

TRANSFORMING LIVES THROUGH LAW

Ten examples from civil society organisations

by Dr Jacqui Kinghan and Professor Lisa Vanhala, University College London



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About the Baring Foundation

The Baring Foundation is an independent foundation which protects and advances human rights and promotes inclusion. The Foundation's 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.

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Introduction

This use of law by civil society organisations has been particularly creative and productive in recent years. This publication aims to showcase different examples from across the UK and in wide subject areas including criminal justice, children's rights, environmental justice, social welfare and equality.

The selected examples highlight a diverse range of approaches in the strategic deployment of the law for social change. The legal tools used range from writing a legal letter to a public body to make them aware of their legal duties; to making Freedom of Information requests in a systematic way to gather evidence of unlawful practices; to intervening or taking cases in the courts and tribunals. They rest upon innovative collaborations and demonstrate that many different individuals – from campaigners to researchers; frontline advocates and lawyers – need to work together when using the law to drive positive change.

Some of these examples focus on the use of law to support frontline workers in giving information and advice to individuals and families. This can have a transformative impact on people's lives: these case studies include examples of work that helps people to recognise what they are entitled to and challenge the public bodies that are behaving unlawfully by denying or removing services. The examples show how law can matter well before anyone gets to court. A framework developed by sociologists of law, William

Felstiner, Richard Abel and Austin Sarat, can help us understand the processes by which individuals or communities go through the process of beginning to perceive harms done to them (what they refer to as “naming”), which can then become grievances (“blaming”) and can ultimately become legal disputes (“claiming”). The examples presented here show a variety of different ways in which organisations that have expertise in law can support individuals and the frontline workers that work with those individuals to “name, blame and claim” to ensure that rights and benefits become real.

Another set of examples focuses on organisations that have turned to the courts. The opportunity to take on a strategic legal case comes along rarely and has to be seized in the right way to be effective. The examples demonstrate that in all instances of the use of litigation the organisations had already been engaged on the issue, usually in the legislative arena, for many years in advance. This meant that they knew the problems with the law inside and out and had evidence to support their claims.

Overall, these examples aim to inspire both individuals and organisations that have not traditionally used these types of strategies to consider whether they might be models that could be deployed in their areas of interest in future.

Unlock



ADVOCATING FOR CHANGE THROUGH A LEGAL INTERVENTION

People with a criminal record often face stigma and barriers which can sometimes last for decades after they have been convicted or served their sentence. Unlock is a national charity that advocates and provides support for those who have been convicted of a crime and now want equal treatment in society. The charity provides advice and information for people with a criminal record and supports employers and universities in their approach. The organisation's only previous involvement with litigation has been in providing witness statements on issues relating to the core of their mission.

In 2018, Unlock had the opportunity to try a different tactic: it intervened in a case in the Supreme Court for the first time in the organisation's 18-year history. The case started when several individuals in England, Wales and Northern Ireland brought a challenge against the government's harsh system of criminal record checks, known as the Disclosure and Barring Service (DBS). This system requires past offences to be revealed in a number of circumstances, for example, when applying for a job. The individuals bringing the case claimed that the regime hinders the possibilities for rehabilitation. The government which was defending the current regime lost in the High Court and the Court of Appeal. The Court of Appeal said the scheme – in relation to multiple convictions and certain specified offences – breached individuals' right to private and family life under Article 8 of the European Convention on Human Rights. The government appealed this decision to the Supreme Court.

“We had a long running understanding of what the issues were and had seen this coming from quite far off.”

At this point, Unlock decided to step in. Christopher Stacey, a co-director of Unlock, says it made sense to intervene because the issues in the case are core to the mission of what Unlock is trying to achieve. Christopher pointed back to 2013 when the government had brought in some changes that Unlock thought were positive but knew didn't go far enough. At that time, Unlock began to collect examples and case studies of people who were not benefiting or still being harmed by the system. Christopher says, “We were thinking at that point that we would either bring our own legal challenge or support one that was ongoing.” Having a public law solicitor on the charity's trustee board was helpful in that it allowed the organisation to have “ongoing understanding” of the risks and opportunities of legal intervention.

When the case reached the Supreme Court, Unlock instructed Caoilfhionn Gallagher QC to act on their behalf and offer the evidence they had collected. Although the organisation hadn't had a long-standing relationship with her, Christopher knew Caoilfhionn had been involved in a similar recent case and connected with Caoilfhionn after seeing her speaking at an event. Christopher notes that “We were able to develop those relationships in a fairly short space of time in a way that worked for what we were trying to do.”

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At the Supreme Court stage, a number of charities were involved including Liberty and Just for Kids Law, who were representing two of the individuals, and Clan Childlaw from Scotland. Unlock worked closely with their solicitor and barrister in developing the legal intervention and was careful in making sure that their submissions added value.

Unlock argued in their written submissions that people with relatively minor convictions and cautions “face stigma and obstacles because of their criminal records often many decades after they have been sentenced or cautioned and often throughout their adult lives despite their criminal records dating from childhood.” The submission also used Unlock’s extensive research to argue that children in care are more likely to commit childhood crimes as a result of their circumstances, and therefore as a group they are disproportionately criminalised by DBS. The submission suggested that children can become known to police as a result of aspects of their home life that are largely out of their control: “behaviour which is normal or common in a family home environment (teenage door-slamming, threats during an argument with adults) attracts police attention.”

Christopher attended the three-day Supreme Court hearing in June 2018, and notes that Unlock’s submission had a real impact, saying it was “good to see that information provided by us came up a number of times.” The organisation also launched a research report that was based on data that they had collected from Freedom of Information requests to coincide with their submission to the Court.

