

**FRAMEWORK FOR  
EFFECTIVE USE OF THE LAW  
BY THE VOLUNTARY SECTOR**

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## **FOREWORD FROM THE BARING FOUNDATION**

In March 2015 the Baring Foundation adopted a new focus for its Strengthening the Voluntary Sector Programme of supporting effective use of the law and human rights based approaches by the voluntary sector in the United Kingdom. The Baring Foundation sees the law and human rights based approaches as important tools for the voluntary sector. They can provide a means to tackle directly the disadvantage and discrimination faced by vulnerable people and to create and protect the space in which voluntary organisations operate, helping to safeguard the freedom of purpose, action and voice of the sector as a whole.

In September 2015 the Baring Foundation, in collaboration with the Legal Education Foundation, launched two new pilot funds designed to encourage different approaches, test appetite for activity within the voluntary sector and inform future funding rounds on this theme. Eighteen grants were awarded in February 2016.

This report has been commissioned by the Baring Foundation to articulate a conceptual framework to help guide future thinking on the types of organisations to be supported and the types of funding interventions that are possible and most promising. It will prove invaluable in helping us to develop the programme over the coming years and we are very grateful to Lisa for her hard work in producing this report.

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# 1 : Introduction

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In 2015 the Baring Foundation, in collaboration with the Legal Education Foundation, launched two open pilot funds as part of a programme to support effective use of the law and human rights based approaches by the voluntary sector in the UK. The aim of the programme is to raise levels of awareness about the potential promise of using the law across the voluntary sector, to enhance the capacity of voluntary sector organisations to deploy the law and to develop legal tools and networks that voluntary sector organisations can draw on. At this point in time, the Baring Foundation is taking the opportunity to reflect on the grant-making experience thus far and to develop a conceptual framework to help guide future thinking on the types of organisations to be supported and the types of funding interventions that are possible and most promising. This short report sets out a conceptual framework that outlines:

- the range of different legal tactics and tools available to/used by voluntary sector organisations in the UK; and
- the different types of voluntary sector organisations that exist in the UK in terms of the many ways in which organisations use (or eschew) law.

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## 2 : Context

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Recent developments at both the national and international level make this analysis on the use of the law by the voluntary sector particularly timely. Domestically, a number of recent changes to the rules on legal aid, the tightening of the regulations on the use of judicial reviews by voluntary sector organisations and the introduction of court fees have shifted the landscape in terms of the extent to which individuals and organisations can access justice. These changes, in combination with limits being placed on the ability of the voluntary sector to engage in campaigning and advocacy work, threaten the civic legal space within which these organisations operate.

However, there has also been a growth in the types of opportunities available to voluntary sector organisations. Use of the law and human rights is gaining traction both at home and abroad. For example, the UK Supreme Court has explicitly acknowledged that third-party interventions in legal cases can make an important contribution to the interpretation of law and promote an understanding of the needs of vulnerable individuals and communities. Internationally, there is a growing number of legal instruments and mechanisms that groups can turn to. For example, legal instruments, such as the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of Discrimination against Women (CEDAW) offer groups working on these issues legal as well as symbolic resources that have been largely untapped. International legal venues and processes, such as the committees associated with UN human rights Conventions and the Universal Period Review (UPR) mechanism, also offer channels through which voluntary sector organisations can advocate for change.

Some assume that the use of law by voluntary sector organisations is a relatively novel phenomenon among UK-based groups interested in addressing disadvantage and discrimination. However, Carol Harlow and Richard Rawlings in their seminal book, *Pressure through Law*, challenge the idea that turning to the courts or use of the law by voluntary sector organisations is a uniquely American phenomenon or a particularly new one.<sup>1</sup> Harlow and Rawlings define pressure through law as “...use of the law and legal techniques as an instrument for obtaining wider collective objectives.”<sup>2</sup> They argue that legal cases taken by groups advocating for social change can be identified in Britain as early as 1749 when abolitionists used the court to test conflicting views of slavery in common law.

Over the last decade a burgeoning academic literature on use of the law has documented how some voluntary sector organisations rely on a wide range of legal tactics in the UK.<sup>3</sup> This includes providing expert legal advice; developing and coordinating legal research and strategy; providing financing or aid in finding sources of financing for use of the law;

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<sup>1</sup> Harlow, C., & Rawlings, R. (1992). *Pressure through law*. London: Routledge.

<sup>2</sup> Ibid, p. 1.

<sup>3</sup> Bondy, V., Platt, L., & Sunkin, M. (2015) *The Value and Effects of Judicial Review: The Nature of Claims, their Outcomes and Consequences*. London: Public Law Project; Hilson, C. (2002). “New social movements: the role of legal opportunity.” *Journal of European Public Policy*, 9(2), 238-255; Public Law Project (2008) *Third Party Interventions: A Practical Guide*. London: Public Law Project; Public Law Project (2014) *Guide to Strategic Litigation*. London: Public Law Project.

sponsoring or coordinating non-legal research that may support particular legal claims; providing publicity about legal issues and developments; and developing or participating in legal networks and facilitating the exchange of ideas.<sup>4</sup> There are a number of influential voluntary sector organisations in the UK that have a good deal of expertise and success with use of the law for empowering or advocating on behalf of individuals or pursuing wider social change, for example, Liberty, Child Poverty Action Group, Friends of the Earth, Public Law Project, Rights of Women, Howard League for Penal Reform and Prisoners Advice Service.

