

Guide to making a complaint under the Convention



CRPD

Independent Mechanism
for Northern Ireland

Promote | Protect | Monitor

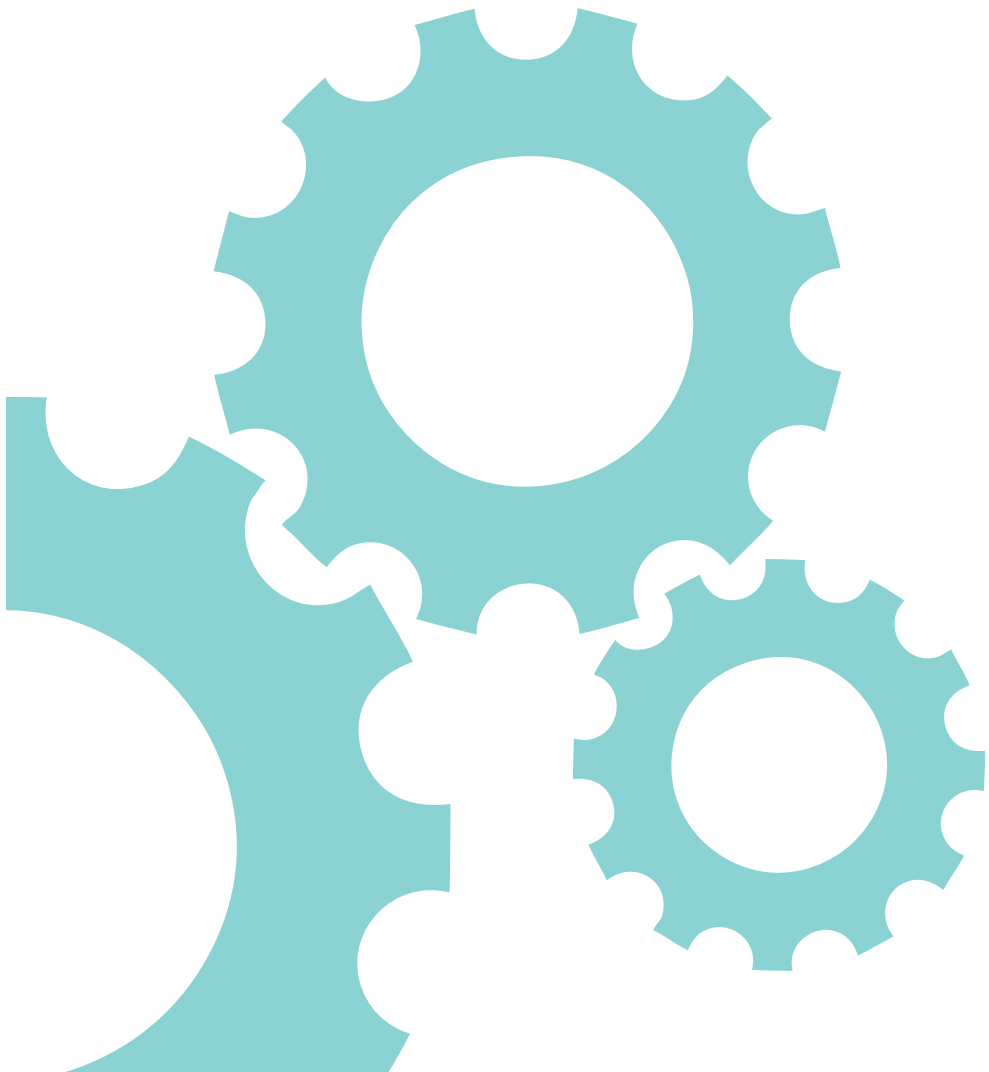
What is the United Nations Convention on the Rights of Persons with Disabilities?

The Convention on the Rights of Persons with Disabilities (the Convention or CRPD for short) is an international agreement which reaffirms that people with disabilities have the same human rights as everyone else. The United Kingdom (UK) ratified the Convention on 8 June 2009. It agreed to promote and ensure the full realisation of all human rights for all disabled people, without discrimination of any kind.

The Convention aims to ensure that disabled people enjoy the same human rights as everyone else and that they can participate fully in society by receiving the same opportunities as others.

What does the Convention cover?

