

## **Petition 1695: Access to justice in Scotland**

*...‘no-one should lose sight of the fact that human rights, and the ability to enforce them, are amongst the hallmarks of a civilised country.’*

*Joint Committee on Human Rights, 2018, Enforcing Human Rights Inquiry*

We welcome the invitation from the Equalities and Human Rights Committee to give our views around the options available to individuals seeking support with individual human rights cases.

### **Options available**

When an individual has a human rights problem, very often it can be resolved by using **complaints processes**, meeting with those concerned, and using the services of **ombudsmen** such as the SPSO. General advice is also available from the [Equality Advisory Support Service](#), a helpline and online service that gives advice and support around equality and human rights issues, and from Citizens Advice Bureaus across Scotland. The Commissioner for Children and Young People can also provide advice and signposting to children and those concerned about them.

Where these do not bring resolution, individuals need **legal advice**. This legal advice may result in a court action, may clarify how the law applies or does not apply to their problem, or in alternative access to remedy. There are a myriad of routes to, and sources of, legal advice in Scotland, and this complexity that can be very confusing and daunting for someone coping with a human rights problem. For example, legal advice is available through:

- Civil society organisations that provide legal advice and support to empower individuals and groups, often on specific issues. For example, Shelter Scotland provides legal advice around housing issues, the Scottish Women’s Rights Centre around issues related to violence against women, and Scottish Refugee Council for advice related to asylum and immigration matters.
- University law clinics<sup>1</sup> can provide legal advice on certain matters – for example, the Aberdeen Law Project can advise on employment, housing or consumer issues amongst others, and can write letters on an individual’s behalf, provide legal opinions, attend mediations, negotiate settlements and sometimes, appear in Court.
- Law centres, such as Govan Law Centre or Clan Childlaw, are invaluable sources of advice and support for many people facing human rights problems.
- The Law Society of Scotland database can provide contact details for solicitors who will take human rights cases.
- The Equality and Human Rights Commission (EHRC) has the power to take human rights cases on reserved issues, and can take court action on devolved issues in agreement with the Scottish Human Rights Commission (SHRC). The EHRC will usually only take cases on

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<sup>1</sup> See full list of university law clinics in Scotland at <https://www.abdn.ac.uk/law/research/the-scottish-university-law-clinic-network-546.php>

strategic issues – however, they can also provide advice and sometimes funding or other support on other cases.

**Advocacy support** for individuals can also be important for enabling access to justice. The Scottish Independent Advocacy Alliance can signpost individuals to advocacy services near them.

## **Problems with access to justice**

We very much recognise the problems faced by the petitioners as common to many people with human rights problems in Scotland. There are many barriers to accessing justice when individuals have faced a breach of their human rights, such as: a lack of solicitors who will take legal aid cases (as also found within the Review of Legal Aid); a lack of solicitors who will take human rights cases and in particular areas of human rights and in particular geographical locations; a confusion of places to go to for legal advice, and sources of legal advice being only available in some parts of Scotland; access to legal aid; the cost of cases including court fees; a lack of legal assistance accessible to disabled people; and others. Simply navigating the legal system to know where to get legal advice, which solicitor to approach and how to go about all of this can be bewildering and frustrating.

We note here one particular barrier around access to justice relating to who is able to take cases under the Human Rights Act to court. Currently, you have to be either the ‘victim’ of the human rights infringement, or the EHRC can take cases in its own name. However, the SHRC and the Commissioner for Children and Young People in Scotland have no powers in law to take test cases – this is an omission and needs to be rectified. Both of these Commissions need to have legal powers, be able to give legal advice to individuals, and be resourced to do so effectively - changing this would be a significant step towards improving access to justice on human rights in Scotland.

## **Incorporating international rights into Scots law**

The Government-led National Taskforce, of which the Human Rights Consortium Scotland is a member, is developing proposals for a strengthened human rights framework in Scotland that will incorporate more international treaties into Scots law. The Scottish Government will also soon introduce a Bill to incorporate the UNCRC into Scots law.

Both of these developments are important to note because they will mean that more of our international human rights, which we already have, will be justiciable and enforceable in Scottish courts. The Taskforce will be considering access to justice, including what methods of remedy will be included in future law. There may also be consideration of the Commissions’ legal powers, as outlined above. However this new human rights framework must also be accompanied by a change in policy, law and practice culture with recognition of human rights in priority setting, budget making and everyday decision-making and accountability, so that individuals do not need to go all the way to court to have their basic human rights realised.

*Mhairi Snowden, Human Rights Consortium Scotland, February 2020*

*The Human Rights Consortium Scotland is the civil society network to promote and protect human rights in Scotland. We do this by enabling a strong civil society voice on human rights, and by facilitating organisations to have all that they need to protect human rights through their work.*

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