

# Standing in Scots Public Law Litigation

A briefing paper for Human Rights Consortium Scotland,  
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## 1. INTRODUCTION

Rules on 'standing' are important for at least four reasons. First, and most obviously, these rules tell us who may raise an action for judicial review. Second, because they determine who has the legal *right* to defend and assert rights and interests in court, it follows that rules on standing are fundamental to the question of access to justice. Third, these rules can be useful gatekeepers for a number of reasons, including: to protect courts from claims that waste their time or resources; to protect decision-making processes from the potentially distorting influence of vested interests, pressure groups or interfering busybodies; or, to protect decision-makers and those third parties reliant on their decisions from undue delay and uncertainty. Fourth, rules on standing shape the *function* of judicial review – whether the role of the courts is a narrow one, to protect the holders of individual or private rights against interference by the state, or whether judicial review exists to defend the public's interest more broadly in good administration conducted in accordance with the rule of law.

Precisely where the line is drawn between those whose connection to an administrative decision is sufficient to give rise to judicial review proceedings, and those whose connection is not, is therefore a vexed question:

*It might appear that at first sight that such rules are necessary to prevent the frivolous or vexatious claimant from troubling the already overburdened courts or disrupting unduly the administrative process. However, it is just as undesirable for such rules to be constructed too narrowly, having the effect of providing yet another obstacle to obtaining relief and excluding from a remedy all but the most directly affected applicants.*

In Scotland, until recently, the rules on standing have been drawn narrowly and applied restrictively to those seeking to challenge administrative decision-making in the public interest.

A combination of developments – first by the Supreme Court in its development of the common law test for standing, and then by the Scottish Parliament putting that new test on a statutory footing – have now reformed the law in a way that is much more favourable to strategic litigants. Whilst other important barriers to judicial review remain – most significantly, cost<sup>2</sup> – the effect of recent reforms<sup>3</sup> are such that the question of standing should not present a significant hurdle for petitioners whose interest in a case is more than that of the 'mere busybody'<sup>4</sup>.

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However, the test for standing remains a restrictive one for strategic litigants seeking to raise a challenge on European Convention on Human Rights grounds under the Human Rights Act 1998 or the Scotland Act 1998. There is some room within the current rules to allow for a degree of strategic litigation, whilst current developments and debate around the statutory human rights framework in Scotland present an opportunity to adopt a more expansive test than is currently the case.

## 2. THE STATUTORY TEST FOR STANDING IN SCOTS LAW

The current test for standing is set out in section 27B(2)(a) of the Court of Session Act 1988, as amended by section 89 of the Court Reform (Scotland) Act 2014. There it is established that the Court of Session may only grant permission to proceed to judicial review where it is satisfied that 'the applicant can demonstrate a *sufficient interest* in the subject matter of the application' (emphasis added).

Read on its own, the 2014 Act is only so helpful: it does not define what constitutes a 'sufficient' interest for these purposes. However, what is clear from reading *around* the statute is that the intention was for the courts to apply the test in a permissive rather than a restrictive way.

First, in their report which gave rise to the new statutory test, the Scottish Civil Courts Review concluded that the 'current restrictive approach of Scots law [to the question of standing] makes it difficult for campaigning groups to bring proceedings to test the lawfulness of controversial policies or decisions of public bodies' and *on that basis* recommended the adoption of a sufficient interest test<sup>5</sup>.

Second, the explanatory note to section 89 of the 2014 Act makes explicit reference to the Supreme Court's prior reform of the law in AXA. There, the

Scottish Justices, Lord Hope and Lord Reed, sought to 'put an end to the unduly restrictive approach to standing [in Scotland] which had too often obstructed the proper administration of justice'<sup>6</sup> – and the explanatory note states that the new statutory test of *sufficient interest* reflects the liberalisation of the rules on standing at common law.