The Convention promotes and protects the human rights of disabled people in economic, social, political, legal and cultural life. This includes rights to accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, equality and non-discrimination.





Who makes sure that the UK is implementing the Convention?

Under Article 33(2) of the Convention, government has decided that the four equality and human rights commissions will make up the UK's Independent Mechanism to promote, protect and monitor implementation of the Convention. Here, the Independent Mechanism is made up of the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission (the Independent Mechanism for Northern Ireland).

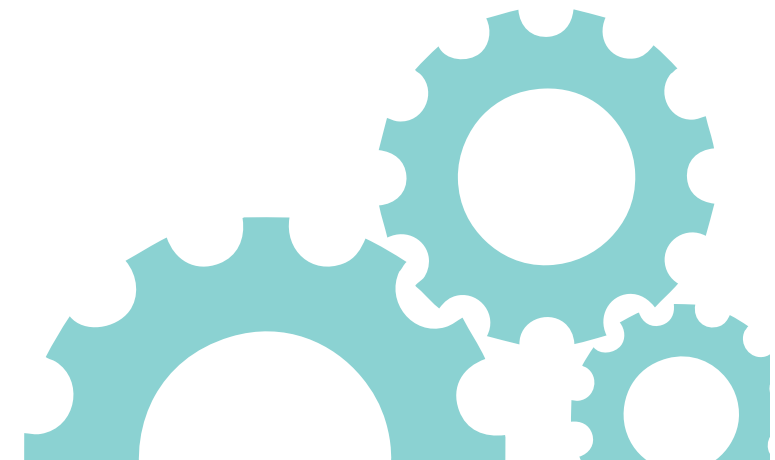
The Independent Mechanism for Northern Ireland is monitoring progress in implementing the Convention here and will report on that to the United Nations Committee on the Rights of Persons with Disabilities (the UN Disability Committee). As part of its monitoring work, the Independent Mechanism will engage with disabled people and their representative organisations to seek their views. Disabled people and their organisations also have a role in holding government to account. For further details, see our guide: *UNCPRD – The role of disabled people and their organisations*.

How do I complain about a breach of the Convention?

The UN Committee on the Rights of Persons with Disabilities (UN Disability Committee) can consider individual cases, and investigate perceived violations of Convention rights.

At national or local level, even though you cannot take the government to court over a breach of the Convention alone, there are several ways in which the Convention can be used to strengthen your case. This could be:

- where you believe that the issue you are facing is covered by another piece of legislation that is directly enforceable in the UK courts (for example, the Human Rights Act or equality legislation), or
- where you make a complaint against a public authority, either through internal procedures or through inspectorates such as the Regulation and Quality Improvement Authority or Ombudsman.





This section explains how you can make a complaint if you believe your rights have been breached.

Step 1: Talk to someone you trust about it. It could be a friend, a relative, an advocate or a colleague at work. Work out what is going wrong, which rights are affected and what you want to change. If you are unsure whether the Convention applies to your situation, do not be afraid to ask for advice. If you are being treated badly at work or when trying to use services, it may be that the body concerned is breaching your rights under equality legislation. Talking to a national disability group or an advice agency could help you figure out which Convention rights are relevant to your situation and whether any other rights are being infringed. See the next section in this factsheet about how to contact advice organisations.

Step 2: Try to resolve the problem with the person or body causing the problem first. There are lots of examples of disabled people using human rights arguments to get a public body to change what it is doing or a service it is providing.

Step 3: If that does not work, ask about their complaints process. All public bodies have a complaints process. All employers must have a grievance procedure for employees.

Step 4: If this does not resolve matters, you can try writing to or contacting your local councillor or your MP or MLA. They might write a letter to the public body on your behalf. A disability group might also help make representations on your behalf and sometimes this might resolve a problem.

Step 5: You might want to consider legal action, but before doing that you can seek advice from the Equality Commission for Northern Ireland (ECNI) or Northern Ireland Human Rights Commission (NIHRC), or other relevant bodies. Bringing legal action can be very expensive and difficult unless:

- you have a very low income and qualify for legal aid (legal aid is where the government pays your legal costs). You will not qualify for legal aid if it's an employment case, or
- the ECNI, NIHRC or another body is willing to support your case – but not all cases qualify for support.

If you want to bring a legal case, it will need to be a case under the Human Rights Act or equality law. You cannot bring a legal case under the Convention on its own. But you can certainly use the Convention to strengthen your case.

