



# Empowering the voluntary sector

Issue 7, November 2008



Welcome to the seventh edition of the newsletter.

As the profile of the Empowering the Voluntary Sector Project and Public Law Project has increased, so has the number of successful judicial review cases taken against public bodies involving voluntary sector organisations. In our first two articles, Louise Whitfield outlines recent judicial reviews involving voluntary sector organisations in the areas of race and disability equality duties.

Terry Perkins and Louise Whitfield then give us an overview of the plans the project has to deliver masterclasses in public law in early 2009, including details on how to book for these events.

Finally, we have our usual listing of workshops that are planned from now until the end of March.

## Southall Black Sisters – The case against Ealing

Louise Whitfield, PLP

*R (Kaur & Shah) v London Borough of Ealing*

In July 2008, two service-users of Southall Black Sisters (SBS) took Ealing Council to court over their decision to change the way they funded support services for victims of domestic violence (DV). The judgment is helpful in clarifying the law on a number of points concerning local authorities' duties under the Race Relations Act (RRA) and the provision of specialist services for BME groups.

---

### Background and the basis of the claim

The case was about a decision by Ealing Council to switch funding away from SBS' specialist domestic violence service for BME women and to use that funding to provide an "all-women" service of the same standard which would also target certain groups. However, no additional funding was being made available by the council; the successful bidder was to provide a similar level of service to all women without any extra funding.

Initially Ealing intended to implement this decision (i.e. go ahead with commissioning a new service on this basis) and then carry out a race equality impact assessment (REIA). When litigation was first threatened by the service-users in December 2007 (on the basis that the REIA should be done first), the council agreed to withdraw their decision, do the REIA and then re-take the decision.

However, the REIA that was then produced and consulted on was seriously flawed, and Ealing's decision to approve the new grant criteria was therefore unlawful. The service-users relied on a number of legal points to argue that Ealing had acted unlawfully:

- The REIA was inadequate and the council therefore had not met their duty under s.71(1) RRA (the duty to promote race equality).
- The council had failed to follow its own EIA guide.
- The council had misinterpreted the figures and so had made false assumptions about the prevalence of domestic violence amongst BME communities.
- The council had wrongly relied on the cohesion guidance for funders and their cohesion strategy generally to argue that a generic service was necessary.
- The council had misunderstood how it should (or could) promote good race relations.

*...the REIA that was then produced and consulted on was seriously flawed, and Ealing's decision to approve the new grant criteria was therefore unlawful*

In response, the council claimed their REIA was sufficient and they carried out a further, fuller REIA after the case started. They also claimed that it would be unlawful to fund SBS unless there was a special case (i.e. specific evidenced need for BME only services)

---

and s.35 of the RRA applied. Section 35 is the part of the RRA that allows services to be for particular groups only, an essential part of equality and anti-discrimination legislation.

### The court case

Proceedings were begun in the High Court in April and a two-day trial started on Thursday 17 July. At lunchtime on Friday, the council withdrew from the case, agreeing to their decision on the grant criteria being quashed, and confirming that they would go back to the drawing board and start the entire process again including a fresh REIA on any new proposals. This meant that Ealing did not finish their legal submissions, but the judge agreed to give judgment to provide guidance on the key issues.

The key findings for the voluntary sector are as follows (see below for notes of what the judge actually said):

- REIAs must be undertaken before policy is decided upon or implemented;
- REIAs cannot be a rearguard action to justify a policy already decided;
- the impact on those losing a service should be assessed, not just the new service that is being proposed;
- in this case Ealing should have done the REIA before they decided to limit applications to one provider or a consortium;
- Ealing's interpretation of s.35 RRA was wrong; it was not unlawful to fund such a group, in fact it was sometimes essential to do so.

### Quotes from the judgment by Lord Justice Moses

*“The jurisprudence [legal theory] relative to the issues reinforces the importance of considering the impact of any proposed policy before it is adopted as part of the significant role of section 71 in fulfilling the aims of anti-discriminatory legislation...In considering the impact, the authority must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated.”*

---

*“The need for advanced consideration must be distinguished from the use of such impact assessments for what Lord Justice Sedley described as a rearguard action following a concluded decision...What is important is that a racial equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption.”*

*“I should observe at this stage that it was Ealing’s obligation to ensure that its criteria for funding did not have an impact adverse to those for whom services had hitherto been provided.”*

*“This was a clear error. The authority was not entitled to formulate policy before any equality impact assessment. Thus it is unlawful to adopt a policy contingent on an assessment.”*

