



Environmental Rights Centre for Scotland

# Business Plan – 2021 update

September 2021



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## 1. Executive summary

The Environmental Rights Centre for Scotland (ERCS) was initiated by [Scottish Environment LINK](#) (LINK) in January 2020. This is an operational update to our first Business Plan July 2020 and covers the period from July 2020 to December 2022. Its purpose is to provide clarity for the organisation, prioritise tasks in these start-up years, and demonstrate to supporters, funders and stakeholders that there is a solid understanding and vision for ERCS. A full review of services will be undertaken in the autumn of 2022 to inform a new three-year strategic plan.

ERCS was [registered as a Scottish Incorporated Charitable Organisation](#) (SCIO) on 3 July 2020 and became fully independent from LINK as its parent charity on 1 July 2021.

***Our vision is of a Scotland where every person's right to live in a healthy environment is fully realised.***

We identify three needs in Scotland that ERCS can respond to:

- to advance the substantive right to a healthy environment;
- to address systemic environmental governance and procedural problems;
- to meet the opportunities of the new human rights framework and challenges arising from Brexit and Covid-19.

Our mission is to assist members of the public and civil society to understand and exercise their rights in environmental law and to protect the environment. We will do this through:

- public education to increase awareness of legal rights and remedies in environmental matters;
- advice, assistance and representation to improve public participation in environmental decision-making;
- advocacy in policy and law reform to improve environmental law and access to justice on the environment; and
- strategic public interest litigation to enforce progress on key environmental issues and tackle systemic environmental problems.

This plan summarises our programme priorities and strategic development and identifies an operating budget of approximately £151,000 in 2021/2022 increasing to £172,000 in 2022/23. With this, we are confident that ERCS can make a significant impact in terms of increasing confidence and expertise within communities and environmental non-governmental organisations (eNGOs) to strengthen environmental democracy. ERCS can also play an important role in the incorporation of environmental rights in Scots law; and in reducing barriers, in terms of cost and uncertainty, to pursuing legal remedies for breaches of environmental law. Our long-term goal is a shift in culture: with improved participation in decision-making, reform and enforcement of environmental laws, and better outcomes for people and the environment.



## 2. Organisation overview

### 2.1 Organisation details

The Environmental Rights Centre for Scotland (ERCS) was [registered as a Scottish Charitable Incorporated Organisation \(SC050257\)](#) on 3 July 2020. It was initiated by [Scottish Environment LINK \(LINK\)](#) in January 2020 and remained ERCS's parent charity until the 30 June 2021, with full transfer of financial and employer liabilities effective as of 1 July 2021. LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee and without a share capital (SC250899).

### 2.2 History

Founded in 1987, LINK is the forum for Scotland's voluntary environmental community, with over 40 member bodies representing a broad spectrum of interests with the common goal of contributing to a sustainable society. LINK is core funded by membership subscriptions and grants from charitable trusts, NatureScot and Scottish Government.

LINK has long recognised the importance of the credible threat of legal action in upholding environmental rights and enforcing environmental protection, as well as the myriad difficulties of legal redress for communities and environmental non-governmental organisations (eNGOs). In 2015 it formed the Legal Strategy Subgroup to help support the work of LINK members and campaign to improve Scottish Government's compliance with the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.<sup>1</sup>

Drawing on this work, the Legal Strategy Subgroup commissioned a Feasibility Study<sup>2</sup> in March 2018 which underpins the case for an Environmental Rights Centre for Scotland as an independent organisation to provide four programmes of work: dedicated public education; advice; advocacy in policy and law reform; and strategic public interest litigation. In 2019, LINK was delighted to be awarded £120,000 over three years (2020-2022) by the Joseph Rowntree Charitable Trust to start this initiative with two part-time workers appointed in January 2020.

### 2.3 Organisational structure – governance and management

ERCS is a Scottish Charitable Incorporated Organisation with a two-tier [Constitution](#). The Constitution was formally adopted on 1 September 2020. Membership is free for any person aged 16 or over who agrees with our vision and charitable purposes which are reflected in our mission and values. As at September 2021, ERCS had 66 members.

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<sup>1</sup> Aarhus Convention (1998) [Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters](#)

<sup>2</sup> Christman/Scottish Environment LINK (2018) [Report on the Feasibility of an Environmental Rights Centre for Scotland](#)



The maximum number of charity trustees is 12: LINK has two nominated places and there is provision for two co-opted positions, with the remaining eight open to membership election. As of September 2021, the Board comprises nine trustees who are not remunerated.

## Trustees

The initial Board consisted of members from the LINK Legal Strategy Subgroup who have combined work experience in the most prominent environmental non-governmental organisations in Scotland as well as grassroots community activism and the law. Following a skills audit in September 2020, an open recruitment process was instigated to attract trustees from disciplines outside the environment sector, and we now have trustees with expertise and experience of advancing children's rights and addressing health and systemic inequalities. A treasurer with extensive experience as a fundraiser was appointed in April 2021. The considerable skill set of the Board ensures that ERCS has the strategic leadership and the highest standards of governance to become a successful SCIO.

