

Using Human Rights

A guide for people accessing Fair Justice Systems
for Scotland Group's services



FJSS GROUP

Co-produced with

The British Institute
of Human Rights 

This guide covers

- Who is this guide for?
- What are human rights?
- Human rights and universality
- Fair Justice Systems for Scotland
- British Institute of Human Rights
- The Human Rights Act in Scotland
- Legal duties
- Article 8: The right to respect for private, family life, home and correspondence
- Article 14: The right to be free from discrimination
- Support to claim your rights

Who is this guide for?

This guide, made in collaboration with the British Institute of Human Rights (BIHR) and Fair Justice Systems for Scotland Group (FJSS Group), will provide a short introduction to the Human Rights Act and a focus on the right to private and family life alongside the right to be free from discrimination. This guide will give an explanation of human rights and provide practical examples of breaches and how you can use frameworks to make sure your rights are respected.

The guide has been created to be used by for people accessing FJSS Group's service, which largely represents the Black African Community in West Calder, Lothian. A community who are trying to address the processes of services failing marginalised communities through policies and services who require an understanding of the human rights legal frameworks in an adaptable, accessible, and informative resource. In the period ending October 2022, FJSS Group supported 200 families in the local area.

What are human rights?

Human rights are universal, this means that they belong to everyone. We are all born with human rights and whilst they can be restricted in certain circumstances, they can never be taken away.

Human rights are for all of us, it doesn't matter who we are, what our job is, what our age or ethnicity is. We are human beings and it's important we know our rights and use them to advocate for positive change.

They are not gifts or rewards from the government, they are protected by law under the UK Human Rights Act, provisions in the Scotland Act and the European Convention on Human Rights. These laws mean that public bodies, those delivering public functions, have a legal duty to make sure that your rights are protected.

Human rights and universality

The Human Rights Act says that all people should be treated with dignity, respect and without discrimination. However, in practice we know that not everyone has the same access to their human rights protections.

Around 250 – 300 people are supported each month by FJSS Group to access food support services. Of that number, 90% are students from the Black African community, these students are often on visas that do not give them any recourse to public funds and are struggling financially to make ends meet.

Fair Justice Systems for Scotland Group

impacting Black and Minority Ethnic students – not just Black African students but also Asian and Arab students who do not speak English as a first language. The main issues were struggling with dissertations, theses and related academic assignments. They often failed after resits but due to lack of support and struggling with the English language. This resulted in students running out of time and having their visas expire before they could renew or take advantage of the post-study graduate visa.” –



“I was inspired to start FJSS Group as a direct result of the experience that I had when I was trying to join the legal profession in Scotland. I would submit my CV and applications, go for interviews, but I never got the opportunities I wanted. I looked at my qualifications and I was left with only one reason why I never got the opportunities; I am a Black African person, and my white peers were given preference ahead of me.” – Silence Chihuri, CEO, FJSS Group

At FJSS Group we advocate for a racially inclusive justice system that reflects the Scottish society as it is today. For example, the legal profession in Scotland is predominantly white. Out of 13,000 members of the Law Society of Scotland, only 3% are from the Black community. Whilst gender diversity has progressed rapidly with 62% of the legal profession being women, the numbers are small for black female professionals with numbers in Scotland not on record.

“A diverse society requires diverse leadership and management to be fair, inclusive and efficient. This ensures that there is no discrimination on any basis, whether it is race, colour, or creed.” Prof Sir Geoff Palmer OBE, Chairman, FJSS Group



British Institute of Human Rights

“Working on this resource alongside FJSS Group as an advocate to support people accessing the service has been enlightening. Whilst my work largely allows me to inform and amplify the voices of individuals and share knowledge of human rights law, after speaking to Silence and his team, I was inspired to provide creative literature for staff and the community to know and speak about their human rights in everyday practice.” - Charlotte Maguire, British Institute of Human Rights, 2023



At BIHR, we believe that everyone wants to live safe and well, knowing that their rights are supported by those in power. We believe our Human Rights Act is the tool that can achieve this, helping each of us live with equal dignity and respect. We work beyond the courts, collaborating with people and community groups like Fair Justice Systems for Scotland Group to use human rights advocacy to challenge those in public power to live up to their duties using human rights approaches.

At the heart of everything we do is the goal of enabling positive social change through the practical use of our Human Rights Act.

The Human Rights Act

The Human Rights Act is the main human rights protection in the UK. It is important because it places duties on public bodies to respect and protect rights in everything they do. This means that when interacting with public bodies, people can expect to have their rights protected and if they don't, they can challenge this.

