

# **ACCESS TO JUSTICE FOR CHILDREN:** **ENGLAND AND WALES**

*This report was produced by Child Rights International Network (CRIN) in January 2013. CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

Ratified<sup>1</sup> international instruments do not automatically have the force of law in the United Kingdom; rather, they must be incorporated through implementing legislation. Incorporation can either be direct, as with the Human Rights Act's incorporation of the European Convention on Human Rights (ECHR) into national law, or in a subject-by-subject piecemeal manner, as with the CRC and most other regional and international human rights instruments.

It has now been established by the Supreme Court that the CRC is binding in domestic law where an ECHR right is engaged.<sup>2</sup>

### **B. Does the CRC take precedence over national law?**

The CRC does not take precedence over national law, although national law is interpreted where possible in a manner consistent with the CRC and other international human rights obligations. ECHR rights must be interpreted in “harmony” with international human rights law.<sup>3</sup> In addition, in 2010, the acting UK Children's Minister pledged in writing that the coalition Government would consider the CRC in making new law and policy.<sup>4</sup>

### **C. Has the CRC been incorporated into national law?**

The CRC has not to date been directly incorporated into national law. However, some of the rights under the CRC are included in the ECHR, which has been incorporated into national law as the Human Rights Act of 1998. There are rights which were not included in the Act, resulting in incomplete protection of children's rights in the UK.<sup>5</sup> In 2008, a nationwide collaboration of organisations the Rights of the Child UK (ROCK)

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<sup>1</sup> Comments on this report provided by Dr Tim Bateman, Office of the Children's Commissioner, August 2015, and Kate Aubrey-Johnson, Director, Youth Justice Legal Centre (YJLC), Just for Kids Law, September 2015.

<sup>2</sup> *R (SG) v. Secretary of State for Work and Pensions* [2015] UKSC 16, available at: [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2014\\_0079\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf); *Cameron Mathieson, a deceased child (by his father Craig Mathieson) (Appellant) v. Secretary of State for Work and Pensions (Respondent)* [2015] UKSC 47. See also <http://www.yjlc.uk/echr-rights-must-be-interpreted-in-harmony-with-international-human-rights-law>.

<sup>3</sup> Ibid.

<sup>4</sup> See <http://www.crae.org.uk/rights/unrcr.html>.

<sup>5</sup> UNCRC and UK Legislation. Available online at: <http://www.childrensrightswales.org.uk/unrcr-rights.aspx>.

Coalition was founded to advocate for the direct incorporation of the CRC into UK law.

<sup>6</sup> In 2012, ROCK published *Why incorporate? Making rights a reality for every child*.<sup>7</sup>

Wales has an independent representative body, the National Assembly for Wales, which makes laws for Wales.<sup>8</sup> Although the Assembly is not empowered to incorporate the CRC, it has implemented provisions<sup>9</sup> requiring its Ministers to give due consideration to children's rights under the CRC when making decisions about new policies or laws, or when amending current policies.<sup>10</sup>

#### D. Can the CRC be directly enforced in the courts?

The CRC can only be directly enforced in UK courts when an ECHR right is engaged. It is often referenced and discussed in legal proceedings involving children's rights as a source of interpretive guidance.

In the case of *Regina v. Durham Constabulary and another*, which dealt with the cautioning of children alleged to have committed an offence, the Court said that the CRC is "not only binding in international law; it is reflected in the interpretation and application by the European Court of Human Rights of the rights guaranteed by the European Convention: see, for example, *V v United Kingdom* (1999) 30 EHRR 131; to that extent at least, therefore, it must be taken into account in the interpretation and application of those rights in our national law".<sup>11</sup>

#### E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been extensively cited in court decisions throughout the UK.<sup>12</sup> The Supreme Court, formerly known as the House of Lords, has discussed the CRC in cases concerning corporal punishment in schools<sup>13</sup>, child support calculations,<sup>14</sup> and the immigration status of a foreign mother with UK national children.<sup>15</sup> In a March 2015 decision concerning the lawfulness of the government's 'benefits' cap' policy, which limits the amount of social benefits a person can claim, the Supreme Court discussed the relevance of Article 3 CRC and the Convention's applicability in national law.<sup>16</sup>

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<sup>6</sup> See <http://www.crae.org.uk/protecting/uk-law.html>.

<sup>7</sup> See [http://www.crae.org.uk/media/28534/ROCK-Coalition\\_Why-Incorporate-the-CRC.pdf](http://www.crae.org.uk/media/28534/ROCK-Coalition_Why-Incorporate-the-CRC.pdf).

<sup>8</sup> National Assembly for Wales, available online at: <http://www.assembly.wales/en/Pages/Home.aspx>.

<sup>9</sup> The Rights of Children and Young Persons (Wales) Measure 2011, available online at: <http://www.legislation.gov.uk/mwa/2011/2/contents>.

<sup>10</sup> Welsh Government. *Children's Rights Scheme*, 2012, page 2, available online at: <http://gov.wales/docs/phhs/publications/120418rightsofchildrenen.pdf>.

<sup>11</sup> [2005] UKHL 21, paragraph 26.

<sup>12</sup> See

[http://www.bailii.org/cgi-bin/sino\\_search\\_1.cgi?sort=rank&datehigh=&query=%22convention%20on%20the%20rights%20of%20the%20child%22&method=boolean&highlight=1&datelow=&mask\\_pat h=ew/cases%20uk/cases/UKHL%20uk/cases/UKPC%20uk/cases/UKSC](http://www.bailii.org/cgi-bin/sino_search_1.cgi?sort=rank&datehigh=&query=%22convention%20on%20the%20rights%20of%20the%20child%22&method=boolean&highlight=1&datelow=&mask_pat h=ew/cases%20uk/cases/UKHL%20uk/cases/UKPC%20uk/cases/UKSC).

<sup>13</sup> *R(Williamson and others) v. Secretary of State for Education and Employment*, available at <http://crin.org/Law/instrument.asp?InstID=1485>.

<sup>14</sup> *Smith v. Smith and another*, available at <http://crin.org/Law/instrument.asp?InstID=1486>.

<sup>15</sup> *ZH v. Secretary of State*, available at <http://crin.org/Law/instrument.asp?InstID=1520>.

