Neutral Citation Number: [2019] EWHC 1532 (Admin)

Case No: CO/4111/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 June 2019

Before :

THE HONOURABLE MR JUSTICE MURRAY

- -

Between :

The Queen on the application of LIBERTY	**Claimant**
- and -	
DIRECTOR OF LEGAL AID CASEWORK	**Defendant**
- and -	
(1) SARAH WARD	
(2) BOROUGH OF POOLE	**Interested Parties**
(3) THE LORD CHANCELLOR	

- -
- -

Mr Jamie Burton (instructed by **Liberty**) for the **Claimant**
Mr Martin Chamberlain QC and **Mr Malcolm Birdling** (instructed by the **Government Legal Department**) for the **Defendant**
The **Interested Parties** did not attend and were not represented.

Hearing date: 20 March 2019

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Approved Judgment

Mr Justice Murray :

1. This is the substantive hearing of a claim brought by Liberty for judicial review of the decision dated 20 July 2018 by the Director of Legal Aid Casework ("the Decision") confirming his earlier decision dated 24 May 2018 refusing to grant civil legal aid to Ms Sarah Ward, the first interested party, to enable her to pursue her statutory application to quash prohibitions contained in a public spaces protection order made by the Borough of Poole ("the Borough"), the second interested party, on 13 March 2018 ("the PSPO") under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the 2014 Act").

2. Ms Ward is seeking to challenge the validity of the PSPO under section 66 of the 2014 Act ("the Section 66 Challenge") on the basis that the PSPO unlawfully targets rough sleepers and therefore the Borough did not have the power to make it. Ms Ward is represented in the Section 66 Challenge by Liberty.

3. Permission to bring this claim was granted by Swift J, after a hearing on 15 January 2019, by his order sealed on 18 January 2019.

The issues

4. In the Decision, the Director refused Ms Ward's application for legal aid on the basis that:

   i) legal services to support the Section 66 Challenge are not "civil legal services" described in Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and

   ii) the application did not meet the merits criteria set out in the Civil Legal Aid (Merits Criteria) Regulations 2013, SI 2013/104 ("the 2013 Regulations").

   In his Summary Grounds for Contesting the Claim, the Director indicated that he did not rely on the second of the two bases set out above. I only need, therefore, to consider whether the Director was right to refuse on the first basis, which is, in essence, whether the application is within scope of civil legal aid.

5. It is common ground that there are two limbs to the scope issue, namely, whether:

   i) the Section 66 Challenge is not "judicial review" within the meaning given to that term in para 19(10) of Part 1 of Schedule 1 to LASPO; or

   ii) the proposed proceedings do not have the potential to produce a "benefit" for Ms Ward within the meaning given to that term in para 19(3) of Part 1 of Schedule 1 to LASPO.

6. In the Decision, the Director concluded that the Section 66 Challenge is not "judicial review" within the meaning of para 19(10) and that the Section 66 Challenge does not have the potential to produce a benefit for Ms Ward and is therefore excluded from the scope of civil legal aid by para 19(3).

7. Para 19(10) defines "judicial review" as follows:

> "'judicial review' means –
>
> (a) the procedure on an application for judicial review (see section 31 of the Senior Courts Act 1981), but not including the procedure after the application is treated under rules of court as if it were not such an application, and
>
> (b) any procedure in which a court, tribunal or other person mentioned in Part 3 of this Schedule is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review."

8. The question in this case is whether the Section 66 Challenge falls within clause (b) of the definition of "judicial review" in para 19(10). That, in turn, depends on whether section 66 of the 2014 Act is an enactment that requires the court "to make a decision applying the principles that are applied by the court on an application for judicial review".

9. Accordingly, the two issues in this case may be stated as follows:

   i) Does section 66 of the 2014 Act require the court to make a decision applying the principles that are applied by the court on an application for judicial review?

   ii) Does the Section 66 Challenge have the potential to produce a "benefit" for Ms Ward within the meaning of para 19(3) of Part 1 of Schedule 1 to LASPO?

