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Mobilising the Market: An Empirical Analysis of Crowdfunding for Judicial Review Litigation

Sam Guy*

This article provides an analysis of 413 crowdfunding campaigns raising funds for judicial review cases. In doing so, it empirically captures the judicial review crowdfunding landscape for the first time, drawing attention to the divergent rates of funding and generating a profile of the actors using the resource based on their geographic scope and their litigation experience. Noting the proliferation of campaigns seeking social goals beyond the immediate litigation, it argues that crowdfunding reveals, and gives rise to, an important reality of legal mobilisation that has received insufficient recognition – the use of law for social change by groups that are inexperienced or locally-oriented. It therefore constructs a typology for understanding these broader patterns of legal mobilisation, accounting for the dimensions of scale and litigation experience.

INTRODUCTION

It is increasingly recognised that judicial review, for all its value in ensuring state accountability in principle, is inaccessible in practice for the majority of the UK population. Indeed, Rawlings refers to a 'secret history' of judicial review, wherein the judicial review system has been reshaped and expanded over recent decades, yet most people remain excluded from accessing it.[1] Central to this inaccessibility are the high costs and limited funding routes associated with the process,[2] and, with a reduced legal aid budget under austerity policy,[3] exclusion from judicial review has only worsened since Rawlings' comments in 2008. Into this context, many have turned to the online crowdfunding phenomenon to fund their cases. Having been used with considerable success to support civic projects and political mobilisation,[4] crowdfunding has been transplanted into the litigation funding context throughout the world, in an attempt to circumvent the difficulty associated with funding access to legal processes.

*PhD Candidate, York Law School, University of York. I am very grateful for helpful comments and discussions on previous drafts of this article from Joe Tomlinson, Simon Halliday and Aileen McHarg, as well as from the anonymous reviewers. I gratefully acknowledge the ESRC PhD studentship funding which has made this research possible. Any errors remain my own.

1 Richard Rawlings, 'Modelling Judicial Review' (2008) 61 *Current Legal Problems* 95, 109.
2 Joe Tomlinson and Alison Pickup, 'Reforming Judicial Review Costs Rules in an Age of Austerity' in Andrew Higgins (ed), *The Civil Procedure Rules at 20* (Oxford: OUP, 2020).
3 Tom Mullen, 'Access to Justice in Administrative Law and Administrative Justice' in Ellie Palmer et al (eds), *Access to Justice: Beyond the Policies and Politics of Austerity* (London: Hart Publishing, 2016).
4 For example Rodrigo Davies, 'Three provocations for civic crowdfunding' (2015) 18 *Information, Communication & Society* 342.

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This has been accompanied by a small but growing body of critical analysis worldwide,[5] and in the UK.[6] Into this limited research field, this article presents a quantitative analysis to construct a fuller picture of the crowdfunding field, providing an account of its various actors and the practices which they often employ, within the context of judicial review in the UK. Much of the existing research – and popular media coverage – has focused predominantly on litigation with a 'public interest' or social reform agenda, and this facet of crowdfunding makes it a phenomenon of particular interest for scholars interested in legal mobilisation and the use of law in pursuit of broader social goals.

This article provides the first systematic empirical analysis of judicial review crowdfunding, reporting the findings from a quantitative database. In doing so, it highlights the apparent disconnect between outlying cases raising enormous sums of money, and the more typical, often locally-oriented, cases where fundraising is more limited. Developing a profile of the actors involved, it emphasises that crowdfunding is used most frequently in judicial reviews which form part of campaigns mobilising to seek or resist broader change, whether at the national or local level, in contrast to cases concerning purely individual entitlement which are far less prevalent and gain less traction. It argues that the patterns of crowdfunding activity reveal an underappreciated phenomenon: the mobilisation of law for social goals by groups outside of the 'usual suspects' – that is, relatively well-established and well-resourced policy groups operating at the national level. By pointing to mobilisation by less traditional social actors, namely inexperienced and local groups, we can pay attention to new questions, and the article constructs a typology through which to frame this broadened understanding.

The article begins by explaining the study's quantitative method, before reporting key findings. These include the rate of success in the judicial review system, the donations made to crowdfunding campaigns, the claims' subject matter and public bodies challenged, whether cases tend to concern effects at the household, local, or national level, and claimants' level of litigation experience. It then discusses implications of the widespread use of crowdfunding in litigation campaigns for social change, and finally explores the dynamics of legal mobilisation in the dataset by inexperienced and local actors.

DATA AND METHODS

The quantitative data presented here is derived from CrowdJustice.[7] As the only bespoke crowdfunding site established specifically for litigation, CrowdJustice

5 For example Julius Yam, 'Political Crowdfunding of Rights' (2020) 50 *Hong Kong Law Journal* 395; Evan Hamman, 'Save the Reef: Civic Crowdfunding and Public Interest Environmental Litigation' (2015) 15 *QUT Law Review* 159; Ronen Perry, 'Crowdfunding Civil Justice' (2018) 59 *Boston College Law Review* 1357.

6 Joe Tomlinson, 'Crowdfunding public interest judicial reviews: a risky new resource and the case for a practical ethics' [2019] *Public Law* 166; Joe Tomlinson, *Justice in the Digital State* (Bristol: Policy Press, 2019) 19-36; Sam Guy, 'Access to justice on the market: An empirical case study on the dynamics of crowdfunding judicial reviews' [2021] *Public Law* 678.

7 CrowdJustice at https://www.crowdjustice.com (all websites last visited 28 June 2022).

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has proven by far the most popular site for litigation crowdfunding in the UK since its inception in 2014. It is owned by The Justice Platform Ltd, which also trades as Legl, a legal technology company.[8] A small number of crowdfunded cases use generalist crowdfunding sites like Kickstarter or Crowdfunder, which are not represented in this study. However, this is a limited number compared to those hosted on CrowdJustice, and it would be difficult to systematically identify cases from across disparate crowdfunding sites. To locate judicial reviews on CrowdJustice and construct the dataset, all fundraising pages within the site's 'Judicial Review' category were identified, and pages which were not labelled as such but which sought funding for judicial reviews were identified manually, by surveying the profiles of all other UK-based cases on the site.[9] In total, 413 CrowdJustice pages were identified, representing the vast majority of fundraising pages for judicial review claims hosted on CrowdJustice from its inception to the time of research. It is possible that, given the lack of clarity and detail in some pages, some judicial review claims were missed in the manual search of all cases hosted on CrowdJustice, but if this were the case it would nonetheless be a very small number. It is also possible that CrowdJustice may have removed a small number of pages from the website, for instance due to content breaching its terms and conditions.[10] The majority of cases were brought by claimants in England and Wales, with a small number in Scotland and Northern Ireland.[11] Notably, 15 pages were posted by the Good Law Project, or its founder, Jolyon Maugham KC, which relies heavily on crowdfunding and uses CrowdJustice to support the organisation's growing profile of 'public interest' litigation.[12] Using the information contained within the 413 CrowdJustice profiles, a database was constructed containing variables including, inter alia, the sums of money sought and raised; the cases' progress, subject matter, and public body challenged; the names of claimants; the images used on the pages; the degree of detail provided on the nature of the case, and the number of updates provided. Owing to the lack of transparency provided by some pages, it was sometimes necessary to undertake internet searches to ascertain cases' ultimate progress. This usually clarified the result, but on occasions where cases had ceased taking donations, where no updates were provided on CrowdJustice, and where the internet searches yielded no information, they were assumed to have been abandoned at an early stage. CrowdJustice has collected significant volumes of data on the nature of cases on its site, but this has not been shared externally. As

8 CrowdJustice, 'Terms of Use' at https://www.crowdjustice.com/terms-and-conditions; Legl at https://legl.com.

9 Judicial review is not the only form of public law litigation that litigants have crowdfunded for. Litigation in other forums is commonly crowdfunded, such as tribunal hearings, statutory reviews, and, in Scotland, applications to the nobile officium.

10 In the Employment Tribunal context, CrowdJustice removed a page by barrister Allison Bailey, due to language relating to trans people which it judged to breach its terms and conditions. CrowdJustice did however allow fundraising for her claim to continue on a holding page, to a limit of £60,000: CrowdJustice, 'Statement from CrowdJustice' (2020) at https://www.crowdjustice.com/case/allison-baileys-case.

11 For dedicated discussion of litigation crowdfunding in Scotland, see Andrew Tickell, 'The Continuation of Politics by Other Means: Crowdfunded Litigation in Scotland (2015–2021)' (2022) 26 *Edinburgh Law Review* 100.

12 Good Law Project, 'About' at https://goodlawproject.org/about.

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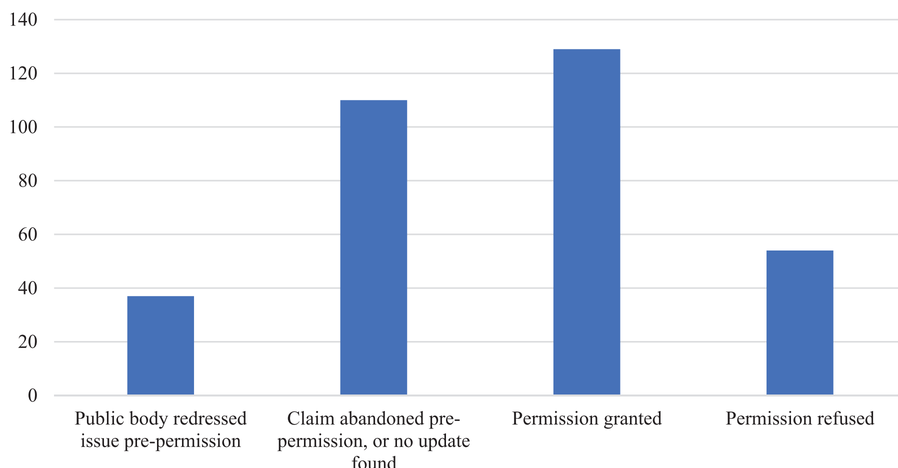

Figure 1: The permission stage [Colour figure can be viewed at wileyonlinelibrary.com]

a private organisation holding valuable information on an important and controversial dynamic of public law litigation, it would be helpful for CrowdJustice to release these data more widely.[13]

THE PROGRESS OF CLAIMS

This section outlines the progress made by cases in the dataset through the judicial review system, demonstrating the volume of claims reaching the permission, substantive hearing, and appeals stages, and those where a positive outcome was achieved out-of-court. Of the 413 CrowdJustice pages, those which were recorded as involving ongoing cases were removed. Where a claimant created further crowdfunding pages which were related to other pages, for instance launching a second page to fundraise for an appeal to a judgment, all pages related to the same case were treated as one, to avoid duplicate cases. As such, there were 330 unique completed cases, which progressed through the judicial review process as follows.

Figure 1 shows the proportion of cases which proceeded to the permission stage of judicial review, and the proportion of those which were granted or refused permission. On 37 occasions, the case was resolved in the claimant's favour prior to the permission stage, because the public body agreed to redress the issue in response to the legal action, and so the claimant withdrew their claim. This affirms the importance of settlement in judicial review proceedings, in redressing claimants' grievances while avoiding costly litigation. Yet the rate of cases

13 There is a growing focus on the importance of data collection and sharing in informing access to justice policy, particularly from The Legal Education Foundation. See for example Natalie Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice* (Guildford: The Legal Education Foundation, 2019).