16 rights in the Human Rights Act



The right to life



The right to be free from inhuman or degrading treatment or torture



The right to be free from slavery or forced labour



The right to liberty



The right to a fair trial



The right not to be punished for something that wasn't against the law when you did it



The right to respect for private and family life, home and correspondence



The right to freedom of thought, conscience and religion



The right to freedom of expression



The right to freedom of assembly and association



The right to marry and found a family



The right to be free from discrimination



The right to peaceful enjoyment of possessions



The right to education



The right to free elections



Abolition of the death penalty

In this guide we will provide information and examples of family and private life and racial discrimination which are the rights that came up in our codesign process reflective of people's lived experience who are supported by FJSS Group.

You can read a plain language or an Easy Read guide of each of the 16 rights and whether they are absolute or non-absolute on BIHR's website section, "What rights do I have?" here.

The Human Rights Act in Scotland

The Human Rights Act (HRA) applies across the UK. The rights within the HRA are brought into UK law from European Convention on Human Rights and are interwoven into the Scotland Act 1998. The Scotland Act prevents Scottish Ministers from passing laws which may be incompatible with Convention rights, as set out in the HRA. If a court in Scotland finds a law to be incompatible with human rights, it can be disapplied, because such a law would be outside the powers delegated to those bodies (“ultra vires”). This is not the same for UK Parliament which is sovereign. The mechanisms in the HRA and its position in devolution arrangements are part of what makes it such an innovative, distinct piece of legislation. In Scotland, the HRA is a crucial building block for increased rights protections.

Who has legal duties under the Human Rights Act?

Section 6 of our HRA puts a legal duty on all “public authorities” and their employees. There are two different types of “public authority” that must respect our human rights:

1. 'Core' public authorities: these are bodies typically seen as public, for example, local authorities, emergency services, NHS, Health and Social Care Partnerships, regulators, public education providers, and Government Departments, as well as courts and tribunals.

2. 'Hybrid' public authorities: these are other bodies (for example private companies and charities) who must only follow the HRA when they are doing things which are "of a public nature". This means that they are doing something which would typically be done by a core public body, such as a private company running a prison.

What do the legal duties look like under the Human Rights Act?

The duty to **respect** people's human rights means that public authorities must not restrict them or try to breach rights. This is known as a negative obligation, not to cause harm.

The duty to **protect** people's human rights means that by law, public authorities must step in and take positive action to protect people from harm. This is known as a positive obligation.

The duty to **fulfil** people's human rights means investigating when things have gone wrong and putting measures in place to stop it from happening again. This is known as a procedural duty. It means that public authorities should take steps to strengthen access to human rights.

The Human Rights Act decision-making framework

Some of these rights are absolute. This means that they can never be lawfully restricted. These rights are things like the right not to be tortured or treated in an inhuman or degrading way and the right to a fair trial. Other rights can be restricted, but only if certain requirements are met. These are called non-absolute rights. These requirements are known as the three-stage test. These are rights such as the right to private and family life and the right to freedom of expression. For a restriction on a non-absolute right to be allowed, the restriction must be lawful, legitimate and proportionate. This means that there must be:

1. A law which allows the restriction, for example mental health legislation can allow for restrictions on a person's liberty. All of the safeguards within the law used must be met for it to be lawful.
2. A legitimate reason for using the law to restrict someone's right. This must be about keeping people safe, for example, the protection of public health.
3. A proportionate option. Alternatives must have been explored to find the least restrictive option and the restriction applied must be proportionate to the risk, this involves considering the individual and their circumstances.

Rights in the Human Rights Act & examples from lived experience



Article 8: The Right to Private and Family Life, Home, and Correspondence

The right to private and family life, home and correspondence is protected by Article 8 of the Human Rights Act. This is a non-absolute right meaning it can sometimes be restricted.

The right is very broad and sits at the heart of what makes us people or what makes us our own kind of individual person. Article 8 is all about our autonomy and our choices, where we want to be, who we want to spend our time with, what we want to look like, what we want to eat, what we want to share with other people.

This right really goes to the heart of all of those different things and it is thought of in four different elements broken down below:

Private life

- Wellbeing – this means your mental and physical health.

- **Community** – this means being able to participate in your community, whatever community means to you.
- **Relationships** – this means being able to have relationships with others, like your friends.
- **Autonomy** – this means having a say in decisions that affect you.
- **Confidentiality** – this means no one should interfere with information about you.

