

Report: **Access** **to Justice**

*How do we ensure that children's
rights are realised?*



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Why did we organise a Round Table on Access to Justice?

Our specialist legal hub, and particularly our free legal advice is a lifeline to many children and families. The demand for this service has increased significantly since the beginning of the year and we saw a **250% increase** from January 2024 to July 2024. This August we received **313 enquiries, our highest amount ever.**

We see a consistent theme in the enquiries we receive:

- **Children and families cannot find a Legal Aid solicitor** to get free legal advice and legal representation.
- **Families do not qualify for Legal Aid** but still cannot afford the costs of a solicitor.
- This means that when **children and families rights are breached they have no way of accessing justice to remedy this.**

We provide free legal advice on all areas of child law in Scotland. We commonly receive enquiries from:

- Parents who are trying to raise a court action for contact with their child.
- Parents who are seeking full time residence of their children due to concerns about the **child's welfare.**
- Asking for help on rights breaches for children with **additional support needs**, particularly in the education setting.

UNCRC Incorporation

On the 16th of July 2024 the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 came into force. This means that it is **unlawful for public authorities**, including the Scottish Government, courts, and anyone carrying out public functions, **to act or fail to act in a way that is incompatible with the UNCRC requirements.**

This applies to actions or duties conferred by Acts of the Scottish Parliament or by Scottish statutory instruments. It covers a wide range of bodies performing public functions and may include charities and businesses providing public services.



What do we mean by 'Access to Justice'?

Access to justice is a **fundamental principle** of the rule of law, meaning that people can **have their voices heard**, exercise their **rights** and hold decision-makers **accountable**. It is the fair and equal opportunity for everyone to secure their rights under law and demand that they be protected, no matter your background or financial status. Access to justice for babies, children and young people is also at the heart of the UNCRC and is a **key component of ensuring that their rights are protected and respected**.

While lack of legal representation is only one issue in the wider theme of access to justice, it is a telling sign of how much further we have to go to realise the rights of the child in Scotland. Children and families must be able to have **equal access to legal advice** to know what their rights are, how the law applies to them and be able to access remedy when there have been violations of their rights.

The purpose of the Round Table was to have **representatives from diverse organisations** to share and discuss the issues we are seeing in terms of access to justice, and what the short-term and long-term collaborative solutions could be.

We were joined by two brilliant speakers at the Round Table:

Juliet Harris

Director of Together
(Scottish Alliance for Children's
Rights)

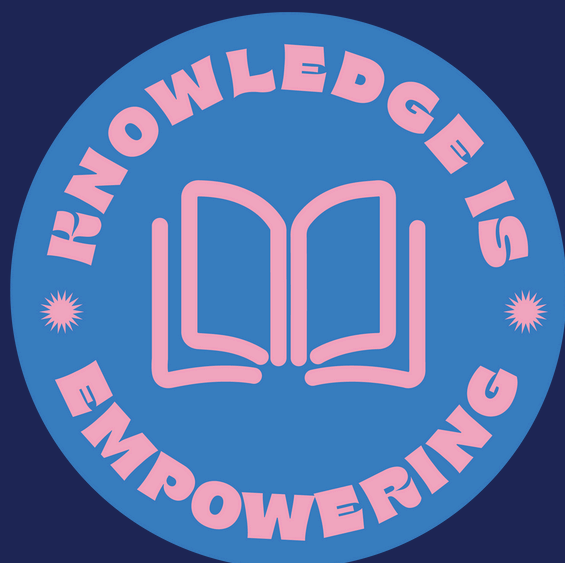
Lucy Miller

Policy and Communications Lead
at Human Rights Consortium
Scotland (HRCS).

Findings

We define access to justice as access to the legal system, including courts, as well as access to alternative forms of justice outwith the legal system. Children should not have to follow a set pathway when accessing justice, for example they should be able to litigate first if they wish.

Our delegates identified the following issues surrounding access to justice and the undernoted short-term and long-term solutions.



1. Lack of education about children's rights

- We found that there is a lack of consistent education and training on children's rights, including rights under the UNCRC, other domestic and international human rights legislation, and common law.

Solutions

- A standardised children's rights training program from nursery to S6 that must be implemented by all schools, covering both rights and how to access remedies for rights breaches.
- Mandatory children's rights training, and trauma-informed training, for all solicitors who may deal with children and families in their practice.
- Creation of child-friendly resource hubs for children and families so that they can find information about their rights in one location.
- Free upskilling sessions on children's rights offered to those working in communities that experience the most poverty and deprivation.



Children and young people need to know they have rights. They must be able to recognise when those rights have been breached and know where to go and what to do to access justice – Juliet Harris, Together

2. Children's Limited Access to Legal Advice

- As organisations working in this sector, we see that children have limited access to free legal advice and representation and independent advocacy.

