

The Baring Foundation

LEGAL ACTION IN AN EMERGENCY

Lessons from Covid-19 grantmaking

By Dr Jacqui Kinghan and Professor Lisa Vanhala

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About the Baring Foundation

The Baring Foundation is an independent foundation which protects and advances human rights and promotes inclusion. Our Strengthening Civil Society programme aims to support civil society organisations to embrace the law and human rights based approaches as effective tools for achieving positive change for individuals and communities.

Find out more at: baringfoundation.org.uk/programme/strengthening-civil-society.

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Introduction

In 2020, the Baring Foundation launched the Covid-19 Legal Action Fund¹ in response to the increasing adverse impacts of the pandemic – and government’s responses to the pandemic – on individuals and communities experiencing discrimination and disadvantage. The fund was designed to support strategic legal action in different forms (i.e. empowering, persuading and challenging) that might better protect the rights of those at risk of further discrimination or disadvantage.²

This report captures learning from this funding. The aim is to develop more general insights about litigating in an emergency, using wider legal tools “at speed” and to advance thinking on how to fund organisations to successfully use the law in a fast-changing landscape. There are two key audiences in terms of learning for this piece of work: the grant-holders themselves and the Baring Foundation / other funders.

For grant-holders

The aim for grant-holders was to carve out some time for reflection on what has changed over the last two years and the successes and difficulties of using legal tools during the pandemic. We want to identify what worked well about Covid-19 legal action and how changes to ways of working shaped the ability of organisations to achieve their objectives.

A list of these grant-holders can be found on page 16.

For the Baring Foundation and other funders

The learning for the Baring Foundation involves gaining a deeper understanding of the challenges and potential of funding legal action in the early stages of the Covid-19 pandemic and the way in which it relates to other funded projects in the Strengthening Civil Society programme, as well as related projects funded by other foundations. The aim is to identify ways in which funders can support grant-holders that want to use legal action at short notice or to address grievous problems in a timely manner during challenging circumstances.

This report summarises some of the key relevant contextual changes during the pandemic that impacted on organisations and their service users. Organisations have also changed how they have used the law and some organisations engaged with legal action for the first time during the pandemic. There are important lessons to emerge from the legal action that has been undertaken and we offer a small contribution to learning from the pandemic through the findings of this research with the Baring Foundation’s grant-holder organisations. The final section puts forward some lessons that may be of interest to funders and civil society organisations.

¹ For more information about this funding, see: baringfoundation.org.uk/news-story/strengthening-civil-society-programme-new-funding-to-support-legally-expert-hub-organisations.

² Vanhala, L., *Framework for Effective use of Law by Voluntary Sector Organisations*, 2016. London: The Baring Foundation.

Methodology

Our research involved a scan of the landscape to identify key areas of change associated with the pandemic and responses to it and we then conducted three focus groups in November and December 2021 (lasting 90 minutes each) with small groups of the Covid-19 legal action grant-holders. Focus groups have the advantage of eliciting conversation amongst grant-holders, highlighting both experiences that were shared as well as contrasts. The limitation of focus groups is that they allowed us less time to explore the experiences of individual organisations in a more in-depth manner.

We elicited information about how the grant-holders' work and engagement with law changed over the course of the pandemic; their experience of grant-funding during the Covid-19 period to date (not limited to funding from the Baring Foundation); how the nature of Covid-19 funding shaped their legal activity; and how their use of legal activity (from encounters with individuals with legal problems through to the use of litigation) may have changed (potentially irrevocably) because of the pandemic.

Context

EMERGENCY LEGISLATION AND GUIDANCE

Within a short timeframe, organisations had to adapt to extremely **fast-moving changes to law and related guidance**. This includes changes at multiple levels and across different areas. For example, guidance on social distancing and lockdown regulations was altered some 64 times in less than a year, often without formal scrutiny.³ There were also comprehensive changes to discrete areas in which civil society organisations work such as social care,⁴ welfare benefits,⁵ housing⁶ and immigration.⁷ For some, litigation was a necessary tool in ensuring that restrictions on rights and entitlements were proportionate and necessary. For others, there was a significant increase in those requiring advice and assistance relevant to accessing different forms of state support. The passing of emergency legislation also shifted the work of many organisations in terms of **limiting regression of rights**. At an early stage in the pandemic, many identified the need to ensure that measures that negatively impact democracy and civil society were not made permanent.

DIGITAL SERVICE PROVISION AND REMOTE COURT HEARINGS

Lockdown measures significantly impacted upon the mode of delivery of legal services and the operation of the courts, resulting

in a dramatic shift to online provision and digital hearings. Regarding remote service provision, some who needed it were unable to access services due to demand and supply issues. While there have been many positive aspects to digital hearings, there are also access to justice implications for those with **limited access to technology**, as well as **delays** and higher rates of **court adjournments**.

