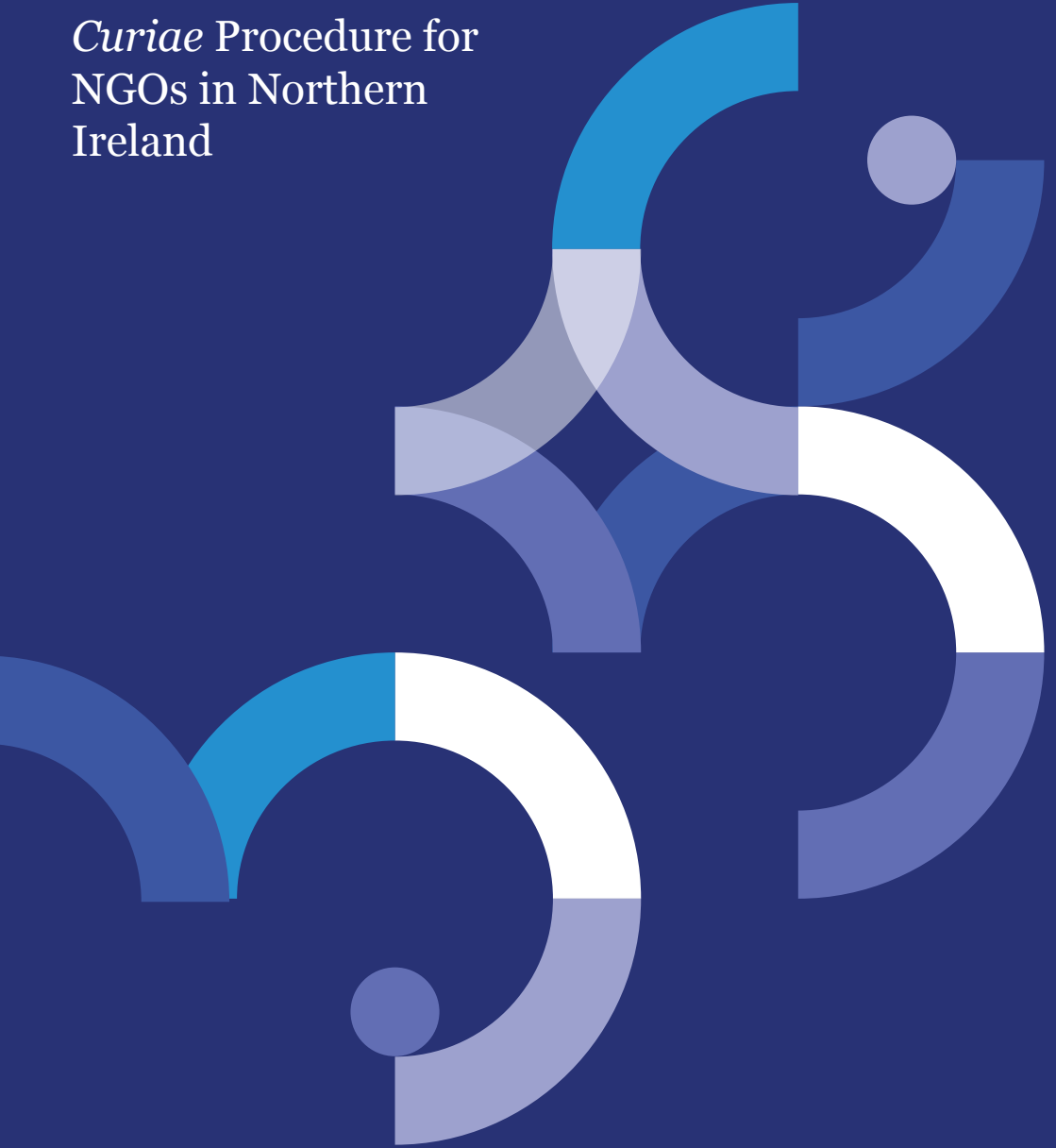


2022 **NGO**

ENGAGEMENT GUIDE SERIES

Guide to the *Amicus Curiae* Procedure for  
NGOs in Northern  
Ireland





This project is a cross-border collaborative effort between law firms and NGO partners to develop guidelines on recourses to action for the NGO community in the areas of UN and EU mechanisms, judicial review and the appointment of an *amicus curiae*.