Unlock relied on crowdfunding through Crowdjustice to cover the organisation’s legal costs. The organisation received overwhelming support and raised £17,000 — enough to cover costs and provide a little bit of support to the campaign work around the case. Christopher remarks that the case was “not something we could do every day,” and that Unlock was able to draw on the fact that they’d never undertaken this level of legal

intervention before in order to appeal to donors. The crowdfunding campaign was useful in raising awareness of the issue and the legal case amongst individuals and stakeholders. Christopher notes that “it allowed people to connect with something that we were doing. It was a very clear activity.” However, he also recognises the enormous amount of effort that had to go into the campaign’s launch and promotion.

“Crowdfunding allowed people to connect with something that we were doing. It was a very clear activity. It was a very clear cost that we had. This wasn’t just an ongoing fundraising initiative. It was to allow us to do something at a moment in time.”

The Supreme Court judgment was announced in January 2019. The Court found that two aspects of the criminal records disclosure scheme are disproportionate and in breach of Article 8 of the European Convention on Human Rights. The first is the blanket rules that require the automatic disclosure of all convictions where a person has more than one conviction; the second is the requirement that some childhood cautions be disclosed indefinitely. The ruling has the potential to affect many thousands of people with old and minor criminal records. Despite this exciting victory, Christopher notes that “nothing has yet changed” and that there is more work to be done at a policy level to ensure that meaningful changes are implemented.

Unlock’s foray into the Supreme Court is a lesson in how to create change through the very highest legal channels. Unlock were able to overcome one of the major disincentives for going to court — the cost — through a hugely effective crowdfunding campaign. However, it also shows that strategic litigation can only take you so far. After you achieve a positive ruling, there are other strategies and tools that you need to deploy to make lasting change.

The Legal Network at Mencap



USING DATA TO DRIVE STRATEGIC LEGAL CASEWORK

The UK is grappling with a social care crisis. According to recent estimates, there will be a social care funding gap of £18 billion by 2030. Mencap has found that people with a learning disability have become increasingly isolated and vulnerable due to the reduction of services. For example, a recent study found that only a quarter of people with a learning disability spend more than one hour outside the home a day. We know that social care can transform the lives of people with a learning disability. We also know that public bodies have a legal duty to provide social care.

While cuts to funding are a huge part of the problem, public bodies often fail to live up to their statutory duties. For example, there are unjust postcode lotteries for care provision, inadequate (or non-existent) assessments of social care needs, reductions in services without consultation and a failure to provide advocates for people with learning disabilities. All of these problems could be considered discriminatory, but the lack of legal aid for community care often means that it is difficult for people to take legal action. Even in those relatively rare cases when an individual might think to contact a lawyer, the provision of early legal help in community care is not financially viable for most legal aid law firms, leading to “advice deserts.”

The Legal Network, a project supported by Mencap, is helping to tackle this problem by bringing together organisations that support people with learning disabilities, their families

and carers with lawyers who have expertise in community care and are supported by a panel of pro bono barristers.

One of the innovative elements of the project is the strong focus on data-gathering. In working closely with partner organisations and undertaking high-volume casework, the Legal Network is able to identify egregious breaches of human rights. They are also able to spot geographic hot spots in terms of failures in social care provision. This allows the team to use their legal expertise more strategically both in the way they deliver their casework and in informing the way they engage with the public bodies that are failing to meet their statutory duties.

“We’re trying to be strategic about our case work and we’re looking for specific themes within the casework that we are doing.”

For example, through analysis of their data, the Legal Network was able to spot a pattern of unlawful decision-making within one local authority area in London. The team reached out to providers in the area to see if they were spotting the same issues, and they were. Kari Gerstheimer, who runs the Legal Network, says they decided to go directly to the borough and talk to them about what was happening. The team is hoping to work in collaboration with the borough in order to highlight the problems

flowing from the gap in funding. Kari notes, “Maybe we can try and do something a bit more positive with the local authority.”

The Legal Network’s focus on collecting evidence of unlawful decision-making is also part of a pioneering collective response to the social care crisis. The team have been encouraging the Care and Support Alliance — a collaboration of more than 80 organisations — to set up a helpline group to pool data from advice lines and case work. Kari notes that the alliance has often collaborated on public policy work and communications and messaging but that to-date they haven’t worked together on casework.

“We have been focusing on improving our data capture so that we find it easier to spot trends... We are also going to start collaborating with other organisations in the sector to gain insights from pooling our data.”

It has become increasingly difficult to challenge unlawful decision-making in the provision of social care since the cuts to legal aid. Having a strong evidence base both at the local level and nationally can help to highlight problems to local authorities, central government and if necessary, the courts. This case also shows that working directly with local authorities who are making unlawful decisions – rather than fighting against them – can sometimes be the most fruitful first step.

Birthrights



AWARENESS RAISING FOR MATERNAL REQUEST CAESAREANS

“The campaign and the legal work were very much interlinked from our perspective. We felt the law was an important strategic lever for making change on the issue. We wanted to consider it amongst all the other options.”

Birthrights is a charity working to ensure women receive respect and dignity in pregnancy and childbirth. There has long been a problem of disparity in the policy and practice of maternal request caesarean sections across NHS Trusts in the UK. Birthrights sought to use the law, alongside wider campaigning, to clarify the position and raise awareness so that women could make more informed decisions and enforce their rights. Their strategic approach to information gathering and then individually engaging with particular NHS Trusts who failed to meet the NICE guidance, led to considerable improvements in practice on the ground.