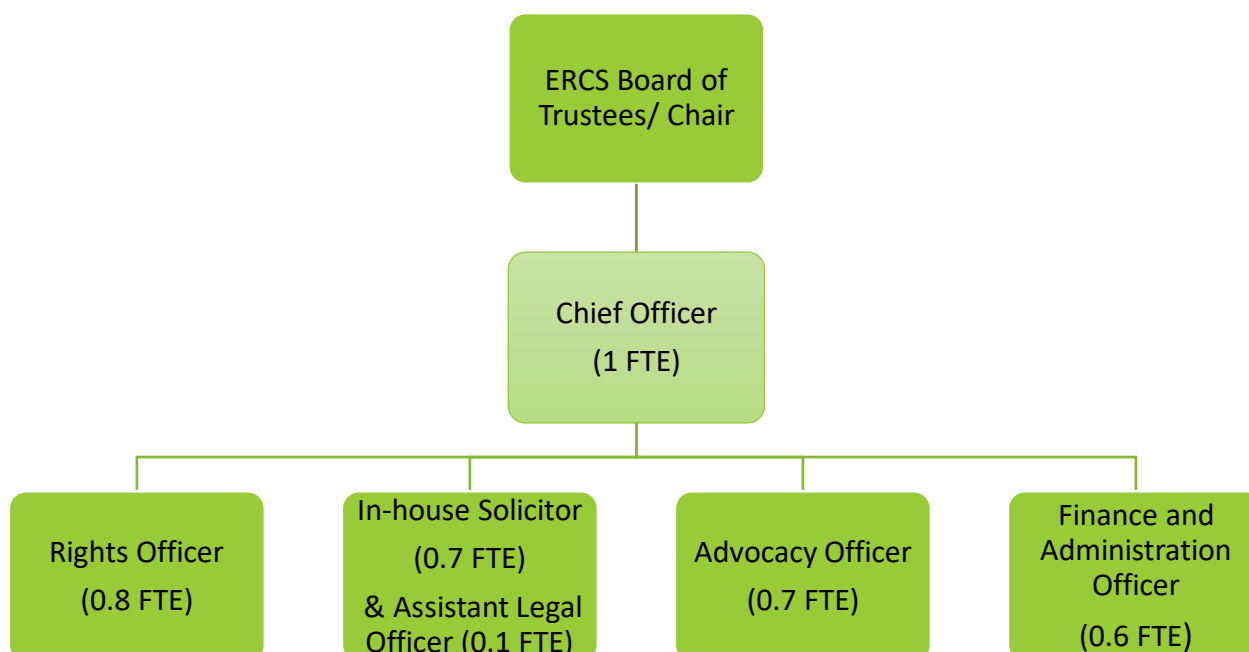
In addition, ERCS has members who are associates, asked to offer their expertise and inform ERCS's work from their policy work, professional practice or interests; develop external relationships; and facilitate wider connections across civil society and the policy arena. Associates, unlike trustees, maintain their independence from ERCS and there is no expectation that they will represent the detailed advocacy positions of ERCS externally, nor share all the views expressed by ERCS. Nominations for associate membership can be put forward by the Chief Officer or any trustee and appointment is by a majority vote by the Board of Trustees. There is no fixed term or limit.

[Short biographies of the trustees, associates and staff team](#) can be found on the website.

## Staff team

The initial staff team of Development Manager and Programme Manager (comprising a total 1.2 full-time equivalent 'FTE') was appointed in January 2020 on a one-year contract reporting to the LINK Chief Officer/ trustee. As a result of exceeding the fundraising targets set out in the Business Plan July 2020, ERCS staff team has steadily grown. An Advocacy Officer and Administrator joined the team in August 2020. In January 2021 the Development Manager was appointed Chief Officer and the Administrator was promoted to Finance and Administration Officer in April. Our In-house Solicitor joined the team in June to replace the post of Programme Manager.

With a grant from the Scottish Government's Equality and Human Rights Fund to run from October 2021 for three years, the team will further grow to 3.9 FTE. This includes an increase in hours for the Chief Officer and Advice Service, and the recruitment of a Rights Officer. This staff structure (see Figure 1) exceeds the optimum scenario envisaged last year and provides a strong foundation to take our three work programmes forward for public education, legal advice and advocacy.



*Figure 1: ERCS organisational structure from January 2022*

### Student placements

From September 2021, ERCS will also pilot taking student work placements and/or paid interns to undertake small pieces of work. In all circumstances, ERCS acknowledges that placements require considerable commitment to provide appropriate support and supervision, offer opportunities for building networks and a variety of work experience to gain knowledge of the sector.

There are two strategies for working with student work placements and/or paid interns.

#### **I. Student work placements on Masters courses in partnership with a university**

There are a number of research projects that ERCS wishes to explore – either in partnership with other academics or commissioned, and this could be a valuable resource to undertake preliminary scoping and literature reviews. It is also an opportunity for ERCS to encourage post-graduate students to take an interest in the field of environmental justice and ‘cultivate’ and ‘grow’ our profession.

With this objective, student work placements will be considered if on Masters courses where a placement is part of the academic course and where a written project is an output that can be supervised by ERCS to a suitable academic standard.



## II. Paid internships as part of a recognised scholarship scheme

ERCS is also committed to encouraging interest in the sector from individuals from diverse backgrounds and paying the real living wage to increase opportunities for people from low-income and disadvantaged backgrounds. This is noted in our Pay, Remuneration and Pension Policy.<sup>3</sup>

With this objective, ERCS will participate in in the [Robertson Scholar Internship Scheme](#) (or a similar scheme which supports the real living wage) through which we would host a summer intern in their third year of university. Placements will be supported to participate in the Advocacy work programme and day to day operations.

### 2.4 Vision and purpose

***Our vision is of a Scotland where every person's right to live in a healthy environment is fully realised.***

There is a clear unmet need within communities and civil society relating to the understanding of legal rights and remedies in environmental matters. At the same time, the environment has 'no voice' in the Scottish courts and relies on individuals, communities and eNGOs to be that voice.

Our purpose is to increase the capacity and opportunity of individuals, community groups and organisations to challenge environmental injustice at neighbourhood, local authority and national levels. We promote environmental justice in two ways:

- **substantive:** by advocating for law reform, policies and practices that support the equitable distribution of environmental benefits, burdens and responsibilities; and
- **procedural:** by working for meaningful participation in decision-making and for fair, timely and affordable access to legal remedies.

### 2.5 Mission statement and values

Our mission is to assist members of the public and civil society to understand and exercise their rights in environmental law and to protect the environment. We will do this through:

- public education to increase awareness of legal rights and remedies in environmental matters;
- advice, assistance and representation to improve public participation in environmental decision-making;

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<sup>3</sup> Real living wage: ERCS is fully committed to the paying, at all times, of at least the [Real Living Wage](#) for all its staff. This is based on the real cost of living, including everyday needs, which is calculated annually by the Resolution Foundation and overseen by the [Living Wage Commission](#). Whilst this will apply across all employees of ERCS it is envisaged this will specifically (but not exclusively) be the recognised rate when ERCS employs Interns.



