



# Empowering the voluntary sector

Issue 8, April 2009



Welcome to the eighth edition of the newsletter.

This extended special edition of the newsletter marks the end of the three years of the Public Law Project and NAVCA working together on the Empowering the Voluntary Sector project and marks the beginning of its next phase. In addition, we have revisited some of the most popular and useful items we covered in the life of the project. We also look at a recent case in Leicester, where a Tenants' Association brought a case on unfair and unlawful decisions by a city council.

## The next phase – summary of key points

*Full details of these points can be found in the following article*

- The Empowering the Voluntary Sector partnership now consists of Compact Advocacy, NAVCA and the Public Law Project
- **From 1 April 2009** the first line of contact for advice will be Compact Advocacy; tel **020 7520 3161** or email **evsAdvice@ncvo-vol.org.uk**
- Any organisations requiring legal advice to manage a public law dispute will be referred to the lawyers at the Public Law Project by the Compact advocates
- The high quality training programme delivered by NAVCA will continue. The price will increase to £40 for bookings via the NAVCA website; bulk bookings will increase to £30 per person
- Training enquiries should continue to be directed to Terry Perkins; tel **0114 289 3972** or email **terry.perkins@navca.org.uk**
- Newsletters will continue to be published 3-4 times a year

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## Empowering the Voluntary Sector – the next phase

Terry Perkins, NAVCA

As a result of the successful bid under BASIS 2, the project will continue, with some changes, until at least September 2011.

A major change to the project is the inclusion of Compact Advocacy as a partner. The bid to the Big Lottery Fund under the BASIS 2 programme came about as a result of Compact Advocacy being solicited to bid on the basis that their work would continue in partnership with the EVS project. As a result of this bid, we are now able to formally extend the programme both in time and in level of support.

From 1 April 2009, the start of the new phase, the key point of contact for third sector organisations will be Compact Advocacy. The advocates there will look at the issues and help you to identify a way forward using the Compact in the first instance. You will be able to contact the advice line on **020 7520 3161** or email [evsAdvice@ncvo-vol.org.uk](mailto:evsAdvice@ncvo-vol.org.uk).

The advocates are at present undertaking development sessions with the legal team at PLP so that they can identify public law disputes that may require immediate intervention of a lawyer to start the dispute resolution process. This will make for a more streamlined approach to support organisations.

The training programme will re-commence from mid-April; the

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workshops will still provide a grounding in identifying and managing public law disputes but will increase in Compact content to reflect the aims of the new phase. The cost of the workshops has increased slightly from £35 to £40 for direct bookings with NAVCA; the bulk-booking price will increase from £25 to £30. These prices will still include all resources, VAT and lunch. Still excellent value for money for a day's training! Details of the booking process can be downloaded

from the project pages on the NAVCA website: [www.navca.org.uk/evs](http://www.navca.org.uk/evs).

The newsletters will continue; we aim to have the next edition out by early summer.

There have also been some changes to the project staff.

### **NAVCA**

Terry Perkins will continue to deliver the training element of the programme as he has done since April 2006. He will also be working with LIOs to identify methods of sharing this information with local groups who are unable to attend the one-day workshops. If you have attended a workshop and would like further information on how to share this information and access the resources, please call Terry on **0114 289 3972** or email [terry.perkins@navca.org.uk](mailto:terry.perkins@navca.org.uk).

### **Compact Advocacy**

The Compact Advocacy team is based at NCVO and consists of the Head of Compact and two advocates:

**Oliver Reichardt** is the Head of the Compact Team at NCVO and is responsible for Compact Voice and the Compact Advocacy Programme. Compact Voice is an independent body housed at NCVO that represents the voluntary and community sector in England on taking the Compact forward. The Compact Advocacy Programme was set up by NCVO to provide practical support and help voluntary and community organisations to use the Compact to improve their relationships with government. Before then, Oliver worked in NCVO's research team where he managed a variety of programmes including the production of the acclaimed Civil Society Almanac and NCVO's input into a £2.5m Treasury-funded project looking at measuring quality in public service provision. Previously he held a number of roles across the sector in both frontline and infrastructure organisations.

