



Empowering the voluntary sector

Issue 3, May 2007



Welcome to the third edition of our newsletter. We start with a piece by Louise Whitfield, Project Solicitor at the Public Law Project, which continues the theme in earlier newsletters about the status of local strategic partnerships and the role of the voluntary and community sector within them. We then have a piece about public law in action from Brian Horner, Chief Executive of Norwich and Norfolk Voluntary Services, and finally our 'did you know section' on what the so-called 'equality duties' actually mean in practice.

Local strategic partnerships

PLP recently represented service users of a voluntary sector organisation in Doncaster which had been offered £50,000 of funding by their local strategic partnership (LSP), only to have the grant blocked by the local council, even though the organisation had met the conditions set out in the offer letter. The council's decision was based on two factors that had never been raised with the group previously and one of which – best value – actually contradicted the basis on which the application had earlier been approved by the LSP. The group appealed against the decision unsuccessfully and then sought legal advice.

PLP took on the case to challenge the way in which the council had tried to veto the LSP's funding decision. We raised a number of arguments including the fact that it was unfair for the LSP to make a funding offer with conditions attached and then to fail to honour that offer once the conditions had been met. We also argued that the council had no power to veto the LSP's decision and that it was unfair to raise issues that had not been raised earlier in the process.

Although these were the key issues when we started the case, another fundamental point came up as soon as we wrote to the LSP and the council: the latter said that the LSP was not a public body and could not be challenged by way of judicial review proceedings. We argued that it was, because it was exercising a public function (allocating public funding) and had to be accountable for its actions. The council also

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seemed to maintain that they could veto the LSP's decisions. After three months of correspondence, the LSP finally instructed their own solicitors and began negotiating in their own right.

Both the LSP and the council eventually conceded that the LSP was a public body that could be challenged using judicial review, and that the council did not have a veto over the LSP's funding decisions. The LSP agreed to reconsider the organisation's application for funding and when it did so it offered the £50,000 and accepted that the earlier conditions had in fact been met. The judicial review court case is therefore being settled and the organisation has secured its funding.

Apart from the success for the individual organisation, the case also highlights the issue of how partnership bodies such as LSPs exercise their powers and how to make them accountable. Like any public body, they should act fairly and openly and should not allow one member, such as a local authority, to take decisions on their behalf.

User piece

Brian Horner, Chief Executive of Norwich and Norfolk Voluntary Services (NVS) has been in negotiation with the local PCT regarding a proposed blanket cut to funding of the voluntary sector. PLP advised that there were three main issues:

1. A number of 'principles' were set out by the PCT as constituting part of a review, but it gave no explanation as to weighting, scoring, how any information would be gathered, and no disclosure of documents referred to (e.g. strategies, planning priorities and targets).
2. The timetable set out was unclear and unhelpful; drafted in December it was an attempt to give the sector notice that their funding MIGHT cease at the end of March as a result of the review process, even though the process had not even been started!

Using the principles of public law as a tool, Brian successfully negotiated a turn round in the method being used to action the proposed cuts.

3. The PCT also referred to the sector being given notice of 'potential reductions' in January and that there would be ongoing negotiations, but it was unclear whether the potential reductions would be prior to, or after, the review had been undertaken.

Using the principles of public law as a tool, Brian successfully negotiated a turn round in the method being used to action the proposed cuts. The PCT is now going to contact all voluntary sector organisations to discuss its proposal for funding future activity. Below is an extract from a letter from Brian to all NVS members explaining the current situation and outlining their actions and strategy.

"Dear Colleague,

In my previous message, I mentioned that we had been given sight of a draft letter that the PCT proposed to send to all voluntary organisations with which it had a funding arrangement. Some of the proposals in that letter caused us very serious concerns about the approach that the PCT at that stage were intending to adopt. It was our view that some of these would have had potentially very damaging consequences for individual voluntary organisations. We made urgent representations to the PCT about some of these including pointing out the possibility that some of their proposals would probably not be allowed under public law. The PCT acknowledged the points raised by NVS. As a result of our intervention the most worrying proposals have been withdrawn and the letter has not been sent by the PCT.

