

CELEBRATING 15 YEARS OF THE PILS PROJECT

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Good evening,

It is a pleasure to have been invited to speak to you about an organisation that has helped transform the pursuit of justice and equality in Northern Ireland, and indeed continues to make an impression and difference in the legal world. I want to extend my thanks to Fiona Doherty KC and the PILS Project Board, together with Maria McCloskey, PILS Project Director, for asking me to be part of this milestone event.

We live in a society that values fairness, equality, and the protection of human rights. But these principles do not enforce themselves. At times, they need to be actively enforced or defended – sometimes through the courts. This is where the PILS Project plays an essential role, empowering individuals and organisations to use the legal system to, amongst other things, bring about social change, challenge unfair policies, and protect the rights of vulnerable communities.

The PILS Project has been in existence for 15 years now, having been established in 2009. At that time, it was set up to address what had been described as two main obstacles to Public Interest Litigation – financial barriers and knowledge

gaps. Overcoming these hurdles has been the foundation on which the PILS Project was built and the basis on which it continues to operate to this day. The funding issues have been addressed with the engagement and support of a number of funds and foundations. The knowledge gap has been bridged by the involvement of expert solicitors who bring with them local knowledge and international experience.

I know that each case may begin with some pro-bono advice, but from this advice the most complex and far-reaching cases can grow. On reading into the background of the work of the PILS project I see that it provides support for applicants who can show that their case has three interconnected aspects. Firstly, the issue being looked at must have broad public interest at its heart and secondly, the issue in the case must relate to a human rights or equality issue. Finally, and I think this is perhaps the most important feature, solving the issue will have positive effects for many people. This is significant as legal cases often involve personal issues with personal outcomes, which though important, are of significance only to the individuals involved.

The work of the PILS Project is thus not merely theoretical or confined to legal debates – it has made real and lasting changes to the lives of people in Northern Ireland.

Through the groundbreaking cases in which it has been involved, the PILS Project has raised awareness of critical issues affecting Northern Ireland and has

challenged the status quo. By advocating for the public interest, PILS has played a vital role in shaping public policy and promoting social justice.

PILS has not only supported individual cases but has invested in building the capacity of communities to advocate for their own rights. By providing training and resources, PILS has empowered grassroots organisations to become effective advocates for social change, and its collection of associated NGOs continues to grow in this regard.

The journey of the PILS project has no doubt faced challenges. From limited resources to complex legal battles, PILS has faced numerous obstacles over the years. However, through perseverance and dedication, the project has achieved remarkable victories that have had a lasting impact on the lives of many.

The variety of legal fields which PILS Project backed cases have impacted is evidence of the influence the project has brought to bear on public interest matters. Access to welfare benefits, cultural issues in the form of transport to school as well as entering the arena on constitutional matters are all areas in which the PILS project has left an impression.

I think the best way to celebrate the PILS Project's continued work and existence is to look at some of the cases in which it has been involved and which have met its self-imposed criteria, including that of benefitting many people. I would like to briefly look at some of those cases to highlight the work this organisation has done, and continues to do, and the influence brought to the legal sphere.

I am going to look this evening at PILS Project-backed cases involving access to welfare benefits, and at two cases which examined the executive's decision making for two different types of educational institutions, as well as looking at a recent environmental case, before touching on how future public interest litigation may develop as regards environmental law.

*Cox's Application*¹ was a landmark case that addressed a critical flaw in the social welfare system in Northern Ireland, specifically in the rules governing Universal Credit for terminally ill individuals. The case was brought by Lorraine Cox, a terminally ill woman, who has since sadly passed away, who challenged the requirement that individuals applying for Universal Credit on the grounds of terminal illness had to demonstrate that they had a life expectancy of less than six months.

The case was brought on the basis that this rule was unlawfully discriminatory and violated the human rights of terminally ill individuals, as it imposed an arbitrary and distressing requirement that excluded many people who, while terminally ill, were not expected to die within six months. This criterion ignored the complexities of terminal illnesses, where prognoses are often uncertain or extend beyond the rigid six-month timeframe.

Ms Cox had been diagnosed with terminal cancer and, having been given no specific prognosis regarding her life expectancy, found herself unable to access the fast-tracked Universal Credit benefits for the terminally ill. Under the then

¹ *In the matter of an application by Lorraine Cox for leave to apply for Judicial Review* [2020] NIQB 53

rules, individuals who could not prove they had less than six months to live were required to go through the standard, lengthy application process, despite their dire circumstances. This led Ms Cox to challenge the policy, arguing that the six-month rule created undue hardship and was inhumane, given that many people with terminal illnesses live longer than six months but still face severe financial hardship and deteriorating health.