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settled appears relatively low when compared with previous research.[14] This is possibly due to the subject matter of cases in the CrowdJustice data, which is dominated by planning cases, where settlement rates have tended to be low compared to the wider caseload.[15] By contrast, areas like homelessness, housing, and asylum, where settlement rates tend to be far higher, are underrepresented here, as discussed later.

110 cases were recorded as not proceeding to permission or resulting in settlement, meaning that the public body's decision likely went unchallenged and unredressed. In some cases, an update was posted on the CrowdJustice page, in the media, or on social media which clarified that the case was withdrawn without a positive outcome, sometimes because lawyers had advised not to proceed on the basis of the high costs risk relative to the case's merits. In other cases, there was no update posted on the page or in media coverage. Here, following extensive media searches, cases were recorded as withdrawing without positive outcome. It is possible that a small number of these cases settled but were not publicised online, meaning the data may slightly underrepresent the settlement rate. Some may even have gone to the permission stage, although as fundraising often ceased at an early stage, this indicates claimants may have used initial funds to gain legal advice, and the lawyers discouraged proceeding.

Concerns have been raised that crowdfunding might encourage meritless litigation, particularly in 'non-investment-based' crowdfunding. This is where donors have no financial stake in the case's outcome and so have less incentive to assess its merits,[16] as in judicial review, where monetary remedies are not generally available. As such, we might expect to see a high proportion of crowdfunded judicial reviews being refused permission, since the permission stage is intended to filter out unarguable claims.[17] However, of the 184 cases reaching the permission stage, only 54 were refused permission while 129 were granted, whether at first application or on appeal. Considered alongside the relatively low rate of cases settled before the permission stage, this may indicate that cases with arguable merit were settled less frequently than ordinarily expected, meaning a higher proportion of arguable cases reached the permission stage than expected. Again, this may be explained by the patterns in subject matter of crowdfunded claims, with planning cases settling rarely, and so there may be a greater incidence of arguable cases proceeding to and being granted permission. It is also possible that, whereas they might tactically settle with a legally aided claimant to avoid a judicial review,[18] some public bodies may have underestimated claimants' capacity to crowdfund claims and resisted settlement, expecting claimants to withdraw due to financial pressures. If so, it is possible that as crowdfunding becomes increasingly prominent as an effective fundraising tool, incidences of early settlement will increase from public bodies seeking to avoid costly litigation.

14 See Varda Bondy and Maurice Sunkin, 'Settlement in judicial review proceedings' [2009] *Public Law* 237, 245-246.
15 *ibid*, 246.
16 Perry, n 5 above.
17 See Varda Bondy and Maurice Sunkin, 'Accessing judicial review' [2008] *Public Law* 647.
18 Bondy and Sunkin, n 14 above, 240.

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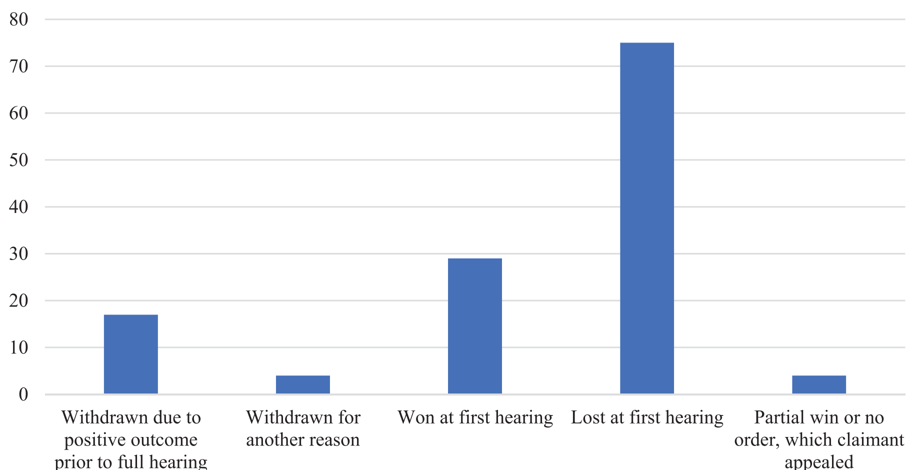

Figure 2: The first substantive hearing [Colour figure can be viewed at wileyonlinelibrary.com]

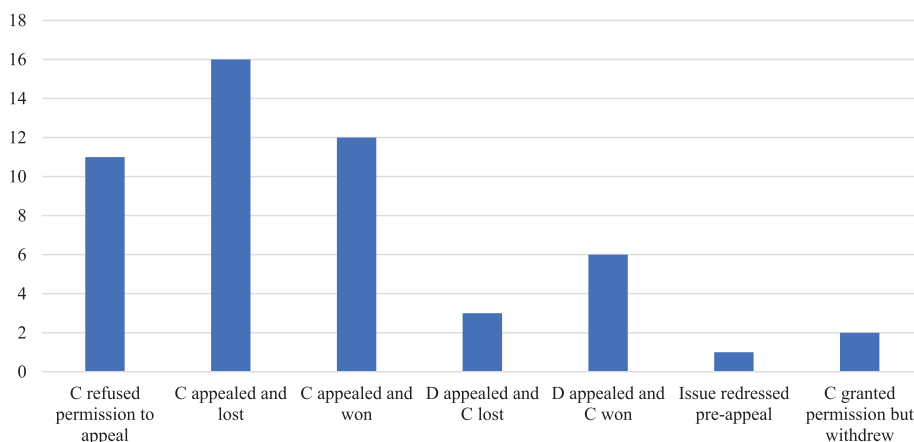

Figure 3: The appeals stage [Colour figure can be viewed at wileyonlinelibrary.com]

Figure 2 shows the progress of the 129 crowdfunded cases granted permission in the period. Of these, 17 were withdrawn due to settlement prior to the full judicial review hearing. Four cases were withdrawn prior to a full hearing for other reasons, for instance due to the costs risk, resulting in a negative outcome for the claimant. 108 cases proceeded to a full judicial review, with the claimant winning in 29 cases in the first instance, and losing in 75. In four cases, the claimant appealed even though they did not lose in the High Court per se. Here, either no order was made, the claimant won on certain grounds but not others, or won a ground but was denied relief. This category is somewhat paradoxical as claimants won but were unsatisfied – since the claimants appealed, it was taken that they did not achieve a satisfactory outcome, and were recorded separately.

Figure 3 shows the outcomes of the 51 cases which were appealed, whether by the claimant or defendant public body. Of the 29 cases which claimants won at first instance, the defendant appealed in nine, with the claimant losing three and winning six. Where claimants lost at first instance, they were recorded as

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being refused permission to appeal in 11 instances. It is also possible that other claimants among the 75 first instances losses sought to appeal and were refused, but this was not documented online. In 31 cases, claimants were granted permission to appeal losses – they won in 12 appeals, losing in 16, and withdrawing in two cases despite being granted permission, for instance due to the costs risk. In one further case, a claimant was granted permission to appeal but withdrew after the issue was redressed. City of York Council had granted planning permission to English Heritage to construct a visitor centre at the popular Clifford's Tower landmark. Despite the claimants' High Court loss, English Heritage withdrew their plans prior to the appeal hearing, recognising the unpopularity of the proposals, expressed in part through the collective crowdfunding campaign.[19] In the 27 instances where claimants appealed and the case proceeded, permission to appeal was granted by the High Court judge on three occasions, and by the appellate court at a later date – whether the Court of Appeal or, in one instance, the Inner House of Scotland's Court of Session – in 24 cases.

From the 330 unique completed cases, then, at least 93 claimants achieved a positive outcome, whether through settlement or in court – on a narrow view of success, 28 per cent of claimants experienced a positive outcome from going to law. While comparisons could be made here with success rates in the wider judicial review caseload, this may be unwise given disparities in the recording of statistics. As official statistics do not capture the reasons why cases are withdrawn, it is difficult to measure the positive outcomes which claimants regularly achieve pre-action, which are accounted for in this study.[20] Furthermore, given the lack of information in some CrowdJustice pages, it cannot be stated with certainty that all pages in this dataset reached the stage of being issued as applications for judicial review, the basis for official statistics in England and Wales.[21]

DONATIONS

Through analysing the donations made on CrowdJustice, we can begin to construct a picture of the crowdfunding field, one beset with inequality. Across all 413 cases, the total sum of money donated was £9,164,971, which was amassed from 287,882 unique pledges by donors. As such, the mean individual pledge donated was £31.65. The lowest value of donations which a case received was £0, on two occasions, while the maximum value was £422,758. This was the entrepreneur Simon Dolan's case unsuccessfully challenging the coronavirus lockdown restrictions[22] – this fund continued after the period of research and

19 Cllr Johnny Hayes MBE, 'Clifford's Tower Visitor Centre Judicial Review' *CrowdJustice* 2016 at https://www.crowdjustice.com/case/cliffords-tower/.

20 Mikołaj Barczentewicz, '*Cart* Challenges, Empirical Methods, and Effectiveness of Judicial Review' (2021) 84 *Modern Law Review* 1360, 1363. This is a problem acknowledged by the Independent Review of Administrative Law: *Independent Review of Administrative Law* Report Cm 407 (2021).

21 Ministry of Justice, *Civil justice statistics quarterly* at https://www.gov.uk/government/collections/civil-justice-statistics-quarterly.

22 Simon Dolan, 'Join the Legal Challenge to the UK Govt Lockdown' *CrowdJustice* 2020 at https://www.crowdjustice.com/case/lockdownlegalchallenge/.

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ultimately closed at £427,307.[23] Among the 413 cases, the mean value of donations which a case received was £22,191, while the median was £8,046. The mean number of pledges was 697 and the median was 187. The difference between the mean and median figures in both the values of donations and the number of pledges is striking. This points to the statistical effect of outlying cases, that is, values which differ vastly from the rest of the data. Whereas the calculation of the median value is largely unaffected by outliers, the mean value can be skewed considerably where outliers are present. To test this, all outliers were identified and removed from the dataset through calculating the interquartile range and the lower and upper bounds. Remarkably, 52 cases were identified as outliers exceeding the upper bound of £47,382.50, comprising 13 per cent of the entire dataset, a considerable proportion. Excluding these outliers, the mean and median values were far more similar – the mean value donated was £10,209.90 and the median was £6,330. Equally, the mean number of pledges was 285 and the median was 145, substantially closer than when accounting for outliers. This starkly demonstrates that there exists a substantial divide between the 'typical' cases, that is, those which raise approximately between £5,000 and £20,000, and the outliers raising upwards of £50,000. To underscore this fundraising inequality further, while the total sum of money donated across all 413 cases was £9,164,971, this total fell to £3,685,776 when excluding the 52 outliers. This means that the outliers, representing 13 per cent of cases, were responsible for almost 2/3 of the money raised across the entire dataset. The breakdown of funding rates is demonstrated in Figure 4, for all 413 pages, and in Figure 5, for the remaining 361 pages having excluded the outliers.

