

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

Lord Justice Singh and Mr Justice Holgate

Claim No: CO/1052/2017



B E T W E E N:

THE QUEEN

on the application of

NATIONAL COUNCIL FOR CIVIL LIBERTIES (LIBERTY)

Claimant

- and -

(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT

(2) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Defendants

- and -

NATIONAL UNION OF JOURNALISTS

Intervener

ORDER FOLLOWING 17-21 JUNE 2019 HEARING

UPON:

- (1) the Claimant applying for permission to apply for judicial review of certain provisions of the Investigatory Powers Act 2016 (the "IPA") by its Claim Form and Statement of Facts and Grounds dated 28 February 2017, amended on 29 June 2018 and re-amended on 3 August 2018

- (2) the Claimant having been granted permission in relation to its claim for judicial review insofar as it relates to Part 4 of the Investigatory Powers Act 2016 (the "**Part 4 Claim**") by Mr Justice Jeremy Baker on 14 June 2017 and on all other grounds (the "**Bulk Powers Claim**") by Lord Justice Singh on 27 November 2018
- (3) a costs capping order having been made pursuant to sections 88 and 89 of the Criminal Justice and Courts Act 2015 in respect of the Part 4 Claim by Mrs Justice Lang DBE on 4 October 2017 in respect of the Part 4 Claim and extended to the Bulk Powers Claim by an order by consent made by Lord Justice Singh dated 11 December 2018
- (4) the parties having agreed that the Part 4 Claim insofar as it is based on EU law (the "**Part 4 EU Claim**") should be determined before the Part 4 Claim insofar as it is based on the European Convention on Human Rights (the "**Part 4 ECHR Claim**")
- (5) the Court on 27 April 2018 having made orders allowing the Part 4 EU Claim in part, staying that claim in part (pending the decision of the Court of Justice of the European Union in the reference made by the Investigatory Powers Tribunal in Case No IPT/151/110/CH (the "**CJEU Judgment**") and dismissing the remainder of that claim
- (6) the Court on 27 November 2018 having directed that the Bulk Powers Claim insofar as based on EU law be stayed pending the CJEU Judgment being handed down and otherwise be heard and determined together with the Part 4 ECHR Claim (that part of the Bulk Powers Claim and the Part 4 ECHR Claim, together, being the "**ECHR Claim**")
- (7) the stays ordered on 27 April 2018 and 27 November 2018 remaining in effect as at the date of this Order
- (8) the Defendants having filed Summary Grounds of Resistance on 28 September 2018, the Claimant having filed a Response to the Summary Grounds of Resistance dated 2 November 2018, and the Defendants having filed Detailed Grounds of Resistance in relation to the ECHR Claim dated 5 February 2019
- (9) the National Union of Journalists having been given leave to intervene on 20 May 2019

AND UPON reading the evidence and documents on the Court file

AND UPON hearing Leading Counsel for the Claimant, the Defendants and the Special Advocates and Counsel for the Intervener at the trial from 17–21 June 2019 in relation to the ECHR Claim

AND UPON the Claimant's application for a certificate under s 12 of the Administration of Justice Act 1969 (the "**Application**") dated 29 July 2019

IT IS ORDERED THAT:

1. The ECHR Claim is dismissed.
2. Time for applying to this Court, and for filing an appellant's notice at the appeal court, for permission to appeal against paragraph 1 of this Order is extended until 28 days after the Grand Chamber of the European Court of Human Rights hands down its judgment in *Big Brother Watch v United Kingdom* (Application Nos 58170/13, 62322/14 and 24960/15) ("**Big Brother Watch**") or further order.
3. The Application is stayed until 28 days after the Grand Chamber of the European Court of Human Rights hands down its judgment in *Big Brother Watch* or further order, with liberty to apply to restore the Application sooner.
4. Costs reserved, save that there shall be no order as to the costs of or occasioned by the Intervener's intervention.
5. Liberty to apply.

Lord Justice Singh

Mr Justice Holgate

Dated this 29th day of July 2019

By the Court