- advocacy in policy and law reform to improve environmental law and access to justice on the environment; and
- strategic public interest litigation to enforce progress on key environmental issues and tackle systemic environmental problems.

ERCS understands environmental law to include law relating to land-use planning, climate change, pollution control, environmental health, the conservation of biodiversity, and any other field (e.g. cultural heritage, transport, energy) to the extent that it impacts on the natural environment in Scotland.

Our operating values and principles are to be:

- Open, accessible and approachable in how we offer our services
- Respectful, collaborative and enabling in how we deliver our services
- Evidence-based and assertive in how we advocate for policy and law reform
- Trusted and authoritative in how we pursue environmental rights and litigation.

### 3. Strategic analysis

#### 3.1 The need and demand for our services

The political context into which ERCS entered is dynamic and challenging and the nature of demand is complex, particularly with the impacts of Brexit and Covid-19. The key factors that shape modern Scotland and questions of environmental justice include its distinct legal system, its institutions and land ownership. The new initiatives under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, including the creation of [Environmental Standards Scotland](#) as the new environmental governance organisation, will take time to develop. There are also developments of planning law and practice in the UK and Scotland – all of which require scrutiny. The operating environment will be regularly reviewed by the Board and ERCS activities will need to adapt to the differing pace of demands, public engagement with environmental issues and the fundraising climate. Notwithstanding, the three reasons why ERCS is needed remain clear and we see them as follows.

##### 1. To advance the substantive right to a healthy environment

The United Nations Special Rapporteur on human rights obligations related to the enjoyment of a safe, clean healthy and sustainable environment identifies six substantive elements as a fundamental human right: ‘clean air, a safe climate, access to safe water and adequate sanitation,





healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems'.<sup>4</sup>

As well as tackling the global climate and nature emergencies,<sup>5</sup> there are a number of substantive environmental problems in Scotland. Many people, particularly living in areas of highest deprivation, suffer from air pollution,<sup>6</sup> poor environmental quality,<sup>7</sup> poor access to good quality greenspace,<sup>8</sup> and close proximity to vacant and derelict land,<sup>9</sup> exacerbating existing health inequalities. The most vulnerable in our society (including children, older people elderly, people with health problems) are hardest hit by environmental stressors such as pollution and chemicals. In addition, socially disadvantaged groups are less resilient to the impacts of climate change, such as severe weather events, because they have fewer resources to adapt and recover.<sup>10</sup>

Rules are in place to protect the environment but, without a credible threat of a legal challenge from communities and eNGOs, unlawful decisions can be made. Taking legal action should be a means of last resort to overturn such decisions, but the Scottish legal system makes it extremely difficult to hold government and other public bodies to account over harm to the environment. Scotland's distinct legal system lags behind England and Wales in developing a public law culture, and there remain significant barriers to public interest litigation.<sup>11</sup> This means public interest legal action on the environment is rarely taken.

Those eNGOs who have worked with communities in Scotland to take forward a small number of legal challenges and/or public interest interventions are either involved in or support ERCS to increase collective capacity by providing free legal services in public interest environmental law.

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<sup>4</sup> United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)

<sup>5</sup> IPCC (2021) [IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel of Climate Change](#); IPCC (2018) [IPCC Special Report: Global warming of 1.50c](#); State of Nature Partnership (2019) [State of Nature 2019 report](#)

<sup>6</sup> Ricardo Energy & Environment, Air Quality in Scotland Website (accessed 7 Jun 2021) [Air Quality Management Areas](#); Ricardo Energy & Environment, Air Quality in Scotland Website (accessed 7 Jun 2021) [Standards: Air Quality Standards and Objectives](#)

<sup>7</sup> Keep Scotland Beautiful (2017) [Local environmental quality in decline, Further analysis by Keep Scotland Beautiful](#)

<sup>8</sup> greenspace scotland (2018) [The Third State of Scotland's Greenspace Report, February 2018](#)

<sup>9</sup> Scottish Government (2020) [Scottish Vacant and Derelict Land Survey 2019](#); Scottish Land Commission Website (accessed 28 Aug 2021) <https://www.landcommission.gov.scot/our-work/housing-development/vacant-and-derelict-land>

<sup>10</sup> European Environment Agency (2020) [Healthy environment, healthy lives: how the environment influences health and wellbeing in Europe](#)

<sup>11</sup> Human Rights Consortium Scotland (2018) [Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland](#)



## 2. To address systemic environmental governance and procedural problems

The procedural elements to our human right to a healthy environment are access to information, public participation, and access to justice and effective remedies.<sup>12</sup>

Scotland's distinct legal system and Scottish devolution have resulted in a growing and complex body of Scottish environmental law as Holyrood integrates international and European Union (EU) Law. Rhetoric of world leadership often accompanies these laws yet in practice, implementation falls far short.<sup>13</sup>

Systemic governance issues include limited public participation in the planning system,<sup>14</sup> poor enforcement of planning and nature conservation law,<sup>15</sup> the absence (in the main) of any system of substantive review, and the prohibitive expense to challenge potentially unlawful environmental decisions.

The playing field in environmental disputes is far from level, particularly in the Scottish planning system where local communities' resources and experience are far outweighed by those of developers, and no third-party right of appeal exists. People with protected characteristics, compounded with socio-economic disadvantage and place-based deprivation are furthest removed from participation and influence in local decision-making, contributing to systemic discrimination.<sup>16</sup>

Further, on the grounds of prohibitive expense, Scotland has repeatedly been found in breach of the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. This was reconfirmed in the latest progress review by the Convention's Compliance Committee in August 2021.<sup>17</sup>

The unmet need identified by LINK members, the 2018 ERCS feasibility study, and the feedback from grassroots community networks such as [Planning Democracy](#) point to the ongoing (as well as potentially untapped) demand for a responsive free legal advice service. In providing this, and public education on environmental rights to communities and equality groups, ERCS can play a key role in helping to level the playing field in environmental decision-making and challenges.