The factual background

10. The factual background is that in early 2017 the Borough proposed to make a public spaces protection order for Poole town centre that would prohibit rough sleeping. In December 2017, however, the Home Office issued revised Guidance that made it plain that such orders could not be used to target homeless people or rough sleepers.

11. After consultation, the Borough, notwithstanding opposition, made the PSPO, replacing the explicit prohibition of rough sleeping with prohibitions that would, in the view of Liberty and Ms Ward, have a comparable negative impact on the homeless and rough sleepers, including a prohibition on begging, leaving unattended personal belongings such as bedding or bags in a designated area or causing an obstruction in a doorway to commercial premises, public buildings, car parks or other public areas. The PSPO came into effect on 16 April 2018.

12. Ms Ward approached Liberty for assistance in challenging the PSPO. With the assistance of Liberty, on 9 May 2018 Ms Ward applied for legal aid to bring the Section 66 Challenge, the deadline for issuing it being 25 May 2018.

13. On 24 May 2018 the Director refused Ms Ward legal aid on the grounds that I have already summarised. On 30 May 2018 Ms Ward sought a review of the Director's initial refusal of legal aid. On 20 July 2018 the Director issued the Decision, confirming that refusal on the same grounds.

14. Notwithstanding the Director's initial refusal of her application for legal aid on 24 May 2018, Ms Ward made an application to initiate the Section 66 Challenge on 25 May 2018, in order to preserve her position.

15. Finally, for completeness, I note that on 30 May 2018 Ms Ward made an application for exceptional case funding ("ECF") under section 10 of LASPO in relation to the Section 66 Challenge. Ms Ward's application for ECF was refused on 15 June 2018 and, after review, that refusal was confirmed by the Director on 20 July 2018. No issue arises as to that refusal in these proceedings.

The legal framework for civil legal aid

16. Before LASPO, legal aid funding in the United Kingdom was governed by the Access to Justice Act 1999 ("the 1999 Act"), which established the Legal Services Commission ("the LSC"). The LSC was charged with the creation of the Community Legal Service. Under section 6(6) of the 1999 Act, legal aid for certain types of services was excluded by reference to a list of services in Schedule 2 to the 1999 Act. Exceptional funding was possible under section 6(8)(b) of the 1999 Act in certain cases that were otherwise specifically excluded.

17. Under section 8 of the 1999 Act the LSC was required to prepare a code ("the Funding Code") setting out the criteria according to which it would decide whether to fund or continue to fund legal services as part of the Community Legal Service. Section 8 also set out various factors that the LSC should consider in settling its criteria for funding and provided that, before preparing the Funding Code, the LSC should undertake such consultation on the Funding Code as appeared to it to be appropriate. Section 9 of the 1999 Act provided for approval of the Funding Code by the Lord Chancellor and for approval by Parliament via the affirmative resolution procedure, subject to a fast-track process in certain circumstances.

18. On 16 July 2009 the Ministry of Justice published a consultation paper, produced jointly by the Ministry and the LSC, entitled "Legal Aid: Refocusing on Priority Cases" (Consultation Paper CP 12/09, Ministry of Justice, July 2009) ("CP 12/09"), inviting comments on a range of proposals to change the legal aid funding rules for civil and criminal cases. The stated intention was to refocus limited civil and criminal legal aid resources on priority cases. After the consultation, the Lord Chancellor approved amendments to the Funding Code which came into force on 1 April 2010. The revised Funding Code included the following provision at para 7.2.4:

> "*Client interest*
>
> Investigative help will be refused unless the proceedings have the potential to produce real benefits for the applicant, for the applicant's family or for the environment. However funding will not automatically be withdrawn if the applicant ceases to have a direct personal interest during the course of the proceedings."

19. The revised Funding Code included an identical provision at para 7.3.4 save that the words "Investigative help" were replaced by "Full representation".

