Ministry of Justice

Responding to human rights judgments

Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2022–2023

November 2023

CP 958

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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of His Majesty

November 2023

CP 958

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Introduction

This is the latest report to the Joint Committee on Human Rights setting out the Government's position on the implementation of adverse human rights judgments from the European Court of Human Rights (ECtHR) and the domestic courts.[1]

This report covers the period from August 2022 to July 2023 (but also notes some developments since then that took place before the date of publication). Following the approach in previous reports, it is divided into three sections:

- a general introduction, including **wider developments in human rights**;
- recent **ECtHR judgments** involving the UK and progress on the implementation of ECtHR judgments; and
- **declarations of incompatibility** in domestic cases and the Government's response.

The Government welcomes correspondence from the Joint Committee should it require further information on anything in this report.

[1] Previous reports are published at https://www.gov.uk/government/collections/human-rights-the-governments-response-to-human-rights-judgments

General comments

This paper focuses on two types of human rights judgment:

- **judgments of the European Court of Human Rights** in Strasbourg against the UK under the European Convention on Human Rights (ECHR); and
- **declarations of incompatibility** made by UK courts under section 4 of the Human Rights Act 1998 (HRA).

An important aspect of these judgments is that their implementation may require changes to legislation, policy, practice, or a combination of these.

European Court of Human Rights judgments

Under Article 46(1) of the ECHR, the UK is obliged to implement judgments of the ECtHR in any case to which it is a party. The implementation (or 'execution') of judgments of the ECtHR is overseen by the Committee of Ministers of the Council of Europe under Article 46(2).

The Committee of Ministers is the Council of Europe's statutory decision-making body, in which every member State is represented. It is advised by a specialist Secretariat (the Department for the Execution of Judgments) in its work overseeing the implementation of judgments.

There are three parts to the implementation of an ECtHR judgment which finds there has been a violation:

- the payment of *just satisfaction*, a sum of money which the court may award to the applicant;
- other *individual measures*, required to put the applicant, so far as possible, in the position they would have been in, had the violation not occurred; and
- *general measures*, required to prevent the violation happening again or to put an end to an ongoing violation.

Past judgments can be found on the HUDOC database.[2] New judgments are announced a few days in advance on the ECtHR's website.[3]

[2] http://hudoc.echr.coe.int

[3] http://www.echr.coe.int/Pages/home.aspx?p=home

The Department for the Execution of Judgments has a website explaining the process of implementation[4] and a database called HUDOC-EXEC which records details of the implementation of each judgment.[5]

Declarations of incompatibility

Under section 3 of the HRA, legislation must be read and given effect, so far as possible, in a way which is compatible with the Convention rights.[6] If a higher court[7] is satisfied that legislation[8] is incompatible with a Convention right, it may make a declaration of incompatibility under section 4 of the HRA. This declaration constitutes a notification to Parliament that the legislation is incompatible with the Convention rights.

A declaration of incompatibility does not affect the continuing operation or enforcement of the legislation in question, nor does it bind the parties to the proceedings in which it is made.[9] This respects the supremacy of Parliament in the making of the law. Under the HRA, there is no legal obligation on the Government to take remedial action following a declaration of incompatibility or on Parliament to accept any remedial measures the Government may propose.

There is no official database of declarations of incompatibility, but a summary of all declarations is provided in Annex A to this report.

Coordination of implementation

Lead responsibility for implementation of an adverse judgment rests with the relevant government department for each case, while the Ministry of Justice provides light-touch coordination of the process.

Following an adverse ECtHR judgment against the UK, the Ministry of Justice liaises with the lead department to provide oversight of and advice on the implementation process and to assist with the drafting of action plans and updates which are required by the Committee of Ministers in its role of supervising the execution of judgments. The Ministry of Justice

4 http://www.coe.int/en/web/execution

5 http://hudoc.exec.coe.int

6 The rights drawn from the ECHR listed in Schedule 1 to the HRA.

7 Of the level of the High Court or equivalent and above, as listed in section 4(5) of the HRA.

8 Either primary legislation, or subordinate legislation if the primary legislation under which it is made prevents removal of the incompatibility (except by revocation).

9 Section 4(6) of the HRA.

passes this information to the UK Delegation to the Council of Europe, which represents the UK at the Committee of Ministers' meetings.

It is not feasible for any one department to identify all the ECtHR judgments against other member States that may be relevant to the UK, so all departments are expected to identify judgments relevant to their area of work and disseminate them to bodies for which they are responsible as appropriate. The roles of the Foreign, Commonwealth and Development Office and the Ministry of Justice supplement and support this work.

When a new declaration of incompatibility is made in the domestic courts, the lead department is expected to bring it to the Joint Committee's attention. The Ministry of Justice encourages departments to update the Joint Committee regularly on their plans for responding to declarations of incompatibility.

Wider developments in human rights

The UK has a longstanding tradition of ensuring rights and liberties are protected domestically and of fulfilling our international human rights obligations. We have strong human rights protections within a comprehensive and well-established constitutional and legal system. In domestic law, rights are protected through the common law, the HRA and the devolution statutes as well as other legislation.

The Government will continue to protect and respect human rights and liberties both domestically, and through our international obligations. We will maintain our leading role in the promotion and protection of human rights, democracy, and the rule of law.

The Government is also committed to furthering the UK's status as a global, outward-looking nation, playing an active, leading role in the world. We will continue to support an international order in which rules govern state conduct, and to champion the universal values of freedom, democracy, tolerance and the rule of law. We will continue to call on other countries to comply with their international human rights obligations, and to take action to tackle human rights violations globally.

European Convention on Human Rights

The Council of Europe and the ECHR have a leading role in the promotion and protection of human rights, democracy and the rule of law in Europe.

The UK has long been at the forefront of efforts amongst States Parties to improve the effectiveness of the system of the ECHR. As noted in previous reports, Protocol No. 15 to the ECHR came into force on 1 August 2021, concluding the last major piece of reform from the Brighton Declaration. It recognises that the primary responsibility for protecting human rights under the ECHR falls to each individual State Party and introduced a number of changes to the ECtHR processes.

Accession of the European Union (EU) to the ECHR

The UK took an active role in the negotiations on EU accession to the ECHR, which concluded on 17 March 2023. The Government welcomes the positive result of the negotiations. It is important that the EU now finds a swift and credible solution to addressing the Common Foreign and Security Policy aspects of its accession to the ECHR. Before a final agreement to the whole package of accession instruments can be achieved, all parties to the negotiations must be informed of and have sufficient time to consider the way the Common Foreign and Security Policy issue has been resolved.

Convention on the Profession of Lawyer

The Government strongly supports the development of a binding convention to strengthen the protection of the profession of lawyers and the right to practice of the profession without prejudice or restraint. This is currently being considered by an expert group created by the Council of Europe's European Committee on Legal Co-operation (CDCJ), in which the UK is actively involved. A binding convention would send a strong signal to the international community to take these issues seriously and reflect the crucial role legal professionals play within a society.

Bill of Rights

As detailed in last year's report, the Bill of Rights Bill, which would have repealed and replaced the HRA, was introduced to Parliament on 22 June 2022. Having carefully considered its legislative priorities, the Government has decided not to proceed with the Bill in order to focus on other key commitments. The Secretary of State for Justice announced this decision in Parliament on 27 June 2023. The Government remains committed to a human rights framework that is up to date and fit for purpose and works for the British people.

Reporting to United Nations (UN) Human Rights Monitoring Bodies

The Government takes its international human rights obligations seriously and remains committed to playing a full role in UN Treaty reporting and dialogue processes. Through delivering our obligations, we strengthen the UK's ability to hold other States to account, and we demonstrate our commitment to protecting human rights globally.

The Government also remains fully committed to the Universal Periodic Review (UPR) process,[10] a unique mechanism for sharing best practice on human rights, and for promoting the continuous improvement of human rights on the ground. As part of the UK's 4th UPR cycle the Government submitted its state report to the Human Rights Council in August 2022 and underwent its review at the UN in Geneva in November 2022. The Government's response to the recommendations received during the dialogue was submitted in March 2023.

As part of the monitoring process, the Government is committed to constructive engagement with the UK's National Human Rights Institutions and interested non-governmental organisations.

[10] Details can be found at http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

The UK at the ECtHR: statistics

The ECtHR publishes statistical reports for each calendar year.[11] The following tables summarise data on the applications made against the UK at the ECtHR from its initial establishment in 1959 until the end of 2022, focusing on the last ten years.

New applications

Applications have been on a general downward trend over the last ten years. By population, the UK has the lowest rate of applications of all member States: in 2022 it was 3.6 per million, while for all States combined it was 54.4 per million.[12]

Table 1. Applications against the UK allocated to a judicial formation[13]

1959–2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
21,208	908	720	575	372	415	354	344	301	210	240	**25,647**

Inadmissible applications

Due to the time lag between an application being allocated for initial consideration and a decision being made on its admissibility, the number of applications declared inadmissible cannot be directly compared to newly allocated applications on a year-by-year basis. However, it is noteworthy that the number declared inadmissible in the last eight years is close to the number allocated, indicating that only a small minority of applications are found admissible and proceed to a judgment.

Table 2. Applications against the UK declared inadmissible or struck out[14]

1959–2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
17,104	1,633	1,970	533	360	507	358	347	280	206	255	**23,553**

[11] https://www.echr.coe.int/statistical-reports; see also https://www.echr.coe.int/dashboards

[12] Source: Analysis of statistics 2022, page 14. These statistics include the Russian Federation which ceased to be a member of the Council of Europe on 16 March 2022.

[13] Source: Analysis of statistics 2022, page 14, and previous reports. This is the first stage of consideration by the Court. Single judges can declare applications inadmissible or strike them out where this decision can be taken without further examination. By unanimity, Committees take similar decisions to single judges but can also declare an application admissible and give a judgment if the underlying question is already well-established in the case-law of the Court. Where neither a single judge nor a Committee has taken a decision or made a judgment, Chambers may decide on admissibility and merits.

[14] Source: Analysis of statistics 2022, page 13, and previous reports. A few applications each year are struck out on the basis of a friendly settlement or unilateral declaration.