Recent research raises a number of concerns including technical difficulties during online hearings, the unsuitability of online hearings in highly contested matters, and the practical and emotional **barriers to effective participation** for litigants online.⁸ The changes have raised procedural concerns that have led to legal challenge; for example, a challenge by the Joint Council for the Welfare of Immigrants (JCWI) to Immigration Tribunal determinations on paper, rather than by way of oral hearing, during the pandemic was successful and ruled relevant guidance to be unlawful.⁹

DISPROPORTIONATE IMPACT OF THE PANDEMIC ON CERTAIN INDIVIDUALS AND GROUPS

People already living in **poverty** were particularly impacted by the pandemic and many faced debt issues for the first time. Overall, Citizens Advice estimates that six million UK adults have fallen behind on at least

³ See e.g. Wagner, Adam, *Table of Covid-19 Lockdown Regulations*, 2020, London: Doughty Street Chambers. Available at: docs.google.com/document/d/1ne4zhPYAZK8G867D1z0Gg2ZJFLGmF2K/edit.

⁴ Changes to the Care Act 2014 made pursuant to the Coronavirus Act 2020 including easements to allow local authorities to cease formal assessments, applications for eligibility and reviews.

⁵ Richard Machin, 'Covid-19 and the temporary transformation of the UK social security system', *Critical Social Policy* 41(4).

⁶ See e.g. Fitzpatrick, S, Watts, B., & Simms, R, *Homelessness Monitor England 2020: COVID-19 Crisis Response Briefing*, 2020. London: Crisis.

⁷ *Changes to asylum and resettlement policy and practice in response to Covid-19*, Refugee Council, 2021. Available at: refugeecouncil.org.uk/latest/news/changes-to-home-office-asylum-resettlement-policy-and-practice-in-response-to-covid-19.

⁸ Byrom, N, Beardon, S & Kendrick, A, *Rapid Review: The impact of Covid-19 on the Civil Justice System*, 2021. London: Civil Justice Council & The Legal Education Foundation.

⁹ R (The Joint Council for the Welfare of Immigrants) v The President of the Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 3103 (Admin).

one household bill during the pandemic.¹⁰ Certain groups are far more likely to have fallen behind: those directly affected by coronavirus, who played a key role in the response, or those who were already in a precarious financial situation beforehand are far more likely to have fallen behind on their bills.¹¹ Increased reliance on the **welfare benefits** system also resulted in nearly a million new claims in the first three weeks of the pandemic and March 2020 lockdown and across many areas there was insufficient social welfare service provision to meet demand.¹² In the **social care** context, there was growth in demand for support as people's health and wellbeing were affected by both the virus and restrictions.¹³ People living in care settings were disproportionately impacted by measures to contain Covid-19 and less likely to be able to access legal advice.¹⁴ Evidence shows that **disabled people** are considerably more likely to report that Covid-19 restrictions have had a negative impact on their lives.¹⁵

People experiencing **homelessness** also faced wide-ranging challenges. For example, while the speed and clarity of the early Government response in England on rapidly accommodating people sleeping rough, eliminating the use of communal shelters, enhancing welfare benefits, and halting evictions, was widely welcomed, there were subsequent 'mixed-messages'.¹⁶ The medium- to longer-term response to groups accommodated under 'Everyone In', especially non-UK nationals ineligible for housing benefit, became a matter of acute concern amongst local authorities and their third sector partners. Highly ambivalent, and changing, signals in England about the application of the usual homelessness eligibility and entitlement criteria during the pandemic were identified as especially problematic.¹⁷

There was an increased risk of harm and isolation for those experiencing **domestic violence**. As well as an increase overall in reported cases, evidence shows quicker case escalation and increased severity.¹⁸ This has had adverse impacts upon **children** in addition to wide ranging limitations on children's rights including education, play and health. Children living in poverty, those in secure care, refugee and migrant children and young people at risk have been disproportionately impacted.¹⁹

WIDER SOCIO-POLITICAL LANDSCAPE

Grant-holder organisations experienced pressures as a result of the uncertainty posed by wider **proposed legislative reforms**. The implementation of administrative reform following the Independent Review on Administrative Law, the Human Rights Act Review and subsequent UK Government consultation, as well as regressive legislation across multiple areas (e.g. restrictions on the right to protest in the Police, Crime, Sentencing and Courts Bill; deprivation of citizenship in the Nationality and Borders Bill) continue to raise concerns. While the socio-political context in England can be contrasted, to some extent, with that in each of the devolved nations, the divergent approaches to human rights issues across the UK raise a number of constitutional concerns. Responding to government consultations within short time frames also constrains organisational capacity. This is further exacerbated by the challenge of recruitment and retention in the legal aid sector and wellbeing issues associated with the pandemic.

