

IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: info@article39.org.uk

Taking a case to court

- + Many of the rights children and young people have in our country today exist because a child or young person, or their parent, took a case to court.



Here are some examples of rights children and young people have which came from successful court cases:

- + Teachers are not allowed to hit children.¹
- + Children in care have independent reviewing officers to check they are looked after properly.²
- + Social services must accommodate and give support to 16 and 17 year-olds who have nowhere to live.³
- + The right we all have to look at information held about us.⁴
- + What's best for children must be looked at very carefully when decisions are made about parents staying in this country.⁵
- + When children appear in court, charged with committing a crime, the language spoken should be understandable to the child. There must be regular breaks and other special arrangements to make sure children get their right to a fair trial.⁶
- + Councils must investigate and protect children from abuse in prisons just like everywhere else.⁷

Your rights – general

The court process that is most often used to protect people's rights is called a **judicial review**.

A judicial review is where a judge or judges carefully check whether the law has been followed by organisations like schools, hospitals, children's homes, children's social care and prisons.

Here are some of the things that judges can review for children and young people:

- + Your education rights.
- + Your right to protection and help from social workers and the council.
- + Your right not to be discriminated against.
- + Your health rights.
- + Your human rights.
- + Your right to live in this country.

If a judge or judges find that an organisation has acted against the law, the organisation may:

- + Have a decision it has made overturned.
- + Be ordered by the court to act in a certain way.
- + Be ordered by the court to stop acting in a certain way.
- + Be ordered to pay you damages, usually if your human rights have been violated.

When other things haven't worked

A court must give permission for a judicial review. It will not give permission if the case has no chance of being successful.

Before applying for a judicial review you must have tried very hard to get things sorted outside the courts – by, for example, going through all stages of a complaints procedure.

It is always better to sort things without going to court, if possible. Lawyers will try to persuade organisations to protect the rights of children and young people. They will only go to court if this persuasion doesn't work, and they think a child or young person has a good chance of winning their case.

You must apply for a judicial review as soon as possible and almost always within **three months** of receiving a decision, or something happening, that you want changing.

Your privacy

When cases concern children or young people, courts use initials rather than names in the case title so that children and young people's privacy is protected – see our case example below.

Court hearings

Hearings take place in the High Court, either in London or another city like Birmingham, Bristol, Leeds or Manchester.

In judicial reviews, no-one is on trial and no-one can be given a punishment.

Lawyers do all the background work and speaking in court. You won't have to be speak in court but your lawyers should make sure the court hears what you have to say. Sometimes there will be expert witnesses. These are people who have special knowledge and skills who can help the judge carefully consider the case.

Result of court hearing

Judges write their decisions in a document called a judgment. This is public so everyone can read it.

Either side can ask to appeal a judgment from a judicial review. This means they can go to a higher court – like the Court of Appeal or the Supreme Court in London – to ask other judges to review the case.

Instructing lawyers

Lawyers work for children and young people who take cases to court. A lawyer will have to be sure you have enough understanding to be able to work for you directly. This is because lawyers have to take instructions from their clients.

If you don't have enough understanding, you will need what's called a litigation friend. This is someone who acts on your behalf, like a parent or carer or an independent advocate who is helping you. They will instruct a lawyer on your behalf.

Paying for a lawyer

You should be able to get legal aid to pay for a lawyer to review your case and possibly take a case to court, especially if you are a child in care.

The 'People and places' part of our site gives information about where you can get help, including from independent advocates and helplines. If you need a lawyer, these people and places should be able to help find you one.

Other reasons for taking a case to court

There are other reasons a child or young person might take a case to court. If they are in care, they might want a decision about seeing people in their family – including brothers and sisters – looked at again. If a child has been mistreated in a place like a school, children's home or prison, a lawyer might go to court to get this recognised, and to get damages.

Two boys in care whose human rights were violated

In a case known as **A and S (Children) v Lancashire County Council**⁸, lawyers for two teenage boys went to court because they believed their human rights had been seriously broken.

When the two brothers were young children, it was decided that they would be adopted. They were stopped from seeing their mother and their brothers and sisters.

The two brothers were placed in separate foster homes, even though their relationship with each other was very strong.

By the time the brothers were aged 16 and 14, they had moved nearly 100 times. They were never adopted. They had asked often to see their family but this was never acted on. They were mistreated in foster care.

The High Court found that Lancashire County Council had very seriously broken the boys' human rights, including by not encouraging them to get advice from a lawyer.

The boys were awarded damages for what they had suffered.

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1 This was a European Court of Human Rights case. Costello-Roberts v. the United Kingdom (1993).

2 Re W and B; Re W (Care Plan) [2001] EWCA Civ 757.

3 This was a judgment of the House of Lords. R (G) v London Borough of Southwark (2009).

4 This was a European Court of Human Rights case brought by a care leaver. Gaskin v. UK (1989).

5 This was a judgment of the Supreme Court. ZH (Tanzania) v. Secretary of State for The Home Department (2011).

6 This was a European Court of Human Rights case. SC v. United Kingdom (2004).

7 This was a judgment of the High Court. Howard League for Penal Reform v. Secretary of State for the Home Department (2002).

8 This was a judgment of the High Court. [2013] EWHC 851 (Fam).