It is of course inevitable that, in a free market reliant on the generosity of donors choosing to pledge their money to facilitate access to justice, certain cases will receive a substantially higher number and value of pledges than others. This may be affected by the relative pre-existing social capital of the actors promoting the cases, for instance their capacity to mobilise traditional and social media,[24] and the emotiveness or topicality of the issue at stake. Yet much of the coverage and public consciousness around crowdfunding is centred largely on its use in outlying cases, highlighting with optimism or concern the enormous amounts of money which campaign groups can raise.[25] This might obscure the reality that, in the vast majority of 'typical' crowdfunded cases, a funding gap

23 While this was the largest sum which a judicial review case raised in the dataset, in another form of public law litigation, the private prosecution, Marcus Ball raised an even higher sum for his unsuccessful attempt to prosecute Boris Johnson for misconduct in public office. See 'MJB Individual Ltd.' (Crowdfunder) at https://www.crowdfunder.co.uk/user/marcusjball/profile/projects.

24 For discussion of crowdfunding and social capital in other contexts, see for example Roel Davidson and Nathaniel Poor, 'The barriers facing artists' use of crowdfunding platforms: Personality, emotional labor, and going to the well one too many times' (2015) 17 *New Media & Society* 289; Rob Gleasure and Lorraine Morgan, 'The pastoral crowd: Exploring self-hosted crowdfunding using activity theory and social capital' (2018) 28 *Information Systems Journal* 489.

25 For example Ruby Lott-Lavigna, '"It Will Be Difficult, but We Have to Try": The Lawyers Fighting for Trans Rights in the UK' *Vice* 15 December 2020 at https://www.vice.com/en/article/qjp3ab/it-will-be-difficult-but-we-have-to-try-the-lawyers-fighting-for-trans-rights-in-the-uk.

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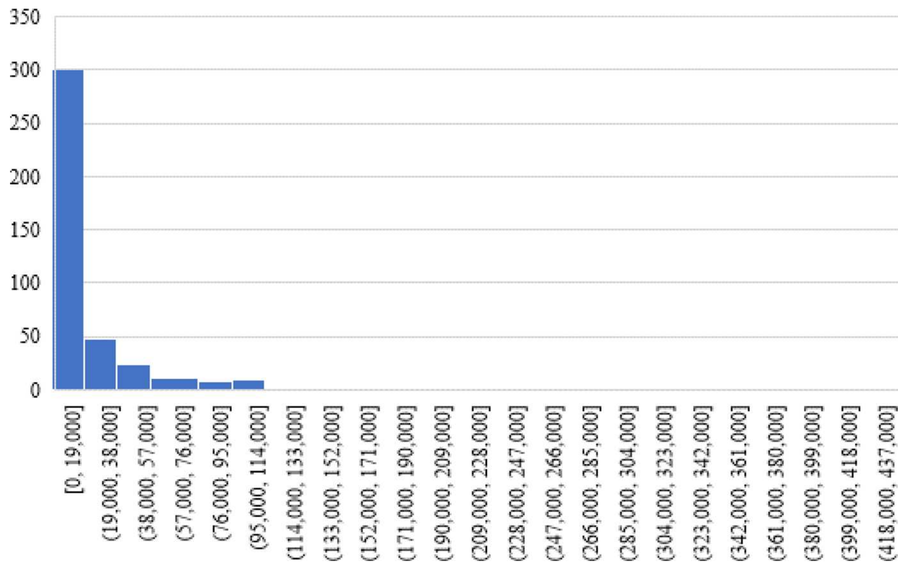

Figure 4: Donation (all 413 pages) [Colour figure can be viewed at wileyonlinelibrary.com]

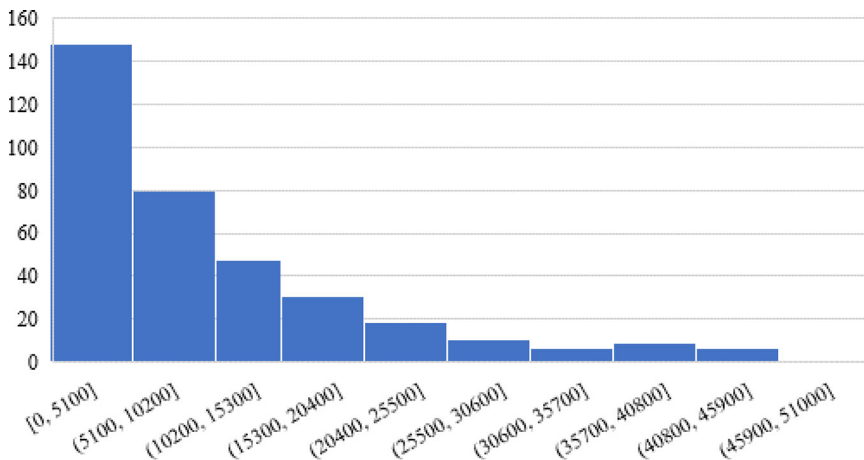

Figure 5: Donation (with 52 outliers removed) [Colour figure can be viewed at wileyonlinelibrary.com]

remains. In these cases, claimants may be unable to raise enough to willingly adopt the high costs risk associated with civil litigation, where the 'loser pays' the other side's costs.[26]

Indeed, there are several cases which claimants have explained were abandoned due to funding risks. For instance, one group raised £17,500 to challenge planning permission granted to demolish and replace a building in the Golden Lane area of London. It withdrew its judicial review application days before the permission hearing because the costs risk outweighed the claim's

26 For a critical analysis of the costs rules, see Andrew Higgins, 'The Costs of Civil Justice and Who Pays?' (2017) 37 *Oxford Journal of Legal Studies* 687.

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merit.[27] Similarly, a community group challenging the decision to sell Hornsey Town Hall to private developers raised £14,817 on their second fundraiser – a respectable sum which roughly bisects the dataset's mean and median values – was forced to close the CrowdJustice page and withdraw the claim the night before the permission hearing, as they had not fundraised enough to prevent the costs risk falling on individuals.[28] Alongside such cases, it can reasonably be assumed that, of the many pages which did not provide an update before ceasing fundraising, a considerable proportion were chilled from bringing a claim due to the costs risk. Relatively successful crowdfunding campaigns often remain reliant on other funding mechanisms to proceed. For instance, having been granted permission, a group which raised £20,807 to challenge restrictions on nightlife in Hackney abandoned the case having been refused a costs-capping order which would have limited the significant adverse costs risk should they lose the judicial review.[29] Many crowdfunded claimants rely on defendants' costs being capped, whether through the Aarhus Rules in planning and environment cases,[30] or costs-capping orders in non-environmental cases. This frequently occurs alongside their lawyers agreeing to act on a conditional fee or pro bono basis, enabling claimants to navigate an expensive judicial review landscape.

It is not necessarily surprising or problematic that many crowdfunded cases are withdrawn – indeed, on one view it could be argued that this is emblematic of the restrictive costs rules filtering out cases where cost outweighs the merit of proceeding, providing an additional case management filter alongside the permission stage.[31] Nevertheless, it is important to dispel the tempting narrative, perhaps encouraged by the prevalence of outlier cases in the public consciousness, that fundraising is easy for crowdfunded claimants and generates large sums. For the typical claimant, this is far from the case – the financial reality of bringing a claim remains incredibly burdensome and produces significant attrition, which will result in meritorious cases being unable to proceed.

A final point here concerns funding targets. On the front page of its website, CrowdJustice claims that '4 in 5 Hit funding target'. It is important to distinguish a case's 'Target' from its 'Stretch target' – the former is the initial sum a case owner must raise, and if the sum is not met, any funds donated are not kept and donors are not charged. In the judicial review context, this sum is frequently used to gain legal advice on whether a case has merit to proceed, or

27 Save Golden Lane Consortium, 'Save Golden Lane' *CrowdJustice* 2017 at https://www.crowdjustice.com/case/save-golden-lane/.

28 Hornsey Town Hall Community Interest Company, '#HTHBadDeal – Legal review of the sale of Hornsey Town Hall – *Part 2*' *CrowdJustice* 2018 at https://www.crowdjustice.com/case/hthbaddeal-part2/; the group's first CrowdJustice page can be found at: Hornsey Town Hall Community Interest Company, '#HTHBadDeal – Support a legal review of the sale of Hornsey Town Hall' *CrowdJustice* 2018 at https://www.crowdjustice.com/case/hthbaddeal/.

29 *R (on the application of We Love Hackney Ltd)* v *London Borough of Hackney* [2019] EWHC 1007 (Admin); [2019] LLR 625; We Love Hackney, 'We Love Hackney – defend Hackney nightlife' *CrowdJustice* 2018 at https://www.crowdjustice.com/case/welovehackney/. For the rules on costs-capping, see the Criminal Justice and Courts Act 2015, s 88.

30 CPR 45.41-45.45.

31 For a similar view, see James Maurici, 'Rethinking Costs in Judicial Review – A Response' (2009) 14 *Judicial Review* 388.

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Sector	Number of Cases Advertised	Percentage of Dataset
Environment and Planning	146	35
Health and Social Care	56	14
Education	41	10
Immigration and Asylum	30	7
Civil Liberties	19	5
Brexit	16	4
Inquest	10	2
Criminal Justice	10	2
Other	85	21

Figure 6: Subject Matter

possibly to fund costs as far as permission.[32] This usually represents a small fraction of the money required to bring a full claim, for which the stretch target is commonly designated. In the judicial review dataset, 362 cases met their initial funding 'Target' while 51 did not – 88 per cent met their target. Yet of these 362 cases, only 78 met their 'Stretch target' and 244 did not – 24 per cent met their 'Stretch target. While many cases could proceed to a full hearing without reaching the stretch target, many others which reached their initial target did not proceed any further or receive sufficient funding to do so.

WHAT KINDS OF CASES ARE CROWDFUNDED?

Subject matter

The cases within the dataset were coded for their subject matter, primarily using the feature on CrowdJustice pages where the case's 'Category' is identified. Where a category had not been identified, the primary subject matter was assigned by interpreting the page's content, including in a minority of cases which did not specify a category and which engaged overlapping areas. Figure 6 shows the primary subject matters coded in 10 or more judicial reviews – subjects with fewer than 10 cases were aggregated as 'Other' subjects. The breakdown of subject matters is striking.

146 CrowdJustice pages were primarily related to environmental or planning issues, meaning this subject matter represented 35 per cent of the dataset,

32 For discussion of costs at permission in the planning context, see Alistair Mills, 'Costs, Permission and Interested Parties' (2014) 19 *Judicial Review* 173.