10 Excess debts – who has fallen behind on their household bills due to coronavirus, Citizens Advice, 2020. Available at: [www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Excess%20Debts_who%20has%20fallen%20behind%20on%20their%20household%20bills%20due%20to%20coronavirus%20plus%20methodology\).pdf](http://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Excess%20Debts_who%20has%20fallen%20behind%20on%20their%20household%20bills%20due%20to%20coronavirus%20plus%20methodology).pdf).

11 Ibid.

12 See, e.g. Advising Londoners: an evaluation of the provision of social welfare legal advice across London, Advice Services Alliance, 2020, London: ASA.

13 *RIPPLE: Coronavirus PLE Pandemic Response Work*, CELC, 2020.

14 *Law under lockdown: Covid-19 measures, access to justice and vulnerable people*, The Law Society, 2020. London: The Law Society.

15 Sayce, L. *The forgotten crisis: Exploring the disproportionate impact of the pandemic*. The Health Foundation, 2021. Available at www.health.org.uk/news-and-comment/blogs/the-forgotten-crisis-exploring-the-disproportionate-impact-of-the-pandemic.

16 Fitzpatrick, S, Watts, B., & Simms, R. *Homelessness Monitor England 2020: COVID-19 Crisis Response Briefing*, 2020. London: Crisis.

17 Ibid.

18 Ivandic, R, Kirchner, T & Linton, B. *Changing patterns of domestic abuse during Covid-19 Lockdown*, 2020, London Centre for Economic Performance.

19 The Children's Society, *The impact of Covid-19 on children and young people*, 2021. London: Children's Society.

Findings

THIS SECTION PRESENTS THE FINDINGS OF OUR FOCUS GROUP RESEARCH WITH THE BARING FOUNDATION'S GRANT-HOLDER ORGANISATIONS ABOUT THE CHALLENGES AND OPPORTUNITIES THAT THE PANDEMIC PROVIDED.

As outlined above, the rapidly changing societal, economic and policy landscape during the pandemic meant that most organisations were grappling with numerous changes at once. All participants in the focus groups suggested that the pandemic had required them to change their ways of doing things. **Grant-holders reported the following three key changes:**

1. shifts in the legal needs of clients and service users;
2. the introduction of new legal frameworks, including new legal protections, that needed to be understood and disseminated at speed;
3. changes in the way public sector service provision and the courts were engaging with organisations and their service users.

CHANGING LEGAL NEEDS

As discussed above, the pandemic thrust many of those in vulnerable situations into even more difficult circumstances, but also meant the rights and legal protections regarding their situations were changing rapidly and sometimes dramatically. As one focus group participant noted, it simply *“shone a magnifying glass on discrimination and inequality”*. Those in organisations providing legal advice noticed significant changes in the legal needs of their service users – partly shaped by the nature of the pandemic and resulting lockdowns and partly shaped by the legislative and policy responses.

Legal needs varied significantly across sectors. Focus group participants represented a wide range of organisations that cover a breadth of issues and their experiences varied. For some, demand quietened down at the very beginning of the pandemic whereas others saw huge surges in demand, particularly in calls to advice lines. For example, one organisation that provides legal advice related to employment discrimination saw a quadrupling of the number of people needing their advice line overnight and had to completely re-configure their service provision in response.

Focus group participants also noted that there was a range of technological skills and ease among their clients. This was an important mediating factor in whether or not individuals were able to articulate their legal needs to service providers. There was **variation across issues areas. For example:**

- Focus group participants from organisations working on **public law** issues or with service users who had generally not claimed **benefits** before did not report that the shift online caused challenges in relation to digital exclusion for their client groups (though they may have faced technological or practical challenges such as poor internet connections, lack of privacy and juggling of childcare and home-schooling).
- One participant who works with **homeless migrants** noted that there was significant variation in access to digital technologies and was encouraged at the beginning of the pandemic by how well clients responded to the need to shift online, noting that they even

“shocked themselves with their ability to do this. They wouldn’t have thought they were capable of doing it”.

- One participant who works in **social welfare law** noted that for some of their service users the ability to engage remotely suited them for childcare reasons.
- Two participants who work with **children and young people** noted that supporting them in engaging with their support workers online tended to work well but that now that meetings were shifting back to in-person encounters there were challenges in reverting to previous ways of working.

CHANGES IN STRATEGIC FOCUS AND SERVICE PROVISION

In response to changing legal needs and the requirements of the lockdown, organisations had to shift the focus of their work, the types of services they provided and the way in which they were delivered. For some, this meant more of a focus on ‘empowering’ through frontline individual advice and representation in order to meet legal needs. For others, it meant ‘challenging’ by way of judicial review for the first time. There are obvious tensions for some organisations given that even before the pandemic, the time- and resource-constraining nature of engaging in the latter might risk compromising the resolution of legal needs of the former.²⁰ In many organisations general shifts sparked innovation but some participants also talked about relying on tried-and-tested methods. As has been highlighted by emerging research in the field, while *‘remote delivery may be working well for some clients, others just cannot do without face-to-face interactions’*.²¹

Research participants noted the following issues.