**Sean Roberts** has worked in policy development, advocacy and campaigning in a wide range of voluntary and statutory organisations,

including Citizens Advice, Amnesty International, the Commission for Racial Equality, the Community Fund and the Howard League for Penal Reform. He has worked mainly on refugee, employment and criminal justice issues, and also more general third sector-related issues around civil renewal and community cohesion. He now deals with local and regional compact advocacy cases.

Direct line **020 7520 2551**, email **sean.roberts@ncvo-vol.org.uk**

**Daniel Fluskey** joins the Compact Advocacy Programme from the Information and Publishing Team at NCVO where he spent over three years. Before working at NCVO, he was at Arts Council England and has a range of voluntary experience at the Law Society, Lambeth Law Centre, the Citizenship Foundation, and the Montreal Holocaust Centre. He now handles all cases with national public bodies such as departments and Non-Departmental Public Bodies.

Direct Line **020 7520 2460**, email **daniel.fluskey@ncvo-vol.org.uk**

### **Public Law Project**

Diane Astin and Ravi Low-Beer provide the legal support at PLP.

**Diane Astin** is head of casework at the Public Law Project. She has worked as a solicitor in both the voluntary sector and in private practice for 20 years, specialising in housing, community care and asylum support. She is also an experienced trainer and author of *Housing law: an adviser's handbook* published by Legal Action Group in December 2008.

**Ravi Low-Beer** is an assistant solicitor at the Public Law Project. He trained as a solicitor in the legal department of the London Borough of Southwark before spending a year with the Public Law Project in 1995-96. He spent the next 10 years as an immigration lawyer, the last five of those as part of the Refugee Legal Centre's litigation team. He has trained lawyers and non-lawyers on asylum and public law issues, and for the last year has been involved in offering legal support to voluntary sector groups as the Public Law Project's Empowering the Voluntary Sector scheme.

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## The Leicester Heating Case

Diane Astin, PLP

The St Matthew's Estate in Leicester is an inner city council estate which houses approximately 3,500 people. It has been assessed as being the second most poverty stricken estate in the UK and 80% of household incomes are less than £10,400 a year. Its population is transient; many residents are recently arrived refugees and asylum seekers. The estimates of the ethnicity of residents on the estates is: Somali 25.9%; White British 23%; Asian 20.3%; Black African 10.5%; African Caribbean 3.5%; Portuguese 2.8%; Irish 1.4%; Kurdish 0.7%; other White European 0.7%; and other 5.6%.

The council provides heating and hot water on the estate and each household pays district heating charges set according to the size of the dwelling. On 1 October 2008 the council decided to increase the heating charges by 76% from 10 November 2008.

One of the estate residents, with the help of the Tenants' Association, sought the help of PLP. Her charges were set to increase from £17.10 per week to £30.12 per week. Representations were made to the council challenging the decision on the basis that they had failed to consult properly and that they had failed to have regard to their duty to promote equality of opportunity in relation to race, gender and disability. The council responded, rejecting the argument about consultation but accepting that they had failed in regard to the Equalities Duty. However, the council did not agree to withdraw the decision but only to suspend it

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and refund the charges paid by the one resident for whom PLP were acting. The council indicated that it would undertake an Equality Impact Assessment and reconsider the issue at its next Cabinet meeting in January 2009.

As the council were refusing to withdraw the decision, a claim for judicial review was brought on behalf of two tenants.

*...despite the proposal having clear implications for race equality, the council had failed to carry out any assessment of the impact of the proposal.*

The judicial review was based on two grounds:

Firstly, that despite the proposal having clear implications for race equality, the council had failed to carry out any assessment of the impact of the proposal.

Secondly, that the consultation process was flawed in that the council had failed to consult on all of the options available. Although the council had consulted the tenants, only three options were put forward: the current proposed increase of 76% to be implemented in November 2008; a larger increase implemented in January 2009; or an even larger increase implemented in April 2009. The majority of tenants opted for the first proposal. However, other options, including the council subsidising the charges, were being considered by the council, but were not mentioned during the consultation.

It was argued that the council Cabinet had made the decision on an understanding that a proper consultation had taken place but that this was wrong as the Cabinet had not been informed about the limited scope of the consultation.

After the claim was issued, it was decided that a further ground for the challenge should be added.

The Climate Change and Sustainable Energy Act 2006 requires the Secretary of State to publish an energy measures report. Section 3(2) of the Act requires a local authority to have regard to the most recently published report.

