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# ADVOCACY CLINIC

## Access to justice & remedies for children and young people

Wednesday 14 May 2025, 4-6pm on Zoom

For members of the Children and Young People's Advocates Network

# What to expect from today

1. How complaints procedures can provide meaningful remedies – including preventing bad decisions being made;
2. As a last resort, how judicial review can meet children and young people's needs and change the law and practice;
3. Obtaining financial compensation through the courts when things go wrong for children and young people;
4. Working with lawyers and making sure a case can be funded;
5. Being aware of the strict time limits on bringing a case;
6. How advocates can support children and young people to access justice and obtain remedies.

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# What do we mean by “access to justice"?

*"The worst form of justice is pretended justice."*

Plato

*"Justice delayed is justice denied."*

William E. Gladstone

*"The concept of 'access to justice' has wide appeal despite meaning different things to different people. Although it has been defined in various, and sometimes inexplicable, ways depending on the context, the term access to justice conveys several consistent principles of importance to societies, the rule of law and justice systems. Under the rule of law, law stands above all people and all people are equal before it. In this way, access to justice is an aspiration. No person and no institution, including the state, should be above the law.* ***But for all people to be equal before the law there must be equal access to the law.*** *This requires people knowing their rights and entitlements, being aware of processes for remedy or redress, having the ability to access those processes, being able effectively to participate in those processes, and achieving an outcome that is just, in light of the merits of the case and by processes that are conspicuously fair and perceived to be so. Effective access to justice ensures that laws are more than hollow promises of protection for the vulnerable and powerless."*

*Lady Hale – Justice for Everyone - Cambridge University Press: 05 May 2022*

# Rights at risk

# Rights at risk

- Homelessness
- Abuse and neglect within the family home or in foster care
- Harm suffered in an institutional setting (children's home, mental health unit)
- Care reviews where the child is not listened to
- Unauthorised deprivation of liberty
- Children without a home and support
- Care leavers without a personal adviser, or pathway  plan, or a home
- No access to mental health care

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# Rights at risk

- Not wanting to be in care
- Care leavers with no settled home and disputes about local connection
- Children restrained in their home
- Nowhere to go on discharge from hospital and prison
- A child's home located away from their community
- Non-compliance with or existence of education, health and care (EHC) plan
- Lack of support for a care leaver who "qualifies" for advice and assistance
- Access to children's service records

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# What are the remedies?

Remedies tend to **either** deal with **the present / future OR the past**

- **Complaints**
- **Court proceedings or the threat of court proceedings**
- **Compensation schemes**

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# Complaints

# The complaint

- Complaint procedures operate in many contexts, including private and public companies, and public bodies.
- Children and young people, and others, can make representations, incl. complaints, or challenge failings by children's services through the Children Act 1989 procedure.
- The current procedure arose from recommendations following the Waterhouse Inquiry report "***Lost in Care***" (2000) which concluded found that '***widespread sexual abuse of boys occurred in children's residential establishments in Clwyd between 1974 and 1990***' as a result – in part – of a weak complaints procedures.

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# Children Act 1989 complaint

- **Section 26 representations**

*(3) Every local authority shall establish a procedure for considering any representations (including any complaint) made to them by—*
*(a) **any child who is being looked after by them** or who is not being looked after by them but is **in need**;*
*about the discharge by the authority of any of their [functions under Part of the Act] in relation to the child.*
*…*
*(3B)(a) [**children who may be adopted**]*
*…*
*(3C)(a) **a child with respect to whom a special guardianship order is in force***

- **Section 24D representations**

*(1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by—*
*(a) a **relevant child** for the purposes of section 23A or a young person falling within section 23C [**former relevant child**];*
*(b) a **person qualifying for advice and assistance**; or*
*…*
*about the discharge of their functions under this Part in relation to him.*

- **Section 26A - Advocacy services**

*(1) Every local authority **shall make arrangements for the provision of assistance to**—*
*(a) persons who make or intend to make representations under **section 24D**; and*
*(b) children who make or intend to make representations under **section 26**.*
*(2) The assistance provided under the arrangements **shall include assistance by way of representation**.*

