

Law and human rights based approaches as tools for tackling disadvantage and discrimination experienced by children and young people

Empower / Inform / Persuade

- Treating children as rights holders
- Ensuring awareness of rights and how to realise them
- Ensuring views of children and young people are heard
- Rooting work in human rights
- Identifying best practice in rest of UK and abroad
- Making freedom of information requests
- Collaborating across sectors
- Capacity-building to identify where law can make a difference
- Assisting law-makers in writing legislation anchored in international children's rights standards
- Using legal & human rights arguments in responses to public consultations
- Petitioning the Scottish/UK/ European Parliaments
- Scrutinising adherence by Scottish Ministers and public authorities to respective duties under Children & Young People (Scotland) Act 2014
- Campaigning for UNCRC to be directly applicable and justiciable under national law
- Engaging with European and international human rights mechanisms

Challenge

- Holding authorities to account by challenging policy, practice or legislation that may breach children's rights
- Seeking legal opinions on legal remedies
- Setting out legal position in advocacy /correspondence with authorities: possibility of legal challenge may encourage review of policy or practice
- Developing research which could support legal claims
- Alerting lawyers/Children & Young People's Commissioner/ Equality & Human Rights Commission/Scottish Human Rights Commission
- Supporting individual children to bring claims
- Providing witness statements in court cases
- Contributing to public impact/strategic litigation
- Petitioning for judicial review
- Providing expertise to court by intervening in judicial review (see overleaf)

Judicial Review in Scotland

Petition for judicial review

- Judicial review is where the Court of Session, and the Supreme Court on appeal, is asked to review the lawfulness of a decision or action of a public body or government ministers. This includes reviewing whether legislation and decisions comply with the rights protected by the European Convention on Human Rights.
- An individual or organisation can bring judicial review if they can show they have 'sufficient interest' to do so. This allows organisations to bring an action in the public interest.
- A solicitor will develop your case and an advocate will represent you before the Court of Session/Supreme Court.

Public interest intervention in judicial review

- A third party can apply to intervene in judicial review proceedings brought by someone else, if it can show an interest to intervene. Interveners provide expertise without getting involved in the facts of the case or supporting either party.
- A solicitor will help you develop your case and an advocate will represent you before the Court of Session/Supreme Court.
- The court will only allow an intervention if it raises a matter of public interest and is likely to assist the court.
- In the Court of Session, interventions are generally written but the court may also allow an oral intervention; in the Supreme Court interventions are generally both written and oral.
- The Equality and Human Rights Commission and the Scottish Human Rights Commission also have specific powers to intervene.

Considerations:

Purpose

Best interests of the child

Timing

Cost & liability for expenses

Potential impact of favourable or unfavourable judgment

Publicity