

SHEILA MCKECHNIE FOUNDATION

POWERING CAMPAIGN PEOPLE



USING THE LAW FOR CAMPAIGNING & SOCIAL CHANGE

A 101 GUIDE

This guide is for you if...

- You're not sure how the law operates
- You want to know what is possible
- You think the law could be useful but need help to get started
- Your organisation isn't yet equipped to use legal tools in campaigns

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FOREWORD

Sue Tibballs

Chief Executive,
Sheila McKechnie
Foundation

At the Sheila McKechnie Foundation, we recognise the law as a crucial part of the wider change eco-system. It has played a critical role in significant campaigns such as equal pay, reproductive rights and the Hillsborough Justice Campaign. More recently, campaigners have used legal measures at critical points in the unfolding Brexit saga.

Our Social Change Project found that, while change-makers recognise the law as a valuable tool, most identify critical gaps in their knowledge and face organisational barriers to using the law. The result is that many never even consider the law an option.

This guide is an introduction to using the law to achieve social change. It provides an overview of legal tools and practical questions that are relevant to civil society organisations. It is not written by lawyers and does not constitute 'legal advice'. It is important to seek one-to-one advice from legal experts and explore more in-depth resources to develop your strategy and campaign plan.

You'll find further reading and resources in our Social Change & Law Resource Centre at www.smk.org.uk/law

We would like to thank The Baring Foundation for sponsoring this guide, Emma Smale for researching and compiling information, and the many campaigners and experts who offered their experience and advice during the process.

Learn more feature: SMK Social Change & Law Resource Centre

For any report or issue highlighted in the dark red boxes, you can find more information at the end of this guide and in our online resource centre at www.smk.org.uk/law

WHAT'S POSSIBLE?

We've all seen dramatic courtroom dramas in which the brilliant barrister and brave litigant take on a state or corporate Goliath and emerge in triumph. But this kind of legal action is just one of the ways that campaigners can utilise the law. In this section, we take a look at what is (and isn't) possible.

GETTING STARTED

Why use the law to bring about social change?

The law is just one mechanism for realising social change. It may align with, intersect or conflict with other important factors. For example, the Marriage (Same Sex Couples) Act 2013 gives same sex individuals rights to marry, but does not remove the risk of harassment (which may be informed by social attitudes).

It is not effective to use the law as a social change tactic in isolation, but using the law as part of a campaign 'toolkit' can be a powerful strategy. Think about how it can work alongside your other approaches.

'The law on its own isn't enough. Our lawyers were tackling the same issue over and over because unlawful decisions kept being made. Other people didn't know about their rights and the root causes of the issue remained a problem. That's why it's been so important to work with colleagues from across the organisation and use a range of strategies to improve the situation'.

Lawyer, Shelter, campaign against DSS discrimination

The UK legal system

Thomson Reuters Practical Law website publishes a plain English overview of the constitution, legal system, forms of law, court structure, quasi legal authorities and different types of legal case.

The Ministry of Justice also publishes information about the court system and procedures.

The UK legal system

It is not necessary to understand everything about the law to use it in campaigning (that's what legal training is for). But it can be helpful to understand some of the basics, especially if you are speaking to lawyers who are talking about legal systems and technicalities.

There are many different forms of law.

The types of law that are relevant to your work depend on your organisational priorities and the problems you are tackling. A lawyer can help you understand what types of law are relevant to your work – talking with them is an important first stage.

See also GET ADVICE EARLY: EVERY CASE IS DIFFERENT in TOOLKIT 3.

Types of law commonly used by charities and NGOs:

Domestic law: Each country in the UK has national legislation, so the law is different in England, Scotland, Wales and Northern Ireland. British law applies to the whole of the UK, for example constitutional or tax law.

