An orange watercolor splash graphic on the left side of the slide, with a textured, irregular edge and some darker spots.

Acting as an
Intervener in
Judicial Review
cases:

**"When it's good to poke your
nose into someone else's
business"**

- **Tips and Thoughts from NICCY's
Experience**

- Ciaran White BL

What's an Intervener?

- **Notice party**
- A party whose interests might be directly or indirectly affected by the decision in the dispute between the parties. In a challenge to the grant of planning permission, for example, the party in whose favour planning permission had been granted would be a notice party.
- **Interveners**
- Party that applies to court to intervene to make submissions in a case in which it has no direct involvement but about which it is concerned.
- **Amicus Curiae**
- Lit 'Friend of the Court'. A party appointed by the court to assist it in dealing with a complex point or case. It generally occupies a neutral position to the dispute advising on the law and the principles involved so that the court is fully appraised of all the issues.



What sort of cases are we talking about?

- In the matter of D (A Child) [2019] UKSC 42
- Can persons with parental responsibility consent to the deprivation of a child's liberty (locked doors, constant accompaniment), where the child (with ADHD, Tourette's, Asberger's & mild learning disability) lacks mental capacity?
- Intervener: EHRC

Interveners in the UKSC 2019

- 27 Yes – Note some interveners were Devolved law officers, and some appeals were conjoined
- 35 No
- = 43%





NICCY Interventions 2019-20

High Court Judicial Review challenges

- Iveagh Centre 'Delayed Discharge' Cases
- Vulnerable children, SEN and Covid-19

What's the Key to being a 'good' Intervener?

- Intervener must add something new
- House of Lords in re **E (a child) (AP) (Northern Ireland)** [2008] UKHL 66
- “An intervention is however of **no assistance if it merely repeats points which the appellant or respondent has already made**. An intervener will have had sight of their printed cases and, if it has nothing to add, should not add anything. It is not the role of an intervener to be an additional counsel for one of the parties. This is particularly important in the case of an oral intervention.”
Lord Hoffman, para 3
- Don't repeat the points which had already been quite adequately argued by counsel for the Applicant.

How to become an Intervener



Practice Direction 2013 in NI,
elsewhere? <https://www.judiciaryni.uk/judicial-decisions/practice-direction-012013-third-party-interveners>



Application: but no particular Form needed

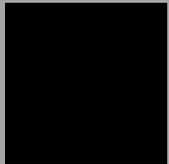


Permission

Advantages



No danger of Costs Order against Intervener (except where Intervener acts as a party or adds to costs.)

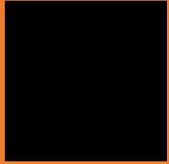


Allows Court to see the beyond the particular circumstances of the Applicant

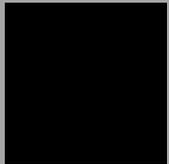


Opportunity to present additional, relevant, factual and legal material to Court: *Brandeis Brief* <https://youtu.be/XiT53pbk1Tk>

Disadvantages



Intervener may be confined to
Written Interventions only



It is the Applicant's case after all!



A 'bad' intervention risks reputation

Maximising your legal 'footprint'

- **'What is of concern to us?'** Identify key legal issues of concern to your organisation, and what you can bring to the discussion/resolution.
- **'Extend your network & communicate'**: Engage with service users and their representative groups, and other NGOs, & statutory agencies.
- **'Can we scramble, if we have to?'**: What is your capacity or ability to seek permission to intervene at short notice, and to deliver on that intervention.

Tips

1. Be Open to Interventions

2. Engage with Applicant

3. What can Intervener add?

4. And why does the Intervener want to add it?

5. Intervene **ASAP** – Better to be in at start, then intervene on appeal