

ACCESS TO JUSTICE FOR CHILDREN: NORTHERN IRELAND (UK)

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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?

The United Kingdom (UK), of which Northern Ireland is part, ratified the CRC in 1991. Ratified international instruments do not have the force of law in the UK, unless incorporated through implementing legislation. The CRC had not been so incorporated into national law.

B. Does the CRC take precedence over national law?

No, the CRC does not take precedence over national law. However, where possible, the UK courts interpret national law in a manner which is consistent with the CRC and other international human rights obligations.

C. Has the CRC been incorporated into national law?

No, the Convention has not yet been directly incorporated into national law.

The Children's Commissioner for Northern Ireland (as well as the three other UK Children's Commissioners) has called for the CRC to be incorporated into national law, stating that "the biggest problem facing the realisation of children's rights is the absence of domestic legislation fully incorporating children's rights in legislation."¹

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

No, the CRC cannot be directly enforced in the courts. However, it is often referenced and discussed in legal proceedings involving children's rights as a source of interpretive guidance.

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

The CRC is frequently cited in by the courts. In *Re. Northern Ireland Commissioner for Children and Young People*,² the Northern Ireland Commissioner for Children and Young People (NICCY) challenged the law

¹ Children's Rights - Human Rights Joint Committee, *Memorandum submitted by the Northern Ireland Commissioner for Children and Young People (NICCY)*, available at: <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/157/157we38.htm>.

² [2007] NIQB 115, available at: <http://www.bailii.org/nie/cases/NIHC/OB/2007/115.html>.

regarding the reasonable chastisement of children. The NICCY presented an extensive argument regarding the relevant CRC principles. The High Court examined these arguments and noted: “Even if an international treaty such as this has not been incorporated into domestic law, our domestic legislation should be construed so far as possible to comply with the international obligations which we have undertaken when two interpretations are possible. However it remains the fact that that internationally agreed statements of good practice such as the UNCRC are not contained within our domestic law and whilst it “should colour the courts’ approach” [...] they can do no more than that. To take such matters into account does not mean that they become binding. The fundamental principle still remains that treaties do not affect domestic law unless incorporated into it by some legislative act.”³

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?

Children and their representatives can initiate civil proceedings to challenge violations of children’s rights, pursuant to the rules outlined in part II.B below.

If the violation constitutes a crime, any member of the public may report the matter to the police.

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?

Civil cases on behalf of a child can only be brought by a “next friend”,⁴ who must act through a solicitor.⁵ A court order is not generally required to appoint a person as a next friend.⁶ A person may apply to act as a next friend by filing with the court:

1. a written consent from the proposed next friend; and
2. a certificate from the child’s solicitor stating that:
 - a) the person in question is indeed a minor;
 - b) no other person has already been appointed as a next friend; and
 - c) the proposed next friend does not have any conflict of interest with the minor.⁷

If a person has previously acted as a next friend for the child, then that person is also entitled to act as a next friend in further proceedings. A court order is required to appoint a substitute.⁸ A person’s role as a next friend

³ Ibid. at para. 109.

⁴ The Rules of the Court of Judicature 1980 SR 1980/346, Order 80, Rule 2(1), available at: <http://www.courtsni.gov.uk/en-GB/Publications/court-rules/Documents/RsCoJ/RsCJ.pdf>.

⁵ The Rules of the Court of Judicature 1980, Order 80, Rule 2(3).

⁶ The Rules of the Court of Judicature 1980, Order 80, Rule 3(1).

⁷ The Rules of the Court of Judicature 1980, Order 80, Rule 3(5) – (6).

⁸ The Rules of the Court of Judicature 1980, Order 80, Rule 3(3).

automatically ceases when the child in question reaches 18 and is no longer considered a minor.⁹

In family court proceedings a case on a child's behalf must also be brought by a next friend.¹⁰ A child can request to bring a case without a next friend by filing a written request for leave setting out the reasons for the application, or by making an oral request for leave at any hearing in the proceedings.¹¹ A child will be able to bring a case without a next friend if they have obtained the leave of the court for that purpose; or a solicitor considers that the child is able, having regard to their understanding, to give instructions in relation to the proceedings; and they have accepted instructions from the minor to act for them in the proceedings.¹² If, once proceedings have started, a minor wishes to continue the proceedings without their next friend, they may apply to the court for the next friend to be removed.¹³ The court will use the same criteria described above to decide whether or not to grant the request.¹⁴

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

The case of an infant or young child is not different than that of an older child and follows the same rules as above.