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<sup>12</sup> United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)

<sup>13</sup> Scottish Environment LINK (2011) [Scotland's environmental laws since devolution – from rhetoric to reality](#)

<sup>14</sup> yellow book ltd (2017) [Barriers to community engagement in planning: a research study](#)

<sup>15</sup> Scottish Environment LINK (2015) [Natural Injustice: A review of the enforcement of wildlife protection legislation in Scotland](#)

<sup>16</sup> Social Renewal Advisory Board: Independent report to the Scottish Government (Jan 2021) [If not now, when? – Social Renewal Advisory Board report](#)

<sup>17</sup> Aarhus Convention Compliance Committee (Aug 21) [Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I and Part II](#)



### 3. To meet the opportunities of the new human rights framework, and challenges arising from Brexit and Covid-19

Last year, three key areas of opportunity and risk made the need for specialist input to promote effective environmental policy and law reform particularly pressing: the anticipated incorporation of environmental rights in the proposed new statutory framework for human rights in Scotland, Brexit and Covid-19.

Following the recommendation from the First Minister's Advisory Group on Human Rights Leadership for the incorporation of the right to a healthy environment in the new human rights framework,<sup>18</sup> and consequent recommendations from the National Taskforce for Human Rights Leadership in March 2021: that the right be incorporated 'with substantive and procedural elements',<sup>19</sup> there is significant opportunity to help shape and influence how this is established in law, build the capacity to realise these rights in practice, and monitor implementation.

Most of the UK and Scotland's environmental laws come from the European Union, therefore the UK's exit from the EU risks both the deterioration of existing environmental laws, and a loss of alignment with EU standards as it brings in new laws to respond to emerging environmental challenges. Crucially, we no longer have the supervisory role of the EU Commission and access to the European Court of Justice to hold government to account on environmental issues.<sup>20</sup> This year, ERCS welcomed the establishment of [Environmental Standards Scotland](#), the new independent body to ensure Scotland has high environmental standards, strong systems which maintain them and prevent enforcement gaps arising from Brexit. With introductions already having taken place, we hope to become a key referral source to test their powers both of monitoring the effectiveness of environmental law and of public authorities' compliance with it.

Covid-19 has demonstrated how human rights and environmental protection are inextricably linked,<sup>21</sup> with mounting evidence that biodiversity loss and climate change make pandemics more likely.<sup>22</sup> The pandemic lockdown simultaneously brought in to focus the importance of local greenspace for our health and wellbeing, as well as the sharp inequalities in accessing nature and

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<sup>18</sup> First Minister's Advisory Group on Human Rights Leadership (2018) [Recommendations for a new human rights framework to improve people's lives, report to the First Minister](#)

<sup>19</sup> National Taskforce for Human Rights Leadership (Mar 2021) [The National Taskforce for Human Rights Leadership Report](#), Recommendation 2

<sup>20</sup> (Gemmell/ Scottish Environment LINK (2019) [Environmental Governance: effective approaches for Scotland post-Brexit. Final Report, October 2019](#)

<sup>21</sup> Morgera and Miller, University of Strathclyde (28 May 2020) [COVID-19, Environmental Protection & Human Rights Leadership](#)

<sup>22</sup> Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services (IPBES) (2020:2) [Workshop Report on Biodiversity and Pandemics](#),



good quality greenspace.<sup>23</sup> In our unequal society, it is imperative that we work to make our spaces greener, healthier and wilder as a right for all.

In summary, there is no organisation in Scotland that provides accessible and professional public education, and advice and representation services in environmental and related planning law. Neither is there a dedicated organisation to act as the knowledge hub to inform advocacy in policy and law reform, nor pursue public interest litigation to ensure environmental standards are upheld or improved where necessary. Uniquely, through its programmes of work, ERCS can respond to these needs and opportunities.

### 3.2 SWOC analysis

From the Business plan July 2020, Table 1 reproduces the summary SWOC (strengths, weaknesses, opportunities, challenges) analysis of our work including political, economic, social, technological, environmental and legal factors. In the first 18 months of ERCS's operations, while the external challenge remain, it is reassuring to note that the strengths and opportunities have consolidated and the weaknesses mitigated.

Table 1: SWOC analysis

INTERNAL STRENGTHS	INTERNAL WEAKNESSES
<ul style="list-style-type: none"> <li>• ERCS is the only community-focused expert in environmental law in Scotland.</li> <li>• Covid-19 and reduced social engagement suggests increased demand for ERCS's on-line public education content.</li> <li>• No Scottish eNGO employs an in-house lawyer or provides our programme of advice, assistance and representation.</li> <li>• ERCS's programmes of work offer flexibility in how we respond to the political climate and communities' needs.</li> <li>• ERCS provides a mechanism to help Scotland comply with Art.9(5) of Aarhus Convention.</li> <li>• ERCS's focus on substantive and procedural environmental justice is politically opportune and intersects with community empowerment discourse, land reform, human rights and reducing health inequalities.</li> <li>• LINK members offer the policy and scientific expertise to support ERCS work.</li> </ul>	<ul style="list-style-type: none"> <li>• This is a new initiative which involves learning organically and writing the rule book as we go along.</li> <li>• Starting at zero with limited capacity.</li> <li>• Governance structures will take a year to establish.</li> <li>• Operational structures will take a year to establish.</li> <li>• The demand for our services is potentially too big for current resources – need to manage expectations and ensure quality control of outputs.</li> <li>• As a new organisation, offering a new service, it will take time to develop our partnerships and collaborations.</li> <li>• Need additional resources to operationally respond and strategically develop all four programmes of work.</li> </ul>