However, the use of these types of approaches is not widespread across the British voluntary sector.<sup>5</sup> Research shows that there is a good deal of variation in use of the law across policy issues. Some organisations have a much longer experience of the use of law and legal approaches. These can generally be found in the area of children's rights, women's rights, LGBT issues and the environment.<sup>6</sup> The voluntary sector in other areas, for example disability, prisoners' rights and older people have been slower to adopt human-rights based approaches and use of the law. Variations also likely exist across England, Scotland, Wales and Northern Ireland. For example, until very recently the Scottish legal system has had very restrictive rules on legal standing for voluntary sector organisations. Engagement with law and legal tools can often seem daunting, highly technical and the exclusive remit of lawyers or "legal" NGOs. Legal acumen and engagement with legal tools is not as widespread or deeply embedded across much of the voluntary sector as it could be or when compared to other jurisdictions such as the United States and Canada.<sup>7</sup>

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<sup>4</sup> Epp, C. R. (1998). *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press; King, J. (2012) *Judging Social Rights*. Cambridge: Cambridge University Press.

<sup>5</sup> Crowther, N. (2015) *Better use of the law and human rights by the voluntary sector*. London: Baring Foundation.

<sup>6</sup> Anagnostou, D. *Rights in Pursuit of Social Change: Legal Mobilisation in the Multi-level European System*. Oxford: Hart; Harding, R. (2011) *Regulating Sexuality: Legal consciousness in lesbian and gay lives*. Routledge: London; Hodson, L. (2013). "Activating the Law: Exploring NGOs' Legal Responses to Gross Human Rights Violations". In M. R. Madsen, & G. Verschraegen (Eds.), *Making Human Rights Intelligible: Towards a Sociology of Human Rights*. Oxford: Hart.

<sup>7</sup> The literature on comparative legal mobilization is relatively embryonic but see e.g. Epp, C. R. (1998). *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press; King, J. (2012) *Judging Social Rights*. Cambridge: Cambridge University Press; Vanhala, L. (2011) *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.

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## 3 : Research questions and methods

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In order to better understand the different types of activities and organisations vis-à-vis the use of the law, this working paper addresses the following research questions:

- What are the different types of legal tools, knowledge, tactics and processes available to UK voluntary sector organisations?
- What is the landscape of voluntary sector organisations in the UK in terms of how these organisations use law?

In order to address these questions three sources of data were relied on. First, existing academic research was surveyed. There is a rich scholarly literature on “legal mobilization” by non-governmental organisations. This body of research focuses on why groups might (not) mobilize the law, what determines their success in doing so and assesses the impacts (including unintended consequences) of using the law. I drew on this literature to inform the analysis and specifically, to help shed light on the UK experience with knowledge about use of the law by voluntary sector organisations in other countries. Second, I reviewed existing policy research. Certain legal voluntary sector organisations in the UK have produced publications about use of particular legal tools and resources (e.g. the Public Law Project, Just for Kids Law, Rights of Women). Reviewing this literature helped with the development of a UK-wide mapping of the range of legal tactics available and the types of collaborations that are possible across “legal” and “non-legal” voluntary sector organisations. Finally, I sampled grant applications from the 2015 funding round in order to gain a sense of the types of organisations that are engaged with the thematic area and the types of projects being pursued.

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## 4 : Use of the law: the range of activities and approaches

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There are many different forms of law. For the purpose of this working paper it is worth highlighting four forms of legal regimes. Each of these forms will have different implications in terms of the ways in which voluntary sector organisations can use the law and legal tools.

1. **Domestic legislation:** This refers to all types of national law. For example, the Equality Act 2010 legally protects people from discrimination in the workplace and in wider society.
2. **Domestic legislation incorporating international law:** This type of law tends to have more force (than international treaties that have not been incorporated) in terms of the domestic justiciability of rights and the domestic impact of an international court's jurisprudence. For example, the Human Rights Act 1998 incorporates the rights contained within the European Convention on Human Rights.
3. **European Union law:** This consists of different forms of law. Some like regulations and treaty provisions have direct effect and primacy over national law. Others, like some directives, need to be incorporated into domestic law in order to be used in the UK courts.
4. **International law:** This refers to international treaties to which the UK is party but that have not been incorporated into domestic law. For example, the UK ratified the UN Convention on the Rights of Persons with Disabilities and its optional protocol in 2009. The CRPD however is not legally binding in the UK until it is incorporated into domestic law. The CRPD optional protocol does grant people with disabilities the right to directly complain to the UN in the case of violation of their human rights by the state, after having exhausted remedies at home.
5. **Soft law:** This refers to normative provisions contained in non-binding legal texts. Soft law principles generally follow a voluntary or self-regulatory logic. For example, the UN Guiding Principles on Business and Human Rights (UNGPs, also known as the "Ruggie Principles") are a flexible framework that set a global standard for preventing and addressing the risk of adverse impacts on human rights linked to the activities of corporations.