Public law: Public law applies to public bodies and governs how they exercise power. It applies to central and local government, and to private companies running public services. Civil society organisations often work with people affected by decisions governed by public law. Decision-makers that can be held to account include: government ministers and departments, local authorities, the police, clinical commissioning groups (CCGs), maintained schools and governing bodies, supervisory and regulatory authorities (e.g. the Care Quality Commission). Judicial review is a type of public law challenge. **See also JUDICIAL REVIEW in TOOLKIT 3.**

Private law: This involves relationships between individuals. Civil society organisations tend to use this less.

International law: International treaties to which the UK is party only have legal weight if incorporated into domestic law. Not all treaties are, but appealing to treaties may apply pressure on the government to improve its practices.

Also be aware of:

Soft law: This does not have legally binding force or is weaker than 'hard' law mechanisms. It includes policy guidance, codes of conduct and some modes of governance.

'Legal hooks': This refers to the different types of law you might use. Some areas are used a lot by voluntary sector organisations in campaigning, for example the Human Rights Act 1998 (HRA), equality legislation, community care law (e.g. Care Act 2014), or civil law (e.g. local planning regulations).

Things to think about before you start

Every campaign journey is different. Tactics that worked for one campaign might not be right for you. Some tactics require more resource than others. It is possible to engage with the law a lot or very little – both can lead to success.

Be strategic and maximise resource. It's a good idea to get advice from a lawyer and consider options in the early stages of campaign planning.

It can take time. Using the law can be an important catalyst for change, but it's important to think about what you want to achieve. Some legal tactics can help to provide pressure or clarity in the short-term, e.g. writing legal letters to decision-makers or legal research on a policy point. Others, such as judicial review, can take months or years and need to be aligned with other tactics to contribute to lasting change.



WHAT ARE THE OPTIONS FOR USING THE LAW?

OBJECTIVE	INFORM OR PERSUADE	EQUIP PEOPLE TO MAKE CHANGE	CHALLENGE OR ENFORCE
TACTICS	<p>Public awareness about rights.</p> <p>Informing and training employers.</p> <p>Influencing governments by legal monitoring and research.</p> <p>MORE IN TOOLKIT 1</p>	<p>Projects to uphold people's rights.</p> <p>Rights awareness.</p> <p>Providing legal advice.</p> <p>MORE IN TOOLKIT 2</p>	<p>Test cases in court led or supported by organisations.</p> <p>MORE IN TOOLKIT 3</p>
STRATEGY	COMBINE WITH OTHER CAMPAIGN TACTICS OR BY WORKING IN PARTNERSHIP		

Using the law for social change

Effective use of the law by the voluntary sector by Lisa Vanhala and Jacqueline Kinghan looks at how organisations are using the law in the current social and political environment.

Framework for Better Use of the Law by the Voluntary Sector by Lisa Vanhala and *Transforming lives through law: ten inspiring examples from civil society organisations* by Lisa Vanhala include numerous examples.

TOOLKIT 1: USING LEGAL EXPERTISE TO INFORM OR PERSUADE

YOU NEED TO KNOW

- Understanding the law, including how it affects people's lives, can influence decision-makers and inform campaign design.
- Advice from lawyers can provide clarity on the implications of existing or proposed law and carry significant weight with decision-makers.
- Legal arguments can persuade decision-makers to take issues more seriously, especially if they are faced with financial or reputational risks or the threat of legal action.
- Consider monitoring the law and using human rights frameworks to influence change and hold decision-makers to account.
- **Lawyers operate commercially, so it's important to find out about what they can offer and the costs involved. Be clear about expectations and timelines, and prepare so that you can clearly communicate your interests and goals.**

Legal expertise and services

Legal advice: A process by which a lawyer assists individuals and organisations with legal issues. Campaigners usually need ‘advice’ in a different way to individuals because they are looking at how an issue affects lots of people or operates at a systems level. **See also GET ADVICE EARLY: EVERY CASE IS DIFFERENT in TOOLKIT 3.**

Expertise: By focusing on how lawful actions and decisions are, lawyers can help campaigners in a range of ways, including:

- Drafting a letter or briefing outlining a legal position, a case for action or decision, or clarifying rights where there is a dispute
- Building a case using the language of the law (and technical areas that need to be unpicked) to lobby for new rights, defend the interests of individuals and groups, or amend legislation
- Offering perspectives on where the law isn’t working and trends in unlawful practice

Legal research and legally informed policy work

It can be important to understand the lawfulness of government (or other actors’) proposals, decisions or practice. Lawyers can bring new perspectives to give campaigners powerful arguments for action or change. Research is also often needed pre-litigation to identify the operation and effects of the law, and to help develop more detailed arguments for judicial review or other legal strategies. Legal research can also inform the development of policy, guidance and regulations.

The Public Law Project (PLP)

provides assistance to individuals, charities and organisations through research and policy work, training and support to lawyers and advisers, legal casework including strategic litigation.

Monitoring

Common amongst human rights organisations, monitoring involves investigating and documenting incidents or government practices, including gathering evidence from people directly affected. It can expose problems or abuses by governments and others. Results can be used to put pressure on those violating rights, to inform campaigns and advocacy strategies, and provide evidence for strategic litigation.

Children’s Rights Alliance for England (CRAE)

promotes children’s rights and monitors government implementation of the UN Convention on the Rights of the Child. They make recommendations to government for change in regular State of Children’s Rights reports.

TOOLKIT 2: EQUIPPING PEOPLE TO MAKE THEIR OWN CHANGE

YOU NEED TO KNOW

- Organisations that offer legal advice to individuals can identify emerging issues and help gather evidence to inform lobbying, campaigns and/or strategic litigation.
- Improving legal literacy in your organisation could help people to understand their rights, access legal advice, and challenge unlawful decision making.

Collaborating with legal advice providers

Many organisations give legal advice directly to people who need information about their rights, or require legal support and guidance. Working with these organisations can help to:

- Identify areas of unlawful decision making, priorities for reform and campaign strategies
- Provide data and evidence of a problem, often through direct work with clients
- Gain access to networks of people directly affected by issues (who may be interested in engaging in campaigns) and professionals with up to date knowledge of how the law is operating

Some law advice organisations

- Legal Action Group
www.lag.org.uk
- Advice UK
www.adviceuk.org.uk
- Law Centres Network
www.lawcentres.org.uk

Supporting people to challenge unlawful decisions

Taking legal action and accessing early legal advice is difficult for many people – cuts to legal aid have made it harder. One option is to invest in legal education for an organisation's staff, so they can spot legal problems quickly, signpost and help individuals access the advice they need.

Mencap and the Legal Network are working together to skill up frontline care managers and advice professionals. They are also gathering data about unlawful decision making and using this to:

- Target case work – identifying key themes and strategies for tackling common issues
- Approach local authorities to show what is happening, aiming to collaborate on solutions
- Work with other care and support organisations to pool data from advice lines and case work to generate insights into trends and key issues
- Pursue litigation where there is a strong case for doing so

Mencap

Mencap is supporting people with learning disabilities by using data and strategic legal tactics to hold public bodies to account.

TOOLKIT 3: CHALLENGING & ENFORCING THE LAW

YOU NEED TO KNOW

- It's an expensive option so you need a clear rationale, but it might deliver the result you need more efficiently than other kinds of campaigning.
- Can only be used to address a 'legal problem' (where interpretation or application of the law is contributing to it).
- You need evidence about how the 'legal problem' is affecting people – gather it from research, people affected, professionals or partners.
- Judicial reviews have specific time limits – if a possible case emerges seek specialist advice straight away, and you'll need to act quickly to take steps to cover costs.
- Work with people with direct experience of the problem and involve them at every stage.
- Strategic litigation is only effective as part of a wider strategy – think outside the courtroom, use other tactics to build support for the case and the issue you're trying to address.
- It is a lot of work – you need to prepare and plan carefully.
- It can take a long time and timeframes are unpredictable.
- Courts can be intimidating places, so have support in place for everyone involved.
- The outcome is never guaranteed, it's always a risky process – think through the consequences of winning and losing.

