



Human Rights in practice - Interventions

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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 3rd September 2015**



Christian Institute v Lord Advocate

UK Supreme Court

8 & 9 March 2016



Christian Institute v Lord Advocate

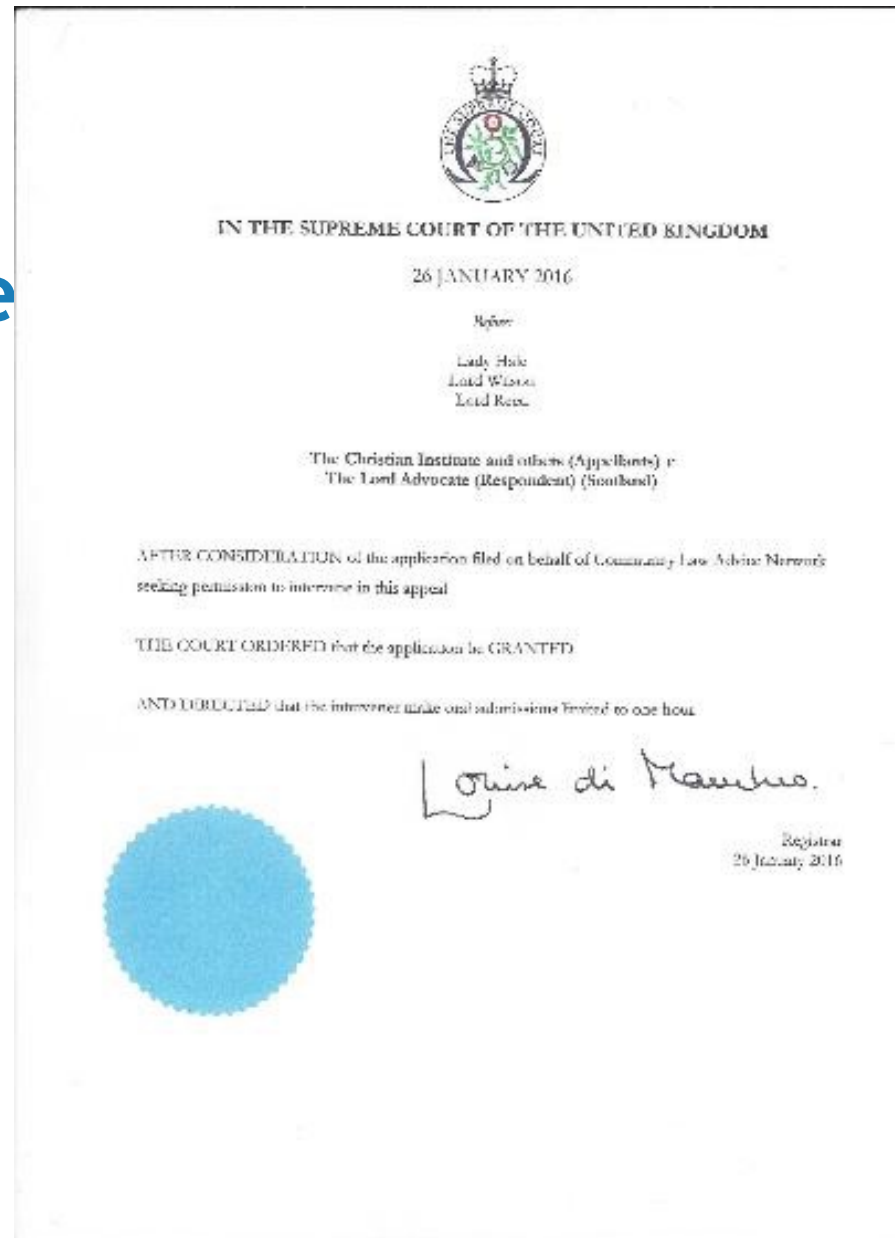
Supreme Court Intervention

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?**



Thank you

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lawyers for
children & young people