The language and concepts of law and human rights can play a dynamic role both inside and outside of the courtroom. By taking a broad and practical understanding of the use of the law it is possible to articulate a number of different types of social change objectives that can be met through the use of legal tools. This conceptualisation of use of the law combines a bottom-up approach which involves raising awareness of law among individuals and communities so that they can know and claim their rights and a top-down approach of increasing the ability and accountability of individuals and institutions who have a duty to respect, protect and fulfil human rights and other legal obligations.

Figure 1 outlines these different objectives and their target audiences. It shows that law can be used to:

1. **Empower:** This involves raising awareness about law so that individuals and groups can know and claim their rights. The target audiences for these types of activities include:
  - a. Individuals of a particular constituency that might experience discrimination or disadvantage. For example, providing legal advice to disabled individuals can help them to assert their rights vis-à-vis employers and enhance the employment prospects of disabled persons.
  - b. Other civil society organisations. For example, raising awareness among voluntary sector organisations about how international rights and mechanisms on violence against women can be used in the UK.<sup>8</sup>
  - c. Other parts of one's own organisation. For example, large voluntary sector organisations that undertake a broad range of activities might have some parts of the organisation that are further behind in terms of use of human-rights based approaches. Law can be used to change the way an organisation delivers services to a particular constituency, such as older people. E.g. if a voluntary sector organisation runs a day care centre a rights-based approach would mean that the organisation offers services to the older person because it is her human right to be supported, rather than supporting her out of pity.
2. **Inform and/or persuade:** This involves raising awareness of law and human rights protections among those who have a duty to respect, protect and fulfil human rights and other legal obligations as well as the wider public.<sup>9</sup> The target audiences for these types of activities include:
  - a. The general public. For example, launching a publicity campaign about human rights approaches to migration issues in order to shift public perceptions about the rights of refugees under international law.
  - b. Specialist stakeholders, such as employers and providers of goods and services. For example, this might include organising workshops with refugee workers to persuade them to work in a different manner when dealing with women who have experienced violence.<sup>10</sup>
  - c. Government. This includes all levels and branches of government. For example, a group might develop a legal research report on new developments in international law on children's rights in order to lobby government about changes relevant to domestic legislation.
3. **Challenge:** This involves using law to directly challenge stakeholders who fail to live up to their legal obligations. The target audiences for these types of activities include:
  - a. Specialist stakeholders. This might include providers of goods and services. For example, a disability rights legal advice organisation might represent a visually impaired client in a case about the duty to make reasonable adjustments if she has informed her bank that she would like to receive her bank statements in braille and they fail to do so.

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<sup>8</sup> Rights of Women (2011) From *Rights to Action: Using international rights and mechanisms on violence against women in the UK*. London: Rights of Women.

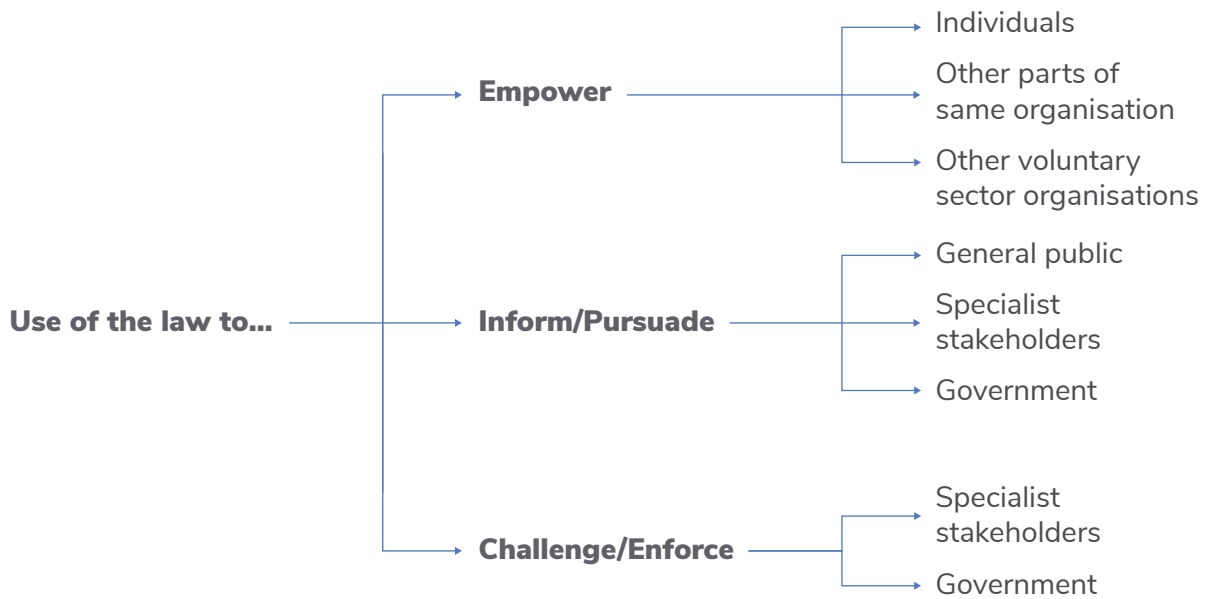
<sup>9</sup> The distinction between "inform" and "persuade" rests on how a particular organisation understands processes of social change. Some organisations play a relatively neutral role in raising awareness among the public or among specialist stakeholders about what the law requires of them. The idea of "informing" assumes that when an individual or institution becomes aware of their obligations they will change their behaviour. Some campaigning/social change organisations would be sceptical that simply informing individuals or institutions of their legal obligations will lead to change. They might better understand their role as one of persuading individuals or institutions to behave differently through the use of the law.