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# Children Act 1989 complaint

The procedure that must be followed by local authorities when considering representations is outlined in [The Children Act 1989 Representations Procedure (England) Regulations 2006]

**Time limit on making representations (BUT note power to consider outside of those timescales)**

*9. (1) A complainant must make his representations about a matter* ***no later than one year after the grounds to make the representations arose****.*
*(2)* ***But*** *a local authority* ***may*** *consider any representations … outside the time limit specified .. **if, having regard to all the circumstances**, they conclude that—*
*(a) it would* ***not be reasonable*** *to expect the complainant to have made the representations within the time limit;* ***and***
*(b)… it is still possible to consider the representations* ***effectively and fairly.***

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# Children Act 1989 complaint

Getting the best from complaints

*3.3.1 as with freezing decisions,* ***decisions need to be made on a case by case basis*** *and there should* ***generally*** *be a* ***presumption in favour of accepting the complaint*** *unless there is good reason against it.*

*3.3.2 The time limit* ***can be extended at the local authority's discretion*** *… if it would be unreasonable to expect the complainant to have made the complaint earlier.* ***For example, where the child was not able to make the complaint or did not feel confident in bringing it forward*** *in the year time limit.*

*3.3.3 Though* ***not exclusive****, possible grounds for accepting a complaint made after one year are:*

- *genuine issues of* ***vulnerability****;*
- *the local authority believes that there is still* ***benefit to the complainant in proceeding****;*
- *there is likely to be sufficient access to information or individuals involved at the time, to enable an effective and fair investigation to be carried out; and*
- *action should be taken in light of* ***human rights-based legislation****.*

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# Children Act 1989 complaint

Getting the Best from Complaints

**Statutory guidance** setting out how the regulations should be applied and interpreted.

**For example:**

*6.5* ***Deferring (freezing) decisions***

*6.5.1 If the complaint is about a proposed* ***change to a care plan, a placement or a service****, the decision may need to be deferred (frozen) until the complaint is considered. …*

*6.5.2 ….  there should* ***generally be a presumption in favour of freezing****, unless there is a good reason against it … In cases where decisions are met with opposing views,* ***advice should be sought from the appropriate Director in the local authority****.*

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# Children Act 1989 complaint - power to remedy injustice

Getting the best from complaints

***3.12 Redress***

*3.12.1 Under Section 92 of the Local Government Act 2000,* ***local authorities are empowered to remedy any injustice arising from maladministration****.*

***6.3 General principles of redress***

*6.3.1 … Remedies will* ***include****, but are not restricted to,* ***financial redress****.*

*6.3.2* ***Each case should be considered on its own merits****, and local authorities should develop their own policies to assure consistency across similar injustices. These should ensure that any remedies are implemented* ***reasonably quickly*** *or to take action within a defined framework.*

***6.3.3 Any application of remedies should****:*

- *be* ***appropriate and proportionate to the injustice****;*
- *put the complainant in the position he would have been in except for the fault;*
- ***consider financial [remedy]****, where the above is not possible;*
- *take into account the* ***complainant's views and desired outcomes****; and*
- *take into account the effect of the complainant's own actions (such as delay on his part).*

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# Ombudsman

- An ombudsman is an independent service that investigates and resolves complaints;
- Free to use and impartial in their investigations;
- Redress for an individual complaints and may identify systemic issues;
- There are different ombudsman schemes covering different sectors;
- As an ombudsman is the final stage of the complaints process, their decisions cannot be 'appealed' other than by judicial review process;

[However, the LGO can review its decisions in limited circumstances - internal review system where there is new evidence or it's felt an error of fact has been made. Requests for an internal review should be made within one month of the final decision being issued - https://www.lgo.org.uk/information-centre/about-us/our-performance/challenging-our-decisions]

- There is generally a time limit for bringing a complaint eg. 12 months from the conclusion of the complaints process (by a local authority / other public body).

