



Direct dial: +44(0)20 7014 2092  
Direct fax: +44(0)20 7837 9792

Our Ref: 273674/1.  
JCAR.RHAR.VECA

Date: 15 October 2020

Direct email: [j.carey@bindmans.com](mailto:j.carey@bindmans.com)  
[r.harger@bindmans.com](mailto:r.harger@bindmans.com)

Wedlake Bell  
71 Queen Victoria Street  
London  
EC4V 4AY

By email only: [mgardner@wedlakebell.com](mailto:mgardner@wedlakebell.com); [elowe@wedlakebell.com](mailto:elowe@wedlakebell.com)

cc. Secretary of State for Health and Social Care; Secretary of State for Education

Dear Sir or Madam

**R (Dolan and others) v Secretary of State for Health and Social Care (C1/2020/1117)**

1. Big Brother Watch (“BBW”) intends to apply for permission to intervene in this appeal. We write to request that you agree to this proposed application on a costs-neutral basis.
2. BBW is a non-partisan, not-for-profit campaign group, which was founded in 2009. BBW campaigns to protect civil liberties, individual privacy, and individual freedoms. It has recent experience in litigating issues relating to the use of facial recognition technology, mass surveillance measures,<sup>1</sup> and other human rights issues. One recent focus of its campaigning has been the use of emergency powers in response to the COVID-19 pandemic. BBW has produced monthly reports on the impact of

<sup>1</sup> See, for example, the judgment of the European Court of Human Rights in *Big Brother Watch and others v United Kingdom* (App. No. 58170/13).

## Bindmans LLP

236 Gray's Inn Road London WC1X 8HB  
DX 37904 King's Cross Telephone 020 7833 4433 Fax 020 7837 9792  
[www.bindmans.com](http://www.bindmans.com) [info@bindmans.com](mailto:info@bindmans.com)

Bindmans LLP is a limited liability partnership registered in England and Wales under number OC335189. Its registered office is as set out above. The term partner means either a member of the LLP or a person with equivalent status and qualification.

SENIOR CONSULTANTS  
Sir Geoffrey Bindman QC\*  
Stephen Grosz QC\*  
Saimo Chahal QC\*  
Lynn Knowles

PARTNERS  
Tayab Ali  
Tamsin Allen  
Liz Barratt  
Jules Carey  
Jon Crocker  
Yagmur Ekici  
Kate Goold  
John Halford  
Charlotte HaworthHird  
Siobhan Kelly  
Elizabeth McGlone  
Alla Murphy  
Olivia Piercy  
Jamie Potter  
Paul Ridge  
Amrit Rana  
Amy Rowe  
Alison Stanley  
Anna Thwaites  
Katie Wheatley

ASSOCIATES  
Salima Budhani  
Emma Cohen  
Neil Emery  
Ashley-Jayne Fleming  
Roberta Haslam  
Sarah Hindle  
Laura Hobey-Hamsher  
Catherine Jackson  
Jude Lanchin  
Alison Mackintosh  
Karen May  
Jessica Skins  
Sheetul Sowdagur

SOLICITORS  
Karan Ahluwalia  
Samina Aslam  
Clara Barry Born  
Nasbin Begum  
Jessie Brennan  
Elizabeth Cleaver  
Samuel Cronin  
Alice Davis  
Emily-Jade Defriend  
Abigail Evans  
Christian Hansen  
Rachel Harger  
Ella Jefferson  
Robert Maddox  
Hannah Marshall  
Carla Mirallas  
Joseph Morgan  
Oliver Oldman  
Patrick Ormerod  
Shelly Pastakia  
Jen Parker  
Farhana Patel  
Caroline Robinson  
Rosie Roddy  
Basmah Sahib  
Emma Varley  
William Whitaker  
Rosaleen Wyllie  
Daniel Zona

LAWYER  
Melissa Arnold

CONSULTANTS  
Liz Dronfield  
Tony Taylor

\*Honorary

Contracted with  
the Legal Aid  
Agency

Fraud Panel

**Lexcel**  
Legal Practice Quality Mark  
Law Society Accredited

Authorised and regulated  
by the Solicitors  
Regulation Authority  
with SRA authorisation  
number 484856

such emergency measures on civil liberties in the UK since April for parliamentarians and journalists;<sup>2</sup> given briefings to parliamentarians on many of the coronavirus Regulations made under section 45C of the Public Health Act 1984, from the first House of Commons motion in May,<sup>3</sup> to an October motion in the House of Lords;<sup>4</sup> presented podcast episodes to inform the public,<sup>5</sup> and featured in press reports about the emergency legislation.<sup>6</sup>