<sup>10</sup> Rights of Women (2011) From *Rights to Action: Using international rights and mechanisms on violence against women in the UK*. London: Rights of Women.



- b. Government. For example, a case brought by Just for Kids Law, and supported by Coram Children’s Legal Centre and the Howard League for Penal Reform as interveners, secured a change in the law to require 17 year olds at the police station to be offered appropriate adults in line with other children.<sup>11</sup>

These three overarching objectives are inter-linked. For example, an organisation may first try to persuade government or specialist stakeholders to change their behaviour in line with legal obligations and if they fail to do so may then opt to challenge them through the use of litigation or judicial review procedures.



**FIGURE 1: Uses of law by an organisation and their audiences/targets**

Table 1 outlines in more detail the range of activities that organisations can undertake in order to empower, inform/persuade and challenge through use of the law. It focuses on the different audiences for these various activities. This table collapses activities that involve empowering and informing/persuading into one category because depending on the audience many of the activities could be classified as either empowering or informing/persuading. For example, if an organisation interested in women’s rights produces specialist legal advice material for lawyers who represent women who have experienced violence this can be seen as “empowering” activities. If it produces specialist legal advice materials for local authority officers who engage with this constituency with the aim of updating them of their obligations in light of new legislation or international law this would be better understood as “informing” activities. Table 3 in the appendix offers concrete examples from the area of disability policy in terms of what these activities might entail.

<sup>11</sup> R (on the application of HC) v Secretary of State for the Home Department v The Commissioner of Police of the Metropolis [2013] EWHC 982 (Admin).

## ACTIVITIES – USE OF LAW BY CIVIL SOCIETY ORGANISATIONS

### EMPOWERING/INFORMING/ ENFORCING/CHALLENGING PERSUADING

#### AUDIENCE/TARGET FOR ACTIVITIES

<b>General Public</b>	<ul style="list-style-type: none"> <li>• Casework - providing general legal advice</li> <li>• Undertaking publicity campaigns about legal developments in international or national law or in relevant legal cases</li> <li>• Producing legal advice materials</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
<b>Other parts of own organisation</b>	<ul style="list-style-type: none"> <li>• Advising campaigns and/or policy teams about legal points of wider campaigners, e.g. adding legal perspectives into policy briefs, advising on campaigning strategy</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
<b>Specialist stakeholders</b>	<ul style="list-style-type: none"> <li>• Providing specialist legal advice</li> <li>• Developing and coordinating legal research</li> <li>• Undertaking monitoring research and activities on legal developments in international or national law or in relevant legal cases</li> <li>• Producing legal advice materials</li> <li>• Producing specialist legal advice materials</li> <li>• Undertaking community development and network building activities around legal topics</li> <li>• Delivering training on legal topics to specialist audiences</li> <li>• Engaging in wider legal networks and coalitions related to its sector or beyond</li> </ul>	<ul style="list-style-type: none"> <li>• Taking on (strategic) legal cases on behalf of clients</li> <li>• Advising on how to cover the cost of expert legal counsel for clients</li> <li>• Taking on (strategic) legal cases or acting as intervenors in the organisation's own name</li> </ul>
<b>Power-holders (public and/or private)</b>	<ul style="list-style-type: none"> <li>• Undertaking monitoring research and activities on legal developments in international or national law or in relevant legal cases. E.g. tracking passage of legislation, proposing amendments, lobbying MPs etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Taking on (strategic) legal cases on behalf of clients</li> <li>• Advising on how to cover the cost of expert legal counsel for clients</li> <li>• Taking on (strategic) legal cases or acting as intervenors in their own name</li> <li>• Making complaints to other non-court institutions at the local or national level</li> <li>• Making complaints or taking cases to international tribunals or committees</li> </ul>

TABLE 1: Uses of law by civil society organisations by audience/target type

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## 5 : Use of the law and voluntary sector organisations in the UK: mapping the landscape

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Voluntary sector organisations take different approaches in terms of how much or little they engage with the law and legal tools. This is reflected in: the degree to which law is considered in their mission and vision; the types of activities they undertake; the degree to which individuals with legal expertise or experience are represented among their workforce and governance bodies. Table 2 (see page 12) provides a list of indicators for determining how law-focused an organisation is.

