



Neutral Citation Number: [2019] EWHC 3065 (QB)

Case No: QB-2019-002461

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/11/2019

Before:

MR JUSTICE CHAMBERLAIN

Between:

**(1) THE ALL ENGLAND LAWN TENNIS CLUB
(CHAMPIONSHIPS) LIMITED**

**(2) THE ALL ENGLAND LAWN TENNIS
GROUND PLC**

Claimants

- and -

LUKE McKAY

Defendant

Edward Rowntree (instructed by Kerman & Co.) for the Claimants
Michael Rimer for the Legal Aid Agency
The Defendant appeared as a litigant in person

Hearing date: 8 November 2019

Approved Judgment 2 of 2

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

- 1 In a judgment handed down on 30 October 2019 (neutral citation: [2019] EWHC 2973 (QB)), I drew attention to an issue about the correct procedure for determining applications for legal aid by those facing applications in the High Court to commit them to prison for contempt because they have failed to comply with an order. As I indicated in that judgment, there is no real doubt that such individuals are entitled to legal aid. The question is who has power to grant it. The Legal Aid Agency ('LAA') says that it is the Director of Legal Aid Casework ('the Director'), but this is contrary to what was said by Blake J in *King's Lynn and West Norfolk BC v Bunning* [2015] 1 WLR 531, a decision that has been followed or at least assumed to be correct in subsequent decisions of the High Court and Court of Appeal. I indicated at [28] of my earlier judgment that this '*lack of clarity*' as to who has power to grant legal aid '*creates a real problem for individuals like the Defendant who seek legal representation and for courts dealing with civil contempt cases*'. I noted that the issue needed to be determined and invited the LAA to make submissions.
- 2 Mr Michael Rimer of the LAA filed helpful written submissions and also appeared on 8 November 2019 to make brief oral submissions. I accepted Mr Rimer's assurance that Mr McKay is entitled to legal aid without the need for any assessment of his means or of the merits of his case; and that applications of this kind were normally determined within 48 hours. At the conclusion of the argument, I declined to make a representation order. I indicated, however, that I would set out my reasons in a reserved judgment. My reasons are as follows.

The statutory framework

- 3 The availability of legal aid is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO'). That distinguishes between civil legal aid (which is provided for in ss. 8-12) and criminal legal aid (which is provided for in ss. 13-20). 'Civil legal services' are '*any legal services other than the types of advice, assistance and representation that are required to be made available under sections 13, 15 and 16 (criminal legal aid)*'. Criminal legal aid is available in 'criminal proceedings' as defined in paragraphs (a)-(h) of s. 14. Among the types of proceedings there set out are some that might not in other circumstances be regarded as criminal. In particular, paragraph (g) covers '*proceedings for contempt committed, or alleged to have been committed, by an individual in the face of the court*' (not the kind of contempt at issue in these proceedings) and paragraph (h) covers '*such other proceedings, before any court, tribunal or other person, as may be prescribed*'.
- 4 Regulation 9 of the Criminal Legal Aid (General) Regulations 2013 (SI 2013/9: 'the General Regulations') prescribes a long list of proceedings as criminal for the purposes of s. 14(h) of LASPO. At the end of this list, there is a catch-all provision in paragraph (v): '*any other proceedings that involve the determination of a criminal charge for the purposes of Article 6(1) of the European Convention of Human Rights*'. This provision was presumably regarded as necessary to ensure compliance with the UK's international obligations, given that under Article 6 ECHR certain procedural guarantees apply whenever a 'criminal charge' is being determined; that 'criminal

charge’ for these purposes has a meaning autonomous of the classification given by domestic law; and that committal proceedings, because their potential consequences include imprisonment, fall within that meaning: *Hammerton v Hammerton* [2007] 2 FLR 1133, [9] (Moses LJ).

- 5 Representation for criminal proceedings is governed by s. 16 of LASPO. That provides, insofar as material, as follows:

‘(1) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—

- (a) the individual is a specified individual in relation to the proceedings, and
- (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part and has not withdrawn the determination).

...

(6) In this section—

“the relevant authority”, in relation to a specified individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings;

“specified individual” means—

- (a) in relation to criminal proceedings mentioned in any of paragraphs (a) to (g) of section 14, an individual mentioned in that paragraph in relation to those proceedings, and
- (b) in relation to criminal proceedings prescribed by regulations under section 14(h), a description of individual specified in the regulations in relation to those proceedings.’