Strategic litigation

Strategic litigation is bringing cases to court to change law, practice or public awareness. It is described as 'strategic' because it involves carefully chosen cases, pursued alongside other tactics, to achieve campaign goals.

It is about achieving change for lots of people in similar situations. Whilst individuals who have first-hand experience are at the centre of a case, the aim is to 'test' a legal point that also applies to other cases.

Success involves more than simply winning a case. It might be used to publicise how an issue is affecting people, to encourage debate, to set precedent, or to spark momentum for change.

What types of law does it apply to?

It can apply to any type of law. The key considerations are the same, regardless of the type of law a case relates to.

Strategic litigation and public law. Civil society organisations usually engage in strategic litigation of public law because they want to challenge decisions made by public bodies (known as 'public law challenges'). Judicial review is a type of 'public law challenge'.

Other 'public law challenges' do not always involve going to court and can resolve individual issues. These can incur less cost and include: complaints procedures, Ombudsman schemes, appeals, review procedures, or alternative dispute resolution.

Judicial review & its alternatives

An Introduction to Judicial Review is published by the Public Law Project.

Judicial review

Judicial review is a special type of court procedure where the judge looks at the public body's decision, policy, practice, act or omission, and decides whether it is lawful or not. If it isn't, the court may quash the decision or action, and require the public body to reconsider it, lawfully.

Public Law Project

Key features

- Can be expensive
- Specific timeframes and constraints – an application for a court hearing must be made 'within three months' of the decision or omission by the public body (and, in this time, both costs and evidence to support the case need to be assembled)
- Can be lengthy – even when a case is won, it can be appealed more than once
- Unpredictable – making it hard to predict the costs and resources needed

How does it work? (in a nutshell)

The 'applicant' brings a claim for judicial review. They specify what type of outcome they want, e.g. a declaration from the high court that something is unlawful. Applicants must have sufficient connection to the subject matter (usually directly by experience). Sometimes claims can be made jointly. Charities and NGOs can bring cases when it is in the public interest.

Specialist judges hear a case and make a judgment, i.e. whether the public body has been lawful or unlawful. At the discretion of a judge a 'remedy' (type of order) is issued that can have different effects on the public body, e.g. makes a decision invalid, prevents unlawful behaviour by the public body, or enforces a duty.

Funding judicial review is an important part of the process. **See also TOP TIPS – LEGAL COSTS AND HOW TO MEET THEM.**

A step-by-step guide to the judicial review process

An Introduction to Judicial Review is published by the Public Law Project.

Should we get involved in strategic litigation?

Make sure strategic litigation is right for your campaign and that the whole organisation is behind you.

Seek advice from a lawyer who has relevant experience and can advise you on potential legal strategies. This is important because of the risks and costs involved – you may be able to address the issue in another way. **See also TOP TIPS – LEGAL COSTS AND HOW TO MEET THEM.**

GET ADVICE EARLY: EVERY CASE IS DIFFERENT

Is it a legal problem? Is there a challenge or not? This can be complicated even if it seems straightforward, e.g. whether a decision taken by a public body is open to judicial review. Every situation is different and things can change, even in a short timeframe, so considerations will be different for each case.

Don't do it alone. Speak to a lawyer who has the right experience. This is important. Pursuing the wrong type of challenge can be very costly, even problematic for the very people you are trying to help.

It's complicated. The issues people and communities experience are usually complex. Lawyers can help you unpick those complexities from a legal perspective, such as identifying which areas and types of law might apply to your case.

Convene a team of experts. Some issues can fall between two or more areas of law, and lawyers with one specialism might not know about another. Solicitors and barristers have different roles.

Lawyers will ask questions like...

- What is the situation? Who is involved?
- What is the public body doing? How is it affecting people?

They will consider things like...