Further, an adult with "parental responsibility" over a child may pursue legal claims related to a child and his/her property.¹⁵ Parental responsibility vests with the biological mother at birth and with the father if he is married to the mother, or is registered on the birth certificate or is granted it by the mother.¹⁶ However, the Children (Northern Ireland) Order 1995 also provides for the appointment of legal guardians¹⁷ who acquire parental responsibility for the child concerned.¹⁸ But it is important to note that adults do not require parental responsibility to act as a next friend but can apply to the court to act as a next friend.¹⁹

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

⁹ The Rules of the Court of Judicature 1980, Order 80, Rule 1.

¹⁰ The Family Proceedings Rules (Northern Ireland) 1996 (S.R. 1996 No.322), Rule 6.2, available at <http://legislation.data.gov.uk/nisr/1996/322/part/VI/made/data.htm?wrap=true>.

¹¹ Family Proceedings Rules (Northern Ireland) 1996, Rule 6.3(2).

¹² Family Proceedings Rules (Northern Ireland) 1996, Rule 6.3(1).

¹³ Family Proceedings Rules (Northern Ireland) 1996, Rule 6.3 (4).

¹⁴ Family Proceedings Rules (Northern Ireland) 1996, Rule 6.3 (5) – (6).

¹⁵ The Children (Northern Ireland) Order 1995 No. 755 (N.I. 2), Section 6 Meaning of Parental Responsibility: '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.

¹⁶ The Children (Northern Ireland) Order 1995, Article 5.

¹⁷ The Children (Northern Ireland) Order 1995, Articles 159-160.

¹⁸ The Children (Northern Ireland) Order 1995, Articles 159(4) and 160 (4).

¹⁹ The Rules of the Court of Judicature 1980, Order 80.

Civil legal aid is available for cases in the Supreme Court, Court of Appeal, High Court and others.²⁰ There are no provisions preventing children's representatives to apply for legal aid, however, to qualify for civil legal aid, an applicant must meet the requirements of a means test²¹ and a merits test.²² For further detail, please see part IV.B below.

In criminal proceedings the parent or guardian of a child may apply for free legal aid on behalf of the child.²³ A child is entitled to free legal aid in the preparation and conduct of his/her defence at the trial.²⁴

- 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 parent or guardian does not need to consent to a case being brought.

It is worth noting that a next friend or guardian ad litem cannot, where a claim for money is involved, agree to a settlement, compromise or payment without the court's approval.²⁵

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?

Most civil cases are brought in the County Court, although the High Court has jurisdiction over cases involving claims for compensation over £30,000.²⁶ The action typically claims damages and a declaration for breach of the rights protected by the Human Rights Act 1998, and may also claim an injunction, where appropriate.

With the leave of the court, judicial review proceedings may be brought to challenge a decision of a public body.²⁷ In judicial review, the High Court examines whether a body performing a public function made a decision in a lawful manner.²⁸ A decision may be challenged if the body, when making the decision acted illegally, acted in a procedurally unfair manner, acted

²⁰ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, No. 228 (N.I. 8), Article 10 (1) and Schedule 1 available at: <http://www.legislation.gov.uk/nisi/1981/228/contents>.

²¹ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Article 9.

²² Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Article 10 (4).

²³ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Article 34.

²⁴ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Article 29.

²⁵ The Rules of the Court of Judicature 1980, Order 80, Rule 8.

²⁶ The County Courts (Financial Limits) Order (Northern Ireland) 2013 No. 18, Article 2(a). Available at <http://www.legislation.gov.uk/nisr/2013/18/made>.

²⁷ The Rules of the Court of Judicature 1980, Order 53, Rule 3.