- 6 Section 17(1) of LASPO explains how the ‘relevant authority’ is to determine eligibility for legal aid. There are two tests that must be satisfied – the ‘means’ test (set out in s. 21 and regulations made under it) and the ‘interests of justice’ test. Both tests, however, may be deemed by regulations to be satisfied in certain categories of case: in relation to means, see s. 21(3); in relation to the ‘interests of justice’, see s. 17(4). In criminal proceedings other than those in the magistrates’ court or Crown Court, the relevant authority *must* make a determination that the individual’s financial resources are such that he or she is eligible: see reg. 39 of the Criminal Legal Aid (Financial Resources) Regulations 2013 (SI 2013/471: ‘the Financial Resources Regulations’). So, the means test is automatically satisfied. Making representation available to an individual for the purposes of criminal proceedings is taken to be in the interests of

justice when the proceedings are before the High Court (among other courts): see reg. 21 of the General Regulations. So, the ‘interests of justice’ test is also automatically satisfied.

7 Section 18 of LASPO deals with determinations by the Director, who is authorised by s. 18(1) to determine ‘*whether an individual qualifies under this Part for representation for the purposes of criminal proceedings, except in circumstances in which a court is authorised to make a determination under regulations under section 19*’.

8 Section 19 of LASPO deals with determinations by a court. It provides insofar as material as follows:

‘(1) Regulations may—

(a) provide that a court before which criminal proceedings take place, or are to take place, is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings of a prescribed description, and

(b) make provision about the making and withdrawal of such determinations by a court.’

9 The combined effect of ss. 18 and 19 of LASPO is twofold. First, the Director has power to make a determination only where no court has such a power. Second, a court has power to make a determination only where authorised to do so by regulations made under s. 19.

10 The power conferred by s. 19(1) of LASPO has been exercised to make the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 (SI 2013/614: ‘the Determinations Regulations’). Part 2 of the Determinations Regulations deals with determinations by a court under s. 16 of LASPO. Regulation 4 provides as follows:

‘4.— Applications

(1) An application for a determination under section 16 of the Act (representation for criminal proceedings) made to the Crown Court must be made orally to the court.

(2) An application for a determination under section 16 of the Act made to the High Court or the Court of Appeal must be made—

(a) orally to the court; or

(b) in writing to an officer of the court.

(3) An application for a determination made in accordance with paragraph (2)(b) must be made in a form specified by the Lord Chancellor.’

Regulation 5 provides as follows:

‘5.— General

(1) When the court makes a determination under section 16 of the Act in accordance with any of regulations 6 to 8, the court must—

- (a) issue a representation order recording that determination; and
- (b) send a copy of the representation order to the individual and any provider named in the representation order.

(2) Where these Regulations provide that a court is authorised to make a determination under section 16 of the Act, the power to make a determination may be exercised by the court or an officer of the court.’

Regulation 6 deals with determinations by the Crown Court. Regulations 7 and 8 deal with determinations by the High Court and Court of Appeal respectively. They provide as follows:

‘7.— Determinations by the High Court

(1) On the application of an individual, the High Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of criminal proceedings before the High Court in relation to an appeal by way of case stated from a decision of the magistrates’ court or the Crown Court.

(2) On the application of an individual, or of its own motion, the High Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of proceedings before the High Court, or proceedings before the Supreme Court on appeal from the High Court, described in—

- (a) section 14(a) to (g) of the Act, other than proceedings under paragraph (1); or
- (b) regulation 9(r) of the General Regulations.

8.— Determinations by the Court of Appeal

(1) On the application of an individual, or of its own motion, the Court of Appeal may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of any criminal proceedings before the Court of Appeal, or criminal proceedings before the Supreme Court on appeal from the Court of Appeal.

(2) A determination made in accordance with paragraph (1)—

- (a) must not be made until service of an appeal notice in respect of the proceedings has taken place; and
- (b) may specify the stage of the proceedings at which the determination is to take effect.’