- What the relevant policies or guidelines are
- The type of legal problem and how it may be judged in court
- What type of public law challenge might be appropriate, if any
- What types of law would apply to the issue you have raised, e.g. an issue governed by housing or environmental law
- Whether there is a legal duty for public bodies to do or not do something
- Whether the public body has a legal power, whether there are there any limits on this power, and whether they are acting fairly and reasonably

What if we're reacting to a case or issue in a short-time frame?

You still need advice to help navigate the complexities, identify the best way you can help (not always legal), and ensure you can manage the risks and costs involved.

Finding the ‘right’ lawyer

Look for firms and lawyers who are experts with a track record of working with civil society. Legal qualifications don’t mean that every lawyer will be helpful – like anyone they are limited by their experience and area of practice.

Who can help me find the right lawyer?

It might not be obvious what type of lawyer or expert to approach. Funders and organisations who connect lawyers and civil society can help. For example, the Public Law Project or Joint Council for the Welfare of Immigrants bring people and organisations together and put people in contact with lawyers.

Legal networks. Some funders run events where you can meet legal professionals involved in relevant work. Organisations experienced in using the law employ lawyers or experts who might be able to point you in the right direction. **See also TOP TIPS – WORKING IN PARTNERSHIP.**

Solicitors can be found using the Law Society’s Find a Solicitor database.

Three main ways to get involved in strategic litigation

You will always need to work in partnership with lawyers, but they require different levels of resource and oversight. Consider engaging an expert third party or consultant to help your organisation consider its options and plan accordingly. Speak to other organisations who have done this type of work.

A. BRING A CASE

This involves identifying a claimant and funding the litigation from beginning to end. It’s the most expensive option, involves the most work, and can be unpredictable.

Refugee Action

In 2014, Refugee Action pursued a legal challenge over the Government’s decision to freeze asylum support rates. They have written about their reasons for doing it, evidence for the case and the outcome.

B. SUPPORT A CLAIMANT

Organisations can support a claimant who is bringing and funding the case themselves by providing a witness statement or sharing expertise.

Disability benefits

A legal action brought by an individual known as RF to challenge changes to disability benefits was supported by several organisations: The National Autistic Society, Inclusion London, Revolving Doors and Disability Rights UK. Mind and the Equality and Human Rights Commission (EHRC) intervened in the case as third parties. A study of the case is available from the Public Law Project.

C. INTERVENE

It is possible to act as a third-party intervenor. This involves offering information to the court that would be helpful. It is not necessary to take sides, but it's essential that you understand the impact that a law is having on the ground.

Third Party Interventions

The Public Law Project publishes guide that explains the main ways that third parties can get involved in cases and provides examples.

What are the risks?

The costs incurred can be significant. It's possible to fund cases and manage the risks involved but you'll need to plan carefully.

Insufficient organisational capacity. Planning for different outcomes and what is needed before, during and after a case is vital. Make sure your organisation can respond adequately to the result.

Relationships. Existing or future relationships with stakeholders, including government and those affected by the problem, can be affected. Communication and working in partnership are key to managing these, for example by explaining your rationale and aims for pursuing strategic litigation.

'Winning isn't everything, it's the only thing'. Right?

No. It's not necessary to win a case for it to have impact. There are many examples of judicial review cases that have been lost but still contributed to change.

Making an impact: win or lose

Dignity in Dying supports cases about assisted dying. Whilst no single case has changed the current law that makes assisted suicide a crime, they have led to changes in policy and guidance and raised the issue in the public arena. Co-ordinating legal action with effective communications and campaigns to create a swell of support is central to their approach.

Find out more at
www.dignityindying.org.uk

Winning a case alone isn't enough. Judgments are open to interpretation, so further clarity, policy and guidance is usually needed. And how decisions are implemented is essential. This can involve further work to communicate decisions to people affected, train professionals to do things differently, and help people understand their rights.

Your case doesn't exist in a vacuum. Think about the bigger picture. What does your strategy mean for others? Might a win (or a loss) for you put others' efforts or interests at risk? Are there opportunities to influence the situation of more than one person or community?