The NICE guidance recognises that women should have autonomy in making decisions about childbirth, whilst also protecting the rights of individual doctors who might wish to decline requests for caesarean sections on non-medical grounds. Yet, Birthrights became aware of a considerable lack of transparency from hospitals in relation to policies and best practice. Birthrights Programmes Director, Maria Booker, notes that their advice line played an important role in identifying the prevalence of the problem, “we noticed that enquiries about maternal request caesareans were coming up a lot, they formed about a third of our requests for advice.” Birthrights’ analysis

of its advice enquiries showed that women may request caesarean sections for a variety of reasons including previously traumatic births, mental ill-health or childhood sexual abuse, as well as simply making a logical choice based on the evidence.

In November 2017, Birthrights began sending Freedom of Information Act requests to every NHS Trust in the UK and every Clinical Commissioning Group (CCG) in England to find out more about their policies in relation to maternal request caesareans. Maria comments that they “wanted to know what was driving the decision not to offer them, how widespread it was and whether there were regional variations.” The results showed that many Trusts made the process lengthy and difficult, exacerbating women’s anxiety and distress at an already vulnerable time. In fact, only 26% of Trusts offered caesareans in line with the NICE best practice guidance; 15% had a policy not to offer maternal request caesareans and 47% had policies or process that were problematic or inconsistent.

This information was published in a comprehensive report in August 2018 that was also made accessible online via an interactive map. A campaign by Birthrights raised awareness of the issue across social media and in the national press. Women were therefore

able to make more informed decisions about where to choose to give birth and also have the relevant guidelines available to them.

The information gathering exercise was a great success in that only about 5% of Trusts failed to respond to the request for information. Another positive outcome was Birthrights's ability to connect the information across different levels — from frontline work with individuals to senior decision makers where there was the prospect of legal challenge for failure to comply with the NICE guidance.

Maria stresses that Birthrights “were always quite clear that we would use legal action if we needed to create change” and that they “wouldn’t be put off by backlash.” Some organisations involved in the wider campaigning were hesitant to be associated with legal action but Birthrights knew it was an important tool for them to use in creating changes in practice. They had noticed that a number of women making requests for advice came from a particular Trust, Oxford University Hospitals. As Maria comments, Oxford “took a hard line, they had written to all women and said we don’t believe it’s in the interests of women and if you want a maternal request caesarean you’ll have to go elsewhere.”

Birthrights found some pro bono lawyers to discuss the strongest elements of the case from the very beginning. Maria says they then worked closely with the women who had made complaints in relation to Oxford. She comments, “I held the relationship with all these women, if there was anything that came through the advice line about the issue I would reply and build up that rapport with them.”

Since challenging Oxford by way of written correspondence, in anticipation of judicial review if required, Birthrights report more positive practices on the ground: “there’s definitely been an improvement, it feels like it’s changing from the intelligence we’ve had coming through from people.”

“I held the relationship with all these women, if there was anything that came through the advice line about the issue I would reply and build up that rapport with them. That’s one of the advantages of being a small charity — I think we can keep that relationship quite personal which definitely helps.”

Birthrights plan to continue to correspond with Trusts rated “red” in their map and will write to all of the Heads of Midwifery and Clinical Directors to keep them aware of their legal duties while also closely monitoring their advice line. This multi-level approach is critical in terms of connecting experiences on the ground to medical decision making and management practices. Maria reflects that “it’s about having women’s choices respected — the feeling is that the health care professionals always know what’s best but actually there’s cultural bias in the system.” The law has been an important tool for countering this bias and creating systemic change for women facing constrained choices in pregnancy and childbirth.

Friends of the Earth Northern Ireland



USING THE LAW IN A CHALLENGING ENVIRONMENT

Friends of the Earth Northern Ireland (FoE NI) is an environmental charity that uses a variety of law-based tactics to promote its objectives. Northern Ireland's environment is the least protected across the UK and Ireland, despite the fact that it has many important wildlife sites and increasingly contaminated soil, water and air. Northern Ireland has no independent environmental protection agency, no national parks and no legislation on greenhouse gas emissions. In addition, the particular context of Northern Ireland makes it harder to get things achieved through political channels since the suspension of the Northern Ireland Assembly in January 2017. This means that organisations like FoE NI are forced to turn to the courts to get things done because, as James Orr, FoE NI's Chief Executive notes, "there is just nowhere else to go."

FoE NI is trying to use these barriers as an opportunity: the organisation has set its sights on shifting the environmental legal landscape in Northern Ireland. It is thinking creatively about how to engage with human rights arguments and is exploring ways in which environmental law could be shifted away from an almost exclusive focus on the use of judicial review towards the use of tort law. Laura Neal, a lawyer with FoE NI, notes that the climate emergency is driving them to "tackle things at the source." She adds that "if something is bad and has a harmful effect that should be easily proven and tested in court."

“Lawyers are looking at environmental justice as a new way to promote human rights.”

Moving into tort law would have the benefit of engaging courts with the actual issues and evidence of environmental harm, rather than just dealing with procedures and discretion. The downside is the unpredictable and potentially high cost of going to court. However, Laura notes that there has been an "incredibly exciting" shift in the Northern Irish legal landscape that may make new options more viable. Law firms that were previously primarily occupied by human rights litigation related to the Troubles and Legacy issues are now looking at environmental justice as a new way to promote human rights. Together with their academic partners FoE NI have been exploring the availability of conditional fee arrangements and their ability to allow greater access to environmental justice in Northern Ireland. Whilst this research is in its very early stages it is hoped that it will highlight issues around access to environmental justice and could potentially increase enthusiasm to take environmental cases within the legal profession.

FoE NI's current campaigns focus on climate change, intensive agriculture and local environmental harm. As part of its advocacy work, FoE NI has taken two cases to court over the last decade. One case was in relation to breaches of the Urban Wastewater Directive and the other in relation to the unlawful extraction of sand from Lough Neagh,

Northern Ireland's largest lake, whose wildlife is disappearing as a result of pollution and disturbance caused by the extraction.

