



# Judicial Review Interventions

**Alison Reid  
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Clan Childlaw**

# Clan Childlaw

- **Improve children and young people's life chances**
- **Use legal skills and expert knowledge**
- **Help take part in decisions**
- **Children's rights are realised in Scots Law**

# Interventions by Clan Childlaw

- **Christian Institute v Lord Advocate  
(Named Person case)**
- **AB v HMA**
- **What we have learned**
- **Opportunities**

# **Christian Institute v Lord Advocate**

## **Before any Court Proceedings**

- **Policy Concern – Article 8**
- **Consultation responses – 2012, 2013**
- **Stage 1 - Briefing**
- **Stage 2 - Some amendments made**
- **Stage 3 - Proposed amendments not carried**

# Christian Institute v Lord Advocate

## Decision to Intervene - Court of Session

- **Opinion from Ailsa Carmichael QC**
- **“Standing”**
- **Something to add?**

# Christian Institute v Lord Advocate

## Practicalities of Intervening

- Paid £200 to the Court of Session
- QC did not charge any fee
- Applied for leave to intervene
- Asked court to order that we would not incur liability for expenses of others

# Christian Institute v Lord Advocate

**The Court allowed us to Intervene!**

- **In writing up to 5,000 words**
- **No liability for expenses of others**
- **Court hearing 3 & 4 June 2015**
- **Decision 3<sup>rd</sup> September 2015**