When is strategic litigation a good strategy?

You have received legal advice and are confident that you have a legal problem and a strong case for pursuing a legal challenge.

You have carefully considered the resources and risks involved. You have put plans in place to manage these.

Your whole organisation supports the action, and has planned for:

- **Legacy activities.** How will you spread knowledge about judgments and changes? Can you deal with queries from people in similar situations? Can you resource this?
- **Communications.** Do you know how you'll communicate, when and to whom? Legal action can stimulate wider interest, how will you handle media enquiries or social media debate?
- **Campaign strategy.** Any legal action needs to be rooted in real experiences – strategic litigation can help to build support and a movement for change. Are you ready to harness this energy?

Young, gifted & blocked

Just for Kids Law wanted to learn lessons from their involvement in a legal case on student finance for young people whose immigration status meant they were unable to access student loans. Their report *Case Study of Just for Kids Law's Strategic Intervention in the UK Supreme Court* explores how they approached many of the key points above.

TOP TIPS

LEGAL COSTS AND HOW TO MEET THEM

All legal services have a cost – they are expensive, fluid and vary on a case-by-case basis. You must consider and plan for costs **BEFORE** starting any work, whatever strategy or tactic you are pursuing.

BUT whilst costs are considerable, they CAN be managed:

- Educate senior management about what's involved to help ensure that risks are understood and planned for
- A good lawyer should tell you what to expect at each stage – it's their responsibility to keep you informed of costs and provide clear bills
- You may be able to get free help – through a 'pro bono' scheme, your network or the Legal Aid Scheme
- Build up a network of legal contacts, organisations and partners experienced in using the law to learn about costs, and to potentially help meet them
- Always consider working in partnership to share resources and risks

Paying for judicial review

Judicial review time limits mean that you must act quickly to take steps to cover costs (for your own fees and the other side's fees). *An Introduction to Judicial Review* by the Public Law Project covers estimate costs and ways to limit how much judicial review costs.

Some key concepts

Aarhus Convention. This requires that, in environmental cases, the costs of litigating must not be 'prohibitively expensive'. This can give environmental campaigners a lot more certainty.

Conditional fee arrangements (CFAs). A solicitor or barrister may agree to act for an individual for a conditional fee. Full fees will not apply unless the case is successful and an order is obtained so that the opponent pays your costs. If the case is unsuccessful, the individual must still pay their opponent's costs.

Cost capping orders. Orders that the court can make in the early stage of proceedings if it believes that a case raises issues in the public interest, and that without a limit on costs the claimant could not afford to pursue the claim. The decision is not made until after the court has granted permission for judicial review.

Cost rules. The rules that govern who pays what in litigation. In the UK, the loser in legal proceedings must pay the costs of the winning party. Therefore, it is not possible to predict how much litigation will cost at the outset of a case.

Court fees. Even applying for permission from the court to bring a judicial review case has a cost. Organisations need to raise initial fees even if a case does not proceed.

Exceptional case funding (ECF). Public funding in limited instances when a case is not eligible for legal aid. Legal aid providers have to apply for ECF. There is more useful guidance on the Public Law Project website.

Fixed recoverable costs (FRCs). These set the amount of legal costs that the winning party can claim back from the losing party in civil litigation.

Legal aid contracts. Not all solicitors will undertake legal aid cases - you can search for solicitors that do 'accept legal aid' on the Law Society's website. Some solicitors and firms hold legal aid contracts (in some cases it is necessary to secure one).

Legal aid. Public funds to assist with the costs of legal advice, mediation and representation in court. Strict eligibility criteria apply based on the type and strength of a case and individuals' financial circumstances. In recent years, changes in England and Wales have reduced access to justice for some individuals and groups. The system is separate in Scotland and Northern Ireland.

Protective cost orders (PCOs). Orders made by the court at the beginning of proceedings to limit liability for paying opponents' costs.

Standing. Refers to the regulations that limit or allow access to the courts.

What is pro bono?

Legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public and alternative means or funding are not available.