*“There was no full racial equality impact assessment until some time after these proceedings were launched, namely on 5 June 2008. This failure establishes a clear breach of Section 71 of the 1976 Act, the statutory code and the specified duties which Ealing was required to follow under the 2001 Order. In determining as criteria that the provider should be a single source of services to all throughout the borough or a consortium with a single leader before a full racial equality impact assessment had been undertaken, the Council acted unlawfully. Moreover it was wrong to fix on a solution with only the prospect of monitoring its effect on minorities in the future.”*

*“There is no dichotomy between the promotion of equality and cohesion and the provision of specialist services to an ethnic minority. Barriers cannot be broken down unless the victims themselves recognise that the source of help is coming from the same community and background as they do.”*

**“...Barriers cannot be broken down unless the victims themselves recognise that the source of help is coming from the same community and background as they do...”**

*“It [the Council] appreciates that it was in error and that in certain circumstances the purposes of section 71 and the relevant statutory code may only be met by specialist services from a specialist source.”*

*“As I have endeavoured to explain, specialist services for a racial minority from a specialist source is anti-discriminatory*

---

*and furthers the objectives of equality and cohesion.”*

Pragna Patel chair of SBS said the following about the outcome of the hearing and its effects on the voluntary and community sector,

*“The judgment is having a great impact around the UK. We are often contacted by community groups and even statutory bodies including local authority officers asking for further information or a copy of the judgment. Many groups have been using it successfully to fight off cuts that they are facing or to push for real equality in relation to race and gender. This is exactly what we hoped would happen. I must say that it is a really satisfying judgment and it is taking on iconic status because it is safeguarding a progressive notion of equality!”*

The full judgment is available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2008/2062.html>.

## Campaigning litigation – “Working with disability groups to protect services”

### Louise Whitfield, PLP

Many of our cases arise from a dispute that a particular organisation has with a public body, often in relation to their own funding or the services they provide. However, in a judicial review brought by PLP at the end of last year, voluntary sector organisations working with, and run by, local disabled people became involved and had an enormous impact on the outcome of the case.

The background to the case was that the London Borough of Harrow had been considering whether to reduce the availability of its care services for disabled people. This became a long drawn-out process involving a consultation exercise which many of the local voluntary sector organisations took part in, helping users to get their voices heard and also raising concerns that the groups had about the proposals. Unfortunately, despite grave concerns raised by the groups and

---

*The evidence we served included statements from local groups ... setting out how their users and members would lose out not just on essential services but on better health, participation in social events, relationships and their independence.*

numerous individual users, the council decided to go ahead with the proposals to cut services.

PLP was approached by some individual service-users and a voluntary sector organisation who were concerned about the way the council had made its decision. The individuals instructed us to bring a judicial review challenge against the council; we got legal aid to fund the case and started proceedings, obtaining an emergency injunction to stop the council implementing the cuts before the case was heard.

As the case progressed it became clear that the proposals would have a great impact on a wide range of disabled people and that it would be vital to explain this to the Court. We therefore obtained witness statements from staff at each of the key organisations to ensure that the judge was fully aware of the impact and what this would mean for disabled people in Harrow. The evidence we served included statements from local groups including Mencap, Rethink, Mind and Age Concern, setting out how their users and members would lose out not just on essential services but on better health, participation in social events, relationships and their independence. All the groups had already been involved in the campaign to try to stop the cuts, so they had already got together the information and arguments that we then presented in the witness statements; this helped to provide compelling evidence about an essential aspect of the case: disability discrimination.

Although the legal challenge raised five different arguments about why the council's approach was unlawful, the one that the case eventually turned on was about whether the council had properly considered its duties under the Disability Discrimination Act. This is the duty to have due regard to the need to eliminate discrimination and to promote equality of opportunity for disabled people, including taking account of their disabilities, promoting positive attitudes towards disabled people and encouraging participation in public life. These issues were all covered in the witness evidence from the organisations involved in the campaign. When the judge looked at whether the council had considered its duties properly, he concluded that they hadn't.

---

The involvement of the groups was crucial to making it clear how the cuts would affect disabled people. The voluntary sector organisations that gave evidence (through witness statements rather than appearing in court <sup>1</sup>) easily established their expert credentials to comment on these issues as they had years of experience, great depth of knowledge and were largely user-led so could comment authoritatively on the issues. It built up a picture of how important it was that the decision-makers (councillors sitting in a special Cabinet meeting) considered their disability equality duty properly.

This case illustrated to us the important role voluntary sector organisations can play in supporting a judicial review challenge and how their expertise can influence the outcome <sup>2</sup>. In the next newsletter, we will report on a similar case where we worked with BME groups in Dudley to help challenge cuts to services which again revolved around a flawed consultation and a failure by the local council to address the equality duties.