<sup>16</sup> *SG and others, R (on the application of) v. Secretary of State for Work and Pensions*, available at: <https://www.crin.org/en/library/legal-database/sg-and-others-r-application-v-secretary-state-work-and-pensions-0>.

## II. What is the legal status of the child?

### A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Under the Civil Procedure Rules, children (through their “litigation friend”) and their representatives are entitled to bring civil cases in courts across England and Wales to challenge violations of their rights.<sup>17</sup>

Notably, the Children's Commissioner for England<sup>18</sup> and the Children’s Commissioner for Wales<sup>19</sup> are not empowered to receive individual complaints, but children may file complaints with the local government ombudsman or public services ombudsman for Wales<sup>20</sup> about services they are receiving, including education, social care, and housing.<sup>21</sup> Complaints made by or on behalf of children are fast-tracked, and the ombudsman will either investigate the complaint, refer the complaint to another agency or legal adviser, or determine that the complaint must first go through the local authority's own complaints procedure.

### B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

The Civil Procedure Rules set out the guidelines for the participation of children and other protected parties in civil court proceedings in England and Wales.<sup>22</sup> Children are required to have a “litigation friend” to conduct proceedings on their behalf, unless the court decides otherwise at the request of the child involved. If a court determines at a later date that it would be “desirable” for a litigation friend to conduct the proceedings on behalf of the child, a litigation friend may again be appointed to represent the child.<sup>23</sup>

If no litigation friend has been appointed by the court, a person may act as a child's litigation friend without a court order by filing a “certificate of suitability” with the court.<sup>24</sup> In order for this appointment to be successful, the requesting person must show that there is no conflict of interest, demonstrate that he or she can “fairly and competently” conduct proceedings on the child's behalf, and promise to front or pay any costs the child is ordered to pay in relation to the proceedings.<sup>25</sup>

Litigation friends may be changed by court order, and the appointment of a litigation friend automatically ceases when the child reaches the age of 18.<sup>26</sup>

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<sup>17</sup> Civil Procedure Rules 1998, available at <http://www.justice.gov.uk/courts/procedure-rules/civil/rules>.

<sup>18</sup> The Children’s Commissioner for England’s “primary function is promoting and protecting the rights of children in England” and “in considering for the purposes of the primary function what constitute the rights and interests of children”, the Commissioner must have regard to the CRC: Children and Families Act 2014, section 107. See also The Children’s Commissioner for England, available at: [http://www.childrenscommissioner.gov.uk/info/about\\_us](http://www.childrenscommissioner.gov.uk/info/about_us).

<sup>19</sup> The Children’s Commissioner for Wales, available at: <http://www.childcomwales.org.uk/>;

<sup>20</sup> Public services ombudsman for Wales, available at: <http://www.ombudsman-wales.org.uk/>.

<sup>21</sup> See <http://www.lgo.org.uk/youngpeople/>.

<sup>22</sup> Civil Procedure Rules 1998, Part 21.

<sup>23</sup> Civil Procedure Rules 1998, Rule 21.2.

<sup>24</sup> Civil Procedure Rules 1998, Rule 21.5.

<sup>25</sup> Civil Procedure Rules 1998, Rule 21.4.

<sup>26</sup> Civil Procedure Rules 1998, Rule 21.7, 21.9.

Children are also appointed guardians, litigation friends or lawyers in certain family court proceedings, such as adoption and care proceedings, unless the court is “satisfied that it is not necessary to do so in order to safeguard [their] interests”.<sup>27</sup> Under the Family Procedure Rules 2010, lawyers acting for children “must conduct the proceedings in accordance with instructions received from the child”.<sup>28</sup> Children may seek the permission of the court to proceed without a guardian or litigation friend<sup>29</sup> or ask that the appointment of their lawyer be terminated.<sup>30</sup> However, where children who are not the subject of the proceedings are joined as a party to those proceedings because the court considers their involvement to be in their best interests,<sup>31</sup> they must have a litigation friend to conduct the proceedings on their behalf.<sup>32</sup>

The rules for the appointment of a litigation friend in a family court are largely similar to those in a civil court.<sup>33</sup> Otherwise, children may represent themselves where the court agrees that they have “sufficient understanding to conduct the proceedings concerned or proposed”.<sup>34</sup>

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, the child's parent or legal guardian would typically initiate legal proceedings on behalf of the child as a litigation friend in the manner described above.<sup>35</sup> Possessing “parental responsibility” over a child grants the holder the right to pursue legal claims related to a child and his or her property.<sup>36</sup> Although parental responsibility usually vests with biological parents at birth, the Children Act 1989 also provides for the appointment of legal guardians, and their acquisition of parental responsibility for the child.<sup>37</sup> Adults who do not hold parental responsibility for a child may also seek the permission of the court to serve as a child's litigation friend for the purposes of bringing civil proceedings provided they meet the criteria established in the Civil Procedure Rules.<sup>38</sup>

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<sup>27</sup> Children Act 1989, Part 41, available at <http://www.legislation.gov.uk/ukpga/1989/41/contents>; Family Procedure Rules 2010, Part 16, available at <http://www.legislation.gov.uk/uksi/2010/2955/contents/made>.

<sup>28</sup> Family Procedure Rules 2010, Rule 16.29.

<sup>29</sup> Family Procedure Rules 2010, Rule 16.6.

<sup>30</sup> Family Procedure Rules 2010, Rule 16.29.

<sup>31</sup> Family Procedure Rules 2010, Rule 16.2; Practice Direction 16a, Part 4, available at [http://www.familylaw.co.uk/system/uploads/attachments/0001/8889/FPR\\_PD16A.pdf](http://www.familylaw.co.uk/system/uploads/attachments/0001/8889/FPR_PD16A.pdf).

<sup>32</sup> Family Procedure Rules 2010, Rule 16.5.

<sup>33</sup> Family Procedure Rules 2010, Part 16, Chapter 5.

<sup>34</sup> Family Procedure Rules 2010, Rule 16.6.

<sup>35</sup> See, e.g., [http://www.findlaw.co.uk/law/accidents\\_and\\_injuries/personal\\_injury/500055.html](http://www.findlaw.co.uk/law/accidents_and_injuries/personal_injury/500055.html).