Family Life

- **Developing ordinary relationships** – this means having a normal family life.
- **Ongoing contact with family** – this means being able to see or speak to your family and loved ones.
- **Receiving support for your family to work together and have your needs met through services** – this means being able to involve your family in conversations around how you are cared for.
- **Giving access to contact** – this means taking active steps to help you to see and speak to your family.
- **Can include friends and partners** – this means that family isn't limited to your immediate relatives, it can also include your friends and loved ones.



In Real Life: Migration

Family life is one of the first casualties of migrant life. People have to leave their families in their countries of origin, travel for several days, weeks or months and separation from loved ones is often ensued along the way. The Black African community in Scotland have experienced disruption of their family life due to limited family networks around them. The UK asylum system can have a negative impact on asylum seekers. Changes in policy and demand for accommodation can result in asylum seekers being given little to no notice before a move, often to another part of the country. Home Office policy dictates that accommodation is provided to those seeking asylum on 'no choice basis'.

A challenge to a public body making a decision which limits family life would run through the 3 stage test for non-absolute rights:

1. Is there a **law** that lets the public body restrict this right? What legal framework are the public body using?
2. Is there a **legitimate** aim for the restriction of this right? If so, what is the aim of this decision, is it about protecting people from harm?
3. Is this decision **proportionate**? Has the public body looked at everything else? Have they involved the person in those discussions and involved family members and there's nothing else that they can do in order to keep that person or others safe?

Decisions being made should avoid blanket policies and instead focus on assessing on an individual case by case basis.



“What's the balance of this decision. How have my human rights been thought about? Has the 3 stage test been run correctly?”



In Real Life: JT

JT, originally from Rwanda lived with her aunt and uncle in the country with little to no other relatives. JT was enslaved and abused by both family members on a daily basis. JT escaped from the family home and claimed asylum in summer 2020. The Home Office questions JT's asylum claim due to inconsistencies surrounding her family life, she was placed in detention for around 7 months pending deportation.

JT was first introduced to FJSS Group through referral by a friend as it was clear that several of her human rights had been violated and breached.

For JT, the most pressing issue to comprehend was the level of intrusion and lack of privacy while she was placed in detention - unannounced spot checks were completed almost routinely on a daily basis.

Home

- Not a right to housing – the right to home does not mean you have a right to be provided with a place to live.
- This is the right to enjoy the home you are living in, free from interruption and intrusion without your permission – this means the place where you are living and the way you enjoy it should be respected as much as possible.
- Includes temporary accommodation – this means your home isn't just a place you own, rent, or have been provided with, it includes anywhere where you are staying for an extended period of time.

“The level of ignorance and lack of awareness of their basic human rights is alarming among not just the asylum-seeking category but broadly, most Black African people are not very HR aware.” – Silence Chihuri



Correspondence

- Right to uncensored communication with others – this means you can speak to people either in person or through texts and letters without it being watched or censored by others.

- Through a variety of mediums including letters and modern communication – this means you have a right to communicate with people through things like texts, emails, and social media as well as in person.

“Article 8 has huge implications on the Black African community in Scotland. Most if not everyone from this demographic group have experienced disruption of their right to family life, right to a home and things that we often take for granted such as the receiving of correspondence from loved ones and the ability to correspond. Most people from the Black African community who access our services are migrants who have been through the asylum process and are often left severely traumatised and distressed. This affects their wellbeing and mental health. Between the year 2020 to 2033 Fair Justice Systems for Scotland Group has reported a rise of around 150 families who have accessed the service. Some of them were worthy case studies as we share here.” – Silence Chihuri, 2023



FJSS Group has supported 50 cases since the end of Covid-19 between May 2021 to June 2023 and these cases include Afghan and Syrian asylum seekers. The support has identified situations of family disruptions whereby 30% of the families had been broken were hindered significantly from subsisting in the ordinary sense of the word family. We saw children with one parent like two girls with their mother because the father was Kurdish and was not allowed to travel with them.

2022 saw our organisation support Ukrainian families with mainly signposting. Of the 12 families who accessed our services, 98% of them were single parent or guardian (mother/aunt/grandparent) families.



Article 14: The right to be free from discrimination

This right protects you from being treated worse than others for any reason, like age, disability, or race, or for more than one reason, like being a young, black, disabled woman.

Both the Human Rights Act and the Equality Act provide protection against discrimination but in different ways. The Equality Act prohibits discrimination on 9 grounds, called protected characteristics. These are: age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, sex and sexual orientation. The Equality Act covers public and private bodies, like businesses or organisations which provide goods and services.