3. This appeal raises important questions of public interest in which BBW has a direct interest as well as long-standing expertise. BBW is therefore well-placed to assist the Court in the wider context of this appeal and to ensure that the Court obtains “... *a more rounded picture than it would otherwise obtain*” (*In re E (a child)* [2009] 1 AC 536 at §2).
4. BBW will seek to concentrate, in its intervention, on the scope of the Secretary of State’s regulation-making powers under s.45C Public Health (Control of Disease) Act 1984. This is an issue of general and continuing public importance. Over 70 regulations have been made under the power since March 2020 and

---

2 See, for example, Emergency Powers and Civil Liberties – Big Brother Watch, April 2020, which is available online at: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/04/Emergency-Powers-and-Civil-Liberties-Report-april-2020.pdf>

3 Big Brother Watch’s Briefing for Motion on the Health Protection (Coronavirus, Restrictions) Regulations 2020: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/05/Health-Protection-Regulations-Motion-Briefing-4-May-2020-Big-Brother-Watch.pdf>

4 Big Brother Watch Briefing on The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 for the House of Lords, October 2020: <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/10/Big-Brother-Watch-Briefing-on-The-Health-Protection-Coronavirus-Collection-of-Contact-Details-etc-and-Related-Requirements-Regulations-2020-for-the-House-of-Lords.pdf>

5 See, for example, the recent discussion between the Director of BBW and Steve Baker MP, a former government minister and executive member of the 1922 Committee: <https://bigbrotherwatch.org.uk/2020/09/podcast-5-coronavirus-act-biggest-expansion-of-uk-state-power-in-a-generation-silkie-carlo-steve-baker-mp/>

6 *The Critic*: “*Liberty in lockdown*”, September 2020 (which features an interview with the director of BBW): <https://thecritic.co.uk/issues/september-2020/liberty-in-lockdown/>

regulations continue to be made under the power with regularity. BBW is deeply concerned by the approach that has been adopted, which restricts parliamentary scrutiny and democratic input into the content of laws, and which appear to have been made in excess of the powers conferred by the Public Health (Control of Disease) Act 1984. It seeks to assist the Court with three issues arising in respect of this ground:

- 4.1 Considerations of statutory purpose were at the heart of Lewis J's decision to refuse permission, but more recent appellate authority, including the Supreme Court's decision in *J v Welsh Ministers* [2020] AC 757, shed light on how arguments from purpose should be approached where powers to interfere with fundamental rights are in issue;
- 4.2 The explanatory memorandum to the Health and Social Care Act 2008, and the background of the SARS epidemic, played a role in the Judge's reasoning. However, he may have misunderstood what the WHO International Health Regulations 2005 - implemented following SARS and referred to in the explanatory memorandum - actually provide. The Court would be likely to benefit from submissions addressing that aspect of the matter and the idea that the explanatory memorandum supports a reading of Part 2A of the Act that grants powers to impose severe population-wide restrictions, rather than measures targeted at persons who are or may be infected;
- 4.3 BBW also seeks to assist the Court on the wider constitutional and human rights perspective and on whether this challenge is properly regarded as "*academic.*"

5. Counsel instructed by BBW have discussed this appeal with representatives of the Appellant. BBW will ensure that there is no duplication of submissions and that its submissions are concise and focussed.
6. BBW intends to apply for permission to intervene by way of written submissions, not to exceed 20 pages. So as to ensure that there is no prejudice to your clients, BBW will seek to provide its written submissions at the same time that it applies for permission to intervene and, in any event, by Monday, 19<sup>th</sup> October 2020.
7. BBW seeks to intervene in the public interest with the aim of assisting the Court in its analysis of these important issues. It will not seek any order as to costs against any of the parties and seeks your client's confirmation that it will not be liable for your client's costs at the conclusion of these proceedings.
8. In the circumstances, we would be grateful if you could confirm your clients' agreement to our clients' proposed application.

We look forward to hearing from you.

Yours faithfully,

*Bindmans LLP*

**Bindmans LLP**