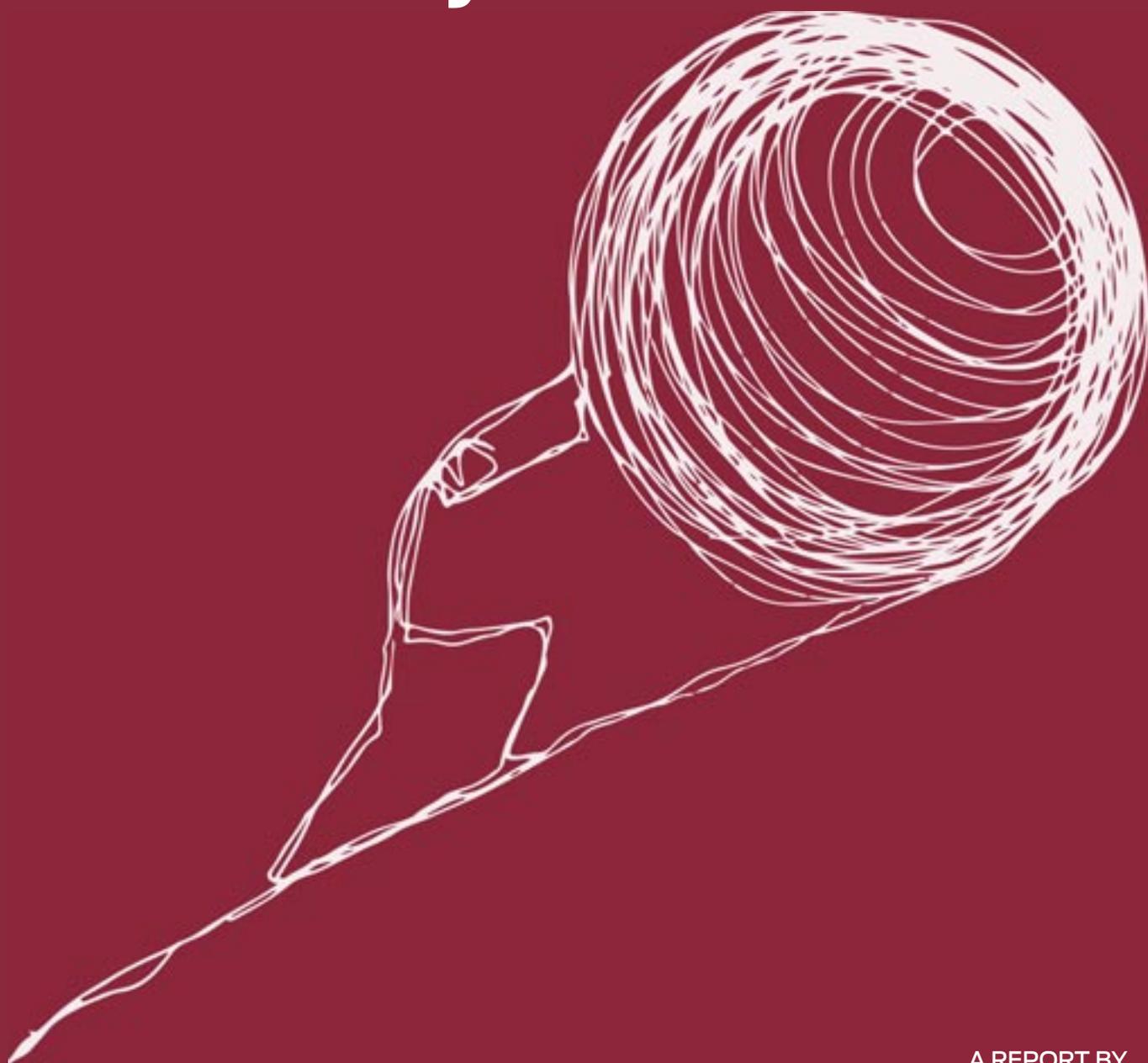


# Make Human Rights Justice a Reality



A REPORT BY  
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## EXECUTIVE SUMMARY

If Scotland is to be a country where everyone's human rights are recognised, protected and realised, then everyone must be able to access remedy and justice for violations of their human rights. Access to remedy must be affordable, accessible, effective, timely and person-centred.

**However, for too many people, it is just incredibly difficult to access remedy.** This report is informed by the lived experience of trying to access remedy of community groups and individuals who took part in a series of workshops. This report also draws on the experience of our organisations that work day-by-day with people who experience barriers to justice.

The report spells out what some of these barriers are: barriers around affordability, around difficulties navigating the system, about a lack of information and advice on rights, around confusing and excluding communications, around a lack of enforceability of rights, unfair timescales, and routes to justice being exhausting and feeling like an uphill struggle, amongst others.

This report comes at a time when Scotland is about to introduce a Bill to enhance human rights law in Scotland to include economic, social, cultural and environmental rights. The Bill will include particular rights protections for women, disabled people and on race. In the midst of these ambitious plans for new law, and if Scotland is to be a country that is rights-respecting in reality and not only in rhetoric, then action is needed. The status quo around accessing rights justice is not an option.

**The main purpose of this report therefore is to outline 13 priority actions that will improve access to human rights justice in Scotland. These are:**

**Put all of our human rights into law:** The report calls for the incorporation of all international human rights standards into Scots law, thereby granting them enforceability in Scottish courts. This foundational legal reform seeks to solidify the commitment to human rights at the domestic level.

**Ensure everyone knows their rights and how to get them:** To empower individuals to exercise their rights effectively, the report proposes the

establishment of a National Network for Human Rights Information, Education, Legal Services, and Advice. This initiative aims to raise awareness and ensure that every person in Scotland is equipped with the knowledge needed to access their rights.

**Ensure inclusive communications across the system:** Recognising the importance of equitable access to justice, the report emphasises the need to eliminate barriers faced by individuals with specific communication, translation, and interpreter requirements. This inclusivity ensures that all residents can participate fully in the justice system.

**Provide independent advocacy for all:** The report advocates for the provision of independent advocacy services, ensuring that all those who require assistance can access it. These services are critical in guiding individuals through the complexities of the justice system.

**Develop effective non-court routes to justice:** To alleviate the burden on the court system and provide swifter resolutions, the report recommends the development of effective, timely, and supportive non-court avenues for seeking remedies.

**Improve people's experience of going to court:** Specialised court rules for human rights and equality cases are suggested to enhance the experience of rights holders within the legal process, promoting efficiency and fairness. Remove unfair timescales: The report stresses the importance of removing unrealistic court time limits, including the three-month limit for Judicial Review cases, to ensure that justice is not rushed and that individuals have ample time to present their cases comprehensively.

**Value NGO-led public interest litigation:** Barriers to NGO-led strategic litigation, including issues related to courts accepting cases brought by charities, should be eliminated to bolster civil society's role in upholding human rights.

**Ensure effective remedies for human rights breaches:** The introduction of judicial remedies for human rights and equality infringements that address individual grievances while also promoting broader structural change is recommended to ensure meaningful redress.

**Introduce radical reform of legal aid:** The report underscores the need to prioritise the reform of Legal Aid, with a commitment to publishing a consultation on necessary legislative changes in 2024.

**Remove financial barriers to justice:** Remove court fees and introduce protection from awards of expenses for all cases raising human rights and equality issues.

**Strengthen accountability bodies:** Regulatory and scrutiny bodies responsible for human rights oversight should be equipped with the necessary duties, powers, and resources to effectively deliver accountability and prevent further breaches.