The charity also offers background support to individuals and communities that are pursuing environment-related judicial reviews. James notes that the organisation does training on the Environmental Impact Regulations and how to use the European and International regulations but also does more bespoke support for community groups and individuals and can help them find the right lawyer.

“A helpful legal letter can sometimes just be the icing on the cake to help government departments to make the right decision. It's about timing our legal intervention in that way.”

A lot of what the organisation does in terms of using the law is the less high-profile – but nonetheless incredibly effective – legal work of calling government departments out on their misapplication of the law or raising their awareness of the true intention behind the law.

Laura notes, “Because we don't have the resources to take strategic litigation cases every other month we pursue more informal tactics which is the bread and butter of what we do.” She adds that because of the current political and legal scene in Northern Ireland, there is agitation on environmental issues from all angles. Therefore, she says, “a helpful legal letter can sometimes just be the icing on the cake to help government departments to make the right decision. It's about timing our legal intervention in that way.”

The case of FoE NI shows that, even in complex political and legal settings, the law can be a used as a means for advancing environmental causes. At the moment FoE NI cannot take as many cases to court as they would like due to high costs. But the more that organisations in Northern Ireland push the boundaries of how law is deployed, the more the environmental law landscape may start to shift – and this is when real change happens.

North East Law Centre



A COLLABORATIVE APPROACH TO SUPPORTING FAMILIES THROUGH CRISIS

We know from longstanding research on access to justice that legal problems can “cluster” so that one unresolved legal problem can lead to many more. We also know that the phenomenon of “referral fatigue” is a concern for individuals who might be endlessly referred from one agency to another in order to resolve a legal problem; such that they give up entirely for want of any meaningful advice and support. The Families Through Crisis project run by the North East Law Centre aims to counter these issues from an early stage. Working in close collaboration with two other charities, Changing Lives and Advocacy Centre North, their holistic problem-solving approach has had a preventative positive impact for families in Newcastle during challenging times of austerity.

“The welfare benefits issue becomes the main point of contact for other services or legal advice because people need to feed their children and keep a roof over their heads.”

The project was established after changes brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 took welfare benefits work out of scope for legal aid funding. In addition, Newcastle became one of the first areas of the UK to experience the rollout of Universal Credit. Clare Hurst, the senior solicitor at North East Law Centre explains, “the welfare benefits issue becomes the main point of contact for other services or legal advice because people need to feed their children

and keep a roof over their heads.” Clare and her colleagues could see that the law often wasn’t enough and they needed to work holistically to support clients with other practicalities, such as foodbanks or acquiring furniture, as well as ensuring access to health services. This was especially important in the area of mental health, often a key issue in welfare benefits appeals, where clients can struggle to access appropriate support.

The project is based around an outreach model, offering drop-in sessions at different locations within local communities. Lucy Harrison, a welfare benefits caseworker advising on legal issues, notes that at the beginning of the project attendance was poor because it was seen as “just another service.” She explains that clients “didn’t engage as they didn’t necessarily know the advocate or link worker.” All the partner organisations therefore made the decision to run drop-in sessions together to ensure they built a rapport with clients both individually and collectively. As a result, Lucy says “the numbers instantly went up – having someone on the spot to say ‘I can help with that, here’s what we’re going to do’ is really important, the relationship is key.” Lucy has noticed that clients often come in before, rather than after, they need to take action on an issue such as a benefits applications or rent arrears, which leads to a much greater likelihood of resolution.

During the drop-in sessions, clients might get a referral for a housing, immigration, employment or healthcare issue. The welfare adviser, advocate and family link worker together adopt

a flexible and client-centred approach. Lucy comments, “I think it works because our client journey is not very structured... We say ‘what works for you?’” Learning has been embedded into the project with each of the partners reflectively reconsidering aspects of the work as it progresses. Clare notes that, “We would listen to the clients to see if something isn’t working for them and then adapt.”

“I think it works because our client journey is not very structured. We take an approach that’s suitable for the client – we don’t say you have to come at a particular point. We say what works for you?”

This close and flexible way of working has resulted in an increased awareness of rights and entitlements among each of the support workers. It has also led to an improved ability to gather evidence on behalf of clients and to get a “big picture” of their situation.

As Lucy explains, “our partner organisations can write supporting letters for the tribunals, they make contact with the GP and attend appointments with them.” Through close collaborative working they all become aware of one another’s roles and can support each other in resolving clients’ issues.

There is no doubt that early intervention in everyday legal problems has been a challenge in recent years since cuts to legal aid. This project demonstrates how a shared approach that is rooted in local communities can make entitlements to services and support more accessible in practice and help prevent problems escalating in times of crisis.

UCL Centre for Access to Justice and Just for Kids Law



HOW LAW STUDENTS CAN CONTRIBUTE TO STRATEGIC LEGAL WORK

When we think of free legal services in the UK, we tend to think of charities. However, now more than 70% of UK law schools offer free legal advice. Lawworks, a charity aimed at connecting volunteer lawyers to those who need legal advice, estimates that some 41% of legal advice clinics in the UK are now based in law schools. Often universities work together with charities, NGOs, law firms or community based organisations to create changes to the law. A successful example of this kind of collaboration happened in 2015, when the charity Just for Kids Law partnered with the Centre for Access to Justice at University College London (UCL) to fight against discrimination towards migrants in accessing student loans. The case is a useful example of the way in which the legal knowledge, expertise and enthusiasm of law students can be used to support charities involved in public interest litigation.

The case concerned a young woman who had come to the UK lawfully as a small child with her family. She was granted discretionary leave to remain and completed her primary and secondary education in the UK. As a student she achieved excellent academic grades and was Head Girl of her secondary school. However, she was unable to take up a university place – despite receiving numerous offers – because she was not entitled to student loan funding in light of her discretionary status. A legal challenge of the application of the criteria went all the way to the Supreme Court where

Just for Kids Law supported her by way of a third party intervention. It was argued that the criteria breached the right to education and also unjustifiably discriminated on the grounds of immigration status.