## 3. THE DEVELOPMENT OF COMMON LAW APPROACHES TO STANDING IN SCOTS LAW

### a. *The traditional (pre-AXA) approach to standing in Scots law*

Until AXA the Scottish courts had taken a narrow approach to the question of standing, applying a two-step test of *title and interest* that was established long before the emergence of public law as a distinct field of study and of practice. Firmly grounded in the private law tradition, these tests were highly restrictive to individuals or groups acting in the public interest rather than to enforce or to protect a private right.

These tests could occasionally accommodate public interest challenges but in general the requirement for strategic litigants to demonstrate *both* title and *interest* was an unduly onerous one. For example:

- In *Rape Crisis Centre v Secretary of State for the Home Department*<sup>7</sup> Lord Clarke indicated that the Rape Crisis Centre would have had an interest in the decision to allow the boxer and convicted rapist, Mike Tyson, to enter the UK to compete in a boxing match but that they lacked *title* to sue. 'It is a fallacy,' Lord Clarke said, 'to suppose that because of the public interest in ministers acting lawfully and fairly that public interest *by itself* confers on every member of the public a right to challenge a minister's act or decision'<sup>8</sup>.

▪ In *Scottish Old People's Welfare Council, Petitioners*<sup>9</sup>, a voluntary association who sought to promote the interests of old people in Scotland had title to challenge the validity of a circular issued by the Chief Adjudication Officer that would have the effect of restricting the circumstances in which cold weather payments might be made, on the basis that 'any member of the public has at least title to sue' where 'the purpose of legislation is to make state benefit available to any member of the public who may qualify for it'<sup>10</sup>. However, the group lacked a qualifying *interest* being not 'a body of potential claimants but...a body working to protect and advance the interests of the aged' more generally.<sup>11</sup>

This restrictive position gave rise to two significant criticisms. First, the practical problem that public interest cases that ought to have been raised in the Scottish courts were instead being brought in England where the threshold for standing was set much lower.<sup>12</sup> Second, the principled problem that, in the absence of a petitioner with an enforceable right at stake, there would be 'no means under the Scottish system of obtaining from the courts an effective remedy' against unlawful decision-making.<sup>13</sup>

#### ***b. The liberalisation of standing in Scots law by the Supreme Court in AXA***

The Scots law approach to standing was significantly reformed in 2011 by Lord Hope and Lord Reed in what is now the leading Supreme Court case on standing: *AXA General Insurance v Lord Advocate*.

For Lord Hope in *AXA*:

It [was] hard to see the justification for applying [a] test...which is rooted in private law to proceedings which lie in the field of public law.<sup>14</sup>

Instead, his Lordship argued for a new test that would not 'be based on the concept of rights, but,' reflecting the more liberal test in England and Wales, 'must be based on the concept of interests'<sup>15</sup>. For Lord Reed, because '[a] public authority can violate the rule of law without infringing the rights of any individual' the restrictive approach to standing was 'incompatible with the courts' function of preserving the rule of law'<sup>16</sup>. Here, drawing a direct parallel with the approach taken in England and Wales, Lord Reed adopted the terminology of standing, based on sufficient interest<sup>17</sup>. For Lord Hope, the words 'directly affected', construed broadly to include those acting with genuine concern for the public interest even in the absence of any private right or interest of their own, were appropriate.<sup>18</sup>

**A difference of terminology aside, the thrust of the change here was clear: judicial review in Scotland would no longer be at base about the enforcement of private rights and the remedy of individual grievances. Instead, it would be about the correction of the abuse of power and the remedy of public wrongs.**

#### **4. UNDERSTANDING CONTEXT: THE INTERPRETATION OF THE SUFFICIENT INTEREST TEST IN THE SCOTTISH COURTS POST-AXA**

What constitutes a *sufficient* interest to raise an action for judicial review depends upon the context in which the impugned decision is situated. In some circumstances, Lord Reed in *AXA* said, it might be 'appropriate to require an applicant for judicial review to demonstrate that he has a particular interest in the matter complained of.' However, in other contexts, 'such as where the excess or misuse of power affects the public generally,' to insist upon a particular interest 'might disable the court from performing its function to protect the rule of law'<sup>19</sup>.

