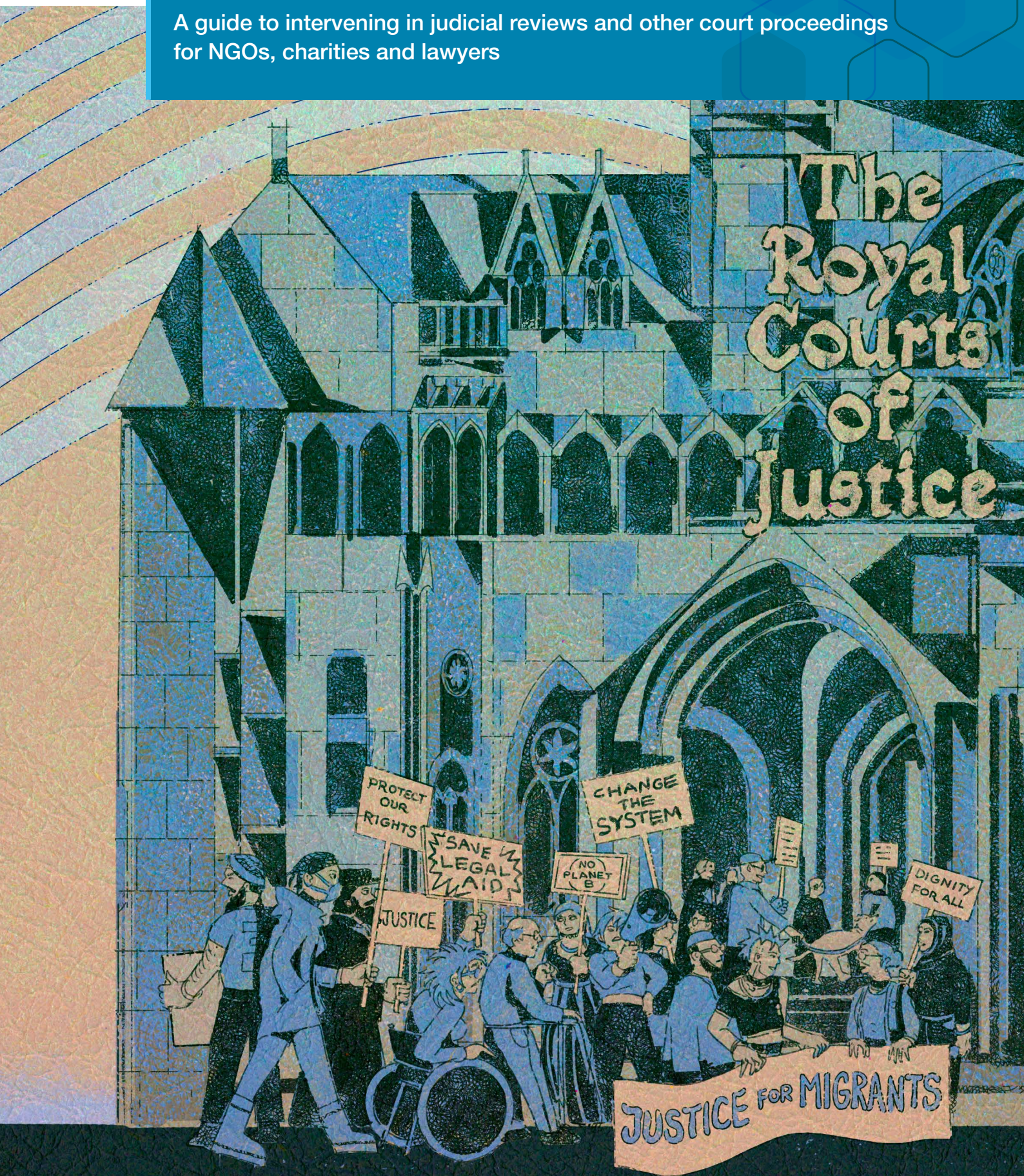
Public Law Project

Public interest interventions

A guide to intervening in judicial reviews and other court proceedings for NGOs, charities and lawyers



Contributors

We'd like to thank everyone that has contributed to this guide:

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A number of charities with interventions experience have contributed to reviewing this guide and provided case studies and tips based on their direct experience:

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- Monique Hawkins at the3million
- Pierre Makhlouf at Bail for Immigration Detainees (BID)
- Stephanie Needleman, Tyrone Steele and Ellen Lefley at JUSTICE
- Dr Alison Penny at Childhood Bereavement Network, National Children's Bureau

We would also like to thank Adenike Onasanya at Liberty for providing their 'tips sheet' on obtaining relevant court documents.

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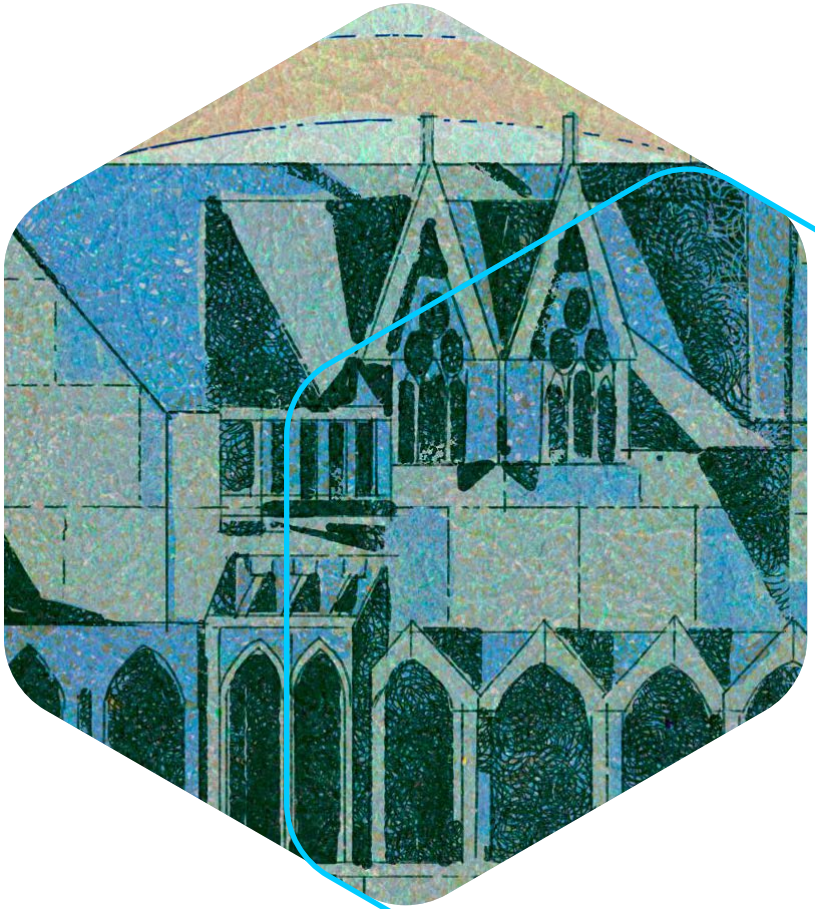
This project has been kindly supported by:

A&O SHEARMAN

LANDMARK CHAMBERS

This PDF contains interactive elements

Contents



Introduction

Introduction from Victoria Pogge von Strandmann, Legal Director, Public Law Project

Welcome to our new guide to interventions for charities, NGOs, small organisations, public bodies and lawyers.

For 30 years, Public Law Project has worked towards our vision of a world where the state acts fairly and lawfully by seeking to ensure that those marginalised through poverty, discrimination or disadvantage can hold public authorities to account when they act unlawfully.

For over two decades, interventions in public law cases – often called interventions in the public interest – have formed a crucial part of Public Law Project's strategic activities. We have acted as an intervener ourselves, as well as representing organisations, in interventions across a broad range of cases, from our intervention in the Supreme Court challenging the former Prime Minister's decision to prorogue Parliament, to a joint intervention with Liberty and Child Poverty Action Group in a Supreme Court case on the bedroom tax. In 2024 alone, Public Law Project acted as an intervener in a major case about protest laws brought by Liberty, and represented two smaller charities, the3million and BEO (both contributed valuable insights to this guide), in important interventions.

In 1996, Public Law Project convened a working party jointly with JUSTICE to examine and make recommendations on interventions in public interest litigation. Since then, the law has changed considerably, and a wide spectrum of charities, NGOs and organisations now use interventions to influence the outcome of judicial review claims and other court processes concerning Government policy and public decision making. These interventions have had a wide effect and positive impacts.

But twenty years is a long time in the law, and court guidance around interventions has changed along with political perspectives and financial pressures.

Our new guide gives up to date information to navigate planning and decision making on interventions, including detailed learning and tips from intervening charities, as well as advice about communications and media profile around interventions.

We want this guide to encourage and support organisations to include interventions as part of their toolkit in driving change. If you've got something of real value to add and are committed to getting it before the court, you can influence a case, however small you are.

Victoria Pogge von Strandmann,
Legal Director, Public Law Project

"If you've got something of real value to add and are committed to getting it before the court, you can influence a case, however small you are."

Introduction from Dr Alison Penny, Director, Childhood Bereavement Network (part of the National Children's Bureau)

As a small network in a children's charity, the idea of intervening in a public law case felt pretty daunting to us. But after years of campaigning to extend the eligibility rules for bereavement benefits to parents who had been cohabiting before their partner died, it was increasingly clear that this would only be resolved through the courts. The bravery of parents who brought cases on behalf of their grieving children, and the pain and hardship that the outdated rules were bringing to families, inspired us to put our evidence before the court.

Getting involved was a steep learning curve for us but with fantastic pro bono support,[1] we were able to intervene in an appeal to the Supreme Court, as did the Child Poverty Action Group. Watching Lady Hale read out the judgment to the mother who had appealed the denial of benefits was one of the proudest moments for our tiny team. The court paved the way for change for the next generation of grieving children.

We hope this guide will inspire others to intervene as we did – and we wish you all the best in using your evidence to achieve change.

Dr Alison Penny, Director,
Childhood Bereavement Network
(part of the National Children's Bureau)

"We hope this guide will inspire others to intervene as we did – and we wish you all the best in using your evidence to achieve change"

– Dr Alison Penny

How to use this guide

As well as providing a narrative guide to interventions, this guide also contains:

- A glossary of terms you can refer to.
- A flowchart explaining the stages of an intervention (Appendix 1).
- An in-depth case study of an intervention (Appendix 2). The guide also contains short case studies and tips from experience provided by our contributors.
- Other tools, including a detailed communications plan, appear in the appendices.

You can refer to these at any point when reading through the guide or even read them first to get an overview of interventions. We want this guide to be as accessible as possible, and some readers will be much more familiar with interventions than others.

Chapter 1

What is an intervention?

An intervention is a way for a person or organisation not directly involved in a legal case to submit specialist information or expertise to the court, to help the court make a more informed decision.

Interventions offer a route for people or organisations who are not a 'principal party' to a case to provide information and expertise to the court in an impartial way. By the 'principal' or 'main' parties we mean the person or organisation bringing the case (referred to as the claimant) to the court, and the person or organisation defending the case (referred to as the defendant). This is why interveners are often referred to as 'third party interveners', though in this guide we just use the term 'interveners'.

Interventions can occur in different legal cases in England and Wales.[2] The types of cases in which you are most likely to want to intervene are judicial review claims, though we do touch on interventions in other areas in this guide. Judicial reviews are a type of claim against public bodies such as central government or local authorities.

An intervener does not have the same rights as either of the main parties in a case. The extent of their involvement will be established by the court. For example, the court will decide if the intervener will be granted permission to provide evidence, written submissions or oral submissions on points of law or public interest that could assist with its decision making.

The court will want the intervener to provide a different viewpoint in the proceedings that the main parties to the judicial review are unable to provide or have not yet considered.

An intervener should have something new to say that is important to the case and adds real value.

What is judicial review?

Judicial review is the process by which people or organisations can challenge the decisions, acts or failures to act of a public body.[3] It is a procedure in which a judge reviews whether a decision (or the lack of a decision) taken by a public body was lawful or not based on 'public law' principles. The judge will consider whether the public body acted lawfully, rationally, fairly, and compatibly with the rights of those affected by its actions (for example rights under the Equality Act 2010).

This guide assumes a broad familiarity with judicial review, but you can find more information in Public Law Project (PLP)'s detailed Introduction to Judicial Review guide,[4] available on the PLP website.

Public bodies, whose decisions or actions can be challenged by way of judicial review, include government departments, local councils, prisons, the police and immigration authorities, among many others.

Interveners v interested parties

As well as the claimant and defendant, the principal parties in judicial review proceedings can also include 'interested parties'.

The role of the interested party is different to the role of an intervener. An interested party is directly affected by the outcome of the case and is entitled to participate as of right.

Examples of interested parties include:

- The dependent family members of someone applying for leave to remain in the UK who is challenging a decision made on their application, where those family members would also be entitled to leave to remain if the applicant succeeded.
- The Secretary of State for Justice would be included as an interested party in unlawful detention judicial reviews where the Probation Service has a role in facilitating a claimant's release.

It is rare that a charity or NGO will be directly affected by a challenged decision. These organisations are therefore unlikely to be interested parties in a judicial review. Charities and NGOs often look to get involved in judicial reviews as interveners because of their expertise in the matter in question.

Courts addressed in this guide

Although interventions are possible in other contexts, this guide focuses on interventions in judicial review proceedings. For this reason, we focus on interventions before the following courts and tribunals:

- **The Administrative Court** – This is a specialist division of the High Court where most claims for judicial review are filed and heard. The Planning Court is a branch of the Administrative Court, dealing with planning and environmental challenges.
- **The Upper Tribunal** – The Upper Tribunal has jurisdiction to deal with judicial reviews of certain decisions, normally relating to immigration, asylum and human rights cases, but also in certain criminal injuries compensation cases.
- **The Court of Appeal** – If a case is appealed from the Administrative Court or the Upper Tribunal, it will usually go to the Court of Appeal. Cases which get permission to be appealed to the Court of Appeal raise important points of law or issues of public interest.
- **The Supreme Court** – In some cases, judicial review proceedings may reach the Supreme Court, the final court of appeal in the UK. Cases which reach this level typically have wide-reaching implications or involve an important legal issue which needs to be clarified for the benefit of the general public.

Each of these courts and tribunals have different procedures governing third party interventions.

Other types of intervention

Although not covered in detail in this guide, it is also important to note that interventions can be an option in other types of proceedings that may raise public interest issues.

Other civil proceedings

Interventions are possible in relation to statutory appeals in the County Court or other branches of the High Court. The procedure for this is less detailed than that for judicial review claims.[5] While there is no express power and procedure for interventions in non-judicial review claims under the Civil Procedure Rules (CPR) in the High Court, interventions in such cases are sometimes made under the Court's general powers of case management.[6]

Case study from the Equality and Human Rights Commission (EHRC): Intervening in a private, civil law case.

The Equality and Human Rights Commission intervened in a private, civil law disability discrimination case before the High Court, the *University of Bristol v Dr Robert Abrahart*.[7] The EHRC was given permission to intervene as an independent and neutral intervener to give guidance to the court on how and when universities should make reasonable adjustments for their students. The process to follow is the same as when intervening in judicial review cases. The parties must be consulted and their views sought, then an application made to the court for permission to intervene.