Advice line overload

Several focus group participants said their organisations’ advice lines were inundated during the pandemic and they had to increase their capacity in this area and diversify the way in which they provided these services. One research group participant said they set up

a chat line on their website and others found ways to scale the provision of advice through e.g. holding legal clinics online and organising webinars to share advice from legal counsel.

The push towards litigation

One organisation said they issued judicial review proceedings for the first time because of problems with changes in law in relation to employment discrimination and the furlough scheme. The participant noted they *“weren’t afraid of JR anymore”* and suggested that *“the reality of it is that it’s like managing another project. We’ve built up a better knowledge”*. The participant also suggested they hadn’t really thought through enough at the outset what would have happened if they had lost. When they did lose in the lower courts, they felt a pressure to appeal the judgment because *“otherwise we were leaving a negative legacy”* (i.e. by setting bad legal precedent). This suggests there is both room for more learning from organisations more experienced in this realm, but that for funders it is also worth thinking through the many different eventualities of litigation, and how they can support organisations – practically and with in-kind support – to do so. For another organisation established at the start of the pandemic, litigation was a new tool but one necessitated by the pandemic.

The pull away from litigation

One organisation familiar with the use of litigation commented that considering where sympathies might lie during the pandemic was critical to shaping their strategic approach. In the healthcare context they noted that *“we thought we would take cases right through but we got advice from barristers that the courts were being sympathetic to public bodies”*. This meant that a more cautious approach was needed and the organisation changed strategy. While letters before action were issued, these were used to *“campaign and push for change”* rather than formally proceeding with the litigation.

²⁰ See e.g. Kinghan, J. *Lawyers, Networks and Progressive Social Change: Lawyers Changing Lives*, Hart, 2021.

²¹ Creutzfeldt, N. & Sechi, D. ‘Social welfare [law] provision during the pandemic in England and Wales: a conceptual framework’, 2021, 43(2) *Journal of Social Welfare and Family Law* 153-174.

The relevance of rights

One organisation with a long-standing mission to raise rights consciousness noted that the pandemic **accelerated their agenda** and allowed them to **develop new relationships**. It also created new opportunities to show how rights matter in their work. They noted that individuals in a local authority, which had generally been reluctant to talk about poverty because it wanted to be seen as a thriving, vibrant city, were facing up to the issues of those in more vulnerable situations and were willing to engage in a new way. Another organisation that works with campaigning groups said there was also a new appetite to engage with socio-economic rights given the societal context.

Engaging with other service providers

For some participants a part of their legal work involves engaging with government service providers. One participant noted (and others agreed) that getting data from government service providers to support clients with their legal work had become *“slightly easier”* with the shift to remote working. However, questions were raised by focus group participants about whether this shift would be permanent or temporary.

Opportunities for more joined up advocacy

The focus groups indicated a notable shift in the use of legal tools to ‘persuade’ because of increased opportunities to participate through online working. Those based in Scotland and Belfast noted how much more straightforward it was to engage with advocates based in other places than it had been before the pandemic. One noted it was possible to attend an event (remotely) in Wales in the morning and one in Belfast in the afternoon. Another said that participation at committee meetings in Westminster was much easier online. This suggests that pandemic-related practices may shift the London-centric focus of the legally-oriented end of civil society.

Engaging in legislative processes differently

For those organisations working in policy and legislative reform, the traditional routes to monitoring legislation and working with parliamentarians to propose amendments were unavailable. This was in part due to remote working but also to the speed and volume of Covid-19 emergency legislation. One organisation commented, *“it’s so fast paced there isn’t a chance to write a paper beforehand or prepare a report in advance”*. There was therefore a shift in terms of working in a light touch way on amendments and undertakings as well as trying to anticipate issues in advance. This is especially important in view of engagement with prospective public inquiries into the handling of the Covid-19 pandemic. An organisation working in this way also noted that there is an important connection between what they do and what others are doing: *“we’re doing the upstream work, others work on fighting individual cases and we work with Parliament to try to change the law”*.

COURTS AND SERVICE PROVISION MOVING ONLINE

For many (but not all) of the organisations that the Baring Foundation supports, engaging with legal processes and courts is part and parcel of the services they provide and inextricably linked to informing and facilitating other strategic work. The pandemic meant that court hearings moved online as well significantly shaping the experience of clients and the organisations supporting them. According to our research participants, this had both advantages and disadvantages and there were **marked differences in experiences across organisations and sectors**.

Advantages

— Several participants spoke about the benefits of being able to **participate in court proceedings** online. One working in the higher courts noted that it meant you can *“get more people attending court hearings because they don’t have to travel to London”* and another working on the rights of children and young people in institutional settings

noted that *“loads of people were able to watch the proceedings because it was online”* and suggested that *“in terms of access to justice – that was a good development”*.