**Ensure duty bearers take a human rights-based approach:** To foster a culture of respect for human rights, all stakeholders involved in human rights remedy and accountability should receive comprehensive training and assessment in taking a human rights-based approach, ensuring consistent commitment to human rights principles.

The report finishes with a call to Scottish Government, Scottish Parliament and other key decision-makers to prioritise implementation of these actions in order to make human rights justice a reality.

## INTRODUCTION

If human rights are important to Scotland, everyone must be able to access justice.

Access to justice is a fundamental pillar of a fair and equitable society, ensuring that individuals have the means to seek legal remedies and uphold their rights. Being able to access justice, and thus actually access human rights, people are empowered, regardless of their background, to participate in society and advocate for their rights, fostering a just and inclusive society that respects the dignity and freedoms of all its members.

However, in Scotland, there are significant persistent barriers that prevent marginalised groups and individuals from accessing justice effectively.

Recognising the importance of addressing these challenges, this report presents solutions that aim to make access to justice more inclusive, and more equal.

Access to justice is crucial to a forthcoming human rights framework in Scotland. The Scottish Human Rights Bill is an opportune moment to secure that legal framework that widens access to justice for human rights claims and ensures effective enforcement of those rights. This framework should ensure violations are met with equal levels of justice, and effectively enforce human rights for those seeking remedy for violations. Importantly, a framework should also enable the government to be held to account.

It is vital that as Scotland looks to incorporate such important international human rights, the Scottish Government prioritises action to improve access to justice. We must all be able to access human rights remedy and justice that is affordable, timely, effective, and accessible.

### **Purpose of this report**

This report explores some of the key barriers that individuals and groups face when seeking justice for violations of their human rights – their civil, political, economic, social, cultural, and environmental rights. It highlights the disproportionate impact of these barriers on people whose rights are most at risk.

This report sets out thirteen calls to action. These actions are ambitious but feasible. If implemented, these actions would lead to a significant improvement in accessing human rights justice and help to make Scotland a nation with human rights at its heart.

The overall purpose of this report is to drive improvement in our human rights justice system - we urge policy makers to respond to these calls to action with a sense of urgency and a recognition that the status quo is not working. Access to justice needs to be improved if human rights are to be better protected, respected and fulfilled in Scotland.

## Report Sources

Evidence used in this report comes from the following sources:

- Workshops with communities and individuals with lived experience of facing barriers to accessing justice, as well as professionals, including community leaders and policy experts with experience working with these communities. Some of these workshops were open to all and included people with a wide range of experiences and backgrounds.
- Other group workshops and individual discussions were held with community organisations following an open call to the public, including:
  - Women's Integration Network (WIN)
  - Saheliya
  - The Scottish Refugee Council
  - White Ribbon Scotland
  - Dyslexia Scotland
- Reports from Lived Experience Boards facilitated by Human Rights Consortium Scotland, Together, and the Scottish Commission for People with Learning Disabilities (SCLD), on behalf of the Scottish Government.
- Years of experience from the human rights organisations who co-produced this report within their member bodies and communities.
- Human rights lawyers and law centres.

## Lived Expertise through Experience

An important component in producing this report has been working directly with communities affected by barriers when trying to access justice day in and day out, and those directly affected by these barriers who contributed to our workshops.

People with direct experience of navigating the justice system and routes to remedy when their human rights have been violated have shed light on the gaps and inequities in the system. Their insights highlighted specific issues that might otherwise go unnoticed in statistical or theoretical analysis.

We want to particularly thank all those who contributed their lived expertise to shape this report. We understand this can be a difficult thing to do and are more than grateful to all participants for allowing us to share and build policy recommendations from their experiences.

## Limitations

This report focuses specifically on accessing remedies for human rights violations that have taken place in Scotland. There are some important barriers and difficulties that people face in accessing justice that are not included in this report. Indeed, there are also other actions required that are relevant to making human rights justice as accessible as possible in Scotland that this report does not cover. We note that further engagement with marginalised people and groups, and further research and data, around accessing human rights justice are very much needed.

However, by setting out these thirteen priority actions, this report aims to identify what needs to be done now to begin the significant reform required for human rights justice in Scotland.

## The imperative of access to justice

Access to remedy for human rights violations is a crucial element of a well-functioning human rights framework. If a country is to protect, respect and fulfil human rights, it needs to have a credible way in which individuals and groups can raise their voice, get justice and hold duty bearers to account when their rights have been breached. Access to remedy can mean that rights infringements are resolved for an individual or community, and the impacts of those breaches on their lives can be mitigated and future impacts avoided. People can be empowered and valued through recognition of the infringement, and remedy that recognises its unacceptability and impact.

Credible access to remedy can also mean that the unintended consequences of any policy or law on minoritised groups can be properly taken into account. The interpretation of rights and duties can be clarified or confirmed. Access to remedy leads to human rights being increasingly seen as a non-negotiable 'must' for public services, and rights become embedded into the development and shaping of public services from the outset, avoiding problems before they arise.

So often, human rights in Scotland are simply rhetoric, and not reality. If human rights protection is to be increasingly evident in the decisions that government and public bodies make, and in the reality of people's lives and experience, human rights need to have credible 'teeth'. That is, our human rights need to be realistically enforceable, ensuring that the voices of individuals and communities are not ignored but heard, and then realisation of their rights taken seriously. Credible access to remedy is not an optional extra, but a foundational element of a human rights-based society and culture.

### **The problem**

We all have the right to access justice when our human rights are breached. The right to an effective remedy is protected under European Convention on Human Rights (ECHR) Article 13 and "recognises that people are entitled to seek effective redress for violations of their rights. This means they should be able to take their case to court to seek a judgment. To be effective, remedies must be available in practice and in law" and be accessible<sup>1</sup>.

The right to an effective remedy for breaches of human rights is a general principle of international human rights law and it is expressly set out in most international human rights treaties that the remedy of rights violations needs to be accessible, affordable, timely, and effective. A system of human rights and justice needs to work for people – it needs to be designed and delivered in a way that is user-friendly. The human rights justice system needs to work for the people who need to access it.

However, in Scotland, when people experience serious infringements of their fundamental rights, there is too often very little they can do about it. The barriers to accessing justice and holding those in power to account are insurmountable for many people.

Indeed, it is "incredibly difficult" to access justice for most people<sup>2</sup>. People we have spoken to have said that if they have managed to obtain remedy for a breach of their rights, it is more often by chance or luck, by sustained and exhausting persistence, or by community connections, than by a system that makes this in any way easy or straightforward.

The evidence from people with lived experience of trying to access remedies for human rights violations is stark and deeply troubling. Many people have told us about some of the many reasons why they do not even begin to pursue routes to remedy:

- Not knowing that they have human rights, nor how these apply to their circumstances.
- Experience of raising concerns and rights violations with public bodies but these being simply dismissed as unimportant or overly aggressive. These experiences can lead to a lack of trust by individuals or communities that raising human rights issues will lead to being listened to, or to any change in decision-making.
- A lack of enforceable economic, social, and cultural rights in UK law so when people experience infringement of these 'everyday' human rights, human rights law cannot help them.
- Having no one to turn to for robust and detailed advice on rights and on how to go about accessing remedy.
- A lack of knowledge of how to go about finding a lawyer, particularly a lawyer who will take a legal aid case, or a complex or specialist case.
- Being 'worn down' by multiple, 'everyday' infringements. Each of these often amount to something that is not seen as 'enough' to put in a formal complaint but taken together can have a significant impact.
- Fear of retaliation by public body staff.
- Not wanting to be always seen as the 'troublemaker' or 'a problem', especially when your well-being relies upon decisions by a public body.
- Concerns about personal data being shared widely with other public authorities who could harm their interests or discriminate against them. For example, people are very concerned about sharing of data around sexual orientation, mental health or political beliefs. This is also particularly a concern for those directly impacted by the immigration system, who worry about information being shared with the Home Office and being detrimental to decisions about their immigration status and support.
- Seeing serious rights violations as normal and "just the way things are."
- Persistent experience of racism and racial discrimination embedded into systems and decision-making.
- Seeking justice, particularly through lawyers or the courts, is seen as unaffordable and only for wealthy people.
- Isolation, where people feel they are on their own in challenging an injustice.