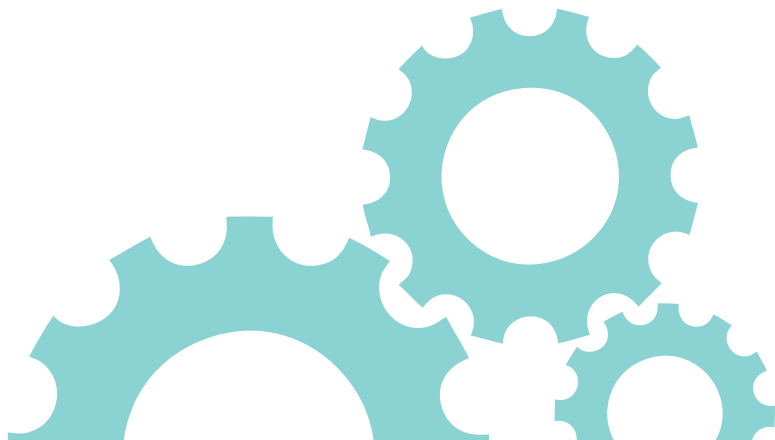


You need to identify which rights in the Human Rights Act or equality law are affected in your case. Then look at the relevant article(s) of the Convention to see what it says about your human rights in that area and use that in your argument. Your legal representative should be able to identify these issues - if they do not, you should raise it with them.

How can the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission help?

The Commissions can:

- give disabled people free advice and information about their rights
- in limited circumstances, they can assist individual legal cases or through other processes, and undertake research, conduct inquiries, investigations and assessments.



If you are pursuing a legal case involving human rights and the Convention, tell the Commissions about this:

- in case they are able to intervene with helpful arguments, and
- so that they have evidence to help them advise government on action needed to protect disabled people's human rights.

If you have been through all the available routes for a remedy in the UK and have not got justice, you can consider complaining to the UN Disability Committee.

How do I complain to the UN Disability Committee?

The **Optional Protocol** sets out a “communications procedure” which explains how you can contact the Disability Committee and an “inquiry procedure” explaining how an inquiry will work.

The **communications procedure** allows individuals, or groups of people, to bring a complaint (known as a petition) to the UN Disability Committee if they believe that their Convention rights have been breached and they have exhausted all other avenues through the UK courts.



The **inquiry procedure** allows the UN Disability Committee to investigate a complaint about allegations of grave or systematic breaches of Convention rights, when reliable information is received.

You can complain to the UN Disability Committee if:

- you are the (alleged) victim; if you are not the victim you must have permission to act on the victim's behalf
- the complaint is against the government. It cannot be brought against other authorities, for example, your council. If you believe that the NI Assembly is in breach of the Convention, then you must still complain against the UK Government although it would be best to first use any available complaints mechanisms including the relevant Ombudsman.
- the complaint is well-founded; this means you need evidence that a real human rights violation has taken place. The violation must clearly relate to one or more Articles of the Convention
- the complaint does not go against the principles and rights set out in the Convention
- you have used all the possible legal remedies available in the UK without success, or if legal action is taking too long or is unlikely to put matters right

- there is no law you can use in the UK to enforce that particular Convention right; for example, there is no law in the UK that says government has to ensure disabled people have an adequate standard of living and an accessible home. If you are living in real hardship or in conditions that cause you loss of dignity, even after claiming all the benefits and grants you are entitled to or because of grossly inadequate housing, this might be a situation where a complaint could be made to the UN Disability Committee.

There are other important rules about bringing a complaint:

- The issue you are complaining about must have either happened after the UK ratified the Convention on 8 June 2009, or if it started before then it must still be continuing at the time you want to make the complaint.
- You cannot make an anonymous complaint (you need to say who you are).
- The issue must be one the UN Disability Committee has not looked at before .
- The issue must be one that is not being looked at by another international rights body like the European Court of Justice or the European Court of Human Rights.



Other important things to remember:

1. You can seek advice from the ECNI or the NIHRC before deciding whether to use the Optional Protocol. They can advise you about whether the case is suitable and, if not, what else you might do.
2. Try to find out about other people affected by this issue. Groups of people can make a complaint as well as individuals. It might be easier if there is a group of you to support each other. Contact disabled people's organisations locally or nationally just in case they know of other people who are affected.

