

# Human Rights Act Claims

## Access to Justice in Scotland

These factsheets are to be used as a tool to outline your rights and to help improve access to justice here in Scotland.

They explain key ideas, definition, rights, and laws so that people and organisations know how to use the law to defend themselves and others.

They contain general information, not legal advice.



## What is the Human Rights Act?

The Human Rights Act 1998 (the Act) came into force in 2000.

It requires public authorities to respect and protect our human rights in everything they do, and it safeguards the rights of every single person in the United Kingdom.

For more than 20 years the Act has helped to encourage public bodies to respect, protect and fulfil our rights, and it has been used by people in Scotland when their rights have been breached.

The Act covers the following human rights:

- Right to life
- Prohibition of torture, inhuman and degrading treatment
- Prohibition of slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience, and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Prohibition of discrimination (in relation to any of the other rights)
- Protection of property
- Right to education
- Right to free elections

## Who does the Act apply to?

Under the Act, government, public authorities and other public bodies, have to respect these rights by law. This includes local and central government, courts and tribunals, hospitals, police, prisons, public transport providers, immigration officers and schools (if publicly funded).

The Act also applies to private bodies performing public functions. This includes housing associations that act as social landlords, private care homes providing care on behalf of a local authority, private hospitals providing care on behalf of the NHS, companies running private prisons or privatised utilities companies (such as British Gas or Royal Mail).



## What happens if your rights have been breached?

If you think your rights under the Act have been breached, you can bring a claim.

It is generally a good idea to try to secure a remedy for the breach of your rights without going to court. There are steps you can take before legal action, which are discussed in our [Initial Action factsheet](#). However, it is very important to know there are tight deadlines for bringing your claim to court. These will be outlined in this factsheet.



# How to make a claim under the Human Rights Act

You can take a case to court under the Act if you think that a public body, such as a local authority, the police, or the NHS, or a body exercising public functions has breached one or more of your human rights.

Any person can use the Act to defend their rights – a child, an adult, a member of the public, a foreign national, or someone in prison – and it is not necessary to be a UK citizen to bring a claim.

If you are considering legal action, you should get advice from a solicitor, at a law centre or law firm if you can.

A claim under the Act must be raised in court within a year of the potential breach of your human rights. Your solicitor will be able to advise you about when the year runs from in your case.

If there has been a particular decision or act, or failure to act, by a public body, that may be the start of the one-year period.

However, the most common way of raising a human rights claim is through Judicial Review, and an application for permission to bring a Judicial Review must be made within three months of the act or decision being challenged. It is important to seek legal advice as soon as possible so that you can be advised about these time limits. In rare cases, the time limit may be extended, but only if there is a very good reason and the court thinks it is fair to allow it late.

1

**Get professional advice**

2

**Request a Judicial review within three months**

3

**Raise other court claims within one year**



## How much does it cost to raise a claim?

If you would like to take legal action, you will need to think about court fees and the cost of any legal representation or advice. Check [our factsheet on legal aid](#) for more information on costs and help available. How much it costs will in part depend on which court or tribunal your claim is heard by. That depends on the nature of your complaint and the remedy you want from the court. Your solicitor should advise you on which court to make your application to. The most common type of action raised for breaches of human rights is probably Judicial Review.

This can only be raised in Scotland's Court of Session and if you have a solicitor, they will need to instruct an Advocate to appear for you.

It is possible to represent yourself in Scotland's civil courts and there are particular rules depending on the court and the particular procedure, which can be found on the [Scottish Courts and Tribunal's website](#). Our [factsheet on Judicial Review](#) has more information on this procedure.

## What remedy can I get if my claim is successful?

There are several remedies available if your claim is successful, depending on the type of legal action you have taken.

If the court agrees that your human rights have been breached it can:

- Make a declaration stating that your human rights have been breached
- Award you financial compensation for money lost or injury to feelings resulting from the human rights violation
- Make an order of "reduction", overturning the decision you have complained about
- Order "specific performance", which requires the public authority to do something
- Grant an interdict - a prohibitory order preventing the public body from acting beyond its powers or breaching your rights.



It is important for you to know that a court will not automatically order financial compensation, even if it agrees that your human rights have been breached. Compensation will depend on whether the court believes that you suffered a loss that should be compensated for. Even in cases where compensation is awarded, in human rights cases the amount is normally quite low.

For many people, the most important thing in pursuing a claim for breach of their human rights is obtaining the declarator that their rights have been breached and obtaining an order requiring the public body to put things right.

## What happens if you lose your claim?

If you lose the case in court, you may have to pay the other side's legal costs, which could be high.

If you have Legal Aid, you will be able to ask the court to reduce your liability to nil, but this is not guaranteed. Your solicitor will be able to advise you in detail about the costs and risks.

Check our [factsheet on Legal Aid](#) for more information on costs and help available.

If you lose there may be an option to appeal the decision and your solicitor can advise you on whether that is possible and worthwhile.



# Examples of Human Rights cases in Scotland

Below, we explore some of the key human rights cases that have been successful in Scotland:

## 1 – Ending degrading prison conditions:

### **Robert Napier v. The Scottish Ministers**

Robert Napier was a remand prisoner in HMP Barlinnie, Glasgow. He brought a Judicial Review court action, relying on the prohibition against inhuman and degrading treatment. People in Scottish prisons, including Mr Napier, did not have access to a flush toilet in their cells and had to empty human waste when prison cells were unlocked in the morning. The Scottish courts agreed that this was a breach of his human rights and decided that the Scottish Government, as operators of the prison, had acted unlawfully. As a result of that successful case the practice of holding people in Scottish prisons without access to a flush toilet was banned in Scotland.

This case is a very good example of how one person's human rights claim can lead to a change that benefits many people.

## 2 – Ending unlawful detention in care homes:

### **Equality and Human Rights Commission v. Greater Glasgow and Clyde Council**

In this Judicial Review court action, the practice of keeping elderly patients locked in care units for up to a year without their consent, while waiting for a welfare guardian to be appointed, was challenged as a breach of their right to liberty and their right to family and private life (which covers dignity and physical and psychological autonomy). As a result of the action being raised, NHS Greater Glasgow and Clyde agreed to stop the practice.

This is a good example of securing a remedy for breach of rights without having to take a court case all the way through to a decision from the court.



JustRight Scotland identified a need in the community for better information and resources on access to justice.

Read our other factsheets on:



For more help and information: **Scottish Human Rights Commission**

[Equality and Human Rights Commission](#)  
[– Taking legal action to protect your human rights](#)

## JustRight Scotland

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**WE DEFEND AND EXTEND  
PEOPLE'S RIGHTS**