Article 14 of the Human Rights Act also prohibits discrimination by public bodies or those delivering public function. This right is known as a piggy-back right, which means that it can only be raised if one of your other rights are at risk.

Unlike the Equality Act, Article 14 of the Human Rights Act does not have a set list of reasons you may be discriminated against. The right to be free from discrimination is open-ended because it says “or other status”, which courts have decided includes age, sexual orientation, health and disability, parental and marital status and immigration status. Under Article 14, you can also be discriminated against for a combination of reasons, for example if you are a black, disabled and a woman.

Discrimination can include:

- a. Treating someone less favourably to another person in a similar situation where this cannot be objectively and reasonably justified, i.e. to stop them from being treated worse.
- b. Failing to treat someone differently when they are in a very different situation to others

This right may be at risk:

- If a doctor decides not to treat your physical health problem because you have mental health issues or a learning disability.
- If a social worker or public body decides you should live somewhere, like a foster home, care home or a mental health unit, just because of your age, social status, property status, or disability.

- If you are not listened to or believed about issues you are having due to your age or another characteristic.
- If you are restrained or secluded due to your age, disability, race, or another characteristic.



In Real Life: SL

One of our volunteers who was also a student at one of the universities in Edinburgh. He had a condition that made him anxious and have low self-esteem. This affected his performance in his coursework, and he started getting behind with the assignments. Despite having been diagnosed and having been prescribed medicine his tutors failed to understand him and give him adequate support to manage his work. According to his account, the way he was treated by his tutors was very different from the way other students in similar situations were treated and supported. We could not verify this view but according to our involvement with his situation and the correspondence that we saw between him and his tutors, information about his diagnosis was shared with the tutors but this still did not prevent the treatment that he say he was subjected to. The correspondence from the tutors that we saw, did not seem to acknowledge his circumstances but were only to confirm that they had given him all the chances he could get, though there was not evidence of the chances.

The police in Scotland are from a predominantly white background which creates conflicts across sectors and communities around racial discrimination, largely around policing practices.

Advocacy example: Windrush Victims Compensation and Support

The Windrush generation are those who came to the UK from Caribbean countries as part of the British commonwealth between 1948 and 1973. The name comes from the 'HMT Empire Windrush' as the ship that brought the first group of people to the UK.

The Windrush scandal subsequently saw hundreds of Caribbean immigrants wrongly targeted by the government immigration enforcement policies. As a result, individuals were wrongly detained, barred from working, refused access to services, welfare benefits and in worst cases, threatened with the possibility of deportation.

FJSS Group has advocated for more support of Windrush victims in Scotland. From January 2021 to May 2022, FJSS Group ran a project that was consultative and investigatory in nature. The purpose of the project was to establish the extent of the impact of Windrush in Scotland and to ascertain the existence and number of victims. The results confirmed that there were 200 families in Scotland that had a Windrush victim or were directly connected to a Windrush victim or had been impacted by the Windrush scandal.

We conducted a public survey that got more than 900 respondents and 70% of the respondents favoured more support for victims including access to, and support with, the compensation process. Because Windrush victims are victims of gross human rights violations, FJSS Group has been advocating for their support. We have established networks with organisations from other parts of the UK particularly England that have involved with this work including the Windrush Nation Organisation (WNO), Action for Race Equality (ARE) and the Home Office Windrush Engagement Team. We are the WNO and Home Office official partners on Windrush in Scotland.

Support to claim your rights

If you have raised an issue using the language of human rights with the relevant public authority and are unable to resolve the matter informally, you may want to consider writing a letter. This has many advantages, particularly since the organisation should write you a letter in response. A letter provides a way for you to explain the situation, identify the desired outcome and keep a record of the situation. BIHR coproduced an advocacy toolkit with Room to Heal in 2022, [this tool includes tips for writing a letter and example letter templates for individuals and case workers which you can access here.](#)

Where to get more information and support

- Community Mental Health
- Food Distribution Programme
- High Schools Leadership Development Programme
- Anti-Racism Education and Training
- Diversity and Inclusion Programme
- Human Rights Advocacy
- Voluntary Sector Gateway West Lothian
- Race Forum West Lothian

With thanks to...

FJSS Group would like to express great thanks to British Institute for Human Rights for the collaboration on the Human Rights Resource. Working with BIHR has been such a phenomenal experience that provided our team with great insight into wider work on human rights.

RIGHT TO LIBERTY
FREEDOM

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