<sup>23</sup> Public Health Scotland (PHS): Social Systems Recovery Environment and Spaces Group (Mar 2021) [COVID-19 Green and Open Space Use in Autumn 2020](#); PHS Social Systems Recovery– Environments and Spaces Group Report (August 2021) [Priorities for pandemic recovery](#); greenspace scotland Website (accessed 3 Oct 2021) <https://www.greenspacescotland.org.uk/News/greenspace-use-brings-mental-health-benefits-but-access-is-unequal>  
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<ul style="list-style-type: none"> <li>LINK members and their networks are a 'captured audience' for our services which we can build on.</li> </ul>	
<p><b>EXTERNAL OPPORTUNITIES</b></p> <ul style="list-style-type: none"> <li>Pre-Covid-19 there was increased funding for environmental matters reflecting growing engagement with climate change and biodiversity loss.</li> <li>Pre-Covid-19 more non-environmental organisations were wanting to learn about environmental matters.</li> <li>Brexit leaves a scrutiny/accountability gap that ERCS can help to fill.</li> <li>Incorporation of environmental rights in the new statutory framework for human rights offers opportunities for ERCS.</li> <li>ERCS can build partnerships with other rights-based groups to inform the new statutory framework for human rights.</li> <li>Covid-19 reinforces the need to integrate public health and environmental stewardship which ERCS can develop.</li> </ul>	<p><b>EXTERNAL CHALLENGES</b></p> <ul style="list-style-type: none"> <li>Recessionary impacts of Covid-19 risk a reduction in public engagement with environmental matters.</li> <li>Community groups and organisations, particularly in more disadvantaged areas, will necessarily focus on the social impacts of Covid-19 and may be less interested in environmental matters.</li> <li>Priorities for funding will focus on mitigating the social impacts of Covid-19.</li> <li>Covid-19 impacts on the Government's Programme include slippages in timescales and reordering of priorities.</li> <li>Cost and uncertainties of litigation as a last resort.</li> </ul>

### 3.3 Strategic development

In our start-up year, our priorities were to establish ERCS's governance structures and operationalise our charitable principles. This included mapping a theory of change to provide strategic direction which is illustrated at [Appendix 1](#). ERCS promotes the human right to a healthy environment as pivotal to enabling all human rights,<sup>24</sup> contributing to the [National Performance Framework Outcomes](#) for Human Rights,<sup>25</sup> Environment,<sup>26</sup> Communities,<sup>27</sup> and Health.<sup>28</sup>

ERCS's Annual report and financial statements summarise our achievements and performance for the period 3 July 2020 to 31 March 2021.

Our work programmes take a human rights-based approach and embed the 5 PANEL principles: participation, accountability, non-discrimination and equality, empowerment and legality. Below sets out an update to our aims and activities for the forthcoming year. A full review of services will be undertaken in the autumn of 2022 to inform a new three-year strategic plan.

<sup>24</sup> United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#); United Nations Human Rights Special Procedures (2018) [Framework Principles on Human Rights and the Environment 2018](#)

<sup>25</sup> [National Performance Framework Outcomes](#) 'We respect, protect and fulfil human rights and live free from discrimination'

<sup>26</sup> 'We value, enjoy, protect and enhance our environment'

<sup>27</sup> 'We live in communities that are inclusive, empowered, resilient and safe'

<sup>28</sup> 'We are healthy and active'



## 1. Public education to increase awareness of legal rights and remedies

### **Aim**

Our education programme will provide resources and deliver training to advance education on environmental law and rights. This will cultivate an informed public who are more aware, not only of their rights to information, participation and access to justice, but also of the need for policy and law reform.

### **2021 update**

ERCS was delighted to be one of 48 organisations to be awarded a grant from the new Equality and Human Rights Fund over the next three years starting from October 2021. The grant will enable us to recruit a Rights Officer who will lead our work to increase awareness and participation of equality groups on the human right to a healthy environment. We will collaborate with organisations who represent or support equality groups to raise awareness of how environmental decisions affect our health and wellbeing, build people's capacity to exercise their rights in relation to the environment, and inform the policy and practice of public bodies to advance environmental justice.

### **Activities**

Our free resources will act as a 'one-stop shop' and will include online 'how to guides' on environmental and related planning law: such as how to access information, how to participate in decision-making and how to challenge decision-making. There will also be specific topic-focused briefings including the Aarhus Convention, the merits of establishing an Environmental Court, powers of environmental regulators, and the relationship between the human right to a healthy environment and other human rights. As well as blogs, podcasts, videos, educational resources will be tailored to different levels of knowledge, and supported by links to other organisations, networks, resources and research to ensure we deliver added value and avoid duplication.

Working with LINK members, networks and organisations who represent or support people with protected characteristics, we will deliver bespoke training on how to exercise our rights to community and equality groups, third sector organisations and other civil society stakeholders (e.g. community councils) with opportunities for networking and peer support, including a dedicated online forum.

We will also develop our work with academic institutions to conduct Scotland-focused research on the impacts of environmental and related planning law and areas for policy and law reform.



## 2. Advice, assistance and representation to improve participation in environmental decision-making and access to justice

### ***Aim***

Our advice, assistance and representation service will act as a 'citizens' advice bureau for environmental rights', enabling individuals and groups to exercise their environmental rights and hold public bodies to account on the environment. This will strengthen environmental citizenship and democracy.

### ***2021 update***

Following the successful recruitment of our In-house Solicitor, our free legal advice service was launched in June 2021. Environmental concerns have covered a broad range and all enquirers have given positive feedback on the service. At the time of writing there have been no cases that have progressed to litigation.

### ***Activities***

#### ***Legal representation***

Through our advice service, ERCS aims to improve the ability of individuals and groups, with good grounds for challenging environmental decisions, to take their cases to court as a last resort.

As a charity, ERCS does not have rights of audience in the Court of Session where most judicial review proceedings or statutory planning appeals are heard. To this end, ERCS has agreed a Memorandum of Understanding with Brown & Co/Legal Services Agency to pilot referrals for legal representation for six months: September 2021 to March 2022. Any cases eligible for legal aid will be referred to Legal Services Agency as the preferred provider. The evaluation of the pilot will consider future working/partnership arrangements.

The pilot will offer a testing ground and evidence base for legal aid on environmental law and will inform an options appraisal, to be undertaken in 2022/23, to identify the most appropriate model for ERCS to operate as a law centre. Options include partnering with a law firm or registering as our own law practice unit with the Law Society of Scotland.