- Coping with multiple or complex issues in their daily lives, including the daily impact of living in poverty, where simply managing to keep going can take all of someone's energy and time.
- The remedy available, or possible, simply does not make the pursuit of justice worthwhile.

Our experience is that, even when all these challenges are overcome and an individual or community takes initial steps to pursue a remedy, the system works against them.

For example, amongst many other barriers, people spoke to us about:

- Complex and confusing paperwork and rules.
- The considerable time and energy required to attend multiple meetings and share personal experiences multiple times with different strangers.
- The very long time it can take to go through the whole justice process, often not being resolved before someone's life circumstances have changed in the meantime.
- The financial cost of lost hours at work and in travel and childcare costs, as well as legal costs where no legal aid is available.

**It is important therefore that those in power recognise that things are not as they should or could be and that the status quo is not an option.**

**This report is a loud call to policymakers in Scotland to create change so that human rights justice becomes an affordable, accessible, timely, effective, and an empowering reality.**

## CALLS TO ACTION

### 1. Put all of our human rights into law

We strongly welcome the Scottish Government's commitment to incorporating more of our international human rights treaties and the right to a healthy environment into Scots law. This is the right thing to do.

If this is done well, it will mean that more of our human rights will be taken seriously, will be part of the foundation of our law, and will be enforceable. This will mean that, in addition to remedy for civil and political rights through the Human Rights Act 1998, individuals who experience a violation of their economic, social, cultural, or environmental rights will be able to access remedy.

It is important that the Scottish Human Rights Incorporation Bill is drafted in such a way as to ensure that all our human rights have 'teeth'<sup>3</sup>. We acknowledge that the devolution constitutional settlement does limit the powers of the Scottish Parliament and can create complexities in drafting competent legislation. However, it is vitally important that the Scottish Government does not pull back from incorporation to the fullest extent possible. This includes placing a duty to comply with every human right that is within devolved competence.

Indeed, without this compliance duty, people will not be able to name and claim their rights. The Scottish Government itself recognises that it is the stronger duty to comply that has a 'transformative impact'<sup>4</sup>. Making our human rights framework as robust a foundation as possible means going as far as we can with every human right, not ignoring some as too difficult or not as important.

We particularly emphasise that, if the Bill does not include a duty to comply with some of the substantive rights within the UNCRPD such as the right to independent living and the right to inclusive education, then the Bill will have a very limited impact on protecting the fundamental rights of disabled people<sup>5</sup>.

Disabled people experience some of the worst human rights infringements in Scotland<sup>6</sup>. The full realisation of economic, social, and cultural rights for disabled people is a rarity, and this was only 'super-charged'<sup>7</sup> by the impacts of COVID-19. A Human Rights Incorporation Bill that does not fully include disabled people's human rights possible would be highly regrettable.

### **Call to Action**

**Put all of our human rights into law: Make all of our international human rights foundational in Scots law and enforceable in Scottish courts to the greatest extent possible.**

## 2. Ensure everyone knows their rights and how to get them

One of the key barriers that is consistently raised in almost every discussion with rights holders and community groups around human rights is that people simply don't know that they have human rights at all.

Even where they are aware that they have human rights in general, they very often do not know how these apply to everyday life and to the issues affecting them and their families. This is particularly true when people have migrated to the UK, often not knowing what rights they have within the immigration system, as well as their basic economic and social rights.

People often don't receive the necessary information about their human rights to address violations effectively. Whilst there are some general sources of information on human rights, it is often too high-level and vague. Often, this information is tailored at a national level, rather than being local and specific. The information available lacks real everyday examples of what human rights mean to people in different situations and how they should be fulfilled. To this end, the current information is out of touch with the reality of everyday rights infringements.

There is a lack of information available about how to use your human rights to obtain justice and hold any level of government to account. People speak about not being sure what they could do if they thought that there had been a significant violation of their human rights. Very often, people do not know where to begin to raise a human rights issue, let alone seek justice. A considerable hurdle to people's access to justice is simply knowing how to go about that.

There is a lack of inclusive communications around human rights and our justice system<sup>8</sup>. The information that is available is full of legal jargon, acronyms, and language that is excluding and inaccessible, particularly to people with learning disabilities or those whose first language is not English. Whilst key principles such as dignity<sup>9</sup> seem to be easily understood by many people, the language used around human rights is all too often off-putting, frustrating, confusing, and excluding for many people.

“I’ve witnessed both for vulnerable people within my family or just in the community at large, people having their access to information and freedom of expression and access to fair justice and health and education, frequently denied because the because they have a communication disadvantage, either stemming from their life circumstances, or long term conditions, or simply, or because they’re unwell, either physically or mentally unwell, and not able to understand or express themselves as they may otherwise do.”<sup>10</sup>

Information is very often only available online. Many people are simply not able to access digital information, such as people who live in poverty, disabled people with access-related requirements, older people, and people for whom English is a second language, amongst others<sup>11</sup>.

Many people in Scotland struggle to access in-depth rights advice. People speak about being given confusing or inaccurate advice or being given partial advice which is unhelpful. They can be sent from pillar to post as different agencies try to identify others who can provide the level of detail that the individual needs. This is especially true when people do not experience one single one-off infringement of their human rights but instead face myriad, often complex, picture of human rights issues in their lives, and those of their family<sup>12</sup>.

Citizen Advice Bureaus and law centres play a vital role in providing much-needed advice but capacity and resources are stretched for providing detailed human rights advice and services to all those who need them. The SHRC is not able to give individual advice. The EHRC has a helpline, but this is national and limited in capacity. Nor does the EHRC have responsibility for human rights in devolved areas.

Scotland needs a step-change in the readily available and accessible information and in-depth advice on human rights – anything less will leave human rights justice out of reach to many, if not most, people.

Drawing on lived expertise of what the most effective and accessible ways to address this problem would be<sup>13</sup>, we call on the Scottish Government to work with groups of people whose rights are most at risk to co-produce the development of a National Network for Human Rights Information, Education, Legal Services and Advice. We note that this also reflects one of the SNAP2

actions around a strategic programme to significantly increase understanding of human rights law and human rights-based approaches with duty bearers and rights-holders<sup>14</sup>. This Network should provide information that is accessible, in a wide range of different mediums and formats, with an inclusive communications approach. It should be available nationally but importantly should also operate at a community level. Not limited to this, it should include digital information and aim to ensure that information, education, and advice are available when and where people need it, including the point at which migrants first arrive in Scotland.

### **Call to action**

**Ensure everyone knows their rights and how to get them:** Co-produce and resource a National Network for Human Rights Information, Education, Legal Services and Advice, building on and strengthening the capacity of existing advice networks.