Judgments

The numbers of judgments and adverse judgments remain low.

Table 3. Judgments in UK cases (judgments finding violation)[15]

1959–2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
486	13	14	13	14	5	2	5	4	7	4	**567**
(289)	(8)	(4)	(4)	(7)	(2)	(1)	(5)	(2)	(5)	(2)	**(329)**

Caseload

The caseload of ongoing applications against the UK under consideration by the ECtHR has followed a downward trend over the last ten years. It remains low both in absolute terms and as a proportion of all States' applications. For comparison, the UK population comprises 8.1% of the population of all States.[16]

Table 4. Ongoing caseload of the ECtHR at year end[17]

Year	2015	2016	2017	2018	2019	2020	2021	2022
UK	256	231	130	124	111	124	118	99
Total	64,834	79,750	56,262	56,365	59,813	62,000	70,156	74,647
Proportion	0.39%	0.29%	0.23%	0.22%	0.19%	0.20%	0.17%	0.13%

Implementation

At the end of 2022, the UK was responsible for 14 (0.23%) of a total 6,112 pending cases before the Committee of Ministers (this includes both adverse judgments whose implementation is still being supervised and friendly settlements). This is lower than for other States with a similar population size (see Annex B).[18]

Further statistics and the numbers of pending judgments for all States for the years 2020–2022 can be found in Annex B. This annex also lists all judgments that found a violation against the UK that were still under the supervision of the Committee of Ministers at the end of July 2023.

[15] Source: Violations by Article and by State 2022 and previous reports; Violations by Article and by State 1959–2022 and previous reports. This refers to judgments when given, not final judgments, and includes strike-out judgments following a friendly settlement. A judgment can cover more than one application.

[16] Source: Analysis of statistics 2022, page 14.

[17] Source: Analysis of statistics 2022, page 12, and previous reports.

[18] Source: Supervision of the execution of judgments and decisions of the European Court of Human Rights: 16th Annual Report of the Committee of Ministers 2022, Table C.3. See http://www.coe.int/en/web/execution/annual-reports

Earlier ECtHR judgments

The reporting year began with 12 judgments under the supervision of the Committee of Ministers.

During the year, having examined the action report submitted by the Government, the Committee of Ministers was satisfied that all necessary measures had been adopted and decided to close its examination of the following judgment:

- *Pal* (44261/19), final judgment on 28 February 2022, closed on 5 April 2023.

Details of this judgment can be found in last year's report.[19]

The following judgments remained open at the end of July 2023:

- *McKerr group* of five judgments (28883/95 etc.), first final judgments on 4 August 2001 (Two of these are now closed.)
- *S and Marper* (30562/04 and 30566/04), final judgment on 4 December 2008
- *Catt* (43514/15), final judgment on 24 April 2019
- *Gaughran* (45245/15), final judgment on 13 June 2020
- *Big Brother Watch and Others* (58170/13 etc.), final judgment on 25 May 2021
- *VCL and AN* (77587/12 and 74603/12), final judgment on 5 July 2021
- *SW* (87/18), final judgment on 22 September 2021.

Details of the measures being taken to implement these judgments are set out below.

[19] https://www.gov.uk/government/publications/responding-to-human-rights-judgments-2021-to-2022

1. McKerr group (28883/95 etc.)

Chamber judgments – violation of Article 2
First final judgments on 4 August 2001

These cases concern investigations into the deaths of the applicants' next-of-kin in Northern Ireland in the 1980s and 1990s, either during security force operations or in circumstances giving rise to suspicion of collusion with those forces. The ECtHR was concerned with the obligations under Article 2 that require that there be an effective official investigation when individuals have been killed as a result of the use of force.

In the *McKerr* group of cases, the problems identified by the ECtHR as impacting on the effectiveness of the investigations related to issues identified with the police investigations which included, notably, a lack of independence of police officers investigating the incidents, defects in the police investigations and a lack of public scrutiny and information to the victims' families. Furthermore, the ECtHR identified a number of shortcomings in the inquest proceedings including the failure to comply with the requirement of promptness and expedition and the absence of legal aid for the victims' families. The *McShane* case (now closed) also concerned a failure by the State to comply with its obligations under Article 34.

In *McCaughey and Others* and *Hemsworth* (both now closed) the ECtHR found that there had been excessive delay in the inquest proceedings which had concluded in 2012 and 2011 respectively (procedural violations of Article 2), caused variously by periods of inactivity; the quality and timeliness of the disclosure of material; and legal procedures necessary to clarify coronial law and practice. Under Article 46, the ECtHR indicated that the authorities had to take, as a matter of priority, all necessary and appropriate measures to ensure, in similar cases of killings by the security forces in Northern Ireland where inquests were pending, that the procedural requirements of Article 2 would be complied with expeditiously.

General measures

Following the judgments in these cases, general measures to respond to the issues raised by the ECtHR were placed under ten measures. These measures are summarised as follows:

- Lack of independence of the investigating police officers from security forces or police officers implicated in the incidents
- Lack of public scrutiny of and information to the victims' families concerning the reasons for decisions not to prosecute
- Defects in the police investigations
- The inquest procedure did not allow for any verdict or findings which could play an effective role in securing prosecution in respect of any criminal offence which might have been disclosed.

- The soldiers or police officers who shot the deceased could not be required to attend the inquest as witnesses.
- Absence of legal aid for the representation of the victim's family
- Non-disclosure of witness statements prior to the witnesses' appearance at the inquest prejudiced the ability of the applicants to participate in the inquest and contributed to long adjournments in the proceedings.
- The scope of the inquest procedure excluded the concerns of collusion by security force personnel in the killing.
- The public interest immunity certificate in *McKerr* had the effect of preventing the inquest examining matters which were relevant to the outstanding issues in the case.
- The inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

Supervision of nine of these measures was closed by the Committee of Ministers in a series of decisions and interim resolutions between 2005 and 2009 which are not repeated in detail here. The outstanding issue concerns the lack of independence of the investigating police officers from the security forces or police officers implicated in the incidents.

In September 2023, the Committee of Ministers adopted its latest decisions on the *McKerr* group. As regards general measures, the Committee reiterated its concerns about the approach taken in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. The Committee will consider the group again by June 2024.

The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

The UK Government introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill (now Act) in May 2022, providing a framework to deliver effective legacy mechanisms while complying with our international obligations. The legislation obtained Royal Assent on 18 September 2023. The Act establishes an Independent Commission for Reconciliation and Information Recovery (ICRIR) to conduct reviews into Troubles-related deaths and serious injury, with the primary objective of providing information to families, and victims and survivors. The ICRIR will have all the necessary powers to conduct criminal investigations as part of any review.

The Government recognises that some aspects of the Act are uncomfortable, but in order to provide greater information, accountability and acknowledgement to victims and families, we must do things differently, being realistic about what we can best deliver for families over a quarter of a century after the Belfast (Good Friday) Agreement.

A significant package of Government amendments to strengthen the legislation were adopted, providing assurance regarding compliance with our international obligations, enhancing the independence of the ICRIR, providing a greater focus on the interests of victims and families, and strengthening provisions related to the immunity process.

Now that the legislation is law, the ICRIR, led by Sir Declan Morgan as Chief Commissioner, should be provided with sufficient time to establish its policies and procedures. These will be directly relevant to how the ICRIR will work in practice, and its ability to discharge the UK's ECHR obligations.

Individual measures

McKerr

This case is subject to ongoing preparation for inquest in relation to the disclosure of documents and other materials that date back to 1976. It is one of the inquests included in the then Lord Chief Justice of Northern Ireland's plan for disposing of remaining legacy inquests relating to the Troubles. A significant amount of disclosure to the Coroner has taken place in this case to date.

Shanaghan

An inquest was held in 1996 following the incident in 1991. There has not been a referral from the Attorney General for a fresh inquest.

The Office of the Police Ombudsman for Northern Ireland published a report in January 2022, relating to an investigation into police handling of certain loyalist paramilitary murders and attempted murders in the north-west of Northern Ireland during the period 1989 to 1993. The *Shanaghan* case was a component of the investigation. The Ombudsman's statement concluded:

> "I am of the view that police conducted a thorough investigation of the attempted murder of Mr Shanaghan on 17 February 1989, but were unable to gather sufficient evidence to identify and prosecute those responsible. There was limited intelligence. This investigation has not identified any missed opportunities or deliberate omissions on the part of police."

In September 2023, the Committee of Ministers, recalling that the question of general measures continues to be examined within the framework of the *McKerr* group, concluded that the necessary individual measures had been adopted and decided to close its examination of this case.

Kelly and Others

An inquest was held in 1995 following the incident in 1987. The Police Service of Northern Ireland's Historical Enquiries Team commenced an investigation in 2011.

Following an announcement by the Advocate General, in September 2015, that new inquests into these deaths are justified, the case became part of the Lord Chief Justice's plan to resolve legacy inquests.

The Office of the Police Ombudsman for Northern Ireland has also received a number of complaints associated with the incident, which form part of its investigative remit.

McCaughey and Others
An inquest was held in 2012 with a jury, following the incident in 1990. It gave a narrative verdict.

Next of kin sought to challenge many aspects of the verdict by way of Judicial Review. Following refusal by the Judicial Review Court to grant leave for hearing on a number of grounds, the Court of Appeal granted leave for hearing. In April 2015, the Court delivered judgment *ex tempore* in which the Coroner's decisions and inquest findings were upheld. Further requests for permission to appeal the decision were considered by the higher courts and ultimately refused by the Supreme Court, in December 2017.

Sally Gribben, the sister of Martin McCaughey, brought a fresh application before the ECtHR, alleging a breach of her Article 2 rights by the UK. On 17 February 2022, the ECtHR unanimously rejected Ms Gribben's application and declared it inadmissible. The ECtHR concluded that the 2012 inquest was:

> "undoubtedly thorough, with a scope which extended beyond matters directly causative of the deaths and which encompassed broader questions relating to the planning and scope of the operation."

While the ECtHR identified certain weaknesses, it did not consider that these weaknesses, either individually or cumulatively, undermined the ability of the inquest to fulfil its essential purpose.