## 3. Advocacy in policy and law reform to improve environmental law

### ***Aim***

The desired outcome of our advocacy in policy and law reform is to secure concrete progress on environmental rights in Scotland and to reduce barriers to access to justice on the environment.

### ***2021 update***

As well as contributing to LINK's advocacy work and the work of individual LINK members by advising on environmental legislation and the legal system, Our Advocacy Officer will continue to



consolidate key relationships with Scottish Government and civil society partners to advance the substantive and procedural elements of the human right to a healthy environment.

### **Activities**

- i. The **human right to a healthy environment** to be incorporated into Scots law during the next Parliament.*

We will proactively work to shape how the human right to a healthy environment in a Human Rights (Scotland) Act is established and increase awareness and understanding of the interrelationship between environmental and other human rights.

We will also contribute to the capacity-building programme for duty-bearers and rights-holders to enable the practical implementation of the Act.

- ii. An **overhaul of judicial expenses** to make environmental litigation affordable.*

There is a pressing need for a suite of further reforms on expenses so that Scotland becomes fully compliant with the Aarhus Convention,<sup>29</sup> and that access to justice is affordable, accessible, timely, and has an effective judicial route to remedy.

- iii. A **specialist environmental court***

We will detail the key features required for a specialist environmental court to develop expertise, reduce costs, increase the speed of dispute resolution and achieve better outcomes for the environment. This will go some way to reduce the current barriers to public interest litigation.

## **4. Strategic public interest litigation to enforce progress on key environmental issues and systemic environmental problems**

### **Aim**

Pursuing strategic public interest litigation, when all non-legal efforts fail, will help to enforce progress on key environmental issues and give the environment ‘a voice’ in the Scottish courts. Improving access to the courts - through our advocacy work and through strategic litigation - will create a credible threat of legal action, encouraging improved engagement, transparency, respect and accountability by decision-makers. This programme will also advance health by challenging environmental decisions which harm human health and/or exacerbate health inequalities because of the disproportionate impact of environmental burdens on vulnerable groups and in areas of highest deprivation.

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<sup>29</sup> [Environmental Governance: effective approaches for Scotland post-Brexit. Final Report, October 2019](#) (Gemmell/ Scottish Environment LINK, 2019); Human Rights Consortium Scotland (2018), [Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland](#).





## 2021 update

ERCS has been approached by several groups to map out case scenarios and options for public interest litigation. However, given the current barriers to public interest litigation, this work is likely to take time to develop.

### Activities

ERCS will undertake its first strategic public interest case, either alone or with another organisation, in 2022. ERCS also intends to be a proactive stakeholder in taking representations to Environmental Standards Scotland to test its powers in holding public bodies to account, when this is deemed as the appropriate first step in monitoring the effectiveness of environmental law in Scotland and its enforcement.

## 3.4 Outcomes

Table 2 presents the outcomes from our theory of change ([Appendix 1](#)) that ERCS is working towards during the period along with progress indicators.

Table 2: Outcomes and indicators

Key Outcome	Progress Indicators – per year
<p><b>1. Public education</b></p> <p><i>The public and civil society have an increased awareness of legal rights and remedies in environmental matters.</i></p>	<p>a) ERCS has online ‘how to guides’ on environmental and planning law, and specific topic-focussed briefings, and can demonstrate traffic and qualitative feedback.</p> <p>b) ERCS delivers and evaluates 4 training/awareness-raising sessions to civil society stakeholders per year.</p> <p>c) ERCS produces quarterly briefings/ebulletins on environmental and planning law developments, and progress on environmental rights; and can demonstrate qualitative feedback.</p> <p>d) ERCS delivers and evaluates 6 consultation/deliberative workshops to support capacity building with rights holders/equality groups on the incorporation of a human right to a healthy environment.</p> <p>e) ERCS delivers 6 x online workshops and produce 6 x short videos and podcasts on ‘how to information’ (joint-working with organisations who represent/support equality groups: disabled people, BAME, Gypsy/Travellers, older people and women).</p> <p>f) ERCS supports an online forum to exchange experiences practical support, tips and tricks in exercising environmental and human rights.</p>



	Resources written accessibly for a broad civil society audience and translated into BSL, easy read, child friendly and other relevant formats. Each year's activities will build on the knowledge base and capacity building of previous years.
<p><b>2. Advice, assistance and representation</b></p> <p><i>The public and civil society are better informed and more confident in participating in environmental decision-making and report more positive outcomes.</i></p>	<p>a) ERCS provides advice to at least 30 Individuals/community groups. Feedback includes reporting more effective engagement and positive outcomes from participation in environmental decision-making.</p> <p>b) ERCS provides advice to at least 4 civil society stakeholders (e.g. NGOs, councillors, parliamentarians). Feedback includes reporting more effective participation/negotiation in environmental policy and practice.</p> <p>b) ERCS provides advice to at least 20 individuals with protected characteristics (including women, BAME, disabled, Gypsy/Travellers); and 10 organisations or networks who represent or support equality groups.</p> <p>c) Outputs and outcomes from the advice, assistance and representation service evidence demand for ERCS.</p>
<p><b>3. Advocacy and Strategic public interest litigation</b></p> <p><i>Policy and legal reforms secure concrete progress on environmental rights in Scotland, and barriers to access to justice have reduced.</i></p>	<p>a) ERCS's advocacy work demonstrates progress towards environmental rights becoming realised in Scots law.</p> <p>b) There is progress towards improved access to justice in environmental matters.</p> <p>c) At least one public interest litigation arising from ERCS's advice service or in partnership with an environmental NGO. Success will be through outright 'win' or through incremental progress in case-law.</p>

### 3.5 Communications strategy

In our start-up year we were successful in our stated objectives of creating a visual identity and launching our website and pilot advice service in September 2020. Due to Covid restrictions, our official launch was postponed, but we were able to celebrate with an [on-line launch on 6 June 2021](#) with over 260 people registered and 150 joining us on the day.