The Court of Session has had the opportunity in a handful of cases to develop the contextual approach set out in *AXA*, and strategic litigants ought to pay heed to the guidance that the Court has offered as to what may be required to justify the sufficient interest test. For example:

- In *Walton v Scottish Ministers*<sup>20</sup>, a statutory appeal rather than a judicial review<sup>21</sup>, Mr Walton sought to challenge the validity of certain orders and schemes made in relation to the construction of a new road network on the periphery of Aberdeen. In determining whether he was (in the language of the relevant statute) a ‘person aggrieved’ and therefore entitled to raise proceedings, the Inner House (the Scottish court) held that Mr Walton had failed to demonstrate that the construction of the road had any substantial impact upon his interests, or would negatively affect his property. The Court went on to add that, had this been a petition for judicial review and not a statutory appeal, Mr Walton would likely have lacked sufficient interest at common law, not least because of the considerable geographical distance between his property and the new route<sup>22</sup>. However, when this case reached the Supreme Court, Lord Hope and Lord Reed gave short shrift to the narrow approach to sufficient interest adopted by the Inner House. Lord Reed took the opportunity to reinforce the spirit and the implications of *AXA*. He concluded that, in the context of the relevant decisions, the Inner House had adopted an unduly restrictive approach. Mr Walton, he noted, had demonstrated a genuine concern about the proposal and had been an active member in organisations concerned with the environment generally and with opposition to new route specifically, and so ought to have had standing as a party with a sufficient interest. The Court’s constitutional function of maintaining the

rule of law, Lord Reed said, could no longer be ignored by the Inner House in favour of ‘an approach which presupposed that the court’s supervisory jurisdiction was to redress individual grievances<sup>23</sup>’. Lord Hope, in a colourful passage, demonstrated what is at stake with the example of a decision to erect a cluster of wind turbines that disturbs the habitual path of an osprey to and from its favourite fishing loch:

*Does the fact that this proposal cannot reasonably be said to affect any individual’s property rights or interests mean that it is not open to an individual to challenge the proposed development on this ground? That would seem to be contrary to the purpose of environmental law, which proceeds on the basis that the quality of the natural environment is of legitimate concern to everyone. The osprey has no means of taking that step on its own behalf, any more than any other wild creature. If its interests are to be protected someone has to be allowed to speak up on its behalf.<sup>24</sup>*

- In *Sustainable Shetland v Scottish Ministers*<sup>25</sup> the Inner House said that, notwithstanding the permissive approach to be adopted post-*AXA*:

The range of persons able to enter the process remains limited to those who can show an interest in the outcome of the case; that is to say not in the potential legal reasoning employed by the court in reaching a decision, but in the decision itself.<sup>26</sup> (Underline added)

- In *Jordanhill Community Council v Glasgow City Council*<sup>27</sup> any attempt by the respondents to resist the standing of the community council to challenge a new residential development would



have been rejected in the Outer House taking account of such factors as the development taking place within the community council's area, the community council's early representations made against the development, and the community council's involvement as consultees at earlier stages in the development cycle. More generally, Lady Wolffe in this case said that the arguments made against the community council's standing 'hark[ed] back to an unduly restrictive approach to title... reminiscent of what may have obtained pre-*AXA*'<sup>28</sup>.

That a proper interpretation of *AXA and Walton* required the Court of Session to take a qualitatively different approach to standing can be seen in the contrasting treatment given to that issue by the Outer and Inner Houses in *McGinty v Scottish Ministers*<sup>29</sup>. Marco McGinty, a keen birdwatcher and member of the Royal Society for the Protection of Birds, sought to challenge the designation of a new power station and transshipment hub at Hunterston as a 'national development', thereby giving it priority in any subsequent application for development consent, on the basis that statutory requirements for public consultation prior to designation were not complied with. In the Outer House, Lord Brailsford declined to delay his opinion until the Supreme Court's judgment in *AXA* had been handed down, and – applying the test of title and interest – dismissed the petition. Whilst he took the view that Mr McGinty might have had *title* to sue in order to 'prevent a breach by a public body of a duty owed to the public by that body'<sup>30</sup>, as an individual who resided some five miles from the land in question, and whose only connection to that land was to use it infrequently for recreational purposes, Lord Brailsford concluded that Mr McGinty could not be said to have had a 'real and legitimate' or 'real and practical' interest in the matter, capable of enforcement by the court<sup>31</sup>. Following the Supreme Court's decision in *AXA*, however, when the petition was reclaimed to the