In September 2023, the Committee of Ministers, recalling that the question of general measures continues to be examined within the framework of the *McKerr* group, concluded that the necessary individual measures had been adopted and decided to close its examination of this case.

Finucane
On 27 February 2019, the Supreme Court handed down judgment in the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland).[20] In respect of the issues regarding Article 2 and the application of the HRA, the Supreme Court found that:

> "there has not been an article 2 compliant inquiry into the death of Patrick Finucane. It does not follow that a public inquiry of the type which the appellant seeks must be ordered. It is for the state to decide, in light of the incapacity of Sir Desmond de Silva's review and the inquiries which preceded it to meet the procedural requirement of article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement." (para. 153)

[20] https://www.supremecourt.uk/cases/uksc-2017-0058.html

Following the Supreme Court judgment, a review of previous investigations into the murder of Mr Finucane took place to help inform the Secretary of State for Northern Ireland to take a decision on what further steps may be necessary to meet the procedural requirements of Article 2. The review exercise was in the nature of a factual inquiry into the content and methodology of previous investigations. The records examined as part of this process were extensive and not easily accessible, due to the format in which they are held, by virtue of their age. Time was taken to ensure that all relevant material had been received and considered.

Recognising the importance of transparency, the Government also published a document that set out further detail about the nature and scope of previous investigations where this is relevant to the issues identified by the Supreme Court. The Secretary of State decided that it was not appropriate for a public inquiry to be held at that time.

Mrs Finucane subsequently challenged the Secretary of State’s decision by way of Judicial Review. In December 2022, the Northern Ireland High Court held that there had still not been an Article 2 compliant inquiry into the death of Patrick Finucane. In February 2023, the Secretary of State for Northern Ireland appealed the Northern Ireland High Court judgment. Hearing of that appeal commenced in the Northern Ireland Court of Appeal on 8 June and concluded on 19 September. Judgment is awaited.

The Government's position is that a final decision on the *Finucane* case has not yet been taken and it would not be appropriate to set out any decision on the way forward while the litigation process is ongoing.

2. S and Marper (30562/04 and 30566/04)

Grand Chamber – violation of Article 8
Final judgment on 4 December 2008

The applicants, both of whom had been arrested for but not convicted of criminal offences, sought to have their DNA samples, profiles and fingerprints removed from police records. The refusal of the police to delete this information was upheld by all domestic courts up to the House of Lords. However, on 4 December 2008 the Grand Chamber ruled the blanket policy of retaining this information from all those arrested or charged but not convicted of an offence was disproportionate and therefore unjustifiable under Article 8.

The Government brought forward legislative proposals to address the issue in England and Wales, and across the UK in respect of material collected under counter-terrorism powers, in the Protection of Freedoms Act 2012 (PoFA) which received Royal Assent on 1 May 2012. The legislation adopted the protections of the Scottish model for the retention of DNA and fingerprints, which was noted by the ECtHR to be consistent with Recommendation No. R (92) 1 of the Committee of Ministers, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases.

The Government confirmed that in England and Wales, DNA profiles and fingerprints which can no longer be retained under the provisions of PoFA have been removed from the national databases. This was completed by 31 October 2013, the date on which PoFA was brought into force.

The Northern Ireland Department of Justice (DoJ) was unable to secure the necessary legislative consent motion to allow the extension of PoFA to Northern Ireland in respect of material collected under policing powers there. Instead, the DoJ brought forward broadly similar provision in the Criminal Justice Act (Northern Ireland) 2013 (CJA), which received Royal Assent on 25 April 2013. However, the biometric retention provisions of CJA remain uncommenced (for reasons set out below).

It is now the intention of the DoJ to bring in new legislation to repeal the CJA and implement the wider destruction regime for Northern Ireland to ensure compliance with both *S and Marper* and *Gaughran* (covered later in this section of the report). This legislation was due to be introduced in October 2021, before being adopted in autumn 2023, but the Justice Minister was unable to secure Northern Ireland Executive approval for the scope of the draft Bill, which resulted in the biometric provisions (and a number of other provisions) being removed from the Bill. Whilst officials have a current position on what will be included in the new biometrics provisions, advice will need to be provided to an incoming Justice Minister and their agreement, and that of the Executive, obtained on the detailed provisions included in the Bill. No legislation can be progressed without a

sitting Northern Ireland Assembly and given the lack of a Northern Ireland Executive and Assembly at this time, the timeline is uncertain.

Legacy biometric retention
As the provisions of both PoFA and the new biometric retention framework to be introduced by DoJ will require the destruction of a large volume of existing DNA and fingerprints, there is a risk that future investigations into Troubles-related deaths in Northern Ireland would be undermined should such material be destroyed.

The UK Government proposed to mitigate this risk by introducing statutory provision to allow for the retention of a copy of material solely for the purposes of such investigations. It is the intention of the UK Government that the retention of this data will be strictly time-limited for the period any such investigations are taking place.

The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 obtained Royal Assent on 18 September 2023. The Act provides for secondary legislation to be made by the Secretary of State for Northern Ireland, which will provide for the limited retention of legacy biometric data from police databases, to be used by the new Independent Commission for Information Recovery and Reconciliation (ICRIR) for the purpose of carrying out legacy investigations, in order to comply with any Article 2 and 3 obligations.

The data retention will be time-limited and will only continue until a reasonable period after the winding up of the body, and the ICRIR must carry out regular periodic reviews as to whether data it holds is still relevant.

It is our intention to make clear in regulations that biometric material held by the body will largely only cover the data of individuals convicted of any offence during the Troubles, aiding our compliance with *S and Marper* (which only relates to data held by individuals not convicted of an offence). Any other material kept for the ICRIR's work that does cover individuals not convicted of an offence (such as potentially relevant Terrorism Act 2000 material) will only be retained if it may be reasonably required by the ICRIR in relation to a case that may lead to a prosecution (which remains a possibility for those who do not comply with the ICRIR under our conditional immunity approach).

The UK Government has made provision through a transitional order to enable authorities in Northern Ireland to retain biometric data collected under counter-terrorism powers in Northern Ireland before 31 October 2013 on a temporary basis, pending the proposed statutory provision. The UK Government has taken steps to renew this transitional order so that such material can continue to be held until October 2024.

Once a longer-term statutory provision on the retention of legacy biometrics has been made, the DoJ will work to bring the collective provisions of the new biometric retention framework into force. The Police Service of Northern Ireland will enter into a retention regime that meets the requirements of the *S and Marper* and *Gaughran* judgments.

As such, the legislation to allow the taking and use of biometric data for legacy purposes will be sequenced with the commencement of the new biometric retention framework.

3. Catt (43514/15)

Chamber (First Section) – violation of Article 8
Final judgment on 24 April 2019

The applicant was a pacifist, over ninety years old, who participated in demonstrations including protests organised by a group called Smash EDO. Whilst he had no criminal record and was not considered a danger to anyone, the protests involved disorder and criminality and information about the protests and members of Smash EDO was collected by the police and held on the database referred to in the proceedings as the domestic extremism database.

In 2010, the applicant requested that information relating to his attendance at demonstrations and events, mostly related to Smash EDO, between 2005 and 2009 be deleted from the database. The request was initially refused; however, following a review in 2012, records that referred primarily to him were deleted. Entries that made incidental reference to him did, however, continue to be retained on the database. He challenged this, arguing that retaining the data was not necessary within the meaning of Article 8.

In March 2015 the Supreme Court held that the collection and retention of this information was in accordance with the law and proportionate, in particular, the invasion of privacy had been minor and the information was not intimate or sensitive. It found that there were good policing reasons for collecting and retaining such data and that there were sufficient safeguards in place as it was periodically reviewed for retention or deletion.

The ECtHR accepted the applicant's complaint, finding a violation of his Article 8 rights. The ECtHR agreed that were good policing reasons why such data had to be collected and in the case of the applicant it had been justified because Smash EDO's activities were known to be violent and potentially criminal. However, they expressed concerns about the continuing retention of the data, given that there was no pressing need, after a time, to retain the data relating to him.

The ECtHR considered that the continued retention of data in the applicant's case had been disproportionate because it revealed political opinions requiring enhanced protection, it had been accepted he did not pose a threat (taking account of his age) and there had been a lack of procedural safeguards, the only safeguard provided by the Management of Police Information Code of Practice being that data would be held for a minimum of six years and then reviewed. The ECtHR did not consider that this was applied in a meaningful way as the decision to retain did not take account of the heightened level of protection it attracted as data revealing a political opinion. The ECtHR rejected the argument that it would be too burdensome to review and delete all entries on the database relating to the applicant; also, if this were accepted as a valid reason for non-compliance, that would create a route to allow violations of Article 8.

Individual measures
The police unit (National Domestic Extremism and Disorder Intelligence Unit) which held the standalone database containing the applicant's six data entries which were the subject of the judgment, has ceased to exist. The information held by this unit was transferred to the National Counter Terrorism Policing Operations Centre within the Metropolitan Police Service (MPS). A new national database, the National Common Intelligence Application (NCIA), supports the work of this Centre. Other police forces migrated their respective standalone databases to the NCIA. Searches were then conducted by the Compliance & Protective Monitoring Unit across the migrated databases for any references to the applicant. Any remaining references to the applicant that were identified were deleted by 4 October 2019.

General measures
The NCIA is administered centrally by the National Counter Terrorism Police Headquarters within the MPS. As this data is now on one database and is under the control of one police force, this ensures a consistent approach to the review, retention and disposal of this information. A team of assessors determine whether a record is relevant and necessary and whether it is proportionate for the record to be added to the database, and their decisions are recorded. The NCIA database schedules a review for all records at either 6, 7 or 10 years depending on the category of the data. A user may also trigger a record for review at another date in time if considered necessary.

The police set up a national level 'Records Management Working Group' led by the Metropolitan Police Service, the College of Policing and the National Police Chiefs' Council and including a member from the Information Commissioner's Office, whose role is to uphold information rights in the public interest.