Human rights cases

You can also intervene in cases before the European Court of Human Rights in Strasbourg (also known as the **ECtHR**). Once the domestic appeal route has been exhausted, an issue in a judicial review that concerns the rights of an individual under the European Convention of Human Rights could also form part of an application to the ECtHR. Individuals and groups of individuals can bring a case against the United Kingdom to the ECtHR, but only after all domestic legal routes have been exhausted. We have provided an overview of this process in Appendix 3.

Criminal appeals

Interventions are also possible in criminal proceedings before the UK Court of Appeal (Criminal Division), although they occur less frequently than interventions in civil proceedings. See Chapter 7 for some specific tips if you are considering intervening in criminal proceedings.

Chapter 2

The importance of interventions

Third party interventions are important for the resolution of legal claims and the development of the law. The first public interest intervention in modern times occurred when Liberty was granted permission to intervene by the House of Lords in *R v Khan*,[8] a 1996 case about the right to privacy. Recent interventions include the high-profile intervention of the UN High Commissioner for Refugees (UNHCR) in the Rwanda litigation in 2023.[9]

The importance of interventions has consistently been recognised by the courts. In *Re E*,[10] Lord Hoffman explained that the House of Lords had "*frequently been assisted by the submissions of statutory bodies and non-governmental organisations on questions of general public importance*".

In *R (Air Transport Association of America Inc.) v Secretary of State for Energy and Climate Change*,[11] the judge described the practice of allowing interventions from third parties as "*well established and beneficial*".

Yet in recent years there has been some pressure to limit the number and extent of interventions. This has led to increasing constraints on the costs position of interveners, reflected in changes brought about by the Criminal Justice and Courts Act 2015 and subsequent amendments to the CPR and the Rules of the Supreme Court, which are covered in more detail in Chapter 7.

The pressure is also political. As recently as 2022, a prominent think tank published a report called "How and Why to Constrain Interveners and Depoliticise Our Courts", which argued in favour of further restrictions on public interest interventions.[12]

Nonetheless, in the 13 months from 1 November 2023 to 30 November 2024, 22 judgments in judicial reviews were handed down where interventions played a part in the court's decision making.[13]

Interventions remain important for a number of reasons:

- **Interventions can enhance the quality of judicial decision-making.** Interveners provide specialised knowledge, insight or expertise that the principal parties might not have. For example, in a climate-related judicial review, an environmental NGO might be able to provide scientific research that could be influential in the court's understanding of the issues. Interventions can help the court to benefit from access to a greater array of information, and interventions continue to be acknowledged as "*helpful*" by the Supreme Court.[14]
- **Interventions can balance interests and ensure fairness.** By presenting additional information or alternative perspectives, interveners can assist the court in reaching a decision that considers a wider range of public interest issues. This is especially important in cases where the outcome could affect a variety of individuals or groups. For example, when an individual claimant is challenging a system of decision making, there may be wider evidence of systemic concerns that an intervener is able to bring to the court's attention.
- **Interventions promote transparency and public participation in the judicial process.** By allowing interveners to contribute, the court shows it is open to diverse viewpoints, which can increase public confidence in the legal system. Interventions can lead to changes in legal principles in line with contemporary concerns and research. They can also represent the interests of those who might be affected by a decision but do not have the means or standing to be directly involved in the case.
- **Interventions can highlight the wider international context.** Some public interest interveners can provide an international dimension by using examples from other countries, particularly when the other countries have comparable systems and legal obligations.

Case study from JUSTICE: Raising the international context of issues in a case

In *Nealon and Hallam v The United Kingdom*,[15] which concerned the UK's policy of requiring exonerees to prove their innocence beyond reasonable doubt to access any compensation for wrongful imprisonment, JUSTICE provided international legal research on comparative jurisdictions which did not require such a high standard, including Austria, Belgium, Spain and Norway, to argue that the UK regime was incompatible with the presumption of innocence in Article 6(2) ECHR.

Chapter 3
Who can intervene?

Any person who is not a party to judicial review proceedings can apply for permission to intervene. It is also possible for the court to invite a party to act as an intervener, but this is uncommon and most likely to relate to those with a statutory or formal role.[16]

Interveners are often charities and NGOs, but can also include individuals, trade unions, businesses, and public bodies such as the Equality and Human Rights Commission.

Many NGOs and charities including JUSTICE, Liberty, Amnesty International and Shelter have a long history of acting acting as interveners. However, being a small organisation is no bar to making an intervention. What is important is having specialist knowledge – legal, factual, or both – that gives the court significant and important expertise to assist with its determination of a case.

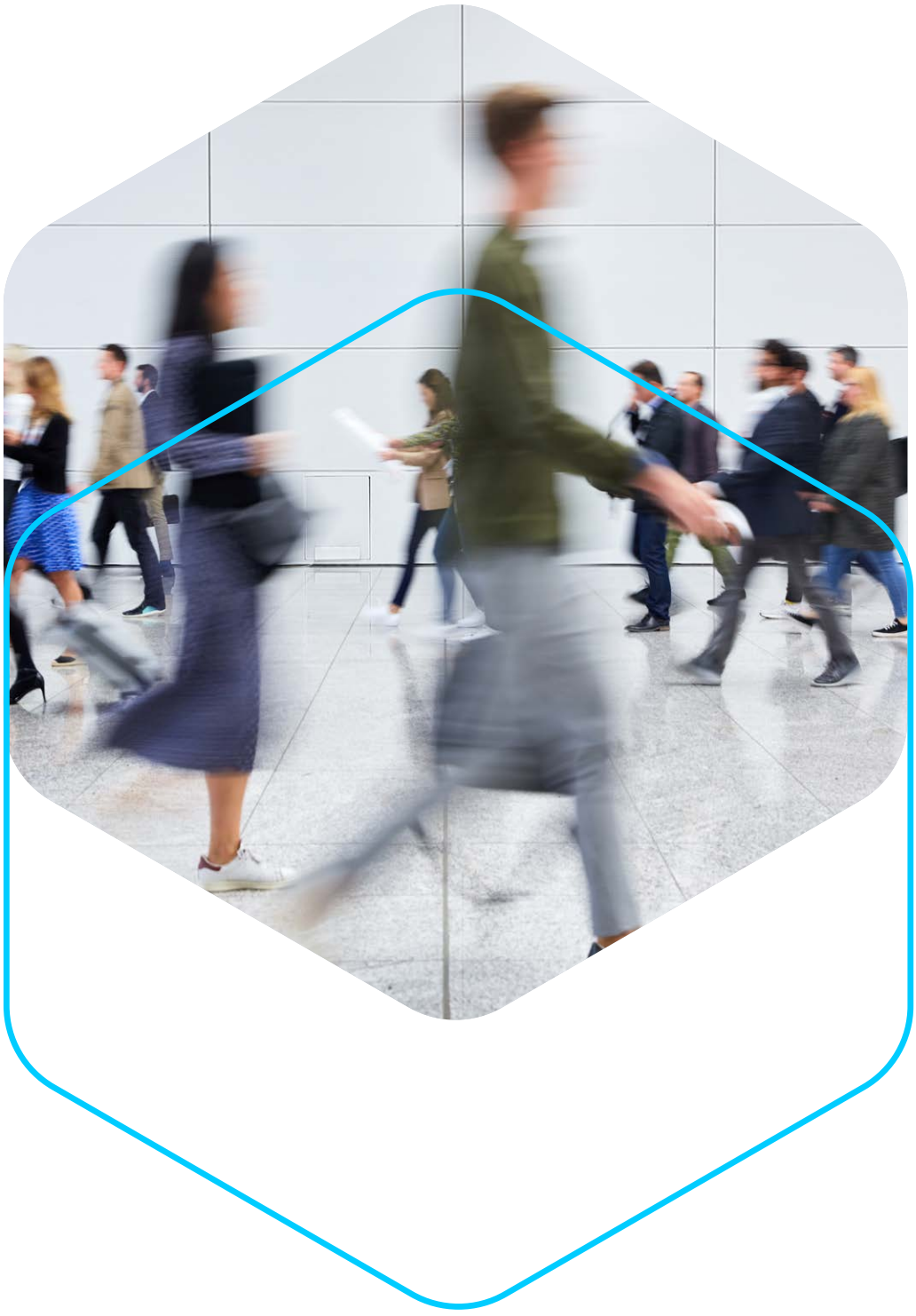
Charities and NGOs who intervene can bring their practical experience to the attention of the court to help with its decision making. Further examples to show the variety of recent interventions include:

- Liberty, Child Poverty Action Group and Public Law Project jointly intervened in the Supreme Court in a challenge to regulations made by the Secretary of State for Work and Pensions in relation to the 'bedroom tax', providing evidence on the practical implications if the Court of Appeal's decision was found to be right.[17]
- BID intervened in a challenge to deportation orders made by the Home Secretary. The challenge meant that the individuals in question could only appeal their deportation after they had been deported from the UK.[18] BID provided evidence of the significant practical difficulties faced by individuals in this position.
- Mind and Medical Justice both intervened in a challenge to the Home Secretary's approach to immigration detainees with mental illness. They provided a range of evidence from public research papers and statements from medical professionals to inform the Court of Appeal's decision.[19]
- Friends of the Earth and Greenpeace UK separately intervened in the Supreme Court in support of a successful challenge to the grant of planning permission for oil production in Surrey. The court also granted permission to intervene to the Office for Environmental Protection, which took a neutral stance, and the developer West Cumbria Mining Ltd, which opposed the challenge.[20]
- BEO intervened in a judicial review in the High Court, challenging the Home Office's decision to drop key recommendations from the Windrush Review. The judge agreed that the evidence before her – including the evidence provided by BEO – demonstrated the detrimental impact that the decision to drop the recommendations had on Windrush victims.
- Green Alliance and the Office for Environmental Protection both applied to intervene in a case involving environmental policy-making duties. The applications to intervene were made prior to permission to appeal being granted by the Court of Appeal.[21] The Court granted permission to intervene at the same time as permission to appeal, allowing written submissions from Green Alliance and written and oral submissions from the Office for Environmental Protection.
- JUSTICE intervened before the Supreme Court in a reference from the Attorney General of Northern Ireland over the compatibility with the ECHR of legislation relating to 'safe access zones' around abortion clinics in Northern Ireland.[22] JUSTICE's intervention drew on its expertise on the potential impacts of criminal legislation and policy on protesters' rights and focused on an issue of statutory interpretation that had not been raised by any of the other parties.

Multiple and joint interventions

As shown by these examples, in some cases a number of organisations may want to intervene, particularly if the case raises issues across different areas of expertise. In principle, there is no limit to the number of third-party interveners that could be involved in a case. In one 2005 case, the House of Lords (now the Supreme Court) heard from 17 separate interveners.[23]

We look at when joint interventions might be appropriate in further detail in Chapter 5.



Chapter 4

Identifying cases to intervene in

The earlier you can find out about a case, the more flexibility you will have in deciding whether and when you should apply for permission to intervene, and the more time you will have to prepare evidence and submissions.

Ideally, you want to know about a claim at the pre-action stage or, failing that, shortly after the claim has been filed. If you are considering intervening at the appeal stage, you would want to know about the appeal as soon as it is lodged with the relevant court. This chapter discusses some ways you could find out about a case – but once you have identified a case for a potential intervention, you will want to access the case documents. Appendix 4 shares some tips from Liberty on how to get hold of these. You can also discuss with your lawyers whether to request documents that are not in the public domain, such as draft claim materials, from the principal parties directly.

Publicly available sources

It can be challenging to identify cases, claims or appeals from public sources alone. The information they contain is limited, not always searchable and, in practice, few organisations have the time or resources to monitor them. We have included useful publicly available court databases in Appendix 4.

Other sources

Most potential interveners hear about cases through their existing networks or as a result of their reputation in a particular area of expertise. Organisations who publicise their interest in or knowledge of a particular legal issue, such as homelessness or immigration, are more likely to be approached directly by a claimant involved in a case related to that topic.

If your organisation is not able to bring a legal challenge – for example, because it is not directly affected by the relevant decision, intervening can be a valuable way to contribute expertise and help shape decision-making in that area.

There are a number of ways to connect with others who may be involved in litigation relating to your organisation's area of expertise:

- **Subscribe to relevant mailing lists**

Some organisations, including Public Law Project, Liberty, Asylum Aid, Child Poverty Action Group (CPAG) and the3million, e-mail their mailing list subscribers when launching cases that could be of interest to interveners. Subscribe to the mailing lists of organisations that have been involved in litigation in your area of expertise.

- **Use your social media networks**

Many charities, NGOs, law firms and barristers' chambers use social media to publicise cases, often from a very early stage. Follow or subscribe to individual lawyers who may tweet or post in a personal capacity, if they practise in your area.

- **Join dedicated interest groups with a legal dimension**

Organisations may not put information about cases with which they are involved in the public domain for all sorts of reasons, ranging from concern about political sensitivities to limited communications capacity. However, some organisations and their legal teams might share information about cases with specialist networks. There is a network for lawyers working on public law/judicial review cases at NGOs, called Public Lawyers in NGOs or 'PLINGO', which has been set up to facilitate the sharing of information and best practice between lawyers at these organisations. Other networks may also hold regular meetings where members (not necessarily lawyers) share information. Other examples include, NRPF Network,[24] EUSS Civil Society Alliance,[25] Immigration Law Practitioners Association,[26] Housing Immigration Group (HIG) and the Refugee Legal Group (RLG).[27]

If a relevant group does not exist in your area of interest, consider setting one up.

- **Attend events that discuss legal issues in your area of interest**

Attending events, including training, seminars, conferences and roundtables, that discuss legal issues in your organisation's area of interest is a good way to learn about what legal challenges are being brought or considered, and who the main players are.

These events will usually be advertised on social media and circulated to mailing lists, so subscribe to or follow organisations that are likely to organise relevant activities.

Even if you aren't interested in any of the current legal challenges, it's a networking opportunity that will help you stay informed and connected with others who may bring claims of interest in the future.

While some training and conferences can be expensive for organisations with limited budgets, many legal NGOs, barristers' chambers and law firms hold free events or offer concessions for smaller organisations.

- **Make direct contact with organisations and law firms involved in legal work in your area**

Make contact with organisations, solicitors or barristers who work in your relevant area of expertise. Let them know about your interest in intervening in cases that raise issues important to you. If you put yourself on their radar, they may contact you when an appropriate case comes up.

- **Make use of your funders' networks**

If your organisation is in a funded stream of work, find out who else is funded in that area and make connections with them. Ask your funder to introduce you to organisations with similar aims or areas of interest and expertise who might be party to proceedings or launch proceedings themselves.

Case study from the3million: Identifying cases to intervene in

In late 2021, the Independent Monitoring Authority (IMA), an organisation set up by statute to protect EU citizens' rights in the UK post-Brexit, announced their intention to issue judicial review proceedings against the Home Office. This was around their concerns for EU citizens' rights and second applications to the EU Settlement Scheme. The IMA announced this on social media and via email to its subscribers. We (the3milllion) had raised this issue as part of a comprehensive report written for the IMA.

We had informal discussions with lawyers as to whether there was scope or need for an intervention by the3million. In June 2022, the IMA was granted permission for a judicial review hearing and the3million applied for permission to intervene.[28]

Tips from experience: BID on identifying cases

- Cases should be of legal importance.
- You can check court websites.
- Develop links with barristers and solicitors and develop a budget for this area of work.
- BID works closely with many barristers who provide us with pro bono services. They also identify cases and suggest applications to intervene. Experienced barristers will be aware of your need to be cautious while also being aware of significant cases.
- Public law lawyers who may not be experienced in your area of specialism can also work with you to ensure objectivity and neutrality.
- Those with good reputations before the courts may be influential.

