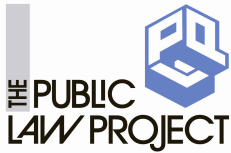


Empowering the voluntary sector

Issue 14 January 2011



Working with



Welcome to the 14th edition

Firstly, a belated Happy New Year to all our readers! In this edition of our newsletter we examine some recent cases where public law and Compact have been successfully used to challenge decisions made by public bodies to make unfair cuts to local organisations.

In the first case study Ravi Low-Beer examines the case Harrow Mind brought against the PCT when it threatened to cut funding. The next case study, from Nicole Catenazzi, explores how the Compact Advocacy Project and the Public Law Project worked together to prevent cuts to many local organisation being made by the PCT. The third case, again from Ravi Low-Beer, outlines the case brought by the Alliance for Black Children when they faced cuts from the Children's Fund in Northamptonshire. Also in this edition Ingela Andersson from the Compact Advocacy Project provides us with an overview of the new national Compact. The final pages of the newsletter give details of forthcoming EVS workshops and details of our London master class. Also listed are details for NAVCA's "Understanding Contracts: the legal implications" workshops. Our final article is a press release from Pierce Glynn Solicitors, outlining the recent successful judicial review taken against London Councils.

Finally, EVS had some formal recognition in 2010 that we would like to show off. The project was shortlisted as a finalist in the **Third Sector Excellence Awards** in the Charity Partnership category, an achievement we are very proud of. The three organisations that make up EVS; Public Law Project, NAVCA and NCVO, feel that the partnership works very well, and by bringing the expertise of our own organisations together, we can offer an enhanced service to others. It's great to see this recognised formally and we hope you agree with the Awards panel.

MIND in Harrow challenges the PCT

Ravi Low-Beer, Public Law Project

At the beginning of May 2010, Harrow PCT notified all those voluntary sector service providers which it funded, that it would terminate its funding arrangements with the voluntary sector, and then, following a review, re-engage those services that successfully applied through a re-commissioning process.

Essentially, voluntary sector providers were asked to submit a self-assessment form to the PCT by 28 May 2010. On that date, the PCT gave three months' notice on all voluntary sector contracts. The self-assessment forms were scored against published criteria, with a view to some services being re-commissioned under new service level agreements. PLP and the NCVO Compact Advocacy team were consulted by Mind in Harrow and other members of the voluntary sector in Harrow under the Empowering the Voluntary Sector scheme.

On 4 June 2010, PLP wrote to the PCT on behalf of the voluntary sector organisations to ask that:

1. the three months' notice of the termination of existing services should be extended as it might otherwise be insufficient to ensure that service users do not face disruption to, or even a termination of, vitally needed services. The loss of these services would, it was argued, disproportionately impact on disabled people, the old, the young, those with mental health problems, members of the BME communities, and women
2. the PCT should consult with service users as part of its duty to consult with and involve local people under section 242 of the National Health Service Act 2006
3. before terminating its voluntary sector contracts, the PCT should assess the impact of the loss of service on disabled people, black people and women of the planned termination of the voluntary sector contracts on service users caught by the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995.

...the funding it received from the PCT to carry out certain specified services would be reduced to £174,000.... This corresponded to a cut in Mind in Harrow's funding of approximately 43%.

On 2 July 2010, the PCT gave notice to Mind in Harrow, that the funding it received from the PCT to carry out certain specified services would be reduced to £174,000 for the period from 1 March 2010 to 31 March 2011. This corresponded to a cut in Mind in Harrow's funding of approximately 43%. MIH subsequently confirmed that as a result of the reduction in its funding from PCT, certain of its services would be reduced or discontinued.

Service users, whose services were threatened by the proposed cuts to Mind in Harrow, applied for legal aid to bring a claim for judicial review. The PCT did not back down, and proceedings were issued with PLP acting for the service users, and Compact Advocacy acting for Mind in Harrow (other voluntary sector organisations had not had such large cuts to their budgets, and did not involve themselves directly in the litigation).

At the time proceedings were issued, certain key services were going to end at the end of August, so the service users applied for a stay on the PCT's decision to terminate funding.

On 7 September 2010, the court ordered that the case be heard quickly, directed that the case have an oral hearing before the end of September 2010, and ordered that, pending that hearing, the PCT should continue to fund Mind in Harrow to provide the services. However, following the order of 7 September 2010, agreement was reached between the PCT's solicitors and PLP that the decision under challenge should be quashed; that the PCT will continue to fund the services in question provided by MIH pending a reconsideration of its position in respect of the funding it provides to MIH; and that the PCT should pay the service users' reasonable costs of the case.

