sector engagement does not end immediately after litigation ends
- Coordinate a strategic campaign between NGOs, CSOs and community organisations in the human rights and equality sector and the legal sector to promote a consistent positive message around public interest litigation and to build networks on social media platforms to amplify these messages
- Support journalists who are interested to cover law and public interest litigation, providing positive factual information about the challenges and impacts

Funders

- Make the case to issue or sector specific funders for supporting public interest litigation as a tool for positive social change
- Offer pooled funding that provides multi-year, unrestricted core funding for organisations engaged in public interest litigation and funding for communities that might engage in public interest litigation, such as NGOs, CSOs and community groups that provide advocacy, legal casework and advice and support to public interest litigants
- Fund initiatives that build and strengthen networks to support public interest litigation

5.3 Conclusion

In conclusion, this report has evidenced the significant role that public interest litigation has played in driving positive change on a range of human rights and equality issues in Northern Ireland over the past 15 years. It has also demonstrated how the environment for public interest litigation is shaped by a diverse range of stakeholder actors, who – working together – have brought interesting and complex litigation and who collectively hold considerable expertise in bringing public interest challenges.

These stakeholders have also identified a range of areas in which more can be done, and made concrete recommendations aimed at reducing the barriers they have identified. The author is indebted to stakeholder participants for their contributions, and hopeful that some of these recommendations will be taken up by them, by government and by funders in years to come – realising their vision of a flourishing environment for public interest litigation, where a wide range of impactful litigation contributes to increasing rights and narrowing access to justice gaps for everyone in Northern Ireland.

Appendix 1: Participating Organisations

Bar of Northern Ireland	Human Rights Consortium
Baring Foundation	Integrated Education Fund
Children's Law Centre	JUSTICE
Committee on the Administration of Justice	JustRight Scotland
Community Foundation for Northern Ireland (NI Human Rights Fund)	Law Centre NI
Community Law and Mediation (ROI)	Law Society of Northern Ireland
Conradh na Gaeilge	Northern Ireland Human Rights Commission
Disability Action	Participation and the Practice of Rights
Environmental Justice Network Ireland	Pat Finucane Centre
Equality Commission for Northern Ireland	Public Law Project
Free Legal Advice Centres (ROI)	Queen's University Belfast
Friends of the Earth NI	Social Change Initiative
Housing Rights	Ulster University Law Clinic

5. Summary and Close

Appendix 2: Endnotes

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