

GUIDANCE: CLAIMS FOR DAMAGES UNDER THE HUMAN RIGHTS ACT 1998 ARISING OUT OF CARE PROCEEDINGS



Anthony Collins
solicitors

BACKGROUND

There has been a dramatic increase in enquiries from solicitors acting in family proceedings as to whether their clients, typically children, have claims for damages for breach of their Human Rights as protected by the European Convention of Human Rights.

In a developing area of law, these cases can be highly complex. However, where there has been a failure by the state, typically a local authority, which has violated a person's Convention rights, then there may well be a claim worth investigating.

Anthony Collins Solicitors have teamed up with specialist counsel, Tom Harrill, to provide some tips and things to look out for.

TOOLKIT

If you have a case where you think there is a potential claim to be investigated:

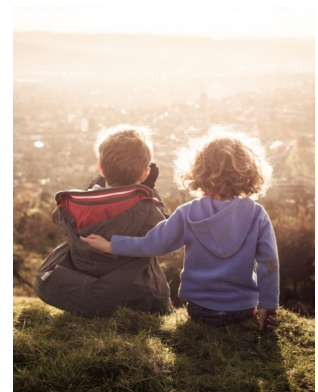
- Seek advice at the earliest opportunity. Obtaining case-specific legal advice at the earliest opportunity will help you to take the most beneficial practical and tactical decisions for the client.
- Beware limitation. Under the Human Rights Act 1998, you have one year from the date of the act complained of to issue the claim. Extension of that period is possible but is subject to the Court's discretion.
- Seek disclosure. It is often extremely helpful to ask for a direction permitting the papers from family proceedings to be disclosed to a litigation specialist and the Official Solicitor in anticipation of proceedings under the Human Rights Act 1998.



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TIP: EVEN IF THERE ARE OTHER ADULTS WHO MAY BE ABLE TO ACT AS THE LITIGATION FRIEND IT IS WORTHWHILE ASKING FOR DISCLOSURE TO THE OFFICIAL SOLICITOR AS A FALL-BACK POSITION, AS IT CAN CREATE DELAY IF A SEPARATE ORDER IS NEEDED BEFORE THE OFFICIAL SOLICITOR CAN GIVE FORMAL INSTRUCTIONS.

- If you need to bring a claim for a child (or protected party), then you will almost certainly require a litigation friend. Generally, the Children's Guardian cannot provide instructions in relation to the civil claim.
- Where there appears to be a valid cause for concern, the current guidance is that attempts should be made to deal with the matter by way of Alternative Dispute Resolution. That may include a formal complaint or a letter before action. Financial offers of settlement, properly quantified, may avoid the need to issue a claim at the Court.
- If you agree a financial settlement for a child or protected party, that will need to be approved by the Court in accordance with the Civil Procedure Rules within Part 8 proceedings.
- If you need to issue a formal claim. The general guidance of the Court is that where possible any Human Rights Act claim should be dealt with within any existing Family Court proceedings. However, there are some situations where a standalone claim is required, for example, where the existing Family Court proceedings would be delayed due to the HRA issues, which would be contrary to the best interests of the child.



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INITIAL ADVICE

We will be prepared to provide an initial view as to whether there is a potential claim worth investigating. In order to do so, the following papers, if available, are likely to be the most helpful:

- Any forensic chronology prepared by the LA
- Guardian's Report(s)
- All care plans
- All court orders
- All LAC Review/CIC review minute meetings
- Any correspondence relevant to the Human Rights Act 1998 claim.

FURTHER INFORMATION



Tom Harrill

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Tom Harrill is a barrister at St Ives Chambers in Birmingham with a multi-disciplinary practice. Tom has acted for multiple children in group litigation and frequently appears in the High Court in claims made under the freestanding jurisdiction of section 7(1)(a) of the Human Rights Act 1998 and in claims within proceedings pursuant to section 7(1)(b). He has succeeded in securing declarations and significant awards in damages on behalf of the children he represents.

ANTHONY COLLINS SOLICITORS

Anthony Collins Solicitors has a team who specialise in claims for damages against public authorities arising out of abuse, social work negligence and claims under the Human Rights Act. A large family law team and a well-respected personal injury team supplements this team. Our breadth of expertise allows us to offer pragmatic and holistic advice on a wide range of issues.

Please do get in touch if you would like to speak to our specialist team about any of the issues raised in this document.



*Get in touch if you would like
to speak to our specialist team*



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David acts on behalf of people who have suffered harm as a result of negligence or abuse, by those who owe them a duty of care. Individuals might have suffered abuse, either as a child or as a vulnerable adult. David strives to give his clients access to justice, allowing them to have a more positive future.

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