# Christian Institute v Lord Advocate

UK Supreme Court

8 & 9 March 2016





# Christian Institute v Lord Advocate

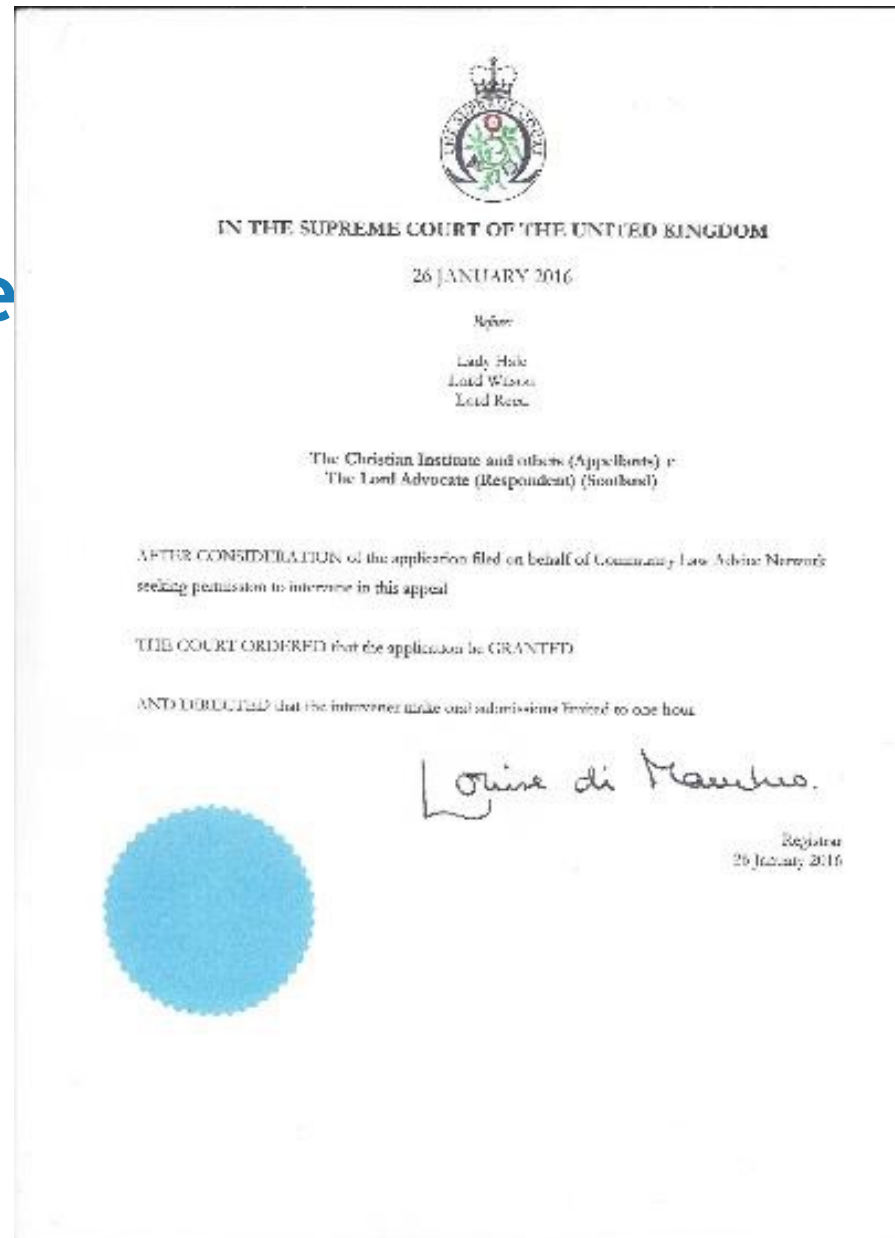
## Supreme Court Intervention

### Practicalities:

- Application to Intervene
  - Form 2 <https://www.supremecourt.uk/procedures/index.html>
  - asked to waive £800 fee as charity
  - requested “costs neutral”

# Christian Institute v Lord Advocate

Allowed to make  
written and  
oral submissions



# Christian Institute v Lord Advocate

## Supreme Court Intervention

**Written:** <http://www.clanchildlaw.org/app/uploads/2016/09/here.pdf>

**Oral:** <https://www.supremecourt.uk/watch/uksc-2015-0216/080316-pm.html>



# Christian Institute v Lord Advocate

## Supreme Court Intervention

Information sharing provisions:

- were not “in accordance with the law” because they were not sufficiently precise and accessible
- set too low a threshold for the disclosure of confidential information without adequate safeguards

and amounted to an infringement of the article 8 rights of children and young people.



# Christian Institute v Lord Advocate

Supreme Court Judgment 28 July 2016

<https://www.supremecourt.uk/cases/docs/uksc-2015-0216-judgment.pdf>



# Christian Institute v Lord Advocate

*"[T]he information sharing provisions ... are incompatible with the rights of children, young persons and parents under article 8 of the ECHR because*

*they are not 'in accordance with the law' as that article requires,*

*[and] may in practice result in a disproportionate interference with the article 8 rights of many children, young persons and their parents, through the sharing of private information ..."*



# Christian Institute v Lord Advocate

*“ [T]he information-sharing provisions of Part 4 of the Act are not within the legislative competence of the Scottish Parliament.*

*“...In short, changes are needed both to improve the accessibility of the legal rules and to provide safeguards so that the proportionality of an interference can be challenged and assessed.”*



# Christian Institute v Lord Advocate

## What next?

- **3 month consultation period**
- **New legislation proposed to be in force by August 2017**





# AB v HMA – 11 July 2016

- 19 year old boy had consensual sexual activity with girl under 16 years
- Thought that she was 16 and wanted to rely on this defence
- When 14 years been charged with a “relevant sexual offence” meaning defence not open for him to use

# AB v HMA – 11 July 2016

- **Appeal to Supreme Court**
- **Sexual Offences (Sc) Act 2009 – Article 6,8,14**
- **Raised general issues around the treatment of charges on children – Article 8**
  - **Children’s Hearings System – welfare based (no “official warning” system)**
  - **Scottish Government Policy (“MACR”)**

# AB v HMA – 11 July 2016

- **Decision to intervene?**
  - **Standing**
  - **Link to Clan strategic aims**
  - **Anything to add?**
  - **Cost**
  - **Risk assessment**

# AB v HMA – 11 July 2016

## Oral Submissions for Clan:

<https://www.supremecourt.uk/watch/uksc-2016-0083/110716-am.html> (1hr 23min 40 sec)

Decision awaited.....



# What have we learned?

- Risk assessment including costs, time needed, conflicts with funders, link to strategic aims
- Oral submissions seem more effective and involve more work
- Think about publicity
- Be sure to have something to add - Lord Hoffman in *Re E*[2009] 1 AC 539

# What have we learned?

**CAN BE AN EFFECTIVE POLICY TOOL**

## **Baring Foundation – Strategic Litigation Group**

Using the law and human rights to advance policy for the benefit of disadvantaged children and young people

**Use Human Rights to set own agenda**



# Opportunities

- **Need lawyers & policy influencers to work together**
- **Voluntary Sector concerns – costs, confrontational, conflict with funders, who to approach, how to know about ongoing proceedings**
- **Challenge – How to make the law & lawyers more accessible?**



# Opportunities

- **Are there outstanding policy issues?**
- **Do you think intervening could help?**
- **What could help enable use of this method?**



# Thank you

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children & young people