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by far the largest subject. 56 pages concerned health and social care (14 per cent), 41 related to education (10 per cent), and 30 concerned immigration, including asylum (7 per cent). These figures can be compared to statistics on the subject matter trends in the wider judicial review caseload. Of use here are Bondy et al's study of 502 judicial review cases between 2010 and 2012,[33] and Bell and Fisher's analysis of decisions of the Administrative Court in 2017, which included 283 judicial reviews.[34] Drawing comparisons with both studies is imperfect – both comprise cases which reached a final decision in the Administrative Court, whereas the CrowdJustice dataset includes cases which left the system at earlier stages. Furthermore, while the timeframe for Bell and Fisher's data is more recent, Bondy et al's study is older and therefore may not capture new developments – it was prior to Brexit, for instance, and both datasets were prior to COVID-19. Notwithstanding these limitations, certain trends are observable and some comparisons can be made indicatively. In Bondy et al's study, planning cases accounted for 9 per cent and environmental cases for 0.4 per cent, while, in Bell and Fisher's study, 44 of 283 judicial reviews were planning cases, totalling 16 per cent. There is a stark contrast between the overwhelming rate of planning and environmental pages on CrowdJustice and the comparatively lower rate of cases in these studies. To a lesser extent, this disparity is observable in relation to healthcare. In Bondy et al's data, community care cases comprised six per cent, health cases 1.2 per cent, and mental health cases 0.4 per cent. Yet healthcare cases are the second-most common crowdfunded subject matter, with claimants often challenging proposed closures of NHS services by regional clinical commissioning groups. As discussed below, the high representation of planning and healthcare cases speaks to the types of cases for which crowdfunding has been integral – those where groups can bring otherwise inaccessible judicial reviews as part of campaigns to protect their local area. By contrast, immigration and asylum cases, which usually represent by far the most common subject matter of judicial review,[35] appear underrepresented among crowdfunded cases and are only the fourth most common subject. This highlights the types of cases where crowdfunding is less commonly used – challenges by individuals seeking redress for decisions made concerning their entitlements, as discussed below. The presence of 16 cases related to the Brexit process is indicative of the use of crowdfunding to seek government accountability through the courts on politically contentious issues, as has also been seen in the COVID-19 context.

33 Varda Bondy, Lucinda Platt and Maurice Sunkin, *The Value and Effects of Judicial Review: The Nature of Claims, their Outcomes and Consequences* (London: Public Law Project, 2015) 11.

34 Joanna Bell and Elizabeth Fisher, 'Exploring a year of administrative law adjudication in the Administrative Court' [2021] *Public Law* 505.

35 Robert Thomas, 'Mapping immigration judicial review litigation: an empirical legal analysis' [2015] *Public Law* 652; Sarah Nason and Maurice Sunkin, 'The Regionalisation of Judicial Review: Constitutional Authority, Access to Justice and Specialisation of Legal Services in Public Law' (2013) 76 *Modern Law Review* 223, 239.

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Public Body	Number of Cases Advertised
Local Councils	136
Home Office	32
Department for Health and Social Care	28
Department for Transport	17
Department for Housing, Communities and Local Government	14
Prime Minister	13
Department for Business, Energy and Industrial Strategy	8
Department for Environment, Food and Rural Affairs	8

Figure 7: Public Bodies Challenged

Public body challenged

The trends in subject matter are mirrored in the public bodies which crowd-funded challenges are directed toward. Unlike subject matter, CrowdJustice does not contain an explicit feature specifying the public body challenged, meaning this was deduced from descriptions on the fundraising pages and, where applicable, by referring to judgments.

As Figure 7 shows, 136 crowdfunding pages directed claims at local councils, totalling 33 per cent of pages. This is to be expected, given local authorities typically attract a considerable proportion of judicial review claims,[36] and particularly in light of the high rate of planning cases, typically the remit of local authorities. The individual public body most frequently challenged was the Home Office, which appeared as the proposed defendant in 32 crowdfunding pages, followed by the Department for Health and Social Care in 28 cases – a considerable number of these concerned the handling of the COVID-19 pandemic. Notably, 13 cases were directed at the Prime Minister, again indicative of the incidence of cases engaging with issues at the centre of government. This includes the successful challenge in *R (on the application of Miller)* v *The Prime Minister* (*Miller II*) declaring Prime Minister Boris Johnson's prorogation of parliament null.[37]

Locus of effects

It was instructive to categorise the data to understand the division between cases concerned solely with redressing the application of a law or policy to

36 Lucinda Platt et al, 'Mapping the use of judicial review to challenge local authorities in England and Wales' [2007] *Public Law* 545.

37 *R (on the application of Miller)* v *The Prime Minister* [2019] UKSC 41; [2020] AC 373.

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an individual decision largely affecting a single household – for instance an immigration decision where an individual has been denied leave to remain in the country – and cases seeking broader effects impacting people beyond the claimants. A categorisation was adopted based on the primary locus of the effects – that is, whether the case's potential effects are judged to be focused primarily at the individual household level, such as a leave to remain decision being reconsidered; the local or regional level, such as a grant of planning permission in a protected area being quashed; or the national level, such as central government regulations on social security entitlement being quashed. This approach accounts for local community group litigation better than, for instance, a binary approach distinguishing 'strategic' from non-strategic litigation.

Adopting this categorisation, 202 cases were recorded as primarily national in focus, with 164 primarily focused at the local or regional level, and 47 at the household level. This distribution demonstrates that crowdfunding is most commonly used for challenges seeking communal effects, whether national or local – cases seeking redress for decisions affecting individual households, such as social security or asylum decisions, are rare. Similar to the discussion on subject matter, this type of case is considerably underrepresented, given that among all judicial reviews, decisions primarily affecting individual households tend to be the most common.[38] There are several possible explanations for this disparity. The most benign, and likely the most common, is that claimants bringing cases primarily affecting a single household regarding issues like social security and immigration are more likely to be granted legal aid, meaning those claimants will need to turn to crowdfunding less frequently. Potentially more concerning though is the possibility that, as claimants must promote their case to an audience to raise money, this may prove more accessible for those with popular causes which attract public attention and claim to affect wider society or a locale. Individuals with household-level concerns may have neglected to crowdfund or been advised against crowdfunding – if, indeed, they are aware of its existence. This accords with concerns raised previously that crowdfunding might become a popularity contest which proves less accessible for less popular claimants and causes.[39] This potential effect is exacerbated by crowdfunding's close link with social media, which both gave rise to the crowdfunding phenomenon and is a crucial means to promote cases.[40] In all likelihood, the social media presence of individuals navigating the administrative justice system to address their own justiciable problems will tend to be far less significant than that of social campaigners, reducing their relative fundraising capacity.[41] Even if most difference is likely explained by access to legal aid, those who do crowdfund

38 See the discussion of 'own fact' litigants in Bondy et al, n 33 above, 22-24.
39 Tomlinson, 'Crowdfunding public interest judicial reviews' n 6 above, 179.
40 Irma Borst, Christine Moser and Julie Ferguson, 'From friendfunding to crowdfunding: Relevance of relationships, social media, and platform activities to crowdfunding performance' (2018) 20 *New Media & Society* 1396; Rodrigo Davies, *Civic Crowdfunding: Participatory Communities, Entrepreneurs and the Political Economy of Place* (Massachusetts Institute of Technology, Master of Science Thesis, 2014) 38.
41 There may be some exceptions here, for instance where the case of the individual seeking redress for their personal justiciable problem also operates as a wider test case. See for example *SSHD* v *Jake Parker DeSouza* Upper Tribunal (Immigration and Asylum Chamber) Appeal Number:

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for household-level cases often receive low funding rates, sometimes closing the fund without meeting the initial funding target. One notable example is a page by an individual who crowdfunded a case related to obtaining visas, to ensure his family would avoid deportation and separation abroad, which failed to raise enough to proceed.[42] If claimants who are already in positions of vulnerability have the lowest chance of constructing a successful crowdfunding campaign, this raises questions as to whether some claimants who are also denied legal aid will fall through the cracks altogether. By contrast, the prevalence of cases with broader goals is considerable, and indicative of the volume of legal mobilisation activity present within the data.

Litigation experience

The assessment of actors' 'litigation experience' draws upon accounts of resource mobilisation within legal mobilisation research, to distinguish experienced from inexperienced litigants. It is particularly influenced by Galanter's classical typology of 'one-shotters' and 'repeat players'.[43] According to Galanter, a one-shotter litigant has recourse to the law only on occasion, meaning that they are relatively inexperienced in legal venues. Once their individual case has exited the court system, they have no need to litigate for the foreseeable future. They also tend to be smaller and less well-resourced units than repeat players. As the legal claim a one-shotter makes is likely to be large relative to their size and resources, they are unlikely to be able to manage it routinely – the stakes are high when they go to court. By contrast, the repeat player anticipates engaging in litigation repeatedly, and has the resources to pursue more strategic and ongoing litigation campaigns. The outcome of a particular legal claim that a repeat player makes will therefore likely be smaller and less high stakes relative to their size as an organisational unit and to their resources – notwithstanding that the litigation may be of high stakes more broadly, for instance a challenge to government regulations. The repeat player may experience several advantages when litigating relative to the one-shotter.[44] For instance, repeat players can benefit from economies of scale when building a litigation record; they are also able to develop expertise and can readily access legal specialists, including through employing in-house staff. Furthermore, their bargaining reputation is more convincing than that of the one-shotter, giving them potentially greater credibility and power when liaising with and combatting litigation opponents. The repeat player may also conceptualise what is regarded as a favourable outcome differently – while one-shotters are mainly concerned with the immediate tangible outcome in the present case, repeat players may be more interested

EA/06667/2016, 14 October 2019. For discussion see Jo Shaw, *The People in Question: Citizens and Constitutions in Uncertain Times* (Bristol: Policy Press, 2020) 92-94.

42 Peter Dipnarine, 'Help my family stay in the UK and fight unfair visa fees' *CrowdJustice* 2017 at https://www.crowdjustice.com/case/fight-against-unfair-visa-fees/.

43 Marc Galanter, 'Why the Haves Come out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95, 97.

44 Notwithstanding that repeat player organisations still face structural constraints on legal opportunity.

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in the case's 'rule component' and in favourably influencing the outcomes of future cases in the field.[45]

In order to operationalise the distinction between experienced and inexperienced litigants here, actors who have commenced three or more judicial review cases in their campaign work – including cases brought without using crowdfunding – were classified as 'experienced'. This number, it is argued, indicates a more established and strategic approach to litigation. By contrast, to regard actors who have commenced two actions as 'experienced' carries greater risk of over-inclusivity, incorporating actors with disparate, reactive, and less intentional or strategic patterns of legal action. Indeed, when comparing the 11 actors who have commenced two cases to the six who have commenced three actions, the latter were considerably more established and specialised actors in their use of law. While some organisations which have commenced two cases may be developing an emerging litigation profile, at this time it would appear premature to regard them as 'experienced'.[46] The number of cases claimants have brought was ascertained using BAILII case law records, for cases reaching a full hearing, and internet searches, for cases brought which did not reach a full hearing, whether due to settlement, refusal of permission, or another reason.[47] Accordingly, leaving aside the 47 cases seeking household-level effects, 316 of the 366 remaining crowdfunding pages have been coded as being brought by inexperienced litigants, and 50 by experienced litigants. This represents an important empirical observation that is interrogated later: the majority of crowdfunded cases using law to pursue collective social aims are brought by inexperienced litigants.

From the variables discussed in this section, we can construct a picture of the types of cases to which crowdfunding is and is not well-suited. It is common for community groups to crowdfund cases with local-level effects, often challenging local councils and in relation to planning or healthcare issues. It is also common for groups mobilising law within campaigns for national social and legal reform to crowdfund litigation on topical and contentious issues, often against central government bodies. By contrast, there is an underrepresentation of individuals seeking redress for administrative decisions concerning their entitlements, particularly in sectors like immigration and asylum, and social security. These observations highlight that the use of crowdfunding is skewed towards campaigns with a communal element, to a seemingly disproportionate degree when compared with the wider judicial review landscape. The availability of crowdfunding appears to have invited inexperienced group litigants to bring cases as part of wider campaigns, such that these actors dominate the dataset. This facet of crowdfunding gives rise to concerns explored subsequently.