The Records Management Working Group produced a revised Management of Police Information Code of Practice. This is a statutory Code which sets out procedures to be applied in respect of the collection and retention of information and to which the police must have regard when obtaining, managing and using information to carry out their duties. The new Code of Practice was laid in Parliament and published by the College of Policing on 20 July 2023, along with the complementary Authorised Professional Practice.

The Government will provide a full update to the Committee of Ministers shortly.

4. Gaughran (45245/15)

Chamber (First Section) – violation of Article 8
Final judgment on 13 June 2020

Mr Gaughran pleaded guilty in November 2008 to the offence of driving with excess alcohol at Newry Magistrates Court. He was thus a convicted person. His DNA profile, fingerprints and photograph ('biometrics') were taken. The regime in Northern Ireland relating to police powers allows these biometrics to be retained indefinitely. Mr Gaughran argued that the Police Service of Northern Ireland's (PSNI) indefinite retention of his biometrics contravened his Article 8 rights. In 2015 the Supreme Court rejected his argument. He subsequently applied to the ECtHR, which heard the case in 2018.

The ECtHR unanimously found that the scheme allowing for the indefinite retention of the biometrics of a person convicted of an offence was disproportionate and in violation of Article 8. In reaching this conclusion the ECtHR pointed to the lack of reference within the scheme to the seriousness of the offence or sufficient safeguards, including the absence of any real possibility of review of the retention.

The retention regime for DNA and fingerprints of convicted persons in England and Wales is very similar to that in Northern Ireland; the rules are set out in Part V of the Police and Criminal Evidence Act 1984 as amended by the Protections of Freedoms Act 2012. The regime allows DNA and fingerprints of convicted persons to be retained indefinitely (subject to the type of the offence and the age of the individual).

However, the Data Protection Act 2018 (DPA), which came into force in May 2018, requires periodic reviews of the retention of personal data, including biometrics, for law enforcement purposes (DPA, Part 3, Chapter 2, Section 39). The DPA also provides for oversight by the Information Commissioner. The DPA applies to all parts of the UK. The *Gaughran* case was brought before the Courts prior to the DPA coming into force, so the DPA was not factored into the judgment.

Therefore, our view is that no change to legislation is required to implement the judgment, as although indefinite retention of biometrics without the possibility of review violated Article 8, that has now been addressed UK-wide by the DPA and the wider data protection framework, which provides safeguards and provisions for individuals to apply for the deletion of their DNA and fingerprints. The framework includes independent oversight of data protection by the Information Commissioner's Office, which accepts complaints from members of the public who are unhappy with how an organisation has handled their information.

Additionally, ACRO Criminal Records Office is responsible for considering applications to delete criminal records earlier than is specified by the law. Decisions are made on the basis of published guidance, which sets clear parameters for granting applications. This

includes records which are indefinitly held as a result of an out of court disposal, i.e. cautions.

Finally, the Forensic Information Databases Strategy Board is a statutory body which oversees the application of powers conferred by the law for the taking, use, retention and destruction of DNA samples/profiles and fingerprints. Its function includes the issuing of guidance to the police.

Notwithstanding this, we are considering whether further work is necessary in England and Wales.

The Northern Ireland authorities plan to take forward biometrics provisions in relation to DNA and fingerprints to amend provisions within the Police and Criminal Evidence Act (Northern Ireland) Order 1989 to enable the commencement of a biometric retention framework in Northern Ireland that will comply with the *S and Marper* and *Gaughran* judgments. The Department of Justice in Northern Ireland held a public consultation in 2020 on a new legislative framework to change domestic law on biometrics retention in Northern Ireland, to replace indefinite retention with maximum retention periods, based on the seriousness of the offence, age, criminal history, and whether the person is convicted or not convicted. The legislation will also support the DPA by setting out in regulations a mechanism to review long-term retained biometric material. The proposed retention periods are maximum retention periods and the review mechanism will ensure that material is subject to scheduled reviews.

The legislation will also provide for appropriate safeguards, including the right for individuals to ask for a review of any decision by the PSNI to retain their material. The proposals also contain provision for the appointment and functions of the NI Commissioner for the Retention of Biometric Material, which will provide important independent oversight of the operation of the new retention system and the review process, and may also include a decision-making role on requests for review and requests from the PSNI to retain material in certain circumstances.

Whilst officials have a current position on what will be included in the new biometrics provisions, advice will need to be provided to an incoming Justice Minister and their agreement, and that of the Executive, obtained on the detailed provisions included in the Bill. No legislation can be progressed without a sitting Northern Ireland Assembly and given the lack of a Northern Ireland Executive and an Assembly at this time, the timeline is uncertain.

UK public authorities (which includes law enforcement agencies) must ensure that their practices on data retention are consistent with data protection obligations and the ECHR. The Home Office will continue to work with the police to promote consistent compliance with the DPA and enable more efficient review of the retention of biometric data.

5. Big Brother Watch and Others (58170/13, 62322/14, 24960/15)

Grand Chamber – violation of Articles 8 and 10
Final judgment on 25 May 2021

This litigation was made up of three linked cases launched in response to the Snowden leaks in 2013. The cases were referred to the Grand Chamber following the Chamber judgment delivered on 13 September 2018, summarised in the 2018–2019 report.[21]

These cases each challenged elements of the UK's investigatory powers regime under the previous legal framework, the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of their lawfulness under Articles 8 and 10. Specifically, the cases focused on bulk interception, international intelligence sharing, and targeted acquisition of communications data. The cases were brought by the privacy campaign group, Big Brother Watch and other similar organisations.

The judgment was broadly in line with the previous Chamber ruling, concluding that bulk interception is not in itself a violation of the ECHR and that the international intelligence sharing regime does not, in any respect, violate the ECHR. The Grand Chamber accepted that bulk interception is a critical tool for the identification of new threats in the digital domain. However, the Grand Chamber did find violations of Articles 8 and 10 in relation to specific aspects of both the bulk interception and targeted communications data acquisition regimes in RIPA.

RIPA has now been largely replaced by the Investigatory Powers Act 2016 (IPA), which included enhanced safeguards. The IPA introduced a 'double lock' which requires warrants for the use of these powers to be authorised by a Secretary of State and approved by a judge. The Investigatory Powers Commissioner also ensures robust independent oversight of how these powers are used. Most of the deficiencies are dealt with by the IPA. The Data Retention and Acquisition Regulations 2018 also enhanced the safeguards for the IPA's Communications Data regime by introducing a serious crime threshold and independent authorisation of communications data requests.

In consultation with the Investigatory Powers Commissioner, the Government has been working to address the remaining few violations relating to aspects of the bulk interception regime that are not deemed to be addressed by the IPA. These relate to additional details that should be included in warrant applications, additional protections for confidential journalistic material and prior internal authorisation for the use of certain methods used to select bulk intercept material for examination. An action plan was submitted to the Committee of Ministers on 25 November 2021.

[21] https://www.gov.uk/government/publications/responding-to-human-rights-judgments-2018-to-2019

The Home Secretary issued a Written Ministerial Statement on 31 March 2022[22] setting out the Government's plans to deal with the issues that had not otherwise been dealt with by the IPA.

On 20 March 2023, the Government laid before Parliament a document containing a draft of a proposed Remedial Order to amend section 154 of the IPA to introduce enhanced safeguards relating to the selection for examination and retention of confidential journalistic material and sources of journalistic material derived from material acquired through bulk interception.[23] The Joint Committee published its report on 13 June 2023, recommending one change to the draft Remedial Order which has the effect that the Investigatory Powers Commissioner must order the destruction of journalistic material unless convinced that there is an overriding public interest in retaining it.[24] The Government accepted this recommendation.

Representations were also received from the Investigatory Powers Commissioner's Office and the UK Intelligence Community, questioning whether the proposed new section 154 should contain a process for the approval of the use of certain criteria for the selection for examination, or retention of material, in urgent circumstances. The Government agreed that the addition of an urgency provision would be consistent with existing urgency procedures elsewhere within the IPA.

The Government laid a revised draft Remedial Order on 18 October 2023, together with a document containing a summary of the representations and details of the drafting changes made as a result.[25] The Government looks forward to receiving the Joint Committee's report on the revised draft Remedial Order.

22 https://questions-statements.parliament.uk/written-statements/detail/2022-03-31/hcws759

23 https://www.gov.uk/government/publications/amending-the-journalistic-safeguard-of-the-investigatory-powers-act-2016

24 https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/195659/more-safeguards-needed-for-interception-of-journalistic-material-jchr-finds/

25 https://www.gov.uk/government/publications/amending-the-journalistic-safeguard-of-the-investigatory-powers-act

6. VCL and AN (77587/12 and 74603/12)

Chamber (Fourth Section) – violation of Articles 4 and 6
Final judgment on 5 July 2021

These joined cases concern two Vietnamese youths who were discovered working on cannabis farms in 2009 and were subsequently convicted of drug cultivation offences, to which they pleaded guilty.

The applicants challenged the Court of Appeal's decisions to dismiss their appeals against prosecution, which had been made on the basis that the Competent Authority had made a 'Conclusive Grounds Decision' in each case that it was more likely than not that the applicants were victims of human trafficking, and therefore that they should not have been prosecuted for offences that had a nexus with their trafficking; and that if they were prosecuted, the proceedings should have been stayed by order of the judge.

The ECtHR found in each case a violation of Article 4 (prohibition of slavery and forced labour) on account of: failure to take sufficient operational measures to protect minors prosecuted despite credible suspicion they were trafficking victims; failure to make sufficient initial and prompt assessment of trafficking status; and not having adequate reasons to continue prosecution despite a positive competent authority decision.

The ECtHR also found in each case a violation of Article 6 (right to a fair trial) on account of: failure to investigate potential trafficking affecting overall fairness of proceedings; evidence constituting a fundamental aspect of their defence not being secured; no waiver of guilty pleas that were not made with full awareness of the facts; and the defect not being remedied by subsequent reviews by domestic authorities relying on inadequate reasons.

The two cases pre-date relevant domestic legislation. In England and Wales, the Modern Slavery Act 2015[26] includes (at section 45) a statutory defence against prosecution where an individual is compelled to commit a crime as a result of their exploitation, except in cases of specified serious offences set out in Schedule 4 to the Act. This is available in appropriate cases in addition to the general principle of the common law defence of duress where a person has been threatened, when considering whether to prosecute.