— One participant commented that moving the **submission of application forms and evidence entirely online** had been empowering for some clients. It had speeded up processes and now having returned to face-to-face appointments again it was *“much slower”*. Similarly, it was noted in the housing context that evidence sharing had become *“slightly easier”*, with government service providers providing data needed in support of applications more quickly than before the pandemic. Another organisation noted that Home Office appointments electronically and documents sent by post worked well commenting: *“if they did revert we would probably challenge that, why reverse that trend?”*

— There was also a consensus among research participants that the **use of digital submission of court papers was advantageous**, with one participant noting that being able to email papers was much more efficient.

Disadvantages

— **Access to justice:** one participant noted that the huge **variation in the different systems and platforms courts and tribunals were using** was very time consuming and involved taking time to *“support your client to navigate the systems as well”*. Another participant noted that where courts had adopted telephone hearings, *“clients were not able to engage with that”* and felt that *“digital courts were a real barrier for some of our clients”*. Another noted the challenges of communicating with counsel and with the client in these settings and lamented the inability to *“tap them on the shoulder or pass a post-it-note”*, arguing that *“in terms of accessing justice nothing can replace face-to-face....”*. Another noted that if court proceedings are not accessible to the public it makes people *“lose confidence in justice”*. An organisation said that given the nature of their client group they had *“tried to minimise remote hearings as much as possible”*, but this *“put them in conflict with the rest of the [legal] profession”*.

— **Training:** one participant noted that another disadvantage of the courts being so inaccessible (in person) is that organisations cannot train people by bringing them to sit in court, which further exacerbated the recruitment and development problems organisations were facing at the same time.

AWARENESS RAISING AND PUBLIC DISCOURSE

Many focus group participants felt that there were **changes in public perceptions** as a result of the pandemic, particularly in relation to benefits including universal credit, the furlough scheme and the universal credit uplift. One participant noted that, *“people’s approach to benefits has changed”* and suggested that there is *“more of a recognition that benefits need to be here for all of us”*. Another suggested that *“people are so much more aware”* and there is *“more of a shared sense of community”*. Another noted that this was also true within the civil society sector, noting that more campaigns are doing work on social justice issues and interested in how socio-economic rights relate to their work and how the *“plethora of rights violations”* has been so vast.

One organisation also highlighted that the pandemic had **drawn public attention to rule of law issues** that have existed for some time. The pandemic had *“accelerated”* longer term negative trends, such as the *“increased use of secondary legislation, much less parliamentary scrutiny and legislation not being amendable”*. This had created a *“jumping off point”* to expose negative trends and advocate more strongly for reform. Several organisations noted with concern that emergency rules that had been passed in haste and without much scrutiny might remain: *“the government used the crisis to change policies and practices with the excuse that it was an emergency”*.

For other organisations the pandemic had exposed **systemic injustice**. In the immigration and asylum context, *“the level of dysfunctionality in the asylum support and accommodation system”* was made clear by the tragic consequences of ill treatment.²² This was also the case for another organisation working

²² See e.g., Brooks, L. ‘Calls for inquiry into deaths of asylum seekers in Glasgow’, *The Guardian*, 25th June 2021.

with care experienced children and young people. Participants noted that there were opportunities to “*learn and address the gaps in the longer term*”.

IMPACT OF THE PANDEMIC ON ORGANISATIONS MORE GENERALLY

Beyond the legal needs of their clients and the types and volume of services they delivered, organisations experienced a range of other pandemic-related pressures. Participants also articulated the opportunities that these changes had created, specifically in relation to the shift to remote-working and digitalisation. **Three issues stood out.**

1. The shift to remote working

For example, one participant noted the rapid shift to moving online within her organisation:

“As an organisation we have gone through a barrier of thinking of digitisation and access to digital services as something we didn’t support and our clients would be disadvantaged by. We have some clients, using WhatsApp, using facetime etc has had a bonus. If we ever get back to business as usual ... offering an appointment in our office wouldn’t necessarily be the thing that we would do. Pretty much overnight we went paperless. I’ve been trying to get us to do that for years.”

2. Collaboration

Many participants noted that they had appreciated the ability to collaborate with those further afield. One organisation that hosts secretariat positions for networks noted that many more partners were able to attend the meetings and the reach of the network was expanded. Another commented, *“it’s a real strength in terms of being a small campaign charity, we can have regular face to face contact with supporters and campaigners online”*. Another research participant noted that they were able to bring together children and civil servants to talk about the role of advocates in a way that would have been more expensive or impossible in person. She noted that the *“vast majority”* of people had said that they prefer Zoom trainings, though she noted *“as a trainer I would much rather be in the room”*. For another organisation, in relation to a Court

of Appeal case, they highly valued the ability of *“loads of people to watch proceedings online... in terms of access to justice that was a good development”*. We note however that this was not necessarily a shared experience, with another organisation commenting on the challenge of participation as an observer in online hearings.