## **3. Ensure inclusive communications across the justice system**

Inclusive communications refer to intentional and deliberate efforts to incorporate a diverse range of methods and mediums into all communications that are accessible to the whole diversity of people who need it. Inclusive communications mean delivering information and advice in all the ways that work well for people, not primarily for those who provide it.

Routes to human rights justice in Scotland are riddled with communication barriers that lead to people being excluded from accessing remedies. Many people cannot understand their rights, interact with frontline public services, give feedback and suggestions for service improvement, take part in decisions about their life, navigate complaints or legal processes, or access legal services because communications exclude them. People told us about information being routinely provided in inaccessible formats to people with visual impairments, despite public authorities being told numerous times about access requirements. People with limited literacy skills speak about being left to understand complex legal documents, without support. People spoke about being given inappropriate healthcare services due to a lack of understanding because of a lack of qualified interpreters.

In workshops, we heard about the barriers faced by three particular groups:

### **Deaf people**

People told us that the Scottish Government has made some efforts to improve accessibility of the justice system such as by providing British Sign Language (BSL) interpreters and captioning services in courtrooms. However, they also said that very often, there are delays or an inability to access BSL and transcription to access legal advice and services when they needed them. This problem is particularly acute in some geographical areas. People spoke about considerable misunderstandings, misinterpretations, unequal treatment, and lack of full participation because of the patchy and inadequate provision of BSL interpreters and transcription.

### **Refugee women**

During our lived expertise workshops, we heard about obstacles faced by refugee women in accessing justice in Scotland, particularly concerning interpretation services. It should be noted that the following experience is heavily drawn on experiences between the people we spoke to and their interpreters when trying to access justice. This experience is outlined below and emphasises that the provision of translation services, the very service which gives a power to voices by translating testimony into English, should be part of a well-functioning justice system. This service must be well regulated so that those who rely on it as an essential service when accessing justice have equality to those whose first language is English.

- Male interpreters may hinder effective communication for women seeking assistance on sensitive matters such as sexual abuse or women's health issues. Instances have been documented where male interpreters refuse to translate relevant information, leaving multilingual staff to fulfil their responsibilities. The discomfort conveyed by interpreters in addressing certain topics further impedes open dialogue.
- Regardless of gender, interpreters may discourage women from discussing gender-based violence, such as domestic abuse, sexual abuse, forced marriage, or female genital mutilation (FGM). They may shame women for seeking help outside their community, blame victims for the abuse endured, or even collude with the abusers, perpetuating further harm.
- Despite qualifications and signed contracts, there are no standardized quality measures for interpreting services. Consequently, both service providers and

users remain uncertain about the reliability and effectiveness of the interpretation, leading to potential misinterpretations with severe consequences. Custody battles have been influenced by interpreters using incorrect dialects or languages in court proceedings.

- In Scotland's small Black, Asian, and Minority Ethnic (BAME) communities, interpreters might be known to the women or related to them, creating concerns about confidentiality. Some cases indicate that interpreters have breached confidentiality, causing mental health and abuse issues to worsen. Victims, however, are often reluctant to report these breaches due to the interpreters' significant influence and standing within the communities.
- Interpreters sometimes act as gatekeepers, restricting access to specific services or solicitors, including asylum and immigration services. They have been found to seek payment or other favours, which creates a power imbalance and inhibits women from reporting these incidents formally.

### **New Scots**

Migrants including refugees and asylum seekers in Scotland face specific challenges in accessing human rights information including:

- Language barriers can make it difficult to understand and navigate complex information related to their rights. Legal terminology and complex procedures may be unfamiliar to them, and information is most often not available in their native language.
- The availability of quality information relevant to migrants' rights is very variable. It can be challenging for them to find reliable sources or comprehensive information that address their specific legal situation and entitlements. Inaccurate or outdated information further complicate their efforts to access their rights.
- Some migrants, especially refugees and asylum seekers have limited access to the internet or lack personal devices, such as smartphones or computers, which are essential for accessing digital information. This can be due to financial constraints or inadequate access to technology in reception centres or temporary accommodation.
- Some migrants, especially refugees and asylum seekers often have concerns about privacy and data security when accessing digital information related to their legal status and rights. They may be hesitant to share personal information or engage with digital platforms due to fears of surveillance or potential negative consequences.

Scotland's justice system could be much better in how it embeds an inclusive communications approach to all that it does, making sure that all the information and services are not designed as if 'one size fits all'. Instead, an inclusive communications approach involves designing communication strategies and materials that cater to diverse needs, including those of individuals with sensory impairments, language barriers, or other accessibility requirements. Indeed, The Convention on the Rights of Disabled People (CRPD), Article 9<sup>15</sup> requires accessibility for disabled people to be a must in the provision of public services.

We particularly highlight that the availability of timely and effective translation and interpreters across the justice system, including for accessing legal advice, needs urgent attention. People are missing out on justice every day because of the gaps and inadequacies of these services.

### **Call to action**

**Ensure inclusive communications across the justice system:** End exclusion from human rights remedies for people with particular communication, translation, and interpreter requirements.

## **4. Provide independent advocacy for all who need it**

Time and time again, people speak about the significance of support from independent advocacy services to access remedies and accountability around human rights. The justice system can very often be complex and feel intimidating, with power imbalances between individuals and communities, and legal professionals. Independent advocates help level the playing field by empowering individuals, providing them with knowledge and support, and ensuring that their concerns and needs are adequately represented.

Independent advocates help individuals and groups understand their rights, options, and procedures, ensuring they can make informed decisions and actively participate in legal processes. Throughout the work of the National Taskforce on Human Rights Leadership<sup>16</sup> and in the advice from the Human Rights Bill Lived Experience Boards<sup>17</sup>, the vital place of independent advocacy within the Scottish human rights framework was emphasised.

Independent advocacy currently exists in different pieces of legislation, giving some groups in particular circumstances the right to access advocacy, to be informed about it, or duties placed on public authorities to provide these services<sup>18</sup>. However, there is a shortage of resourcing for these vital services which results in longer waiting lists or stretched capacity to provide these services. In addition, there are people who do not fall within these existing categories who nonetheless need independent advocacy to access remedy. Many people whose rights are often at risk have no statutory right to access independent advocacy. For example, there is no statutory right for people impacted by prison, people living in poverty, people who experience housing issues or care experienced adults, amongst others.

The ability of all those who need independent advocacy to access it should be seen as an essential part of Scotland's justice system. There is a specific opportunity to embed independent advocacy into the upcoming Scottish Human Rights Bill through the Human Rights Scheme, placing a requirement on the Scottish Government to report on the provision and resourcing of independent advocacy services for everyone who needs them. Attention is needed to fill the gaps in service provision, as well as sustainable and adequate funding of services. We urge policymakers to take action to address this.

### **Call to action**

**Provide independent advocacy for all:** Deliver and resource independent advocacy services for all those who need them to access remedy.

## **5. Develop effective non-court routes to justice**

Getting remedies for human rights injustices should be straightforward, clear, and easy to navigate. It should not always require the involvement of lawyers or courts, but instead, there should be routes to remedy that an individual or group can easily pursue if a human rights problem is not addressed by a public authority. People should be able to choose between court and/or non-court routes to an effective remedy. In providing this choice, timely and satisfactory remedy to bring justice for individuals and groups, and better decision-making by public authorities will become the norm and not a rarity.