In Northern Ireland, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)[27] (HTEA) was introduced in 2015 to provide a more robust legal framework to prosecute traffickers and those subjecting people in Northern Ireland to slavery and improved support for victims, whilst also tackling the demand for the services of trafficked victims.

[26] https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

[27] https://www.legislation.gov.uk/nia/2015/2/enacted

Section 22 of the HTEA (Northern Ireland) 2015 creates a statutory defence for victims of human trafficking and slavery-like offences who have been compelled to commit certain offences. The defence under section 22 does not apply in respect of more serious offences.

In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015[28] (HTEA) was introduced in 2015 and provides police and prosecutors with greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for victims. The HTEA (Scotland) 2015 included two new criminal offences: i) human trafficking and ii) slavery, servitude and forced or compulsory labour. The maximum penalty for either offence is life imprisonment.

Section 8 of the HTEA (Scotland) 2015 places a duty on the Lord Advocate to issue and publish instructions for prosecutors about the prosecution of suspected or confirmed adult and child victims of the offence of human trafficking and the offence under section 4 (slavery, servitude and forced or compulsory labour). The Lord Advocate's Instructions were issued and published in 2016 and continue to be applied by prosecutors.

The Government continues to work closely with operational partners and the devolved nations to take the necessary steps to implement the judgment. An action plan was submitted to the Committee of Ministers on 5 January 2022, with many of the actions completed on submission. A further updated action plan was submitted on 10 March 2023 to acknowledge the impact of recent changes in legislation. Some of the ongoing actions include: improving first responders training; introducing the duty to notify for non-consenting adults in Scotland and Northern Ireland; keeping national referral mechanism decision-making times under review, to reduce delays and ensure victims get quality and timely decisions and appropriate support; and monitoring the impact that new legislation may have on the identification of and support for potential victims of trafficking. The Home Office will also continue to work with the Department for Education and local authorities on the prevention of child exploitation. An updated action plan will be provided by 1 April 2024.

[28] https://www.legislation.gov.uk/asp/2015/12/contents/enacted

7. SW (87/18)

Chamber (Fourth Section) – violation of Articles 8 and 13
Final judgment on 22 September 2021

The applicant, SW, was a social worker, and acted as an expert witness in care proceedings. The judge in those proceedings, without warning, made a number of critical comments about SW in his judgment which were passed to her employer and led her to being dismissed from her job. She appealed to the Court of Appeal, which acknowledged that the process by which the judge came to make the criticisms was manifestly unfair, and directed that the criticisms be of no effect and removed from the judgment. SW stated that these events led to her becoming ill and unable to work.

The Court of Appeal found that there had been an infringement of her Article 8 rights, as a result of the unfair procedure. However, SW was unable to claim compensation in the domestic courts because of section 9(3) of the HRA which at that time stated: “In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.”

The applicant complained to the ECtHR that the accusations of professional misconduct violated her rights under Articles 6 and 8. Furthermore, she complained of a violation of Article 13 in that at the time of her application she was unable to claim damages for a judicial act done in good faith because of section 9(3) of the HRA.

The ECtHR found that the judge’s direction that his adverse findings be sent to the local authorities and relevant professional bodies without giving the applicant an opportunity to address them in the course of the hearing interfered both unlawfully and disproportionately with her right to respect for her private life under Article 8.

The ECtHR also found a violation of Article 13, read together with Article 8, on the basis that the applicant did not have access to an effective remedy at the national level capable of addressing the substance of her Article 8 complaint and by virtue of which she could obtain appropriate relief.

The ECtHR awarded EUR 24,000 in respect of non-pecuniary damage and EUR 60,000 in respect of costs and expenses, which have been paid.

The violation of Article 8 was due to an independent judicial decision rather than any procedural or legal requirement. Judicial acts are subject to section 6 of the HRA, which provides that it is unlawful for a public authority, including a court or tribunal, to act in a way which is incompatible with a Convention right. The Government has disseminated the judgment to the Heads of the Judiciary of England and Wales, of Northern Ireland, and of Scotland, and to the President of the UK Supreme Court.

The violation of Article 13 arose from the provisions of section 9(3) of the HRA. The Government intended to address this violation in the Bill of Rights Bill, which was introduced to the House of Commons on 22 June 2022 and would have repealed and replaced the HRA. Clause 19 (Judicial acts) of the Bill mainly replicated section 9 of the HRA, but included a further targeted exception to the judicial immunity provisions for judicial acts done in good faith in subsection (3). This would have made damages available to compensate a person for a judicial act that was: (i) incompatible with Article 8 of the Convention; and (ii) inconsistent with the requirements of procedural fairness.

The Secretary of State for Justice announced in Parliament on 27 June 2023 that the Government has decided not to proceed with the Bill of Rights Bill. The Government is looking carefully at its legislative agenda and exploring alternative legislative options for the implementation of the *SW* judgment.

New ECtHR judgments

Four judgments in UK cases became final during the period August 2022 – July 2023. Two of these found violations of the ECHR, requiring the Government to take measures to implement them:

- *Benkharbouche and Janah* (19059/18 and 19725/18) – violation of Articles 6 and 14
  Chamber (Fourth Section). Final judgment on 5 September 2022
- *Coventry* (6016/16) – violation of Article 6, and Article 1 of Protocol 1
  Chamber (Fourth Section). Final judgment on 6 March 2023

and two did not:

- *Sanchez-Sanchez* (22854/20) – no violation of Article 3
  Grand Chamber. Final judgment on 3 November 2022
- *Otite* (18339/19) – no violation of Article 8
  Chamber (Fourth Section). Final judgment on 27 December 2022.

A further nine applications (five of which were joined) were declared inadmissible in reasoned admissibility decisions.

The adverse judgments and the Government's response are summarised below.[29]

[29] Full details can be found on HUDOC (http://hudoc.echr.coe.int) and HUDOC-EXEC (http://hudoc.exec.coe.int).

1. Benkharbouche and Janah (19059/18 and 19725/18)

Chamber (Fourth Section) – violation of Articles 6 and 14
Final judgment on 5 September 2022

In *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs* [2017] UKSC 62, the Supreme Court determined that the statutory limits to the availability of bringing an employment claim under the existing sections 4(2)(b) and 16(1)(a) the State Immunity Act 1978 (SIA) were incompatible with Article 6, including as read with Article 14, in so far as they barred two members of the service staff of foreign missions bringing employment claims in the domestic courts.

Following the Supreme Court judgment, Ms Benkharbouche and Ms Janah applied to the ECtHR on the grounds that the SIA was incompatible with the Convention and prevented them from bringing employment claims against their employer States, leading to a violation of Article 6 in respect of both applicants and of Article 14 in respect of the second applicant.

On 23 February 2021, the Government announced its intention to address the declaration of incompatibility by making a Remedial Order (see further details on page 34).

On 1 March 2021, the Government submitted a unilateral declaration to the ECtHR acknowledging that sections 4(2)(b) and 16(1)(a) of the SIA resulted in a violation of Article 6 in respect of both applicants, and a violation of Article 14 in respect of the second applicant, in that they prevented each applicant from bringing an employment claim against a foreign State in circumstances where the UK was not required under customary international law to provide immunity to the foreign State in question. The Government undertook to pay each applicant £20,000 in respect of pecuniary and non-pecuniary damages, and £2,500 in respect of costs and expenses. They also undertook to make a Remedial Order to amend the SIA. However, the applicants resisted the Government's request for the Court to strike the applications out of its list of cases on the basis of the terms of the unilateral declaration, and the request was rejected by the Court.

In its judgment, the ECtHR accepted the Government's concession that there had been a violation of Article 6(1) in respect of the first applicant and a violation of Article 6(1), read alone and together with Article 14, in respect of the second applicant.

The State Immunity Act 1978 (Remedial) Order 2023 came into force on 23 February 2023. As the amendments have retrospective effect to the date of the Supreme Court judgment, claimants may apply to the Employment Tribunal to consider or reopen claims entered since that judgment.

The Government considers that all necessary individual and general measures have been taken and has submitted an action report to the Committee of Ministers requesting that it close its supervision of the judgment.

2. Coventry (6016/16)

Chamber (Fourth Section) – violation of Article 6, and Article 1 of Protocol 1
Final judgment on 6 March 2023

The applicant was an unsuccessful defendant in a nuisance action which the claimants had funded through a conditional fee arrangement (CFA) and 'after the event' insurance (ATE). The case was appealed to the Supreme Court in *Coventry v Lawrence* [2015] UKSC 50; Coventry lost the case and was ordered to pay approximately £10,000 in damages and 60% of the claimants' costs. Coventry is now seeking an indemnity of £1,666,437 in legal costs.

At the time of the original proceedings, the costs and funding provisions in the Access to Justice Act 1999 (AJA) were in force. This legislation provided that an order for costs made by a court against a losing party could include both the success fees payable under a CFA and any ATE insurance premium; that is, that these sums could be recoverable from a losing party, in addition to the base legal costs.

Following the Supreme Court judgment, and the decision that he be liable for the claimants' success fees and ATE insurance premiums, Coventry challenged this decision before the ECtHR. He argued that the costs incurred were disproportionate, and therefore interfered with his rights under Article 6(1) (right to a fair trial) and Article 1 of Protocol 1 (protection of property).

The ECtHR held that the AJA CFA/ATE costs regime had violated Coventry's rights under Article 6(1) and Article 1 of Protocol 1. In its assessment of Article 6(1), the ECtHR held that there was not a fair balance between the parties since Coventry was facing 'rapidly escalating costs', and the Government could not point to any safeguards build into the original scheme to mitigate this risk. In its assessment of Coventry's rights under Article 1 of Protocol 1, the ECtHR held that the original scheme placed an excessive burden on uninsured defendants like Coventry, and was therefore not compatible with the Convention.

The ECtHR considered that the question of the application of Article 41 (just satisfaction) was not ready for decision. Accordingly, the ECtHR reserved the question in whole and invited the Government and the applicant to submit their written observations on the matter within six months from the date on which the judgment became final (later extended until 6 October 2023).