<sup>1</sup> *Judicial review does not usually involve oral evidence, so witnesses give a written statement rather than appearing in court or being cross-examined.*

<sup>2</sup> *Voluntary sector organisations can also make a formal intervention in a judicial review to make legal submissions as well as providing evidence, to help the court. This is particularly common in public interest cases deciding national issues (e.g. Liberty intervening in human rights cases, or Child Poverty Action Group in relation to a major welfare benefits challenge).*

## Masterclasses in public law

### Terry Perkins and Louise Whitfield

As the project has progressed, we have taken notice of the feedback given to the steering group via the evaluation tools set up to monitor the outputs of the project.

A large number of you who provided feedback have requested further development opportunities. To support this request the project will deliver

four masterclasses, taking place in early 2009. These events will be delivered jointly by NAVCA and PLP and are aimed at those people who have attended an Empowering the Voluntary Sector workshop.

The masterclasses will include break-out sessions on the equality duties and consultations, two major areas having significant impact on public body decision-making affecting voluntary sector organisations in their work. Plenary sessions will cover topics such as local area agreements, tactical support and tendering and procurement decisions. Based around case studies and the project's advice work over the last two years, the masterclasses will give you extra public law tools and tactics when dealing with public bodies.

The breakout sessions will run both morning and afternoon so that you will not miss any of the content.

The event will run in four venues around the country on the following dates:

- Sheffield – 27 January 2009
- London – 3 February 2009
- Taunton – 3 March 2009
- Birmingham – 24 March 2009

There will be no charge for these events and you can book via the NAVCA website on the EVS training page [www.navca.org.uk/evs](http://www.navca.org.uk/evs) using the booking form for the masterclasses available for download on the page. Alternatively, you may complete and return the booking form attached at the end of this newsletter.

Please note **if you book a place and do not attend, you will incur a booking penalty of £50**, you will be invoiced for this sum after the event. You will be able to cancel up to one week before the event; a £10 administration fee will apply.

---

## 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: Monday to Friday 10.00 to 16.00  
or email: [evs@publiclawproject.org.uk](mailto:evs@publiclawproject.org.uk)

The project is running workshops in the following areas:

- Black Development Agency, Bristol, 25 Nov (EVS74)
- Gloucester, 1 Dec (EVS93)
- Oldham, 3 Dec (EVS105) **(Full)**
- Dover, 4 Dec (EVS96)
- ROTA, London, 9 Dec (EVS103)
- Calderdale, 10 Dec (EVS59) **(Full)**
- Grimsby, 11 Dec (EVS104)
- Margate, 14 Jan (EVS98)
- Taunton, 21 Jan (EVS100)
- East Cornwall, 29 Jan (EVS106)
- Ipswich, 5 Feb (EVS107)
- Enfield, 11 Feb (EVS97)
- Sheffield, 16 Feb (EVS109)
- Ulverston (Cumbria), 19 Feb (EVS102)
- Sutton, 26 Feb (EVS101)
- Menter (Bedford), 5 March (EVS108)
- Age Concern London, 12 March (EVS110)
- Uckfield, East Sussex, 18 March (EVS87)
- Wokingham, 19 March (EVS91)

Booking forms for the one-day workshops are available from [www.navca.org.uk/evs](http://www.navca.org.uk/evs). Please do not use the booking form at the back of this newsletter for the workshops listed above.

## Empowering the Voluntary Sector masterclass booking form

**Masterclass details:** Which location would you like to attend?

Sheffield	27 January 2009	EVSMC1	✓
London	3 February 2009	EVSMC2	
Taunton	3 March 2009	EVSMC3	
Birmingham	24 March 2009	EVSMC4	

**Have you attended a one-day EVS workshop?**

Yes

No

**Delegate details:**

Name ..... Job title .....

Organisation .....

Address .....

Tel ..... Email .....

**Individual requirements** (e.g. hearing loop or vegan diet): .....

If you would prefer to discuss your requirements with someone, please contact the events team on 0114 278 6636 or email [events@navca.org.uk](mailto:events@navca.org.uk)

Please return your completed form to **Events Team, NAVCA, The Tower, 2 Furnival Square, Sheffield, S1 4QL**. Tel: 0114 278 6636 Fax: 0114 278 7004  
Email: [events@navca.org.uk](mailto:events@navca.org.uk)

**Non attendance fees:** £50 per person (inc VAT)

Please invoice me as above for £50 if I fail to attend the masterclass or fail to cancel my place at least one week in advance

Purchase order number .....

Address for invoicing if different to above: .....

Accounts tel .....

**Closing date** for bookings is one week prior to the masterclass.

**Cancellations** must be in writing and are refundable minus a £10 admin fee before the closing date.

**Booking confirmation details** will be sent one week prior to the masterclass.

If you do not wish to receive information about future NAVCA events, please tick here