Solutions

- Free, consistent independent advocacy should be expanded to cover all children and young people for all life situations, including for babies and very young children and those in secure accommodation.
- Establishment of a network of solicitors in Scotland who specialise in advising and representing babies, children and young people with services allocated throughout Scotland to reach every child, with particular focus on rural areas.
- Automatic free advice and representation and abolition of legal aid applications for anyone under the age of 18.



The scarcity of human rights advice in Scotland is intensified by significant problems in accessing advice or services from solicitors – Lucy Miller, HRCS

3. Legal Aid is unavailable to those in need

- One of the biggest issues we see is that Civil Legal Aid is not available to those families who need it.

Solutions

- The results of consultations with Legal Aid solicitors must be actioned in order to improve the system and incentivise offering Legal Aid.
- Plans must be laid out for a complete reformation of Legal Aid to encourage more solicitors to offer the service.
- Means testing for Criminal and Civil Legal Aid eligibility should be reviewed and updated on an annual basis.
- Appropriate funding must be allocated for the review and reformation of Civil Legal Aid.
- Timely access and simplification of processes for children and their families, especially for those whose rights are most at risk.



There has been a reduction in the number of lawyers willing to take on legal aid cases. This shortage is particularly acute in specialist areas such as immigration, asylum, environmental, and human rights law. These are severe shortages in the areas of highest deprivation, meaning once again it is the most marginalised missing out on their fundamental human rights – Lucy Miller, HRCS

4. Lack of system for creating change

- Unfortunately, there is no system at a strategic level for addressing flaws with children's rights and access to justice.

Solutions

- A national strategy for access to justice must be developed in partnership with children and young people, accompanied by consistent resources for implementation.
- A standardised minimum level of support required for effective access to justice for all children and young people must be identified and enforced across all local authorities.
- We need a robust method of identifying and addressing gaps in accessing justice, with failings admitted and recognised by senior decision makers.



For any action focused on helping children understand their rights and access justice, it's equally important to support the adults around them. Adults—whether parents, carers, teachers, or professionals—need to know how to guide and advocate for children, ensuring that their rights are fully protected and upheld. – Juliet Harris, Together

5. Lack of children's inclusion in policy design

- We have seen that children are not meaningfully included in designing policy and services that impact them.

Solutions

- Children and young people with lived experience should be sought out and invited to collaborate on the design and delivery of services that directly affect them.
- There must be specific consideration on how to obtain the views of very young children and babies as well as non-verbal and disabled children and a plan put in place to have these views taken into account.
- Processes for children to give feedback on services should be child-friendly. There should be an option for children to give feedback on improving the service and an option for lodging a complaint. Both avenues should have follow up communication confirming what action has been taken as a result of the feedback.
- A clear plan must be developed for the private, legal, public and third sectors to work together in partnership with children and young people to design a national strategy for access to justice.



There must be confidential, child-friendly, independent complaints mechanisms to ensure all children have access to justice – Juliet Harris, Together

Conclusion

Work must commence as a matter of urgency to improve access to justice for babies, children and young people. The 2023 UN Concluding Observations on Access to Justice made the following recommendations:

(a) Confidential, child-friendly and independent complaint mechanisms in schools, alternative care settings, foster care systems, mental health settings and detention for reporting all forms of violence, abuse, discrimination and other violations of their rights and that it raise awareness among children of their right to file a complaint under existing mechanisms;

(b) Legal support and representation in addition to remedies, including by removing barriers faced by children in disadvantaged situations and expanding the types of support provided under the legal aid budget;

(c) Officials working with children in the justice system who have been adequately trained on children's rights and child-friendly proceedings

It is deeply concerning that these recommendations have not yet been actioned and that children still do not have proper recourse for rights breaches. The UN General Comment 27 on Children's Rights to Access to Justice and Effective Remedies has concluded its consultation phase and will shortly be published. The overall objective of the General Comment is to provide authoritative guidance to States Parties to undertake all appropriate legislative, administrative and other actions to ensure children's right to access justice and effective remedies for the full realisation of all their rights.

Access to justice is an immediate issue. Given the clear guidance from the UN in the 2023 Concluding Observations and the impending publication of General Comment 27, it is difficult to ascertain why substantial work has not begun on improving access to justice for all children in Scotland.

Now that Scotland has taken the step of incorporating the UNCRC into our domestic legislation, it is time to follow up with the policies and practices to ensure every child can access justice for the full realisation of their rights.



Special Thank You to the Attending Organisations

Together (Scottish Allian for Children's Rights)

Human Rights Consortium Scotland

Institute for Inspiring Children's Futures

University of Strathclyde

Law Society of Scotland

Children's and Young People's Centre for Justice (CYCJ)

Just Right Scotland

Action for Children

Scottish Children's Reporter Administration (SCRA)

Clan Childlaw

Who Cares? Scotland

Amnesty International

Scottish Legal Aid Board