45 Galanter, n 43 above, 98-102.
46 Potential examples in this mould are the Transport Action Network and Safe Schools Alliance UK.
47 These searches used the organisation or individual's name alongside keywords such as 'launch/commence', 'judicial review', 'legal case/action'. Although campaigners often seek local or national media attention when launching proceedings, it is possible that a small number of claims have not been reported on online or captured in the search, and so the number of experienced groups may be slightly underreported.

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JUDICIAL REVIEW AND CAMPAIGNING

The propensity of crowdfunding cases which form part of broader campaigns seeking social change, and the importance of appealing to audiences, has resulted in case owners frequently framing their CrowdJustice pages as contributing to collective campaigns. It has also arguably provoked tensions for case owners between reporting their cases rigorously, including acknowledging the realities of the legal system, and mobilising policy campaigns. This tension is apparent in relation to both the descriptions and updates which case owners may provide to donors.

Collective framings

It is common for case owners to utilise the requirements of the crowdfunding medium to help promote their causes. Many pages' titles function to enrol prospective donors into a collective campaign to, for instance, preserve a feature valued by a local community, or overturn a government policy deemed oppressive or discriminatory. Uses of language such as 'Join' and 'Help' – employed in 16 and 36 pages respectively – convey that prospective donors can make an active contribution to a worthwhile cause. Equally, the use in 11 instances of 'No to', such as 'NO to Heathrow. YES to a Safe Climate Future',[48] and 'Defending our Democracy – Say No to Voter ID',[49] communicates that participation will help demonstrate to policymakers that the donor base will not tolerate certain actions. For locally-oriented cases, there were frequent appeals to donors to actively help to 'save' local features such as hospitals and areas of natural significance, and 'stop' their removal. The idea that contributing to a crowdfunding campaign enables donors to feel they are exercising their voice in society – whether at a local or nationwide level – has been raised elsewhere,[50] and the present data indicate that case owners may employ participatory frames to encourage donations. Similarly, 18 page titles include a hashtag, for instance '#justice4henharriers',[51] and '#NoVoteDenied'.[52] This suggests campaigns are attempting to mobilise crowdfunding's relationship with social media, connecting cases with existing media to generate a shareable campaign on multiple online fronts. There were also 27 pages which employed language of 'justice', 'just', or 'unjust' – across national, local, and household-level cases. These universal frames appeal to collective notions of right and wrong, and enable campaigns of any size to associate their particular causes with broader struggles.

48 Plan B, 'NO to Heathrow. YES to a Safe Climate Future' *CrowdJustice* 2018 at https://www.crowdjustice.com/case/no-to-heathrow/.
49 Neil Coughlan, 'Defending our Democracy – Say No to Voter ID' *CrowdJustice* 2018 at https://www.crowdjustice.com/case/defending-our-democracy-say-no-to-voter-id/.
50 Hamman, n 5 above.
51 Mark Avery, 'Justice for Hen Harriers! #justice4henharriers' *CrowdJustice* 2018 at https://www.crowdjustice.com/case/justice-for-hen-harriers/.
52 NEW EUROPEANS, '#NoVoteDenied: Ensure all EU citizens can vote in the UK EU elections' *CrowdJustice* 2019 at https://www.crowdjustice.com/case/novotedenied/. .

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Quality of descriptions

The relationship of many crowdfunded cases to broader policy campaigns is an inevitable feature of a competitive and finite funding market, and is itself relatively unproblematic – much valuable strategic litigation is brought by campaign groups with a wider policy aim, and this is far from a recent phenomenon.[53] Problems may arise in the crowdfunding context, though, where a case's framing is misleading, as conflicts of interest can arise between the need to appeal to donors and the importance of representing a case with integrity. The primary method for case owners to communicate to donors the nature of their case is writing a case description.

For each of the 413 cases in the dataset, the content of the description was analysed – categories were constructed of 'Facts', 'Policy', and 'Law', and descriptions were judged to provide 'Strong', 'Moderate', or 'Weak' descriptions in relation to each. 'Facts' regards the circumstances of the case and what the public body has done, for instance a council proposing to reduce funding for transport for children with SEND. 'Policy' relates to how the case fits into the policy field, such as what systemic problems the case reveals about the public body's conduct, how it relates to the political landscape, or any implications that leaving the conduct unchallenged might have. For instance, a case owner might claim that reducing SEND transport funding is emblematic of a council's ongoing discriminatory approach to children with SEND due to a restricted budget. Of course, judicial reviews need not be relevant to the policy landscape, but this is common within descriptions and, in mobilisation terms, can be important in gaining traction among politically engaged lay audiences. Finally, 'Law' concerns the extent to which the description explains the legal grounds, process, and potential remedies, for instance that SEND funding cuts will be challenged under the Equality Act 2010 on discrimination grounds, and that the council's consultation was inadequate. Whether a description is 'strong', 'moderate', or 'weak' on these matters does not necessarily indicate that the case has merit, rather it relates to the volume and precision of the information provided. It should be noted that this coding exercise was undertaken solely by the author, and so the distribution of cases across the categories was not independently verified by another researcher.

Accordingly, the discussion pertaining to the strength of descriptions should be viewed in this light and the analysis taken as indicative. The breakdown of cases coded in each category is presented in Figure 8.

There is a stark contrast between the coded strength of description in relation to the case facts and how it relates to policy, compared to the description provided of legal process, which is far less commonly coded as 'strong' and far more commonly coded as 'weak'. Indeed, the number of cases providing a 'weak' description of law is almost tenfold that of the cases providing a 'weak' policy description, and the number of cases providing a 'strong' description of law is less than one quarter that of the cases providing 'strong' policy descriptions. In

53 For discussion of the history of litigation brought by campaign groups, see Carol Harlow and Richard Rawlings, *Pressure Through Law* (Abingdon: Routledge, 1992).

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	Strong		Moderate		Weak	
	Number	Per cent	Number	Per cent	Number	Per cent
Facts	153	37	237	57.4	23	5.6
Policy	180	43.6	214	51.8	19	4.6
Law	43	10.4	200	48.4	170	41.2

Figure 8: Strength of Descriptions

some instances, the weak detail afforded to law is perhaps inevitable since case owners are raising initial sums for a barrister's early-stage advice, meaning there may be little information on grounds at that stage. Nevertheless, this coding indicates that donors are often persuaded to fund cases based on their relevance to policy and their emotive factual circumstances. In order to receive donations, case owners need not especially outline or justify why their case could represent an arguable judicial review claim, where for the most part the lawfulness of the decision-making procedure is subject to review rather than the substantive merit of the decision itself. This is to be expected given the aforementioned dynamics of marketing to a crowd – from that perspective, it appears logical to emphasise the emotive and politically salient features. The procedural legal grounds may appear less important for appealing to a crowd seeking to participate in bringing about change via donating.

It appears, then, that there may be a tension between providing accounts of a case's legal basis and mobilising a popular campaign. This has arguably, at times, contributed to a disconnect between whether cases have merit and whether they in fact receive funding, which is perhaps emblematic of the arbitrariness associated with market-based legal funding more broadly.[54] This disconnect is most apparent where cases with little legal merit but considerable political salience raise substantial amounts of money. For instance, the *Webster* litigation, which challenged the legality of the UK's notice of withdrawal from the EU under Article 50, raised £199,460 on CrowdJustice from 7,467 pledges.[55] Yet the claimants were refused permission and the judge declared it belonged 'firmly in the political arena, not the courts.'[56] Another politically significant but meritless case declared that 'The Coronavirus Act 2020 is Null and Void!'. It raised £79,595 from 3,452 pledges at the time of sampling,[57] and has since reached

54 See Frederick Wilmot-Smith, *Equal Justice: Fair Legal Systems in an Unfair World* (Cambridge, MA: Harvard University Press, 2019).
55 Liz Webster, 'Article 50 Challenge' *CrowdJustice* 2017 at https://www.crowdjustice.com/case/a50-chall-her-e50/.
56 *R (on the application of Webster)* v *Secretary of State for Exiting the European* Union [2018] EWHC 1543 (Admin) (*Webster*) at [24]; for further discussion see Tomlinson, 'Crowdfunding public interest judicial reviews' n 6 above, 175-176.
57 The People's Brexit, 'The Coronavirus Act 2020 is Null and Void!' *CrowdJustice* 2020 at https://www.crowdjustice.com/case/the-coronavirus-act-2020/.

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£114,101, but was refused permission on the papers,[58] and at an oral hearing.[59] This case highlights a broader problem that donors may fund cases with particular expectations of how the law will operate and what interests it will protect – expectations which are not reflected in practice. The crowdfunding page suggested that the claim would seek to repeal the Coronavirus Act itself, and there is evidence of people donating on that basis, but it did not explain how primary legislation could be overturned.[60]

Given the low profile traditionally afforded to administrative justice relative to criminal, civil, and family justice,[61] public understanding of the function and procedures of judicial review may be limited. Indeed, Nason suggests there is an absence of a 'public law culture' throughout much of the country, with the majority of lay citizens unaware of their administrative law rights.[62] Rarely do case owners – usually themselves lay persons – educate their prospective donors on the operation of judicial review, or the remedy which could reasonably be expected in the event of success. As such, as McCorkindale and McHarg have warned in relation to litigation around contentious issues like Brexit, and as the discussion above supports, lay crowdfunding donors may fund a case based on political or emotive factors unrelated to merit, without fully understanding what it could achieve or its prospects of success.[63] Harlow and Rawlings argued in 1992 that relaxing the standing rules for judicial review risked luring into court laypersons as litigants who would then become 'disenchanted' by the comparatively limited nature of the rest of judicial review proceedings, particularly the technical and procedural grounds for review, which discourage political battles. They feared this would create 'a class of disappointed litigants' whose disillusionment would undermine the authority of the judicial process.[64] Crowdfunding risks the same issue. It is not uncommon for disappointed litigants to accuse the judiciary of bias. For instance, in the aforementioned Coronavirus Act litigation, the claimants suggested while the case was ongoing that the judiciary were 'pro-British political activist', and stated after the refusal of their renewed application for permission that '[t]he Courts are actively preventing this corrupt Government being held to account for their fraudulent 'covid laws'!'[65] Marcus Ball even complained to the Judicial Complaints Commission, alleging bias against two of the judges who refused his private prosecution case against Boris Johnson.[66] This issue also arises in relation to donors. These

58 *R (on the application of Corbett, Morris, and McCrae)* v *Secretary of State for Health and Social Care and others* CO/3772/2020 (*R (Corbett, Morris, and McCrae)*).
59 *R (on the application of Morris and McCrae)* v *Secretary of State for Health and Social Care and others* [2021] EWHC 1497 (Admin).
60 See Sam Guy, 'Judicial review and Covid-19: reflections on the role of crowdfunding' *UK Administrative Justice Institute* 5 June 2020 at https://ukaji.org/2020/06/05/judicial-review-and-covid-19-reflections-on-the-role-of-crowdfunding/.
61 Nick O'Brien, 'Administrative Justice: A Libertarian Cinderella in Search of an Egalitarian Prince' (2012) 83 *Political Quarterly* 494, 494.
62 Sarah Nason, *Reconstructing Judicial Review* (London: Hart Publishing, 2016) 127.
63 Christopher McCorkindale and Aileen McHarg, 'Litigating Brexit' in Oran Doyle, Aileen McHarg, and Jo Murkens, *The Brexit Challenge for Ireland and the United Kingdom: Constitutions Under Pressure* (Cambridge: Cambridge University Press, 2021) 288.
64 Harlow and Rawlings, n 53 above, 307.
65 The People's Brexit, n 57 above.
66 Marcus Ball, 'Marcus J Ball JCIO Complaint Supperstone Rafferty' at http://bitly.ws/o9XM.

