



# Intervening to present the Children's Rights perspective

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## Interventions by Clan Childlaw

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



# **Christian Institute v Lord Advocate**

**Before any Court Proceedings**



# **Christian Institute v Lord Advocate**

**Decision to Intervene**



## 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
- Told Solicitors acting for others
- 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<sup>rd</sup>/4<sup>th</sup> March 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

### Clan Childlaw 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

### 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/uk-sc-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?



## 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?

### 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



## What have we learned?

- Carry out a risk assessment including costs, time needed, any possible conflict with funders, link to organisation's 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



# Thank you

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