Inner House that court felt bound to adopt a different approach. Agreeing with Lord Reed that the rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no-one was able to challenge it<sup>32</sup>, Lord Brodie held that, 'applying the approach now desiderated by the Supreme Court' it was no longer permissible to dismiss Mr McGinty as a mere busybody<sup>33</sup>. The court considered as relevant the petitioner's concern for the environment and for the activity of birdwatching; his knowledge of both; and his willingness to make representations during any consultation process that preceded the decision.<sup>34</sup>

Drummond et al, in a recently published practitioner's guide to judicial review in Scotland<sup>35</sup>, note that since the law on standing was reformed challenges by respondents to the standing of petitioners in Scottish judicial review cases is less common<sup>36</sup>. However, for strategic litigants and their lawyers there remains a number of practical considerations and questions that should be addressed when giving thought to the question of standing under the new test:

*Once particular grounds have been identified, which person or people have standing on those grounds? Have each of the petitioners engaged with any consultation or public process beforehand? How many petitioners are required? If there is only one petitioner with a coalition or other supporters in the background, will that petitioner cope with the pressure? What agreement is in place for potential adverse financial consequences, and are all involved aware of those arrangements and risks? If there is more than one litigant, are there conflicts of interest between them as to the reasons why the action is being taken? How are instructions to be taken practically? Will the clients liaise*

*between themselves and nominate one person with sufficient authority, and has the solicitor seen this authority and acknowledged it in terms of engagement letters? If there is more than one person or organisation as a petitioner, is this required?...Lastly, it should not be forgotten that any interested parties may have to justify their standing before the court.<sup>37</sup>*

## 5. STANDING IN CASES WHICH ENGAGE ECHR RIGHTS

Since the coming into force of the Human Rights Act 1998 and the Scotland Act 1998, it has been possible to challenge public acts in Scottish courts on the basis that they have violated human rights contained in the European Convention on Human Rights (ECHR). Depending on where the legal authority for the alleged violation originated, applicants may bring proceedings under the Human Rights Act 1998 (HRA) or the Scotland Act 1998. However, in both contexts, applicants must establish that they would be a victim for the purposes of article 34 of the Convention.<sup>38</sup> It should be noted however, that there is some uncertainty over whether section 7 HRA applies merely to challenges to acts of public authorities under section 6 HRA or whether this restriction also applies where the claimant is seeking a declaration of incompatibility under section 4 HRA.<sup>39</sup>

### a. 'Victim' status under the ECHR

Article 34 of the ECHR provides the following:

*The Court may receive application from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation...*

The European Court of Human Rights in Strasbourg has found that a victim must be directly affected by the alleged violation of which they are complaining. This means that general complaints, that allege a violation of ECHR rights in the abstract, are not admissible.<sup>40</sup> Further, the Court has been explicit in ruling out any form of *actio popularis* – that is, public interest litigation not directly related to an individual victim.<sup>41</sup>

Organisations are, however, able to apply to the Strasbourg Court if they themselves (not merely one of their members)<sup>42</sup> can claim to be a victim of violation of one of the ECHR rights. The Court has also shown a degree of flexibility in its interpretation of 'victim', finding that applications can be made on behalf of individuals who have died (or disappeared) by their next of kin. In exceptional circumstances, the court has extended this principle to allow organisations with no formal legal relationship with the deceased to apply on behalf of individuals who have no next of kin,<sup>43</sup> but only if the organisation has been de facto acknowledged as the individual's representative in domestic proceedings.<sup>44</sup>

It is also possible for organisations to act as a representative for specific individuals.<sup>45</sup> In order to do so, they must produce signed, written authority to act<sup>46</sup> and demonstrate that they have received specific and explicit instructions from the individual on whose behalf they purport to act.<sup>47</sup>

Finally, the Court accepts *amicus curiae* submissions, sometimes called Public Interest Interventions or Third Party Interventions.<sup>48</sup> *Amicus curiae* briefs are usually written submissions, occasionally oral submissions, that present the technical view on points of law, raise particular or additional issues of public interest, or of fact by a party not represented in the proceedings.<sup>49</sup> Third party interventions have become an important means by which organisations with an interest in human rights protection can communicate with the Court.