20. The background to these provisions was explained in CP 12/09, in part 3 under the heading "Legal Aid for judicial review" at para 3.2 under the heading "Personal benefit from the proceedings":

> "An underlying principle of [the 1999 Act] is that the claimant has a direct interest in and will personally benefit from the action. The Act is not intended to provide funding for purely representative litigation.
>
> Section 4.5 of the Funding Code's standard criteria sets out that 'an application will be refused unless it is for the benefit of a client who is an individual …' This should make clear that proceedings cannot be brought about matters to which the applicant has no connection or direct interest. However, there have been cases where applicants have sought funding about matters of principle, on behalf of other people they do not know, or with regard to decisions to which they have no direct connection or involvement. It is our view that it is not appropriate for purely representative actions to receive limited legal aid funds.
>
> Our proposal is to amend section 7 of the Funding Code to tighten the tests for both investigative help and legal representation in judicial review so that funding can only be granted to an individual who will gain a personal benefit from the outcome of the proceedings, either for themselves or their family. "

21. After the consultation closed, the Ministry of Justice said the following in its Response to Consultation (CPR(R) 12/09, February 2010) at pp 20-21:

> "It is important that the rules for legal aid are sufficiently robust to ensure that it is correctly focused. Some respondents have argued that the existing criteria are clear enough, but we want to put beyond doubt the LSC's ability to refuse legal aid for cases where the client is not seeking a remedy for themselves or their family.
>
> We will therefore proceed to clarify the code so that funding for judicial review will only be granted where the client is seeking a material benefit for themselves or their family. We will also make clear that this restriction does not prevent the funding of judicial reviews on environmental matters in the light of our obligations under the Aarhus Convention.
>
> This measure is not intended as a method of withdrawing funding in a case where the client secures a satisfactory outcome, but the general issue remains unresolved. Funding will not automatically be withdrawn if the applicant ceases to have a direct personal interest in this way during the course of the proceedings."

22. The amendments to the Funding Code following CP 12/09 and reflected in paras 7.2.4 and 7.3.4 of the Funding Code were considered by the Divisional Court in the case of *R (Evans) v Lord Chancellor* [2011] EWHC 1146 (Admin). The Divisional Court ordered the amendments to be quashed on the basis that the LSC in framing the amendments and the Lord Chancellor in approving the amendments had taken into account a legally inadmissible consideration, namely, representations from the Secretary of State for Defence ("the SSD") that adverse judicial review decisions arising out of the United Kingdom's intervention in Iraq could be extremely serious for the country's defence, security and policy interests. Moreover, the SSD's representations to this effect were not made public during the consultation and therefore other interested parties responding to the consultation did not have the chance to comment on them.

23. Laws LJ for the Divisional Court in *Evans* at [26] made clear, however, that the LSC and the Lord Chancellor were:

> "… perfectly entitled to promulgate criteria such as the amendments under challenge, but only for legally proper reasons. The reasonable prioritisation of scarce public funds would in my judgement be capable of amounting to such a reason."

24. I note at this point that CPR 12/09 was not in the bundles prepared for the hearing before me. The extract that I have quoted from CP 12/09 at [20] is taken from *Evans* at [12].

25. In November 2010, the Lord Chancellor issued a consultation document "Proposals for the Reform of Legal Aid in England and Wales" (Consultation Paper CP 12/10, Ministry of Justice, November 2010) ("CP12/10"). In CP12/10, the Lord Chancellor noted the Government's concern that the civil legal aid framework then in place under the 1999 Act:

    i) was too broad and thus "encouraged people to bring their problems before the courts too readily" and generated "unnecessary litigation" (Ministerial Foreword, p 3); and

    ii) was "no longer sustainable financially if the Government is to meet its commitment to reduce the public financial deficit" (para 4.11).

26. The aim of the reforms proposed in CP 12/10 was, therefore (Ministerial Foreword, p 3):

> "… to reserve taxpayer funding of legal advice and representation for serious issues which have sufficient priority to justify the use of public funds, subject to people's means and the merits of the case."

27. The legislation introduced following this consultation was LASPO. Under section 9 of LASPO, civil legal aid is available for civil legal services described in Part 1 of Schedule 1 to LASPO provided that the Director has determined that the individual qualifies for civil legal aid in accordance with Part 1 of LASPO and relevant

secondary legislation, such as the 2013 Regulations. In contrast, therefore, to the approach under the 1999 Act, where all civil legal services were in unless specifically excluded, under LASPO all civil legal services are out, unless specifically included. In certain circumstances, ECF is available under section 10 of LASPO for cases falling outside section 9, but, as already noted, I do not need to consider those provisions in this case.