²⁸ The PILS Project, Judicial Review in Northern Ireland: A guide for non-governmental organisations, available at <http://www.pilsni.org/sites/default/files/JRhandbook.pdf>.

irrationally; or acted contrary to an individual's legitimate expectation as protected by law.²⁹

The NICCY can investigate complaints made by a child against an action by a public body, but only if the complaint does not fall within the remit of another statutory complaints system.³⁰ Where the NICCY has completed a formal investigation,³¹ he shall produce a report with his conclusions and reasons for them which contains recommendations as to action to be taken by that or any other authority.³² If the NICCY does not resolve a complaint in a satisfactory manner, complaints may be made to the Northern Ireland Ombudsman.³³

The NICCY may bring or intervene in proceedings concerning the rights or welfare of children or young persons, where the case raises an issue of principle.³⁴ He may also assist a child in legal proceedings where it would be unreasonable to expect the child or young person to deal with the case without assistance because of its complexity, or because of his position in relation to another person involved, or for some other reason and the case raises an issue of principle.³⁵

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.³⁶ 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,³⁷ but the complaint will be admissible only if all domestic remedies have been exhausted.³⁸ Anonymous complaints are not permitted.³⁹ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.⁴⁰ After examining the case, the Court renders a judgment which is binding on the State⁴¹ and also has powers to award monetary compensation to the victims of human rights abuses.⁴² It is also worth noting that the Court has an established practice of referring to other international human rights

²⁹ The PILS Project: Judicial Review in Northern Ireland: A guide for non-governmental organisations. Please see this guide for details on what constitutes the four criteria.

³⁰ The Commissioner for Children and Young People (Northern Ireland) Order 2003, Section 12, available at: <http://www.legislation.gov.uk/nisi/2003/439/contents/made>.

³¹ The Commissioner for Children and Young People (Northern Ireland) Order 2003, Article 16.

³² The Commissioner for Children and Young People (Northern Ireland) Order 2003, Article 18.

³³ See <http://www.ni-ombudsman.org.uk/>.

³⁴ The Commissioner for Children and Young People (Northern Ireland) Order 2003, Article 14.

³⁵ The Commissioner for Children and Young People (Northern Ireland) Order 2003, Article 15.

³⁶ 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>.

³⁷ *Ibid.*, Article 34.

³⁸ *Ibid.*, Article 35.

³⁹ *Ibid.*

⁴⁰ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁴¹ European Convention on Human Rights, Article 46.

⁴² *Ibid.*, Article 41.

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?

Civil courts can award monetary damages or issue an injunction. If a court holds that a law breaches the Human Rights Act 1998 then it may issue a “declaration of incompatibility”.⁴³ The law in question will remain in force until Parliament legislates to amend it. Civil courts may award damages for a breach of a party’s human rights.⁴⁴

In judicial review proceedings, the court may issue a “quashing order” which voids the unlawful decision made by the body; the body must then re-take the decision in a lawful fashion but does not necessarily need to alter the decision. Judicial review proceedings typically seek either a declaration or an injunction⁴⁵ as well as damages though they are not commonly awarded.⁴⁶

In both civil and judicial review proceedings, it is possible to request an interim injunction at the beginning of proceedings to ensure that the action complained of does not continue while the case is in progress.

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?

In judicial review proceedings, it is not necessary to identify or involve individual child victims. To bring judicial review proceedings, an individual must have “standing”, which means that an individual who challenges a decision on human rights grounds must be a “victim” of the disputed decision and in all other cases the individual challenging the decision must have “sufficient interest”⁴⁷ in the matter, but “sufficient interest” has been interpreted broadly.⁴⁸

Generally, in other legal proceedings it is necessary to identify a specific victim. However, reporting restrictions exist to protect the identity of children involved in the justice system.⁴⁹ In both criminal⁵⁰ and civil⁵¹ proceedings, the court has the power to order that the name, address, school,

⁴³ Human Rights Act 1998, Section 4, available at <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

⁴⁴ Human Rights Act 1998, Section 8. See also https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389272/responding-to-human-rights-judgments-2013-2014.pdf.

⁴⁵ The Rules of the Court of Judicature 1980, Order 53 Rule 1.

⁴⁶ The Rules of the Court of Judicature 1980, Order 53 Rule 7(1).

⁴⁷ The Rules of the Court of Judicature 1980, Order 53 Rule 5.

⁴⁸ The PILS Project: Judicial Review in Northern Ireland: A guide for non-governmental organisations.

⁴⁹ See <http://www.jsbni.com/Publications/reporting-restrictions/Pages/default.aspx>.

⁵⁰ Youth Justice and Criminal Evidence Act 1999, Chapter IV: Reporting restrictions, available at: <http://www.legislation.gov.uk/ukpga/1999/23/part/II/chapter/IV>.