From this rather involved background, there have been the following developments:

- Mind in Harrow are still in receipt of funding and remain in negotiation with the PCT about the future.

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- The case involved partnership working (in a loose sense) between the voluntary sector and service users, and between Compact Advocacy and PLP. The ultimate success of the intervention will doubtless also depend on the extent to which Mind in Harrow can successfully work together with the PCT in agreeing new funding arrangements for 2011/12.
 - It is another example of a successful claim for judicial review arising out of (1) a breach by a public body of its due regard duty under the equality legislation (soon to be simplified and extended by the coming into force of the general duty in the Equality Act 2010); and (2) what the service users argued was a breach of a duty to consult contained in section 242 of the National Health Act 2006.
 - PLP have given a public talk in Harrow about cuts to services and the law. The experience was positive, and we hope to be able to repeat the experience soon.

For the service users concerned, the success of the claim remains palpable.

NYFVO – Holding a health authority accountable to its pledge to the Compact

Nicole Catenazzi, Compact Advocate, Compact Advocacy Team

The problem

The North Yorkshire Forum for Voluntary Organisations (NYFVO) and other organisations in the area were notified by NHS North Yorkshire and York's decision to cut the voluntary sector budget by £150,000 for the final quarter of the year. They were given a month's notice to return the remainder of their 2010/11 grants in order to relieve "serious financial pressures" faced by the PCT. Organisations affected included local infrastructure and frontline sexual health and counselling services. There had been no engagement or consultation about the decision and attempts between the organisations affected and the PCT to find an alternative, fairer solution to the situation

were unsuccessful. In an effort coordinated by the NYFVO and York CVS, the organisations approached the Compact Advocacy team for help.

The Compact issues

The NHS North Yorkshire and York were signed up to both the North Yorkshire Compact and the York Compact and had therefore agreed to the following:

- Prompt payment, consulting on changes to the funding position and letting voluntary and community organisations know about future funding as early as possible before the end of any grant periods or contract end dates.
- To examine the effect on the voluntary and community sector of new policies and strategies whilst still in development.

From its Funding Code of Practice, the PCT had undertaken to:

- give as much notice as possible (not less than six months) of changes to levels or terms of funding in contractual agreements; and
- provide service level agreements and contracts that include:
 - I. clear information on the purpose of funding
 - II. information on accountability
 - III. payment timetables
 - IV. appropriate performance monitoring and evaluation requirements
 - V. negotiation arrangements for each party should changes occur or become necessary.

*...care services minister
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The action

Compact Advocacy helped NYVFO draft a letter to the PCT outlining their concerns and identified areas of non-Compliance with the Compact and with public law. Acknowledging this, the PCT continued to justify its position and expressed unwillingness to reconsider the decision. The Public Law Project offered advice to the organisations on how the public body's decision could be in breach of public law under its equalities duties and the organisations' rights to a fair hearing.

Meanwhile, sector press got word of the situation and not only published the story but tracked it and continued to report on its progress, including when

the PCT rejected a compromise offered by the organisations affected to return half of the requested amount.

The story caught the attention of politicians where care services minister Paul Burstow described the PCT's actions as "despicable" and "a disgrace" during a parliamentary debate... *pulling the plug on small organisations with just a month's notice - or in some cases, less - is alien to the spirit of collaboration and partnership that we want the NHS to cultivate* – care services minister Paul Burstow. He then asked the chief executive of the NHS to intervene.

The outcome

Following another round of talks with the regional strategic health authority, the PCT finally decided to reverse its decision and stand by its original agreed funding terms to the end of March 2011.

Pressure from national infrastructure organisations, widespread coverage in sector press and influence from central government's key players certainly led to the PCT's u-turn on its initial decision. However, this outcome would have been unlikely had it not been for the NYFVO and York CVS, who coordinated opposition to the cuts. Throughout the process, the groups were incredibly organised, had a clear, unified objective and were driven to achieve a fair outcome despite the PCT's repeated reluctance to engage with them.