Chapter 5

Is intervening the right thing to do?

Before applying for permission to intervene, there are several questions you should ask.

Will your intervention assist the court?

An intervener's role is to assist the court. An intervener will have to provide new evidence, make legal arguments or offer a different perspective that the principal parties cannot.

Permission will not be granted if the intervention will not add something to the case. Ask yourself – could the strongest evidence be given without your intervention?

The court will expect the parties, including interveners, to avoid repetition. It may be appropriate to contact the principal parties or other interveners on potential areas of overlap.

These conversations can happen on a common interest privilege basis – a way of confidentially sharing legal advice with another party where you have a common interest. Privilege is a complex area of law though, so you should seek legal advice before sharing or discussing advice with another party.

In any event, be cautious that any contact you make with other parties does not compromise your independence and lead you to adopt the position of a particular party in a way that would be inappropriate for an intervener.

Is an intervention right for your organisation in principle?

Does the case raise broader issues relevant to your organisation?

Consider the broader significance of the issues raised in the case for your organisation. You should consider an intervention when the outcome of the case will have an impact on your objectives or set a precedent on issues that are relevant to you. Your expertise could help inform the judgment, and how the issues are approached by future decision-makers and judges.

Does your organisation have sufficient resources to fund an intervention?

Financing an intervention may be a particular challenge for smaller NGOs, charities and not-for-profits. These costs may include court and legal fees if you do not have pro bono representation.

Consider whether the costs of an intervention can be met from your existing budget. Explore alternative options for financial support. We look at other potential sources in Chapter 6.

There is also the potential, though relatively low, risk that your organisation might have to pay the costs incurred by the principal parties in responding to your intervention. This could run into several thousand pounds. At the start of an intervention, you may not know if you will have to pay these costs or how much they might be. This is often a key issue in whether to intervene in principle, which we explore in more detail in Chapter 8.

Is strategic litigation in line with your organisation's mandate and objectives?

Check whether intervening in litigation is within your organisation's mandate and objectives. Have you obtained the required approvals, such as from your board, trustees or other relevant stakeholders?

As the costs risk cannot always be eliminated, approval may depend on your board or leadership's risk appetite, and the importance of the issues raised in your intervention.

The Charities Commission has provided guidance for charities bringing or defending litigation, which can also be applied in the context of an intervention.[29] It contains a number of principles to guide trustees in their decision making, including the need to act in the best interests of the charity and to use charity funds only to further the charity's aims and objectives.

Is there any potential reputational impact of seeking to intervene?

The best outcome following any intervention is where your intervention shapes the court's decision and the court acknowledges your contribution. That may help you obtain permission to intervene in later cases. It is often important for organisations to build a reputation as a 'responsible' intervener. This means applying for permission to intervene only when you can genuinely assist the court in deciding the case and that, whenever possible, you apply in good time.

It is important to avoid trying to play the role of a principal party or acting in a way the court considers unhelpful. Judges can not only make adverse costs orders against interveners, but they can also make critical remarks in their judgments. Any negative commentary might be picked up in the press or might prejudice you in any future applications.

Other strategic considerations

Is it the right time in the case to intervene?

Given the time, effort and financial resources required for an intervention, you should intervene at a point in the proceedings which maximises the impact of your evidence and arguments. Weigh up the pros and cons of applying early before the lower courts or waiting to see if there is an appeal and trying to intervene at that stage.

Consider whether a case could be of general public interest. Although some cases before the lower courts will raise public interest issues, many cases at the first instance stage will be more fact-specific and may not raise wider points of principle. Your arguments might have a greater impact if you intervene when the case is in a higher court, where the focus will likely be on wider public interest issues and less about individual facts.

On the other hand, there may be good reason to intervene earlier, such as:

- Where a case raises issues of wider relevance, and you could provide important evidence.
- Where it is unlikely that one of the principal parties will be in a position to appeal if they are unsuccessful.

Tips from experience: BID on when to intevene

It's important to show the court either that an application to intervene is made at the earliest opportunity or, alternatively, that there is a good reason why an application is being made at a later stage.

Recent changes to the Supreme Court rules also mean it is harder to introduce new factual evidence at that stage.[30]

If you are considering intervening in a judicial review before the Administrative Court or Upper Tribunal, you will also need to decide whether to wait until after the applicant has been granted permission for judicial review, which is the first step in those proceedings. There is no right answer and it will depend on the facts of the case.

There can be benefits to applying before permission has been granted, particularly if your evidence or submissions could increase the chances of a favourable permission decision. Your application may highlight the importance of the case, encouraging the judge to grant permission. A pre-permission intervention may also help your intervention to be factored into the post-permission management of the case. For example, you could request a hearing which is long enough to give your legal team an opportunity to make oral submissions, or you could ask the court to allow you to file your written submissions after the principal parties.

On the other hand, applying before judicial review is approved can result in wasted time and costs if the applicant is not successful and permission for the claim to proceed is refused. This can be particularly challenging in the Administrative Court, as potential interveners need to front-load their work. Administrative Court rules mean interveners are now required to include a summary of their legal submissions and any evidence which they intend to rely on as part of the application for permission to intervene.[31]

To avoid this risk, potential interveners often notify the parties and the court pre-permission that they intend to apply for permission to intervene if permission for judicial review is granted. If you take this route, it can be helpful to include a brief outline of your anticipated grounds.

Finally, be aware that applications made at the last minute before a hearing (at any stage in the proceedings) are unlikely to be received favourably by the court or the other parties involved. The legal pleadings of the principal parties are likely to be advanced and court time is likely to have already been agreed and scheduled. Applying at short notice could also damage your reputation with the court as a 'responsible' intervener (see Chapter 6).

Tips from experience: BEO on when to intervene

The earlier you can indicate to the main parties that you wish to intervene the better. You will have access to the arguments and have time to develop your line of argument. You can choose whether to apply to intervene before or after the claimant has received permission for its judicial review claim to proceed, but it is key to start planning a potential intervention before permission has been granted.

Could you support the case by providing evidence instead of intervening?

In some cases, organisations provide evidence directly to one of the principal parties. They may do this because they do not have legal submissions to make beyond those already raised by the parties, and an intervention might be disproportionate. An organisation refused permission to intervene may still provide valuable witness evidence to assist one of the parties, if that is appropriate.

Equally, they may not have the time and budget to cover costs to devote to an intervention or they may have been refused permission to intervene or even to bring their own claim.

While this evidential route may seem attractive, it gives you less control over how your evidence is presented, giving you no direct ability to shape the parties' legal arguments.

Case study from the3million: Witness statement or intervention?

We were approached by a legal team to intervene in a judicial review concerning dysfunctional aspects of the Home Office digital immigration status system. After a few discussions and taking pro bono advice, we decided to support the case through a witness statement, rather than an intervention, thus sharing our evidence with the claimants.

This decision was made for several reasons.

- The timescale was short, and we were unsure we had the capacity to adequately prepare evidence, assemble a legal team and submit an application to intervene by the deadline.
- We were already crowdfunding on a different litigation strategy and felt it would be difficult to raise sufficient funds to cover our legal costs or find a lawyer to work pro bono.
- We were not convinced that we would be able to make substantially different legal arguments from those the claimant had raised.
- We felt this case did not sufficiently address the larger strategic argument we wanted to make, as our long-term aim is for the Home Office to implement a different and better digital status system.

Would it be more appropriate to litigate as claimant?

An intervener's role is to assist the court and not to act as a principal party. However, if the case raises vitally important issues to your organisation such that you would prefer not to have a limited role, it may be possible to bring your own claim. This is more likely to be a viable option if you become aware of a legal issue prior to a claim being issued by someone else: it is at this point that you can decide whether to bring your own claim or seek to intervene in someone else's claim.

To bring your own claim, your organisation would need to show how its interests or objectives are sufficiently affected by the challenged decision, such that you are able to bring proceedings as a claimant in your own right (known as 'standing'). For instance, in one case an NGO with community planning objectives successfully argued that it had standing to bring a judicial review claim relating to a planning decision, notwithstanding the fact that another body (the local council) may have had better standing and decided not to bring a challenge.[32]

You will also need to consider issues of timing: if a claim is already in progress, it may be too late to bring your own challenge, even if you had standing to do so.

A claimant has greater control of the arguments raised and direction of the proceedings. However, this should be balanced against the significantly greater amount of time, effort and cost required, as well as the greater risk of facing adverse costs if the proceedings are not successful. If you are considering this route, it will be important to seek legal advice at an early stage in order to weigh up the pros and cons.

It is also possible to seek to be joined as a co-claimant to a prospective or existing claim.[33] This can also bring its own complications: for example, it can cause issues if the existing claimant is legally aided. You should always seek legal advice as to whether your involvement as a co-claimant would be useful for the existing claimant. Again, this option is more likely to be viable at the very early stages of the proceedings.

Alternatively, if your organisation is directly affected by the matters raised in the claim, you may be able to apply to act as an interested party (see Chapter 1).[34] While often interested parties do not actively participate in proceedings, an interested party may make representations or lodge an Acknowledgement of Service and may play a more significant role in proceedings if appropriate.

Case study from BEO: Claimant or intervener?

We wanted to challenge the Home Office decision to drop some recommendations from the independent review of the Windrush scandal. However, a Windrush victim, Trevor Donald, was already bringing a case, so we weren't in a position to be a claimant.

Being an intervener was a way of us being able to support the claim that we believed strongly in, and we could focus on the discrimination elements of Trevor Donald's case, bringing our expertise to bear as an intervener. In other circumstances, it's really fact and resource considerations that lead to a decision about whether it's best to be a claimant or an intervener. One of those resource issues is costs.

Could you jointly intervene with another organisation?

A joint intervention has several benefits. It could lend additional authority to submissions if they reflect the collective views of key specialist organisations. Complementary specialisms may add breadth to your evidence and may be important where an issue is multi-faceted, affecting different groups.

Courts are often grateful for the additional expertise brought by multiple interveners, so long as they coordinate as much as possible. The courts do not like to hear overlapping or repetitive information from different interveners.

Where a case is likely to attract multiple potential interventions, a joint application along with one or more other NGOs or charities may increase your chances of getting permission to intervene. From the court's perspective, a joint application with one set of submissions and evidence may be preferable to multiple separate interventions, particularly if it reduces the potential impact on the principal parties.

A recent example came in a judicial review of a decision of the Secretary of State for Work and Pensions before the Supreme Court. Three NGOs – Liberty, Child Poverty Action Group and Public Law Project – worked together to prepare a joint intervention.[35]

Do you have any documents or evidence that would be unhelpful if disclosed?

All parties in judicial review proceedings are subject to a "duty of candour", and this applies to an intervener, too.[36]

This means you would have to provide any facts or reasoning relevant to the decision under challenge, including anything harmful to your position. In most cases, it is unlikely that an intervener will have been involved in the decision making itself but could still possess relevant factual information. You should consider whether there is anything in your possession that could risk undermining the evidence or submissions you wish to make, as you could be required to provide details of it.

Chapter 6

Practical considerations for interveners

There are many important practical considerations when taking the decision to intervene.

How will your organisation resource the intervention?

While an intervener's role is not as demanding as being a principal party, an effective intervention will often require a significant commitment of time, resources and costs.

You should ensure that your organisation can allocate staff or volunteers to manage and input to the case, especially if you are planning to file evidence. This can be very time-consuming, and deadlines might be tight or change at short notice, so you should be clear on which team members will work on the intervention.

Interveners may be required to meet court ordered deadlines, and there can be negative consequences if these are not met, including reputational consequences for future interventions.

Tip from experience:
Public Law Project on deadlines

No matter how much planning ahead you do, be prepared for last-minute deadlines. Interveners can be missed off emails or correspondence about upcoming deadlines and court dates because they are not the primary parties in the case. Make sure to check in regularly with the other parties and, where appropriate, the court to ensure you do not miss key information.

Can you secure legal assistance and help with funding?

When you are considering an intervention, you should get legal advice at an early stage. Doing so can avoid spending unnecessary time and expense on an intervention which has weak prospects or significant cost risks. But if your intervention is appropriate, early legal advice will put you in the best position to apply.

Your organisation may have its own lawyers, but if their capacity or experience is limited, instruct external lawyers. In most cases, you will also need to instruct a barrister to help formulate your application and present an effective intervention.

Lawyers can be expensive. Explore routes for funding and find out if the lawyers you engage can provide their services pro bono (for free) or "low bono" (at a discounted cost).

Cases which attract interventions involve important points of law and principle in the public interest. Because of that, external lawyers may be happy to support you for no or low payment. Don't be afraid to ask if law firms or barristers would be willing to take on cases pro bono.

Your in-house legal team, other NGOs working in the area and legal directories like Legal 500 or Chambers and Partners may help identify lawyers willing to work on a pro bono or reduced-fee basis. Many large firms welcome pro bono opportunities and have experience in interventions.

Another option is to apply to funding sources who may be prepared to cover the legal costs of your intervention. Examples of these include:

- The Strategic Legal Fund supports strategic litigation work in the immigration sphere.[37]
- Law for Change supports public interest litigation for communities with limited access to resources to secure justice.[38]
- The Digital Freedom Fund supports technology-related legal work.[39]

In recent years, an alternative source of grassroots-level funding has emerged for public interest litigation through crowdfunding platforms such as CrowdJustice. This is less common for interveners than for claimants. However, the3million is an example of an organisation that successfully uses crowdfunding to fund judicial review claims, pre-litigation research and interventions in other types of case.

Claimants regularly now use crowdfunding. A good example is Friends of the Earth, who alongside co-claimants ClientEarth and Good Law Project, used crowdfunding to challenge the UK government's climate strategy under the Climate Change Act 2008.[40]

Case study from the3million: Crowdfunding for interventions

the3million has used crowdfunding very successfully to fund judicial review claims. We are also currently running a rolling crowdfunder, to support a litigation strategy of intervening in cases where the government is restricting the rights of marginalised EU citizens and their families on access to benefits and housing.

Our legal team is working part pro bono, and part supported by the donations raised through the crowdfunder. Because our strategy is one of intervening rather than bringing the claims ourselves, we are not needing to cover potential adverse legal costs associated with bringing a claim, which would be much higher.

Would you also like to rely on expert evidence?

As part of your intervention, it is possible to file an expert report on specialist or technical matters which are outside the court's expertise (such as medical or scientific issues). However, submitting expert evidence requires separate permission from the court. It is also worth bearing in mind that obtaining an expert report from a specialist could increase the costs of your intervention.

Speak to your legal team at an early stage about whether it would be helpful to file expert evidence in addition to any other evidence you intend to provide. There are specific rules about what expert evidence can cover and how it differs from witness evidence so, depending on the information you want to provide to the court, you may need to consider both forms of evidence.

Experts, like interveners, must also be independent and are there to assist the court – so any expert should not be associated with a principal party and should provide their unbiased professional opinion on the issue in question.

Tips from experience: BEO on commissioning expert evidence for a claim

Commissioning expert evidence is a great opportunity to add value to the proceedings from your perspective, even though you're not a principal party. To enhance the relevance and importance of an expert report, it's best to get the relevant principal party's support for the application for an expert report to be admitted in evidence. Working with the other parties is crucial but not always easy. And you need to be aware of the costs of the report.

What is your communication strategy?