Figure 2 presents a typology of voluntary sector organisations in terms of how they use the law and how integrated use of the law is in their general strategic approach. The vertical axis refers to the breadth of legal activities they use. For example, organisations that offer legal advice, offer specialist legal training, take legal cases and use international legal mechanisms would be considered to use a wide breadth of activities. Organisations that tend to focus on only one type of activity, for example providing legal advice, would be situated lower down the axis. Organisations that do not use law at all would be situated towards the bottom of the axis. The horizontal axis refers to the extent to which legal activities and approaches are central or incidental to an organisation's strategy, mission and staffing/governance processes. Organisations that take a proactive approach to use of legal activities and that have law-related activities integrated in their general strategic approach would be situated further to the right. Organisations that use law in a more reactive manner, when opportunities arise, or do not have legal activities integrated in their general approach are situated to the left on this axis.

This typology highlights four different categories of voluntary sector organisations in terms of their relationship to use of the law. These constitute descriptive “ideal types” rather than a fully accurate reflection of the reality of any single organisation.

1. **Strategic Law Organisations:** These organisations focus on changing, enforcing or clarifying law as a key component of their mission; they use a wide range of legal tactics as a core part of their work; they might be a leader or entrepreneur in developing legal networks and alliances; they likely have a number of individuals with legal expertise on staff and/or as trustees.<sup>12</sup> Examples include: Just for Kids Law, Rights of Women, The Howard League.
2. **Law Advice Organisations:** These organisations may include engagement with law as a key component of their mission; they may use a narrower range of legal tactics than strategic law organisations and many of them will be focused on change at the individual level; they may be a participant or leader of legal networks and alliances related to their area of focus or legal activity of focus; and they likely have a number of

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<sup>12</sup> It is worth noting that a law reform agenda and litigation strategy can be very different or pursued in tandem. At one conceptual level they can be understood as incompatible when litigation seeks to enforce existing law whereas law reform activities (including strategic litigation) seek to change law.

individuals with legal expertise on staff or among their volunteers.<sup>13</sup> Examples include: YOUth Legal and Resource Centre, Environmental Law Foundation.

3. **Law-literate Organisations:** These organisations likely have missions that are conceptualised more broadly than those organisations discussed above; they may use a wide range of legal tactics but these activities might be more incidental or reactive and not feature as commonly as those organisations discussed above; they may be a participant in legal networks; and they may have a legal team or institutionalised relationships with lawyers but individuals with legal expertise likely do not make up a significant proportion of their workforce or trustee board. Examples include: NSPCC, Stonewall, Greenpeace UK.



**FIGURE 2: Typology of civil society organisations in terms of how law-focused they are in their activities, mission and staffing/governance**

<sup>13</sup> Law Centres may fall into the strategic law organisation category or the law advice organisation category depending on the model under which they operate.

4. **Law-hesitant Organisations:** These organisations do not incorporate legal activities or tactics into their mission or general activities (or do so only rarely); they generally do not get involved in legal networks and do not tend to incorporate the perspective of individuals with legal expertise into their work. They may be organisations that focus on grassroots or community mobilization, political campaigning or research.

This typology could be further developed to take into account the nexus between the breadth of legal activities an organisation uses/the extent to which law is firmly integrated in their general strategy and whether the organisation's orientation is local or national (or international). This would further nuance the analysis by specifying the geographic scale of a group's intervention and the audience for their activities. For example, some law advice organisations are focused on particular social issues (such as violence against women, migrants' rights) and serve a nation-wide constituency and are able to highlight cross-national trends on that issue. Other advice organisations work within a community to defend the legal rights of local people and they may collaborate with local groups in order to build capacity by training and educating people about the law and their rights. These groups possess in-depth knowledge of the issues a community faces. This type of mapping exercise could be useful in highlighting areas of strengths and gaps in terms of local/central legal advice delivery.

	MISSION AND VISION –	ACTIVITIES –	STAFF AND GOVERNANCE –
	DOES THE ORGANISATION FOCUS ON...	DOES THE ORGANISATION...	DOES THE ORGANISATION HAVE...
<b>INDICATORS</b>	<ul style="list-style-type: none"> <li>• Creating, changing or enforcing law as one of its objectives?</li> <li>• Creating, changing or enforcing law as one of the means by which the organisation seeks to achieve its goals?</li> <li>• Promoting the rule of law and/or access to justice?</li> </ul>	<ul style="list-style-type: none"> <li>• Provide general legal advice to the constituency it serves? E.g. is there a helpline on knowing your rights?</li> <li>• Provide specialist legal advice? E.g. do they support lawyers who are taking cases?</li> <li>• Take on legal cases on behalf of clients?</li> <li>• Advise on how to cover the cost of expert legal counsel for clients?</li> <li>• Take on legal cases or act as intervenors in their own name?</li> <li>• Make complaints to other non-court institutions at the local or national level? E.g. do they make FOI requests or complaints to ombudsmen?</li> <li>• Make complaints or take cases to international tribunals or committees?</li> <li>• Undertake publicity campaigns about legal developments in international or national law or in relevant legal cases?</li> <li>• Undertake monitoring research and activities on legal developments in international or national law or in relevant legal cases? E.g. tracking passage of legislation, proposing amendments, lobbying etc.</li> <li>• Develop and coordinate legal research?</li> <li>• Produce legal advice materials for the constituency it serves?</li> <li>• Produce specialist legal advice materials for other stakeholders (e.g. other civil society organisations, service providers, lawyers)?</li> <li>• Undertake community development and network building activities around legal topics?</li> <li>• Engage in wider legal networks and coalitions related to its sector or beyond?</li> <li>• Deliver training on legal topics to specialist audiences (e.g. other civil society organisations, service providers, lawyers)?</li> </ul>	<ul style="list-style-type: none"> <li>• A large proportion of lawyers on staff?</li> <li>• A separate legal team as part of the organisation and/or an institutionalised relationship with a specialist legal firm and/or an active network of pro bono lawyers that offer legal services to the organisation?</li> <li>• Trustees who have legal experience or training in relation to using the law strategically?</li> </ul>