⁵¹ The Children (Northern Ireland) Order 1995, Section 170, available at: <http://www.legislation.gov.uk/nisi/1995/755/article/170>.

a picture or other detail which may lead to the identification of a child is not published, except in so far as permitted by the court itself.

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

Representative action is possible where numerous parties have the same interest in a claim.⁵² Civil courts may add parties to individual claims if it would help the court to resolve all matters in dispute in the proceedings or if it would provide a chance for a new issue connected to the proceedings to be raised and resolved.⁵³ Two or more persons may bring an action together and the Court has the power to order separate trials only if it considers that the joinder of parties will “embarrass or delay the trial or is otherwise inconvenient”.⁵⁴

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?

Generally, a person or an organisation must be directly affected by a matter in order to have standing to bring legal proceedings. A non-governmental organisation (NGO) may bring judicial review proceedings in their own name if it has a “sufficient interest” in the matter”.⁵⁵

NGOs can also intervene as a third party in proceedings between other parties by making written or oral submissions.⁵⁶ However, this is not a right: “the intervention is always subject to the control of the court and whether the third person is allowed by the court to intervene is usually dependent upon the court’s judgment as to whether the interests of justice will be promoted by allowing the intervention”.⁵⁷ The submission must directly concern the issues in question and must add something to the proceedings that the parties themselves cannot provide⁵⁸ and not “merely repeat points” which either party has already made.⁵⁹

If the case reaches the Supreme Court, the following may apply to the court for permission to intervene:

(a) any official body or non-governmental organisation seeking to make submissions in the public interest;

⁵² The Rules of the Court of Judicature 1980, Order 15 Rule 12

⁵³ The Rules of the Court of Judicature 1980, Order 15.

⁵⁴ The Rules of the Court of Judicature 1980, Order 1 and Order 15.

⁵⁵ The Rules of the Courts of Judicature 1980, Order 53, Rule 3(5).

⁵⁶ See Practice Direction 1/2013, entitled “Third party Interveners”, in relation to process in the Court of Judicature for Northern Ireland, available at:

https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Practice%20Direction%2001-13/j_j_Practice%20Direction%2001-13.htm.

⁵⁷ *Re Northern Ireland Human Rights Commission’s Application* [2002] NI 2006 (HL) per Lord Woolf at para. 32, available at: <http://www.publications.parliament.uk/pa/ld200102/ldjudgmt/jd020620/ni-1.htm>.

⁵⁸ The PILS Project, *Judicial Review in Northern Ireland: A guide for non-governmental organisations*.

⁵⁹ Practice Direction 8 of the Supreme Court, para. 8.8.2 available at

<https://www.supremecourt.uk/procedures/practice-direction-08.html#08>; see also Lord Hoffman’s judgment in *Re E’s application* [2008] UKHL 66, available at:

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081112/inrea-1.htm>.

- (b) any person with an interest in proceedings by way of judicial review; and
- (c) any person who was an intervener in the court below.⁶⁰

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?

Civil cases are usually filed in the county courts, but if the claimant seeks damages in excess of £30,000 then the case must be filed in the High Court.

⁶¹ The Rules of the Court of Judicature provide extensive guidance on how to initiate civil proceedings.⁶² Claims for judicial review are filed with the High Court.⁶³

- 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 detailed in Section II.D above, child complainants and their representatives may qualify for free or subsidised legal assistance to bring civil or judicial review proceedings based on a means and merits tests. Applications are considered by the Legal Services Agency, an agency of the Department of Justice. It considers all questions of fact and law arising out of an application and must be satisfied that it is reasonable to grant legal aid. If an application is refused on the merits test appeals may be made to the appeals panel which is an independent panel of lawyers.⁶⁴ Assessment officers at the Assessment Office of the Social Security Agency carry out the means assessment.⁶⁵ An applicant must show that their savings and income are below the current financial limits. Children are now assessed in their own right and not by their parents' financial position. The current financial limits apply to both children and adults.⁶⁶ For further information, the predecessor organisation to the Legal Services Agency, the Northern Ireland Legal Services Commission has produced a guide to legal aid.⁶⁷

Civil courts, family courts and magistrates' courts all charge various filing and administrative fees.⁶⁸ If legal aid is not available to the child, the next

⁶⁰ Supreme Court Rules 2009, Rule 26, available at https://www.supremecourt.uk/docs/uksc_rules_2009.pdf.