Ombudsman Association

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# Ombudsman

### Local Government & Social Care Ombudsman

-> investigates individual complaints about councils (and adult care providers)

https://www.lgo.org.uk/how-to-complain

### Parliamentary and Health Service Ombudsman

-> investigates complaints about UK government departments, other public organisations and the NHS in England.

https://www.ombudsman.org.uk/making-complaint

### Prison and Probation Ombudsman

-> investigates deaths in custody, and complaints from people who are in custody or under community supervision

-> Independent Prisoner Complaint Investigations investigates complaints made by children in prison and secure training centres.

-> Three months time limit

https://ppo.gov.uk/complaints/

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# Limitations with complaints

- **12 months limitation to file complaint** (there are exceptions!)
- **Delays** in obtaining an outcome (e.g., seven months with the Parliamentary and Health Services Ombudsman)
- Low impact of the powers of Ombudsman schemes and levels of financial redress (**recommendation only**)
- Lack of direct involvement with investigation by child/young person
- Complexity of procedure
- Complexity of legal and factual issues difficult for Ombudsman to analyse
- Lack of legal support to draft and progress complaints (poorly funded legal aid)
- Poor quality decisions and difficulties in communicating with investigators
- Ombudsman offices are under-resourced
- Less likely to change the law or policy for group of people
- Others …

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# Court proceedings

# Judicial review

- Is a type of legal case where a **judge/s review the lawfulness of a decision or action made by a public authority**, such as, local authority, government department, police force, or health authority.

- The judge does not decide if the original decision made by the public authority was right or wrong; instead, they look at the **process of the decision making** and decide if it was lawful and if the correct processes were used.

- A judicial review case **can be brought by a person** (**or a group** of people or organisations) that has been **affected by the decision** of the public authority.

- **Strict time limits to bring a judicial review - usually within 3 months.**

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# Judicial review

The lawfulness of the decision can be challenged for **three reasons** (called grounds)

- **UNLAWFUL -** the public authority **did not have the power** to make the decision, or if it did the decision was made considering irrelevant information.
- **IRRATIONAL -** the decision is so unreasonable that no reasonable public authority would have made it (this is sometimes called **Wednesbury unreasonableness**).
- **UNFAIR -** The public body has not followed fair procedures in making the decision, this includes making sure the decision is impartial.
- **PLUS -** the decision breaches **human rights law**.

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# Judicial review – what can the court do?

There are **six remedies** that may be obtained:

**A QUASHING ORDER**

Overturns or undoes the decision being challenged, so that it has no legal effect. This is the most common outcome of successful judicial reviews.

**A PROHIBITING ORDER**

This stops a public body from taking an unlawful decision or action that it has not yet taken.

**A MANDATORY ORDER**

The court can direct a public body to take an active step, e.g. to take a new decision within a specific period of time.

**A DECLARATION**

This is an order stating clearly and concisely what the law is. Often judges prefer not to do this because (they say) the law is adequately set out in their written judgment.

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# Judicial review – what can the court do?

**A DECLARATION OF INCOMPATIBILITY**

A particular provision of an Act of Parliament contravenes the Human Rights Act. It is not binding on parliament but is an invitation to MPs to change the law so that it complies the Human Rights Act.

**DAMAGES**

The court can order damages only if some other form of legal remedy is also being sought.

**INJUCTION**

In addition, the court can grant an **injunction**.
This is a temporary order requiring a public body to do something or not to do something until a final decision has been made in the case.

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# Judicial review – types of outcomes

**SYSTEMIC ISSUES**

-> challenges to policy or the law that target the underlying lawfulness of decision-making systems, affecting a class of individuals; Where a policy authorises or positively approves of unlawful conduct.

Example: ***Gillick*** *- concerned a challenge to the legality of a policy on the prescription of contraceptives to children under the age of 16.*

*https://article39.org.uk/2021/12/21/childrens-rights-legal-digest-december-2021/*

**POLICY ISSUES**

-> challenges to policy which contradicts what is required by law.