The legal challenge was based on several grounds. Ms Cox argued that the rule discriminated against individuals with terminal illnesses that did not fit into the narrow six-month life expectancy window. The case was brought under Article 14 of the European Convention on Human Rights, which prohibits discrimination, in conjunction with article 8, the right to respect for private and family life, and article 1 of protocol No. 1, which is the right to peaceful enjoyment of possessions, which can include social benefits. The argument was that the rule imposed an unjustifiable burden on terminally ill individuals who could not be certain of their life expectancy, effectively penalising them for not fitting into the rigid, and often inaccurate, prognosis system.

It was also argued that the Department for Communities, which administered Universal Credit in Northern Ireland, had failed to meet its duty of fairness by implementing a policy that imposed unreasonable barriers on terminally ill people. This was a violation of public law principles, as the policy failed to consider the real needs and vulnerabilities of the people it was supposed to protect.

In a landmark ruling, the High Court found in favour of the applicant, declaring that the six-month life expectancy rule was unlawful. The court held that the rule discriminated against individuals with terminal illnesses who could not demonstrate a short life expectancy, and that the policy violated their human rights. The judgment was seen as a major victory for social justice, as it highlighted the unfairness and inhumanity of the existing welfare system. The ruling was also regarded as putting significant pressure on the government to reform the criteria for terminal illness benefits, ensuring that individuals with terminal conditions could access support without the need for an arbitrary prognosis.

The PILS Project played a crucial role in supporting Ms Cox's legal challenge. As a key backer, the Project provided both financial and legal resources, enabling Ms Cox to bring the case to court. PILS' involvement was essential in ensuring that the case could proceed, as Ms Cox, like many individuals facing terminal illness, was in a vulnerable financial and emotional position. Ms Cox was provided with pro-bono advice, followed by further involvement between the PILS Project and the Law Centre. Without PILS' support, it is unlikely that the case would have gained the traction necessary to reach the High Court. The Project's publication of the case through its own website also helped amplify the case and its impact.

The Cox case was significant not only for its immediate impact on Universal Credit policy but also for its broader implications for welfare reform and the rights of terminally ill individuals in Northern Ireland and beyond. By

supporting this case, the PILS Project also contributed to a broader societal discussion on the treatment of terminally ill individuals within the welfare system.

PILS' involvement demonstrated the power of public interest litigation as a tool for social change. By providing support to an individual claimant, PILS was able to catalyse a shift in welfare policy, benefiting not only Ms Cox but, in keeping with the Project's core principles, many other terminally ill individuals who were previously excluded from receiving the support they needed. This case serves as a powerful example of how public interest litigation can hold public bodies accountable and ensure that policies are not just legally sound but also fair and compassionate.

Another case which was successfully brought with the support of the PILS Project was *Coláiste Feirste's Application*². Coláiste Feirste, an Irish-medium post-primary school based in Belfast, initiated judicial review proceedings against the Department of Education following the Department's decision not to provide free home-to-school transport for some of its students, in contrast to pupils attending English-medium schools.

Coláiste Feirste argued that the refusal to provide adequate transport disadvantaged its students and violated their right to Irish-medium education. The school serves a catchment area across the wider Belfast region, and many students lived a significant distance from the school. While the Department

² *Coláiste Feirste's Application* [2011] NIQB 98

provided free transport to English-medium schools within a certain distance, it did not apply the same policy to Irish-medium schools, which generally serve a more dispersed population due to the limited number of such institutions.

Coláiste Feirste claimed that the Department's refusal to fund transport for students attending Irish-medium education created an inequality. They relied on the statutory duties imposed on the Department by the Education (Northern Ireland) Order 1998, specifically Article 89, which mandates the Department to encourage and facilitate the development of Irish-medium education.

The High Court ruled in favour of Coláiste Feirste finding that the Department of Education had failed in its statutory duty to encourage and facilitate Irish-medium education by not providing appropriate transport arrangements. The decision emphasised that the right to Irish-medium education must be meaningfully supported, and transportation is a necessary component of ensuring access.

The ruling acknowledged that students of Irish-medium education were entitled to the same level of support as those in English-medium education. As a result, the Department was required to revisit its transport policy and take steps to ensure equitable treatment for Irish-medium students.

The Coláiste Feirste case is significant for several reasons. The case was a landmark for minority language education in Northern Ireland, reinforcing the obligation of the state to support Irish-medium education. It highlighted how the

failure to provide transportation can act as a barrier to accessing education, especially in a minority language context where schools serve a geographically dispersed student population. However, the case also highlighted on a wider plain the link between education and transport to schools.

The judgment provided a clear interpretation of Article 89 of the 1998 Education Order, mandating the Department of Education to "encourage and facilitate" Irish-medium education. The court's ruling clarified that this duty must be proactively fulfilled by ensuring equal access to education for all students, including providing practical support like transport.