3. Staffing, recruitment and wellbeing

A third area in which research participants saw impacts on their organisations – though these were mixed – concerned human resources issues. As mentioned above, one participant mentioned the challenges associated with training people, particularly when access to observing court hearings was limited, saying about the inaccessible courts that it means *“you can’t train people by having them sit in court. Staff can’t see it...”* However, another participant noted that they were able to widen their search pool and hire someone in Belfast even though traditionally they had been a London-centric organisation. Several participants also mentioned the impact on staff of the pandemic, with some noting that funding they had received to support wellbeing and others thinking consciously about how to protect work-life balance when working had moved to more flexible and remote models.

EXPERIENCES OF FUNDING DURING THE PANDEMIC

We asked focus group participants in an open-ended way about their experiences of working with funders (including, but not limited to, the Baring Foundation) through the pandemic. Some of the insights and experiences they share with us are specific to pandemic-related funding whereas others are more general and are familiar.

Funding during the pandemic

In the discussions about organisational responses to the pandemic many participants highlighted how the context highlighted the strengths and weaknesses of their organisational infrastructures. This also came out in discussions about funding, with one participant noting, and several others agreeing, that it can be challenging to get **funding to develop organisational infrastructure.**

Housing, evictions and homelessness

A specific example can help to illustrate how socio-economic and policy context shaped the nature of legal need, rights protections and service delivery during the pandemic.

The Coronavirus Act 2020 provided protection to social and private tenants by delaying when landlords could evict tenants. The provisions in the Act increased the notice periods landlords were required to provide to tenants with some exceptions in the most serious cases such as egregious rent arrears or anti-social behaviour. The stay on possession proceedings, which was a measure imposed to mitigate the effects of the pandemic, expired on 20 September 2020 and all landlords were at that stage able to progress their possession claims through the courts. Focus group participants outlined the different ways in which the situation of legal need and the provision of legal advice changed during this time.

Legal needs

Those in precarious economic situations faced greater precarity in terms of uncertainty about their economic situations. Being locked down meant that organisations were seeing different types of housing need: more anti-social behaviour cases, more cases of dampness and disrepair. As one participant noted: *“A little bit of neighbour noise becomes more significant...”*.

Changed rights and protections

The Coronavirus Act 2020 provided protection to tenants and resources were provided through the Homelessness Prevent Grant for local authorities to help vulnerable households with rent arrears to reduce the risk of them being evicted and becoming homeless. The “Everyone In” scheme meant that those experiencing the worst forms of homelessness were moved

into emergency accommodation where they could isolate from the virus. One participant noted that a silver lining of the pandemic – arguably a temporary one – is that some of the policies coming out of the Home Office in relation to rough sleeping have been *“slightly less harsh than they had been”* and there is evidence that *“when there is a political will there is a way”*.

Changed nature of service provision

Organisations had to pivot rapidly in the types and nature of their service provision.

More advice, fewer cases

The ban on evictions meant that the caseload of frontline organisations shifted to providing more advice but less opening of cases. One participant noted that *“we dealt with 1000 more clients last year than in a normal year... we weren’t necessarily opening more cases”* and another representative from a different organisation noted that they were doing *“more type 1 cases but that’s not necessarily translating into opening up a case file”*. This resulted in a backlog in court when the stay on possession proceedings was lifted and meant that organisations then had to pivot again when the protections came to an end.

Changes in how services were marketed

One focus group participant noted that they could not deliver their normal door-of-court service when proceedings went online and another participant from a different organisation said they had turned to more traditional methods of outreach, including distributing leaflets. This raised questions about how and when to resume ‘normal’ service provision.

However, there were some who believed funders had devoted more attention to this through the pandemic. For example, one participant noted that *“a lot of funders realised that they needed to be flexible – to cover core costs. To cover core infrastructure costs, digital costs. Make offices safe for people to return - staff and then clients”*. Another participant noted that they had been better able to secure multi-year core grants.

The issue of short- versus long-term funding arose several times in different focus groups. One participant queried whether it was appropriate to have *“short term funding for Covid related work”* given that *“we’re going to be living with Covid for a long time”*. They noted the importance of situating **short term funding within a long-term framework**: *“I would suggest some thinking about the longer term impacts that emergencies like this can have... we’re now in a really challenging situation, we’re so overwhelmed and the amount we’re dealing with is only ever increasing”*. Another organisation said that while short term funding was vital, *“planning and strategy can be thrown up in the air”* and you can be in danger of losing focus.

Some participants noted that funders were also **diversifying their offer of support**, for example with leadership support and consultancy support, and suggested that this kind of in-kind support was helpful. A small organisation noted that one funder gave them £2k for staff wellbeing which required no reporting and was seen as *“a real boost”*, in part because the funder *“had really thought about the timing of it”*. Another organisation found it extremely helpful when a funder **minimised monitoring processes**: *“One of our core funders emailed to offer a significant amount and let us send other reporting for our reporting to them”*. Some participants from more recently established organisations also noted that funders’ requirements in terms of monitoring and reporting mean it is worth carefully weighing up the time it takes to put together an application with the potential grant one might receive. One participant suggested that you might put in the *“same amount of effort for £2k, £20k or £200k”*.