Our communications strategy has focused on our advocacy work with our [website](#) acting as our main digital 'shop window', including regular news updates, blogs, briefings. A parliamentary launch of our 'Advocacy Manifesto' is planned in the same week of Human Rights Day on 10



December and we will continue to consolidate our relations with Scottish Government and rights organisations to advance our objectives across civil society.

As well as our advocacy work, the website provides clear and simple navigation for individuals and organisations on how to get advice and to our education/information resources. Website activity continues to steadily increase as do our followers on Twitter, also launched in April this year.

Initially, we asked for people to support ERCS by subscribing to our mailing list. This was followed in April 2021 by launching our membership recruitment. As at September 2021, ERCS had 95 online subscribers, in addition to our 66 members, and 371 followers on Twitter.

With the recruitment of a Rights Officer in October 2021, our communications strategy and social media plan will be revised to include the objectives outlined in the advocacy and rights/public education workplans, which are summarised above and in our theory of change at [Appendix 1](#).

## 4. Financial plan

In our start-up year, our priorities were to secure additional unrestricted core funding for ERCS's organisational resilience and specific project grants for our programmes of work.

### 4.1 Financial results to the period 31 March 21

In addition to the Joseph Rowntree Charitable Trust grant for £120,000 (over 2020 to 2022), ERCS was successful in its applications to Esmée Fairbairn Foundation for £120,000 (over 2021 to 2023) and Polden Puckham Charitable Foundation for £45,000 (over 2021 to 2023).

The total income for the period 3 July 2020 to 31 March 2021 was £101,400.

Grants and donations accounted for 100% of our income.

Joseph Rowntree Charitable Trust (core costs)	£30,000
Esmée Fairbairn Foundation (core costs)	£40,000
Polden Puckham Charitable Foundation (advocacy)	£15,000
Organisation donations (advocacy)	£5,000
Individual donations (core costs)	£11,400

### 4.2 Financial forecast

As well as having the stability of three-year funding from these major grant providers, ERCS was one of 48 organisations to be awarded a grant from the new Equality and Human Rights Fund for £157,580 (over 2021 to 2023) to begin from October. This means that we have achieved the fundraising ambitions outlined in the Business Plan July 2020.

ERCS's updated financial forecast is provided at [Appendix 2](#).

### 4.3 Monitoring progress

Financial management reports are provided quarterly to the Board and must demonstrate that the following two standards are met:



1. there is confirmed income for ERCS to meet all its cash commitments for the next three months; and
2. there is a robust and credible budget which shows that ERCS is able to break-even or better for the next six months.

As a new organisation, the trustees consider it prudent that unrestricted reserves should be developed and maintained at a level that is sufficient to cover at least one month salary costs. Trustees will seek to create modest operating surpluses, as appropriate, to develop and then maintain reserves in line with this policy. However, it is noted that any current risk is mitigated with secured core funding for three years, allowing for winding down costs and then a return to the grant provider of any surplus as a last resort.

#### 4.4 Fundraising strategy

The key components of our fundraising strategy continue to be:

- A mixed portfolio of **small and large Trusts grants**
- **Central government funding**

A benchmark for the level of statutory funding is to keep within the criteria to apply for consultative status with the United Nations '[ECOSOC](#)' - which is no more than 49%. The Board have agreed that the level of statutory funding ERCS should receive is no more than 30% of annual income. This maintains our independence for advocacy while fulfilling our funding objectives for our public education and advice programmes.

- **Donations including facility for on-line donations**

ERCS's website will provide information on how to donate by October 2021.

- **Legacies**

ERCS will develop a legacy campaign in 2022 but this will take time to generate results.

- **Corporate sponsorship**

Corporate sponsorship is also a possibility longer-term, but will need to adhere to our ethics policy and ensure no undue control over ERCS operations and strategic vision.

- **Crowdfunding** will be used, as appropriate, for example for strategic public interest litigation.

- **Legal fees and legal aid** will be a source of income at a time when ERCS is registered as a law practice unit. Fees will operate at a sliding scale depending on income and individual/organisation circumstances.



## 4.5 Risk management

The Board has a risk management strategy which comprises:

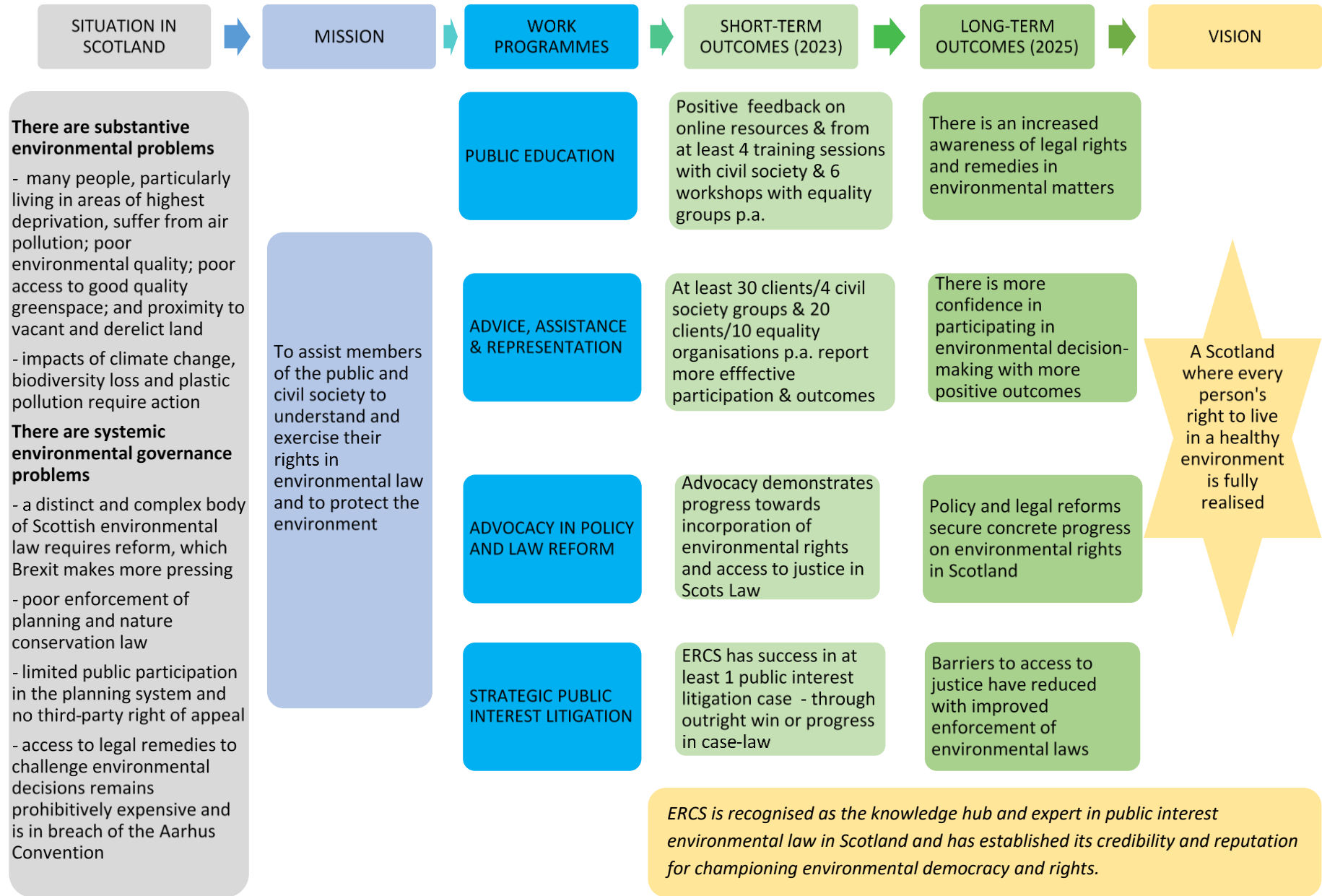
- an annual review of the risks the charity may face, undertaken in accordance with SORP Accounting and Reporting for Charities;
- the establishment of systems and procedures to mitigate those risks identified;
- the implementation of procedures designed to minimise any potential impact on the charity should these risks materialise.

ERCS's risk register was revised in June 2021 and the Chief Officer will report quarterly on progress on all high rating risks. As a new organisation, adapting to Covid-19 lockdown restrictions and establishing a new team via Zoom has had its challenges. Notwithstanding, we have created a strong team morale with a common purpose.

An ongoing priority within the Business Plan was securing adequate income levels to deliver our work programmes – which was achieved. Part of the reason for establishing ERCS was in recognition that low-cost specialist and experienced environmental lawyers were scarce, and therefore a critical risk was not being able to recruit an in-house solicitor. Notwithstanding, the Board believed it was important to test the market and put in place the correct service model for providing appropriate legal advice, and progress to becoming a registered law firm if demand requires. This risk is now resolved with a successful recruitment outcome.

Covid-19 has the potential to magnify and exacerbate the other critical risks identified, specifically reduced levels of income, loss of expertise and knowledge through departure of key staff. Trustees recognise that the financial operating environment remains challenging, with many charitable trusts understandably shifting their funding priorities to address the economic, social and health impacts of the pandemic. Arrangements are in place for robust and frequent monitoring and review of finances and operations. Proactive monitoring and readiness to take action, coupled with thorough environmental scanning, are key elements of our risk management strategy.

# Appendix 1: ERCS theory of change



## Appendix 2: ERCS financial forecast 2021-24

Year commencing	01/04/21	01/04/22	01/04/23	01/04/24
<b>Income</b>				
Joseph Rowntree Charitable Trust	40,000	40,000	40,000	40,000
Esmée Fairbairn Foundation	40,000	40,000	40,000	40,000
Polden-Puckham Charitable Foundation	15,000	15,000	15,000	15,000
Equality Human Rights Fund	25,977	51,782	52,813	27,008
Other grants		15,000	22,000	50,000
Human Rights Consortium Scotland	5,000			
Individual donations	25,000	10,000	15,000	20,000
Organisation donations				
<b>Total income</b>	<b>150,977</b>	<b>171,782</b>	<b>184,813</b>	<b>192,008</b>
<b>Expenditure</b>				
<b>Revised for Year 2 - 4 (annual salary uplift 2.5%)</b>				
Salaries & costs for Chief Officer £35K 0.8/1 FTE	37,240	42,541	43,604	44,695
Salaries & costs for inhouse Solicitor £30K 0.6/7 FTE	19,477	25,409	26,044	26,695
Salaries & costs Advocacy Officer £28.5K 0.7 FTE	23,172	23,752	24,346	24,954
Salaries & costs Finance & Admin Officer £24.5K 0.6 FTE	16,778	17,197	17,627	18,068
Salaries & costs Rights Officer £28.5K 0.8 FTE	13,322	27,310	27,993	28,692
Sessional costs (0.1 FTE advice)	1,771	3,630	3,721	3,814
Audit and accounting, payroll, insurance	6,500	6,500	6,663	6,829
Membership fees and subscriptions	2,500	2,500	2,500	2,500
Travel and subsistence	2,250	2,306	2,364	2,423
Equipment e.g., startup costs, hardware, software etc.	1,000			
General office costs (stationery, postage, phones, office supplies)	1,500	1,500	1,500	1,500
Website maintenance, IT services and support	1,500	900	700	700
Staff training and CPD resources	2,000	2,000	2,000	2,000
Research/Consultancy	5,000	5,000	5,000	5,000
Public education and resources	5,000	5,000	5,000	5,000
Events and meetings	2,000	2,050	2,122	2,122
Recruitment	1,200	500	500	500
Marketing and publicity	250	500	500	500
<b>Total expenditure</b>	<b>142,461</b>	<b>168,595</b>	<b>172,183</b>	<b>175,992</b>
<b>Surplus / deficit</b>	<b>8,516</b>	<b>3,187</b>	<b>12,630</b>	<b>16,016</b>
Secured				
some secured/ balance confident				
Not secured, to be raised				