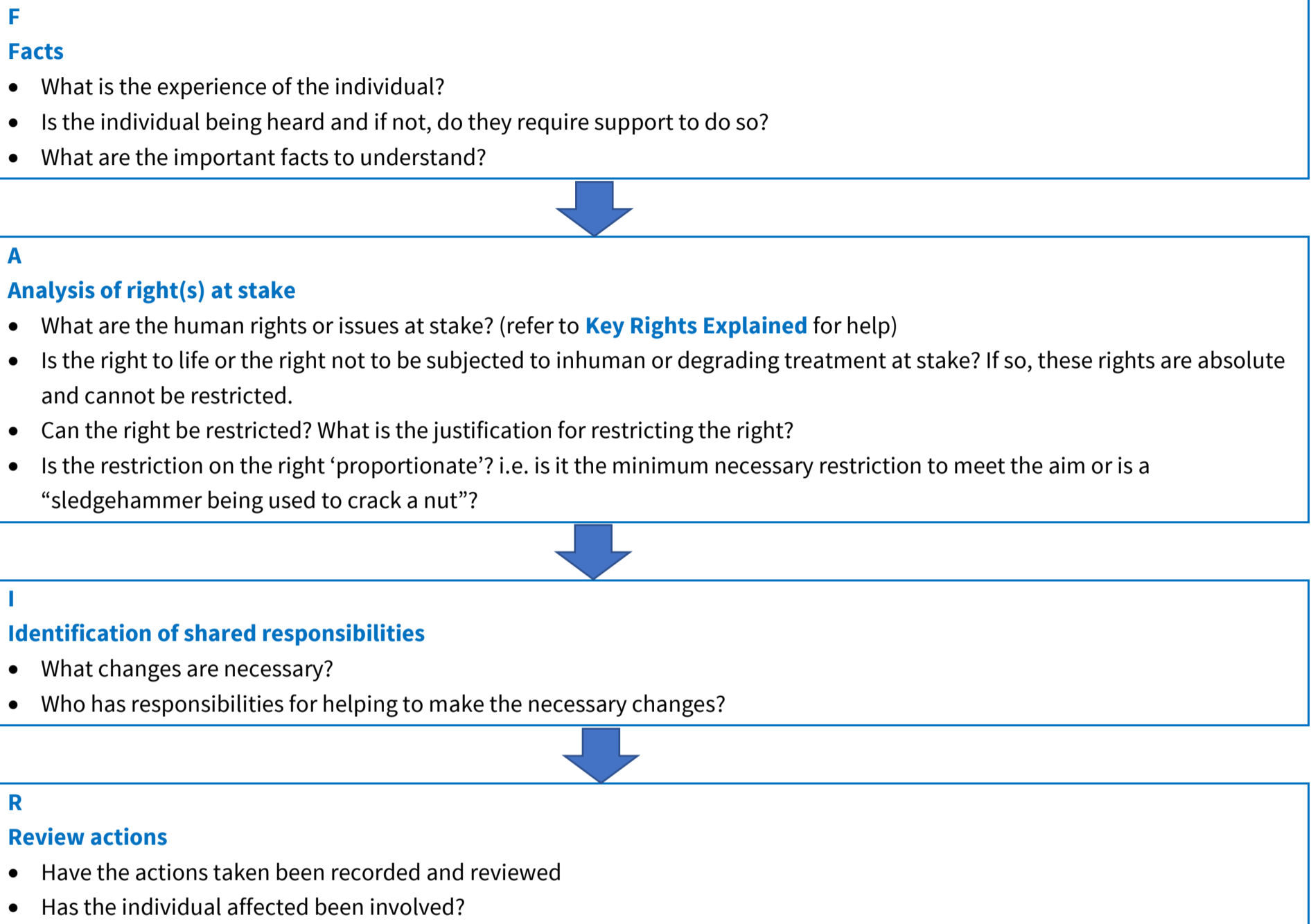


The Scottish Human Rights Commission (SHRC) launched Scotland's National Action Plan for Human Rights in 2013 and the human rights-based 'FAIR' approach. The central role of any human rights-based approach is to ensure that people's dignity is at the heart of decision-making. Using the FAIR approach can provide a practical means of reaching balanced, right and just solutions in difficult situations.

The FAIR approach has four steps.

Thinking it through- FAIR flowchart

This flowchart will help you to apply a human rights based approach. The FAIR button at the top of the page will overlay a flowchart onto the screen, you will find this on pages that require the use of the flowchart.



From: *Care about Rights* Scottish Human Rights Commission

<http://careaboutrights.scottishhumanrights.com/>

The Adult Support and Protection (Scotland) Act, 2007

The Adult Support and Protection (Scotland) Act, 2007 aims to protect adults who are unable to protect themselves and are at risk of harm.

There are many circumstances that can place a person at possible risk of harm, such as mental health difficulties, dementia, learning disabilities and acquired brain injury.

It is important to recognise that having a particular condition such as dementia does not automatically mean an adult is an 'adult at risk'. To be an 'adult at risk' the person must meet the 'three point test'. If an adult meets only one or two elements of the three point test, they cannot be considered an adult at risk.

Three point test

1. Unable to safeguard their own wellbeing, property, rights or other interests.
2. At risk of harm.
3. Are more vulnerable to being harmed because they are affected by disability, mental or physical ill health.

Key Rights Explained

There are many important human rights contained in the international treaties highlighted below.

We are now going to look in more detail at some of the human rights contained in the **European Convention on Human Rights**. These rights are part of our law in Scotland through the **Human Rights Act** and the **Scotland Act**. We also explain some of the other human rights which are not contained in our national laws, but which are guaranteed internationally and are central to securing human dignity for older people.

It is important to understand that there are different types of rights in the Convention. In particular there are absolute rights and qualified rights (there are other categories too but we'll focus on these for now).

Absolute Rights

It is important to understand that there are different types of rights in the Convention. In particular there are absolute rights and qualified rights (there are other categories too but we'll focus on these for now).

Absolute rights include:

- The right to life
- The right not to be subjected to torture or to inhuman or degrading treatment or punishment.

Qualified Rights

Some human rights are qualified, which means they can be restricted in some circumstances and within limits.

These rights are written so that the first part of the Article sets out the right that is to be protected, while the second part establishes whether a public authority can legitimately restrict that right in order to protect the wider public interest.

Qualified rights include:

- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to freedom of assembly and association
- The right to protection of property

To consider whether a restriction of a qualified right is justified, you need to think through the following important questions:

- Legality - is there a legal basis for the restriction of the right?
- Is there a legitimate aim or justification for the restriction such as the protection of public health or the protection of other people's human rights?
- Is the action proportionate - is it the minimum necessary restriction of the right?

Proportionality explained

The principle of proportionality is at the heart of many human rights claims.

Proportionality can be most easily explained by the expression:

“Don't use a sledgehammer to crack a nut.”

When thinking about decisions that affect any of the qualified rights, it is important that the right is restricted with as little as possible, only going as far as is necessary to achieve the legitimate aim.

The following questions might help you to determine whether a restrictive act is proportionate or not:

- What is the problem being addressed by the restriction upon someone's rights?
- Will the restriction lead to a reduction in the problem?
- Does a less restrictive alternative exist and has it been tried?
- Does that restriction involve a blanket policy or does it allow for different individual cases to be treated differently?
- Has sufficient regard been paid to the rights and interests of those affected?
- Do safeguards exist against error or abuse?
- Does the restriction destroy the basic ideas behind the human rights at issue?