

**Allan Marshall's family sue
police, prison service and Crown Office, for breach of human rights**

The family of Allan Marshall have raised a court action against the Scottish Prison Service, Police Scotland and the Crown Office, for breach of Mr Marshall's human rights.

Allan Marshall died in March 2015 at the age of 30, following restraint by a total of 17 prison officers in HMP Edinburgh (Saughton). Mr Marshall experienced a mental health crisis while being held on remand, awaiting trial for a charge of breach of the peace. Rather than calling for medical assistance, prison officers moved him to the segregation unit and then physically restrained him, holding him face down, kneeling on him and using feet to push him to the ground on ten occasions. The restraint persisted for at least 30 minutes. Mr Marshall died due to cardiac arrest and brain damage caused by oxygen starvation as a result of continual physical restraint.*

Despite much of the restraint being recorded on CCTV, and admissions made during the Fatal Accident Inquiry, no-one has been held accountable for what was done to Mr Marshall. The Crown Office granted full immunity to all prison officers at HMP Edinburgh, ruling out any prosecution. The Crown Office has recently admitted that this should not have happened. However, it cannot be reversed.

Mr Marshall's aunt, Sharon MacFadyen, has raised a court claim against the Scottish Prison Service (SPS) for breach of Mr Marshall's right to life by unlawfully causing his death. The right to life is protected under Article 2 of the European Convention on Human Rights, incorporated into UK law through the Human Rights Act 1998. Due to the Crown's decision to grant immunity to the prison officers, this is one of the only remaining routes to securing accountability.

Ms MacFadyen's court action is also directed against Police Scotland and the Crown Office, for breach of their duty to adequately investigate Mr Marshall's death and hold those responsible to account, which is also a requirement under Article 2 of the Convention. In addition to granting the prison officers immunity, the Crown Office has acknowledged that the police investigation was inadequate.

JustRight Scotland is representing the family of Allan Marshall in what may be the first case of its kind in Scotland. Despite the Human Rights Act being in force since

JustRight Scotland

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703).

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1998, and deaths in prison custody being an all too frequent occurrence, the legal team has not found any previous UK court decision finding a breach of Article 2 for causing death in prison. There are decisions from the European Court of Human Rights related to other European countries, finding breach of Article 2 through causing death by restraint in custody.

Ms MacFadyen, who is supported by other family members, including Allan Marshall's brother, Alistair Marshall, said:

"We've been fighting for justice for Allan for nine years. Allan was killed in prison when he needed medical support. No-one has been held responsible for that. The system has failed Allan. We hope that through this court case we can finally get accountability."

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NOTES FOR THE EDITORS

About the case

- Mr Marshall was remanded to HMP Edinburgh on March 2, 2015, awaiting trial for breach of the peace. By March 21, he began showing severe mental health issues, which were reported by his cell mate, but no medical help was provided. On March 24, Mr Marshall, still unwell, was moved to the segregation unit instead of receiving a mental health assessment. He was then violently restrained by a total of 17 prison officers, leading to cardiac arrest. He passed away on March 28 after four days in a coma.
- *These details are confirmed in Sheriff Liddle's determination made at the conclusion of a Fatal Accident Inquiry (FAI), dated 9 August 2019. The purpose of an FAI is to establish the circumstances of the death and consider what steps might be taken to prevent other deaths in similar circumstances. An FAI does not hold anyone responsible or provide accountability. Sheriff Liddle also found that Mr Marshall's death was "entirely preventable" and highlighted numerous missed opportunities for intervention. He issued 13 recommendations for the Scottish Prison Service (SPS). In January 2021, the SPS informed Mr Marshall's family that it had implemented 10 of the 13 recommendations. There has been no independent verification of this as far as we are aware.
- In March 2023 the Lord Advocate announced that Police Scotland would be directed to investigate a possible charge of corporate homicide against the

Scottish Prison Service (SPS). This would be the first such charge, if it came to pass. However, over 16 months later the family is still awaiting the outcome of that investigation and no charges have been brought.

- The defenders in the court case are (1) the Scottish Ministers, on behalf of the Scottish Prison Service, (2) the Lord Advocate, on behalf of the Crown Office Procurator Fiscal Service and (3) the Chief Constable of Police Scotland, on behalf of Police Scotland.
- The case is expected to appear on the Court of Session Rolls of Court on Wednesday 24 July 2024. If so, Defences will be due by 31 July 2024.

More information is available on [Justice for Allan Marshall](#) website.

About JustRight Scotland

JustRight Scotland works to defend and extend people's rights. We work with people and communities to change broken systems as well as individual people's lives:

<https://www.justrightscotland.org.uk>

QUOTES FOR THE EDITORS

Barbara Bolton, Legal Director and Partner at JustRight Scotland, who is working on the case: *"This case highlights the urgent need for transparency in deaths that occur in State custody. Research shows a troubling rise in these deaths, reflecting preventable issues within the prison system. Human rights law, particularly Article 2 of the European Convention on Human Rights, mandates that the State protects the right to life. Thorough investigation and holding those responsible to account are essential for delivering justice to families and addressing critical issues within the prison system."*