



Judicial Review - Interventions

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Clan Childlaw

Clan Childlaw Lawyers for Children & Young People

- **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**



Clan Childlaw

Lawyers for Children & Young People

- **Legal Representation in Edinburgh, the Lothians and Glasgow**
- **Legal Information Service across Scotland**
- **Learning & Development across Scotland**
- **Policy Development across Scotland**



What is an Intervention?

- **Ongoing judicial review proceedings by others**
- **Identified policy issue**
- **Specialist information to assist court**



Interventions by Clan Childlaw

- **Christian Institute v Lord Advocate (Named Person case)**
- **AB v HMA (not judicial review)**
- **What we have learned**
- **Opportunities**



Christian Institute v Lord Advocate

- **Unhappy with information sharing provisions in Children & Young People (Scotland) Act 2014**
- **Engaged in Consultations**
- **Engaged with Parliamentary process**
- **Ongoing Judicial Review**



Christian Institute v Lord Advocate

Intervene?

- **Had policy Issue**
- **Had specialist information to assist the court – no one else giving children’s rights perspective**
- **Ongoing Judicial Review**
- **Sufficient Interest**



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 3rd & 4th June 2015
- Decision 3rd September 2015



Christian Institute v Lord Advocate

UK Supreme Court

8 & 9 March 2016



Christian Institute v Lord Advocate Clan Childlaw Intervention

Practicalities:

- Application to Intervene
 - Form 2
 - 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

Clan Childlaw's 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

Clan Childlaw's 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>

Broadly successful!



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 the Supreme Court
- Raised general issues around the treatment of charges on children
- 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?

- Good opportunity to advance policy
- Be sure to have something to add
- Need a risk assessment - costs, time needed, any possible conflict with funders, link to strategic aims
- Oral submissions seem more effective and involve more work
- Think about publicity



Opportunities

CAN BE AN EFFECTIVE POLICY TOOL

Baring Foundation – Strategic Litigation Group

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



Opportunities

- Set own agenda
- Need lawyers and policy influencers to work together



Thank you

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Opportunities

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