### *b. 'Victim' status in domestic law*

The ECHR does not require states to emulate the article 34 victim test. **The protection system at Strasbourg is very much considered to be 'a floor, not a ceiling' and it is open to states to adopt a more generous definition of standing in domestic law for human rights proceedings.**

Indeed, other signatories to the ECHR have adopted broader rules on standing. For example, the environmental organisation Urgenda was allowed to bring a case in the Dutch courts in which it was successfully argued that the Dutch government's (lack of) action on climate change breached their positive obligations in relation to articles 2 and 8 of the ECHR.<sup>50</sup>

There is, therefore, no ECHR rule that prevents the rules on standing for human rights cases being broadened in Scotland. Indeed, the First Minister's Advisory Group on Human Rights Leadership recommended that the potential new human rights law in Scotland should adopt the 'broader test of "sufficient interest" to enable appropriate bodies such as non-governmental organisations and charities to bring proceedings.'<sup>51</sup> Shortly after, the Scottish Government in their consultation on incorporation of the UN Convention on the Rights of the Child into Scots law, also suggested that the test of 'sufficient interest' should apply in future UNCRC cases, a view supported by the majority of respondents to the consultation question.

### *c. The standing of Human Rights Commissions in the UK to raise proceedings*

The Scottish Human Rights Commission (SHRC), as a Scottish Public Authority, cannot be a victim for the purposes of article 34 ECHR. Thus, the SHRC may not bring a challenge on Convention rights grounds in domestic courts or at the European Court of Human Rights. Further, the SHRC is explicitly forbidden from assisting any person in

claims or legal proceedings.<sup>52</sup> However, it may intervene in civil legal proceedings if it considers that an issue arising is relevant to its general duty and raises a matter of public interest. The SHRC used this power for the first time in 2019.<sup>53</sup>

The Northern Ireland Human Rights Commission (NIHRC) has legal standing to bring human rights proceedings under section 69(5)(b) of the Northern Ireland Act. This includes the ability to bring a case on behalf of an actual or potential named victim and to challenge legislation in abstract.<sup>54</sup> The latter power was originally disputed by the Supreme Court, which found that section 71(2B) of the Northern Ireland Act required the NIHRC to identify an actual or potential named victim(s) when initiating proceedings<sup>55</sup> – effectively ruling out the ability to challenge legislation in abstract. However, in response to this judgment, section 71(2B) was amended to clarify that the need to identify a victim only applied to proceedings under section 7(1) HRA and not to abstract challenges.<sup>56</sup>

The Equality and Human Rights Commission (EHRC) also has the power to initiate or intervene in proceedings which challenge the compatibility of legislation with the ECHR.<sup>57</sup> This appears to include challenges to legislation in the abstract and where a victim may be found.<sup>58</sup> The EHRC has used its power to intervene on several occasions<sup>59</sup> (including in the aforementioned NIHRC case)<sup>60</sup> and has initiated proceedings on at least one occasion.<sup>61</sup> Under the Equality Act, the EHRC is entitled to undertake human rights cases in relation to devolved matters but only if it first obtains the consent of the SHRC. The EHRC has agreed that such consent will be sought whether the activity is undertaken directly by the EHRC or indirectly by third parties engaged or funded by the EHRC.