Though you may have limited communications and media resources, it is important to consider your communication strategy with key stakeholders, such as members of your organisation, staff and external partners.

We provide a detailed sample strategy with tips in Appendix 5 of this guide.

While it is not a legal requirement, it may be advisable as a matter of courtesy to liaise with the principal party to which your intervention most relates to ensure that they have no objections to your communication strategy and to understand if there may be opportunities for you to work together. Make sure to discuss any approach to a principal party with your lawyers beforehand though, as it may need to be handled carefully to ensure you are not compromising the confidentiality of any legal advice you have received.

Is it in the public domain?

When your communications include information that is not publicly available, you must obtain approval from the parties who disclosed this information during the proceedings before publishing anything. This is especially crucial if you have obtained the information through disclosure as a party to the proceedings.

Use of disclosed information

Information or documents disclosed during proceedings can generally only be used for the purposes of those proceedings. You may only use disclosed information for other purposes if the disclosing party agrees or if the court orders otherwise.

Using disclosed information for communications or publicity purposes would not generally be considered a use for the purpose of the proceedings. Always seek advice from your legal team before using information from disclosure in public communications.

Public domain documents

Documents that are already in the public domain can be used for communications. This generally applies to documents which have been read in open court.

Members of the public have a right to request many categories of court document (for a small administrative fee paid to the court). Appendix 4 sets out tips from Liberty on how to obtain court documents.

There will likely be no issue relying on documents you have obtained directly from the court for communications, but you should check with your legal team first. It is also important to be aware that some elements of documents disclosed during court proceedings may still not be public. For example, a governmental white paper is public, but any consultation responses or submissions to ministers that preceded it may not be.

Publicity and media attention

Many of the cases ripe for intervention attract attention from the wider public and the media.

At all times during proceedings, your duty is to the court and not as an advocate of any principal party. This duty should inform your approach to publicity.

You should consider any likely publicity that might arise from your intervention and how you will respond. Is it of strategic benefit to your organisation to draw attention to your intervention, or to address it only reactively? You might prefer to publicise your role only after judgment has been handed down, particularly if the result is favourable to your objectives.

It is important to note that draft judgments are sometimes shared with parties, including interveners, before they are handed down. In these circumstances, the draft is subject to an embargo and strictly confidential, so must not be discussed or publicised until after the hand-down date. Breaching the embargo is contempt of court and can have very serious consequences. We cover this in more detail in Chapter 11.

In some circumstances, you may want to highlight your role as an intervener at an earlier stage. Even where your application for permission to intervene is not successful, there may be reasons to say something publicly about the refusal. For example, you might bring awareness to the issues raised in your proposed intervention where you think they may come up in similar cases, or where there are learning points for others based on the refusal.

Once you are clear on the strategy, you can prepare the appropriate proactive or reactive content, such as drafting press releases and preparing staff for interviews.

Tips from experience: Public Law Project on communications strategy

The most important things to remember for your communications strategy are:

- Check your strategy, timings for publication, and content with your lawyers.
- Remember that as an intervener you are playing a supporting role. Let the principal parties take the limelight and make sure your communications and messaging reflect that. If you get a good result, be sure to share the credit.
- Stay in close contact with the claimant (or other relevant principal party) about your communications and follow their lead.
- Respect court embargoes. You must not publish anything about the judgment before it has officially been handed down. Breaching the embargo is contempt of court and taken very seriously by the courts.
- When you get the judgment, do not publish anything before the claimant (or other relevant principal party) does. That may be considered poor form as it is primarily the principal party's story to tell.

Practical considerations for public bodies

As well as the practical matters above, public bodies may have other things to bear in mind when considering an intervention. This may include confirming that they have the power to intervene at all. They should review the statutes or other rules creating or governing the public body to understand whether they are consistent with an intervention. Public bodies also need to ensure that they can remain neutral, as they are expected by the courts to be expert and impartial in their intervention. This doesn't mean that public bodies can only intervene if they have not spoken to any of the parties or alternatively have not spoken to all parties: only that they should offer the same opportunities to all parties in the case.

If permission to intervene is refused

This is a setback, but not necessarily the end of the road.

You are unlikely to be able to renew your application to intervene before the same court, but you may be able to intervene if the case goes up to a higher court. Higher courts, in particular the Supreme Court, can be more receptive to allowing interventions whereas lower courts may be more concerned about keeping the proceedings straightforward.

If your intervention was de facto supporting one party's case, can you support them with evidence, legal argument, resource and/or publicity? Can you use the case as a platform for wider advocacy?

If you have identified a legal issue which is not resolved by the proceedings in which you were refused permission to intervene, could you apply to intervene in another case that deals with the same legal issue? Alternatively, in some circumstances, your organisation could itself bring a claim on the particular legal issue although you will need to take legal advice on whether your organisation can bring proceedings in its own name and on the merits of any claim itself.

Chapter 7

Procedures governing intervention applications

The rules governing applications for permission to intervene depend on the court or tribunal you are applying to.

As this guide focuses on interventions in judicial review proceedings before the Administrative Court, Court of Appeal and the UK Supreme Court, this chapter focuses on their specific procedural rules. However, be aware that separate procedural rules apply in the First-Tier Tribunal[41] and the Upper Tribunal.[42] Appendix 3 contains a very brief overview of interventions in the European Court of Human Rights, which hears appeals against the final decisions of UK courts on human rights matters. You should carefully check the rules of the relevant court or tribunal at an early stage before filing your application for permission to intervene.

Whichever court or tribunal you wish to intervene in, you will need to make an application to intervene. Every application to intervene will usually contain at least the following three items, either in an accompanying letter, or in more formal submissions drafted by your lawyers:

- A short description of your organisation. You want to paint a picture for the court of a respected, specialist, and above all trustworthy organisation, with a deep knowledge of the technical and/or practical issues relevant to the claim. Don't be too modest. Be proud of what you do and what you have achieved.
- A short description of how your organisation's expertise can assist the court, with reference to the issues that the court must decide in the particular case.
- A short description of what your legal submissions are likely to be.

For the busy judge who will consider your application, brevity is better.

Common guidance for interventions in the Administrative Court, Court of Appeal and Supreme Court

Notifying the parties involved

Before applying for permission to intervene, you should notify the principal parties and any existing interveners of your intention to apply and ask for their consent to your proposed intervention.

You may also want to write to the parties and any other interveners explaining that you will bear your own legal costs and asking that they do not seek costs against you. This is covered in more detail in Chapter 8.

In some cases, it may be helpful to attach a draft of the proposed application for permission to intervene when you write to the parties, if it is ready, but you may not want to do that too early either. It tends to be more common not to share a draft application in advance.

Your letter to the parties should outline your expertise and why your intervention would assist the court. Outline your grounds for seeking permission and the arguments you intend to make if you intervene. You may also want to point to examples of previous cases you have been involved in that show you are a responsible intervener. You should specify a deadline for the parties to respond confirming whether or not they agree to your intervention and your proposal in relation to any costs undertaking that you are seeking.

You should also inform the parties of when you propose to file your written submissions and any evidence. These timings should take into account any case management directions that the court has already made and should make sense with any other timetable being followed by the parties.

Objections from the parties

The principal parties and any existing interveners may not agree to your application to intervene.

If one of the principal parties objects to your proposed intervention, you should first consider together with your lawyers whether any of the objections raised mean that you should re-evaluate whether it is appropriate or not to intervene and/or whether there is any change in cost risk (discussed further at Chapter 8) to your organisation by the points raised. If you decide to proceed with your intervention, you should respond to the points raised and explain in your application why permission should still be granted. You should consider whether any amendments to the scope of your proposed intervention would address their concerns.

The fact that a principal party has objected to a proposed intervention will not necessarily result in the court refusing your application for permission to intervene.

Making your application

The sections below include some specific guidance around how to make your application before different courts, but make sure to check the relevant procedural rules for any material you should include in your application. Your application should typically be supported by evidence, particularly before the High Court. You should also advise the Court of the other parties' responses to your proposed intervention and may want to enclose copies of their correspondence in your application to the Court.

Most UK courts now require documents to be filed electronically using the relevant filing system for that court – these are also discussed further below – but this is usually something your lawyers can help with. After your application has been filed with the court, you should serve a copy of your application on every other party to the proceedings (again, your lawyers will usually do this).

Courts typically deal with applications for permission to intervene on paper (i.e. without a hearing). However, if there is particular urgency or a case management hearing has already been listed it may be dealt with at a hearing.

When deciding your application, the court may decide to only grant permission for you to make written submissions.[43] The court can also make any other directions it considers appropriate, such as limiting the length of your written submissions or restricting the length of time you are given for any oral submissions.

Costs

If you are applying for a particular costs order, this should also be addressed in the application for permission to intervene and a draft order included in the pack of documents you file with the court. See Chapter 8 for more details on this.

Interventions in non-judicial review claims

In non-judicial review claims, you must generally ask the court for permission to intervene via an application supported by evidence.[44] Where there are no specific rules governing how to intervene, it might be that you can rely on CPR Rule 19.4.

CPR Rule 19.4 expects a formal application to be made by using an application notice. The application notice should then be supported by evidence explaining why the Court should grant your application.

You will need to pay an application fee when you file your application to intervene. It is important to check in advance the cost of this and to have budgeted for it or checked whether you would qualify for any fee remission.

Applications in the Upper Tribunal: specific points to note

A person who is not a party to the proceedings in the Upper Tribunal, including an intervener, may apply to be added or substituted as a party. At the time of writing, there is no guidance for how to do this. The Tribunal is intended to be a more informal court setting and, as a result, its procedural rules are less prescriptive.

It is likely that an application accompanied by a letter setting out the information that would be required if the application were being made in the Administrative Court, Court of Appeal or Supreme Court would be sufficient. Again, your application should be served on every party after it has been filed with the Upper Tribunal.

However, you should still check with your legal team before applying to intervene in the Upper Tribunal. Note also that the Upper Tribunal has different jurisdictions (such as Administrative Appeals, the Lands Chamber, and the Immigration and Asylum Chamber) which may require different approaches to interventions.

Applications in the Administrative Court: specific points to note

Anyone can apply for permission to file evidence or make representations in judicial review proceedings in the Administrative Court according to the CPRs.[45]

Your application for permission to intervene must be made "promptly" and you should ensure that all parties are made aware of your intention to apply from the earliest stage.

You should also note the provisions of Practice Direction 54A which apply to interventions, as well as guidance contained in the Administrative Court Judicial Review Guide[46] and the provision of CPR Part 23.

Your application should be made in an Application Notice using Form N244. Applications can now be filed electronically in the Administrative Court.

Your Application Notice should explain who you are and indicate why and in what form you wish to participate in the proceedings. Your application should include a summary of the legal arguments that you propose to make, including whether they are written only or written and oral.[47]

In support of your application, you may wish to file a witness statement along with the Application Notice to assist the court in understanding the reasons and justification for the application to intervene.

If you want to file and serve evidence in the proceedings, a copy of that evidence – which will be a longer and more substantive witness statement[48] compared with any evidence provided in support of the application itself – must be provided with your Application Notice. Note the 'up front' requirement here: it is not optional!

The application to intervene should explain the relevance of any such evidence to the issues in the proceedings.[49]

If you wish to apply for a costs order stating in advance of the proceedings that you will not be ordered to pay another party's costs at the end of the litigation (see Chapter 8), your application should include a copy of the order sought and must set out the grounds on which the order is sought.[50]

Please note that the above guidance applies to cases dealt with in the Royal Courts of Justice in London and practice may differ slightly in regional centres.

Applications in the Court of Appeal (Civil Division): specific points to note

There are no specific rules on applying for permission to intervene before the Court of Appeal. However, it is best practice to seek permission of the court by filing an application in Form N244, although it may also be possible to apply by sending a letter to the Court of Appeal (Civil Division) Registry.

All applications must be filed in Court using e-filing, including when requesting permission to intervene in proceedings. You should also put other parties on notice of your intention to intervene and aim to seek an agreement as to costs.

If you intervened in the lower court and want to also intervene before the Court of Appeal, you should still seek permission from the Court of Appeal.

Tips from experience: JUSTICE on applications to the Court of Appeal Criminal Division

Although less frequent than interventions before the Court of Appeal (Civil Division), it is still possible for NGOs to add value to a case and assist the court in a criminal appeal.

In addition to advice concerning applications in the civil context above, it is worth bearing the following in mind:

- **Purpose**: as the criminal division handles appeals which arise from criminal trials, the focus in the first instance rests on the individual appellant and issues which have arisen from their trial, conviction, or sentence. NGOs should therefore carefully study the grounds of appeal on which permission has been granted and ensure that arguments which they wish to make abide by those assiduously.
- **Application**: the approach to applying for permission to intervene follows that of the Civil Division. Interveners have been able to intervene on the basis of a letter of application setting out the same details as an N244 application form.
- **Engagement**: while the role of an intervener is to assist the court, it is important to bear in mind that in addition to the wider strategic value of the case, an individual's liberty is also at stake. Interveners should be especially prudent about the impact that their intervention can have on the individual's case and fully consider this alongside any wider strategic considerations.

Applications in the Supreme Court: specific points to note

The Supreme Court Rules and Practice Directions

Interventions before the Supreme Court are governed by the Supreme Court Rules 2024[51] (the Supreme Court Rules) and Supreme Court Practice Directions 3, 4 and 5.[52]

Supporting an application for permission to appeal

The Supreme Court Rules, unlike those for the Court of Appeal, provide for the possibility of third parties to make submissions that support an appellant's application for permission to appeal to the Supreme Court.[53]

These submissions must be filed on the Supreme Court's electronic filing portal.[54] Submissions should not normally exceed five pages of A4.[55] A copy must be served on the appellant, every respondent and any person who was an intervener in the court below.[56]

There is no strict time limit for making submissions to support or oppose a grant of permission to appeal. However, the longer you wait, the greater the risk the Court will make a decision before you have filed your submissions.

If permission to appeal is granted, you must make a separate application for permission to intervene: you are not automatically permitted to intervene in the appeal.[57]

Applying for permission to intervene

Anyone may apply for permission to intervene after permission to appeal has been granted or (in certain cases) after a notice of appeal has been issued.[58] Even if you were an intervener in the court below, you will still need to apply to the Supreme Court for permission to intervene as there is no automatic entitlement to intervene again.[59]

You may intervene in writing or orally but the Court will generally only allow interventions in writing unless compelling reasons are shown for oral submissions to be granted.[60] Remember, the time to make oral submissions will normally come out of the time allowed for the party with whose case your submissions are aligned.[61] You may also apply to support your submissions with a witness statement and exhibits.[62]

Methods of application

Before making the application, you must send your proposed application to the appellants and respondents in the appeal and ask them whether they consent to the intervention.[63]

An application to intervene should be made using the Supreme Court's e-filing portal and state whether permission is sought for both oral and written interventions or for written intervention only.[64] Your application should also confirm whether the parties to the appeal have consented.

Justifying your application

The Court has said that "[p]ermission will be given only for interventions which will provide the Court with significant assistance over and above the assistance it can expect to receive from the parties, and only where any cost to the parties or any delay consequent on the intervention is not disproportionate to the assistance that is expected".[65]

In your application, you are required to:[66]

- Explain your interest in the proceedings.
- Explain any prejudice you would suffer if your application were refused.
- Summarise the submissions to be advanced if you are given permission.
- Explain why those submissions will be useful to the Court and how they will differ from the other parties' submissions.
- If oral submissions are sought, explain why those are also necessary.
- If you are applying to admit a witness statement and exhibits, explain why those are needed.