28. Para 19 of Part 1 of Schedule 1 to LASPO specifically includes civil legal services in relation to judicial review, and therefore judicial review is in principle within scope, subject to certain conditions. For present purposes, the relevant provisions of para 19 are:

> "19 Judicial review
>
> (1) Civil legal services provided in relation to judicial review of an enactment, decision, act or omission.
>
> …
>
> *Specific exclusion: benefit to individual*
>
> (3) The services described in sub-paragraph (1) do not include services provided to an individual in relation to judicial review that does not have the potential to produce a benefit for the individual, a member of the individual's family or the environment.
>
> (4) Sub-paragraph (3) excludes services provided in relation to a judicial review where the judicial review ceases to have the potential to produce such a benefit after civil legal services have been provided in relation to the judicial review under arrangements made for the purposes of this Part of this Act.
>
> …
>
> (10) In this paragraph –
>
> …
>
> 'judicial review' means –
>
> (a) the procedure on an application for judicial review (see section 31 of the Senior Courts Act 1981), but not including the procedure after the application is treated under rules of court as if it were not such an application, and
>
> (b) any procedure in which a court, tribunal or other person mentioned in Part 3 of this Schedule is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review;"

29. Para 19(3) refers to the potential to produce a benefit for the individual, a member of the individual's family or the environment. The inclusion of benefit to the environment is to ensure that the United Kingdom is in compliance with its obligations under the Aarhus Convention. It is not suggested in this case that the Section 66 Challenge has the potential to produce a benefit for the environment. As consideration of "benefit" to the environment is a different exercise, I will make no further reference to that aspect of para 19(3). I note that it is not suggested that the Section 66 Challenge has the potential to produce a benefit for one of Ms Ward's family members in the absence of a benefit to her. Accordingly, I focus principally on the question of whether it has the potential to produce a benefit for Ms Ward individually.

30. It can be seen that paras 19(3) and 19(4) of Part 1 of Schedule 1 to LASPO are comparable to paras 7.2.4 and 7.3.4 of the pre-LASPO Funding Code that were struck down by the Divisional Court in *Evans*, for the reason I have already mentioned. Paras 7.2.4 and 7.3.4 of the Funding Code, however, used the term "significant benefits", whereas para 19(3) simply uses the term "benefit".

31. Para 881 of the Explanatory Memorandum to LASPO says the following regarding paras 19(3) and 19(4):

> "Sub-paragraph (3) excludes services that may be provided in relation to judicial review that do not have the potential to produce real benefits for the applicant, for the applicant's family or for the environment. This means that civil legal aid may not be made available for representative actions by way of judicial review. However, sub-paragraph (4) ensures that if services had been provided in relation to a judicial review and those services do not cease to be available if subsequently the judicial review ceases to have the potential to produce the benefit referred to in sub-paragraph (3)."

Legislative background re public spaces protection orders

32. Chapter 2 of the 2014 Act prescribes the circumstances in which local authorities may make a public spaces protection order to prohibit activities in public spaces within their area that are having a detrimental effect on the quality of life of those in the locality. The power of a local authority to make such an order arises under section 59 of the 2014 Act. Section 59(4) defines the public space that is the subject of a public spaces protection order as the "restricted area".

33. Section 66(7) of the 2014 Act provides that an "interested person" may not challenge a public spaces protection order in any legal proceedings, either before or after it is made, other than as provided under section 66 or under another provision of the 2014 Act that is not relevant for present purposes. Section 66(1) defines "interested person" as an individual who lives in the restricted area or who regularly works in or visits the area. It is common ground that Ms Ward is an interested person for this purpose in relation to the PSPO.

34. Of the two issues arising on this claim, most of the hearing was devoted to argument about whether the Section 66 Challenge falls within clause (b) of the definition of

"judicial review" in para 19(10) of Part 1 of Schedule 1 to LASPO. It is common ground, however, that Liberty needs to succeed on both the para 19(3) issue and the para 19(10) issue in order to succeed on the claim. I consider the para 19(3) issue first, on the assumption that the Section 66 Challenge falls within the definition of "judicial review" in para 19(10).