New National Compact launched

Ingela Andersson, Compact Advocate, Compact Advocacy Team

After several months of negotiation, consultation and sheer hard work the renewed national Compact was finally published just before Christmas. Having the vital backing of the Coalition Government gives the Compact the status it needs to succeed, but it also has other advantages. It is shorter and more focused than the previous agreement and is backed by a new set of accountability and transparency measures outlined in a new guide. These include confirmation of the role of the parliamentary and local ombudsmen in handling Compact complaints, requirements to include and report on how the Compact commitments are being met in departmental business plans, and an investigation into better Compact working to be carried out by the National Audit Office.

The work to renew the Compact was not without its difficulties. The tight timeline only allowed for six weeks of consultation with stakeholders and Compact Voice had to work hard to reach out to as many as possible in the limited time. In the end they received 129 written responses, attended 47 events across the nine regions of England and engaged with approximately 1500 individuals before the agreement was finalised.

The Compact Advocacy Team is broadly happy with the new Compact as the key commitments we frequently use are still there. Some new additions include a commitment by Government to ensure that the Compact is adhered to through the supply chain and another is for Government to take into account social and environmental value in funding decisions. We would encourage organisations to use this when demonstrating the true value of their work and to ask funders how this has been taken into account when decisions are made.

Although local Compacts are separate agreements, local areas are encouraged to follow the principles of the new document and it will undoubtedly play a part when local Compacts are refreshed in the future. The renewed national Compact can be viewed and downloaded here: www.compactvoice.org.uk/about-compact

The Alliance for Black Children

Ravi Low-Ber, Public Law Project

The Alliance for Black Children (ABC) is a voluntary sector organisation based in Wellingborough, Northamptonshire. It provides family support, after-school care and holiday activities primarily for black, African Caribbean and dual heritage children, young people and their families in Wellingborough, Kettering, Corby and East Northamptonshire. The service was funded through the Children's Fund by Northamptonshire County Council in accordance with a Service Level Agreement which ran from June 2010 to March 2011.

On 8 July 2010, the council invited ABC and other stakeholders to attend a meeting of the Children's Fund Partnership Board. At the meeting, ABC and

other VSOs were informed that £250,000 would have to be recouped from Children's Fund service providers, but that there would be consultation with various providers prior to a decision on where the cuts would fall.

A Service Level Agreement for 2010/2011 was received by ABC from the council on 9 July, and was signed by ABC following a board meeting of the trustees on 22 July 2010. ABC hand-delivered the signed SLA to the council's office, whereupon they were served with notice by the council of termination of ABC's service on 31 October 2010. No consultation took place in this period.

The premature termination of ABC's service had clear adverse consequences for the beneficiaries of the service offered by ABC, who are for the most part black and minority ethnic children and their families. The officer's report prepared in connection with ABC's application to the council for funding for 2008-09 described ABC's aims and objectives in the following terms:

"To advance the education and development of children, in particular but not exclusively, of African/Caribbean origin (including those of dual heritage): and to work towards the elimination of racial discrimination and to promote good relations between persons of different racial groups by endeavouring to raise levels of tolerance through the provision of information and explanation of African/Caribbean culture. Study support – one to one in school and out of school."

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The officer's assessment was that the funding proposal:

"will continue to improve the achievement of black children at school, improve attendance and reduce the number of children excluded from education. The proposal also supports the development of strong partnerships with the Schools Service. The project not only supports the children but works holistically with the families and the teachers in partnership to increase attainment levels tailored to the needs of the individual child."

The officer's concluding comments were:

“This proposal provides evidence that the pilot has made effective progress in developing a programme to support future generations of black and dual heritage young people. Young black and dual heritage people will be placed in a stronger position to have equity in terms of participation in the economic, social, educational and political life. If the project is not funded it would appear to adversely impact on education standards for black and dual heritage young people in Wellingborough.”

So far as ABC were concerned, nothing had changed since the service was started that could conceivably have led anyone to reasonably conclude that the officer's report was no longer valid – it was clear that terminating the service would have an adverse impact on black and minority ethnic children and their families. Accordingly ABC responded to the notice of termination by asking for sight of any equalities impact assessment on which the decision to terminate had been based, and asking for confirmation of who took part in the consultation. At the same time, ABC asked for copies of the documents used on the impact assessment.

On 9 September 2010 ABC received a response from the council stating that having considered ABC's letter, the council had “discovered that the cessation of [ABC's] funding was in fact subject to the undertaking of a full equalities impact assessment”, and that accordingly “the notice of termination [is] suspended”.

ABC was supported throughout by members of the Compact Advocacy team. In addition, PLP accepted instructions to advise and assist an older man who was the sole carer for three of his grandchildren, all of whom received support from ABC.