**TABLE 2: Indicators of how law-focused an organisation is**

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## 6 : Barriers to use of the law

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Many voluntary sector organisations in the UK fall into the “Law-hesitant” category. In order to think about how to effectively support use of the law across the sector it is important to identify why groups have tended to eschew the law. There are a number of reasons why voluntary sector organisations might be reluctant to deploy legal activities as part of their general approach. Academic research has identified a number of potential barriers and other reasons voluntary sector organisations may not mobilize the law.

1. Levels of legal knowledge: This refers to awareness of the law generally as well as knowledge about specific rights and obligations contained within the law. Among organisations there may be a lack of knowledge that an issue could be addressed through use of the law or a human rights-based approach or a lack of confidence about doing so.<sup>14</sup>
2. Legal basis: In order to use law there needs to exist relevant legislation or other instruments which groups can act upon. Organisations and individuals making claims must articulate them so that they fall within existing “legal stock”. If there is no legal basis at the domestic or international level then use of the law becomes difficult.
3. Financial resources: The cost of using the law will vary enormously depending on the types of activities pursued. However, it is well documented that pursuing a legal challenge can be extremely costly. Marc Galanter in a seminal article argues that well-resourced organizational litigants are more likely to take a long-term view of litigation and become ‘repeat players’ in the courts and are also more likely to come out ahead than “one-shot” players.<sup>15</sup>
4. Legal resources: Access to specialist legal advice and to lawyers is sometimes a necessity to deploying the law.<sup>16</sup> This will vary depending on the type of legal activity being pursued.
5. Access to justice: The degree to which organisations have access to justice has been shown to significantly shape the emergence and progress of legal action. The regulations on what may be litigated, who may litigate and where such litigation may occur shapes the likelihood of an organisation turning to the law.<sup>17</sup>
6. Organisational culture: Some organisations may be ideologically reluctant or opposed to using the law or rely on particular legal tactics because of identity politics within the organisation. A group’s constituency must understand themselves as rights-holders in

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<sup>14</sup> Marshall, A. (2003). “Injustice frames, legality, and the everyday construction of sexual harassment.” *Law & Social Inquiry*, 28(3), 659-689; Paris, M. (2010). *Framing Equal Opportunity: Law and the Politics of School Finance Reform*. Stanford: Stanford University Press; Pedriana, N. (2006). “From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women’s Movement in the 1960s.” *American Journal of Sociology*, 111(6), 1718-1761; Ewick, P and Silbey, S.S. (1998) *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998.

<sup>15</sup> Galanter, M. (1974). “Why the ‘haves’ come out ahead: speculations on the limits of legal change.” *Law and Society Review*, 9(1), 95-160.

<sup>16</sup> Epp, C. R. (1998). *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.

<sup>17</sup> Andersen, E. A. (2005). *Out of the Closets and Into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. University of Michigan Press; Rhode, D. (2004). *Access to Justice*. New York: Oxford University Press.

order to consider taking a legal or human rights approach to an issue.<sup>18</sup>

7. Potential unintended consequences: There are a number of potential risks to using legal tactics. For example, there are potential reputational costs if a group takes and loses high-profile strategic cases that are unpopular among the membership, stakeholders or the wider public. Legal victories can also result in political or public backlash under some circumstances.<sup>19</sup>
8. Division of labour: In some sectors there are one or two key organisations that are effective and inclusive in their strategic use of the law. In these sectors other groups may not feel the need or desire to deploy legal tactics because that ground is already covered.<sup>20</sup>
9. Fear of jeopardising relationships: Some fear that using law – particularly litigation – might harm institutional relationships and jeopardise access to power-holders. Research has shown that this is not necessarily the case and should be assessed on a case-by-case basis.<sup>21</sup>

Without undertaking further systematic research it is difficult to pinpoint why any particular organisation or sector may (or may not) be more inclined to use legal knowledge and tactics in their broader work.

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**18** Vanhala, L. (2009) "Anti-discrimination Policy Actors and their use of Litigation Strategies: the Influence of Identity Politics." *Journal of European Public Policy* 16(5), 738-754.

**19** Keck, T. (2009) "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights" *Law & Society Review* 43(1), 158-186; Vanhala, L. (2011) "Social Movements Lashing Back: Law, Social Change and Socio-legal Backlash in Canada." *Studies in Law, Politics and Society* 54, 113-140.