Does the Section 66 Challenge have the potential to produce a benefit for Ms Ward?

35. Mr Jamie Burton for Ms Ward made a series of points regarding the proper approach to the interpretation of para 19(3):

    i) Whether a judicial review has the potential to produce a benefit for an individual or a member of the individual's family is a question of mixed fact and law.

    ii) The question of whether a judicial review has the potential to produce a benefit is not one that the court must leave to the Director, only disturbing his decision if it is *Wednesbury* unreasonable or otherwise unlawful in public law terms. The court must determine the issue itself. Mr Burton contrasted this with section 9(1)(b) of LASPO, which provides that the Director has determined that an application for in-scope civil legal services has met merits and other relevant criteria.

    iii) The word "benefit" in para 19(3) is to be given its ordinary meaning. It is not qualified in any way in the statute, in contrast, for example, to paras 7.2.4 and 7.3.4 of the pre-LASPO Funding Code, which referred to "*real* benefits for the applicant, for the applicant's family and for the environment" (emphasis added). Mr Burton also contrasted para 19(3) with section 10(5) of LASPO, which addresses the question of whether there is a wider public interest in a proposed case due to the case being likely to produce "*significant* benefits for a class of person, other than the individual and the members of the individual's family" (emphasis added).

    iv) The threshold for whether a judicial review has the potential to produce a relevant "benefit" is intentionally low as it is merely a threshold. Public resources are protected by the requirement under section 9(1)(b) of LASPO that the Director then consider whether public resources should be expended on the proposed judicial review according to the merits criteria and, in particular, the proportionality test.

    v) Provided that there is a potential to produce a relevant benefit, then the proposed judicial review is within scope of the civil legal aid, regardless of the motives of the person seeking to bring the relevant proceedings, including whether those motives include a desire to bring benefit to persons other than the applicant or a member of the applicant's family.

36. Mr Burton submitted that the Section 66 Challenge has the potential to produce the following benefits for Ms Ward:

    i) Ms Ward is not currently homeless, but she is a single mother of three children dependent on state benefits, living in Poole. Two of her children have

disabilities. As recently as 2017 she was threatened with homelessness in circumstances set out in her witness statement dated 19 October 2018. If the Section 66 Challenge is successful, she will have removed the risk to her and her family members of being criminalised by the PSPO in the event of their becoming homeless.

ii) Ms Ward has worked in homelessness services in Poole for many years and considers the criminalisation of homelessness not only unlawful but misguided and contrary to the interests of local residents, of which she is one.

37. Mr Burton noted that the Director in his detailed Grounds of Resistance argued that Ms Ward's application was a representative action (namely, an action made solely on behalf of other people, with the applicant deriving no personal benefit) and that the benefit that she would receive was merely hypothetical.

38. In response to the former argument, Mr Burton said that an application under section 66 of the 2014 Act can never properly be characterised as a representative action, as an applicant under that provision must be an interested person under the 2014 Act. Every interested person has a "direct interest" in the local laws that govern the public spaces where they live or frequent. Public spaces protection orders are concerned only with activities carried on in a public place that are having a detrimental effect on the quality of life of those living in the locality. This is not the same as the test for standing to bring a judicial review, which is much wider.

39. Moreover, Mr Burton submitted, Ms Ward has a personal interest that is greater than merely being an interested person under the 2014 Act. She has good reasons to fear being caught by the prohibitions in the PSPO, and yet her opportunity to challenge the PSPO was limited to the 42-day period after it was made. The Section 66 Challenge has the potential to confer a benefit on her that she would be legally prevented from obtaining were she to be caught by the prohibitions in the PSPO at a later stage. Mr Burton submitted that the removal of this risk is a real benefit to her and not hypothetical.

40. Finally, Mr Burton noted that the court should not be concerned with the nature and degree of the personal benefit to Ms Ward. That is a matter for the proportionality test. Also, it is irrelevant that other residents would also benefit from the Section 66 Challenge.