## 6. CONCLUSION

Rules on standing are fundamental to access to justice. Without the right to raise an action all other

rights and interests that arise from access to the courts fall away. Since the reforms made to standing in Scottish public law litigation, first in AXA and then in the Court Reform (Scotland) Act 2014, it is clear that both the Scottish Parliament and the UK Supreme Court intends for a liberal approach to 'sufficient interest' to be taken – more or less in line with the approach taken in England and Wales – and this has indeed been the case. Whilst it is not the case that public interest litigants can take their standing to raise an action for granted – the court will continue to repel interventions by 'mere busybodies'<sup>62</sup> and will look for indicators of interest such as proximity to or interest in the subject of the decision and its outcome, relevant expertise, and willingness to engage in any prior consultation exercises – the law on standing should not present a significant barrier to justice (though other such barriers remain). Whilst it might be seen to be advantageous to further define (and protect) the new more liberal test, whether by means of legislative amendment, statutory guidance or a change to court rules, the risk here is that any more granular definition might be used to narrow (or at least to close off the possibility of further expanding) the scope of the standing test. In this instance, (further) clarity might be the enemy of progress.

Where an action is raised on Convention rights grounds under the Human Rights Act 1998 or the Scotland Act 1998 the narrow application of the 'victim' test has proven to be restrictive. Recognising that this test is intended to be a floor rather than a ceiling there are a number of measures that might usefully be taken to improve the position of public interest litigants who might be better placed than vulnerable individuals or groups to spot violations and to act upon them within the relevant statutory time limits. These include an explicit shift in the statutory frameworks from a 'victim' test to a 'sufficient interest' test as well as conferring explicit powers on both the Scottish Human Rights Commission and on the Children and Young People's Commissioner Scotland to raise actions in their own name.