⁶¹ The County Courts (Financial Limits) Order (Northern Ireland) 2013 No. 18, Article 2(a).

⁶² The Rules of the Courts of Judicature 1980, Order 5.

⁶³ The Rules of the Courts of Judicature 1980, Order 53.

⁶⁴ Northern Ireland Legal Services Commission: A guide to Legal Aid, paragraph 4.5.

⁶⁵ Northern Ireland Legal Services Commission: A guide to Legal Aid, paragraph 4.6.

⁶⁶ Northern Ireland Legal Services Commission: A guide to Legal Aid, paragraph 4.7.

⁶⁷ See http://www.dojni.gov.uk/index/legalservices/guide_to_legal_aid_v2_jan_2014.pdf.

⁶⁸ The various fees are available at:

<http://www.courtsni.gov.uk/en-GB/Services/CourtFees/Pages/CourtFees.aspx>.

friend may apply on behalf of the minor for exemption or remission of court fees.⁶⁹

- 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 practicing 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?

The Northern Ireland Lawyers' Pro Bono Unit⁷⁰ provides free legal advice and representation in deserving cases where legal aid or other funding is not available and where the applicant is unable to afford legal assistance.⁷¹

The Children's Law Centre offers child-centered legal services on a wide number of issues.⁷²

The Public Interest Litigation Support Project was established in 2009 "to advance human rights and equality in Northern Ireland through the use of and support for public interest litigation."⁷³ It provides legal advice and financial support for legal cases which promote the rights of vulnerable people to participate fully in society.

It is also possible to contact individual lawyers directly to discuss funding a case. The Citizens Advice Bureau⁷⁴ and The Law Society of Northern Ireland⁷⁵ provide advice and an online database of lawyers.

Finally, the NICCY can assist with the bringing of legal cases by providing legal funding to practitioners.⁷⁶

- 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?

The time limit for bringing civil proceedings depends on the nature of the claim. In general, claims concerning violation of rights would need to be

⁶⁹ See

<http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/Exception-Remission-NICTS-fees/Do-I-have-to-pay-fees.pdf>.

⁷⁰ <http://www.solicitors-barristers.co.uk/county-antrim/belfast/northern-ireland-lawyers-pro-bono-unit/>.

⁷¹ See also: The Law Society of Northern Ireland, *Review of Access to justice: Response of the Law Society of Northern Ireland*, available at:

<http://www.lawsoc-ni.org/role-of-the-law-society/influencing-law-reform/policy-issues/access-to-justice/>.

⁷² <http://www.childrenslawcentre.org.uk/index.php/what-we-do-2/legal-services>.

⁷³ See <http://www.pilsni.org/>.

⁷⁴ See

http://www.adviceguide.org.uk/nireland/law_ni/law_legal_system_ni/law_taking_legal_action_e/using_a_legal_adviser_ni.htm.

⁷⁵ See <http://www.lawsoc-ni.org/solicitors-directory/>.

⁷⁶ The Commissioner for Children and Young People (Northern Ireland) Order 2003. See

<http://www.niccy.org/professionals-practitioners-policymakers/legal-and-investigations/niccys-legal-work/legal-proceedings/> and

<http://www.niccy.org/professionals-practitioners-policymakers/legal-and-investigations/niccy-legal-funding-criteria/>.

brought within six years of the violation.⁷⁷ Where the claim is that there has been a breach of the Human Rights Act 1998 such a claim must be made within one year of the violation.⁷⁸ There are certain circumstances under which claims may be allowed after the limitation period has expired, including where the effects of an action in question were not discovered until later⁷⁹ or where the claimant is disabled.⁸⁰ For the purposes of this legislation children are regarded to be under a disability,⁸¹ meaning that the time requirements for their particular claim do not come into play until their eighteenth birthday. Furthermore, 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.⁸²

Judicial review proceedings must be brought within three months' of the public decision to be challenged unless the court considers that there is good reason for extending this period.⁸³

- 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 Rules of the Court of Judicature set out the kinds of evidence that are admissible in civil proceedings.⁸⁴ The rules also provide for the admission of expert testimony, which involves not only giving factual information, but also opinions based on that information.⁸⁵

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. Where a judge believes that a child does not understand the nature of an oath, that child may still be able to serve as a witness in civil proceedings where he or she understands that it is his or her duty to speak the truth and has "sufficient understanding".⁸⁶

In criminal proceedings, children under 14 are not permitted to testify under oath, but may give unsworn testimony.⁸⁷ 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.⁸⁸

⁷⁷ The Limitation (Northern Ireland) Order 1989 No. 1339 (N.I. 11), Article 6, available at: <http://www.legislation.gov.uk/nisi/1989/1339/contents>.