If my complaint meets all the criteria and I have been advised to go ahead, where do I send my complaint?

You will need to put your complaint in writing and send it to the UN Disability Committee. The UN Disability Committee provides information on its website on making a complaint. See the contact details at the end of this factsheet.

What happens then?

If the UN Disability Committee accepts your complaint, they will ask the government to respond. The Committee will then meet in private and decide what finding to make.

The UN Disability Committee gives both parties a copy of its recommendations, and a summary is included in its annual report.

The UN Disability Committee's findings and recommendations may not be enforceable but they carry a lot of moral authority because governments do not like to be told that they are wrong, and will try to put things right. Your complaint may persuade the Government to pass new legislation, change a policy or find the money to resolve the problem.

How do I get the UN Disability Committee to launch an inquiry into human rights violations?

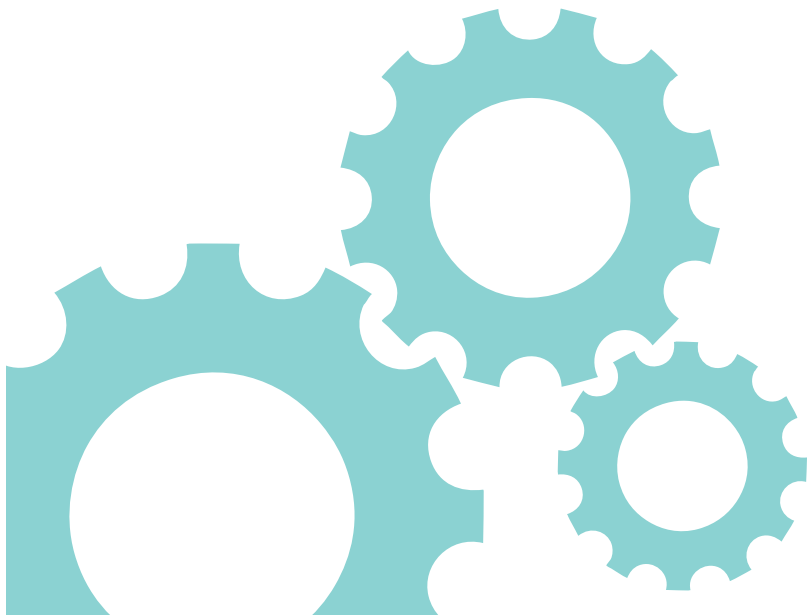
The UN Disability Committee can launch an inquiry into severe or widespread violations of the Convention by any country which has ratified the Convention and Optional Protocol. "Widespread" means the violations affect a lot of disabled people and/or appear to be part of a deliberate policy. The Committee would need reliable evidence about the alleged violations before deciding an inquiry is needed. Individuals or organisations can submit evidence or use the "**individual communications procedure**" to bring breaches of rights to the attention of the UN Committee.



If you think there is evidence of severe or widespread violations of Convention rights that the UN Disability Committee should investigate you may need to:

- work with other disability groups and the ECNI and NIHRC to bring together detailed evidence about the rights violations, and
- write to the UN Disability Committee asking them to investigate.

You should check if either the ECNI or the NIHRC would be willing to conduct an inquiry instead. Seek their advice about whether a UN inquiry is needed. Experience of inquiries under other Conventions shows that they can be an effective way of stopping human rights abuses and bringing about change.



Where can I get more information on the Convention?

The Convention text and a short guide to the Convention are available in booklets produced by the Independent Mechanism for Northern Ireland. The text is also available in plain language, Braille and audio, from these websites:

www.equalityni.org/uncrpd

www.nihrc.org

For more information on the Convention, you can visit UN Enable, the UN website dedicated to CRPD:


<http://www.un.org/disabilities>.

For useful CRPD publications, visit the website of the UN Office of the High Commissioner for Human Rights:

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>.

You can also access information on disability and the Convention from the OFMdfM website:

<http://www.ofmdfmi.gov.uk/>



For further information about the work of the Independent Mechanism for Northern Ireland, please contact the ECNI or the NIHRC or e-mail: CRPDEnquiries@equalityni.org

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7-9 Shaftesbury Square
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BT2 7DP

Northern Ireland Human Rights Commission

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BT1 1NA

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