41. In my view, neither of the two alleged benefits that Mr Burton submits the Section 66 Challenge has the potential to produce for Ms Ward is a sufficient benefit for purposes of para 19(3). I have carefully considered the evidence set out in her witness statement, but that evidence establishes only that at a time in the past she found herself in circumstances where there was a risk that she might be rendered homeless. She was not homeless nor was she imminently homeless at the time she issued the Section 66 Challenge.

42. Mr Burton has submitted that the elimination of the risk that the PSPO will apply to her should she find herself at some point homeless is a sufficient benefit. That, however, does not seem right to me, construing para 19(3) in context, having regard to the whole of LASPO and the Explanatory Memorandum, against the background of CP 12/09, the changes to the pre-LASPO Funding Code considered in *Evans* and

CP 12/10. As I have already noted, paras 7.2.4 and 7.3.4 of the pre-LASPO Funding Code referred to "real benefits" as does para 881 of the Explanatory Memorandum to LASPO. CP 12/09 at para 3.2 referred to "personal benefit". The Ministry of Justice's Response to Consultation referred to "material benefit" at p 20. Para 19(3) simply says "benefit". The word "benefit" has, potentially, a very broad meaning. It cannot be the case that any benefit to an applicant for judicial review (or to a member of the applicant's family), however theoretical or otherwise slight, would suffice to bring a proposed judicial review within para 19(3). That would be inconsistent with the clear policy underlying the introduction of this rule, namely, to exclude the availability of civil legal aid funding, other than in exceptional cases, for judicial review undertaken by an applicant as a representative action.

43. I accept a number of points made by Mr Burton about para 19(3). It is a question of mixed fact and law whether a proposed judicial review action has the potential to produce a benefit for an individual or a member of the individual's family. On an application for judicial review of a decision of the Director refusing civil legal aid on this basis, it is a matter for the court to determine as a question of law having evaluated the relevant facts said to give rise to the potential to produce a relevant benefit.

44. I agree with Mr Burton that the starting point is a consideration of the ordinary meaning of the word "benefit", which is a broad one. I also bear in mind his point that, in view of the Director's application of the merits criteria and, in particular, the proportionality test, it is not necessary for the Director or the court, when considering "benefit", to consider the degree or quality of the benefit to the individual or the individual's family member. While I agree that it should not be necessary for the applicant to show that the proposed judicial review has the potential to produce a significant benefit, it seems to me that it must have some substance. It must be a real benefit. Some degree of evaluation of the benefit arising in the factual circumstances of the case must be undertaken.

45. It is not necessary, therefore, for para 19(3) to have used the words "real benefit". That the benefit must be real goes without saying. Similarly, I do not think that the standard would be any higher if the words "material benefit" had been used. The benefit must be direct, personal and material to the individual or to a member of the individual's family.

46. The elimination of a theoretical or hypothetical risk that an individual might at some future time form part of a class that could be affected by a public law wrong that the relevant judicial review is seeking to address would not, in my view, normally be a sufficient benefit for purposes of para 19(3). But ultimately it is a fact-sensitive judgment. I can envisage an exceptional case where the elimination of a sufficiently grave and imminent risk threatening the applicant or a member of the applicant's family might be a sufficient benefit for purposes of para 19(3). This, however, is not such a case.

47. The first point to note is that the fact that Ms Ward is an interested person for purposes of section 66 of the 2014 Act is not *per se* sufficient to establish that her bringing a Section 66 Challenge to the PSPO has the potential to produce a direct, personal and material benefit to her. Putting her case at its highest, the elimination of the hypothetical risk that Ms Ward might be subject to the PSPO should she in the

future find herself homeless is not, as I have already said, sufficient to constitute a benefit in the sense required by para 19(3).