Just for Kids wanted to gather and present evidence not only to help this particular individual but also to highlight to the court the impact of the restrictive student loan funding rules on the migrant community more widely. Gathering such evidence can be time and resource intensive and is also challenging in light of the tight timescales of many court cases. Rachel Knowles, the senior solicitor working on the intervention comments, “we didn’t get permission to intervene until about two seconds before the case... we were all proceeding on the assumption we would get permission.”

This is when law students were able to offer invaluable help. Closely supervised by Rachel, students at UCL gathered evidence for the intervention as part of an experiential Access to Justice course in their final year of undergraduate legal study. Students helped to conduct initial research, reached out to potentially affected young people, conducted interviews and collated case study evidence. Rachel felt that it was important to show the full range of those impacted by the restrictive student loan policy, so they had to reach far and wide across the networks of the newly established “Let us Learn” campaign group, set up by a group of young migrants to campaign for access to education.

As Rachel notes, “this wasn’t just about the kids with straight A*s going to Oxbridge, but about those wanting to study a diverse range of courses at different universities, which has a huge adverse impact upon their lives when that option is taken away.”

The partnership between UCL and Just for Kids demonstrates how students are often excellent motivators of their peers and can harness the power of fellow students in raising awareness of certain campaigns and issues. UCL students were paired with other students on the “Let us Learn” campaign and helped them with writing letters to MPs and navigating higher education policies and procedures. Such support can be useful to charities and campaigners, especially where student networks such as Young Legal Aid Lawyers or RebLaw UK can be drawn upon to help raise pro bono support and wider awareness in the long-term.

The case was a success: the Supreme Court found that the blanket exclusion from eligibility for student loans was discriminatory. With help from UCL students, Just for Kids had submitted 26 case studies as evidence of the impact and

scale of the problem on migrant young people across the UK. In an evaluation of Just for Kids’ role in the case, interviewees identified the importance of the evidence gathered – the very job that the UCL students had focussed on – not only for the intervention in the case itself but also as part of the wider campaign.

“Sometimes we just have to be responsive and think differently about the ways in which we can use law students to support charities and NGOs in their work.”

As Rachel notes, “sometimes we just have to be responsive and think differently about the ways in which we can use students to support charities and NGOs in their work.” The case shows how collaboration can help charities to get through work that may otherwise prohibit them from making a case. By thinking beyond the scope of its own organisation, Just for Kids was able to win not only in the short term but also in shaping the next generation of lawyers.

JustRight Scotland and the EHRC



SECURING THE RIGHTS OF REFUGEES FLEEING DOMESTIC VIOLENCE

Some women who live in the UK are more vulnerable to abuse and less likely to be able to access support, advocacy and criminal justice measures as a result of their immigration status. The UK has signed the Council of Europe's Istanbul Convention against Violence against Women and Domestic Violence, which requires that female victims of violence are protected regardless of their immigration status. However, the spouses of refugees entering the UK were not able to rely on provisions for victims of domestic violence if they separated from an abusive partner in the same way that the spouse of a British citizen or person with settled status could. A 2016 Scottish case, *A v Secretary of State for the Home Department*, sought to challenge this framework on behalf of the spouse of a Ugandan refugee who had left her marriage because of domestic violence. The case was a success, with the court finding that a decision made under the rule by the Home Office amounted to unlawful discrimination. It nonetheless took several years of dedicated engagement by civil society organisations together with the Equality and Human Rights Commission (EHRC), including an influential campaign run by the charity JustRight Scotland, to embed the court's decision and for the Home Office to make the necessary rule change.

The issue at the heart of the initial legal case was a UK wide problem that came to the attention of law centre solicitors at the Legal Services Agency, Kirsty Thomson and Sarah Crawford (now of JustRight Scotland) when an existing client was unable to access domestic

violence protection because of her immigration status. There was no doubt in the mind of the lawyers involved that it was an important strategic issue that could potentially impact upon many other women in the same position. Jen Ang, Director of JustRight Scotland, notes, "it was a compelling strategic case because it was a discrete group, there was more than one area of law in play and it raised human rights arguments." Once the appeal reached the Court of Session the issues "had sufficiently narrowed," making it an ideal case where the EHRC could make a contribution by way of written third party intervention. Jen highlights that having a strong relationship with the EHRC was helpful in terms of advancing the case, as it contributed important legal insights and informed the court about the UK's international human rights obligations.

“An existing client had the issue, it came to us quite naturally in a sense that the case highlighted a gap. We ran a specialist service and we were always looking at the gaps and we were always looking at these sorts of cases.”

The case was a success with the most straightforward impact being that pre-flight spouses of refugees who have separated from their abusive partners could potentially apply for settlement. However, two key barriers prevented this impact materialising on the ground. The first was that the Home Office showed no signs of an intention to change

the rules in line with the judgment and second, it was difficult to raise awareness of the change among individuals and organisations working in the field. Jen confirms that “the Home Office often just don’t respond for some time... because they hadn’t changed the rules and because other NGOs were so limited in their capacity to raise awareness of the case.” Although the change should have been a straightforward application of the judgment in practice, Jen notes that because there hadn’t been a change to the Immigration Rules “people didn’t think they were eligible and lawyers were also deterred from relying on it.”

Meanwhile, the EHRC began to seek an amendment to the rules. The legal team in Scotland worked together with policy colleagues in England and Wales to try and raise the issue with the Home Office, eventually making formal representations at a meeting with the then Home Secretary Amber Rudd in December 2017. The EHRC again highlighted the problem in their response to the consultation on the Domestic Abuse Bill in May 2018, some two years after the court decision. A few months later, JustRight Scotland proposed an awareness-raising campaign that would run around the sixteen days of action against violence against women from November 2018.