Currently, non-court routes to justice are very limited. The final stage for

complaints about services provided by most public services is the Scottish Public Services Ombudsman (SPSO). They can assess cases to establish if there was maladministration, resulting in injustice or negative impact on the complainant. Maladministration can cover situations where people have been treated unfairly. This is not restricted to discrimination as defined in equalities legislation<sup>19</sup>. In addition, there is little evidence of people's experience of accessing SPSO, why they might not do so, or the effectiveness of the SPSO process when they do. There is little evidence around the barriers faced by people whose rights are most at risk. SPSO in no way considers systemic rights violations and lacks teeth as it can only make recommendations to public bodies and nothing beyond that. The SPSO is beset by delays in handling complaints, and it currently takes them four months to allocate a complaint to one of their complaints reviewers<sup>20</sup>.

To improve access to justice and offer more flexible alternatives, it is essential to develop non-court routes that provide credible routes for addressing rights infringements. These non-court avenues should prioritise accessibility, fairness, and transparency, ensuring that all individuals, from all backgrounds and identities, can access justice and seek remedies when their rights are violated.

By developing effective non-court routes to justice, Scotland can strengthen its justice system, reduce burdens on the courts, and ensure that all individuals have a straightforward route to seeking remedies whilst upholding their rights.

### **Call to action**

**Develop effective non-court routes to justice:** Develop effective, timely, and supportive routes to remedy that don't require going to court.

### **Improve people's experience of going to court**

Due to the upcoming Scottish Human Rights Bill, people in Scotland will soon be able to get justice and hold Government to account in court on more of their human rights – economic, social, cultural, and environmental, as well as civil and political rights. The courts will play a crucial role in interpreting these rights, ensuring that people's rights are upheld and that there is effective remedy. It is crucial that remedy through the courts is accessible and effective, both to individuals taking a case and to groups or NGOs taking a case or intervention.

However, the experience of many individuals who have sought to access justice through the courts is that it can be extremely daunting, confusing and inaccessible.

Even after managing to get information and advice on their rights, accessing legal services, and getting the financial and other resources required to pursue human rights justice through the courts, the experience of then attending court and taking part in proceedings can be exhausting and have a significant emotional toll. Given that the experience of human rights violations in of themselves can be draining, difficult and traumatic, the additional burden of being in court can feel overwhelming.

Accessing justice through the courts does not have to be so traumatising and difficult. We note that experience of accessing justice through an employment tribunal, a mental health tribunal, or various chambers such as housing and education within the First Tier Tribunal System, is comparably more positive, with notably more people taking cases without legal representation. Embedding human rights and equality into the way that court proceedings operate would mean engaging with court-users around their experiences and ensuring that this shapes how court proceedings are run. Particular consideration should be given to engaging with people and groups whose rights are most at risk, and reviewing court rules to ensure that there is equality and non-discrimination in court proceedings.

With a widening of rules around 'standing' under the UNCRC Bill and the upcoming Human Rights Bill, beyond the 'victim' test of the Human Rights Act, more NGOs and groups will be able to take test cases in future. However, litigation for human rights breaches by organisations, in many cases, continues to be restricted by a lack clarity around who has 'sufficient interest' to bring a case. There also remains a lack of clarity in court rules around interventions in the Court of Session make it much more difficult for potential interveners to navigate making an application. This contrasts with the clear practice directions in the Supreme Court for interveners, ensuring that everyone involved understands clearly what the process is and the place of the intervention in the case, also increasing consistency.

Therefore, when the upcoming Scottish Human Rights Bill is passed, the Scottish Courts and Tribunals Service and the Scottish Civil Justice Council,

should begin a review of court rules to ensure that there are no unnecessary barriers for individuals and groups from pursuing justice through the courts. This review should include engaging directly with people whose rights are most at risk to ensure that changes that are made are effective in improving people's experiences. The review should consider ways of reducing formality and complexity, achieving greater clarity for NGOs and interveners, and consideration of using technology to provide access to legal information and court documents, and to remote court appearances, where appropriate.

### **Call to action**

**Improve people's experience of going to court:** Introduce court rules for human rights and equality cases to increase access to justice for rights holders and organisations that represent their interests.

## **6. Remove unfair timescales**

It can take time for someone who experiences infringements of their human rights to get the advice they need, secure a lawyer and legal advice, and then for the preparation of a case to seek judicial review. All this process comes during the time when people try to get on with their lives and often deal with myriad other daily challenges that come from the impacts of poverty, inequality, and discrimination. We need a system to access remedy that works in this reality.

The three-month time limit for judicial review places an unnecessary and often unworkable deadline on accessing justice. Our experience is that this deadline blocks too many people from taking a case to court. For example, one workshop participant said:

“I'd like to mention the short time limits for appeals and making applications to court. You've only got three weeks in the case of an appeal. I had, at one point, two very close court judgments against me and wanted to appeal but I was so devastated by one after the other that I just didn't have time to pull myself together to make a further appeal. And in the case of judicial review, you've only got three months. It's one thing where you've already been involved in some court action. And you might have already had some legal advice.

“But for judicial review, you might be starting from zero, from no legal advice. So, three months within which to get hold of some good legal advice about what you can do and to engage a solicitor is not very long, really. Especially as, you might be also wondering whether what other options there are, like going to the Ombudsman, or trying to get the public service to enter into mediation with you.”

Short time limits can have severe emotional impacts, hindering access to justice as individuals may struggle to consult legal professionals, understand their options, and build strong cases. This limitation disproportionately affects vulnerable and marginalised groups, exacerbating existing disparities in legal support.

The UNCRC Incorporation (Scotland) Bill extends the time limit to one year after a child’s 18th birthday for court cases related to UNCRC compatibility, recognising the additional challenges for children in taking a case and allowing individuals more preparation time for appeals and judicial reviews<sup>21</sup>. The upcoming Scottish Human Rights Bill should also extend the time limit for rights cases under that Bill. The unnecessary time limit on other judicial reviews should be removed, and consideration given to ensuring that all routes to remedy are not impeded by unfair timescales.

The three-month judicial review time limit in Scotland, which begins counting from the date a decision is made rather than when it becomes public, has sparked concerns regarding its compliance with the Aarhus Convention, an international treaty aimed at enhancing access to environmental justice. This distinction conflicts with the Convention's stipulation that time limits for judicial review should be reasonable and calculated from the date decisions are made. An evaluation report on Scotland's action plan on environmental justice also underscores the potential obstacles this time limit poses for citizens seeking redress in environmental cases<sup>22</sup>. In light of these concerns, we call for a review and potential adjustment of this time limit to ensure alignment with international obligations and to facilitate more effective public participation in both human rights and environmental matters.

### Call to action

**Remove unfair timescales:** End unrealistic court time limits, including the three-month limit for Judicial Review.

## 7. Value NGO-led public interest litigation

Public Interest Litigation (PIL) is an essential part of a society based on the rule of law, including the protection of human rights through judicial review of legislation<sup>23</sup>. Litigation that raises issues of public interest can be taken by an individual but there is an important role for PIL taken by groups, by representatives of groups, or by NGOs with significant interest and expertise in the issue at hand.

Allowing charities in Scotland to bring cases to court for the communities they serve is crucial for advancing human rights and social justice. Charities and NGOs possess valuable insights into the specific challenges faced by vulnerable and marginalised communities<sup>24</sup>, allowing them to highlight systemic issues and seek remedies for root causes. By engaging in strategic litigation, charities can advocate for legal decisions that set positive precedents and drive broader social change. Furthermore, bringing cases to court enables charities to amplify the voices of marginalised groups who may lack the means to pursue litigation independently.