11 The wording of reg. 8 differs from that of reg. 7. Regulation 8 empowers the Court of Appeal to make a determination in ‘*any* criminal proceedings’ before it or before the Supreme Court on appeal from it. Regulation 7, by contrast, on its face empowers the High Court to make a determination only in *certain* criminal proceedings before it or on appeal to the Supreme Court from it: case stated appeals from the magistrates’ court or Crown Court (reg. 7(1)), other proceedings described in s. 14(a)-(g) of LASPO (reg. 14(2)(a)) and *one particular* type of proceedings prescribed in regulations made under s. 14(h) of LASPO – those described in reg. 9(r) of the General Regulations (reg. 14(2)(b)).

The starting point: criminal legal aid is available as of right to a person facing High Court committal proceedings alleging breach of an order

12 Mr Rimer accepted unequivocally on behalf of the LAA that criminal legal aid is available as of right to any person, such as Mr McKay, facing High Court committal proceedings for breach of an order. In the light of the statutory scheme as set out above, I have no doubt that he was correct to do so. To summarise the position:

- (a) the proceedings involve the determination of a criminal charge for the purposes of Article 6(1) ECHR: *Hammerton v Hammerton*, [9];
- (b) therefore, they are prescribed as ‘criminal proceedings’ for the purposes of s. 14(h) of LASPO by reg. 9(v) of the General Regulations;
- (c) therefore, criminal legal aid is to be available if the means tests and ‘interests of justice’ test are met: s. 16(1) of LASPO;
- (d) in relation to criminal proceedings before the High Court, both tests are met automatically: reg. 39 of the Financial Resources Regulations (in relation to means) and reg. 21 of the General Regulations (in relation to ‘interests of justice’);
- (e) so, legal aid is available as of right.

13 Thus, the statutory scheme governing eligibility for legal aid properly recognises that the potential consequences of an application to commit (which include imprisonment) require that legal aid be available without any assessment of either the means of the applicant or the merits of the case (or the ‘interests of justice’ factors that would otherwise apply under s. 17 of LASPO when determining eligibility for criminal legal aid). That is so even when the application arises from civil proceedings in which legal aid would not otherwise be available.

- 14 But even in a case where the applicant qualifies for legal aid as of right (because he is a ‘specified person’ for the purposes of s. 16(1)(a) of LASPO), there still has to be a ‘determination’ that the individual qualifies for legal aid by the ‘relevant authority’ (under s. 16(1)(b)) before he or she can obtain it. The next question is therefore: ‘Who is the relevant authority?’

Who is the ‘relevant authority’ to determine whether an individual qualifies for legal aid in High Court committal proceedings for breach of an order?

- 15 The LAA’s position was – as I have said – helpfully summarised in Mr Rimer’s note. Essentially, because of the features of the Determinations Regulations identified in paragraph 11 above, for High Court committal proceedings for breach of an order, the ‘relevant authority’ is the Director; whereas in similar proceedings in the Court of Appeal, the relevant authority is the court. Since May 2015, there has been a ‘*clear established process*’ for applications for legal aid in civil contempt proceedings (including High Court proceedings) in which the Director is the ‘relevant authority’. Applications are to be made using the CRM14 form, which is available on the LAA website or via its E-form portal. Such applications are processed by the National Crime Team in the LAA’s Nottingham office. The majority are processed within 48 hours of receipt and there is a facility to indicate that an application is urgent. Applications can be made by any legal services provider holding a Standard Crime Contract or (now), in a case where the alleged contempt arises in publicly funded civil proceedings, by a firm holding a Standard Civil Contract. The mechanics of applying are explained in a note on the LAA’s website, which is available at www.gov.uk/guidance/apply-for-legal-aid-for-civil-contempt-cases.
- 16 So far so good. The difficulty arises because of the decision of Blake J in the *Bunning* case, to which it is necessary now to turn. That case was heard soon after LASPO came into force. There was an application to commit for breach of an injunction made in civil proceedings in the High Court. The respondent had found it difficult to obtain legal aid because, at that time, the LAA had no established procedure by which applications for it could be made. The main uncertainty which Blake J set out to resolve is described by him in [2] of his judgment: ‘*whether the contempt proceedings should be classified as civil proceedings and an application for exceptional funding made to the director of the LAA, or criminal proceedings where any application is to be made to the court*’. This passage reveals an assumption – which in my judgment is critical to a proper understanding of the decision – that, if the proceedings are classified as criminal, the consequence is that any application for legal aid is to be made to the court, and not the Director.
- 17 Blake J heard submissions from the LAA, made by Mr Rimer. He made reference to s. 14(h) of LASPO and to reg. 9(v) of the General Regulations: [11]-[12]. He considered Article 6 ECHR and the Court of Appeal’s decision in *Hammerton v Hammerton*: [13]-[16]. He noted the deeming provision in reg. 21 of the General Regulations: [17]. He considered the definition of ‘specified individual’ in s. 16(6) of LASPO and of ‘relevant authority’ in ss. 18-20: [18]-[19]. He considered the terms of the Determinations Regulations: [20] & [23]. He identified the drafting of reg. 7 as causing ‘*difficulty in the present case*’ (see [24]-[25]) and noted that there was no explanation why reg. 7 was drafted in the way it was, i.e. not covering proceedings described in reg.