An EHRC lawyer, Frank Jarvis, wrote an article highlighting the ongoing problems presented by the policy loophole which appeared both in the EHRC’s Equality Law bulletin and also on the Free Movement website (which has around two and a half million views per year). At the same time, JustRight Scotland engaged in communications widely across social media and in the national press.

The campaign, alongside the policy engagement by the EHRC, eventually led to changes to expand the domestic violence rules to the spouses of refugees in compliance with the judgment. These were announced by the Home Office on 11 December 2018, a short time after the campaign launched. Jen believes this to be an important example of “the power the EHRC holds in implementation” in their role as a regulator. While there is still some ongoing work to be done in ensuring widespread awareness of the change, it provides an important example of the time and effort needed to embed even a successful decision by the courts. It also demonstrates the impact that organisations such as the EHRC can have working together towards the same goals as their civil society partners.

British Red Cross, organisations serving migrants and Deighton Pierce Glynn



THE POWER OF THE PRE-ACTION PROTOCOL LETTER

Many migrants have trouble getting good quality legal advice that can help to get them accommodation and support. Systemic failures by central government and local authorities have led to increases in homelessness and destitution among migrants. At the same time there has been a significant decline in the number of legal aid solicitors who are able to advise and represent migrants. Frontline workers in organisations who work with refugees, asylum seekers and vulnerable migrants, like the British Red Cross, see first-hand the struggles migrants face when trying to access support.

In response to this, the British Red Cross in London and the law firm Deighton Pierce Glynn (DPG) set up a project linking frontline organisations with specialist legal agencies. The initial stage of the project with the British Red Cross was funded by the National Lottery Community Fund and this was later scaled up to include the Asylum Support Appeals Project (ASAP) with the support of the Baring Foundation. The objective of the project was to empower and support frontline organisations to make greater use of the law and ultimately contribute to a reduction of homelessness and destitution.

The collaboration was set up to ensure that frontline workers were developing their awareness of the rights that migrants have and the processes for ensuring those rights are realised, including the use of legal challenges where appropriate. The project provided

training for frontline workers on key parts of the law that concern accommodation and support for migrants. Most crucially, it helped them to prepare and send “Pre-Action Protocol” (PAP) letters using a set template.

“This is about getting law out of lawyers’ offices.”

PAPs – usually the domain of lawyers – are formal letters to government departments written on behalf of clients as a result of a client having been refused a service. Most of the PAPs written as part of this project were directed at the Home Office or a local authority and addressed things like refusal to conduct Care Act and Children Act assessments, delay or failure to provide accommodation and support and failure to pay maternity grants (among others).

“From day one the Home Office took the Pre-Action Protocol letters very seriously because they were written in this format and they reacted to them exactly the same as if they had been written by solicitors.”

According to research on the project’s impact, almost 400 PAPs have been written by frontline workers. The campaign has been a huge success: of these letters, about 80 to

85 per cent were acted upon by the public body and resulted in the client receiving the relevant service. Polly Glynn, managing partner at DPG, notes that the Home Office “from day one took them very seriously because they were written in this format and they reacted to them exactly the same as if they had been written by solicitors.”

The supervision component of the project has meant that frontline workers are both able to put the knowledge they have acquired through their training into practice and learn along the way through the one-to-one engagement they have with the solicitors at DPG. Polly remarks that “the nice thing about it is there is lots of dialogue.” She adds, “I think that really does mean people can get their head around what law can do in this area.”

“I think that really does mean people can get their head around what law can do in this area.”

In addition to getting outcomes for individual clients, the PAP project creates pressure that can help drive systemic change through highlighting to central government departments where they are consistently failing and documenting the volume of that failure. Polly notes, “The good thing is when we do a systemic case we’ve got all the evidence.” It’s powerful to have the people on the ground, who are seeing the problems first-hand, driving the legal action, rather than lawyers. As Polly says “It’s bottom up rather than top down.” The PAP model shows the power of educating frontline workers to use the law themselves.

Clan Childlaw



ENSURING SIBLING CONTACT FOR LOOKED AFTER CHILDREN

“We’ve been working closely with other organisations to raise awareness of the issues and build support for changing the law. That’s been very powerful.”

Sibling relationships are often among the most important and longest lasting in people’s lives, yet looked after children frequently do not see their siblings or spend long periods away from them. Clan Childlaw has been working in partnership with other civil society organisations, public bodies and universities to improve and change legislation, policy and practice around sibling contact in Scotland. Their collaborative work achieved a key milestone in September 2019 when the Scottish Government announced a package of legislative reforms to support the sibling relationships of looked after children.

Clan provide legal advice and support to children and young people, and many of their clients are looked after children. Solicitors at Clan observed that in meetings about other matters, these children would often raise the issue of missing their siblings. Mostly they were unaware that they could potentially get legal support to help them see their brothers and sisters when they were taken into care.

In 2012, Clan began to identify where the law could be strengthened and took various steps to raise awareness of these in the following years. As a founding member of the “Stand up for Siblings” campaign coalition, which launched in early 2018, they worked to ensure that legal issues were at the forefront of campaigning for change across different platforms including in

the policy arena. One important area was to extend the duty on local authorities to promote personal relations and direct contact between children and their siblings. Clan secured the tabling of an amendment to this effect to the landmark Children and Young People (Scotland) Bill in 2014 – the amendment was ultimately unsuccessful, but it nevertheless helped put it on the policy agenda. All the while Clan continued to legally advise and represent clients seeking contact with siblings.