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lay citizens may participate in judicial review with the promise of social reform and political accountability, yet the procedural focus and the nature of the available remedies could fall short of lay expectations of what law can provide, especially where case owners exaggerate their accounts.[67] In some respects, this mirrors Gill and Creutzfeldt's findings concerning the legal consciousness of 'ombuds watchers'.[68] 'Ombuds watchers' are citizens who have approached the ombuds system expecting justice from their complaints and, to their shock, experienced an informal, bureaucratised process departing from their preconceptions of more formal judicial justice. In response, they have rejected the legitimacy of the ombuds system and the 'political-legal-bureaucratic establishment', regarding it as 'corrupt by design', and have mobilised to resist and seek reform of the ombuds process.[69] While judicial review is formalised, citizens who interact with and place hope in the process for the first time via donating to crowdfunding may discover that, in reality, it is not necessarily designed to deliver the substantive social changes which they hope it will and towards which some campaigns gesture.

Case updates

CrowdJustice offers a function for case owners to update donors on the crowdfunding page, separate to the case description, as the case progresses, for instance when meeting a funding target, or being granted permission. Of the 349 CrowdJustice pages which were completed at the time of sampling, 114 pages provided no such updates whatsoever, while a further 125 gave some updates but did not provide updates to the conclusion of the case. This means that, in 71 per cent of cases, the case owner did not clarify that the case had concluded. As with the above discussion on the strength of descriptions, there may be tension between maintaining a transparent account of the progress of the claim and constructing a compelling page which mobilises support. If a group is crowdfunding litigation as part of a campaign and receives a setback, it might be feared that reporting the setback could dampen the campaign's mobilisation more broadly outside of the crowdfunding context. Yet if this were the case, this would appear dishonest and lack transparency, failing to update those donors who have invested in the case how their money has been used – McCorkindale and McHarg suggest this undermines crowdfunding's democratising impact.[70] Case owners arguably have an ethical responsibility to update their donors on the page, especially since, understandably, campaigners do not receive donors' contact details from CrowdJustice, meaning that the page represents an important and accessible way to inform them.

67 See, for instance, discussion around the litigation on the state pension for '50s women': Barbara Rich, 'A #BackTo60 Setback' *Medium*, 16 September 2020 at https://abarbararich.medium.com/a-backto60-setback-634311f526f7.
68 Chris Gill and Naomi Creutzfeldt, 'The "Ombuds Watchers": Collective Dissent and Legal Protest Among Users of Public Services Ombuds' (2018) 27 *Social & Legal Studies* 367.
69 *ibid*, 380.
70 McCorkindale and McHarg, n 63 above, 288.

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This again highlights the potential incongruity of marketing a case to prospective donors and the ethical responsibilities to report that case transparently, including acknowledging unfavourable outcomes. These concerns are rooted in the recognition of patterns of litigation activity from a remarkably wide range of social campaigners. In light of indications that the profile of social litigant may be expanding, it is important to conceptualise the mobilisation of law by accounting for claimants who do not conform to the conventional image of experienced repeat player public interest litigants.

THE ROLE OF CROWDFUNDING IN LEGAL MOBILISATION

This section makes two interconnected arguments. First, it positions crowdfunding within understandings of legal mobilisation, framing it as a form of resource mobilisation while suggesting it could also be conceptualised as a privatised dimension of legal opportunity. Second, it argues that crowdfunding is a factor which has encouraged the use of law for social goals by inexperienced and local groups. It thus draws attention to an underacknowledged phenomenon – the use of law by less professionalised claimants departing from the typical national repeat player status – and constructs a typology of legal mobilisation to systematically account for this.

The 'legal mobilisation' term has been used most prominently to refer to the attempts of social movement groups to challenge the law's current state, and particularly the use of litigation as a strategy within wider campaigns for social change.[71] This body of work is often situated within two research interests: first, the direct and indirect effects of using law for these purposes.[72] Second, an interest in the structural and organisational factors driving the use of law by social actors, often social movement organisations. Such factors include the influence of political and legal opportunity structures, that is, state rules mediating access to and use of political and legal systems;[73] the availability of resources to a group;[74] and whether a group's identity means it is receptive to turning to litigation.[75] This conception of legal mobilisation, concerning the use of law by social movements in pursuit of change, is not universally adopted though, with some sociolegal scholarship applying the term even to self-interested litigation concerned purely with individual entitlement. Lehoucq and Taylor have recently argued that these points of discord have led to 'conceptual slippage'

71 Steven A. Boutcher and Holly J. McCammon, 'Social Movements and Litigation' in David A. Snow et al (eds), *The Wiley Blackwell Companion to Social Movements* (Bridgewater: John Wiley & Sons, 2nd ed, 2018) 307.

72 Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago, IL: University of Chicago Press, 1991).

73 Chris Hilson, 'New social movements: the role of legal opportunity' (2002) 9 *Journal of European Public Policy* 238.

74 Charles Epp, *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective* (Chicago, IL: University of Chicago Press, 1998).

75 Lisa Vanhala, *Making Rights a Reality? Disability Rights Activists and Legal Mobilization* (Cambridge: Cambridge University Press, 2011).

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and insufficient coherence in the literature.[76] With these concerns in mind, it is submitted that the use of legal strategies in pursuit of wider social goals – as distinct from litigation concerned only with claimants' individual entitlement – is a distinctive component of legal mobilisation, preventing it being subsumed into broader sociolegal scholarship on dispute resolution. Nevertheless, as Lehoucq and Taylor acknowledge, a clear divide between 'self-interested' claims and 'political' claims is not viable – claimants initiating claims in self-interest may develop more political goals with consequences for those beyond the specific dispute, and claims can be regarded as mobilisation even if not framed as such by the actors.[77] This is important for conceptualising the crowdfunded use of law by inexperienced and local groups.

Crowdfunding as novel resource mobilisation

The preceding analysis has indicated that crowdfunding has important implications for understanding the use of law for social goals. In many ways, crowdfunding fits naturally within conventional accounts of resource mobilisation. Broadly considered, resources encompass adequate finances to fund litigation alongside, amongst others, the capacity to generate publicity, partner with allies, and litigate repeatedly over time.[78] These accounts are influenced by Galanter's distinction between well-resourced 'haves', and 'have-nots' with fewer resources, who tend to fare comparatively less well in litigation.[79] Where legal institutions introduce restrictive rules to reduce the volumes of litigation encountered, the more formalised actors capable of understanding rights, navigating procedures, and accepting costs risks are advantaged.[80] A campaign group's 'support structure' of resources is therefore necessary, but not sufficient, for legal mobilisation.[81] Groups' professional, financial, and educational resources influence the strategies they adopt – strategies targeting the political system, like lobbying, are available only to those with professional backgrounds respected by policymakers, and litigation strategies to those with adequate finances. As such, the professionally and financially poor may only have access to extra-institutional protest.[82] Crowdfunding certainly represents a financial 'support structure' enabling groups to navigate procedural rules and access litigation, and arguably resonates with the broader conception of resources by creating opportunities to generate publicity online, partner with allies, and facilitate repeat litigation. Yet there may also be a further conceptual dimension at play. Crowdfunding is,

76 Emilio Lehoucq and Whitney K. Taylor, 'Conceptualizing Legal Mobilisation: How Should We Understand the Deployment of Legal Strategies?' (2020) 45 *Law & Social Inquiry* 166, 168.
77 *ibid*, 174.
78 Ellen Ann Andersen, *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (Ann Arbor, MI: University of Michigan Press, 2004) 5.
79 Galanter, n 43 above.
80 *ibid*, 119, 121.
81 Epp, n 74 above, 17; Lisa Vanhala, 'Is Legal Mobilization for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organizations in the United Kingdom, France, Finland, and Italy' (2018) 51 *Comparative Political Studies* 380, 388.
82 Hilson, n 73 above, 240.

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as McCorkindale and McHarg note, a response to cuts to the legal aid budget which, in contrast to the individualist philosophy of legal aid, better facilitates group litigation.[83] If, as Hilson does, we regard the availability of state legal funding as a feature of a nation's legal opportunity structure,[84] there is perhaps reason to conceptualise crowdfunding, in functioning as a response to legal aid's withdrawal, as a hybrid privatised and less structural form of legal opportunity. While not facilitated by the state, a factor key to accounts of opportunity structures, crowdfunding operates in the gaps left by the shrinking state – with the responsibility for providing public goods, including access to justice, increasingly shifted to private actors – to perform a similar function. It is certainly arguable that, as crowdfunding has become more entrenched within the litigation funding landscape, it resembles a citizen-led substitute legal opportunity. At the very least, it can be framed as a civil society response to a top-down constricting of the legal opportunity structure, and an attempt to forge open legal opportunity. Having briefly indicated some of the potential relevance of crowdfunding to understandings of law and social change, the next section makes a key argument: that crowdfunding draws attention to a broadened understanding of the types of actor mobilising law.

Expanding the gaze of legal mobilisation

As has been indicated, a core empirical puzzle of the CrowdJustice dataset has been the considerable presence of legal mobilisation activity by inexperienced and local groups, particularly relative to their representation in discussions of legal mobilisation. Even leaving aside those 47 cases concerning only the claimant's own household, the majority of crowdfunded cases have been coded as being brought by inexperienced litigants – 316 of 366 remaining cases. This is likely due to experienced NGO litigants having access to alternative funding sources, including charitable funding and membership fees or regular donations. Many cases brought by inexperienced litigants involve social actors making deliberate choices to invoke law in pursuit of their wider goals within ongoing campaigns which have otherwise sought those goals through non-litigious means. Even on a conception of legal mobilisation squarely concerned with campaigners litigating to achieve broader social purposes, then, much activity by crowdfunded actors is from inexperienced litigants. These litigants must navigate the substantive and procedural opportunity structures, and internal resource constraints, which are likely to be even more pressing than for civil society NGOs. Aspinwall notes that assumptions about mobilisation are shaped substantially by civil society organisations with capacity to draw on material resources to act as powerful public interest litigators, yet these

83 McCorkindale and McHarg, n 63 above, 287-288; see also Harlow and Rawlings, n 53 above, 115.
84 Hilson, n 73 above, 243.

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assumptions do not always hold.[85] It is understandable that legal mobilisation is often intuitively framed primarily as the use of law to pursue social change by well-established repeat player organisations. These organisations have greater capacity to litigate strategically looking beyond the tangible outcome of the specific case, and are typically regarded as the core actors able to mobilise law in social movements. Furthermore, discussions in legal scholarship which draw attention to 'public interest' litigation,[86] or 'strategic litigation',[87] may exacerbate this effect by implicitly demarcating 'strategic' cases from 'non-strategic' and self-interested cases. These discussions are useful for understanding civil society litigation patterns, but it is important not to overlook the legal mobilisation of less established groups without strategic profiles. This is a point made forcefully by the trends in the CrowdJustice dataset, where the expanded role of inexperienced litigants is observable.