The Government considers that this is a historic case and no general measures are necessary: since the time of the original proceedings, the AJA costs regime has been reformed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

The AJA regime caused significant additional costs for losing parties in CFA claims, with the losing party having to pay the winning party up to three times the costs they would otherwise have to pay.

Following widespread concern about high costs and a 2010 report by Lord Justice (Sir Rupert) Jackson, Part 2 of LASPO was implemented on 1 April 2013. This generally abolished the recoverability of success fees and ATE insurance premiums, with such costs becoming payable by the CFA client.

Earlier declarations of incompatibility

At the start of the reporting year, the Government was addressing six declarations of incompatibility:

- 30. *Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya*
- 41. *Siobhan McLaughlin, Re Judicial Review (Northern Ireland)*
- 43. *Jackson and Others v Secretary of State for Work and Pensions*
- 44. *In the matter of an application by 'JR111' for judicial review (ruling on remedy)*
- 45. *In the matter of an application by JR123 for judicial review*
- 46. *R v Marks, Morgan, Lynch and Heaney*.

The latest developments are set out below.

30. Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya

Court of Appeal; [2015] EWCA Civ 33; 5 February 2015

The Court of Appeal held that sections 4(2)(b) and 16(1)(a) of the State Immunity Act 1978 are incompatible with Article 6 ECHR in so far as they barred two members of the service staff of foreign missions (Libya and Sudan) bringing employment claims in the UK courts. In so far as those claims fell within the scope of EU law (e.g. Working Time Directive claims), there was also a violation of Article 47 of the Charter of Fundamental Rights.

In terms of remedy, the Court of Appeal made a declaration of incompatibility in respect of sections 4(2)(b) and 16(1)(a) of the 1978 Act. For the same reasons, the Court found that those provisions of the 1978 Act were incompatible with EU law. In respect of those employment claims which were within the scope of EU law, the Court disapplied the provisions in so far as they barred the claims, which meant the claims could be brought by the claimants.

The Foreign Secretary appealed to the Supreme Court which dismissed the appeal and upheld the declaration of incompatibility ([2017] UKSC 62).

On 23 February 2021, the Government announced its intention to address the incompatibility by Remedial Order.[30] The proposal for a draft State Immunity Act 1978 (Remedial) Order was laid on 11 May 2022 and the Joint Committee's report was published on 12 July. The Government laid its response and a revised draft Remedial Order on 7 September.[31] The Joint Committee's report of 29 November recommended that

[30] https://questions-statements.parliament.uk/written-statements/detail/2021-02-23/hcws788

[31] https://www.legislation.gov.uk/ukdsi/2022/9780348238754

Parliament approve the Remedial Order. **It came into force on 23 February 2023 and the incompatibility is now fully removed.**

Article 3 amends section 4(2)(b) of the 1978 Act by restricting the immunity of States in relation to employment claims brought by individuals who were neither a UK national nor resident in the United Kingdom at the time the contract was made to cases involving a State that is party to the European Convention on State Immunity, as is required by the UK's obligations as a party to that Convention.

Article 5 amends section 16(1) of the 1978 Act by limiting the immunity of States in relation to employment claims brought by the staff of diplomatic and consular missions to the immunities required under customary international law. These are claims involving the contracts of employment of an individual as a diplomatic agent or consular officer, or claims involving the contracts of employment of other members of a diplomatic mission or consular post where the State entered into the contract in the exercise of its sovereign authority or where the conduct complained of was undertaken in the exercise of sovereign authority.

Article 4 amends section 13 to address the consequence of restricting the immunity provided in section 16(1) of the 1978 Act on the UK's obligations under Article 7 of the Vienna Convention of Diplomatic Relations, which provides that a State may "freely appoint the members of the Staff of the mission", and the obligation in Article 19 of the Vienna Convention on Consular Relations, which provides that a State may "freely appoint the members of the consular staff". The current version of section 16(1)(a) of the 1978 Act gives effect to these international obligations, as it provides that a State is immune in all proceedings concerning the employment of the members of a diplomatic mission or consular post, so that a court cannot enforce a contract of employment or make a reinstatement order in favour of a member of a mission or consular post. The amendment to section 16(1)(a) of the 1978 Act in Article 5 restricts the immunity in that provision (as described above), and the amendments to section 13 ensure that a court, hearing proceedings that it would not have been able to hear under the unamended section 16(1)(a), is prevented from making an order that would infringe on a State's right to freely appoint members of its diplomatic or consular staff.

The amendments apply in relation to proceedings in respect of a cause of action that arose on or after the date of the Supreme Court judgment, 18 October 2017.

41. Siobhan McLaughlin, Re Judicial Review (Northern Ireland)

Supreme Court; [2018] UKSC 48; 30 August 2018

Bereavement Benefits were previously paid only when a person's spouse or civil partner died. Siobhan McLaughlin cohabited with her partner for over 20 years in Northern Ireland, and following his death in 2014 was left as the sole carer for their four children. Her claim

for Widowed Parent's Allowance (WPA) was refused as they were not married or in a civil partnership when he died. She challenged this in the Northern Ireland Courts, winning in the High Court but subsequently losing on appeal.

The Supreme Court declared that the requirement in Section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 for a marriage/civil partnership as a qualifying condition of WPA was incompatible with Article 14, read with Article 8. The Supreme Court said: 'The purpose of the allowance is to diminish the financial loss caused to families with children by the death of a parent. That loss is the same whether or not the parents are married to or in a civil partnership with one another.'

On 28 July 2020, the Government announced its intention to take forward a Remedial Order to remove this incompatibility and the incompatibility identified in *Jackson* (no. 43, below). The proposal for a draft Bereavement Benefits (Remedial) Order was laid on 15 July 2021 and the Joint Committee's report was published on 12 November 2021. The Government laid its response and a revised draft Remedial Order on 13 October 2022, and the Joint Committee published its report on 6 December 2022.

The Remedial Order came into force on 9 February 2023 and the incompatibility is now removed. It extends eligibility for WPA and the higher rate of Bereavement Support Payment (BSP) to surviving cohabitees with dependent children. The amendments have retrospective effect from 30 August 2018, meaning that entitlement to either of these benefits will be covered from that date (the date of the *McLaughlin* judgment). There is no minimum period of cohabitation required to make a claim, eligible claimants only need to have lived with the deceased on the date of death.

43. Jackson and Others v Secretary of State for Work and Pensions

Administrative Court; [2020] EWHC 183 (Admin); 7 February 2020

Bereavement Support Payment (BSP), which was introduced in April 2017, was previously paid only when a person's spouse or civil partner died. It consists of a lump sum and 18 monthly instalments with higher amounts paid for those with children. Mr Jackson had been living with his partner for 14 years when she died in 2018; they had three children together.

The High Court declared that the primary legislation governing BSP was incompatible with Article 14 read with Article 8 in that BSP could only be paid at the higher rate in respect of parents who were spouses or civil partners of the deceased. Drawing a parallel with the *McLaughlin* case the Court took the view that the higher rate was for children and that limiting eligibility for BSP in this way is unfair discrimination against children on the grounds of their parents' status. The Government did not appeal this case.

On 28 July 2020, the Government announced its intention to remove this incompatibility by Remedial Order. **The Remedial Order came into force on 9 February 2023 and the incompatibility is now removed.** See *McLaughlin* (no. 41, above) for further details.

44. In the matter of an application by 'JR111' for judicial review (ruling on remedy)

Queen's Bench Division (NI); substantive judgment [2021] NIQB 48 on 13 May 2021; ruling on remedy 21 May 2021.

The case was brought in the High Court of Northern Ireland and concerns the Gender Recognition Act 2004 (the GRA). The GRA provides that an applicant for a Gender Recognition Certificate (GRC) must provide certain evidence before a GRC can be granted, including a medical report confirming that they have a diagnosis of gender dysphoria. Gender dysphoria is defined at section 25 of the GRA as '... the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism'. Since the Act was passed in 2004, how gender dysphoria is described has changed, and it is no longer regarded or classified as a mental disorder.

The applicant claimed that it was a breach of her human rights to require her to produce such a report in order to obtain a GRC, and that requiring a diagnosis of gender dysphoria, described as a disorder, was stigmatising and a breach of her Article 8 and Article 14 rights. The Court held that the requirement for a medical diagnosis and medical report could be viewed as part of the proper checks and balances which the State was entitled to adopt, and was Convention compliant. However, the requirement that the diagnosis was one which was specifically and expressly defined as a 'disorder' was not: it was unnecessary, unjustified and 'an affront to the dignity' of those applying for a GRC.

The Court made a declaration that 'sections 2(1)(a) and 25(1) of the Gender Recognition Act 2004 are incompatible with the applicant's Convention rights under Article 8 ECHR insofar as they impose a requirement that she prove herself to be suffering or to have suffered from a *"disorder"* in order to secure a gender recognition certificate.'

The time limit for the applicant to appeal the decision which went against her was reached on 9 September 2021.

On 24 March 2022, in its response to the Women and Equalities Committee's report on the reform of the GRA, the Government announced its intention to address the incompatibility by Remedial Order.[32]

[32] https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/129/report.html
See also https://questions-statements.parliament.uk/written-questions/detail/2022-02-25/HL6452

45. In the matter of an application by JR123 for judicial review

Queen's Bench Division (NI); [2021] NIQB 97; 1 November 2021

The applicant was convicted of arson in 1980, for which he received a five-year prison sentence to be served concurrently with sentences for other offences. Since his release in 1982 he has had no involvement with the criminal justice system and has no further convictions. However, under the Rehabilitation of Offenders (Northern Ireland) Order 1978, any sentence of imprisonment of over 30 months can never be spent and is subject to lifelong disclosure. The applicant claimed that this breached his Article 8 rights and that repeated disclosure of his convictions has led to a number of difficulties and negative consequences, for example, in securing employment and insurance.