(LawWorks)

Sources of funding

Crowdfunding. The platform Crowd Justice is pioneering this approach to raising money for litigation. As well as advantages, be aware of potential risks to fundraisers, donors and even to other cases.

Trusts and Foundations. Some bodies will fund strategic litigation and other legal strategies, such as legal research and advice. Examples include the Strategic Legal Fund, the Baring Foundation, the Legal Education Foundation and Therium.

WORKING IN PARTNERSHIP

Any type of organisation can use the law to bring about social change but, for the majority, the best strategy is working in partnership to achieve shared goals. This makes it easier to manage the costs involved and access necessary expertise.

It is important to co-ordinate legal tactics, such as strategic litigation, with other tactics to secure positive change.

Organisations use the law in different ways and lots have the potential to do more. See what is possible by having a look at what other organisations do.

What can you offer? What do others do? How could you work strategically together to use the law and achieve change?

THINK ABOUT DIFFERENT TYPES OF ORGANISATION

CORE STRATEGY

Using the law is at the core of what they do. They employ lawyers and use a wide range of tactics, including strategic litigation.

LAW ADVICE

Using the law is key to their mission. They may work with individuals by offering advice, advocacy or rights information. Lawyers may work or volunteer for them.

BROADER MISSION

Using the law in more incidental or reactive ways alongside a range of activities. Few will have legal teams but are likely to have legal connections.

RARE OR NEVER

Focused on services or research, community activity or public affairs campaigns. Generally, they're not using the law, but could contribute to legal strategies.

THE LAW AS PART OF CAMPAIGN STRATEGY: SHELTER CASE STUDY

Ending DSS Discrimination

Legal tactics are a core part of Shelter's campaign strategy to fight the widespread discrimination faced by renters receiving Housing Benefit. Shelter decided to develop a new approach using strategic litigation to raise the profile of the problem and provide a catalyst for changing the whole system – rather than reacting on a case by case basis.

Calling out unlawful practice and the threat of litigation has made a critical difference with targets such as mortgage lenders. The status of lawyers and legal advice has proved powerful in meetings and communications, giving clients the confidence to challenge landlords who refuse to consider them as tenants. Lawyers provide legal briefings and letters, working collaboratively with Shelter's policy, research, media and campaigns teams. They are exploring taking a test case to court to challenge the practice of 'No DSS'.

Shelter has developed their approach over the past year, learning and adapting along the way.

Key steps on the journey:

Backing from the whole organisation. A new organisational strategy and CEO committed to using strategic litigation in campaigns. Senior leadership decided to put resources in and took time to understand the risks (including the risks and potential costs of losing a case).

Integrated strategy. The campaign uses a range of tactics to build momentum and secure wins:

- Meetings and communications with key targets are backed up by legal arguments and evidence from policy and research, such as a survey of landlords

- Lawyers attend joint meetings with key targets – the threat of legal action has proved persuasive
- Action by grassroots groups puts pressure on key targets – Natwest changed their policy as a result
- Resources for activists, including a planned digital toolkit, support renters to challenge the system themselves, seek redress and prepare for a case
- Using the media builds momentum, informs and raises awareness so that people know their rights and landlords are persuaded to act.

Educating internally. A consultant has helped the organisation to prepare for using the law more in campaigns and helped everyone understand strategic litigation. Colleagues are kept updated.

New ways of working. A dedicated multi-disciplinary team meets regularly on every campaign with the potential to include legal challenges. Staff are given flexibility to work together on shared goals (away from other targets). The teams involve policy, legal, public affairs, campaigns, media, social media and research.

Managing risks. Senior leadership has trusted the benefits of legal input and understood the challenges involved, such as the financial and time constraints of involving lawyers in campaigns. Policies on supporting individuals taking cases have been developed to cover issues like confidentiality and anonymity, recognising Shelter's responsibilities to clients.

Funding. Legal advisors, campaigners and fundraisers have worked together to secure legal aid on a case by case basis, bid for grants, and explore new sources of funding.