The pathways to justice described in these guides are all too often overlooked or misunderstood due to the overwhelming amount of complex or academic information on these mechanisms. These guidelines steer our NGO partners through easily accessible resources on the different avenues to accessing justice.

The Free Legal Advice Centre (FLAC), The Public Interest Law Alliance (PILA), a project of FLAC based in Dublin, and The Public Interest Litigation Support (PILS) Project in Belfast identified a need in the NGO community for better information and resources on legal recourses to action in the following areas:

1. Individual non-court mechanisms at European level
2. Engagement with UN Special Procedures mandate holders
3. Taking individual complaints to UN treaty bodies
4. *Amicus curiae* procedure
5. Judicial Review

To address this need, PILA, The PILS Project and Arthur Cox offices in Belfast and Dublin collaborated to develop and finalise guideline documents in each of the target areas. The guides were written or revised by the Arthur Cox offices on a *pro bono* basis and were peer reviewed by colleagues from the legal sector in the North and South.

The aim of this project is to provide NGOs with the information they need to understand the available recourses to action and to determine which (if any) to pursue. Should an NGO decide to explore a recourse to action further, the NGO may contact PILA or The PILS Project for assistance through the respective *pro bono* referral schemes.

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Information sources and useful websites are hyperlinked throughout this guide. Updated links to the NGO Engagement Guides are available on the Public Interest Law Alliance website ([www.pila.ie](http://www.pila.ie)) and the PILS Project ([www.pilsni.org](http://www.pilsni.org)) website.

# What does the phrase *amicus curiae* mean?

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*Amicus curiae* (often referred to simply as an “*amicus*”) translates to “friend of the court”.

An *amicus* is not a party to the court case. They are appointed or requested by the court to appear in certain proceedings to give assistance to the court in identifying legal problems or issues which may not otherwise be brought to the court’s attention. The appointment of an *amicus* enables the court to make a more informed decision as it is in a position to consider the broader implications in any given case.

An *amicus curiae* is not the same mechanism as a Third-Party Intervener or a MacKenzie Friend. Both of these processes are also explained at the end of this guide.

## Appointing an *Amicus*

In Northern Ireland, only those who have been granted authority by legislation can act as or appoint an *amicus*. (This is described in more detail in the “*Who can intervene as an amicus?*” section of this guide.)

Where one of the authorities detailed below appoints an *amicus*, the *amicus* will always be a lawyer. Lawyers that are appointed as an *amicus* are usually barristers, as opposed to solicitors. An *amicus* cannot initiate proceedings, lead evidence or control the court proceedings in any way, and their intervention is subject to the discretion of the court.

It is necessary that an *amicus* has a ‘disinterested’ quality in their role. This means that they will assist the court by performing a non-partisan advisory function, and they are not invested in the outcome of the case.

There are a number of different ways an *amicus* can be appointed. The court itself can recognise that an *amicus* may be needed, or the parties can make representations to the court requesting that an *amicus* is appointed.

# Who can intervene as an *amicus*?

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This section provides some examples of who can act as an *amicus*.

As detailed below, the candidates typically perform public functions and have delegated statutory authority to appoint an *amicus* or act as an *amicus* themselves. For the avoidance of doubt, as noted already in this guide, where the below bodies appoint an *amicus*, it will be a lawyer.

The Official Solicitor can agree to assist the court as an *amicus* in instances where the Office of Care and Protection is involved in a case or where the court invites them to participate. Examples of such instances would be if the case involves minors or adults who lack mental capacity or are otherwise vulnerable. The Official Solicitor will only be appointed as a last resort when there is no one else available or willing to act. The Official Solicitor can also instruct counsel in court proceedings.

Coroners in Northern Ireland can either be barristers or solicitors and are appointed by the Lord Chancellor to inquire into deaths that are unexplained. As part of an inquest into the cause of a death, the Coroner may appoint or allow a party to request the appointment of an *amicus* where circumstances dictate that this may be necessary. In the interests of clarity, the Coroner does not themselves act as an *amicus*. Where an *amicus* is appointed by the Coroner or the Coroner allows an *amicus* to be appointed, the *amicus* appointed will be a lawyer. As above, such circumstances may arise where the parties involved are particularly vulnerable and without the requisite representation for fairness.