<sup>36</sup> Children Act 1989, Section 3 (“parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”). See the Children Act 1989: Guidance and Regulations, Volume 1, Chapter 2, available at <http://media.education.gov.uk/assets/files/pdf/c/children%20act%201989%20guidance%20and%20regulations.pdf>; see also [http://www.rbkc.gov.uk/pdf/FPI%20is%20it%20legal%20Feb\\_08.pdf](http://www.rbkc.gov.uk/pdf/FPI%20is%20it%20legal%20Feb_08.pdf) (“Parental responsibility means being responsible for...representing [your children] in legal proceedings...”).

<sup>37</sup> Children Act 1989, Section 5.

<sup>38</sup> Civil Procedure Rules 1998, Rule 21.4.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Children are entitled to receive legal aid in certain types of civil cases if they qualify for financial assistance.<sup>39</sup> These cases include, among others, those relating to the care, supervision and protection of children; special educational needs; child abuse; mental health; community care; certain welfare and disability benefits; abuse of position or powers by a public authority; domestic violence; clinical negligence; human trafficking; eviction; anti-social behaviour; sexual offences; discrimination; and some immigration matters.<sup>40</sup> Notably, legal aid is also available for claims that a public authority has breached an individual's rights under the European Convention on Human Rights.<sup>41</sup>

Legal aid is generally available for judicial review proceedings (see Part III. A below), so long as the proceedings have the potential to benefit the individual bringing the proceedings, a member of that person's family, or the environment.<sup>42</sup> If legal aid is not specifically authorised for a particular kind of claim, it may still be available where it is found to be necessary or appropriate under the European Convention on Human Rights or European Union law. Legal aid may also be provided where it has been determined that the case is in the “wider public interest”, meaning that it would be “likely to produce significant benefits for a class of persons”.<sup>43</sup>

Other factors affecting eligibility for legal aid include the likely cost and benefit of providing legal services; the importance of the matters in question to the individual; the nature and seriousness of the act, omission, or circumstances at issue; the conduct of the requesting individual; and the prospects of success.<sup>44</sup>

In addition, children in the care of local authority are entitled to receive advocacy services free of charge.<sup>45</sup> Among other things, advocates can help children to file complaints with the relevant authority and act on behalf of children in court where asked to do so.<sup>46</sup>

Children who have been arrested on suspicion of committing an offence are entitled to a lawyer at the police station and, if charged, throughout court proceedings.<sup>47</sup> Children charged and tried in youth courts may apply for legal aid (free legal representation funded by the Legal Services Commission),<sup>48</sup> those tried in an adult criminal court are eligible for legal assistance under the Legal Aid, Sentencing and Punishment of

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<sup>39</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Sections 8, 11, 21; for more information, see [http://www.legalservices.gov.uk/about\\_legal\\_aid.asp](http://www.legalservices.gov.uk/about_legal_aid.asp).

<sup>40</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1.

<sup>41</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Section 22.

<sup>42</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Section 19.

<sup>43</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Section 10.

<sup>44</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Section 11.

<sup>45</sup> Children Act 1989, Part 26A.

<sup>46</sup> Children Act 1989, Part 26; see also <http://www.childrenslegalcentre.com/userfiles/Advocacy.pdf>.

<sup>47</sup> Police and Criminal Evidence Act 1984, Supplementary Codes, available at <http://www.legislation.gov.uk/ukpga/1984/60/contents>; for more information, see <http://www.lawstuff.org.uk/the-facts/crime-police-and-court/going-to-court>, [http://www.direct.gov.uk/en/Parents/CrimeAndYoungOffenders/DG\\_4003033](http://www.direct.gov.uk/en/Parents/CrimeAndYoungOffenders/DG_4003033).

<sup>48</sup> Crime and Disorder Act 1988, Section 50, available at <http://www.legislation.gov.uk/ukpga/1998/37/contents>.

Offenders Act 2012.<sup>49</sup> In addition, when a child is arrested, the child's parent, guardian or custodian must be notified<sup>50</sup> and will later be expected to attend court during all stages of the proceedings.<sup>51</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

A child's parents or guardian do not have to consent to their child or his or her litigation friend initiating legal proceedings, but any person acting as the litigation friend to a child must give the child's parent, guardian or custodian notice of this intention and provide a "certificate of suitability".<sup>52</sup>

While it is not a limit on a child or chosen legal representative bringing a case, it is notable that any proposed settlement in a civil proceeding involving a child must be approved by the court.<sup>53</sup>

### **III. How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The United Kingdom has no written Constitution, although, as above, the European Convention on Human Rights has been directly incorporated into UK law and is enforceable in UK courts.

Children and their representatives may initiate legal proceedings in civil courts to challenge violations of their rights under domestic law, following the Civil Procedure Rules. Civil actions typically request compensation in the form of money damages, but may also seek an injunction ordering a party to carry out or cease a particular action. Most civil cases are brought in the County Court, although claims for compensation over a particular amount may be brought in the High Court.<sup>54</sup>

With the permission of the High Court, "judicial review" proceedings may be brought in administrative courts to challenge the decision of a public body.<sup>55</sup> These proceedings seek either a declaration or an injunction, which is an order prohibiting a party from doing something or requiring a party to do something, although it is also possible to request damages.<sup>56</sup> Judicial review proceedings must typically be filed within three

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<sup>49</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Sections 13 – 20.

<sup>50</sup> Paragraph 3.13 Code C Police and Criminal Evidence Act 1984; section 34(2) & (3) Children and Young Persons Act 1933.

<sup>51</sup> Children and Young Persons Act 1933, Sections 34, 34A, available at <http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/contents>.

<sup>52</sup> Civil Procedure Rules 1998, Rules 6.13, 21.5.

<sup>53</sup> Civil Procedure Rules 1998, Rule 21.10.

<sup>54</sup> See

<http://www.yourrights.org.uk/yourrights/how-to-enforce-your-rights/civil-action-and-judicial-review/civil-action.html>.

<sup>55</sup> Civil Procedure Rules, Section 54; Senior Courts Act 1981, Section 31, available at <http://www.legislation.gov.uk/ukpga/1981/54/contents>.