FURTHER READING & RESOURCES

You can find a PDF of this guide with clickable links in SMK's Social Change & Law Resource Centre at www.smk.org.uk/law

What's Possible?

Thomson Reuters Practical Law website

The Ministry of Justice. Information about the court system and procedures.
www.justice.gov.uk

Vanhala, L and Kinghan, J (2018) *Working Paper No 4: Effective use of the law by the voluntary sector. Using the law for social change: A landscape review*. London: The Baring Foundation.

Mind's Legal Team - more information on Mind website

Vanhala, L (2016) *The Baring Foundation: Working paper No.2 On Better Use of the Law by the Voluntary Sector. Framework for Better Use of the Law by the Voluntary Sector*. London: The Baring Foundation.

Vanhala, L and Kinghan, J (2019). *Transforming lives through law: ten inspiring examples from civil society organisations*. London: The Baring Foundation.

Toolkit 1: using legal expertise to inform or persuade

The Public Law Project. www.publiclawproject.org.uk

Children's Rights Alliance for England (CRAE) - more information on Just for Kids Law's website

Toolkit 2: equipping people to make their own change

Legal advice organisations

Legal Action Group. www.lag.org.uk/about-us/useful-sites

Advice UK. www.adviceuk.org.uk

Law Centres Network. www.lawcentres.org.uk

A Mencap case study can be found in Vanhala, L and Kinghan, J (2019). *Transforming lives through law: ten inspiring examples from civil society organisations*. London: The Baring Foundation.

Toolkit 3: challenging & enforcing the law

Open Society Justice Initiative (2018) *Strategic Litigation Impacts: Insights from Global Experience*. New York: Open Society Foundations.

An Introduction to Judicial Review. Short Guide 03. London: Public Law Project.

The Law Society. Find a Solicitor database. <http://solicitors.lawsociety.org.uk>

Joint Council for the Welfare of Immigrants. www.jcwi.org.uk

Briefing: Refugee Action's Asylum Support Rates Legal Challenge. Refugee Action.

Vanhala, L and Kinghan, J (2019) *Using the law to address unfair systems. A case study of the Personal Independence Payments legal challenge*. London: The Baring Foundation and Lankelly Chase.

Third Party Interventions – a practical guide (2008) The Public Law Project.

Dignity in Dying. www.dignityindying.org.uk

Vanhala, L (2017) *Case study of the Just for Kids Strategic intervention in the UK Supreme Court. R (Tigere) v Secretary of State for Business, Innovation and Skills*. London: Just for Kids Law.

TOP TIPS

Costs

The Government publishes a guide to legal aid. www.gov.uk/legal-aid/eligibility

The Law Society publishes a guide to legal aid

Young Legal Aid Lawyers. www.younglegalaidlawyers.org

Legal aid: apply for exceptional case funding (2014). Legal Aid Agency.

Legal Aid Exceptional Case Funding ('ECF'): Applying without the assistance of an adviser or solicitor (2017) Public Law Project.

The Senior Courts Costs Office Guide (2018). Judiciary of England and Wales.
HM Courts & Tribunals Service.

European Commission publishes information about the Aarhus Convention.

What is pro bono?

www.lawworks.org.uk. Law Works is a charity that provides pro bono legal advice. They have a protocol that lawyers can sign up to so that advice is a high standard

www.barcouncil.org.uk

www.weareadvocate.org.uk

www.i-probono.com

www.lawcentres.org.uk

www.citizensadvice.org.uk

Sources of funding

Crowd Justice. www.crowdjustice.com

Strategic Legal Fund. www.strategiclegalfund.org.uk

The Baring Foundation. www.baringfoundation.org.uk

The Legal Education Foundation. www.thelegaleducationfoundation.org

Therium. www.therium.com

Law as part of your campaign strategy: Case Study

Look for Shelter's live blog on the 'Ending DSS Discrimination' campaign

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Email: info@smk.org.uk

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