Indeed, crowdfunding is arguably contributing to a broader pattern in legal mobilisation in this regard. In their study of Brexit litigation, McCorkindale and McHarg argue not only that the level of strategic litigation around Brexit was unprecedented for a single issue within a short time period, but that, in contrast to the notion of strategic litigation as being coordinated to achieve clearly defined objectives, this litigation was unusually reactive, opportunistic, and brought by various parties with diverse motivations.[88] They present courts' increasing receptiveness to strategic litigation as one reason for this unusual pattern of 'hyper-litigation', and regard the emergent availability of crowdfunding as a key factor here. Crucially, they note that this pattern, and the factors underpinning it, has spilled into other policy areas such as the pandemic response.[89] Crowdfunding, then, can clearly shape and mediate the volume and nature of access to courts for socio-political litigation, and the empirical findings presented in this article, alongside McCorkindale and McHarg's study, firmly indicate that the effect of this is to encourage the use of law for social change by scattered and diverse actors with less ongoing strategic profiles. This echoes Tomlinson's suggestion that crowdfunding may be dislodging the relatively stable and 'closed' model of conduct in 'public interest' litigation, wherein a limited number of organisations bring repeat actions, towards a model which is more 'open' to diverse actors. While this democratises and diversifies the voices which can access judicial review for social purposes, these new voices may lack the structures and well-honed practice in bringing litigation of traditional repeat litigants.[90] To some extent, the inexperience of such claimants could be mitigated as many engage experienced repeat player law firms such as Bindmans LLP, Leigh Day, and Irwin Mitchell, mirroring an observation made by

85 Mark Aspinwall, 'Legal mobilization without resources? How civil society organizations generate and share alternative resources in vulnerable communities' (2021) 48 *Journal of Law and Society* 202, 203.
86 Shami Chakrabarti, Julia Stephens and Caoilfhionn Gallagher, 'Whose cost the public interest?' [2003] *Public Law* 697.
87 Michael Ramsden and Kris Gledhill, 'Defining strategic litigation' (2019) 38 *Civil Justice Quarterly* 407.
88 McCorkindale and McHarg, n 63 above, 260.
89 *ibid*, 287, 290.
90 Tomlinson, *Justice in the Digital State* n 6 above, 32-33.

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Harlow and Rawlings in relation to disaster action coalitions and repeat player 'disaster lawyers'.[91] The role of inexperienced actors in legal mobilisation has, then, seemingly been expanded by crowdfunding's availability, which may to some extent erode the differential resource capacity between inexperienced and experienced litigants (although this relationship is not unproblematic). Irrespective of whether it has in definitive terms caused this changing shape of legal mobilisation, it has certainly increased the *visibility* of litigation as a strategy which is potentially accessible for inexperienced groups.

A core tension in the use of courts for social purposes is whether it simply provokes backlash, especially from elected wings of government, that undermines any substantive gains, such that courts have been termed a 'flypaper' luring in campaigners.[92] Harlow and Rawlings refer to this phenomenon as the government, or indeed the judiciary, 'clamping down' and 'striking back'.[93] Evidence of such pushback against the mobilisation of law via crowdfunding is arguably already emerging in England and Wales, for instance in relation to the conduct of inexperienced litigants. The claimants in both aforementioned high-profile anti-lockdown cases, *R (on the application of Dolan and others)* v *Secretary of State for Health and Social Care and another* (*Dolan*) and *R (Corbett, Morris, and McCrae)*,[94] received judicial criticism for a lack of procedural rigour in the excessive length of their court submissions. Following the claimants' poor conduct in *Dolan*, the Court of Appeal invited the Civil Procedure Rules Committee to consider amendments to the procedural rules to deter prolixity, and Swift J, the Judge in Charge of the Administrative Court, recommended several procedural changes to the Committee accordingly.[95] Having expressed such disapproval, the courts are likely to treat future litigants more harshly upon making similar errors, potentially enforcing sanctions.[96] Crowdfunding, by inviting more scattered and inexperienced public interest litigants into court who may have less regard for procedure, could thus contribute to provoking hostile reaction from elites towards legal mobilisation, resulting in more restrictive rules and attitudes towards court procedure. This is not to say that repeat player litigants are not also susceptible to procedural pushback. In a case brought alongside the Runnymede Trust challenging the government's policy for appointments to key positions in response to COVID-19, the High Court refused the Good Law Project standing to bring the claim. It noted that to confer standing on the basis of the organisation's statement of purposes – which was broadly drafted – would be akin to indicating it had standing in any public law case.[97] By contrast, the Runnymede

91 Harlow and Rawlings, n 53 above, 121.
92 Rosenberg, n 72 above, 341.
93 Carol Harlow and Richard Rawlings, '"Striking Back' and 'Clamping Down": An Alternative Perspective on Judicial Review' in John Bell et al (eds), *Public Law Adjudication in Common Law Systems: Process and Substance* (London: Hart Publishing, 2016).
94 Respectively, *R (on the application of Dolan and others)* v *Secretary of State for Health and Social Care and another* [2020] EWCA Civ 1605; [2021] WLR 2326; *R (Corbett, Morris and McCrae)* n 58 above.
95 Joseph Thomas, 'The Need for Procedural Rigour in Judicial Review Cases' (2021) 26 *Judicial Review* 7, 16.
96 *ibid*, 21.
97 *R (on the application of Good Law Project and another)* v *The Prime Minister and another* [2022] EWHC 298 (Admin) at [57]-[59].

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Trust, an organisation dedicated specifically to promoting racial equality, had standing on one ground concerning the public sector equality duty, indicating possible judicial preference for claimants with expertise in specific policy areas when bringing polycentric disputes. While approaches to standing have been relatively liberal since the 1990s, the prospect of increased judicial strictness might present difficulties for some crowdfunded claimants with less focused profiles. These developments occur against a backdrop of perceptions of a political constitutionalist turn, and hostility to polycentric litigation, in the Supreme Court under the presidency of Lord Reed.[98] This judicial pushback can be considered alongside the widely held view that the government's decision to establish the Independent Review of Administrative Law, with a policy drive towards constraining the use judicial review in socio-politically contentious cases, was in part due to its dislike for the results in the crowdfunded *Miller* cases.[99] While the Independent Review's final report, and the subsequent Judicial Review and Courts Act 2022, were more modest than many had feared from the Review's initial Terms of Reference,[100] this is not likely to be the government's final word on constricting the use of 'public interest' judicial review. These developments suggest that the operation of crowdfunding, and its effect on the types of litigants mobilising law, could have significant influence in shaping legal opportunity not only in facilitating, but also potentially constraining, access to judicial review.[101]

The CrowdJustice dataset also draws attention to local groups' use of law for social goals. Local mobilisation is often overlooked yet has implications for understanding legal mobilisation, and crowdfunding has considerable impact on its potential. As with the focus on repeat players, legal mobilisation is most often associated with civil society organisations seeking reform at the *national* level. While there have been studies of local or subnational mobilisation,[102] and which account for the contributions of local community group litigation toward wider (often environmental) movements,[103] local campaigns

98 This is a contested issue. For early discussion, see for instance Gabriel Tan, 'Children's rights and the influence of Lord Sales in the UKSC's political constitutionalist turn' (2022) 26 *Edinburgh Law Review* 93; Lewis Graham, 'The Reed Court by Numbers: How Shallow is the "Shallow End"?' *UK Constitutional Law Blog* 4 April 2022 at https://ukconstitutionallaw.org/2022/04/04/lewis-graham-the-reed-court-by-numbers-how-shallow-is-the-shallow-end%ef%bf%bc%ef%bf%bc/.

99 Mark Elliott, 'Constitutional Adjudication and Constitutional Politics in the United Kingdom: The *Miller II* Case in Legal and Political Context' (2020) 16 *European Constitutional Law Review* 625, 644.

100 Ministry of Justice, *Terms of Reference for the Independent Review of Administrative Law* 31 July 2020 at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915624/independent-review-admin-law-terms-of-reference.pdf; see Joanna Bell, 'Remedies in judicial review: confronting an intellectual blindspot' [2022] *Public Law* 200, 202.

101 Guy, n 6 above, 687.

102 For example Jacqueline Kinghan and Lisa Vanhala, *Against Persons Unknown: A case study on the use of law by self-organised groups* (London: Public Law Project, 2021); Alba Ruibal, 'Federalism and Subnational Legal Mobilization: Feminist Litigation Strategies in Salta, Argentina' (2018) 52 *Law & Society Review* 928; Aspinwall, n 85 above.

103 Lisa Vanhala, 'Shaping the Structure of Legal Opportunities: Environmental NGOs Bringing International Environmental Procedural Rights Back Home' (2018) 40 *Law and Policy* 110; Lisa Vanhala, 'Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK' (2012) 46 *Law & Society Review* 523, 543.

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generally receive less attention. This is perhaps again because they tend to be less 'strategic' in nature and may attach greater emphasis to the immediate tangible impacts of a decision for the local community than longer-term indirect gains, such as favourable legal precedents and opportunity structures. Yet as Lehoucq and Taylor note, legal mobilisation does not simply concern mobilisation by social movements as strictly defined, but incorporates other collective actors who, even if they would not be appropriately categorised as social movements, mobilise law for social goals, just as they can engage in political struggle.[104] Just as local groups can participate in collective political struggle in pursuit of social goals then,[105] so too can they mobilise law to seek those goals. Indeed, local campaigns can even be transformed into national level campaigns, which prior research on judicial review crowdfunding supports,[106] and they can resonate with and contribute to national or global movements.[107] For instance, the 'think global act local' slogan connects a worldwide attempt to combat climate change with personal and local action,[108] and was employed in the title of one CrowdJustice page in the data.[109] Ultimately, within the dataset, 164 pages were locally-oriented, many involving litigation brought with an aim to directly affect wider contexts and people not named in the dispute as part of ongoing local campaigns seeking collective extra-legal goals – local legal mobilisation is a central pattern of crowdfunding activity and should not be overlooked.

Typically, as Abbot has discussed in relation to local environmental community group participation in the planning system, such local groups 'rely heavily on voluntary action' and tend to be less professionalised than organised interest groups. They are one-shotters with limited access to financial and legal resources, particularly compared to the corporate interests they often oppose.[110] Similarly, Kinghan and Vanhala have studied the legal mobilisation of a 'self-organised', voluntary local group operating to protect sex workers in Hull, who challenged an enforcement order made by the local council prohibiting street sex work. They note how the group's experiences differed from that of NGOs given the lack of resources or corporate structure to navigate thinking about turning to law to pursue goals.[111] Legal mobilisation is, then, experienced differently by local groups with less experience and resource. Yet as Abbot identifies, and the present dataset is testament to, crowdfunding is increasingly used by local groups to access legal expertise, and goes some way towards levelling

104 Lehoucq and Taylor, n 76 above, 169.
105 For example Christopher Rootes, 'Acting locally: The character, contexts and significance of local environmental mobilisations' (2007) 16 *Environmental Politics* 722; Pierre Monforte, *Europeanizing Contention: The Protest against 'Fortress Europe' in France and Germany* (Oxford: Berghahn, 2014) 14.
106 Guy, n 6 above.
107 For discussion of local campaigns and multi-scalar framing, see Chris Hilson, 'Framing Fracking: Which Frames Are Heard in English Planning and Environmental Policy and Practice?' (2015) 27 *Journal of Environmental Law* 177.
108 See Sheila Jasanoff, 'A new climate for society' (2010) 27 *Theory, Culture & Society* 233, 241.
109 Matthew Dunne, 'Think Global, Act Local: Fight Fossil Fuel Power Generation in Exmouth' *CrowdJustice* 2020 at https://www.crowdjustice.com/case/exmouth/.
110 Carolyn Abbot, 'Losing the local? Public participation and legal expertise in planning law' (2020) 40 *Legal Studies* 269, 272-273.
111 Kinghan and Vanhala, n 102 above, 16.