9(v) of the General Regulations: [26]. Having considered the matter over the short adjournment, Mr Rimer submitted that ‘*regulation 7 (whatever purpose it may serve in its present form) does not prevent the High Court determining an application made to it for legal representation in proceedings for committal other than in the face of the court*’: [28]. Then, at [29]-[30], Blake J said this:

‘29. I agree. Ultimately, my reason for this conclusion is a short one. Section 16(1) of the 2012 Act requires that representation for the purpose of criminal proceedings is to be available to the individual if they are a “specified individual”. The defendant is a specified individual. Regulations made under s. 19(1) of the 2012 Act are designed to facilitate the discharge of this duty rather than to define or restrict it. If there were to be any conflict between the regulation and the primary statute the latter would prevail.

30. Any conflict can be avoided by reading regulation 5 as requiring an order to be made when the court proceeds under regulation 6 or 7, but not preventing the court making an order in other cases where a regulation 4 application has been made...’

18 Three points can fairly be made about Blake J’s reasoning. First, there is the assumption to which I have already referred (in [2] of the judgment) that, if the proceedings are classified as criminal, the consequence is that any application for legal aid is to be made to the Court, and not the Director. The second – flowing from this assumption and evident in [24]-[25] of the judgment – is that reg. 7, which he noted did not appear to cover civil contempt proceedings other than for contempt in the face of the court, posed a problem or difficulty. The third – which appears from [29] – is that Blake J thought that, if the Determinations Regulations were read as preventing the High Court from making a representation order, that would conflict with the entitlement to legal aid of a ‘specified individual’ within the meaning of s. 16(1)(a) of LASPO. It was because of that conflict that, in [30], he felt obliged to interpret reg. 5 of the Determinations Regulations as empowering the court to make a determination even outside the cases specified in regs 6-8.

19 As I said in my earlier judgment, *Bunning* has been held, or at least assumed, to be correct by other courts. In *Chelmsford County Court v Ramet* [2014] EWHC 56 (Fam), [2014] 2 FLR 1084, Sir James Munby, President of the Family Division, had to consider a complaint of contempt arising from a violent attack by one party against another in court during a hearing. (The contempt proceedings had been transferred from the county court to the High Court.) As Sir James pointed out at [23] of his judgment, this was a contempt in the face of the court. At the end of his judgment (at [32]-[33]), he made some observations about legal aid, referring to reg. 9(v) of the General Regulations, *Hammerton v Hammerton* and *Bunning*, the analysis in which he commended to family judges and practitioners. There is no indication, however, that he heard argument on the question of who was the ‘relevant authority’. There was no reason for him to do so. His judgment does not, therefore, assist on that issue. I note in passing that, because Sir James did not have to consider the issue, he appears to have overlooked that contempt in the face of the court (unlike other contempts) is dealt with expressly in s. 14(g) of LASPO. That particular species of contempt is one of the types of proceedings covered by reg. 7(2)(a) of the Determinations Regulations, so in that

case – on the plain wording of the regulation – the ‘relevant authority’ is indeed the court.

- 20 Next, there is the decision of the Court of Appeal in *Brown v Haringey London Borough Council* [2015] EWCA Civ 483, [2017] 1 WLR 542. That case concerned the availability of legal aid for contempt proceedings in the county court. At [3], however, McCombe LJ (with whom Richards and Lewison LJ agreed), said this:

‘The judgment in *Bunning’s* case now enables a suitably informed and legally qualified adviser (as opposed to a lay person), equipped with the statute, the Regulations and the judgment, to resolve the conundrum that arises in High Court proceedings. That is not so, however, in County Court proceedings.’