<sup>56</sup> Civil Procedure Rules, Rule 54.3.

months of the decision to be challenged.<sup>57</sup>

Claims of human rights violations under the Human Rights Act may be brought either as civil or judicial review proceedings, and must typically be filed within one year of the violation.

If the rights violation amounts to a crime and the public prosecutor does not bring a criminal case against the suspect, the victim or victims may have the right to bring a private criminal prosecution. However, legal aid is not available for private prosecutions, and the public prosecutor may at any point seek to take over the prosecution. If the public prosecutor believes the case to be unfounded, unjust, or against the public interest, the public prosecutor may then seek to discontinue the proceedings.<sup>58</sup>

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>59</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>60</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>61</sup> Anonymous complaints are not permitted.<sup>62</sup> The procedural rules for the Court do not contain any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>63</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>64</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>65</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

B. What powers would courts have to review these violations, and what remedies could they offer?

As above, civil courts have the power either to award money damages or to issue an injunction. In judicial review proceedings, civil courts may issue “quashing orders” that either revise the decision in question or direct the defending public body to reconsider its decision in accordance with the court's judgment.<sup>66</sup> In both civil and judicial review proceedings, it is possible from the outset of proceedings to ask the court for an

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<sup>57</sup> Civil Procedure Rules, Rule 54.5.

<sup>58</sup> Prosecution of Offences Act 1985, Section 6, available at <http://www.legislation.gov.uk/ukpga/1985/23>.

<sup>59</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at: <https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>60</sup> *Ibid.*, Article 34.

<sup>61</sup> *Ibid.*, Article 35.

<sup>62</sup> *Ibid.*

<sup>63</sup> Rules of Court, July 2014, Rule 36, available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>64</sup> European Convention on Human Rights, Article 46.

<sup>65</sup> *Ibid.*, Article 41.

<sup>66</sup> Civil Procedure Rules, Rule 54.19.

injunction or other measures to ensure that no further action is taken on the matter in dispute as the case progresses.<sup>67</sup>

In cases involving violations of the Human Rights Act, UK courts may issue a “declaration of incompatibility” where a law is found to breach the Act.<sup>68</sup> In these circumstances, the law remains the same and is applied in its disputed form until revised by Parliament. Civil courts finding violations of a party's human rights may, however, award damages to that party.<sup>69</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Judicial review proceedings do not require the identification or involvement of individual child victims. These proceedings may be brought by parties with a “sufficient interest”, which has been broadly interpreted.<sup>70</sup> Persons or organisations who are directly affected by the subject matter of judicial review proceedings are known as “interested parties”, and may choose to participate fully in the case by becoming formal parties.

Bringing other legal proceedings typically requires the identification of a specific victim, although hearings may be held in private where necessary to protect the interests of any child. By the same token, civil courts may order that the name of any party or witness not be publicly disclosed if necessary to protect that person's interests.<sup>71</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

The Civil Procedure Rules allow for Representative Proceedings and Group Litigation.<sup>72</sup> Representative Proceedings may be brought by one person on behalf of a group of people who have the “same interest in a claim”<sup>73</sup>, although each claimant must be identified individually wherever possible.<sup>74</sup> Courts look to the overall aims of the Civil Procedure Rules to determine whether the group has the same interest, and typically require that Representative Proceedings be effective in terms of cost and time.<sup>75</sup>

Group Litigation may be authorised by court order to join claims that “give rise to common or related issues of fact or law”.<sup>76</sup> A party may apply for a Group Litigation Order by submitting information as to the nature of the case, the number and nature of claims already filed, the number of parties likely to be involved, the common issues of fact or law that are likely to arise in the litigation, and whether there are any matters that

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<sup>67</sup> Civil Procedure Rules, Part 25.

<sup>68</sup> Human Rights Act, Section 4, available at <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

<sup>69</sup> Human Rights Act, Section 8.

<sup>70</sup> Senior Courts Act, Section 31.

<sup>71</sup> Civil Procedure Rules, Rule 39.2.

<sup>72</sup> Civil Procedure Rules, Part 1.

<sup>73</sup> Civil Procedure Rules, Rule 19.6.

<sup>74</sup> Civil Procedure Rules, Rule 19.7.

<sup>75</sup> For more information, see

<http://www.internationallawoffice.com/newsletters/detail.aspx?g=9ac6c285-4ce7-da11-8a10-00065bfd3168>.

<sup>76</sup> Civil Procedure Rules, Rule 19.10.



would distinguish smaller groups of claims within the wider group.<sup>77</sup> If the court approves the order, it will specify which issues may be litigated collectively and provide for the establishment of a register where all claims falling under the order must be individually entered.<sup>78</sup> The court may order that one or more claims on the register proceed as a test claim, and may appoint one of the parties' lawyers as a lead lawyer for the group.<sup>79</sup> Courts may also issue Group Litigation Orders of their own initiative where appropriate.<sup>80</sup> Judgments on Group Litigation matters are binding on all parties who have registered, although any party adversely affected by a Group Litigation judgment may seek permission to appeal.<sup>81</sup>

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

In general, a person or organisation must be directly affected by a matter to bring legal proceedings. As above, non-governmental organisations may bring judicial review proceedings in their own name where they have a “sufficient interest.”

In addition, any person or organisation may apply for permission to provide evidence for or participate in a judicial review proceeding.<sup>82</sup> These kinds of interventions are relatively common, especially in public interest cases. There are no set requirements that a third party wishing to intervene in judicial review proceedings must fulfill, but it has been suggested that courts are more likely to allow these where an organisation has a special interest and can offer information or a perspective that is not otherwise available to the parties in a case.<sup>83</sup>

Civil courts may add parties to individual claims where it would help the court to resolve all matters in dispute in the proceedings, or where it would provide a chance for a new issue connected to the proceedings to be raised and resolved.<sup>84</sup>

Non-governmental organisations may also seek to intervene in existing legal matters of any nature – civil, criminal, or otherwise – in which they have a strong interest.<sup>85</sup> There are no clear rules governing these kinds of interventions at the trial court and lower appellate court levels, but permission to intervene may be sought and granted by either judicial administrative offices or the court hearing the case.<sup>86</sup> If the case reaches the UK Supreme Court, non-governmental organisations making submissions in the public interest are explicitly given permission to intervene.<sup>87</sup>

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<sup>77</sup> Civil Procedure Rules, Practice Direction 19B, Section 3.2.