“We recognised we were going to have three prongs to our work: awareness raising of the issue, chipping away at the policy work and also the legal casework. They’re all interlinked.”

Clan also considered the extent to which children’s views on sibling contact might be taken into account in the Children’s Hearings System consistent with their Article 8 ECHR right to family and private life. The issue of sibling rights in Children’s Hearings is now at the heart of two cases being heard in the UK Supreme Court in late 2019 and in one of these Clan is representing the appellant.

A further important element was that Clan, along with STAR (a charity running a specialised contact space for siblings),

devised and delivered training workshops for professionals such as social workers the length and breadth of Scotland, funded by the Scottish Government. At a conference marking the end of this training project this Spring, the Scottish Government made a firm commitment to improving the law and went on to publish proposals in the Children (Scotland) Bill and related Family Justice Modernisation Strategy in September 2019. The new Bill introduces a duty on local authorities to promote direct contact between a child and their siblings, where that is practicable and appropriate. It also requires that local authorities seek the views of a child's sibling in relation to decisions on looked after children. The Family Justice Modernisation Strategy commits to changing secondary legislation to place a duty on local authorities to place siblings together when they are looked after away from home and it is in their best interests. These are hugely significant changes.

“The lesson I’ve taken from this is that you need to draw on the experience of as many actors as possible. The strength has been to show the issue from different angles to reach different audiences. I don’t know if individually we could have done the work to change things but as a coalition we’ve supported each other.”

A key success was the Scottish Government expressly committing to work together with “Stand up for Siblings” partners in implementing the new legislation and sharing best practice. The Independent Care Review for Scotland has also worked closely with the campaign and is expected to make concrete recommendations on the issue when it reports in Spring 2020.

Clan and others view these proposed reforms as a significant milestone going “very far” in meeting the concerns identified by the campaign. Clan are well aware that the next phase is now crucial and there continues to be work to be done, not only in ensuring the bill passes but also in its implementation. As Janet Cormack, legal policy manager at Clan comments, “because of resources we’ve seen patchy changes in implementing other legislative duties and the challenge will be to ensure there’s consistent implementation on the ground.”

The work has given Clan a greater understanding of the role of collaborative coalitions. Janet noted the diverse and important roles played by each of the partners, which includes the Scottish Children’s Reporter Administration, Strathclyde University, CELCIS, Adoption UK, Who Cares? Scotland and the Fostering Network. A challenge has been ensuring the different strands of Clan’s work co-exist “in tandem” – representing children and young people as they invoke their rights, training practitioners to promote and support realisation of children’s rights, and advancing the policy agenda with central and local government. Janet notes how valuable it has been to have other organisations engage in “the power of storytelling” when it might not have been appropriate for Clan to perform this role on behalf of clients involved in legal casework.

Overall, a human rights based approach to sibling contact has led to the success of Clan’s involvement in the issue. They have empowered children and young people, as well as the organisations working with them, to understand and claim their right to family life with siblings. The changes have taken many years, and many individuals working collectively, but will now hopefully be embedded in legislation for years to come.

National AIDS Trust



THE POWER OF USING FREEDOM OF INFORMATION REQUESTS AND COLLABORATION

When someone is applying for a job, it is illegal to ask them any health questions that do not relate directly to the role. This is to ensure that employers don't discriminate against applicants with a disability or long-term health condition, and also to help people with disabilities or health conditions to feel confident about applying for any job. This law was written into the Equality Act 2010 as a result of campaigns by several charities, including the National AIDS Trust (NAT). There is some evidence that this legislation has been a success. For example, according to research by Disability Rights UK, the number of occupational health employers that ask pre-employment health questions has been declining, from 36% in 2006 to 8% in 2013.

However, NAT believes that changes have not gone far enough fast enough. Chris Hicks, Senior Policy and Campaigns Officer at NAT, notes that almost ten years after the passage of the Equality Act, the organisation was hearing complaints that discrimination was still taking place as the result of pre-recruitment health questions. It seemed that many employers were either unaware of the law, or unwilling to follow it due to the low risk of enforcement action. Chris notes that, "It is not enough to secure change in legislation, there has to be advocacy around enforcement of the legislation."

In response to this, NAT undertook a project, funded by Trust for London, to determine if pre-employment health questionnaires were being used unlawfully in the social care sector. Chris notes that the organisation focused on

this sector because "social care historically hasn't been set up to meet the holistic needs of people living with HIV in older age." NAT sent a Freedom of Information (FOI) request to all local authorities in London, asking them to list the providers they commissioned for both domiciliary and residential social care. All 33 local authorities in London responded and the organisation was able to identify thousands of commissioned providers. Staff at NAT then looked at the websites of over 1,000 providers to see if their online application forms included unlawful health questions.

Through this research, NAT identified 71 providers using unlawful health questions and contacted them by letter. NAT informed them of their breach of legislation and asked them to confirm a change in practice. With each letter they included guidance that had been developed by the Equality and Human Rights Commission (EHRC) on the use of health questions in recruitment.

For the most part, social care providers responded to this nudge to change their unlawful behaviour positively. Chris notes that when it was pointed out to them that they were in breach of the Equality Act, "a number of providers were very quick to make changes, quite apologetic, wanted more advice on the issue and we built relationships."

“The collaboration shows that the EHRC are taking this issue very seriously ... When they receive referrals from organisations like us, they are very good at being communicative, taking it seriously, doing good work on it.”

When providers did not respond within two months, further attempts were made to contact them and establish a dialogue via email and phone. In instances where providers did respond, NAT staff supported them to modify their application forms by demonstrating how to identify which questions were unlawful, how to comply with the relevant section of the Equality Act, what questions would fall under an exemption, and how to lawfully ask questions about reasonable adjustments that may be needed for the recruitment process. NAT literature and guidance was also shared with providers which discussed how to ensure that wider employment and social care practices meet the needs of people living with HIV. 45 providers removed the health-related questions from their forms as a result of NAT's intervention.