Example: ***The Queen (on the Application of the Howard League) v Secretary of State for the Home Department and the Department of Health*** **[2003] 1 FLR 484** – the government asserted that the Children Act 1989 did not apply to children in prison. The court found the policy unlawful.

https://article39.org.uk/2021/10/28/childrens-rights-legal-digest-october-2021/

**INDIVIDUAL CASE**

-> protecting individual rights, which can lead to establishing wider legal principles

Example: ***R (on the application of G) v Southwark London Borough Council (2009) UKHL 26***

https://article39.org.uk/2021/01/27/childrens-rights-legal-digest-january-2021/

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# Civil claims

- Civil claims can cover a wide range of matters – in this case we are considering **civil claims for things that go wrong for children and young people who are in care or should be in care**.
- Civil claims follow complex procedures and rules and require specialist practitioners and may involve expert evidence.
- Claims are generally brought within the **County** or **High Court**.
- The claims in relation to children and young people are likely to be brought in relation to
  - Breaches of the **Human Rights Act**;
  - **Negligence** and **personal injury**.

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# Be aware!

## COSTS

- Generally, the party who loses a case, pays the costs of the other party;
- Legal aid, costs caps and Qualified One-way Costs Shifting **can** provide protection.

## LIMITATION PERIODS

- **Time limits** within which a party may bring a claim:
  - ✓ **Human Rights Act** claims should be brought within 12 months minus one day from date of breach or when breach ceases to occur;
  - ✓ **Negligence and personal injury claims** should be brought within 3 years minus one day from date of negligent act or when negligent act ceases;
  - ✓ **Can be extended** in certain circumstances.

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# Litigation friend

- A person involved in court proceedings (a **'litigant'**) must have **“capacity”** to conduct those proceedings, that is, must be capable to convey their position, complete paperwork and understand the decisions of the court
- Children under the age of 18 will **typically** require an adult (**'litigation friend’**) to conduct court proceedings on their behalf. In exceptional circumstances the court can grant an order permitting the child to conduct proceedings without a litigation friend.
- There are a number of people who can be appointed as a litigation friend including:
    - ✓ parent or guardian
    - ✓ family member or friend
    - ✓ solicitor
    - ✓ **“professional advocate”**
- Official solicitor - as a last resort litigation friend.

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# Other compensation schemes

# Other ways of obtaining compensation

## CRIMINAL INJURIES COMPENSATION SCHEME

Compensation to people injured because of a violent crime in England, Scotland or Wales.

**Time limits for applying** - as soon as it is reasonably practicable but normally not later than two years after incident.

Criminal Injuries Compensation Authority

## REDRESS SCHEMES

State-sponsored or funded schemes that provide financial redress and (in some cases) other forms of redress to victims who have experienced child sexual abuse (and other forms of abuse) in state institutions
–> for example, the Lambeth Children's Homes Redress Scheme.

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# Working with lawyers

- In England, there are **solicitors** and **barristers**.
- **Solicitors** are (typically) the point of access for advice for most children and young people and will provide preliminary advice, consider the issue of the need for a **litigation friend** and deal with the issue of funding the case.
- Different solicitors are expert in different areas
- Solicitors who represent parties in family court proceedings will not tend to conduct cases in judicial review, community care or civil claims work.
- **Barristers** tend to get involved if the case is likely to or ends of in court.

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# Legal aid…

- State funding (**legal aid**) for legal costs is managed by the **Legal Aid Agency**
- Legal aid permits some people to access legal advice and representation to defend their legal rights

**Legal aid is available if:**

✓ The legal issue is covered by the **scope** of legal aid (like homelessness or community care issues); and

✓ The child or young person's **income and savings** are sufficiently low to meet the financial eligibility test (**most children are**); and

✓ The case has legal **merit** (is worth taking).