Costs of an application

You must pay the relevant court fee specified by the Supreme Court,[67] which at the time of writing was £1,115.[68] If paying the fee would cause financial hardship, the court may remit (waive) it or provide relief.[69] You may apply for fee remission using the "Help with Fees" form[70] at the time the fee is due to be paid via the online portal.[71]

Timings

Once and if permission to appeal is granted, any application for permission to intervene must be filed at the earliest opportunity and no later than ten weeks before the date of the hearing, unless there are particular circumstances that prevent this.[72]

How the Court will consider your application

As the Court wishes to consider all applications to intervene at the same time, the court Registrar will group applications together after the deadline. Applications are considered without a hearing.[73] The court may refuse the application or could permit it either by written submissions or both written and oral submissions. The court may also limit the submissions to a specified duration or page limit:[74] you must seek permission if you want to make submissions longer than 20 pages.[75]

Your submissions

If permission to intervene is granted, you must file written submissions at least six weeks before the hearing.[76] Precise timing is usually addressed in your application, the order granting permission to intervene or any later procedural orders. The Supreme Court Practice Directions say this about the content of the submissions:[77]

"Interveners' submissions, whether written or oral, should focus on advancing the intervener's argument on a legal issue before the court. They should avoid repeating material that is in the parties' written cases. They should not challenge findings of fact. They should not ordinarily seek to introduce new evidence, especially where that would cause procedural unfairness to a party or undermine the basis on which the legal issues were considered by the courts below. They should not introduce new legal issues or seek to expand the case."

Chapter 8

What you need to know about costs when deciding to intervene

Costs are an important consideration when you are deciding whether to seek permission to intervene. You should seek legal advice on this issue before proceeding.

You will normally only be responsible for your own costs

If you have been granted permission to intervene in the Administrative Court, Upper Tribunal, Court of Appeal or Supreme Court, you will normally be responsible for any costs you incur. These costs might include your lawyers' fees, if your legal team are not acting pro bono, or court fees. Remember, you will need to pay a fee to make the application for permission to intervene in the first place.

In judicial reviews before the Administrative Court and Court of Appeal, the court will only order another party to pay an intervener's costs in "exceptional circumstances".[78]

Other parties can seek costs against you for intervening

Although the risk is small, unless you can obtain a costs order when getting permission to intervene that confirms you will not be required to pay other parties' costs (discussed below), there is a chance you may have to pay the costs incurred by the principal parties as a result of your intervention.[79]

A principal party can apply under the Administrative Court or Court of Appeal rules for an order directing that an intervener pay the costs they have incurred as a result of the intervention.

Under changes introduced in 2015, there are circumstances in which those courts can order interveners to pay those costs.[80] This applies where:

(a) An intervener essentially acted as one of the main parties in the case, rather than a third-party intervener;

(b) An intervener's contributions have not significantly assisted the court;

(c) A significant part of an intervener's contributions related to matters that the court did not need to consider in order to resolve the issues at stake; or

(d) An intervener acted unreasonably in the proceedings.

However, even if any of these apply, the court retains power not to order costs against an intervener if there are "exceptional circumstances" that would make that inappropriate. This is dependent on the facts of the case.

In practice, you can take steps to minimise the risk of unexpected legal fees. These include being clear about the scope of your proposed intervention from the outset, being mindful of your role as an intervener and ensuring that your submissions are focused and relevant. This is something that you should be constantly reviewing together with your legal team as the proceedings develop.

Be careful not to be seen as acting as a principal party

In practice, it is rare for costs to be awarded against an intervener. However, in very limited circumstances, costs may be ordered against an intervener who essentially acts as a principal party.

For example, in *R (E) v JFS & others*[81] the Court of Appeal made a costs order against the intervener as it "*took on the principal role in opposing the claim and seeking to uphold the first-instance decision*". The costs order was partially upheld by the Supreme Court, which found that the intervener "*assumed a role that went well beyond that of an intervener*".

To minimise your risk of incurring further costs, it is important to be mindful of your role as an intervener. Avoid leading an argument on behalf of any of the principal parties. You should remember that your role is to impartially offer expertise that will help the court make its decision.

The costs regime is less stringent in the Supreme Court

What we describe above relates to judicial reviews in the Administrative Court and the Court of Appeal. The Supreme Court position is slightly different.

In most cases, you will have to bear your own costs. However, any additional costs to principal parties that arise as a result of your intervention will generally be costs in the appeal.[82]

In practice, the approach is similar to that in the Administrative Court and the Court of Appeal. Interveners generally bear their own costs and are unlikely to have to pay other parties' costs in the absence of a good reason to do so.

The Supreme Court will not normally make costs orders either in favour of or against interveners but under Rule 53(3) of the Supreme Court Rules, the court still has the discretion to apply a cost order if it thinks it is just to do so. This would be the case if you essentially acted as the sole or principal appellant or respondent in the case.

This happened in *R v London Borough of Bromley ex parte Barker*,[83] where the Secretary of State for Communities and Local Government was ordered to pay half of the appellant's costs after effectively joining forces with the respondent in pursuing certain legal arguments and acting as a principal party.

How to mitigate your costs risks as an intervener

Seeking agreement from the other parties on costs

When writing to the principal parties to ask if they agree to your proposed intervention, you should consider asking them to agree to the intervention on a "cost neutral" basis. This means they will not seek costs from you on the basis that you will not seek costs against them.

This approach may be necessary if you have pro bono legal representation or limited funds. Their agreement is not always provided but, where it is, it can offer greater certainty on costs risk, although it does not remove the court's power to award costs against you.

Obtaining a costs order in advance

It is also possible, although not always successful, to ask for a costs order from the court at the same time as applying for permission to intervene. This is an order which says in advance that you will not have costs awarded against you (and that you will not seek to recover your costs from the other parties). If applying for this order, you must include a copy of the order sought with your application and set out your reasons for seeking the order.[84]

The usual position is that parties bear their own costs during the proceedings, but the winning party can then seek to recover a proportion of its costs from the losing party once a judgment has been handed down.

You will need to show "exceptional circumstances" that make it appropriate for the court to depart from this usual position and instead confirm in advance that you will not be ordered to pay for another party's costs.

For example, if you are being supported by a pro bono legal team, or have limited funds to pay your own legal costs and are unlikely to proceed with an intervention if you do not have this type of costs order in place, you should demonstrate this to the court from the outset. This may all help persuade the court to give you costs protection.

Practical costs considerations for any party considering an intervention

As highlighted in this chapter, you should carefully consider costs as part of a potential intervention, especially where the principal parties have left open the possibility that they may seek their costs and you have not obtained a costs order confirming they will not do so in advance.

At the same time, in practice, costs are very rarely ordered against an intervener. This is particularly the case where the intervener is a charity or NGO with limited resources, an important factor that the court or tribunal will take into account when considering costs.

While this potential cost risk might seem daunting, there are practical steps you can take to help reduce it. These include:

- Ensure your intervention is appropriate and focused and provides the court with additional information or expertise of assistance. In being granted permission to intervene – at least before the Administrative Court – the court will already have seen any evidence you intend to rely on and will have seen at least a summary of your legal representations. As long as you keep within the scope of that summary, it is unlikely that a court will exercise its powers to make an order for costs against you.
- Comply promptly with the procedural rules and relevant court practice directions.
- Avoid repeating arguments raised by the principal parties.
- Intervene within the parameters set by the court when granting permission. For example, stick to any restrictions on the length of submissions.
- Maintain good working relations with all parties' legal teams from the outset. This could be beneficial in the event you wish to make any public statements about the case, help you obtain documents to support your intervention, and avoid duplicating what has already been said whilst ensuring you are making relevant points.

If the main issue you intended to address loses its practical significance or falls away during the case, and your contributions will no longer be of significant benefit to the court, you should consider carefully if it is appropriate to proceed with your intervention.

Chapter 9

Key documents – legal submissions

So you have permission to intervene: what next?

A third-party intervention involves legal submissions, witness evidence, or a combination of both. This chapter is concerned with legal submissions, Chapter 10 discusses witness evidence in more depth.

Legal submissions are the legal arguments you want to make. **Written legal submissions** are a formal document prepared by your lawyers, setting out those legal arguments. The rules about the acceptable format and content of written legal submissions are quite complicated. It is therefore usually a good idea to instruct lawyers to produce this document for you.

Written legal submissions may be particularly important for interveners, because you may not have an opportunity for your lawyers to make oral submissions in court. Oral submissions are where your lawyer speaks to the judge directly in court. If you are allowed to make both written and oral legal submissions, your representatives will usually have much less time to make their oral submissions than the principal parties in the case.

If you are drafting or reviewing legal submissions, consider the following tips:

Keep it concise

Explain your case clearly but concisely. Don't argue every point. There are at least two other main parties in the dispute. They may be putting lots of documents before the court and making lots of different arguments. You do not want to annoy the judge by adding to their workload beyond what is reasonable for an intervener.

There is also no need to repeat points made by other parties that you agree with. You can just say that you agree. As an intervener, you should stick to your very best points and argue them succinctly. A focused, targeted intervention is almost always more effective than a scattergun approach.

Keep it to the law

Your organisation may have a real interest in seeing a particular reform reversed or a particular decision taken. You may have lots of avenues you can explore in efforts to achieve this, such as campaigning, advocacy, communications and influencing.

In doing this, you may have points in favour of your preferred outcome that go to 'non-legal' arguments. For example, you might make the moral, political or social case for a particular action.

However, these sorts of arguments are unlikely to be appropriate for or successful in a third-party court intervention, and so should generally not be included in your legal submissions.

A judge's job is to solve disputes about the law. It may therefore be held against you by the court if your legal argument strays into the social or political merits of a decision, as that is not for the court to decide. If the consequences of a particular decision or interpretation of the law are significant and you think the judge needs to know about it, that can be set out in your witness statement. Make sure your legal submissions are confined to the legal arguments.

Stay credible

There is a balance to be struck between being under-ambitious and over-ambitious with your legal submissions.

You want the judge to interpret the law in a particular way, and you should not be shy about pushing the boundaries of the law or using the law to effect the change you want to see.

But if you argue for an interpretation of the law that cannot reasonably be sustained, your submissions and evidence are more likely to be ignored by the court. Your lawyers will advise you regarding how far you can push a legal argument while still staying credible.

The above guidance also applies to any oral submissions made by your lawyers at the hearing itself, which they will already be familiar with.

Chapter 10

Key documents – supporting evidence including witness statements

As discussed above, in some cases like judicial review claims before the Administrative Court, you need to produce your evidence alongside your application to intervene.

Your evidence will typically include a witness statement from a leader in your organisation, with any further evidence (such as extracts from reports, studies or anything else you wish to bring to the Court's attention) appended to that statement.

Witness statements must follow a particular format.[85] The requirements are quite complicated. You should therefore always ask for your witness statement to be reviewed by your lawyers.

The following is not an exhaustive list, but make sure your witness statement:

1. Has an appropriate header (ask your lawyers).
2. Is written in numbered paragraphs.
3. Sets out your full name, occupation and address or place of work.
4. Sets out how the statement has been prepared (i.e. with the assistance of your lawyers or otherwise).
5. Is drawn from your own knowledge, information and/or belief, and identifies the source of your knowledge, information and/or belief.
6. 'Exhibits' (attaches) relevant documents you refer to.
7. Is accompanied by a signed statement of truth.

In terms of style, make sure your witness statement:

1. Is written in your own words (though make sure the language is sufficiently formal and neutral).
2. Is divided by subheadings.
3. Does not stray into opinion – stick to your or your organisation's specific experience of a topic.
4. Is not too long.
5. Does not use hyperlinks in the body or the footnotes. If you want a judge to read a document, you should exhibit it.

In terms of content, this is your opportunity to add value to the claim with your unique perspective and experience. What you say in your witness statement will depend on the nature of the claim, but it could include:

1. Technical (factual) information relevant to the claim.
2. Important explanatory information.
3. Information about the consequences or potential consequences of a particular interpretation of the law, such as the real-world impacts on particular groups, based on your organisation's knowledge or experience.

Where you assert a fact, you should support your witness statement by attaching proportionate evidence of that fact. However, avoid attaching lengthy documents or reports. Extracts will usually suffice.

Remember that you are writing a statement as a witness of fact. It is not an expert report or a legal submission. Therefore, your statement should be limited to factual matters within your or your organisation's knowledge and should avoid giving opinions. If you want to provide evidence on specialist or technical matters you should consider instructing an expert who can prepare a report that complies with Part 35 of the CPR. The rules around expert evidence are quite complex and it is important to make sure you do not inadvertently give expert evidence in witness statements. You should check with your legal team that you are complying with these rules.

Chapter 11
Preparing for the hearing

Interveners inevitably have little control over much of the proceedings they intervene in. The principal parties decide whether to litigate, what arguments to make, and whether to settle or withdraw the claim. It is therefore important to plan your intervention with the unexpected in mind.

The final hearing

Assuming everything goes to plan, there will be a final hearing in the case you are intervening in. If your intervention is limited to written submissions, your work is essentially done by this point. You are not required to attend court if you have only made written submissions, although you can attend as an observer if you would like to hear the principal parties' oral arguments and monitor any developments live.

If you are making oral submissions in the final hearing in addition to your written submissions, you should discuss with your legal representatives what needs to be covered in the limited time available, applying the guidance in Chapter 9 above.

It is completely normal for an intervener's oral submissions to be significantly more limited compared to the other parties' submissions. You should therefore keep your oral submissions as focused as possible.

What if the case settles or is withdrawn?

As an intervener, you cannot stop the case settling if the parties agree to this, nor can you prevent a party from withdrawing its claim.

If a party wishes to withdraw and you would like to apply to be substituted for them, this is possible in principle,[86] but comes with substantially greater resource burdens and costs risks.

An application to substitute parties is made using an N244 application form. It will be granted if the court concludes that it is "desirable to add the new party so that the court can resolve all matters in dispute in the proceedings" or if "there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue".[87]

MS (Pakistan) v Secretary of State for the Home Department[88] is an example in which the Equality and Human Rights Commission was granted permission to intervene and take over conduct of the appeal after the claimant, an individual, chose to withdraw their appeal. Even though the Supreme Court Rules do not expressly permit an intervener to "*stand in the shoes of an appellant*", the Court found that it could permit this.

If substituted for an existing party, the intervener will become responsible for running the claim and may well be faced with an order to pay costs if they are unsuccessful in their claim.

If the case settles and you do not want to step into the shoes of the party settling the claim, you will have to accept that this is the end of the proceedings and there is no ongoing platform for your intervention. Options at this stage would be:

1. Publishing your intervention so that it can assist and inform the public. There is generally no need to seek the court's permission to publish an intervention, although bear in mind the guidance on using other court documents in Chapter 6.[89]
2. Investigating whether there are other claims raising the same issue and applying to intervene in them.
3. Bringing a new claim, with your organisation acting as the claimant.

Generally, it will be best to apply to substitute for a claimant in the proceedings that are settling rather than bringing fresh proceedings, both in terms of costs and prospects of success. However, this will be a case-specific assessment, and the pros and cons will vary from case to case.