The High Court found that the idea that a conviction can never be spent, irrespective of individual circumstances, pays insufficient weight to the interests protected by Article 8. In the view of the Court, it would be both practicable and proportionate to devise a system of administrative review which would enable persons such as the applicant to apply to have their conviction deemed to be spent. That system of review would involve consideration of such matters as the circumstances of the conviction, the length of sentence, the period of time since the conviction was imposed, the conduct of the individual since the conviction and his current personal circumstances.

Accordingly, the Court granted a declaration that "Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 is incompatible with Article 8 of the ECHR by reason of a failure to provide a mechanism by which the applicant can apply to have his conviction considered to be spent, irrespective of the passage of time and his personal circumstances."

The Northern Ireland Department of Justice lodged an appeal in July 2022 against the judgment and the terms of the Order whereby the Court granted the application for judicial review and the declaration of incompatibility.

On 3 May 2023, the Court of Appeal **set aside the declaration of incompatibility**: [2023] NICA 30. The Court held that "the impugned statutory provision, Art 6(1) of the 1978 Order, reflects the discretionary area of judgement enjoyed by the legislature in a sphere where a reasonable margin of appreciation must be recognised and thus withstands the challenge mounted by the respondent."

Prior to the initiation of this legal challenge, the Northern Ireland Minister of Justice publicly committed to a review of rehabilitation of offenders legislation in Northern Ireland with the dual objectives of reducing existing rehabilitation periods and increasing the range of sentences capable of becoming spent.

This reform work was progressed in parallel to the legal challenge, and a statutory instrument has been drafted to introduce legislative amendments to the 1978 Order that

can be implemented by way of secondary legislation, as opposed to the primary legislation needed for the mechanism proposed by the Court.

The Department of Justice considers that its newly developed regime is more straightforward, of more immediate benefit to more members of the public (including the applicant), and more cost-effective than the mechanism proposed by the Court in its judgment.

The intention is that the statutory instrument will be laid before the Northern Ireland Assembly for affirmation as soon as an Executive is formed and the Assembly starts sitting.[33]

46. R v Marks, Morgan, Lynch and Heaney

Court of Appeal (NI); [2021] NICA 67; 22 December 2021

After the London Bridge attack in November 2019 committed by a terrorist offender on licence, the Government set out its plans to tackle automatic early release and increase sentences for terrorist offences. Following the Streatham attack in February 2020, also committed by a terrorist offender released on licence, the then Lord Chancellor Robert Buckland made a statement to Parliament in which he committed to immediate action and emergency legislation to end terrorist offenders getting released automatically with no check or review having served half their sentence in prison.

The statement made clear that the priority of this Government was to protect the public and that the situation demanded an immediate response and application to existing prisoners to prevent their release without Parole Board supervision.

Later in February 2020, the Terrorist Offenders (Restriction of Early Release) Act (TORER) 2020 was introduced. TORER removed automatic release at the halfway point for determinate sentenced terrorist offenders in England, Wales and Scotland, and replaced it with consideration for release by the Parole Board at the two-thirds point of the sentence. To be effective, the legislation had to apply retrospectively to existing prisoners.

Terrorism is a reserved matter, whilst sentencing and release are devolved matters. Due to differences in the way that sentences are imposed between Great Britain and Northern Ireland, the retrospective element in Northern Ireland required a slightly different analysis to assess compliance with the requirements of Article 7 (No punishment without law). Provision for Northern Ireland was therefore not included in the emergency Bill but was instead introduced at a later date after careful consideration of compatibility.

[33] We are grateful to the Northern Ireland Department of Justice for providing this update on the case.

Section 30 of the Counter-Terrorism and Sentencing Act 2021 brought Northern Ireland in line with England, Wales and Scotland, extending the TORER policy so that terrorist offenders in Northern Ireland previously entitled to automatic release at the halfway point in their sentence now have to serve two thirds of their sentence before they are entitled to release, which must now be approved by parole authorities. These arrangements applied retrospectively to serving terrorist offenders.

Several challenges have been brought by serving Northern Ireland terrorist offenders whose release dates have been affected by this legislation. Six offenders applied for a declaration of incompatibility. Marks, Morgan, Lynch and Heaney, determinate sentenced offenders, proceeded to appeal to the Court of Appeal in October 2021. The other two indeterminate sentenced offenders wished to await the Court's view on the compatibility of section 30 with an indeterminate custodial sentence. Those cases were heard but the UK Ministry of Justice played no part in those cases and no judgments have been delivered.

On 22 December 2021, the Court of Appeal in Northern Ireland determined that section 30, in its application to those who were serving prisoners at the time the provision became law only, breaches Article 7 and made a declaration of incompatibility. The Court determined the offenders could not appeal their sentences, and there was no other remedy for these offenders apart from Parliament changing the law. The new release provisions continue to apply to them, and all other retrospectively affected terrorist offenders.

On 19 April 2023 the Supreme Court **set aside the declaration of incompatibility**: [2023] UKSC 14. The Supreme Court determined that the legislation was compatible with Article 7 on the basis that it did not retrospectively change the penalty imposed by the court (which is not permitted) but rather changed the manner of its execution or enforcement (which is permitted).

New declarations of incompatibility

The domestic courts made one declaration of incompatibility under section 4 of the HRA during the period August 2022 – July 2023. This is the 47th declaration made since the HRA came into force on 2 October 2000.

47. Dean, Haggart and Harding v Mitchell and Secretary of State for Levelling-Up, Housing and Communities

King's Bench Division; QB-2022-002460; 29 June 2023

The Mobile Homes Act 1983 (the MHA) provides mobile home occupiers on "protected sites" with security of tenure through the imposition of implied terms. A protected site is land with planning permission for residential use and in respect of which a site licence is required. In *Murphy v Wyatt* [2011] EWCA Civ 408, the Court of Appeal held that a mobile home occupier would only have security of tenure under the MHA if their pitch was on a "protected site" at the inception of the agreement.

When the first defendant initially moved on to the claimants' land, the site was not a protected site. Planning permission was later obtained by the claimants who then served a notice to quit on the first defendant. The first defendant refused to vacate the site on the basis that he had security of tenure under the MHA following the grant of planning permission. The first defendant argued that the relevant provision of the MHA was incompatible with his Article 8 rights (right to respect for private and family life). The Secretary of State was joined as the appropriate defendant, in order to respond to the human rights aspect of the proceedings.

The High Court found that the severity of the effects on a person in the first defendant's position of not receiving the benefit of the implied terms, must outweigh and therefore render disproportionate any implicit support which the terms of the MHA might provide for an objective. (Those objectives include seeking to deter potential mobile home occupiers from entering into occupation prior to the grant of planning permission for the relevant site because the MHA protection can never be obtained even if planning permission is subsequently obtained.)

The Court made a declaration that "by excluding from the scope of the Mobile Homes Act 1983 persons whose occupation agreements pre-date (but continue after) the grant of planning permission, s.1 of that Act infringes those persons' rights under Article 8 of the European Convention on Human Rights."

The time limit for the defendants to appeal the decision passed on 26 June 2023. The Government is considering its response to the declaration of incompatibility.

Annex A: All declarations of incompatibility

As there is no official database of declarations of incompatibility, this annex lists all the cases in which a declaration has been made.

Since the HRA came into force on 2 October 2000 until the end of July 2023, 47 declarations of incompatibility have been made.

Of these, 45 have been fully addressed:

- 12 have been overturned on appeal (and there is no scope for further appeal);
- 5 related to provisions that had already been amended by primary legislation at the time of the declaration;
- 11 have been addressed by Remedial Order;
- 16 have been addressed by primary or secondary legislation (other than by Remedial Order);
- 1 has been addressed by various measures;

and 2 are ongoing:

- 1 the Government has proposed to address by Remedial Order;
- 1 is currently under consideration by the Government.

The cases in each category are listed below. They are numbered in chronological order of the initial making of a declaration of incompatibility (rather than any appeals). The 2019 report was the last to give full details of all cases (at that time, cases 1–42). For cases which have been fully addressed since then, the report containing the final update is indicated in superscript after the case name in the list below.[34]

Overturned on appeal

1. R (on the application of Alconbury Developments Ltd.) v Secretary of State for the Environment, Transport and the Regions
   Administrative Court; [2001] HRLR 2; 13 December 2000

3. Wilson v First County Trust Ltd (no.2)
   Court of Appeal; [2001] EWCA Civ 633; 2 May 2001

[34] https://www.gov.uk/government/collections/human-rights-the-governments-response-to-human-rights-judgments

6. Matthews v Ministry of Defence
Queen's Bench Division; [2002] EWHC 13 (QB); 22 January 2002

10. R (on the application of Uttley) v Secretary of State for the Home Department
Administrative Court; [2003] EWHC 950 (Admin); 8 April 2003

15. R (on the application of MH) v Secretary of State for Health
Court of Appeal; [2004] EWCA Civ 1609; 3 December 2004

20. Re MB
Administrative Court; [2006] EWHC 1000 (Admin); 12 April 2006

24. Nasseri v Secretary of State for the Home Department
Administrative Court; [2007] EWHC 1548 (Admin); 2 July 2007

25. R (on the application of Wayne Thomas Black) v Secretary of State for Justice
Court of Appeal; [2008] EWCA Civ 359; 15 April 2008

31. Northern Ireland Human Rights Commission, Re Judicial Review
Queen's Bench Division (NI); [2015] NIQB 102; 16 December 2015

42. R (on the application of the Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department(2022 report)
Administrative Court; [2019] EWHC 452 (Admin); 1 March 2019

45. In the matter of an application by JR123 for judicial review(2023 report)
Queen's Bench Division (NI); [2021] NIQB 97; 1 November 2021

46. R v Marks, Morgan, Lynch and Heaney(2023 report)
Court of Appeal (NI); [2021] NICA 67; 22 December 2021

Provisions already amended by primary legislation

13. R (on the application of Wilkinson) v Inland Revenue Commissioners
Court of Appeal; [2003] EWCA Civ 814; 18 June 2003

14. R (on the application of Hooper and others) v Secretary of State for Work and Pensions
Court of Appeal; [2003] EWCA Civ 875; 18 June 2003