<sup>78</sup> Civil Procedure Rules, Rule 19.12.

<sup>79</sup> Civil Procedure Rules, Rule 19.3.

<sup>80</sup> Civil Procedure Rules, Practice Direction 19B, Section 4.

<sup>81</sup> Civil Procedure Rules, Rule 19.2.

<sup>82</sup> Civil Procedure Rules, Rule 54.17.

<sup>83</sup> See <http://www.publiclawproject.org.uk/documents/3rdPartyInterventionsGuide.pdf>; for more information, see <http://www.publiclawproject.org.uk/downloads/PublicInterest.pdf>.

<sup>84</sup> Civil Procedure Rules, Rule 19.2.

<sup>85</sup> See <http://www.justice.org.uk/data/files/resources/32/To-Assist-the-Court-26-October-2009.pdf>, Para. 16.

<sup>86</sup> See <http://www.justice.org.uk/data/files/resources/32/To-Assist-the-Court-26-October-2009.pdf>, Para. 25.

<sup>87</sup> Supreme Court Rules 2009, Rule 26, available at [http://www.supremecourt.gov.uk/docs/uksc\\_rules\\_2009.pdf](http://www.supremecourt.gov.uk/docs/uksc_rules_2009.pdf).

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

As above, civil cases are usually filed in county courts, or – where they seek damages in excess of £25,000 – in the High Court. The Civil Procedure Rules provide extensive guidance on how to initiate civil proceedings.<sup>88</sup>

Claims for judicial review are filed with the Administrative Court; again, the Civil Procedure Rules provide guidance on the required fees and documents.<sup>89</sup>

Private criminal prosecutions are initiated in a magistrate's court.<sup>90</sup> Depending on the nature of the offence, these cases may later be transferred to the Crown Court.<sup>91</sup>

Depending on their age and the nature of the offence, cases involving children accused of committing offences will either be heard in a youth court or an adult magistrates' court.<sup>92</sup>

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As above, child complainants or their representatives may qualify for free or subsidised legal assistance to bring civil or judicial review proceedings.<sup>93</sup> The Legal Aid Agency provides an online legal aid eligibility calculator to help potential claimants determine whether they are entitled to assistance in meeting legal fees.<sup>94</sup>

In addition to the potential claimant's financial circumstances, other factors to be considered in determining eligibility for legal assistance include whether the case is brought in the public interest, the nature and possible impact of the claim, and the likelihood of success.<sup>95</sup> If the claim is successful and money damages are recovered, the

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<sup>88</sup> Family Procedure Rules, Practice Direction 7A, Rule 5.1, available online at:

[https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a#para5.1](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a#para5.1).

<sup>89</sup> Civil Procedure Rules, Practice Direction 54A.

<sup>90</sup> Prosecution of Offences Act 1985, Section 6, available at

<http://www.legislation.gov.uk/ukpga/1985/23>; Criminal Procedure Rules, Part 7, available at

<http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>.

<sup>91</sup> Crime and Disorder Act 1998, Section 51; see also

<http://www.mccue-law.com/wp-content/uploads/2011/09/UK-guide-to-private-prosecution1.pdf>.

<sup>92</sup> See, e.g., Powers of Criminal Courts (Sentencing) Act 2000, available at

<http://www.legislation.gov.uk/ukpga/2000/6/contents>.

<sup>93</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1.

<sup>94</sup> See

<http://legalaidcalculator.justice.gov.uk/calculators/eliCalc.jsessionid=A41079FF1119CC595445FC8F5A83B197?execution=e1s1>.

<sup>95</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Sections 10, 11.

complainant may also be required to repay legal aid funds that have been disbursed.<sup>96</sup>

Civil courts, family courts, and magistrates' courts all charge various filing and administrative fees, but operate a system of fee waivers known as a "remission system".

<sup>97</sup> Children may be eligible for fee waivers, and any person representing a child in proceedings may similarly apply for a waiver.<sup>98</sup> If children or their representatives are already receiving legal aid, the rules also provide in some circumstances that their lawyer pay court fees on their behalf.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono legal services are available for both individuals and non-governmental organisations, and are most often obtained through legal service-focused organisations and clearinghouses. Many of these are housed in the National Pro Bono Centre<sup>99</sup> which co-ordinates the delivery of pro-bono legal services in England and Wales including, among others:

- The Bar Pro Bono Unit<sup>100</sup>
- ProBonoUK.net<sup>101</sup>
- LawWorks<sup>102</sup>
- The Access to Justice Foundation<sup>103</sup>
- i-Probono<sup>104</sup>

LawWorks Cymru works with legal professionals in Wales as part of the the National Pro Bono Centre, and co-ordinates the provision of pro bono legal services throughout Wales.<sup>105</sup>

There are also individual firms in England and Wales that offer legal assistance free of charge.<sup>106</sup> It is also possible to contact individual lawyers directly to discuss funding your case. Advice and online databases designed to help with this process are provided by:

- Citizens Advice Bureau<sup>107</sup>
- Community Legal Advice<sup>108</sup>
- The Law Society<sup>109</sup>

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<sup>96</sup> See [http://www.legalservices.gov.uk/docs/about\\_us\\_main/Paying\\_for\\_your\\_legal\\_aid\\_LSCBL.pdf](http://www.legalservices.gov.uk/docs/about_us_main/Paying_for_your_legal_aid_LSCBL.pdf).

<sup>97</sup> See <http://www.justice.gov.uk/courts/fees>.

<sup>98</sup> See <http://hmcts.courtfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf>.

<sup>99</sup> See <http://www.nationalprobonocentre.org.uk/>.

<sup>100</sup> See <http://www.barprobono.org.uk/>.

<sup>101</sup> See <http://www.probonouk.net/index.php?id=home>.

<sup>102</sup> See <http://www.lawworks.org.uk/>.

<sup>103</sup> See <http://www.atjf.org.uk/>.

<sup>104</sup> See <http://www.i-probono.com/>.

<sup>105</sup> See <http://www.wcva.org.uk/advice-guidance/lawworks-cymru>

<sup>106</sup> Solicitors Pro-bono Group, *A guide to law firm pro-bono programmes in England & Wales*, 2004, available online at:

<http://www.probonogroup.org.uk/lawworks/docs/pro%20bono%20programmes%20in%20England%20and%20Wales.pdf>.