Case study from the Equality and Human Rights Commission (EHRC): Taking over conduct of the case

In *MS v Secretary of State for the Home Department*[90], the EHRC was granted permission initially to intervene in the appeal but then granted permission to take over conduct of the case due to unusual circumstances. The claimant, MS, was aged 16 when he was brought to the UK from Pakistan by his family. He said he was told this was for the purposes of his education, but what actually happened was that he worked in one job and then another under the control of the adults in his life, for a year and a half. The money he earned was taken by those adults.

MS came to the attention of the police, who referred him to social services, who referred him on to the National Referral Mechanism (NRM) which identifies and assists victims of trafficking, who then decided that he wasn't a victim of trafficking. He wasn't interviewed, and he didn't meet anyone from the NRM. He sought to judicially review this decision, and he also sought asylum.

The ensuing case was complex, including a judgment from the Upper Tribunal (UT) on whether the decision of the NRM was lawful, and a further appeal questioned whether the UT had the power to make that finding. Ultimately the case made its way to the Supreme Court, however, the claimant sought to withdraw the case when he managed to resolve his immigration status by other means. As the case raised significant points of public interest, the EHRC applied to take over conduct of the appeal. It was decided that the Supreme Court rules would allow the EHRC to do this, because they would allow any procedure compatible with the overriding objective, to ensure that the courts are accessible, fair and efficient. Ultimately it was held that tribunals were entitled to decide whether the National Referral Mechanism's decision was correct, as fact finding tribunals.

What do we do when judgment is handed down?

Judgments are either handed down orally at a hearing, or in writing after a hearing has concluded. The latter is called a 'reserved judgment'. Where judgment is reserved, it will be handed down by being published on a certain date or following a further hearing.

Where judgment is reserved, CPR Practice Direction 40E[91] provides that the court will normally provide a draft judgment at least two working days before the hand-down date. This is done to enable the parties and interveners to make suggestions to correct errors, prepare submissions on consequential issues such as permission to appeal or the terms of an order, and to prepare for publication of the judgment.[92]

Draft judgments are sent to the parties in strict confidence or sometimes even just to the parties' lawyers. Neither the draft judgment, sometimes referred to as an 'embargoed judgment', nor its contents can be disclosed to any other person or published. No action can be taken in response to the draft judgment before it is handed down.[93]

Your legal representatives are responsible for ensuring that all reasonable steps are taken to maintain the confidentiality of a draft judgment and for guiding you in this area.[94] It can be appropriate for a party to the litigation to prepare a press release that can be distributed to the press promptly after judgment is handed down, where this is not for self-promotion but as part of your organisation's work.[95]

After the judgment has been received, if you are in any doubt as to whom copies of the draft judgment can be provided, you can enquire with the court.[96] There have been a number of recent cases in which the parties did not strictly observe the terms of the embargo, and the courts have made clear that these breaches will be taken very seriously. A failure to comply with these rules can be treated as contempt of court.

What if the case goes the wrong way?

All litigation is unpredictable. However good your submissions, the court may decide against the arguments supported by your intervention.

It is possible for an unsuccessful party to seek permission to appeal. Interveners cannot do this unless they are substituted or added as a party to the proceedings. However, there is no obstacle to you contacting the unsuccessful party and enquiring whether they will be seeking permission to appeal.

You can also make submissions in support of an application for permission to appeal. This is unusual, though, and you should only do so if you think you have something significant to add.

You can also consider options 1, 2 or 3 in the '*What if the case settles or is withdrawn?*' section above. However, option 3 would be particularly risky if a claim on the same point has just failed. It would be very unusual for a new claim on the same point to be successful and you could be accused of abusing the court's processes unless you had a good reason for bringing new proceedings. Abuse of the court's process can lead to various sanctions, including refusal of permission and adverse costs orders.

Other things that could go wrong during proceedings

The case might also go wrong because the parties change their arguments or approach so your intervention becomes less relevant or is contradicted by the parties' new arguments. This is not fatal. Your role is to assist the court with evidence and argument.

You can make your own arguments provided that they are relevant to the matters before the court. You can invite the court to consider legal issues which the parties are not advancing. However, be mindful of the risk of ending up *de facto* acting as a claimant, addressed above in Chapters 5 and 8.

It is normal that at least one party will criticise your submissions. The court may grant you an opportunity to reply, either in writing or by way of oral submissions. Do not be put off if this happens. It is completely normal that at least one party will disagree with your approach and tell the court that you are wrong!

What if you are criticised by the court?

This is a risk in any intervention. You can minimise the risks of criticism by ensuring that your evidence and submissions are as relevant, clear, and well-supported as possible. Your role is to assist the court, and that is what your submissions should do. Unfocused, overly long, or poor-quality interventions will likely be criticised.

It is unusual for courts to be highly critical of interveners. Judges rarely express themselves aggressively and it would be improper for them to do so. Most criticism of interventions is limited to an explanation as to why their submissions were not helpful or did not change the judge's mind. Criticism like this may simply be something to learn from.

However, it may be possible to address any criticisms if the decision is appealed. You can apply to intervene in the higher court and include amended submissions which address any points raised against your initial intervention. Your organisation can also comment publicly on a judgment once it is handed down, and you are entitled to explain why you disagree with any criticism of you.

What if it all goes well?

Great news! You've got everything you hoped for out of your intervention. How can you best make use of it? Of course, you will likely want to publicise the outcome and your contribution to it (see Chapter 6 for tips on how best to do this and Appendix 5 on a communications strategy for interveners). It may also be possible, in very rare cases, to use this as a basis for seeking your costs of the intervention, unless you have agreed to intervene on a costs-neutral basis (see Chapter 8).

Your organisation should have identified the benefits of intervening before applying to intervene. You will be best placed to identify and communicate the significance of a positive outcome to your organisation and the individuals or groups with whom you work.

You may want to think about the practical impact of a judgment. The successful party to a claim may only be interested in getting an order that benefits their client. Can you identify and support any wider groups to benefit from the judgment? Can you publicise any new rights or opportunities that are open to the people you work with as a result of the judgment?

Case study from the3million: Implementing judgments

In December 2022, the High Court handed down an important judgment regarding the Government's EU Settlement Scheme, which was the immigration scheme established for EEA nationals and family members who had been living in the UK in reliance on their EU free movement rights before the end of the transition period after Brexit.[97]

The judicial review claim was brought by the Independent Monitoring Authority for the Citizens' Rights Agreement (the IMA), an entity set up to monitor the UK government's implementation of the EU-UK Withdrawal Agreement, as it related to the rights of EU citizens and family members. The High Court ruled in favour of the IMA, finding that certain aspects of the scheme were contrary to the Withdrawal Agreement.

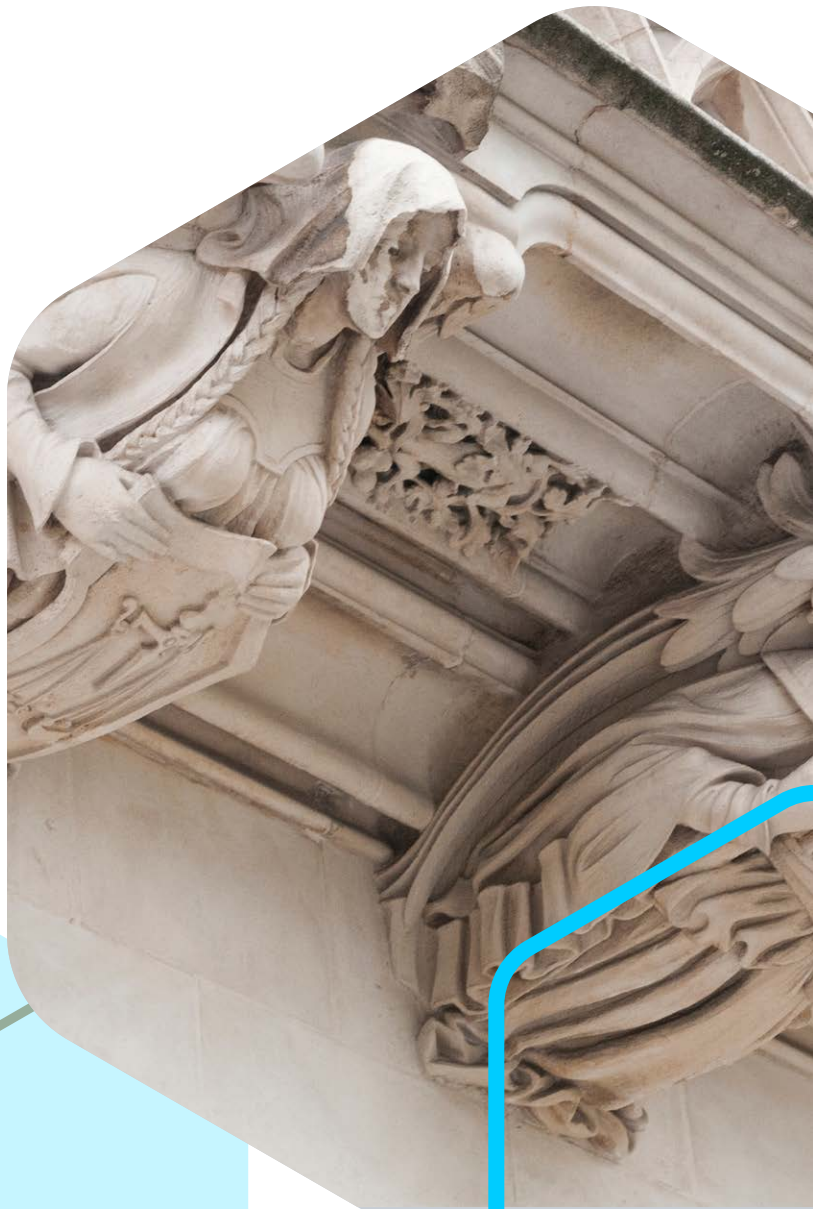
the3million, a grassroots organisation for EU citizens in the UK formed after the 2016 EU Exit Referendum, had been critical of the elements of the scheme the High Court agreed were unlawful, and intervened in the claim. While the judgment became final in February 2023, after the Secretary of State confirmed there would be no appeal,[98] the Home Office's efforts to implement the judgment have taken a number of years and are ongoing.

the3million has taken active steps to monitor and influence measures adopted to implement the judgment. This has included communicating directly and through stakeholder groups with the Home Office and the IMA about issues it has identified that need to be rectified as part of implementing the judgment, working with partner organisations and individuals directly affected by the unlawful elements of the scheme to propose solutions, campaigning publicly regarding its concerns. It also engaged in pre-action correspondence with the Secretary of State in September 2023 due to serious concerns it had about the initial implementation measures the Home Office announced in July 2023.

This example shows that interveners have an important and ongoing role in ensuring that judgments are implemented properly.

Appendix 1

A step-by-step guide to interventions in the Administrative Court



Below is a broad overview of the common path of an intervention in judicial review proceedings, principally focused on the Administrative Court. However, it should be borne in mind that the procedure is often amended by the Court to suit the particular case at hand. Interveners should always speak to their legal advisers to understand the procedure that will be followed in their case.

Intervener identifies potential case to intervene in and engages solicitors if not already engaged.

→ Internal decision-making process as to whether to intervene, including obtaining necessary approvals.

If your organisation decides not to intervene they may decide:
– Not to proceed with any court-based activity
– To provide a witness statement for one of the parties to file
– To potentially intervene at another stage (if there is an appeal)
– In very unusual circumstances, to decide to attempt to proceed as a claimant

Intervener decides to intervene and the form of intervention, including whether to file evidence and whether to seek permission to make oral submissions.

↓

Intervener drafts the application to intervene including the reasons, the desired form of the intervention, summary of intended submissions and request for the court to make an order on costs.

↓

Intervener requests consent to its proposed intervention from the parties to the case (enclosing, in some cases, a draft of the application and summary of the submissions)

↓

Intervener files its application to intervene with the court, along with the summary of the submissions and any evidence, and serves it on the other parties.

↓

The court considers the application to intervene, usually on the papers. If successful, it will make an Order setting out the permitted form of intervention and the relevant deadlines.

→ Intervener files its written submissions and any evidence with the court and serves them on the other parties.

↓

In the run-up to the hearing, the parties will need to agree a number of things, likely including:

– A bundle of the documents that each party intends to rely on in the hearing. This should include the intervener's submissions and any evidence filed.
– A bundle of the legal authorities each party intends to rely on in the hearing including anything to draw to the judge's attention.
– In judicial review proceedings in the Administrative Court, an agreed chronology, list of issues for the judge and list of essential reading.

Usually, the parties will also attempt to agree a timetable for the hearing.

↓

The court hears the case.

↓

If permission has been granted to make oral submissions, generally a barrister will make these on behalf of the intervener at the hearing.

↓

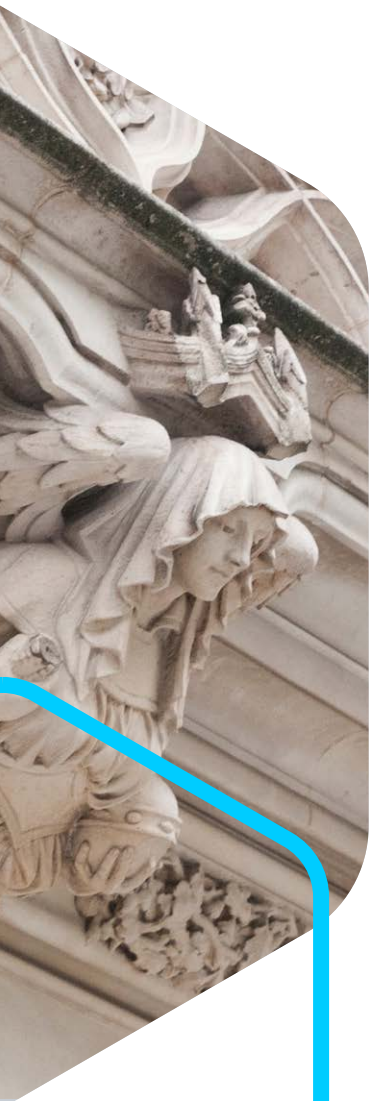
If oral submissions have not been granted, the intervener may nonetheless attend the hearing but may not participate in it. Usually, the court will reserve its judgment to be handed down at a later date.

↓

The court sends a draft of the judgment, subject to a strict embargo. The parties attempt to agree the terms of an order or make submissions consequential on the judgment.

↓

The court formally hands down judgment in the case. The considerations at this point will include:
– your communications strategy
– whether there will be an appeal



Appendix 2

An intervention case study from Black Equity Organisation (BEO)

BEO intervention in *R (Donald) v Secretary of State for the Home Department*[99]

Introduction

BEO is a national Black civil rights organisation created to dismantle systemic racism in Britain, drive generational change and deliver better lived experiences for Black people across the UK.

BEO intervened in support of a Windrush Survivor who brought a judicial review claim challenging the decision of the Home Secretary, Suella Braverman, not to follow a previous promise to implement all the recommendations of Wendy Williams, which had come from her *Windrush Lessons Learned Review*.

Identifying the case

BEO had been closely following the Home Office's implementation of Wendy Williams' recommendations and was extremely concerned by the announcement that the Home Secretary was going back on previous commitments. BEO sought to engage directly with the Home Office in relation to this decision, and did its own investigation (including submitting a FOIA request) to try to understand more about the decision. BEO worked with 38 Degrees to run a petition, it gathered over 53,000 signatures and was delivered to 10 Downing Street on 6 April 2023. BEO instructed Public Law Project and a specialist barrister team to advise it on whether it could challenge the decision by judicial review itself and sent a pre-action letter to the Home Secretary, threatening proceedings. BEO subsequently became aware that Mr Donald had instructed a law firm to represent him in a challenge to the same decision. BEO also became aware that a union had sent a pre action protocol letter, and subsequent to a discussion, decided not to jointly intervene with them as BEO's intervention had a different focus.