**20** Vanhala, L. (2011) *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.

**21** Bouwen, P., & McCown, M. (2007). "Lobbying versus litigation: political and legal strategies of interest representation in the European Union." *Journal of European Public Policy*, 14(3), 422-433. Morag-Levine, N. (2003). "Partners No More: Relational Transformation and the Turn to Litigation in Two Conservationist Organizations." *Law & Society Review*, 37(2), 457-509; Vanhala, L. (2016) "Legal Mobilization under Neo-corporatism: Environmental NGOs before the Conseil d'Etat in France." *Journal of Law and Courts* 4(1): pp 103-130. Zackin, E. (2008). "Popular Constitutionalism's Hard When You're Not Very Popular: Why the ACLU Turned to the Courts." *Law & Society Review*, 42(2), 367-396.



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## 7 : Conclusions

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This working paper has offered a description of the types of legal tools, tactics and approaches that voluntary sector organisations can deploy in seeking to empower, inform, persuade and challenge. It also offers a way of categorising voluntary sector organisations according to how they engage with law (or avoid it).

In terms of thinking about how to promote better use of the law by voluntary sector organisations future analysis could consider the interaction between types of activities, types of organisations and types of constraints. For example, future research could examine which types of activities should be promoted to different types of organisations. For example:

- Raising awareness of law, legal tools and human rights based approaches: This entails raising awareness of the range of activities that could be deployed among organisations that have tended not to use these approaches. This is relevant to law-hesitant organisations but might also apply to law advice as well as law-literate organisations. Even some strategic law organisations may not be aware of particular venues or legal frameworks that are relatively new, such as the UN Guiding Principles on Human Rights or the Universal Periodic Review mechanism.
- Building capacity to engage with law and deploy legal tools: This involves the provision of finances and legal capacity to organisations that have the awareness and inclination to pursue legal activities but lack the resources to do so. This will be most relevant to law-literate organisations, law advice organisations and some strategic law organisations. Strategic law organisations may also have an important leadership or entrepreneurial role to play in fostering partnerships.
- Promoting collaboration: Fostering collaborations and partnerships across the sector (and between the voluntary sector and the private sector) can help to raise awareness about the potential role of law and build capacity in terms of broadening the legal networks of law-literate or law-hesitant organisations. Strategic law organisations may have an important leadership or entrepreneurial role to play.
- Shaping the socio-legal environment: This involves supporting organisations that seek to establish or improve law and broaden or protect access to justice. Strategic law organisations and law advice organisations are likely best placed to effectively shape the broader legal and political environment in terms of promoting access to justice and protecting the freedom of purpose, action and voice of the sector.
- Managing the risks of using the law: This involves offering organisations support in managing institutional relationships and organisational culture vis-à-vis use of the law and helping them to explicitly consider and manage the consequences (both intended and unintended) of using legal action. All types of organisations need to consider the various risks of using the law but law-hesitant organisations likely have less experience in this and hence may require greater support.

Future research could also map the voluntary sector landscape in a policy-area by policy-area manner to help identify issues, organisations and/or activities that are particularly

worthy of funding and support. This could help to address questions such as: are there policy sectors that are particularly strong/weak in terms of use of the law across voluntary sector organisations? Are there policy sectors where voluntary sector organisations are reliant on particular types of legal activities (to the detriment of other potential tools, e.g. international legal mechanisms)? Are there policy areas where there are no strategic law organisations that might benefit from the emergence of one?

Addressing these questions would help to paint a more nuanced empirical picture of how best to catalyse further activity and embed use of the law and human rights based approaches across the voluntary sector.

# 8 : Appendix

## ACTIVITIES – USE OF LAW BY CIVIL SOCIETY ORGANISATIONS

### EMPOWERING/INFORMING/ PERSUADING      ENFORCING/CHALLENGING

AUDIENCE/TARGET FOR ACTIVITIES

Public	<ul style="list-style-type: none"> <li>• Casework – Providing general legal advice, e.g. helpline that offers advice about disability discrimination</li> <li>• Undertaking publicity campaigns about legal developments in international or national law or in relevant legal cases, e.g. a marketing campaign about new understandings of consent based on the UN Convention on the Rights of Persons with Disabilities</li> <li>• Producing legal advice materials, e.g. factsheet on reasonable adjustments in employment for disabled persons</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
Other parts of own organisation	<ul style="list-style-type: none"> <li>• Advising campaigns and/or policy teams about legal points of wider campaigners, e.g. adding legal perspectives into policy briefs about informed consent by persons with learning disabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
Specialist stakeholders (e.g. disabled peoples' organisations, specialist lawyers, service providers, employers)	<ul style="list-style-type: none"> <li>• Providing specialist legal advice, e.g. to lawyers who are representing disabled claimants</li> <li>• Developing and coordinating legal research, e.g. working with other disability organisations to document the experience of hate crime against disabled people</li> <li>• Undertaking monitoring research and activities on legal developments in international or national law or in relevant legal cases, e.g. following the activities of the UN Committee on the Rights of Persons with Disabilities to ensure UK law is in compliance with international best practice on accessibility in ICT and communicating this to relevant corporations working in the sector</li> <li>• Producing specialist legal advice materials, e.g. guidance on best practice for making reasonable adjustments for disabled employees</li> <li>• Engaging in wider legal networks and coalitions related to its sector or beyond, e.g. participating in a coalition about legal approaches to inclusive education</li> <li>• Undertaking community development and network building activities around legal topics, e.g. organising seminars bringing together disability organisations and lawyers to discuss perspectives on access to justice for people with learning disabilities</li> <li>• Delivering training on legal topics to specialist audiences, e.g. organising a workshop on new developments in European disability law for lawyers representing disabled claimants</li> </ul>	<ul style="list-style-type: none"> <li>• Taking on (strategic) legal cases on behalf of clients, e.g. representing a disabled claimant in the employment appeals tribunal against an employer</li> <li>• Advising on covering the cost of expert legal counsel for clients, e.g. liaising with a specialist solicitor to encourage her to take on an important case for a disabled claimant to challenge transport accessibility</li> <li>• Taking on (strategic) legal cases or acting as intervenors in the organisation's own name, e.g. acting as intervenors in a case against a service provider that did not make reasonable adjustments in order to clarify non-discrimination law</li> </ul>