That is, no doubt, why the writer of the headnote in the Weekly Law Reports thought it right to note that *Bunning* had been ‘approved’.

- 21 There is no doubt that the Court of Appeal did approve *part* of Blake J’s reasoning in *Bunning*. At [29], it expressly approved the conclusion that reg. 9(v) of the General Regulations covered proceedings for committal in the High Court. At [30], it held that an individual who may be brought before a court for contempt proceedings is a ‘specified individual’ for the purposes of s. 16(6) of LASPO. The remainder of the judgment is concerned, however, with the question of who is the ‘relevant authority’ for the purposes of *county court* proceedings. The answer at [35] – having considered regs 6-8 of the Determinations Regulations – was that:

‘there is no authorisation conferred on the County Court to make such a determination... Therefore... by virtue of section 18(1) of LASPO it was for the Director to make the determination in the present case.’

The Court of Appeal did not have to consider, and did not consider, the correctness of Blake J’s conclusion that, in High Court committal proceedings for breach of an order, the ‘relevant authority’ was the court.

- 22 *H v T (Committal Appeal: Notices on Orders)* [2018] EWHC 1310 (Fam), [2018] 4 WLR 122 was an appeal from a decision of a recorder imposing a suspended custodial sentence for breach of an order made in proceedings in the Family Court. Baker J (as he then was) initially made a representation order, following *Bunning* and *Ramet*, but giving the LAA permission to apply to vary or discharge it. The LAA duly applied for discharge on the basis that it, and not the court, was the ‘relevant authority’ under s. 16 of LASPO: [43]. In the event, the LAA agreed that the discharge of the order should be contingent upon the Director granting the respondent legal aid for the appeal: [44]. In those circumstances, the order was discharged, but Baker J nonetheless invited submissions from the LAA, which were again made by Mr Rimer: [45]. Mr Rimer made the same submissions to Baker J as he has made to me. These included the submission that *Bunning* was wrongly decided and that there was now an ‘*established procedure*’ as described in [15] above: [46]. Baker J did not find it necessary to decide the point, noting that *Bunning* had been approved in *Ramet* and that ‘*[i]f the Legal Aid Agency wishes to challenge that line of authority, I respectfully suggest that it must identify a suitable case in which to do so*’: [47].

- 23 Finally, and very recently, in *O (Committal: Legal Representation)* [2019] EWCA Civ 1721, Peter Jackson LJ (with whom Moylan LJ agreed) noted as follows at [2]:

‘The case is a reminder that respondents to committal proceedings are entitled to be provided with legal representation if they want it and they will qualify for non-means-tested legal aid. There is an obligation on the court to ensure that this protection is made available. Where this does not happen any resulting committal order may be procedurally irregular.’

Reference was made at [4]-[5] to the *Bunning* and *Haringey* cases, but the Court did not need to, and did not, deal with the question of who was the ‘relevant authority’.

- 24 As I indicated at the start of this judgment, I have concluded that the identity of the ‘relevant authority’ in a case of this kind does now need to be determined. Either it is the Court, or it is the Director. It is not satisfactory in the long-term for there to be a discrepancy between the position as declared by the courts and the declared practice of the LAA.

- 25 The first question is whether it is now open to me to depart from *Bunning*, given that it has been held or assumed to be correct by other courts, including the Court of Appeal. I have concluded that none of the subsequent cases prevents me from departing from *Bunning*. *Ramet* concerned a contempt in the face of the court, which is covered by different statutory provisions; and in any event, the identity of the ‘relevant authority’ was not in issue: see [19] above. The Court of Appeal in the *Haringey* case, though it approved part of Blake J’s reasoning in *Bunning*, did not consider the identity of the relevant authority to determine applications for legal aid in High Court committal proceedings for breach of an order: see [21] above. Insofar as it is relevant at all, it is consistent with the proposition that the proceedings described in regs 6-8 of the Determinations Regulations are the only ones in which the court is the relevant authority. *H v T* plainly does not stand in the way of a first instance court departing from *Bunning*; on the contrary, Baker J in that case invites the LAA to identify a suitable case in which to test the point. *O (Committal: Legal Representation)* does not consider the identity of the ‘relevant authority’ at all.