Such group or NGO proceedings also mean that the burden of engagement in the court system does not fall on one person, particularly when this person is very often a disadvantaged or excluded person. People with lived experience of human rights infringements speak about it being important that the burden of improving the realisation of human rights should not fall on individuals<sup>25</sup>.

Often, systemic rights abuses cannot be raised in court because the infringement is remedied for everyone, thereby nullifying their individual reason to take a case even whilst it remains a problem for many. Sometimes the issue may be relatively small for each person but is significant due to the number of people affected. As Professor Tom Mullen has noted:

**“The essential point is that public interest litigation is necessary in order to guarantee respect for the rule of law by executive government. Relying solely on persons who litigate to advance their own interests will not achieve that aim.”<sup>26</sup>**

However, public interest litigation by NGOs, including taking cases and interventions, is made less likely, and hampered, by a number of obstacles.

Court rules and processes can make it very uncertain as to whether a case can be taken, or intervention made.

The Human Rights Act 1998 restricts standing to those who are a direct ‘victim’ in the case and to the Equality and Human Rights Commission. The UNCRC Incorporation (Scotland) Act 2021 takes a broader approach to standing, allowing the common law approach of ‘sufficient interest’ to apply. This Act also gives the Scottish Human Rights Commission and the Children and Young People’s Commissioner for Scotland the power to take a case in their own name or intervene in proceedings. The Scottish Government has committed to mirroring this approach in the upcoming wider Human Rights Bill. Further consideration is needed around clearly defining ‘sufficient interest’ in court rules so that NGOs can make informed decisions about taking judicial review, and so there is consistency of best practice across courts and tribunals.

There are considerable financial barriers to NGO-led public interest litigation. Rethinking Legal Aid recommended that legal aid should be available for group or multi-party actions. This was further raised during the passing of the Civil Litigation (Expenses and Group Proceedings) Act 2018 when group proceedings were introduced as a possibility in the Court of Session. The Stage One report states:

“The Committee welcomes the Scottish Government’s commitment to amend the legal aid rules to enable legal aid to be available for group proceedings.”<sup>27</sup>

Recognising that “there is little point in opening doors to the courts if litigants cannot afford to come”<sup>28</sup> we recommend that the Scottish Government makes legal aid available for group proceedings. We suggest that there is no access to justice rationale for restricting legal aid for group proceedings only to Fatal Accident Inquiries – it should be available to all group proceedings.

### Call to action

**Value NGO-led public interest litigation:** Eliminate barriers to NGO-led strategic litigation including those related to courts accepting cases taken by charities.

## 8. Ensure effective remedies for human rights breaches

Professor Boyle writes that effective remedies in international law can “include, amongst other things: restitution, compensation, rehabilitation, satisfaction, effective measures to ensure cessation of the violation and guarantees of non-repetition. Specific remedies beyond compensation include public apologies, public and administrative sanctions for wrongdoing, instructing that human rights education be undertaken, ensuring a transparent and accurate account of the violation, reviewing or disapplying incompatible laws or policies, use of delayed remedies to facilitate compliance, including rights holders as participants in development of remedies and supervising compliance post-judgment.”<sup>29</sup>

However, many of these remedies are not currently available through Scottish courts. Remedies that address systemic issues, including those involving multiple public authorities, are very limited. The National Taskforce on Human Rights Leadership recommended that “structural interdicts” be considered. These involve the court in more than a one-off ruling and might involve public bodies being required to take specific actions and reporting back to the court on compliance.

Compensation levels in human rights cases are not sufficient to recognise the seriousness of the violations, and to sufficiently act as a deterrent against future human rights abuses. The maximum compensation in human rights cases should be at least the level of personal injury cases in Scotland. Human rights violations can have severe and long-lasting impacts on individuals, resulting in significant physical, emotional, and psychological harm. By acknowledging the gravity of human rights violations, adequate compensation recognises the need to help victims recover and rebuild their lives<sup>30</sup>.

From our lived expertise workshops, we heard the following:

“From my point of view, it is a decent level of compensation needed for human rights violations. My daughter and I were found to have been subject to injustice by the ombudsman, and we were given £295. And I've talked to a number of people, and they said, without exception, they're missing noughts off the end of that figure. This is a lifetime of PTSD, anxiety, and a whole host of things.

“My daughter is looking at a lifetime of this. And £295? It's insulting, not only to me, but more to her, and it's terribly upsetting. It's what you get for a parking fine. So, her life is worth a parking fine. I'd seek remedies for enough compensation to secure her lifetime. She's failing in school because of the trauma. She needs long-term therapy and long-term support, which £295 is not going to secure.”

When public authorities are held accountable for their actions and face substantial financial consequences, it sends a powerful message that human rights violations will not be tolerated. This can contribute to fostering a culture of respect for human rights.

Adequate compensation also plays a crucial role in restitution and rehabilitation for victims. Human rights violations often result in physical injuries, trauma, loss of income, and other damages. By providing higher compensation, victims can receive assistance in covering medical expenses, therapy costs, loss of earnings, and other financial burdens. This financial support enables victims to access necessary services and rebuild their lives with dignity<sup>31</sup>.

The Taskforce, which included a diverse range of expertise, recommended several key points to enhance access to justice in Scotland:

- **Recommendation 21:** Collaborate with key stakeholders, especially those facing barriers to access, to explore accessible, affordable, timely, and effective remedies and routes to justice within the framework.
- **Recommendation 25:** Consider incorporating a comprehensive range of appropriate remedies, as per international law, that courts or tribunals can order when necessary. This should include targeted remedies aimed at preventing future breaches, such as structural interdicts.
- **Recommendation 26:** As part of framework development, further investigate access to justice by seeking input from rights-holders. This process should aim to create a more accessible, affordable, timely, and effective judicial pathway to remedy.

These recommendations acknowledge the myriad of ways that someone might access redress to the harm suffered by a person who has faced a human rights violation. It is important that in addition to financial support, the Scottish Government consider and implement remedies that address harm beyond

financial compensation, and acknowledge the emotional wounds that people suffer as a result of one or multiple rights violations.

### **Call to action**

Ensure effective remedies for human rights breaches: Introduce judicial remedies for human rights and equality infringements that work for individuals, as well as for guaranteeing wider structural change.

## **9. Introduce radical reform of legal aid**

The dearth of human rights advice in Scotland is compounded by significant problems in accessing advice or services from a solicitor. The Scottish Government has ample evidence around this from the report: Rethinking Legal Aid, an Independent Strategic Review<sup>32</sup>, and from consultation responses around legal aid reform. We have heard from people who simply did not know how to find a solicitor, and when they were aware of the Law Society online listings of law firms, they had to contact multiple firms to find one that was:

- a) willing to take on a legal aid case.
- b) willing to take on their case when it was complex.
- c) has the specialist knowledge to handle their case.

The number of lawyers willing to take legal aid cases has significantly reduced in recent years<sup>33</sup>. This is intensified by a lack of lawyers able to take specialist cases in areas such as, but not limited to, immigration and asylum law, environmental law, or human rights law.

There are shortages outside the Central Belt of Scotland, with people often having to travel to access the legal services that they need. People spoke about positive experiences of accessing community law centres but that there was a need for these to be available for every community.

