

Joint Committee on Human Rights
Committee Office
House of Commons
London
SW1A 0AA

MoJ ref: Sub 125876

21 July 2025

Dear Lord Alton,

IMPLEMENTATION OF SW V UK

I am writing to inform you that on 17 July a draft of the proposed Remedial Order with explanatory documents was laid before Parliament to address the judgment of the European Court of Human Rights (ECtHR) in *SW v UK* (application no. 87/18).

Background

The applicant in this case, SW, was a social worker who was called as a professional witness in childcare proceedings in the Family Court.

The Family Court judge made adverse findings in his judgment of October 2014 of very serious professional misconduct against SW without warning or giving her the ability to respond, and directed that the judgment be sent to her employer (a local authority), to other local authorities where she had worked, and to the relevant professional bodies. As a result, SW was dismissed from her employment.

In November 2016 the Court of Appeal found that the process by which the judge arrived at these criticisms of SW was “manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law”.

The Court of Appeal set aside the relevant findings on the basis that if left standing they would breach SW’s rights under Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR). However, SW was unable to obtain damages due to s.9(3) HRA, which prevents the payment of damages for judicial acts done in good faith except in very limited circumstances (which do not include a breach of Article 8).

In 2021, the ECtHR found there had been violations of SW’s rights under Article 8 and Article 13 (right to an effective remedy). The Article 13 violation was based on the fact that SW did not have access to an effective remedy at the national level capable of addressing the substance of her complaint and by which she could obtain relief. The ECtHR awarded a sum in damages, which has been paid.

The Remedial Order

We intend to make this amendment by Remedial Order under the power in section 10 HRA. A copy of the draft of the proposed Remedial Order we have laid before Parliament, together with the Explanatory Memorandum and the information we are required to provide under schedule 2 HRA, is attached to this letter.

The order would make a targeted amendment to s.9(3) HRA which would have the effect that:

- in proceedings in respect of a judicial act done in good faith;
- where the judicial act is incompatible with Article 8 on the grounds (or on grounds including the ground) that it was done in such a procedurally defective way as to amount to a breach of the requirements of procedural fairness under that Article;

a financial remedy could be awarded to the person to compensate for the breach of Article 8. We are satisfied that damages would be available to individuals in situations similar to that of SW and the proposed Remedial Order would therefore satisfy the requirements of the judgment.

This draft proposed Remedial Order has been laid under the non-urgent procedure.

We are responsible for ensuring that the whole of the UK complies with the judgment and our proposed amendment would have UK-wide extent and application. The Lord Chancellor has written to inform the Lady Chief Justice of England and Wales, the Lady Chief Justice of Northern Ireland, the Lord President of the Court of Session, and the President of the Supreme Court about this proposed Remedial Order, and we have notified Justice Ministers in the devolved governments.

My officials have been in contact with your legal advisers during this process, and we have shared a copy of the documents with them as well. We look forward to receiving your report on the proposed Remedial Order in due course.

If you require any further information, please do feel free to get in touch.

Kind regards,



LORD PONSONBY OF SHULBREDE