- 26 It follows that none of the subsequent cases prevents me from departing from Blake J’s conclusion in *Bunning* that the court is the ‘relevant authority’ to determine eligibility for legal aid in High Court contempt proceedings alleging breach of an order. Since it is the carefully reasoned decision of a High Court Judge, I should not do so unless convinced that it is clearly wrong. In the light of my analysis of the statutory scheme, however, I am so convinced. Given what I have said above, I can explain my reasons briefly.

- 27 Section 16(1) of LASPO makes clear that being a ‘specified individual’ is a necessary but not a sufficient condition for entitlement to legal aid. Even when the applicant is a ‘specified individual’ there must still be a ‘determination’ by the ‘relevant authority’. Section 16(6) and ss. 18-20 make clear that this may be either the Director or the Court. So, the statute specifically contemplates applications for criminal legal aid where the ‘relevant authority’ is the Director, not the court. The assumption evident in [2] of Blake J’s judgment in *Bunning* was therefore false. This means that the Determinations

Regulations, interpreted in accordance with what Blake J accepted and I agree is their natural meaning, give rise to no problem or difficulty: criminal legal aid in this type of case is available as of right (i.e. with no need for substantive consideration of the applicant's means or the 'interests of justice' test) but the 'relevant authority' who must make the formal determination is the Director, not the court. This reading is consistent with s. 16(1) because it does not restrict in any way the types of proceedings in which criminal legal aid is available; it merely identifies who is to make the determination that the individual is eligible. In those circumstances, there is no need to read reg. 5 of the Determinations Regulations as conferring power on the court to make a determination order in any proceedings other than those specified in regs 6-8. In my judgment, it is in any event clear from the wording of reg. 5 that it confers no such power. It is concerned with what happens '*when the court makes a determination under section 16 of the Act in accordance with any of regulations 6 to 8*' (reg. 5(1)) or '*where these Regulations provide that a court is authorised to make a determination under section 16 of the Act*'. This shows that it is regs 6, 7 and 8, and those regulations alone, that confer power on courts (the Crown Court, High Court and Court of Appeal respectively) to make a representation order. As respects the High Court, there is power to make such an order in the types of proceedings mentioned in reg. 7 and no others. Contempt proceedings, other than for contempt in the face of the court, are not covered by that regulation. It follows that the 'relevant authority' to determine applications for legal aid in respect of such proceedings is, under s. 18(1), the Director, and not the court.

- 28 The understandable practical concern that lay behind the decision in *Bunning* was that, at that time, unless the court could make the determination, there was no established procedure by which legal aid could be secured for civil contempt proceedings. That concern has now been addressed. As Mr Rimer confirmed, the LAA now has an established procedure. Given that legal aid for proceedings of this kind does not require any assessment of either means or merits, one would expect that procedure to be capable of resulting in a determination very quickly. Mr Rimer's note indicated that this was so in practice. In those circumstances, this decision should not make it any more difficult to obtain legal aid for those facing High Court committal proceedings for breach of an order, though the procedure will be different from that outlined in *Bunning*. In the light of my conclusions, applications for legal aid in such proceedings should be made to the Director, not the court.

Conclusion

- 29 My reasons for declining to make a representation order in this case may be summarised as follows:
- (a) As the LAA accepts, a respondent to High Court committal proceedings alleging breach of an order (such as Mr McKay) is entitled to legal aid as of right (i.e. without any assessment of his means or of whether it is in the interests of justice for representation to be provided): see [12] above.
 - (b) But it is a separate question who is the 'relevant authority' responsible for determining eligibility for the purposes of s. 16 of LASPO. In High Court committal proceedings alleging breach of an order, the 'relevant authority' is the Director of Legal Aid Casework, not the court. Insofar as it reached the contrary

conclusion, *King's Lynn and West Norfolk Council v Bunning* was wrongly decided: see [27] above.

- (c) This should have no practical effect on the availability of legal aid because the LAA has an established procedure (described in [15] above) for determining applications expeditiously in cases of this sort. Litigants and providers of legal services should be encouraged to use this procedure and should not now apply to the High Court for representation orders: see [28] above. (The position in the Court of Appeal is different: there, the court *is* the 'relevant authority' and the application *should* be made to the court.)