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# Legal aid…

**Legal aid has the benefit of:**

- ✓ Paying the solicitor's costs at the legal aid rates;
- ✓ Paying for any fees arising from the case (interpreter, court, barrister, and expert fees);
- ✓ Preventing the other party from seeking their legal costs from the child or young person if they lose;
- ✓ **Ensuring the child and young person has access to justice.**

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# Legal aid…however…

**Legal aid is in trouble** –> legal aid work is generally conducted by private law firms which, increasingly, are unable to fund legal teams conducting legal aid work due to the reduction in legal aid fees. As a result, it is becoming more and more difficult to find solicitors to take on work for children and young people.

See Children's Legal Centre report 2018 and Law Society article 2024

**71% of people do not have access to a local provider for community care law**

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# Other ways to fund a case

**Alternatives**:

- ✓ Pay privately;
- ✓ **Local authority** funds legal costs.

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# YOUR role as the advocate ….

***National standards for the provision of children's advocacy services***

- **Standard 1:** *Advocacy **is led by the views and wishes of children and young people**.*
- **Standard 2:** *Advocacy **champions the rights** and needs of children and young people.*

  2.1 *The service and all those working for it are committed to promoting and securing the rights of children and young people.*

  2.2 ***Children and young people are referred for legal and other specialist advice when appropriate**. The service keeps an up-to-date and comprehensive referral list and takes active steps to identify legal and specialist advisers who provide a good service.*

Also note:

**3.3 *No child or young person is prevented from accessing advocacy services and participating effectively*** *on the grounds of gender, race, religion, culture, age, ethnicity, language, disability or sexuality. This means, for example, in cases where children and young people are unable to visit the advocacy office, arrangements are made for advocates to meet with children and young people in a place of their choice.*

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# Role of the advocate ….

- **Persevere** with seeking legal advice & avoid assessing the merit or plausibility of the account provided by the child or young person
- With the **consent** of the child or young person seek legal advice **as soon as practically possible** – **limitation periods!**
- Provide the solicitor with as much **detail** about the child or young person, and a **summary** of their complaint or account, and that the case is likely to be funded by **legal aid**.
- The solicitor does not necessarily need to be in the area that the child or young person lives.
- The solicitor will need help completing forms and having the signature of the child or young person, and evidence of their financial means.

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# CASE STUDY ANALYSIS

# Scenario 1 – Angela

Angela (17 years-old) has asked for your help to get a home.

Angela had been living with her mum until she was told to leave.

She went to ask for help from social services, but she was told it would take some time to find accommodation for her. A social worker directed Angela to the housing department.

Angela had to spend two nights sleeping in a local park until a friend's mother said she could sleep on the sofa for a couple of nights.

She is now living in a hostel with no money or support.

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# Scenario 2 – Phillip

Phillip comes from Nottingham where he had lived with foster carers.

Three months ago, his social worker visited and told him he needed to pack his bags as he would be moving the next day to a children's home in Newquay. He didn’t want to move and complained to his foster carer who did nothing about it.

The following day a secure escort arrived to move him from his foster carers to the children's home. Phillip hates the new home. He has one-to-one supervision at all times, is not allowed out of the home without a member of staff, must be in bed by 8pm and is not allowed his mobile phone.

Phillip hasn’t seen his social worker for months and cannot recall the last child in care review.

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# Scenario 3 – Rio

Rio (20 years-old) tells you she is very anxious about her immigration status.

She came to the UK when she was 15 but the authorities didn't believe her age. She was held in an immigration detention centre for 3 months.

Rio was able to get a birth certificate through a friend when she was released from prison to the care of a local authority.

Rio now lives in supported accommodation but hasn't had contact with her personal adviser for around six months. When her advocate asked about the latest pathway plan review, Rio said she didn't know what a pathway plan was.

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# Scenario 4 – Stef

Stef (27 years-old) tells you she wants to investigate whether she can bring a claim for compensation and get an apology from her local authority about what happened when she was a child.

She explains that her parents neglected and abused her. She thinks she was on a child protection plan for a few years. Despite the abuse, she wasn't taken into care until she was about 7 years-old. She was placed in foster care where she was subject to further neglect and abuse until she was 10 years-old. She says that she has suffered from mental health problems, struggled in education and has difficulties holding down a job.

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# Q&A

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