⁷⁸ Human Rights Act 1998, section 7(5).

⁷⁹ Limitation (Northern Ireland) Order 1989, Article 11.

⁸⁰ Limitation (Northern Ireland) Order 1989, Article 48.

⁸¹ Limitation (Northern Ireland) Order 1989, Article 47(1)(a).

⁸² Limitation (Northern Ireland) Order 1989, Article 49 (1).

⁸³ The Rules of the Court of Judicature 1980, Order 53 Rule 4.

⁸⁴ The Rules of the Court of Judicature 1980, Order 38.

⁸⁵ The Rules of the Court of Judicature 1980, Order 40.

⁸⁶ The Children (Northern Ireland) Order 1995, Section 169.

⁸⁷ Youth Justice and Criminal Evidence Act 1999, Section 55, available at <http://www.legislation.gov.uk/ukpga/1999/23/contents>.

⁸⁸ Youth Justice and Criminal Evidence Act 1999, Section 53.

There are extensive protections provided to children accused of committing offences and child witnesses in criminal cases under the Youth Justice and Criminal Evidence Act 1999.⁸⁹ Among other things, protections for child witnesses include privacy screens, video links, and examination through an intermediary.⁹⁰

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

From July to September 2014, the average waiting time in the youth court in criminal cases from first hearing to disposal was 11 weeks.⁹¹ During the same period, the average waiting time in cases involving the Children (Northern Ireland) Order 1995 from lodgement to disposal of cases was 34.5 weeks for public law cases and 23.2 weeks for private law cases.⁹²

Leave for judicial review is usually granted within a few weeks and reach a full hearing in six months to a year, but may in urgent cases be heard within 24 hours. 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?

Decisions made in the County Court can be appealed in the High Court, decisions by the High Court - to the Court of Appeal and decisions by the Court of Appeal - to the Supreme Court of the United Kingdom.⁹³

- 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.

⁸⁹ Youth Justice and Criminal Evidence Act 1999, Part II. See also:

<http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/Special%20Measures%20Leaflet.pdf>.

⁹⁰ Youth Justice and Criminal Evidence Act 1999, Sections 23-30 and Criminal Evidence (Northern Ireland) Order 1999/2789, Article 9, available at: <http://www.legislation.gov.uk/nisi/1999/2789/contents> as amended by Article 8 Justice Act (Northern Ireland) 2011 c. 24 available at: <http://www.legislation.gov.uk/nia/2011/24/contents>.

⁹¹ See

https://www.courtsni.gov.uk/en-GB/Publications/Targets_and_Performance/Documents/Magistrates%27%20Court%20Bulletin%20July%20-%20September%202014/Magistrates%20Court%20Bulletin%20July%20-%20September%202014.pdf.

⁹² See

https://www.courtsni.gov.uk/en-GB/Publications/Targets_and_Performance/Documents/ChildOrderBulletinQ214/p_tp_ChildrenOrderBulletin_AprJun14.pdf.

⁹³ See http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/org_justice_nir_en.pdf.

On several occasions, Parliament has legislated to “reverse” court decisions in contentious cases.⁹⁴ For example, the Criminal Evidence (Witness Anonymity) Bill was passed using a ‘fast-track’ procedure in under three weeks in July 2008. The Government said that the Bill was introduced “in response to a ruling by the House of Lords that the use of anonymous witnesses in a specific case had hampered the conduct of the defence to the extent that the trial had been unfair” and justified the fast-track procedure on the basis that “this judgment was unexpected” and “raised the prospect of a number of convictions for serious offences being overturned and could have compromised a number of pending prosecutions”.⁹⁵

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

The enforcement of awards in civil proceedings is a relatively simple process governed by Rules of the Court of Judicature.⁹⁶

- 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.

No additional factors were identified.

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

⁹⁴ See, for example, <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/178/178.pdf>.

⁹⁵ See <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/11605.htm>.

⁹⁶ The Rules of the Court of Judicature 1980, Order 45.