## ACTIVITIES – USE OF LAW BY CIVIL SOCIETY ORGANISATIONS

### EMPOWERING/INFORMING/ PERSUADING      ENFORCING/CHALLENGING

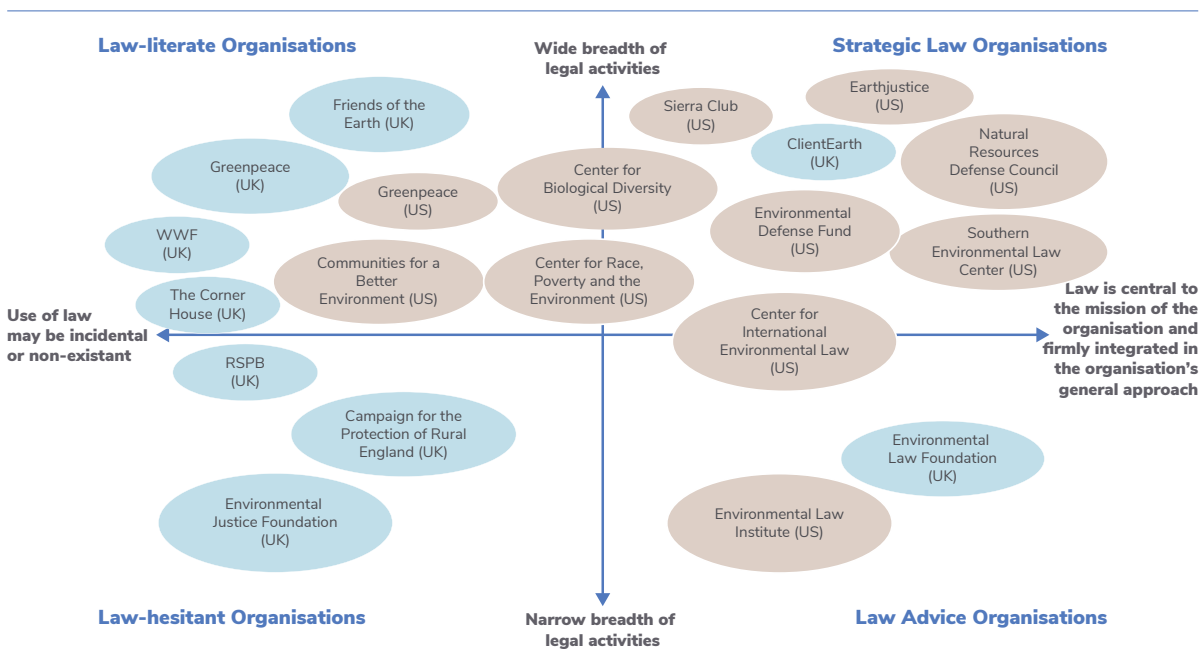
**AUDIENCE/TARGET FOR ACTIVITIES**

**Power-holders (e.g. local, regional and national governments, regulatory agencies, large private sector actors)**

- Undertaking monitoring research and activities on legal developments in international or national law or in relevant legal cases, e.g. following the activities of the UN Committee on the Rights of Persons with Disabilities to ensure UK law is in compliance with international best practice on accessibility in ICT and communicating this to relevant government ministers and regulatory bodies.

- Taking on (strategic) legal cases on behalf of clients, e.g. taking a case against a local council for failure to make reasonable adjustments in employment for a disabled person
- Advising on covering the cost of expert legal counsel for clients, e.g. recommending and liaising with a specialist lawyer to take a case about discrimination by association to the European Court of Justice
- Taking on (strategic) legal cases or acting as intervenors in their own name, e.g. intervening in a case to offer a perspective on the impact of a policy regarding treatment of disabled prisoners in light of the disability equality duty
- Making complaints to other non-court institutions at the local or national level, e.g. making a complaint to the Children’s Commissioner regarding disability discrimination in education provision
- Making complaints or taking cases to international tribunals or committees, e.g. taking an individual complaint to the UN Committee on the Rights of Persons with Disabilities about discrimination and lack of adequate medical treatment following a long-term post-surgical illness

**TABLE 3: Examples of uses of law by disability rights organisations**



**FIGURE 3: Example of Environmental NGOs (UK and US) categorised according to use of legal activities**

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