48. In her witness statement dated 19 October 2018 Ms Ward says the following at paras 14 and 15:

> "14. I do not want anyone in the Poole PSPO area to risk being criminalised for sleeping rough or begging. I am also very aware that my daughters and I are reliant on state benefits. We live a financially precarious existence. My years of experience in the homelessness sector have taught me that people's circumstances can spiral downwards very quickly and that no one who depends on state benefits is very far away from experiencing homelessness. I therefore worry that if my daughters and I lost our home for any reason, then we would be subject to the terms of the Poole PSPO.
>
> 15. Last year my daughters and I were evicted from our previous rental home because the landlord wanted to move back in. I was told by the council that they wouldn't be able to help me until we were at the last stage of eviction, and that at that point the best they could offer us would probably be emergency bed and breakfast accommodation for a month or two. The council said that the emergency bed and breakfast would be followed by being housed anywhere in the country. This would have been inappropriate for my daughters, two of whom have significant health problems, so if it had come to this I would have insisted that they move in with their father. I would then have been a single unemployed woman with no dependent children and therefore a very low priority for the council to house. I hope that I would have been able to stay with friends but that would not have been guaranteed. In the end we were able to find a new home to rent but this situation left me feeling frighteningly close to experiencing street homelessness."

49. This is the evidence supporting Mr Burton's submission that Ms Ward was threatened with homelessness in 2017, that the threat of homelessness hangs over her and that the elimination of that risk is a sufficient benefit to her to satisfy para 19(3). Much more of Ms Ward's evidence concerns her professional and personal involvement in homelessness as a social and political issue. For example, at para 25 of her witness statement she says:

> "When I decided to challenge the Poole PSPO I do so as I am a Poole resident who has worked in homelessness for almost 25 years: I care very deeply about what happens to those who are homeless in Poole. I do not want to be (neither do I want others to be) criminalised for sleeping rough or begging."

50. This and similar statements in Ms Ward's evidence support Mr Burton's submission set out at [36](i) above, namely, that Ms Ward has worked in homelessness services in

Poole for many years and considers the criminalisation of homelessness not only unlawful but misguided and contrary to the interests of local residents, of which she is one.

51. While I do not doubt the sincerity of Ms Ward's fear of potential homelessness, I note that there is no suggestion that she was under significant threat of being made homeless at the time she filed the Section 66 Challenge or at any other time since 2017. Even on her own evidence, in the passages I have quoted above, it is not clear that homelessness for Ms Ward was imminent in 2017. She had, for example, the possibility of staying with friends. And, in the end, she was able to find a new home to rent.

52. The risk of homelessness in her case is hypothetical and the elimination of that hypothetical risk is insufficient, in my judgment, to constitute a benefit within para 19(3), construing it in the context of LASPO as a whole and taking into account the relevant policy background to which I have referred.

53. Similarly, the second alleged benefit to Ms Ward, to which I have referred at [36](ii) and at [50] above, is in my judgment insufficient. Although Ms Ward is a resident of Poole and therefore has a more direct interest than, say, a resident of Newcastle in the quashing of the PSPO, this second alleged benefit is not sufficiently direct, personal and material to Ms Ward or a member of her family to constitute the sort of benefit that would distinguish the Section 66 Challenge from what is, in essence, a representative action.

54. I agree with Mr Burton that when assessing "benefit" to an applicant or a member of an applicant's family under para 19(3) it does not matter whether others would benefit from the proposed judicial challenge or even that the benefiting of others is a strong motivation in bringing the challenge. However, there must be a sufficient direct, personal and material benefit to the applicant or a member of their family.

55. Neither Ms Ward's status as a resident of Poole nor her longstanding professional and personal involvement in the issue of homelessness is sufficient in my view to mean that the Section 66 Challenge would have the potential to produce a benefit to Ms Ward or a member of her family in the sense required by para 19(3).

56. On the facts of this case, what Ms Ward is seeking to do is to bring a representative action. Her status as a resident gives her the standing to bring a Section 66 Challenge against the PSPO. But civil legal aid for a representative action is now excluded by para 19(3) of Part 1 of Schedule 1. Accordingly, in making the Decision the Director was not wrong to the extent that he relied on the ground that the Section 66 Challenge did not have the potential to produce a benefit for Ms Ward or a member of her family in the sense required by para 19(3), and therefore this ground of the claim does not succeed.

Does section 66 of the 2014 Act require the application of judicial review principles?

57. In view of my conclusion on the question of "benefit" to Ms Ward of the Section 66 Challenge, it is not necessary for me to decide whether the Section 66 Challenge falls within the definition of "judicial review".

Conclusion

58. The claim is dismissed.