Providers who did not respond were referred to the EHRC for enforcement action. NAT published a report about the project in February 2019 – *HIV, disability equality and the continued use of pre-employment health questions* – that outlines their approach and key lessons learned.

NAT and the EHRC also worked with the Care Quality Commission (CQC) and Skills for Care to raise awareness among inspectors of the unlawful use of pre-employment health questions. As a result, CQC have published internal guidance for their inspectors, including a procedure for referring care providers to the EHRC in the event that unlawful health questions are identified at inspection.

The collaboration between the EHRC and NAT had been agreed in the early stages of the development of the project and is an example of how charities and statutory bodies can complement each other's work. The project also shows that persistence pays off. Although the Equality Act did not change things overnight, NAT's follow-up project shows how collaboration, intervention and perseverance are sometimes needed for the law on paper to become the law in practice.

Conclusion

These case studies cover a range of different issues and uses of law, but they all share the same aim of using the law to shape people's lives for the better.

They highlight **five key lessons** that organisations might bear in mind when thinking about how to incorporate legal expertise and advice into their work.

01

No organisation is an island when it comes to using law: all of these examples of effective use of the law were underpinned by strong relationships. In some cases these were between frontline workers and the lawyers supporting them; between charity directors and the barristers working on a Supreme Court intervention or between charities and law

students helping to collect evidence in support of litigation. Not all of these relationships were long-standing and many developed organically; nevertheless they show that robust, trusting relationships between those with legal expertise and those with intimate knowledge of the issues in a particular sector can have a deep and lasting impact.

02

Evidence, evidence, evidence: all of the examples highlighted the benefit of effective monitoring and data-gathering whether through record-keeping in order to spot issues at the frontline of advice provision or generating new evidence through projects that used Freedom of Information requests. This data can help organisations improve their strategic casework by highlighting patterns

of problems, emerging issues and geographic hotspots. It might also be used to help pinpoint how partnerships between lawyers and frontline workers could be improved. Finally, there is nothing like hard data to persuade potential allies, funders, public bodies and courts that there is a real problem that needs to be addressed.

03

The seeds of successful strategic casework are usually planted many years before a legal case even comes near a courtroom: the examples here show that charities may have been heavily engaged in consultations, relevant research or advising on proposed legislation for some time in advance of using other legal interventions. The National AIDS Trust played an important role in ensuring

that the ban on health questions in job applications was included in the Equality Act 2010 but then had to chase up employers that still weren't following the law many years later. Birthrights gathered evidence through their advice line, conducted research and listened to experience on the ground before engaging in legal correspondence on maternal request caesareans.

04

Seek out new allies: many of the cases show the extent to which different organisations can serve different purposes in creating change. Potential allies might rest outside of your usual networks or see the same issue or problem from a completely different perspective. The Stand up for Siblings campaign needed a wide and varied network of people working across the children's sector — from social workers to researchers and young people — to push

for legislative change across many different platforms. North East Law Centre collaborated with a range of organisations at the frontline in order to holistically resolve social welfare issues in local communities. Each of these organisations can bring different experience and expertise to issues but share a common desire to pursue positive social change.

05

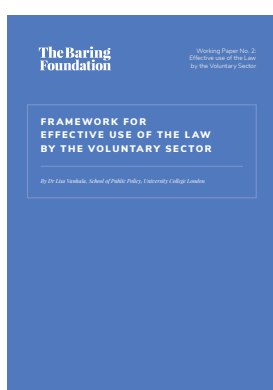
Keep going until the finish line (and look beyond it): it can take many years to embed change. Working on one issue might highlight other related problems that also need to be addressed. Even where legislative reform or a successful judgment creates change, it can then take considerable effort to implement it. For example, the Equality and Human Rights Commission and JustRight Scotland worked together to successfully pursue important

changes to immigration rules several years after their win in court. Friends of the Earth (NI) were alive to the process of incremental change across different challenges in the courts. In short, winning or losing a court case might only be the first step in using the law to enforce rights or access entitlements. Organisations should try to look ahead to what it takes to both start and finish a journey towards social change; and anticipate next steps after the finish line.

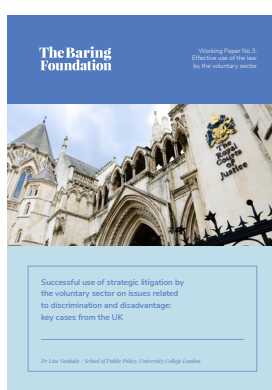
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ON USING THE LAW FOR SOCIAL CHANGE

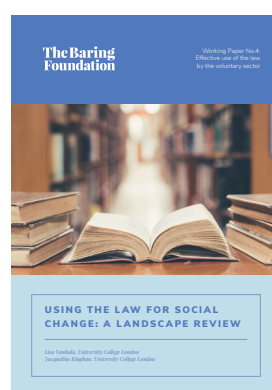
All resources can be found on our website www.baringfoundation.org.uk



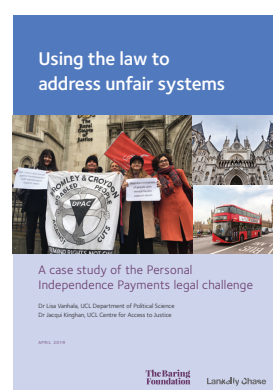
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Birthrights

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& Deighton
Pierce Glynn

Clan Childlaw

Friends of the Earth
Northern Ireland

Just Right Scotland
& the Equality and
Human Rights
Commission

National AIDS Trust

North East Law
Centre

The Legal Network
at Mencap

UCL Centre for
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Unlock

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