The relevant report published under the Act is the Department for Business Enterprise and Regulatory Reform Energy Measures Report, published in September 2007 ([www.berr.gov.uk/files/file41260.pdf](http://www.berr.gov.uk/files/file41260.pdf)). This report refers to the need to address both climate change and fuel poverty in the management of social housing.

In this case the fact that the households on the estate were charged a flat rate, regardless of how much energy was used, gave no incentive for reduced consumption. Furthermore, the increased charges were likely to lead more residents into fuel poverty.

It was intended to add, as a further ground in the judicial review, the council's failure to have regard to the report when making its decision. However, the council conceded the claim before this could be done.

The result of the legal action was that the council agreed to withdraw the decision and to make a new one. Initially, it indicated that an increase of 40% would be implemented in April 2009. The Tenants' Association informed the council that it would consider further legal action and, following further negotiations between the Association and the housing department, the council have now agreed to an increase of 29% with charges to be fixed until March 2011. The case highlights what can be achieved by a local group (the Tenants' Association) working with PLP and individual members of the community.

## Did you know?

This has been a very popular part of our regular newsletters covering areas such as managing a private law dispute, complaints and consultation. One the most useful (from workshop feedback) has been the article on the Freedom of Information Act that appeared in edition 2 in spring 2007. We have repeated it below, just in case you missed it first time round. If you would like to download back copies of the newsletter for yourself or to send on to colleagues please go to [www.navca.org.uk/evs](http://www.navca.org.uk/evs).

## How to seek information under the Freedom of Information Act 2000

Want to see detail of local authority policies but can't find them on the website? Want to see minutes of meetings where your project was discussed? Then you should consider making a request under the Freedom of Information Act. Here's a short guide as to how to do this, together with some useful addresses for further help or information (or you can contact the PLP help line – details at the end of this piece).

The Act states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him or her. The authorities subject to this duty are listed in the Act, and broadly cover all of the bodies that you would expect (local and central government, etc).

In order to be valid, your request must be in writing, together with your name and address (email will do), and you must describe the information that you want. Note that the Act is fully retrospective and applies to any recorded information.

The authority must respond 'promptly' and no later than the 20th working day following receipt of the request. The period does not begin to run

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until the authority has received sufficient information to action the request. Any delay is **only** lawful where the 'public interest exemption' applies – then additional time is allowed in order to determine where the public interest balance lies (see below).

Sometimes an authority is able to charge a fee.

This will happen where it estimates that the cost of complying with your request will be significant, and the rules define how much work is considered significant. In rare cases, where the costs of requests are estimated to cost in excess of a certain amount, such requests can be refused altogether. You then have three months to pay, and the time for complying with the request stops until the fee is paid.

If your request is refused, then you must be told in writing – which exemption(s) are relied on; why the exemption(s) apply in your case; the reasons for any public interest decision and your right to appeal.

The most common exemption is the so-called 'public interest test'. This means that the information must be released **unless** "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information". Note that the Information Commissioner considers that revealing incompetence or corruption involves a consideration of **private interests**, whereas the **public interest** is served by accountability and good administration.

#### Further help

- See [www.RightToKnowOnline.org](http://www.RightToKnowOnline.org) for standard letters
- See [www.ico.gov.uk](http://www.ico.gov.uk) for fact sheets and other guidance from the Information Commissioner, the enforcement body for the Freedom of Information Act.

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## Lessons for VSOs – Be fair to yourselves and insist others are fair to you!

Ravi Low-Beer, PLP

**Do** make a note of conversations with grants officers, particularly where this results in a change to the agreed project outputs or outcomes. Consider confirming all agreements and discussions in writing.

**Don't** allow misunderstandings to happen. Be proactive – so for example where site visits are carried out by grants officers, record what is discussed, what is requested and what is inspected so as to prevent misunderstandings arising as to whether requests for inspection and clarification were complied with.

**Do** be clear about the allegations that are being made against you by the funder, and the basis on which they are made. Where withdrawal or recovery action is contemplated, it is both unreasonable and unfair to require you to make representations to prevent the threatened withdrawal or recovery action without you knowing details of the case against you.

**Don't** guess what the allegations are. If they contain insufficient detail, ask for more information. Reports are inevitably prepared by the funder, ask to see copies as a matter of fairness, and if necessary, under the Freedom of Information Act.