<sup>107</sup> See <http://www.citizensadvice.org.uk/index/getadvice.htm#searchbox>.

<sup>108</sup> See <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>.

<sup>109</sup> See <http://www.lawsociety.org.uk/find-a-solicitor/>.

Children's and human rights organisations may also be able to offer legal advice, representation, or other forms of assistance. Organisations with a particular interest in children's rights include:

- The Coram Children's Legal Centre<sup>110</sup>
- Just for Kids Law<sup>111</sup>
- Children's Rights Alliance for England<sup>112</sup>
- Liberty<sup>113</sup>
- Justice<sup>114</sup>
- Howard League for Penal Reform<sup>115</sup>
- Youth Justice Legal Centre<sup>116</sup>

Conditional fee agreements are generally permitted in civil proceedings.<sup>117</sup> These kinds of agreements provide that legal fees are only payable if certain circumstances are fulfilled. Under “no win, no fee” agreements, legal fees become due if the case is successful.<sup>118</sup> These fees will often include a “success fee”, which cannot be more than a certain percentage of the standard legal fees (100% in most cases under the Conditional Fee Arrangements Order 2000<sup>119</sup>) or damages sought (25% in personal injury cases<sup>120</sup>). However, under a conditional fee agreement, the person bringing the case will still be responsible for paying out-of-pocket expenses like court costs.

It should also be noted that although courts have full discretion in determining whether to award costs in civil proceedings, the usual practice is for courts to order the losing party to pay the winning party's costs.<sup>121</sup> In conditional fee arrangements, however, the losing party cannot be ordered to pay any portion of the “success fee”.<sup>122</sup> By the same token, if a person brings and loses a case under a conditional fee arrangement, he or she may still be responsible for the legal costs of the other side. Legal expenses insurance policies may be taken out to cover these costs should they be awarded, but the expense of these policies must be paid for upfront and in most circumstances cannot be recovered if the case is won.<sup>123</sup>

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

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<sup>110</sup> See <http://www.childrenslegalcentre.com/>.

<sup>111</sup> See <http://www.justforkidslaw.org/>.

<sup>112</sup> See <http://www.crae.org.uk/>.

<sup>113</sup> See <http://www.liberty-human-rights.org.uk/index.php>.

<sup>114</sup> See <http://www.justice.org.uk/>.

<sup>115</sup> See <http://www.howardleague.org/>.

<sup>116</sup> See [www.yjlc.uk](http://www.yjlc.uk).

<sup>117</sup> Courts and Legal Services Act 1990, Section 58: <http://www.legislation.gov.uk/ukpga/1990/41>.

<sup>118</sup> For more information, see

<http://www.legalcentre.co.uk/personal-injury/guide/what-are-conditional-fee-agreements/>.

<sup>119</sup> Conditional Fee Arrangements Order 2000, available at

<http://www.legislation.gov.uk/uksi/2000/823/made>.

<sup>120</sup> See <http://www.lawsociety.org.uk/representation/campaigns/costs/>.

<sup>121</sup> See, e.g., Magistrates' Courts Act 1980, Section 64:

<http://www.legislation.gov.uk/ukpga/1980/43/contents>.

<sup>122</sup> Courts and Legal Services Act 1990, Section 58.

<sup>123</sup> Courts and Legal Services Act 1990, Section 58C.

As above, judicial review proceedings must usually be brought within three months' time of the public decision to be challenged.<sup>124</sup> For civil proceedings, the time limit for bringing cases in the UK depends on the type of claim brought, as set out in the Limitation Act 1980.<sup>125</sup> In general, claims involving violations of rights would need to be brought within six years of the violation.<sup>126</sup> There are certain circumstances under which claims may be brought outside the usual time constraints, including where the effects of an action in question were not known at the time it occurred<sup>127</sup> or where the claimant is disabled.<sup>128</sup>

Because they do not have full access to the legal system, children are classified as disabled for the purposes of the statute of limitations. This means that the time requirements for their particular claim would not come into play until their 18<sup>th</sup> birthday, giving them the opportunity to bring cases relating to violations of their rights during childhood as young adults. If the limitation period has expired, courts may also be able to offer an exception to the usual time bar on bringing certain kinds of claims.<sup>129</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Civil Procedure Rules set out the types of evidence that are admissible in civil proceedings, including documents, physical evidence, photographs or video recordings, and witness statements or testimony.<sup>130</sup> The rules also provide for the admission of expert testimony, which involves not only giving factual information, but also opinions based on that information.<sup>131</sup>

Children may give evidence or testify before any court so long as they are able to understand the seriousness of legal proceedings and the importance of telling the truth.<sup>132</sup> Where the court believes that a child does not understand the nature of an oath, the child may still be able to serve as a witness in civil proceedings where he or she understands that they have a duty to speak the truth and has “sufficient understanding” to satisfy the court their evidence should be heard.<sup>133</sup> In criminal proceedings, children under 14 are not permitted to testify under oath, but may give unsworn testimony.<sup>134</sup> The usual requirement for giving unsworn testimony is that a child be able to understand the questions asked and give answers to these questions that can be understood.<sup>135</sup>

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<sup>124</sup> Civil Procedure Rules, Rule 54.5.

<sup>125</sup> Limitation Act 1980, available at <http://www.legislation.gov.uk/ukpga/1980/58>.

<sup>126</sup> Limitation Act 1980, Section 2.

<sup>127</sup> Limitation Act 1980, Sections 14A, 14B.

<sup>128</sup> Limitation Act 1980, Section 28.

<sup>129</sup> Limitation Act 1980, Sections 32A, 33.

<sup>130</sup> Civil Procedure Rules, Parts 32 – 34.

<sup>131</sup> Civil Procedure Rules, Part 35.

<sup>132</sup> R. v. Hayes (1976); for more information, see <http://fds.oup.com/www.oup.com/pdf/13/9780199583607.pdf>.

<sup>133</sup> Children Act 1989, Section 96.

<sup>134</sup> Youth Justice and Criminal Evidence Act 1999, Section 55, available at <http://www.legislation.gov.uk/ukpga/1999/23/contents>.