PLP's letter set out the relevant facts and asked (by reference to the council's policies on consultation) for confirmation that the council would consult with service users. The letter was sent to the council's Monitoring Officer, and copied, amongst others, to local schools, councillors and the police (who were supportive of the organisation). Implicit in the letter was a threat of judicial review.

In late November 2010, the council wrote to say that a full equalities impact assessment had been carried out and that, as a result of the findings of the impact assessment, the council has decided to continue to fund ABC, through to the end of the contract period in March 2011.

The case illustrates the importance of:

- a) galvanising support for a service from as wide a range of constituents as possible;
- b) ensuring that communications with the council are always constructive, and written in a spirit of partnership and cooperation;
- c) partnership working;
- d) considering whether to give public bodies an opportunity to make amends, whereas here, they get procedures wrong.

And at the time of writing, ABC are still going strong.

High Court allows judicial review of public sector cuts decision

Press Release, Pierce Glynn Solicitors, www.pierceglyn.co.uk

On the afternoon of Friday 28 January 2011, Mr Justice Calvert-Smith gave judgment for the Claimants in judicial review proceedings brought against London Councils. The claim was brought by Pierce Glynn, solicitors, on behalf of service-users of one of the charities affected by the cuts.

The challenge relates to London Councils' plans to cut £10m from the £26.4m in funding provided by London Councils to voluntary sector organizations in London. The cuts would have affected over 200 voluntary and community sector organizations in London, and tens of thousands of Londoners.

The Judge held that London Councils' consultation process was flawed and that they had failed to meet their statutory equality duties. He quashed all the

funding cut decisions for the 200 plus projects and he said that London Councils must re-run the process, this time with full equality impact assessments.

The Claimants' solicitor, Louise Whitfield, a specialist in claims raising equality issues and cuts to the voluntary sector, said:

"This case establishes that even in the current economic climate, it remains of paramount importance that public sector funding cut decisions are properly assessed for their gender, disability and race equality impacts. If they are not, public sector funding cut decisions will be unlawful.

London Councils simply did not consider the full effect of their £10 million cuts on the hundreds of voluntary sector groups and tens of thousands of members of the public who would be affected. They will now be required to do so."

The precise terms of the order made by the court will be confirmed on Tuesday 1 February 2011, as these are yet to be finalised.

Details of advice line & training courses

Many organisations are concerned that cuts to funding have been made disproportionately, without consultation or unfairly. The Empowering the Voluntary Sector project offers free advice to organisations who feel that a decision to cut their funding was made in a non-Compact-compliant way or has breached public law. Contact us on **020 7520 3161** or evsAdvice@ncvo-vol.org.uk for instant advice to your organisation, for direct support in challenging decisions or just to find out more about how we can help you.

The project is running workshops in the following areas:

- Hounslow 2.2.11 (EVS204)
- Slough 9.2.11 (EVS184)
- Bournemouth 16.2.11 (EVS205)
- Tunbridge Wells 17.2.11 (EVS189)
- Nottingham 28.2.11 (EVS194)
- Maryport, Cumbria 3.3.11 (EVS207)
- Westminster 7.4.11 (EVS202)

- Watford 11.4.11 (EVS206)

To book your place on one of the workshops listed go to www.evproject.org.uk and follow the link for the national training programme or email terry.perkins@navca.org.uk. If you wish to host a workshop, details can also be found on the same web page.

It is not too late to book on to our London master class; for details go to <http://www.navca.org.uk/events/evsmaster.htm>

If you attend this event you are also cordially invited to an event celebrating five years of the Empowering the Voluntary Sector project. This will take place at NCVO after the EVS master class in London on 22 February 2011 from 4.30pm until 6.30pm.

The event will showcase some of the amazing work the project has achieved. Join NCVO, NAVCA and the Public Law Project to hear speeches from Sir Stuart Etherington, Kevin Curley and others; come and browse our library of resources; learn about who we've helped; and network with guests over wine and nibbles. We hope to see you there!

Kindly RSVP to evsAdvice@ncvo-vol.org.uk before 10 February 2011.

And finally!

NAVCA's Local Commissioning and Procurement Unit has spaces at the following events:

Understanding Contracts: the legal implications

- 7 February 2011, Exeter
- 17 March 2011, Manchester
- 18 March 2011, Hull
- 22 March 2011, London
- 23 March 2011, Kent

For more details see www.navca.org.uk/events/understandingcontracts