Some participants reflected upon areas in which it has been most difficult to acquire funding beyond the pandemic context. For example, one pointed to challenges of **acquiring funding to litigate** against private companies. Similarly, an organisation that had pursued appellate litigation commented that *“it would be worth setting funding aside”* for such cases (i.e. needing to appeal a decision). Another said that the **implementation work** after a legal case is always challenging to fund (while noting that the Baring Foundation had funded implementation projects) because it is *“reactive”* and *“looking at those wider aspects of litigation ... that takes up a lot of my time that is just not funded”*.

Another (policy based) organisation using the law to persuade noted that it was difficult getting **ad-hoc funding for communications** but that it was sometimes also necessary in an ‘emergency’ way in order to maximise impact. Without such funding they said *“trying to do the comms work is taking away from the policy work”* and it would be helpful to be able to ask for *“four or five days help”* at short notice.

Relationships with funders

There was a consensus that a relationship of trust between funders and grant-holder organisations is important. The distinctions between using the law in a ‘strategic’ way and frontline advice provision can lack clarity, especially where they are perceived by organisations to be interrelated or even one and the same. Several research participants mentioned that explaining the nature of legal work can be challenging with some funders. For example, one suggested that:

“... If you’re working with trusts that are not familiar with the work of law centres – there can be a presumption that legal aid will cover that work. There is a lot of educating and empowerment that is needed to hold the hands of your client. The type of service we provide is not fully funded.”

In terms of the Baring Foundation, there were several specific insights from focus group discussions:

- Grant-holders appreciated the approach taken by the Foundation in terms of being able to have an informal conversation and “**sense-check**” a **proposal** before putting in the time to a full application.
- One research participant suggested that the Baring Foundation should consider **funding organisations that are not charities** and that there are advantages to not being under the restrictions of the Charity Commission.²³
- Almost all organisations appreciated their relationship with the Baring Foundation noting that informal conversations over the course of the grant had been helpful and that there had been a **flexible approach** throughout the pandemic. This flexibility was highly valued.

23 The authors note that the restriction in relation to charitable registration was limited to the Covid-19 Legal Action Fund, due to the speed at which grants needed to be made and due diligence requirements. In other circumstances, the Foundation is open to applications from a wide range of organisations.

Key insights

IN CONCLUDING THIS REPORT WE DRAW OUT SOME KEY INSIGHTS FROM THIS RESEARCH THAT CAN BE USEFUL IN THINKING ABOUT HOW ORGANISATIONS AND FUNDERS CAN BEST UNDERTAKE THEIR WORK IN A RAPIDLY CHANGING ENVIRONMENT.

FOR CIVIL SOCIETY ORGANISATIONS

- Consider the ways in which changes to service provision and online delivery are having potentially both negative and positive impacts on clients and partner organisations.
- In re-visiting organisational strategy in a fast-moving environment consider how to best balance proactive and responsive work and explore how to be agile with organisational resources.
- Take up opportunities presented by remote working to develop partnerships widely across the UK and with new organisations.
- For organisations litigating for the first time: be mindful of the potential resource implications of different stages of litigation and the consequences of negative judgments.
- For organisations exploring the possibility of litigation: think carefully about the complexities of the wider socio-political landscape, including where your opposing party might be situated within it. Develop a strategy that accommodates these complexities and has avenues for campaigning and advocating around the legal challenge in both formal and informal ways.

FOR FUNDERS

- Be flexible in funding different ways in which organisations use the law and the relationship between them. There is unprecedented pressure on frontline legal service provision,

alongside the challenge of staff recruitment and retention and wellbeing issues, which has created a barrier to strategic legal action designed to 'persuade' or 'challenge'. Funding strategic organisations to work flexibly and responsively to connect the different strands of legal action can help to ensure all of the different mechanisms through which engagement with law can drive policy and social change are being activated.

- Longstanding organisations can face different and more wide-ranging challenges during times of emergency than those that are newly established in response to it.
- During an emergency consider funding work that specifically prevents the regression of rights and the maintenance of an emergency status quo beyond what is necessary and proportionate.
- Emergencies present a need for different types of collaboration especially in connecting work around fast-moving policy change to practice. Those working to 'persuade' by making emergency legislation fair, transparent and expose unlawfulness expressed interest in connection to organisations working to 'challenge' that unlawfulness at the frontline. Research to date has identified the importance of these collaborations and partnerships but there is scope for more discrete policy and rule of law based organisations to complement the work of those working in different ways.