<sup>135</sup> Youth Justice and Criminal Evidence Act 1999, Section 53.

There are extensive protections provided to child victims and witnesses in criminal cases under the Youth Justice and Criminal Evidence Act 1999.<sup>136</sup> Among other things, protections for child witnesses include privacy screens, video links, and examination through an intermediary.<sup>137</sup> Child defendants are not entitled to intermediaries. Other special measures that apply to child victims and witnesses also do not apply to child defendants other than those covered by section 47 of the Police and Justice Act 2006, which allows certain accused persons to give evidence through a live link.

The protections afforded to children in criminal proceedings do not, however, as yet apply to children giving evidence in civil proceedings in England. Nonetheless, civil courts may order that the witness statement of a child giving evidence in a lawsuit be kept confidential.<sup>138</sup>

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

The civil courts operate a number of different case management “tracks”.<sup>139</sup> Small claims hearings for claims valued up to £5,000 take on average 30 weeks to reach trial, while both “fast track” claims valued between £5,000 and £25,000 and “multi track” claims valued at more than £25,000 take on average 55 weeks to reach trial. Criminal cases typically reach resolution within 158 days.<sup>140</sup> Public law children's matters, including care proceedings, must conclude within 26 weeks of the date of the application unless the court allows an extension.<sup>141</sup>

Requests to review public decisions are usually granted within a matter of weeks and reach a full hearing in 6 months to a year, but may in urgent cases be heard within 24 hours.<sup>142</sup> Complex issues and cases of any nature, however, may take several years to resolve.

G. Appeal. What are the possibilities for appealing a decision to a higher court?

County Court and High Court decisions are reviewed by the Court of Appeal; Court of Appeal decisions are in turn reviewed by the Supreme Court.<sup>143</sup> The Court of Appeal hears a large number and wide variety of cases, while the Supreme Court has a more limited jurisdiction and typically reviews only cases on matters of general public importance.<sup>144</sup> The Supreme Court's power to review cases is established in a number of statutes, including the Administration of Justice Act 1969<sup>145</sup>, Court of Session Act 1988,<sup>146</sup> and Access to Justice Act 1999.<sup>147</sup>

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<sup>136</sup> For more information, see

<http://www.justice.gov.uk/downloads/victims-and-witnesses/working-with-witnesses/your-child-witness.pdf>.

<sup>137</sup> Youth Justice and Criminal Evidence Act 1999, Sections 23 - 30.

<sup>138</sup> Civil Procedure Rules, Rule 32.13.

<sup>139</sup> Civil Procedure Rules, Parts 26 to 29.

<sup>140</sup> See <http://www.justice.gov.uk/statistics/courts-and-sentencing/judicial-quarterly>.

<sup>141</sup> Practice Direction 12A, Rule 5.1

<sup>142</sup> See <http://www.publiclawproject.org.uk/downloads/GuideToJRProc.pdf>.

<sup>143</sup> For more information, see G. more information:

[http://www.findlaw.co.uk/law/dispute\\_resolution/litigation/post\\_trial/500235.html](http://www.findlaw.co.uk/law/dispute_resolution/litigation/post_trial/500235.html).

<sup>144</sup> See <http://www.supremecourt.gov.uk/about/role-of-the-supreme-court.html>.

<sup>145</sup> Administration of Justice Act 1969, available at <http://www.legislation.gov.uk/ukpga/1969/58>.

<sup>146</sup> Court of Session Act 1988, available at <http://www.legislation.gov.uk/ukpga/1988/36/contents>.

Unless otherwise specified in the Civil Procedure Rules, civil appeals require the permission of the court issuing the judgment in question or the prospective appellate court. An appeal must have a “real prospect of success” or offer another compelling reason to be heard, and the issues that are reviewed on appeal may be limited when permission to appeal is granted.<sup>148</sup> In most circumstances, appeals must be filed within 21 days of the decision, although the lower court may shorten or lengthen this time period.<sup>149</sup> Appeals from decisions refusing permission to seek judicial review must be filed within 7 days.<sup>150</sup> Appellate courts have the same powers as lower courts, and may, among other things, affirm, set aside or vary lower court's order or judgment, refer a particular claim or issue for determination to the lower court, or order a new trial or hearing.<sup>151</sup> This said, appellate courts usually limit their work to reviewing the decision of the lower court and do not generally receive new evidence.<sup>152</sup>

Criminal appeals are governed by the Criminal Procedure Rules.<sup>153</sup> Depending on the plea entered and the court presiding over the trial, a child convicted of an offence may have an automatic right to appeal to either the Crown Court or the Court of Appeal.<sup>154</sup>

Notably, although it is not technically an appeal, further review may be sought with the European Court of Human Rights once a claimant has gone through the English appeals process.<sup>155</sup> Among other requirements, cases must be filed within six months of the final decision, must relate to one or more rights under the European Convention on Human Rights, and must demonstrate that the applicant is a personal, direct victim of a violation and has suffered a “significant disadvantage” as a result.<sup>156</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Precedent plays an important role in the UK judicial system. Courts are bound by their own and higher courts' decisions, which means that the negative effects of a bad decision could be felt for many years. Within the judicial system, a bad decision from a higher court will be more far-reaching and have greater effects than a bad decision from a lower court.

Parliament has on a number of occasions taken action to “reverse” court decisions

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<sup>147</sup> Access to Justice Act 1999, available at <http://www.legislation.gov.uk/ukpga/1999/22/contents>; For more information, see

<http://www.supremecourt.gov.uk/docs/a-guide-to-bringing-a-case-to-the-uksc.pdf>.

<sup>148</sup> Civil Procedure Rules, Rule 52.3.

<sup>149</sup> Civil Procedure Rules, Rule 52.4.

<sup>150</sup> Civil Procedure Rules, Rule 52.15.

<sup>151</sup> Civil Procedure Rules, Rule 52.10.

<sup>152</sup> Civil Procedure Rules, Rule 52.11.

<sup>153</sup> Criminal Procedure Rules, Parts 63 – 75.

<sup>154</sup> For more information, see

<http://www.hse.gov.uk/enforce/enforcementguide/court/appeals-defence.htm>.

<sup>155</sup> See [http://www.echr.coe.int/ECHR/homepage\\_en](http://www.echr.coe.int/ECHR/homepage_en).