The case addressed broader issues of equality in education, as it underscored that all students, regardless of the medium of education they choose, should be provided with the necessary resources to access that education on an equal basis. The court recognised that Irish-medium education, being less widespread, requires special measures to ensure equal access.

The PILS Project played a critical role in bringing this case to court by again providing resources to assist the school. This assistance was critical in enabling the school to challenge the inequities in transport provision for Irish-medium students. Without the support of PILS, it is likely that Coláiste Feirste, a relatively small institution with limited financial resources, would have struggled to mount a legal challenge of this scale. The PILS Project provided financial support to

cover an indemnity against the legal costs that would have been incurred by the school if the case was not successful.

The PILS Project's involvement demonstrated its focus on protecting minority rights, specifically in this case the rights of Irish-medium education students, again ensuring the Project adhered to its core principles of benefitting many people whose rights have been impacted.

On a similar theme the PILS Project also brought a case before the High Court on behalf of Drumragh Integrated College.³ This was a significant case concerning education and the duty to promote integrated schooling in Northern Ireland. The case was brought against the Department of Education, specifically challenging the Department's failure to ensure sufficient growth in the provision of integrated education.

Drumragh Integrated College argued that the Department of Education had not fulfilled its legal obligations under Article 64 of the Education Reform (Northern Ireland) Order 1989. Article 64 states that the Department has a duty to "encourage and facilitate the development of integrated education." Drumragh, which had sought to expand its enrolment but was limited by the Department's refusal to increase its approved capacity, claimed that this decision hindered its ability to meet growing demand for integrated education.

³ *Drumragh Integrated College's Application for Judicial Review* [2014] NIQB 69

The crux of the case revolved around whether the Department had properly discharged its duty under Article 64 by failing to allow Drumragh to expand its numbers in line with the rising demand for integrated schooling.

Drumragh's core argument was that the Department had a statutory obligation under Article 64 to take positive steps to support the expansion of integrated education, particularly in light of clear demand.

Drumragh highlighted the growing local and regional demand for integrated education, arguing that the Department's refusal to allow them to expand enrolment directly contradicted this demand.

The Department of Education argued that it had considered various factors, such as demographic projections and existing school capacity in the region, and that it was not obligated to expand individual schools if it was not considered necessary for overall educational provision.

The High Court ruled in favour of Drumragh, finding that the Department of Education had failed to properly discharge its duties under Article 64 of the 1989 Order. Specifically, the court emphasised that the duty to "encourage and facilitate" integrated education was an active duty that required more than passive acknowledgment. The court noted that the Department had taken a narrow view of this duty by merely ensuring that integrated schools existed without promoting their expansion in response to clear demand.

It was held that the Department had not sufficiently considered the growing demand for integrated education, nor had it actively promoted or facilitated the expansion of Drumragh. The court concluded that the Department's decision to limit Drumragh's enrolment was flawed, and that a more proactive approach was required to meet its statutory obligations.

Similar to the case of *Coláiste Feirste*, the decision in *Drumragh Integrated College's Application* was a landmark ruling for education in Northern Ireland, reinforcing the Department of Education's active duty to promote and support integrated schools. The judgment clarified that the Department must go beyond simply allowing integrated schools to exist and must take affirmative steps to respond to demand for such education.

Of particular significance in this case was the enhanced role played by the PILS Project in bringing this case to court. This was not, as with the previous cases I have mentioned, a case whereby the Project had provided pro bono or financial assistance, but rather involved the Project bringing the case themselves as de facto solicitor for the college, with the Project briefing counsel also. Interestingly, the Project successfully entered into a Protective Costs Agreement with the Department of Education, which limited the financial risk to the PILS Project if the case was lost.

This case thus emphasised the Project's full range of legal expertise and abilities.

The PILS Project has also supported litigation aimed at defending Northern Ireland's environmental rights. A recent Court of Appeal case regarding the Larne Lough gas caverns project is an example. The case centred around the proposed construction of gas storage caverns beneath the seabed, which was opposed by the local community, and the environmental groups Friends of the Earth Northern Ireland and No Gas Caverns.

The Court of Appeal ruled that the decision to approve the gas caverns project was not referred to the Northern Ireland Executive for wider consideration, which was deemed irrational given the project's significant environmental and political implications, and the decision failed to adequately address the concerns surrounding its impact on climate commitments and local communities. There is an application pending to appeal and so I will not discuss the case any further.

Suffice to say that the implementation of the Climate Change Act (Northern Ireland) 2022 has provided a backdrop to environmental decision-making and raises domestic and/or international standards in this area, and it is likely that, as with the Gas Caverns case, this Act will form the basis for further public interest litigation. In *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council*⁴ the Supreme Court recently discussed this issue. I stress that this was a majority 3/2 decision.