Rural areas often have a scarcity of legal practitioners and law firms, making it challenging for individuals to find legal professionals who can provide legal aid services. This shortage can result in long waiting times and limited options for legal representation. Additionally, rural areas in Scotland usually do not have sufficient infrastructure to support legal aid service, and once again a lack of

awareness on human rights, in this case specifically about the availability and eligibility criteria for legal aid can prevent individuals from accessing the support they need.

We heard from people with lived experience of accessing human rights lawyers and the cost incurred. Below are examples of experiences of trying to access a lawyer, and the barriers faced.

“A couple of times, I've approached a lawyer for initial advice on my case, and they've quoted me £2-3000 just for looking over the documents and giving you an opinion about whether it's worth going forward. That seemed an awful lot. Especially since in one case, I eventually got the answer that I needed, but I just stumbled across it by looking at some law reports [...] because I asked as well, a lawyer about a Judicial Review and taking it to the Court of Session. She told me that I would need to set aside about £75,000 to cover all the legal expenses. And that was assuming that I wouldn't lose the case and be lumbered with the other side's costs.”

“It feels to me like we're battling against ourselves (in terms of trying to access a human rights lawyer). It is a shame that the odds are based financially in the authority's favour. And we've had to make a personal contribution to represent us fairly.”

Despite promises of legal aid reform, there has been no Scottish Government consultation on a draft bill and no commitment to a timescale for the reform that is so desperately needed. The legal aid system in Scotland is crumbling and people who are living with serious violations of human rights are bearing the brunt of this. In 2022, the Law Society found the following about the 139 most deprived communities in Scotland, housing about 100,000 people between them<sup>34</sup>:

- Out of the 139 communities, 122 have no civil legal aid firms at all.
- These 139 communities share just 29 civil legal aid firms between them.
- Nearly 90,000 (87,064) people across these 139 communities are left without any local access to civil legal aid.
- Legal aid fees agreed in 1999 have only increased by 10%, while inflation has increased by 55%.

More delay to the reform of legal aid is not an option – we call on the Scottish Government to urgently consult on legislative reform and rebuild a legal aid system that enables access to human rights justice for all.

### **Call to action**

**Introduce radical reform of legal aid:** Prioritise reform of Legal Aid, with a consultation published on necessary legislative change by summer 2024.

## **10. Remove financial barriers to justice**

Our justice system is a vital guarantor of human rights. A functioning, accessible and fair justice system is both the demonstration of, and a fundamental baseline, of a society that values human rights. A core principle of the international human rights framework is that access to justice and accountability on rights should not be affected by your ability to pay. There should be no possibility of human rights legal protections being more accessible for those who are wealthy, than those who are not.

However, our justice system in Scotland is not regarded as a vital and universal public service in the same way that the health and education sector are. The justice system operates based on Full Cost Recovery, even for cases that are about justice for serious human rights violations. Court fees are charged for all cases except those with a specific exemption.

We note too that charging court fees sit in stark contrast to the approach taken by Scottish tribunals such as Additional Support Needs Tribunals and Mental Health Tribunals that do not charge fees. We question the rationale that recognises some routes to justice as supported by the public purse, whilst others are not.

There is a commitment for the Scottish Court and Tribunals Service to monitor cost recovery from the courts and to undertake a comprehensive review of court fees in years to come<sup>35</sup>. However, data such as this from SCTS was not included in the recent consultation on raising court fees. There is an urgent need to expand the evidence base around the impact that court fees have on people who are on low incomes but who are currently outside the eligibility criteria for exemptions, the impact on particular communities and protected

groups, and the impact on organisations, particularly charities with an interest in seeking legal remedies through the courts.

One of the outcomes of the Taylor Review of Expenses and Funding of Civil Litigation in Scotland was the introduction of Qualified One-Way Cost Shifting (QOCS) for personal injury cases. QOCS provide that if the Claimant is not successful, they will not be responsible for the Defender's costs and the Defender will have to pay their own legal costs, even if they successfully defend the case. QOCS therefore “addresses the inequality of arms between parties in these types of claims where a private individual is often raising an action against a corporate Defender, with far greater resources at its disposal”<sup>36</sup>.

In the Scottish Government response to the Taylor Review, then then Cabinet Secretary for Justice said:

“It is not acceptable for the answer to “how much will it cost me to litigate” to be “how long is a piece of string”, from either an individual or a business perspective [...] Sheriff Principal Taylor rightly comments that the unpredictability of the costs of civil litigation represents a barrier to access to justice and I commend his conclusions.”

The unpredictability of the potential cost of litigation is no less a barrier for human rights cases than it is for personal injury cases<sup>37</sup>. This is true for individuals and for charities or groups taking cases.

There are many benefits to QOCS for people seeking to access remedy, such as:

- QOCS helps to address the financial barriers that individuals face when pursuing legal action. Under QOCS, individuals who are bringing a valid claim for human rights violations are protected from having to pay the defendant's legal costs if they lose the case<sup>38</sup>.
- QOCS safeguards access to compensation for individuals who have suffered human rights violations. It ensures that successful claimants can retain the entirety of their awarded damages, as they are not required to use the compensation to cover the defendant's costs.
- QOCS helps to rebalance the power dynamics between individuals and well-resourced defendants. This balance in financial risk allows for fairer and more equitable proceedings<sup>39</sup>.

By mitigating the financial risks associated with litigation, QOCS improves access to justice. It encourages individuals who have suffered harm or human rights violations to pursue their claims if they are unsuccessful. QOCS empowers individuals, particularly those with limited financial resources, to seek redress and hold duty bearers to account.

### **Call to action**

**Remove financial barriers to justice:** Remove court fees and introduce protection from awards of expenses for all cases raising human rights and equality issues.

## **11. Strengthen accountability bodies**

People with lived experience of human rights infringements speak about the importance of having strong accountability mechanisms, with consequences for public authorities and the Scottish Government when they ignore or violate human rights<sup>40</sup>. Indeed, ways to hold Government at all levels to account for steps to progressively realise human rights is seen as crucial for our economic, social, cultural, and environmental rights to be made real – without such strategic accountability, there is widespread concern that enhanced human rights law might lead to little change on the ground<sup>41</sup>.

Giving more powers to the SHRC and CYPSC would strengthen the protection and promotion of human rights in Scotland. With enhanced powers, they can play a more proactive role in investigating human rights violations, addressing systemic issues, and advocating for necessary legal and policy reforms to better safeguard human rights. Strengthened human rights institutions<sup>42</sup> would play a crucial role in an effective system of accountability on the protection and progressive realisation of human rights. They can both take strategic court cases in order to clarify human rights law and hold the Government and public authorities to account through scrutinising and making recommendations on implementation reports.

We consider that enhanced powers for the SHRC should go beyond only enabling them to take cases in their own name and intervene in cases, as was included in the UNCRC (Incorporation) Scotland Act 2021. As we seek to strengthen and enhance Scotland's human rights framework, there should be

consideration of what role we need the SHRC and CYPSC to fulfil to drive the change needed to see human rights made real for more people. For example, these powers could include:

- Give advice to individuals
- Take a case into particular rights issues
- Hold an inquiry into only one public body
- Monitor and scrutinise public body reports on implementation of rights in the Bill
- To compel information from public bodies
- Public bodies should also be required to submit their reports to the Scottish Human Rights Commission for monitoring.

Scrutiny and regulatory bodies could play a significant role in embedding human rights into all of our public services, ensuring that this is mainstreamed into decision-making. Assessing and regulating public services can include actions such as requiring Human Rights Impact Assessments on new policies and priorities, and ensuring demonstration that participation of people whose rights are most at risk informs how services are designed and delivered.