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Locus of Effects

Litigation Experience	Local	National
Inexperienced	Local community group	Emerging social reformer
Experienced	Local pressure group campaigner	Established civil society organisation

Figure 9: Typology of legal mobilisation actors

the playing field with repeat player opponents.[112] Crowdfunding represents a potentially transformative shift in the capacity of laypersons to organise their disparate, limited resources and to use law to achieve gains vis-à-vis local authorities and, indirectly, private interests. Relatedly, while the Good Law Project has typically focused on high-profile national strategic litigation, it has begun to litigate on localised issues by challenging particular local authorities,[113] further indicating that to ignore the local in the mobilisation of law is to miss crucial changing dynamics in litigation patterns.

Towards a typology of legal mobilisation actors

Drawing these observations together, a typology can be constructed to systematically categorise legal mobilisation actors by their primary locus of effects and litigation experience. This is demonstrated in Figure 9 above.

As such, we can ask the 'who', 'where', and 'why' of legal mobilisation – that is, who mobilises law, whether repeat players or one-shotters; at what level of the state do they mobilise; and what are their motivations (local or national outcomes).[114] This can structure how we view crowdfunding, but is also of use for legal mobilisation more broadly in drawing attention explicitly to actors outside of the traditional NGO image, in terms of experience, resource, and geographic scale. Hilson argues that space and place matter to the use of law for social change – that '[g]eography is, in other words, crucial to legal mobilization'.[115] There is a parallel here with Bouwer's argument concerning climate litigation, that understandings of that field ought to embrace greater breadth and complexity, to account for local and smaller scale litigation, both because these cases can have broader social effects, and because climate change requires

112 Abbot, n 110 above, 283.
113 'Children in care' *Good Law Project* 2021 at https://goodlawproject.org/news/children-in-care/.
114 For a similar approach see Navraj Singh Ghaleigh, '"Six honest serving-men": Climate change litigation as legal mobilization and the utility of typologies' (2010) 1 *Climate Law* 31, 36, 38.
115 Chris Hilson, 'Framing the Local and the Global in the Anti-nuclear Movement: Law and the Politics of Place' (2009) 36 *Journal of Law and Society* 94, 109.

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multi-level responses, including local ones.[116] Local campaigns have much to add to understandings of mobilisation across different scales, and should be accounted for accordingly. Each ideal type is explored and applied below in the context of the CrowdJustice dataset.

The Local Community Group

This category comprises inexperienced litigants operating at the local level. As disparate as the crowdfunding field is, this could be argued to be the 'typical' form of crowdfunded legal mobilisation. In the dataset, 163 CrowdJustice pages fall within this category, and these pages raised a sum total of £1,417,687 from 32,227 pledges. As such, the average value of each pledge is £43.99. Unsurprisingly, this field is dominated by environment and planning cases, representing 111 of 163 pages. Claimants tend to be active members of local communities, with the litigation often part of wider extra-legal campaigns challenging the relevant issue and preserving communal resources. They may, for instance, have mobilised initially by protesting, responding to consultations, and participating in *ex ante* political processes in the planning context.[117] Yet while the broader campaign may be ongoing, claimants are legally inexperienced, resource-poor volunteers, and are unlikely to litigate repeatedly.

The Local Pressure Group Campaigner

In sharp contrast to the category above, actors within this type – locally-oriented experienced litigants – are almost entirely absent from the data at present. This may be because, to date, community groups that have mobilised law to advance local goals have not needed to take further judicial reviews. It is certainly possible that some groups would litigate again in future, encouraged by their initial experience.[118] One claimant group arguably falls within this category, namely SAVE Britain's Heritage, a conservation organisation campaigning for the preservation of historic buildings.[119] While the organisation is a national repeat player voice in the heritage sector, it often brings legal actions in relation to specific buildings and might be said to concern primarily local effects. The organisation crowdfunded one judicial review challenging the Secretary of State for Communities and Local Government's refusal to 'call in' a planning application concerning the Paddington Cube development.[120] The case raised £2,835 from 72 pledges.

116 Kim Bouwer, 'The Unsexy Future of Climate Change Litigation' (2018) 30 *Journal of Environmental Law* 483, 486, 499.
117 See Abbot, n 110 above.
118 For indication of this, see discussion in Guy, n 6 above.
119 SAVE Britain's Heritage, 'About Us' at https://savebritainsheritage.org/about-us.
120 SAVE Britain's Heritage, 'Stop the Paddington Cube – SAVE appeals for judicial review costs' *CrowdJustice* 2017 at https://www.crowdjustice.com/case/stop-the-paddington-cube/.

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The Emerging Social Reformer

This category concerns inexperienced litigants seeking national-level effects, and incorporates a diverse range of actors operating in various policy fields. 153 cases were identified here, raising a sum of £5,384,855 – this is almost four times the sum in the local community group category despite containing 10 fewer cases. This is because a considerable proportion of the outlying cases raising the largest sums are located in this category. The sum total number of pledges was 172,970, with the average pledge value totalling £31.13, around £10 lower per donation than for local community groups. It is possible that citizens who are locally affected by an issue are more inclined to donate a higher value than broader national causes, which may be of less direct concern and for which donations may be more purely altruistic.

Although the broader policy campaigns here may be reasonably well-established and may continue outside of the court after the judicial review, claimants are inexperienced litigants. It is, though, possible that some may return to litigation in future given its greater accessibility due to crowdfunding, and could thus gain experience. This category has some resonance with Harlow and Rawlings' discussion of 'litigation coalitions', that is, groups of individuals who unite to litigate on a common grievance. These coalitions can be ephemeral but need not be, and may seek to further their causes outside of the litigation sphere at the same time as preparing for legal action.[121] Campaigns in this category are often volunteer-led, and while some are professionally staffed, this is unlikely to include staff with legal strategy experience. Some cases are brought on the most salient and contentious political issues of the day, such as Brexit and Scottish independence,[122] and a minority of cases may be accused of seeking to resolve purely political issues in court. This is displayed most starkly in the refusal of permission in *Webster*, with the claim declared 'hopeless' and 'Totally Without Merit' given the debate belonged in the political realm.[123] Certain cases in this category, being both high-profile and conducted by unreliable actors, are also among those most likely to provoke hostility and procedural or substantive pushback from judicial and government elites, such as the aforementioned cases of *Dolan* and *R (Corbett, Morris, and McCrae)*. In the crowdfunding context, this category appears especially susceptible to the concern that donors may be persuaded to donate based on political salience rather than through any justification on the CrowdJustice page as to a case's merit.

The Established Civil Society Organisation

The final category concerns experienced groups operating on policy issues at the national landscape, often challenging the legality of government policies and practices themselves, providing a systemic focus. 49 cases were identified within this category, raising a combined £2,057,797 from 75,297 pledges, meaning the average pledge in this category is £27.33. Again, the average pledge appears to

121 Harlow and Rawlings, n 53 above, 113, 120.

122 Respectively, see Webster, n 55 above; Forward as One, 'People's Action on Section 30' *CrowdJustice* 2020 at https://www.crowdjustice.com/case/pas30/.

123 *Webster* n 56 above at [24]-[25].

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be lower in national than local cases. The category incorporates organisations that were repeat player litigants prior to their use of crowdfunding, who use crowdfunding as an additional targeted source of funding for litigation, alongside existing income streams for general activities. These organisations include Liberty and the Joint Council for the Welfare of Immigrants. Such established groups tend to have well-honed practices in the process of bringing claims, and some have in-house lawyers within their professionalised staff team. As discussed, this professionalisation and legal resource is atypical of the crowdfunding field. The category also incorporates more recent organisations that have begun litigating for the first time using crowdfunding and have then litigated repeatedly, gaining influence in their policy areas as a result. Most notably, the aforementioned Good Law Project has secured a number of substantive policy gains through crowdfunded cases, building a strategic litigation profile across various core themes,[124] and has considerably expanded its professional staff team. Wild Justice is another noteworthy group which has developed a litigation profile due to the availability of crowdfunding, pledging to 'stand up for wildlife using the legal system and seeking changes to existing laws'.[125]

CONCLUSION

This article has provided an empirical account of the crowdfunding field within the judicial review context, beginning to consider the diverse implications of this novel resource for the shape and character of legal mobilisation. A central argument in this regard has been that the dataset indicates crowdfunding invites into court social actors from outside the traditional image of legal mobilisation, with inexperienced groups and local-level groups dominating mobilisation activity – a typology accounting for these dimensions of experience, resource, and scale has been presented accordingly. By way of conclusion, it is useful to reflect on this core theme running through the article – the prominence of campaigning in crowdfunding appeals. The article has highlighted the variability in levels of funding, suggesting that the likelihood of cases being funded is influenced as much by factors such as an emotive factual context or political saliency as it is the merit of the case. In some, although by no means all, cases, this emphasis may conflict with values of integrity, transparency, and honesty, with considerable variability in the ways that these campaigns are conducted. Considered alongside a donor base which is often politically motivated but which may lack consciousness of the administrative justice system, this risks a disillusioning disconnect between donors' expectations and the soberingly technical reality of judicial review, particularly when encouraged to attach hopes of social change to cases which are filtered out at an early stage. In light of this, there may be questions raised as to the light touch approach which CrowdJustice takes to

124 Good Law Project, 'All issues' at https://goodlawproject.org/issues/. See also Jolyon Maugham QC and Gabriella De Souza Crook, 'Neither too early nor too late: Goldilocks litigation in the climate space' (2021) 22 *Environmental Law Review* 263.

125 Wild Justice, 'About Wild Justice' at https://wildjustice.org.uk/about/.

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regulating cases – that is, a case is allowed on the site if a lawyer has agreed to represent the claimant, with minimal oversight of the content posted. Any discussion of regulation ought to be attentive to establishing a baseline level of transparency and disclosure in the information provided by case owners to prospective donors, in particular the legal arguments to be advanced and remedies sought. Yet what must also be emphasised in discussions as to the appropriate response to crowdfunding is that, in a hostile and expensive landscape for judicial review litigation, with a vastly reduced legal aid budget, crowdfunding does facilitate access for communities and organisations that seek accountability from local or central government, but may otherwise be deterred from litigating due to lack of resource. In many cases, this has resulted in valuable substantive gains. Furthermore, far from most claimants finding fundraising simple, it is very often the case that crowdfunding generates relatively limited amounts of money, and claimants are reliant on other mechanisms alongside it, such as costs-capping and conditional fee or pro bono legal representation. With the use of the crowdfunding model increasing in popularity, and a small minority of cases causing controversy, discussion of the phenomenon must be placed in the context of a wider judicial review landscape often inhospitable to, and bereft of funding for, collective uses of law.

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