Conclusion

The pandemic highlighted how government action can further exacerbate existing inequalities as well as create new ones. It has also shone a light on how legal action by civil society can mitigate those injustices. This report has sought to identify both the challenges these organisations faced and the agility and impact of their responses. The organisations here are just a subset of those that used legal tools to address unfairness, much of this legal work is ongoing and there is a risk that some pandemic-related measures that have introduced or exacerbated inequalities will persist even as Covid-19 risks abate.

Further research could help to better understand how effective different forms of legal action were in addressing issues across different policy areas. Furthermore, current and ongoing action by government in shaping the rule of law context suggests that many of the issues we highlighted in this report about the ability of individuals and organisations to access justice will endure, suggesting there is a need for ever closer collaboration among organisations – funders, civil society organisations and academia – to articulate and challenge these problems.

Appendix

ORGANISATIONS FUNDED UNDER THE STRENGTHENING CIVIL SOCIETY PROGRAMME COVID-19 LEGAL ACTION FUND

NAME	PURPOSE
Article 39	To support work to end the double punishment of child imprisonment during Covid-19, and wider advocacy of a children's rights approach to law and policy.
Birthrights	To pursue legal action challenging NHS Trusts' policies that violate women's fundamental human rights in childbirth, including a judicial review.
British Institute of International and Comparative Law	To empower civil society and parliamentarians to influence Covid-19 legislation through Rule of Law-based scrutiny.
Central England Law Centre	To understand the impacts on legal rights of Care Act 2014 easements (in the Coronavirus Act) to influence the debate about the future of social care.
Child Poverty Action Group	To undertake strategic legal work to help families with children pushed into or further into poverty.
Children's Law Centre NI	To increase capacity to support collaboration with partner NGOs, undertake impact work and to meet the shortfall in funding for lawyers.
Community Law Advice Network	To continue work to change the law on siblings' rights for looked after children; and support other organisations to use the law to realise children's rights in Scotland.
Covid-19 Bereaved Families for Justice (grant held by INQUEST)	To support the work of Covid-19 Bereaved Families for Justice UK to undertake activities to initiate an immediate Statutory Public Inquiry into the handling of Covid-19.
Foxglove (grant held by Open Trust)	To support civil society organisations and drive social change through strategic litigation, high profile communication and campaigning.

Friends, Families and Travellers	To build the capacity of Friends, Families and Travellers and other GRT organisations to use Human Rights and Law supporting Gypsies & Travellers.
Joint Council for the Welfare of Immigrants	To support an urgent legal challenge to changes made (in response to Covid-19) to the process by which appeals are considered by the tribunals.
Just Fair	To support economic and social rights legal action that aims to tackle the disproportionate impact of Covid-19 on specific populations in the UK.
Just for Kids Law	To challenge new regulations which have increased the Custody Time Limits for defendants, including children, by a further 56 days.
Legal Services Agency	To challenge the unequal treatment of asylum seekers.
Pregnant then Screwed	A public interest discrimination case challenging the Government's Self-Employed Income Support Scheme.
Refugee and Migrant Forum of Essex & London	To challenge the evidential requirements in long residence applications for people who have been rough sleeping.
Refugees for Justice (grant held by Citizens UK)	To support the work of Refugees for Justice in their campaign for a public inquiry into asylum support and accommodation during the Covid-19 pandemic.

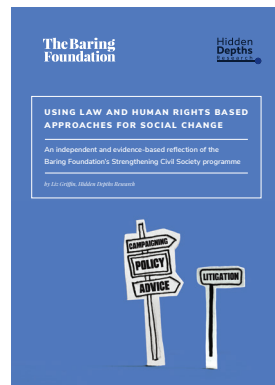
Selected Baring Foundation resources

All resources can be found on our website www.baringfoundation.org.uk



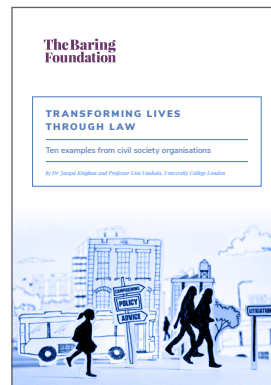
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Dr Bharat Malkani
2021



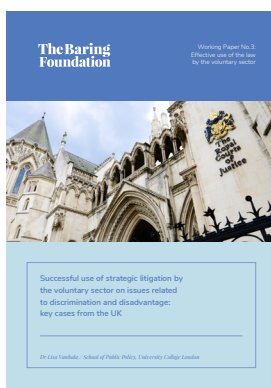
Evaluation of the Strengthening Civil Society programme 2015-2020

Hidden Depths Research
2020



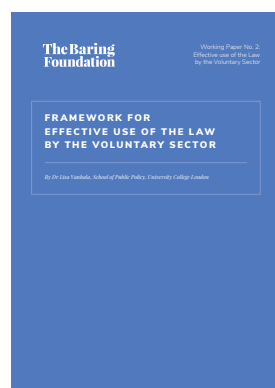
Transforming lives through law: Ten examples from civil society organisations

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