One of the points we have continually stressed to the PCT is that they should not adopt a blanket approach in their dealings with the voluntary sector. NVS has emphasised the importance of providing voluntary organisations with the opportunity to put forward the case for your service and your organisation. This is so that any decisions that are taken on cuts to funding are taken in the full knowledge of the consequences for service users, voluntary organisations and the PCT itself. We have been assured that the PCT is now making direct contact

with all voluntary organisations individually to discuss any proposals for reductions in funding.

In the discussions that took place with the PCT before Christmas we urged the PCT to provide any voluntary organisation whose funding was to be cut with sufficient time to make the necessary adjustments so as not to destabilise organisations and to enable those affected to meet their commitments to staff and service users. The PCT have now agreed that they will give six months notice of any reductions in funding even where a service level agreement may have a shorter agreed notice period within it or is due to end in March.”

Did you know? (1)

What does it mean when a public body says it will consider its equality duties?

As this project moves into its second year, we are going to focus our resources more on organisations comprised of, or serving, disadvantaged groups. This will mean more of a focus on the so-called ‘equality duties’ imposed on public bodies by recent legislation.

There are now three distinct legal regimes applicable to race, gender and disability discrimination, but each follows a similar pattern. Each contains a general anti-discrimination duty (binding on most public bodies) to have due regard to the need to eliminate unlawful discrimination, to promote equality of opportunity; and to promote good relations. Disability discrimination legislation goes even further and requires public bodies to take steps to take account of disabled people’s disabilities (even where that involves treating disabled people more favourably); to promote positive attitudes towards disabled people; and to encourage participation by disabled people in public life.

These general duties are supplemented by additional specific duties, such as a requirement on public bodies to publish Equality Schemes setting out how they propose to meet the relevant general duty. These can usually be accessed via the body’s own website.

But what does this mean in terms of the sector's relationship with public bodies? Most obviously, it means that the public body will have to consider the possible impact of its decisions, policies and procedures upon those within the community that are protected by anti-discrimination legislation (e.g. BME groups, women or those with disabilities). Therefore, if it is considering cuts to funding for organisations serving or representing these groups, it may well be obliged to:

- conduct a full impact assessment of the proposed cuts;
- (in the case of services for disabled people) square its decision with its additional duties towards this group;
- consider any other options that achieve the objective of saving money in ways that impact less upon the protected groups.

For obvious reasons, this process must be completed **before** any final decision is made. A failure to follow this process may well render any final decision unlawful.

Guidance on all these duties is contained in codes of practice issued by the various statutory agencies (the Commission for Racial Equality, the Equal Opportunities Commission, and the Disability Rights Commission) whose functions are to be transferred to the new Equality and Human Rights Commission in October 2007. These are available on their respective websites. PLP solicitors are happy to advise in individual cases.

Did you know? (2)

One of the targets for this project was for the total of monies acquired, preserved or returned to the VCS as a result of our legal advice, to exceed the total BLF grant. Preliminary estimates from year one of the project indicate that we are ahead of schedule, with the current total standing at some £250,000.

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We have also been running workshops since September 2006 and to date we have trained over 200 people from voluntary and community organisations on the one-day workshops and around 70 others have attended short workshops at NAVCA conferences. Over 98% of people who have attended the one-day workshop rate their satisfaction of the quality and value of the training and the resources used as 'high'. "Best and most useful course I have attended for ages" (Eastbourne); "Excellent day's training; the workbook is the best resource from a course I have ever come across" (Tamworth).

Details of advice line & training courses

The advice line run by the Public Law Project provides free detailed legal advice to voluntary organisations on disputes involving public bodies' decisions and failures. PLP's lawyers will also take on particular cases to resolve disputes through complaints procedures, the Ombudsman schemes or court proceedings.

The advice line is available **NOW** on 020 7697 2198 at the following times:

| | | | |
|----------|-------------|------------|-------------|
| Mondays | 2pm to 5pm | Wednesdays | 2pm to 5pm |
| Tuesdays | 10am to 1pm | Thursdays | 10am to 1pm |

Or email: evs@publiclawproject.org.uk

The project is running workshops in the following areas from May to July 2007:

- Leicester, 15 May
- Warrington, 17 May
- Oxford, 13 June
- Chelmsford, 19 June
- Preston, 27 June
- Crook, 4 July
- Mansfield, 10 July
- Crediton, 25 July

For booking forms and further details please go to <http://www.navca.org.uk/evs> or email Terry Perkins at terry.perkins@navca.org.uk