## Footnotes:

- 1 P Leyland and G Anthony, *Textbook on Administrative Law* (8th) (2016) 209.
- 2 As it was put by Justice Toohey (a former Justice of the High Court of Australia): 'There is little point in opening the doors to courts if the litigants cannot afford to come in' (Address to conference of the Australian National Environmental Law Association (1989) quoted in T Mullen, 'Protective Expenses Orders and Public Interest Litigation' (2015) 19(1) *Edinburgh Law Review* 36 at 38).
- 3 See *AXA General Insurance v Lord Advocate* [2011] UKSC 46 and section 89/27B(2)(a) of the Court Reform (Scotland) Act 2014.
- 4 *AXA* at [63] per Lord Hope.
- 5 Report of the Scottish Civil Courts Review (2009) at [65]-[69].
- 6 *Walton v Scottish Ministers* [2012] UKSC 44 at [90] per Lord Reed.
- 7 *Rape Crisis Centre v Secretary of State for the Home Department* 2000 SC 527.
- 8 *Ibid* at 534.
- 9 Scottish Old People's Welfare Council, Petitioners 1987 SLT 179.
- 10 *Ibid* at 185.
- 11 *Ibid* at 187.
- 12 For examples, *R v Secretary of State for Scotland, ex parte Greenpeace* May 24, 1995, unreported, cited in Lord Hope, 'Mike Tyson Comes to Glasgow' (2001) *Public Law* 294.
- 13 Lord Hope, *ibid* at 307.
- 14 *AXA* at [58] per Lord Hope.
- 15 *Ibid* at [62] per Lord Hope.
- 16 *Ibid* at [169] per Lord Reed.
- 17 *Ibid* at [171] per Lord Reed.
- 18 *Ibid* at [63] per Lord Hope.
- 19 *Ibid* at [170] per Lord Reed.
- 20 Above (n 6).
- 21 Roads (Scotland) Act 1984, Sch 2 para 2.
- 22 *Walton v Scottish Ministers* [2012] CSIH 19 at [37] per Lord Clarke.
- 23 *Walton* [UKSC] at [90] per Lord Reed.
- 24 *Walton* [UKSC] at [152] per Lord Hope.
- 25 *Sustainable Shetland v Scottish Ministers* [2013] CSIH 116.
- 26 *Ibid* at [18] per Lord Carloway.
- 27 *Jordanhill Community Council v Glasgow City Council* [2018] CSOH 11.
- 28 *Ibid* at [99].
- 29 See respectively *McGinty v Scottish Ministers* [2011] CSOH 163 and *McGinty v Scottish Ministers* [2013] CSIH 78.
- 30 *McGinty* (OH) at [25].
- 31 *Ibid* at [26].
- 32 *McGinty* (IH) at [46] per Lord Brodie.
- 33 *Ibid* at [48] per Lord Brodie.
- 34 *Ibid*.
- 35 Sheriff Lorna Drummond QC, Sheriff Frances McCartney and Upper Tribunal Judge Anna Poole QC, *A Practical Guide to Public Law Litigation in Scotland* (2020).
- 36 *Ibid* at 108. Whilst there has been the occasional lapse towards the narrower approach in the Outer House, these have been outliers and have been corrected by the Inner House confirming the liberal approach to be taken post- *AXA* and *Walton*. Compare the approaches taken to question of standing in the Christian Institute's challenge to the Named Person provisions in the Children and Young People (Scotland) Act 2014, first by the Outer House ([2015] CSOH 7 at [91]-[96]) and then in the Inner House ([2015] CSIH 64 at [30]-[45]).
- 37 *Ibid* at 106-7 [emphasis added].
- 38 Human Rights Act 1998 ss 7(1), (7); The Scotland Act 1998 s 100(1).
- 39 *R (on the application of Countryside Alliance) v Attorney General* [2006] EWCA Civ 817 QB 305 at [66]-[64], but contrast with *R (on the application of Rudsbridger) v Attorney General* [2003] UKHL 38. For ASPs the same confusion does not exist – Lord Pentland confirming that s 100(1) applies to applicants challenging the vires of ASPs on Convention Rights grounds in *Christian Institute v Lord Advocate* [2015] CSOH 7 at [92].
- 40 *Norris v. Ireland (A/142)* (1999) 13 EHRR 186 at [30].
- 41 *Klass v. Germany (A/28)* (1979-80) 2 EHRR 214.
- 42 *Norris v. Ireland (A/142)* (1999) 13 EHRR 186, *Maupas and Others v France* App no 13844/02 (ECtHR, 19 September 2006).
- 43 Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania App no 47848/08 (ECtHR [GC], 17 July 2014); Case of Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania App no 2959/11 (ECtHR, 24 March 2015).
- 44 Bulgarian Helsinki Committee v. Bulgaria App nos 35653/12 and 66172/12 (ECtHR, 21 July 2016).
- 45 European Court of Human Rights, Rules of the Court, Rule 36(1).
- 46 *Ibid*, Rule 47(1)(c).
- 47 *Confederation des Syndicats Medicaux Francais v France* (1986) 48 DR 255.
- 48 European Convention of Human Rights, Article 36.
- 49 JUSTICE & Freshfields Bruckhaus Deringer LLP, 'To Assist the Court: Third Party Interventions in the Public Interest' (22 June 2016), available at <https://justice.org.uk/assist-court-third-party-interventions-public-interest>.
- 50 Court of Appeals, The Hague, 9 October 2018, ECLI: NL: GHDHA: 2018: 2610 (Urgenda).
- 51 First Minister's Advisory Group on Human Rights Leadership, Recommendations for a new human rights framework to improve people's lives: Report to the First Minister (AGHRL 10 December 2018) 35, available at: <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>.
- 52 Scottish Commission for Human Rights Act 2006 s 6.
- 53 *Ali (Iraq) v. Serco Ltd* [2019] CSIH 54.
- 54 Northern Ireland Act 1998, s 7(2A).
- 55 In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) [2018] UKSC 27.
- 56 European Union (Withdrawal Agreement) Act 2020, Sch 3 para 5(a).
- 57 Equality Act 2006 s 30(1).
- 58 *Ibid* s 30(3).
- 59 *Eg Moore v Secretary of State for Communities and Local Government* [2015] EWHC 44 (admin); *R (on the application of Children's Rights Alliance for England) v Secretary of State for Justice* [2013] EWCA Civ 34; *R (on the application of Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin).
- 60 In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) [2018] UKSC 27.
- 61 *R (on the application of Equality and Human Rights Commission) v Prime Minister* [2011] 10 WLUK 2.
- 62 Above (n 4).