



8 November 2007

- **High Court judge finds that Compact is “more than a wish list – a commitment of intent”**
- **Service-user entitled to bring challenge against charging even if she will not be liable for charges**

In the first case to consider whether a breach of the Compact was unlawful, a judge has confirmed that local authorities should consider the Compact when making decisions. The case also recognised that individual service-users could bring challenges even if they might not be directly affected by a decision.

The case, brought by the Public Law Project (PLP) on behalf of Mrs Helen Berry, related to a challenge brought by an individual service-user against a decision by Cumbria County Council to introduce day care charging across the county. Mrs Berry brought the judicial review claim on the basis that the Council had failed to consult properly with voluntary sector organisations and their users when it initially made a decision in February this year to bring in charging, and that a subsequent decision in September was also unlawful.

In the High Court yesterday, Judge David Mackie QC held that the February decision had been taken without adequate consultation and was therefore unfair and unlawful. Part of Mrs Berry’s claim was that the Cumbria Compact – which required a minimum 12-week written consultation over any major service change – had not been complied with. Whilst the judge made it clear that his final decision did not rely specifically on the Compact terms, he described the Compact as “more than a wish list - a commitment of intent” on the part of the Council, and that the 12-week written consultation promise should be taken as a yardstick for deciding what was reasonable on the Council’s part.

However, after the initial decision in February, the Council had then held an adequate consultation, the outcome of which was a fresh decision in September which could not be criticised; the judge therefore held that the decision to introduce charges should stand. Mrs Berry was therefore ultimately unsuccessful in blocking the introduction of charging and forcing the Council to have a fresh consultation and decision-making process. The judge acknowledged however that the Claimant was right to bring the claim in the first place as the original decision had been unlawful

and it was as a result of the proceedings that the Council had held a second and more wide-ranging consultation process.

Importantly for other service users who wish to bring a challenge, the judge also held that even though Mrs Berry would not be liable for charges herself, she was still entitled to bring the claim. He did not agree with the Council's argument that the case should have been brought by those more directly affected such as voluntary sector providers or those who would be liable for charges. Mrs Berry's solicitor at PLP, Louise Whitfield, said, "this provides useful guidance to enable more individuals to challenge decisions affecting providers in the voluntary sector".

"Whilst my client is disappointed at the result because the charges will now go ahead, she is pleased that Cumbria County Council now appears to be taking consultation far more seriously and ensuring that the voluntary sector and users are properly consulted on other major service changes."

**For further information, please contact Louise Whitfield at the Public Law Project: (020) 7697 2192 / [l.whitfield@publiclawproject.org.uk](mailto:l.whitfield@publiclawproject.org.uk)**

#### **Notes for editors**

1. The Public Law Project currently provides free advice to voluntary sector organisations on public law disputes as part of a three-year project funded by the Big Lottery. Contact on 020 7697 2198 or email on [evs@publiclawproject.org.uk](mailto:evs@publiclawproject.org.uk).
2. The Public Law Project ([www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)) is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage.

Within this broad remit PLP has adopted three main objectives:

- increasing the accountability of public decision-makers;
- enhancing the quality of public decision-making;
- improving access to justice.

Public law remedies are those mechanisms by which citizens can challenge the fairness and/or legality of the decisions of public bodies and so hold central and local government and other public authorities to account. They include non-court-based remedies such as complaints procedures and ombudsman schemes and also litigation remedies, in particular judicial review.

To fulfil its objectives PLP undertakes research, policy initiatives, casework and training across the range of public law remedies.

3. A copy of the full judgment will be available on PLP's website once it is received from the Court.