The Attorney General can act as or appoint an *amicus* in proceedings. For example, an Attorney General can be invited by the court to act as an *amicus* for a party who is unrepresented in a case, either due to ill health or if they are an untraceable/missing person. In a similar fashion to the above, the Attorney General may also act or appoint an *amicus* where there is a particularly vulnerable party involved. The Attorney General may give written and oral submissions in the interests of assisting the court. The net result of this may be that the Attorney General gives submissions that the unavailable party would make if they were present in court.

Under Article 14 of the Commissioner for Children and Young People (Northern Ireland) Order 2003, the Commissioner for Children and Young People has authority to intervene as an *amicus* in any proceedings where their intervention may be necessary to promote the rights and best interests of children or young people. Similarly, Section 10 of the Commissioner for Older People Act (Northern Ireland) 2011 permits the Commissioner for Older People to act as an *amicus* in any proceedings where their intervention may be necessary to safeguard and promote the interests of older people (those aged 60 or over).

# Can an NGO act as an *amicus*?

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In short, the answer is no. The judgment in *Re Northern Ireland Human Rights Commission (Northern Ireland) [2002] UKHL 25* held that the Northern Ireland Act 1998 did not enable the Commission to intervene as an *amicus curiae*. This was because the Human Rights Commission is a statutory body and as such, any functions it performs must originate from statute. Therefore, if an NGO is born of or regulated by statute and the statute does not specifically state that it can act as an *amicus*, it cannot do so.

If an NGO is not born out of or regulated by statute, it will not be able to act as an *amicus* because of the lack of neutrality. Generally, when an NGO gets involved in proceedings, it is because it is an interested party in some capacity. As such, an NGO is not objective enough to take on the role of *amicus*. However, NGOs can contact the bodies and individuals listed in the “Who can intervene as an *amicus*?” section of this guide and appeal to them to intervene as an *amicus* or appoint one. That being said, such a request may be rejected and the bodies and individuals listed above do not have a duty to take on issues advocated for by NGOs.

If an NGO wishes to intervene in court proceedings to represent the views of third parties, they may be in a position to apply to become a Third-Party Intervener (“intervener”). An intervener can act positively in favour of one party’s case, whereas an *amicus* remains objective and will intervene only to advise on the law or to present a balanced legal argument.



# Intervening as a Third-Party Intervener

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NGOs often have data, expertise and/or insight on the issues coming within their remit that parties to a case may not.

Where the outcome of a case may have ramifications for society as a whole or a particular group within society, NGOs may be well placed to represent that collective interest before the court. Unlike the direct parties to a case, NGOs can act purely in the public interest, or the interests of particular groups they represent, and make submissions from that perspective as an intervener.

When an NGO is considering an application to intervene, it is important to take into account who the applicant should be. The NGO themselves can make the application to be an intervener but equally, a party to the proceedings can apply for an NGO to intervene. The intervener can be the NGO itself or a nominee from within it. It would be prudent to take the advice of a solicitor when concluding on complex standing queries. Standing refers to the capacity of an individual or organisation to take an action in court.

An intervener must not merely repeat points which the existing parties have already made. They must bring forward new arguments or present new information which is in the interests of justice. The application must demonstrate how the intervener would add value to the proceedings.

Therefore, where the intervener is an NGO, it is highly beneficial to demonstrate in the application how the NGOs particular expertise on a topic will provide the court with greater knowledge on relevant issues, and without their intervention the court may not be capable of getting the full picture.

Some additional societal benefits of NGOs pursuing intervener roles are that such participation may help to raise more awareness around relevant issues and positively contribute to the democratic legitimacy of the courts by shedding light on important social issues.

Acting as an intervener may also have benefits for the individual NGO itself. Such action may serve as a reminder for the public that the NGO exists and operates as an effective watchdog for issues within its remit and can also enhance that NGO's reputation and gravitas in the field in which it operates.



# Making an application for leave to intervene as a Third-Party Intervener

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Intervening as a third party is a two-stage process.

Applicants must first apply for leave (or permission) to bring an application to intervene as a Third-Party Intervener and thereafter, the intervention can begin. This section details how to apply for leave of the court to intervene.