21. R (on the application of (1) June Wright; (2) Khemraj Jummun; (3) Mary Quinn; (4) Barbara Gambier) v (1) Secretary of State for Health; (2) Secretary of State for Education & Skills
Administrative Court; [2006] EWHC 2886 (Admin); 16 November 2006

22. R (on the application of Clift) v Secretary of State for the Home Department; Secretary of State for the Home Department v Hindawi and another
House of Lords; [2006] UKHL 54; 13 December 2006

32. David Miranda v Secretary of State for the Home Department
Court of Appeal; [2016] EWCA Civ 6; 19 January 2016

Addressed by Remedial Order

2. R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & The Secretary of State for Health
Court of Appeal; [2001] EWCA Civ 415; 28 March 2001

19. R (on the application of Baiai and others) v Secretary of State for the Home Department and another
Administrative Court; [2006] EWHC 823 (Admin); 10 April 2006

26. R (on the application of (1) F; (2) Angus Aubrey Thompson) v Secretary of State for the Home Department
Administrative Court; [2008] EWHC 3170 (Admin); 19 December 2008

29. R (on the application of Reilly (no.2) and Hewstone) v Secretary of State for Work and Pensions
Administrative Court; [2014] EWHC 2182; 4 July 2014

30. Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya(2023 report)
Court of Appeal; [2015] EWCA Civ 33; 5 February 2015

35. Z (A Child) (no.2)
Family Court; [2016] EWHC 1191 (Fam); 20 May 2016

36. R (on the application of Johnson) v Secretary of State for the Home Department
Supreme Court; [2016] UKSC 56; 19 October 2016

37. Consent Order in R (on the application of David Fenton Bangs) v Secretary of State for the Home Department
Administrative Court; 4 July 2017

38. Smith v (1) Lancashire Teaching Hospitals NHS Foundation Trust; (2) Lancashire Care NHS Foundation Trust; (3) Secretary of State for Justice(2020 report)
Court of Appeal; [2017] EWCA Civ 1916; 28 November 2017

41. Siobhan McLaughlin, Re Judicial Review (Northern Ireland)(2023 report)
Supreme Court; [2018] UKSC 48; 30 August 2018

43. Jackson and Simpson v Secretary of State for Work and Pensions(2023 report)
Administrative Court; [2020] EWHC 183 (Admin); 7 February 2020

Addressed by other primary or secondary legislation

4. McR's Application for Judicial Review
Queen's Bench Division (NI); [2002] NIQB 58; 15 January 2002

5. International Transport Roth GmbH v Secretary of State for the Home Department
Court of Appeal; [2002] EWCA Civ 158; 22 February 2002

7. R (on the application of Anderson) v Secretary of State for the Home Department
House of Lords; [2002] UKHL 46; 25 November 2002

8. R (on the application of D) v Secretary of State for the Home Department
Administrative Court; [2002] EWHC 2805 (Admin); 19 December 2002

9. Blood and Tarbuck v Secretary of State for Health
Unreported; 28 February 2003

11. Bellinger v Bellinger
House of Lords; [2003] UKHL 21; 10 April 2003

12. R (on the application of M) v Secretary of State for Health
Administrative Court; [2003] EWHC 1094 (Admin);16 April 2003

16. A and others v Secretary of State for the Home Department
House of Lords; [2004] UKHL 56; 16 December 2004

17. R (on the application of Sylviane Pierrette Morris) v Westminster City Council and First Secretary of State (no.3)
Court of Appeal; [2005] EWCA Civ 1184; 14 October 2005

18. R (on the application of Gabaj) v First Secretary of State
Administrative Court; unreported; 28 March 2006

27. R (on the application of Royal College of Nursing and others) v Secretary of State for Home Department
Administrative Court; [2010] EWHC 2761; 10 November 2010

28. R (on the application of T, JB and AW) v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice
Court of Appeal; [2013] EWCA Civ 25; 29 January 2013

33. R (on the application of P and A) v Secretary of State for the Home Department and Others(2020 report)
Administrative Court; [2016] EWHC 89 (Admin); 22 January 2016

34. R (on the application of G) v Constable of Surrey Police & Others(2020 report)
Administrative Court; [2016] EWHC 295 (Admin); 19 February 2016

39. Steinfeld and another v Secretary of State for International Development(2020 report)
Supreme Court; [2018] UKSC 32; 27 June 2018

40. K (A Child) v Secretary of State for the Home Department(2022 report)
Administrative Court; [2018] EWHC 1834 (Admin); 18 July 2018

Addressed by various measures

23. Smith v Scott(2021 report)
Registration Appeal Court (Scotland); [2007] CSIH 9; 24 January 2007

Proposed to address by Remedial Order

44. In the matter of an application by 'JR111' for judicial review (ruling on remedy)
Queen's Bench Division (NI); substantive judgment [2021] NIQB 48 on 13 May 2021; ruling on remedy 21 May 2021

Under consideration

47. Dean, Haggart and Harding v Mitchell and Secretary of State for Levelling-Up, Housing and Communities
King's Bench Division; QB-2022-002460; 29 June 2023

Annex B: Statistical information on implementation of ECtHR judgments

Data in tables 1 and 2 are taken from the Annual Reports of the Committee of Ministers, 'Supervision of the execution of judgments and decisions of the European Court of Human Rights' (http://www.coe.int/en/web/execution/annual-reports). The source table is indicated in brackets. 'Case' in these statistics refers to a judgment or decision of the ECtHR (including strike-out decisions following a friendly settlement).

Table 1: Statistics on UK cases

New cases under supervision (B.3)	**2020**	**2021**	**2022**
All cases	4	10	11
of which leading cases	2	6	4
Cases closed by final resolution (D.3)	**2020**	**2021**	**2022**
All cases	5	9	13
of which leading cases	2	3	4
Pending cases at year end (C.3)	**2020**	**2021**	**2022**
All cases	15	16	14
of which leading cases	8	11	11
Leading cases by time pending (F.1)	**2020**	**2021**	**2022**
Pending <2 years	4	5	5
Pending 2–5 years	1	1	2
Pending >5 years	3	3	3
Payment of just satisfaction (G.2)	**2020**	**2021**	**2022**
Paid within deadline	3	4	8
Paid outside deadline	1	1	5
Awaiting confirmation of payment	1	5	1
Just satisfaction (G.1)	**2020**	**2021**	**2022**
Total awarded (€)	102,104	588,429	157,552

Table 2: Pending cases at year end by State (C.3)

Ranking by 2022 pending cases	State	All pending cases			of which leading cases		
		2020	2021	2022	2020	2021	2022
1	Russian Federation	1,789	1,942	**2,352**	217	217	228
2	Ukraine	567	638	**716**	107	106	99
3	Romania	347	409	**509**	89	106	113
4	Türkiye	624	510	**480**	149	139	126
5	Azerbaijan	235	271	**285**	45	49	53
6	Hungary	276	265	**219**	54	47	43
7	Italy	184	170	**187**	57	58	59
8	Bulgaria	166	164	**182**	83	92	93
9	Republic of Moldova	154	170	**153**	49	51	45
10	Poland	89	97	**125**	33	38	46
11	Serbia	33	76	**97**	12	12	13
12	Croatia	73	79	**77**	23	25	26
13	Greece	120	93	**70**	39	34	27
14	Georgia	53	63	**68**	23	27	27
15	Slovak Republic	31	63	**59**	14	20	24
16	Armenia	42	50	**57**	19	24	23
17	Malta	33	39	**46**	11	13	15
18	Belgium	31	37	**44**	18	21	22
19	Bosnia and Herzegovina	34	34	**42**	11	12	13
20=	France	35	32	**39**	26	25	29
	Portugal	34	28	**39**	21	17	15
22	Lithuania	34	32	**38**	21	16	19
23	Albania	29	31	**36**	13	14	16
24	Spain	30	37	**30**	18	23	21
25	North Macedonia	40	47	**29**	15	15	11
26	Finland	31	18	**18**	11	9	9
27=	Germany	12	16	**14**	10	13	12
	United Kingdom	15	16	**14**	8	11	11
29	Switzerland	8	9	**11**	8	8	8

Ranking by 2022 pending cases	State	All pending cases			of which leading cases		
		2020	2021	2022	2020	2021	2022
30	Cyprus	10	13	**10**	7	10	9
31	Montenegro	7	7	**9**	5	5	5
32	Latvia	8	9	**8**	8	7	8
33	Czech Republic	4	6	**7**	2	2	4
34=	Austria	13	12	**6**	5	6	3
	Slovenia	7	4	**6**	7	4	4
36	Iceland	12	6	**5**	3	2	1
37=	Denmark	1	4	**4**	1	3	3
	Netherlands	5	10	**4**	5	8	4
	Norway	6	12	**4**	2	2	1
40=	Estonia	2	1	**3**	2	1	3
	Luxembourg	0	0	**3**	0	0	1
42=	Ireland	3	5	**2**	2	2	2
	San Marino	1	3	**2**	1	2	2
	Sweden	3	2	**2**	3	2	2
45	Monaco	0	1	**1**	0	1	1
46=	Andorra	0	0	**0**	0	0	0
	Liechtenstein	2	2	**0**	1	1	0
	Total	**5,233**	**5,533**	**6,112**	**1,258**	**1,300**	**1,299**

Table 3: Judgments finding a violation against the UK under the supervision of the Committee of Ministers at the end of July 2023

Case name	Application	Final judgment
Enhanced Procedure		
McKerr group		
McKerr	28883/95	4 August 2001
Kelly and Others	30054/96	4 August 2001
Shanaghan	37715/97	4 August 2001
Finucane	29178/95	1 October 2003
McCaughey and Others	43098/09	16 October 2013
Gaughran group		
S and Marper	30562/04 and 30566/04	4 December 2008
Gaughran	45245/15	13 June 2020
VCL and AN	77587/12 and 74603/12	5 July 2021
Standard Procedure		
Catt	43514/15	24 April 2019
Big Brother Watch and Others	58170/13 etc.	25 May 2021
SW	87/18	22 September 2021
Benkharbouche and Janah	19059/18 and 19725/18	5 September 2022
Coventry	6016/16	6 March 2023

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