Decision to intervene

BEO took steps to learn as much as it could about Mr Donald's proposed claim and whether it would be better for it to bring the claim itself or to intervene in Mr Donald's claim. Weighing up all the relevant factors (including costs risks and potential standing issues with an NGO bringing a discrimination claim like this), BEO decided that it made most sense for its involvement to be as an intervener. BEO obtained internal approvals and instructed its legal team to act for it as a proposed intervener. BEO had strong links with individuals who had been affected by the Windrush Scandal. They were individuals who were recognised nationally and were able to speak with authority on the impact of the issues. BEO decided that by using their research evidence and the voices of those impacted, intervening would strengthen the information before the Court.

Costs decision and deciding about being a claimant or intervening or running a case at all

The costs risks and financial outlay played a part in BEO's decision to intervene. Judicial review claims are not cheap, and so intervening was attractive because interveners (as long as they act properly) are less likely to be subject to adverse costs awards if a claim is unsuccessful.

Intervening is also less resource intensive than bringing a claim in an organisation's own name.

Organisations need to think about how they cover court fees and any of their own legal costs, and BEO explored crowdfunding, whether general donations could be used or whether any form of insurance could be relevant. At the end of the day legal costs can be as important as considering the merits for smaller organisations in deciding to intervene. BEO entered into a fixed fee agreement with its legal team. It was very important to BEO that it had clarity on what its legal costs would be, as any unanticipated costs risked creating further issues.

Notifying the parties and the court of intention to apply for permission to intervene

BEO wrote to the parties to inform them that it intended to apply for permission to intervene in the claim. In this letter, BEO:

- Told the parties it intended to rely on evidence and would also ask the court for permission to make oral and written submissions.
- Proposed a timetable for dealing with its application, which it intended to make before the Court had made a decision on whether to grant Mr Donald permission to bring his claim.
- Asked the parties to confirm whether they had any objections to its proposed intervention.
- Asked the parties to agree that they would not seek a costs order against BEO. In return, BEO would agree not to seek its costs against any other party.

BEO also wrote to the Court at the same time, so the Court was aware of its intention to seek permission to intervene and its proposal for doing so.

BEO's application for permission to intervention

As agreed with the other parties, BEO filed an application for permission to intervene within 10 days of the Home Secretary's amended summary grounds of defence. The permission to intervene bundle included:

- An application notice (on court form N244) and the draft order that BEO wanted the Court to make, granting it permission to intervene;
- Written submissions explaining the legal arguments that BEO wished to make as part of the proceedings;
- Witness statements from BEO's Chief Executive and three Windrush activists; and
- An expert report of Frances Webber, a trustee and former Vice-Chair of the Institute of Race Relations, addressing the legal, historical and social context of the decision taken by Suella Braverman and the impact on Windrush survivors.

BEO was granted permission to intervene by the judge in the same order that granted Mr Donald permission to bring his judicial review proceedings. BEO was granted permission to rely on the evidence it had filed. The judge also gave BEO permission to file further written submissions and make oral submissions of 45 minutes at the hearing.

Preparing for the hearing

BEO filed its detailed written arguments (called a skeleton argument) in advance of the hearing in advance of the hearing, explaining its position on the claim to the judge in writing. As BEO's barrister would only have limited time to make oral submissions to the judge, it was very important that its skeleton contained all BEO's detailed legal arguments.

BEO's legal team also liaised with the other parties' legal teams to agree what materials the judge would need to consider at the hearing.

Attending the hearing

BEO and its legal team attended the one-and-a-half day hearing of the claim at the Royal Courts of Justice in London. BEO's barrister made oral submissions on behalf of BEO, focusing on discrimination arguments, which were the arguments that BEO as an organisation was most interested in and had most expertise in.

Judgment

The judge allowed Mr Donald's judicial review claim, agreeing that the Secretary of State for the Home Department had acted unlawfully in deciding not to implement two of the three recommendations that had been the subject of the challenge. Importantly for BEO, the judge agreed that the decision was unlawful because it discriminated against Windrush victims. Discrimination had been the focus of BEO's submissions and evidence. The judge also referred specifically to BEO's written and oral submissions, witness statements and expert report in her judgment.

Post-judgment work

BEO's communications team used its media contacts to help get publicity for this important judgment, working with Mr Donald's legal team to agree a strategy and making sure the key elements of the judgment were properly understood as part of this reporting. The judgment was covered in a number of different media outlets, including the Independent and Sky News.

Although the litigation is over the campaigning and advocacy work continues. BEO recognises that the legal claim was just one part of the overall challenge.

BEO continues to work with Mr Donald's legal team to press for change. BEO is also working with other racial justice organisations on a range of Windrush Scandal issues. The successful judicial review is a useful backdrop and foundation to that ongoing work.

Appendix 3

Interventions in the European Court of Human Rights

The European Court of Human Rights ("ECtHR") in Strasbourg hears appeals against final decisions made by UK courts on human rights matters. It is possible for third parties to intervene in cases before the ECtHR and this often happens in cases of wider public importance. For instance, in the recent *Verein KlimaSeniorinnen Schweiz & Ors v Switzerland* case (App. no. 53600/20) several European Governments, the UN High Commissioner for Human Rights, and multiple charities including ClientEarth, intervened.

Article 36(2) of the European Convention on Human Rights (ECHR) permits any State which is not a party to the proceedings and any person concerned who is not the applicant to intervene in matters before the ECtHR. Rule 44 of the Rules of the Court concerns third party interventions. The Court has issued a Practice Direction on third party interventions which anyone considering intervening should read. Applications to intervene must be made within 12 weeks of the Court publishing a notice stating that an application has been given to the respondent State (often referred to as 'communicating the case') or within 12 weeks of a Chamber transferring the case to the Grand Chamber, although this time limit can exceptionally be extended. You can check the status of an application on the Court's HUDOC website.

You must first apply for permission to intervene. The requirements that the application must meet are set out in the Practice Directions. Your request must be short and not normally more than two pages long. It should cover the details of the case in which you seek to intervene, the reasons for the intervention, your expertise, and the reasons why you should be permitted to intervene. You should also specify whether you wish to intervene in writing and/or orally.

When granted permission, interventions in the ECtHR are usually in writing, with oral submissions permitted only in exceptional circumstances (under Rule 44(3) of the Rules of the Court). The Practice Direction sets out in detail what the intervention should cover but written interventions will likely be closely similar in form and content to submissions made in domestic courts, although they are limited to ten pages and there are restrictive rules on formatting.

At the time of writing, applications are made by writing to the ECtHR Registry and must be sent by fax and registered post (three hard copies must be sent). Check on the court's website or with the court directly as to the correct fax number and postal address.

Appendix 4

Publicly available sources for pending court cases

Upper Tribunal/Administrative Court

At the moment, there is no publicly accessible database where you can find out about all judicial review claims that have been issued or that have been granted permission to proceed in the Upper Tribunal or Administrative Court. The Administrative Court introduced a CE-filing pilot in autumn 2024. If you have a CE-filing account, there is a public search function, which allows you to find out about all judicial review claims that have been issued or that have been granted permission to proceed in the Administrative Court where the claimant elected to use CE-file. However, you will only have access to those cases which have been filed electronically and as this is not yet a mandatory requirement, it will not yet be a complete database of cases.

Note that in the Upper Tribunal (Immigration and Asylum Chamber), using CE-file when issuing claims for judicial review or filing documents is a mandatory requirement for parties who are legally represented, save for very urgent cases (where emailing is still a permitted alternative). However, this only became mandatory on 1 September 2023, so will also not yet contain a complete database of claims.

You can set up a CE-file account here[100] - the link includes guidance on how to do so.

Court of Appeal

There is a Case Tracker website[101] which allows users to search for information on applications or appeals in the Civil Division of the Court of Appeal. However, you need to know either the case number or title of the case to search it. It is not a database that will allow you to learn about all appeals that might be relevant to your organisation's area of expertise. There is a civil appeals case tracker accessible through the Government's Justice website, which allows users to search for information ' on applications or appeals in the Court of Appeal, Civil Division.

Supreme Court

The Supreme Court website lists all current cases, now including where permission to appeal applications have been lodged but not yet decided. Generally where permission to appeal has been granted, there will be a summary of the case and its key issues. These appear in the general case list plus the list of monthly 'permission to appeal' decisions. Depending on the status of the case, and what has been published, this website may give you some information about appeals relevant to your organisation's area of expertise, if you don't already know about them.

Liberty's tips on how to request copies of court documents

1. Complete the Office Copy Request form[102] to make your request for copies of court document(s).[103]

   This is available from the case progression e-mail below, though we would advise always writing to both generaloffice@administrativecourtoffice.justice.gov.uk and administrativecourtoffice.caseprogression@justice.gov.uk email addresses to obtain any documentation or a response from the court office, and follow this up with a call to the Administrative Court Office number, which is 020 7947 6655.

2. Email the Administrative Court Office Case Progression Team with your request and attach the Office Copy Request form. Their email address is administrativecourtoffice.caseprogression@justice.gov.uk.

3. The Case Progression Team will review your request and if conditions are met, the fee will be confirmed.[104]

4. You then email generaloffice@administrativecourtoffice.justice.gov.uk with your Office Copy Request form and evidence of approval (from the Case Progression Team) of the request, and ask them to deduct the specified fee if you are using PBA. Alternatively, the Administrative Court Office also has guidance on other ways to pay the fee. Alternatively, the Administrative Court Office has guidance on other ways to pay the specified fee which can be found online in "The Administrative Court Judicial Review Guide 2024" (from page 226) here.

5. Once payment has been made, then email administrativecourtoffice.caseprogression@justice.gov.uk with evidence of this and request for the copy document(s) to be provided (specifying the email addresses you would like them to be sent to if preferred).

It's worth noting there is guidance for the media to obtain court documents:
Jurisdictional guidance to support media access to courts and tribunals:
Civil courts guide (accessible version) - GOV.UK[105]

The phone number and email addresses provided are correct at the time of publication, but it is important to check that they have not been updated before relying on them.

Appendix 5

Communications strategy for interveners

No two interventions or legal proceedings are the same. Communications need to be handled according to the very specific circumstances of each situation. Below are examples of how and when a communications team in an NGO might approach communicating about their intervention if your intervention is one which supports the claimant's case.

Key dates	Type of communication audience and purpose?	Considerations
Your organisation decides it is going to apply for permission to intervene in a case.	You may want to tell your supporters as part of your regular communications with them, through a mailing list or social media. You may want to fundraise off the back of this. It is unlikely that this will have media news value. If seeking media coverage, it may be better to wait until you have permission to intervene before communicating more widely than with your core supporters.	Before communicating anything to anyone outside your organisation, **check with the claimant(s) in the case**. You will want to ensure that your potential intervention is welcomed by them, if possible, and that it will not draw a negative or surprised reaction. You should also speak to your lawyers about any confidentiality considerations – see Chapter 6.

Key dates	Type of communication audience and purpose?	Considerations
The court grants your organisation permission to intervene.	You may wish to communicate this to your core supporters. You might also share it as part of telling your organisational story and to demonstrate your organisation's potential impact. If the case has already attracted media interest, your intervention could well attract further coverage depending on the profile of your organisation and the impact you want to make. If you are seeking to gain media coverage, put your intervention on the radar of any key media or journalists by sending them notice or an email to let them know about your successful application. This will allow them to report on what you're adding to the case, particularly if you can explain legal arguments and key documents – but check with your legal team first!	If thinking about communicating widely, **check in with the claimants in the case**. You should not compromise their communications plans or cause any disruption or difficulty for them. The claimants may or may not want coverage at this point, and if so, their wishes should probably be respected. Subject to the above: If you're sending a press release, consider offering the claimants the opportunity to include a short quote. You may want to share key legal documents such as the intervention papers themselves or a witness statement if that was part of your intervention. At the very least, it would be advisable to share what your legal arguments are. Doing this means journalists will be better able to follow what is going on in court and provide accurate reporting. In addition to checking in with the claimants in the case, it is vital that you follow the advice of your lawyers as to what information and documents they think it is appropriate to share. They should sign off on your comms and determine that the comms will not diminish how well the court receives your intervention.
The day of the judicial review hearing.	If the case you're intervening in is of media interest, this is where a lot of attention will be focused. Subject to checking with your lawyers on the information that you can share and your strategy in approaching the intervention, you may have already briefed key journalists and they should be aware of your legal arguments. You may find some journalists attend court, in which case you can connect with them there and make sure they have a copy of your briefing or press release. If you're doing comms on social media, you may want to post updates throughout the hearing. Be sure to abide by court rules on reporting and check in with your lawyers on all comms. At all times, remember that your duty is to the court.	You may receive the judgment on the same day, although it is more likely that it will be reserved until later. You might prefer to publicise your role only after judgment has been handed down, particularly if the result is favourable to your objectives. Depending on the nature of the case and the interest levels, the hearing may be covered by media, but some media may only be interested in covering the judgment when it is handed down.

Key dates	Type of communication audience and purpose?	Considerations
Judgment is handed down.	This is the good bit, particularly if the claimant wins and the judgment indicates that your intervention has been helpful in arriving at that outcome. You can send out a press release, use social media and other channels as you wish, as long as it is agreed with your lawyers, the claimants are comfortable with what you're saying, and you respect any court embargoes. It is a good idea to work with your lawyers to identify the points in the judgment which indicate where your intervention was useful to the court in reaching its judgment.	If media are covering the judgment, remember that the stars of the show are the claimant and the people they represent. Ensure the messaging in your comms commends or congratulates the claimants if they were successful, putting them first and acknowledging that you have played a supporting role is a good approach to take. Work with the claimant and see if you can put a short quote or paragraph into their press release, rather than sending out your own statement. As well as being more efficient, it also avoids the potential pitfall associated with sending out your own press release, that you may appear to be claiming more credit than the claimant. Of course, you may still want to have your own statement for your website and for social media.

Glossary

Administrative Court – a specialist division of the High Court which hears claims for judicial review. The Planning Court is a branch of the Administrative Court, dealing with planning and environmental challenges.

Administrative Court Guide – the rules applying specifically to judicial review claims before the Administrative Court, available online here. Parties must also still comply with the relevant sections of the CPR. Note that the Administrative Court Guide is updated periodically so make sure to check you are using the latest version.

Appeal – where one party asks a higher court to overturn the judgment of a lower court. In the UK, appeals require the court's permission and will only be granted where the case raises important legal or public interest issues.

Appellant – the party seeking to overturn a lower court's judgment on appeal.

Civil Procedure Rules (CPR) – the rules governing court procedures for civil claims brought in England and Wales available online here. There are specific rules on judicial review claims (see Part 54) and appeals (see Part 52). Note that, in addition to the CPR, some courts (e.g. the Supreme Court) have their own additional rules that must also be complied with and that tribunals are governed by their own separate set of procedural rules.

Claimant (also known as the "**applicant**" in judicial review claims in the Upper Tribunal) – the party bringing the claim or judicial review.

Court of Appeal – the court which hears appeals of decisions by the Administrative Court or the Upper Tribunal.