Lord Leggatt speaking for the majority stated that "anyone interested in the future of our planet is aware by now of the impact on its climate of burning fossil

⁴ *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council* [2024] UKSC 20

fuels chiefly coal and gas". Thus the fact that an environmental impact assessment did not consider effects from the burning of fossil fuels down the line when oil produced is burnt as fuel was considered unlawful. Lord Sales speaking for the minority disagreed and found that these were indirect effects and that it was "constitutionally inappropriate" for a local planning authority to assume practical decision-making authority based on its own views regarding downstream emissions and contrary to EU principles of proportionality. I expect this debate will continue in further cases.

I mention one other recent decision of the Privy Council at this point. It is *Eco-Sud v Minister of the Environment (Mauritius)*⁵. In this case the issue of standing in environmental cases is discussed applying a Northern Ireland Court of Appeal decision of *Duff v Causeway Coast & Glen Borough Council*⁶ and a related Scottish case of *Mussington v Development Control Authority*⁷. The Privy Council found the Mauritian courts were wrong to exclude Eco Sud as a "person aggrieved" as it was an NGO with the stated aim of protecting the environment and so should be able to take environmental litigation to court. This decision reasserts the width of the test for standing articulated previously in *Walton v Scottish Ministers*.⁸

Looking to the future in respect of this intersection between public interest litigation and environmental law, I note that innovative, alternative environmental governance approaches have been brought to the attention of

⁵ *Eco-Sud v Minister of the Environment (Mauritius)* [2024] UKPC 19

⁶ *Duff v Causeway Coast & Glen Borough Council* [2023] NICA 22

⁷ *Mussington v Development Control Authority* [2024] UKPC 3

⁸ *Walton v Scottish Ministers* [2012] UKSC 44

legal policymakers. Seeking to address environmental issues at their root cause, one of these approaches, known as “Rights of Nature”, is currently gaining traction across Europe⁹, having emerged, it appears, from various states in South America,¹⁰. Rights of Nature, as a movement, can be described as the act of giving natural features, including rivers, mountains, or ecosystems, legal personhood.¹¹ In Northern Ireland, this approach has been recognised by different councils, including Derry City and Strabane District Council,¹² and the Fermanagh and Omagh District Council and has been put forward as the basis for addressing the ongoing deterioration of Lough Neagh, the largest freshwater lake on the island of Ireland and in the United Kingdom.

I will be interested to see how, or if, this movement feeds into public interest litigation which may be brought in the future, potentially with the assistance and support of the PILS Project.

These cases highlight a few of the many instances in which PILS has stepped in to make a difference. There are other cases, too many to mention or examine fully, which simply would not have seen the light of day were it not for the PILS Project. Whether it is defending welfare rights, challenging environmental degradation, questioning the constitutional position of Northern Ireland, or

⁹ Rachel Killean, Jérémie Gilbert and Peter Doran, ‘Rights of Nature on the Island of Ireland: Origins, Drivers, and Implications for Future Rights of Nature Movements’ (2024) *Transnational Environmental Law* 13:1, 25-60

¹⁰ S. Borràs, ‘New Transitions from Human Rights to the Environment to the Rights of Nature’ (2016) 5(1) *Transnational Environmental Law*, 113–43

¹¹ Isabella Kaminski, ‘Laws of nature: could UK rivers be given the same rights as people?’ *The Guardian* (17 July 2021)

¹² Gillian Anderson, ‘Rights of Nature backing ‘historic’ for Derry and Strabane’ *Derry Journal* (30 June 2021)

advancing women's reproductive rights, PILS has provided crucial legal and financial support to those fighting for justice.

But PILS' work extends beyond the courtroom. The organisation plays a central role in educating civil society about the power of public interest litigation. It helps build coalitions between legal professionals and community groups, fostering a culture where ordinary people can understand their rights and use the legal system to effect change. PILS also creates strategic alliances, bringing together NGOs, solicitors and advocacy groups to maximise the collective impact of public interest litigation.

By working collaboratively, PILS ensures that the outcomes of these cases have a knock-on effect, not just benefiting the immediate litigants, but setting legal precedents and influencing public policy in ways that will shape the future of Northern Ireland, all of which ties back to their core principles of bringing litigation which will ultimately benefit many people.

The work of PILS reminds us that justice, in whatever form, is not an abstract concept—it is something that must be actively pursued. Through its support for cases like those I've mentioned today, PILS has shown that public interest litigation is one of the most effective tools we have to hold power to account and to protect the rights of all citizens, especially the most vulnerable.

I look forward to seeing from where the next cases will emerge and how they will help form and shape the various landscapes impacted by their relevance. I have

no doubt that in another 15 years the legal profession will be here celebrating 30 years of the PILS Project and examining a raft of new cases which will have left an indelible mark on the world of public interest litigation.

Thank you.