(Further information and guidance on intervention can be found in [The Court of Judicature of Northern Ireland Practice Direction 1/2013](#).)

A solicitor or barrister is best placed to draft the application for leave to intervene but this is not a requirement.

The application must be effective and concise, containing all the relevant legal information.

Strict time limits will also apply and if they are not complied with, the application will fail.

To apply for leave to intervene as an intervener you must file a letter to the relevant court office at least **21 days before the hearing date**. Before applying to do so, it is important to seek the consent of the other parties to the proceedings because this will be relevant to the application letter - as noted at point (f).

The application letter must contain the following information:

- a. name of the case for intervention and the hearing date;
- b. name and contact details of the Intervener;
- c. the nature of the Intervener's interest in the proceedings;
- d. the content of the Intervener's position and how the intervention would promote the interests of justice;
- e. the proposed means of intervention, whether there would be written and/or oral submissions and how much time would be required to make oral submissions;

- f. whether the parties to the proceedings have consented to the application (if this information is known). If the parties have consented, then copies of relevant correspondence should be included;
- g. details of any previous applications for leave to intervene in the proceedings including the results of those applications;
- h. confirmation whether the Intervener intends to make an application for a Protective Costs Order if the application to intervene is successful; and
- i. any other information the Intervener believes is relevant to the application.

This letter must be served on all parties to the proceedings.

The court will endeavour to deal with the application for leave within two working days. At times the court may require the intervener to attend for an oral hearing to determine the outcome of their application. Should an oral hearing be required, the court will notify all parties, providing a date and time.



# The Intervention

## What will an intervener do during the case?

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If the application is successful and leave is granted, the intervener must file written submissions to the court no less than **13 days before the hearing date**.

This is a narrow timeframe within which to prepare arguments for the case. Therefore, it is important that the initial application for leave to intervene is made as soon as practically possible and arguments are prepared in tandem with the application for leave.

If the NGO wants to apply for a Protective Costs Order this must be done as soon as practicable after leave to intervene is granted. Please note that the NGO should only apply for a costs order if this was demonstrated in the initial application, as noted at point (h) above. There is no guarantee that the court will grant a costs order.

If the intervener is an NGO or statutory body, they will assist the court on questions of public importance. The intervener's particular expertise on certain topics is expected to provide the court with a more well-rounded picture than it would otherwise obtain.

The intervener can therefore make legal submissions, produce written evidence or produce expert evidence. If the intervener wishes to produce such evidence, it will be subject to the court's discretion and directions on time limits. Indeed, the court can refuse to allow certain evidence to be heard or considered.

# Can an *amicus* or intervener appeal a final decision in the case?

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No, an *amicus* or intervener can only contribute to the case whilst it is being heard by the court, and has no right to appeal the court's decision once it has been made.



# Assistance from a McKenzie Friend

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In Northern Ireland, where a party to proceedings is a personal litigant (i.e. they are representing themselves and have not instructed a solicitor) they have the right to apply for reasonable assistance from a McKenzie Friend. The McKenzie Friend may take notes, help prepare case papers, and give the personal litigant advice on the case being heard.

The court may still prohibit or restrict the involvement of a McKenzie Friend. For example, where the McKenzie Friend is directly or indirectly conducting the litigation, if the court is not satisfied that the McKenzie Friend fully understands and will comply with the duty of confidentiality, or if the assistance is being provided for an improper purpose.

The McKenzie Friend will not be able to conduct the litigation or speak in court (unless specifically authorised to do so). The role exists primarily to provide moral support to the personal litigant. Typically, a McKenzie Friend would be a family member or close friend, but in some cases organisations or charities will fulfil this role. An NGO itself would not be the McKenzie Friend but rather the personal litigant could nominate an individual from the NGO.

When a personal litigant applies to court to have a McKenzie Friend, the person nominated as such may have to produce their C.V., confirm that they have no conflicts and confirm that they are not being paid to perform the role.

Further guidance on McKenzie Friends can be found in The Department of Justice's "[Guide to Proceedings in the High Court for People Without a Legal Representative](#)" and The Court of Judicature of Northern Ireland Practice Note 3 of 2012.

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