Defendant – the party which the claimant has brought a claim against. In a judicial review, the defendant must be a party exercising a public function.

Disclosure – the process where the principal parties provide each other with documents which are relevant to the case. "Documents" can encompass any relevant material, including, for example, audio recordings, WhatsApp messages and photographs.

European Court of Human Rights (or "**ECtHR**") – a court in Strasbourg with jurisdiction to hear human rights cases once all UK appeal routes have been exhausted. See Appendix 3 for an overview of this process.

Expert evidence – a report prepared by an expert on specialist or technical matters outside the court's expertise (e.g. on medical matters or the law of a non-UK country). Parties cannot rely on expert evidence without permission from the court, so you should discuss with your lawyers whether an expert report may be needed. Different parties will often instruct experts with competing views – it is then up to the court to decide which expert's opinion it finds more convincing.

Interested Party – a party that is directly affected by the outcome of the case (even though it is not the claimant or defendant). In judicial review claims, interested parties have a right to participate in the proceedings, including by making legal submissions.

Intervener – a person or organisation not directly involved in a legal case who has received permission from the court to submit specialist information or expertise to the court to help the court make a more informed decision.

Judicial review – the process by which a judge reviews whether a decision made, action taken or not taken by a UK public body was lawful or not. You can find more information in PLP's detailed Introduction to Judicial Review guide, available on the PLP website.

Legal submissions – Legal arguments made by a party's lawyers to a judge. These can be written (provided to the court to read) or oral (a lawyer speaks to the judge directly in court). Principal parties will usually make both written and oral submissions. Interveners need permission to make either and in many cases may just be permitted to make written submissions.

Respondent – the party responding to the appeal brought by the other party (the "appellant").

Supreme Court – The final court of appeal in the UK, which usually hears appeals of decisions by the Court of Appeal. The Supreme Court was only created in 2009 and prior to this date the final court of appeal in the UK was the House of Lords.

Supreme Court Rules – the rules applying specifically to appeals before the Supreme Court, available online here. Parties must also still comply with the relevant sections of the CPR. Note that the Supreme Court Rules are updated periodically so make sure to check you are using the latest version.

Upper Tribunal – a court with jurisdiction to deal with judicial review in areas such as immigration and asylum cases.

Witness evidence – a statement (or statements) given by a witness on behalf of a party to the case. Witness statements should discuss facts, not make legal arguments, so should be given by someone with direct knowledge of facts that are relevant to the case. Witness evidence should also not provide opinions on the issues in dispute – only experts permitted by the court can provide "opinion" evidence.

References

Chapter 1 - What is an intervention?

1. From Alex Rook (then at Irwin Mitchell, now at Rook Irwin Sweeney) and Steven Broach (then of Monckton Chambers, now at 39 Essex Chambers).
2. It is a matter of some debate whether there may be any cases in the civil courts (as opposed to criminal courts) in which it would be impossible for the court to hear an intervention. For the purposes of this guide, we have focused on interventions in the courts set out in this chapter, being those most likely to be of interest. However, if you are interested in intervening in a different type of case, you should reach out to lawyers to see whether it may be possible.
3. For shorthand in this guide, we generally refer to the defendant in judicial review proceedings as a public body but recognise that judicial review can also be used to challenge a private body exercising public law powers.
4. See https://publiclawproject.org.uk/resources/an-introduction-to-judicial-review-2/.
5. CPR Rule 52.25.
6. CPR Rule 3.1.
7. [2024] EWHC 299.

Chapter 2 - The importance of interventions

8. [1996] 3 W.L.R. 162.
9. *R (AAA and Ors) v Secretary of State for the Home Department [2023]* UKSC 42.
10. [2008] UKHL 66.
11. [2010] EWHC 1554 (Admin).
12. See https://policyexchange.org.uk/wp-content/uploads/2022/12/How-and-Why-to-Constrain-Interveners-and-Depoliticise-Our-Courts.pdf.
13. The ad hoc research undertaken by PLP to attain this figure is detailed here, along with links to all the judgments that had interveners that PLP could find: https://publiclawproject.org.uk/content/uploads/2024/12/Interventions-in-JRs.docx.
14. See, for example, *Cadder v HM Advocate* [2010] UKSC 43 at [47].
15. App No. 32483/19.

Chapter 3 - Who can intervene?

16. *Donald, R. (On the Application Of) v Secretary of State for the Home Department* [2024] EWHC 1492 (Admin) (19 June 2024) is an example where the speaker of the House of Commons was invited to intervene.
17. *RR v Secretary of State for Work and Pensions* [2019] UKSC 52.
18. *R (Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42.
19. *R (Das) v Secretary of State for the Home Department* [2014] EWCA Civ 45.
20. *R (Finch) v Surrey County Council* [2024] UKSC 20.
21. Appealing *R (Rights: Community: Action Ltd) v Secretary of State for Levelling Up, Housing and Communities* (no 2) [2024] EWHC 1693 (Admin).
22. Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zone) (Northern Ireland Bill) [2022] UKSC 32.
23. *A (FC) v Secretary of State for the Home Department* [2005] UKHL 71.

Chapter 4 - Identifying cases to intervene in

24. See https://www.nrpfnetwork.org.uk/.
25. See https://neweuropeans.uk/alliance/.
26. See https://ilpa.org.uk/.
27. See https://groups.google.com/g/Refugee-Legal-Group-UK/about?pli=1.
28. See https://the3million.org.uk/publication/2021020401 and see *R (Independent Monitoring Authority for the Citizens' Rights Agreements) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin).

Chapter 5 - Is intervening the right thing to do?

29. See https://www.gov.uk/government/publications/charities-and-litigation-a-guide-for-trustees-cc38/charities-and-litigation-a-guide-for-trustees#taking-or-defending-legal-action--the-general-position-for-charities.
30. In the past, the UK Supreme Court was more flexible about allowing interveners to introduce new evidence. Note that there are specific restrictions on interveners adducing new evidence under Practice Direction 4.54 of the Supreme Court Rules and interveners cannot challenge findings of fact.
31. See CPR Practice Direction 54A, paragraph 13.
32. See *R (on the application of Rights Community Action Ltd) v Secretary of State for Levelling Up, Housing and Communities and Ors* [2024] EWHC 359 (Admin).
33. See *R (Friends of the Earth, Kevin Jordan and Douglas Paulley) v Secretary of State for Environment, Food and Rural Affairs* [2024] EWHC 2707 (Admin). In this case Friends of the Earth challenged the government's National Adaptiation Plan as a claimant alongside two individuals affected by climate change.
34. An interested party is defined in the Civil Procedure Rules as "any person (other than the claimant and defendant) who is directly affected by the claim" (CPR 54.1).
35. *RR v Secretary of State for Work and Pensions* [2019] UKSC 52.
36. See CPR Practice Direction 54A, paragraph 13.4(1).

Chapter 6 - Practical considerations for interveners

37. See https://strategiclegalfund.org.uk/.
38. See https://www.lawforchange.uk/.
39. See https://digitalfreedomfund.org/.
40. The claim was ultimately successful and can be found at *R (Friends of the Earth and Ors) v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin).

Chapter 7 - Procedures governing intervention applications

41. Applicable rules for First Tier Tribunals: War Pensions and Armed Forces Compensation (see https://assets.publishing.service.gov.uk/media/663ca103cf3b5081b14f3345/consolidated_FtT_War_Pensions_Rule.pdf) Social Entitlement (see https://assets.publishing.service.gov.uk/media/663ca0a474933dccbbb6c486/consolidated_FTT_SEC_Rules.pdf); Health, Education and Social Care (see https://assets.publishing.service.gov.uk/media/663c9fa81c82a7597d4f333e/consolidated-FtT-HESCC-Rules.pdf); General Regulatory (see https://assets.publishing.service.gov.uk/media/663c9efb8603389a07a6d2f3/consolidated-FtT-GRC-Rules.pdf); Tax (see https://www.judiciary.uk/wp-content/uploads/2023/02/Consolidated-FtT-Tax-Chamber-Rules_2011.11.01.pdf); Immigration and Asylum (see https://assets.publishing.service.gov.uk/media/663c9ff64d8bb7378fb6c446/consolidated_FtT_IAC_Rules.pdf); Property (see https://assets.publishing.service.gov.uk/media/663ca046cf3b5081b14f3342/consolidated_FTT_PC_Rules.pdf).).
42. The Tribunal Procedure (Upper Tribunal) Rules 2008, Rule 33 (see https://assets.publishing.service.gov.uk/media/666afaa7673d4d30f3372dc7/consolidated-ut-rules-2024-6-13.pdf). The Upper Tribunal Lands Chamber has separate rules, however it is unusual for interveners to appear in these cases.
43. As seen in *Independent Monitoring Authority v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin) where the court allowed the3million to intervene despite the protestations of the Secretary of State but confined the intervention to written submissions only.
44. CPR Rule 19.4(2).
45. CPR Rule 54.17.
46. Administrative Court Judicial Review Guide 2024 (here), section 3.2.4.
47. CPR Practice Direction 54A paragraph 13.4(2) and Administrative Court Judicial Review Guide 2024, paragraph 3.2.4.3).
48. Please refer to Chapter 10 of this guide for further information regarding witness statements.
49. CPR Practice Direction 54A paragraph 13.4(3) and Administrative Court Judicial Review Guide 2024, paragraph 3.2.4.4.
50. CPR Practice Direction 54A paragraph 13.5 and Administrative Court Judicial Review Guide 2024, paragraph 3.2.4.5.
51. The Supreme Court Rules 2024 (see https://www.legislation.gov.uk/uksi/2024/949/contents/made).
52. See https://supremecourt.uk/how-to-appeal/practice-direction.
53. Supreme Court Rules, Rule 16(1).
54. Supreme Court Practice Direction P, paragraph P.67.
55. Supreme Court Practice Direction 3, paragraph 3.42. Submissions should also be in size 12 font and 1.5 line spacing and have margins of at least 2.54cm top, bottom right, and left.
56. Supreme Court Rules, Rule 16(2).
57. Supreme Court Practice Direction 4, paragraph 4.45.
58. Supreme Court Rules, Rule 24.
59. Supreme Court Practice Direction 4, paragraph 4.49.
60. Supreme Court Practice Direction 4, paragraph 4.47.
61. Supreme Court Practice Direction 4, paragraph 4.51.
62. Supreme Court Practice Direction 4, paragraph 4.47.
63. Supreme Court Practice Direction 4, Paragraph 4.46.
64. Supreme Court Practice Direction 4, paragraph 4.46 and Supreme Court Practice Direction 4, paragraph 4.47.
65. Supreme Court Practice Direction 4, paragraph 4.49.
66. Supreme Court Practice Direction 4, paragraph 4.47.
67. Supreme Court Rules, Rule 52. See: https://supremecourt.uk/how-to-appeal/fees.
68. Supreme Court Fees Order 2024, Schedule 1.
69. Supreme Court Practice Direction 2, paragraph 2.26. See also Supreme Court Fees Order 2024, Schedule 2, paragraph 16 (remission for charitable or not-for-profit organisations).
70. See https://supremecourt.uk/how-to-appeal/court-forms#help-with-fees.
71. Supreme Court Practice Direction P, paragraph P.51.
72. Supreme Court Practice Direction 4, paragraph 4.48.
73. Supreme Court Rules, Rule 24(3).
74. Supreme Court Rules, Rule 24(3).
75. Supreme Court Practice Direction 4, paragraph 4.53.
76. Supreme Court Practice Direction 4, paragraph 4.53.
77. Supreme Court Practice Direction 4, paragraph 4.54.

Chapter 8 - What you need to know about costs when deciding to intervene

78. Section 87(4) of the Criminal Justice and Courts Act 2015 (the CJCA 2015).
79. CPR Rule 46.15.
80. Sections 87(5)-(6) CJCA 2015.
81. [2009] EWCA Civ 681.
82. Supreme Court Practice Direction 4, paragraph 4.55.
83. [2006] UKHL 52.
84. CPR Practice Direction 54A, Rule 13.5.

Chapter 10 - Key documents – supporting evidence including witness statements

85. CPR Rule 32 and Practice Direction 32.

Chapter 11 - Preparing for the hearing

86. There are some claims which an organisation or charity may not be able to bring, for instance claims under the Human Rights Act 1998, which requires claimants to have victim status, i.e. to be a directly affected individual: see s. 7 HRA 1998. The Court must be persuaded that you as intervener have standing, which requires careful case-by-case assessment.
87. See CPR Rule 19.2(2).
88. [2020] 1 WLR 1373.
89. There are exceptions to this, for instance if your intervention quotes evidence or disclosure from other parties in the claim which has not been referred to in open court, if an anonymity order was made, or if there were other orders restricting the publication of information in the claim. Where you are in doubt about whether any matter(s) in your intervention should be published, you should seek legal advice.
90. See *MS (Pakistan) v Secretary of State for the Home Department* [2020] UKSC 9.
91. See https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part40/pd_part40e.
92. *R (Counsel General for Wales) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWCA Civ 181, [2022] 1 WLR 1915, §§18 & 24*.
93. CPR Practice Direction 40E paragraph 2.4.
94. Counsel General for Wales, §§25-28.
95. *R (on the application of Kinsey) v London Borough of Lewisham* [2022] EWHC 2723.
96. CPR Practice Direction para 2.7.
97. *R (Independent Monitoring Authority for the Citizens' Rights Agreements v SSHD* [2022] EWHC 3274 (Admin); [2023] 1 WLR 81.
98. See https://data.parliament.uk/DepositedPapers/Files/DEP2022-0924/Lord_Murray_to_HASC_Chair-High_Court_judgment_in_relation_to_the_EUSS.pdf.

Appendix 2 - An intervention case study from Black Equity Organisation (BEO)

99. [2024] EWHC 1492 (Admin)

Appendix 4 - Publicly available sources for pending court cases

100. See https://www.gov.uk/guidance/hmcts-e-filing-service-for-citizens-and-professionals.
101. See https://casetracker.justice.gov.uk/.
102. To check whether the Office Copy Request form is the most updated version, email caseprogression@administrativecourtoffice.justice.gov.uk.
103. If the criteria in CPR Part 5.4C are met, a non-party may obtain the following documents; a Claim Form, Statement of Facts and Grounds, Acknowledgement of Service, Summary Grounds of Defence/Resistance, Detailed Grounds of Defence/Resistance, Order(s) and Judgment(s) made in public. The Office Copy Request form also lists documents that can be requested. For requests for documents such as witness statements, exhibits, skeleton arguments, etc, you are required to lodge an Application Notice with the fee (at the time of publication) of £303 to seek permission to obtain such documents under CPR Part 23 and CPR 5.4D (for Judge's consideration), sending your email to Office generaloffice@administrativecourtoffice.justice.gov.uk.
104. For office copies the fee (at the time of publication) is per electronic document. For example, if you requested a Claim Form and an Order, that is 2 documents and will cost £22. For a request of a document in hard copy, the fee is £11 per document for the first ten pages and 50p per page thereafter.
105. See https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-civil-court-guide-accesible-version.

The authors would like to acknowledge the influence of Public Interest Interventions in the Supreme Court: Ten Virtues (https://www.blackstonechambers.com/news/analysis-public_interest/) by Mike Fordham KC. This was a paper for a conference at the David Asper Centre for Constitutional Rights, University of Toronto Faculty of Law, on Friday 6th November 2009, subsequently published in Judicial Review in 2010.

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