<sup>156</sup> For more information, see

[http://www.echr.coe.int/NR/rdonlyres/B5358231-79EF-4767-975F-524E0DCF2FBA/0/ENG\\_Guide\\_pratique.pdf](http://www.echr.coe.int/NR/rdonlyres/B5358231-79EF-4767-975F-524E0DCF2FBA/0/ENG_Guide_pratique.pdf).

through legislation in contentious cases.<sup>157</sup> The Human Rights Act, often litigated in courts since it came into force in 2000, is also under threat of repeal following a series of politically unpopular judgments.<sup>158</sup>

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

The enforcement of awards in civil proceedings is relatively straightforward and governed by the Civil Procedure Rules.<sup>159</sup>

Judicial review proceedings often do not provide directly enforceable remedies. Rather, judges most often issue “quashing orders”, which overturn an unlawful decision but do not force a public body to follow any particular course of action.<sup>160</sup> Instead, the body need only approach the decision again bearing the ruling in mind, and may ultimately opt not to alter its stance.

Similarly, cases that involve violations of the Human Rights Act do not automatically alter a law found to breach a party's human rights. The most a court can do is declare the law in question to be incompatible with the Act and request that Parliament revise the offending provision.<sup>161</sup> Until this is done, the law remains valid and in effect, and no particular amendment is guaranteed. The Human Rights Act does, however, provide Parliament with an expedited procedure to revise a law found to violate either the Act as determined by a national court or the European Convention on Human Rights as determined by the European Court on Human Rights.<sup>162</sup> The Ministry of Justice publishes an annual report on “Responding to human rights judgments” that reviews actions taken by the Government when courts have found that human rights were violated.<sup>163</sup>

V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

*National laws*

Whilst the National Assembly for Wales makes laws for Wales in certain subject areas,<sup>164</sup> outside of these ‘subjects’, the UK government passes laws that are also applicable to Wales. Thus, the application of most national laws, the administration of legal aid, and the criminal, civil and family courts and tribunals in England and Wales are unified.

*Legal aid and costs*

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<sup>157</sup> See, e.g., <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/178/178.pdf>.

<sup>158</sup> See <http://www.justice.gov.uk/news/features/bill-of-rights-consultation-launched>.

<sup>159</sup> Civil Procedure Rules, Part 70.

<sup>160</sup> See <http://www.publiclawproject.org.uk/downloads/GuideToJRProc.pdf>.

<sup>161</sup> Human Rights Act, Section 4.

<sup>162</sup> Human Rights Act, Schedule 2; for more information, see <http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf>.

<sup>163</sup> See, e.g., <http://www.official-documents.gov.uk/document/cm84/8432/8432.pdf>.

<sup>164</sup> Cabinet Office & Wales Office, *Devolution Settlement: Wales*, available online at: <https://www.gov.uk/devolution-settlement-wales>.



With the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into effect in April 2013, the UK Government dramatically altered the landscape for legal aid in civil proceedings. It is difficult to know precisely what effects the Act will have on children's ability to bring violations of their rights into the courtroom, but the changes have been widely decried by human rights advocates and English lawyers, and the Children's Commissioner's office predicts its impact on a wide range of children's rights.<sup>165</sup> The abolishment of legal aid for parents in private family matters affects children directly, for example, it impacts on a child's relationship with their absent parent, who would be prevented from seeking assistance from the court due to a lack of funding. Children with immigration law issues have also been directly affected by the denial of legal aid due to the new rules.<sup>166</sup> Of particular relevance to children, the Government targeted reductions in legal aid to cases involving housing, and social-welfare benefits. The cuts to legal aid come in an effort to trim costs, and children's rights advocates at one point estimated that 13% of children would lose access to legal aid under an earlier version of proposed reforms.<sup>167</sup>

The changes to "no win, no fee" fee agreements, with the aim of keeping more cases out of the courts, removes the losing defendant's responsibility to pay the winning claimant's lawyers' "success fee" and reimburse any insurance taken out by the claimant to protect against adverse legal costs.<sup>168</sup> The Law Society believes the revisions will have damaging effects on access to justice for persons who are not eligible for legal aid but unable to afford to legal assistance under traditional fee agreements.<sup>169</sup> Law firm Leigh Day clarifies that "claimants will receive less compensation and may have to pay thousands of pounds at the start of a case with no guarantee of winning".<sup>170</sup>

Cuts to criminal legal aid mean that there is a risk children will receive lower standards of advocacy. Youth court work is poorly paid when compared to adults charged with the same offences. This means children are likely to be represented by inexperienced, junior practitioners.

### *Privacy*

As a general rule, the name or other identifying information of a child accused of an offence may not be publicly reported,<sup>171</sup> and the court has the power to order the same for children otherwise involved in criminal proceedings.<sup>172</sup> However, the statutory presumption of non-reporting in the youth court can be waived, and there is no such presumption where children appear in the adult courts – though the court may impose reporting restrictions should it choose to do so. In addition, the legislation does not apply to children prior to court appearance, therefore there is no protection against reporting of children who are arrested or subject to police bail. In addition, any

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<sup>165</sup> The Children's Commissioner, 24 September 2014, available online at:

[http://www.childrenscommissioner.gov.uk/content/press\\_release/content\\_554](http://www.childrenscommissioner.gov.uk/content/press_release/content_554).

<sup>166</sup> Ibid.

<sup>167</sup> See <http://www.bbc.co.uk/news/education-17728128>.

<sup>168</sup> Ministry of Justice, available online at: <http://www.justice.gov.uk/civil-justice-reforms/main-changes>.

<sup>169</sup> See <http://www.lawgazette.co.uk/news/jackson-civil-cost-reforms-deferred-until-april-2013>.

<sup>170</sup> See

<http://www.leighday.co.uk/News/2012/May-2012/Mesothelioma-claims-and-funding--the-Government-de>.

<sup>171</sup> Youth Justice and Criminal Evidence Act 1999, Section 44.

<sup>172</sup> Youth Justice and Criminal Evidence Act 1999, Section 45.

reporting restrictions imposed only apply to children while they are under 18, and lapse on the child's 18 birthday. Victims and witnesses can be granted lifelong anonymity but defendants cannot.

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*