Increased human rights capacity and effectiveness of strengthened accountability bodies cannot be done within current resources. The Scottish Government should review the resources available in light of the change and capacity required.

### **Call to action**

**Strengthen accountability bodies:** Give human rights, regulatory and scrutiny bodies the duties, powers and resources to deliver accountability on human rights and help prevent further breaches.

## **12. Ensure duty bearers take a human rights-based approach**

The experience of many discriminated-against and excluded people is that frontline staff in public services often do not understand human rights language or their duties, nor understand or implement human rights in their interactions or decisions. When people speak about their human rights with

public service staff, they are often met with indifference or treated without respect. Raising human rights as the foundation to shared decision-making is often treated as being unnecessarily aggressive, or of no consequence. Furthermore, people report experiences of racism and racial discrimination, of being discriminated against, of being excluded from participation because of wholly avoidable barriers, and of being treated without respect for dignity.

A workshop participant spoke about their experience with Home Office:

“Most of the time, it is the service providers (public authorities) or housing officers make it harder for us to feel like human beings with basic rights. For example, I once complained to the Home Office about the transphobic language used in materials translated into Arabic that we as asylum seekers were given.

“The bureaucracy of this situation, and complaining, took so long that I raised the complaint with another organisation. This was after around 5 to 7 months of waiting. Eventually, the Home Office told me that they would change the wording in new hard copies of this information, but that they couldn’t do anything about the copies which had already been distributed.

“They showed me the new copies and it some homophobic and transphobic words still remained. It was as if they were trying to provide a solution without even listening to me.”<sup>1</sup>

Conversely, people speak about how positive and significant it has been when frontline staff have recognised their human rights and treated them with dignity and respect.

Raising issues or gaps in rights realisation with frontline public service staff is the first step in people accessing remedy on human rights breaches. The first response from public services must be one of understanding human rights and how they apply, and an approach of a shared understanding and discussion in order to realise an individual’s rights. Embedding the PANEL approach across the decisions that public services make and how they make them, is crucial to everyday human rights justice. However, public service understanding of a human rights-based approach is not currently up to this task.

The European Convention on Human Rights (as incorporated by the Human Rights Act 1998) is foundational to Scots law and is an important part of the Scotland Act 1998. 'The ECHR plays a non-negotiable foundation' and human rights is one of 'the core pillars of devolution'. This underpinning place of human rights will only be strengthened when the UNCRC (Incorporation) Act 2021 is commenced, and further human rights incorporation legislation is passed. Despite this centrality of human rights to our law, it is still possible for students in Scotland to finish their legal diploma without ever having learned about, let alone studied and understood, human rights including relevant international treaties and case law. The legal diploma does not include human rights as an essential element for all trainees to understand.

### Call to action

Ensure duty bearers take a human rights-based approach: **All those who deliver** human rights remedy and accountability should receive comprehensive training and assessment in taking a human rights-based approach.

## CONCLUSION

In conclusion, it is imperative to emphasise that for human rights to be effectively protected and fully realised in Scotland, unfettered access to remedies and justice is absolutely essential. Access to remedy must not be a mere aspiration or theoretical principle – it should be accessible, affordable, timely and effective in order to be a reality for all people in Scotland.

Therefore, we call upon the Scottish Government, Scottish Parliament and all key justice decision-makers to heed this pressing issue and take decisive action now by acting on these thirteen key calls to action. We acknowledge that achieving these necessary changes will not happen overnight, but there is an urgent imperative to begin taking meaningful steps towards a human rights justice system that works for all.

In embracing these calls and committing to their implementation, Scotland has the opportunity to lead the way in demonstrating how a society can protect realise the human rights of everyone.

## CALLS TO ACTION / RECOMMENDATIONS

- 1. Put all of our human rights into law:** Make all of our international human rights foundational in Scots law and enforceable in Scottish courts to the greatest extent possible.
- 2. Ensure everyone knows their rights and how to get them:** Co-produce and fund a National Network for Human Rights Information, Education, Legal Services and Advice.
- 3. Ensure inclusive communications across the system:** End exclusion from human rights remedies for people with particular communication, translation and interpreter requirements.
- 4. Provide independent advocacy for all:** Deliver and resource independent advocacy services for all those who need them to access remedy.
- 5. Develop effective non-court routes to justice:** Develop effective, timely, and supportive routes to remedy that don't require going to court.
- 6. Improve people's experience of going to court:** Introduce court rules for human rights and equality cases to improve rights holders' experience.
- 7. Remove unfair timescales:** End unrealistic court time limits, including the three-month limit for Judicial Review.
- 8. Value NGO-led public interest litigation:** Eliminate barriers to NGO-led strategic litigation including those related to courts accepting cases taken by charities.
- 9. Ensure effective remedies for human rights breaches:** Introduce judicial remedies for human rights and equality infringements that work for individuals, as well as for guaranteeing wider structural change.
- 10. Introduce radical reform of legal aid:** Prioritise reform of Legal Aid, with a consultation published on necessary legislative change in 2024.
- 11. Remove financial barriers to justice:** Remove court fees and introduce protection from awards of expenses for all cases raising human rights and equality issues.
- 12. Strengthen accountability bodies:** Give human rights, regulatory and scrutiny bodies the duties, powers and resources to deliver accountability on human rights and help prevent further breaches.
- 13. Ensure duty bearers take a human rights-based approach:** All those who deliver human rights remedy and accountability should receive comprehensive training and assessment in taking a human rights-based approach.

*The Human Rights Consortium Scotland would like to thank Network for Social Change for their support towards our work around accessing justice.  
Human Rights Consortium Scotland SCIO: SC050099*

## APPENDIX

### **Civil and political rights**

A category of human rights which protect certain freedoms, such as right to life, right to liberty, freedom of expression, freedom of belief, freedom of association.

### **CRPD**

The Convention on the Rights of Persons with Disabilities (CRPD) is an international human rights treaty adopted in 2006 by the United Nations General Assembly.

### **Devolved competence**

Devolution is a system of government which allows decisions to be made at a more local level. In the UK there are several examples of devolved government including devolved legislatures like the Scottish Parliament. The Scottish Parliament has power to make laws about matters which are not reserved under the Scotland Act 1998. This is called devolved competence.

### **Human Rights Act**

The Human Rights Act 1998 is an Act of the UK Parliament which sets out the human rights and fundamental freedoms that everyone in the UK is entitled to. It incorporates rights set out in the European Convention on Human Rights (ECHR) into domestic UK law. These are civil and political rights.

### **ICESCR**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is an international human rights treaty adopted in 1966 by the United Nations General Assembly.

### **Incorporation**

The process of including UN treaty rights within our domestic law in Scotland.

### **Independent advocacy**

The role of standing alongside people who are marginalised and speaking on behalf of people who are unable to do so for themselves. The purpose of advocacy is to help people have as much control as possible over their own lives. [this is the government's definition]

### **Rights-holders**

A person who claims their rights under a legal framework.

### **Scotland's National Action Plan for Human Rights (SNAP)**

SNAP – Scotland's National Action Plan for Human Rights – was launched in 2013 as a roadmap for Scotland's human rights development.

### **UNCRC**

The United Nations Convention on the Rights of the Child (UNCRC) is an international human rights treaty adopted in 1989 by the United Nations General Assembly.

### **UNCRC (Incorporation) (Scotland) Bill**

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament on 1st September 2020.

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