**Do** sort out your admin and record-keeping. VSOs should always keep their project records logically and efficiently, so that they can easily be produced on inspection or in response to allegations. You are not giving yourselves a fair chance if you don't.

Much of this may seem like commonsense and it is.

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## A review of cases handled by PLP for third sector organisations

A vital part of the project has been the legal representation provided by PLP. Case studies – written not only by lawyers, but by people who have attended the training – have given a useful insight into how public law works on the ground. Edition 3 covered the case against Doncaster Local Strategic Partnership, edition 4 looked at the negotiation of an SLA, editions 5 and 6 looked in more detail at the Warrington and Cumbria cases outlined below and edition 7 highlighted the issues in the Southall Black Sisters case.

**DEM RP** – a BME organisation had been offered £50,000 of Single Regeneration Budget money for a new building by the Local Strategic Partnership (LSP) and was at the last stage of meeting certain conditions; these were duly met, but the local authority then decided – for reasons not previously raised – that the group should not receive the funding. The group had been given no opportunity to make representations, nor were the reasons given consistent with the LSP's earlier position in offering the grant; the council was also over-riding the decision-making powers of the LSP. PLP advised the group that the decision was unlawful and following correspondence with the council and the LSP in which they refused to back down and reinstate the grant, proceedings were issued. Initially the council and the LSP tried to argue that the latter was not a public body and could not be challenged in this way; they then conceded that they were and agreed to reconsider the grant application. When the LSP did so, they agreed to award the money to the group. This has enabled the group to move to new premises where they can provide a crèche and greatly improved disabled access to their users.

**Warrington voluntary sector organisations** – a number of groups funded by the PCT (including an advocacy project, a homelessness project and the local CVS and volunteer bureau) received letters withdrawing their funding with only three months' notice during existing SLAs, some of which had been renewed year on year for many years

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and others which still had several years to run. The PCT cited lack of money, but had had no consultation with the groups, nor disclosed any of their reasoning behind their decisions. PLP advised the groups and their service-users that the decisions were unfair and threatened proceedings in correspondence with the Trust. The PCT backed down, agreeing to reinstate the funding and set up a new review process (heavily involving the voluntary sector in this) for any future funding decisions. This kept funding of £47,000 in the sector and maintained vital services for vulnerable people in place for many months, as well as improving the voluntary sector's relationship with this major funder.

**Age Concern groups in Cumbria** – a failure to consult users or the voluntary sector properly on the introduction of charging for day care centres in Cumbria by the local council, led a service-user and two local Age Concern groups to bring a challenge that led to a full trial. The court held that the first decision was unlawful as the council had failed to consult, but ultimately their decision should stand as further consultation was adequate. Despite losing the court case, the groups felt that it had been a very positive experience as they and the rest of the sector were now taken more seriously by local public bodies with the following key results:

- a positive meeting with the council's chief executive;
- a consultation by the PCT on community hospitals that was well thought out and extensive;
- a robust consultation on the modernisation of residential homes, including local voluntary sector organisations being asked to chair events.

The groups said that it was a wake-up call for the local public bodies as to what a proper consultation process should involve, and felt that they had made a difference and gained respect for supporting the views and wishes of older people that they represent.

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## Three years of EVS – a success story!

Terry Perkins, NAVCA

The EVS project began in April 2006 as a result of successful legal proceedings conducted by solicitors at the Public Law Project against Leicester City Council. These proceedings were brought on behalf of service users of Voluntary Action Leicester and other smaller voluntary organisations. PLP was keen to expand its capacity to provide advice and assistance of this nature to the more vulnerable groups within the voluntary and community sector and so developed its partnership with NAVCA.

The aims for this project have been to enable the voluntary sector to be more effective in maintaining stable services to disadvantaged groups, and to become more effective in representing its own interests and those of the users that it serves. This has been achieved through an extremely successful legal advice service and national training programme.

So what have we achieved in this time? The service provided by the lawyers at PLP has supported over 300 organisations, well over 100% above the target, saving the sector over £600,000. The evaluation of the project has demonstrated that the project has supported a wide range of groups. Of those seeking legal advice, 24% of beneficiaries were from infrastructure organisations, with a good percentage of small and BME organisations using the service. From a geographical point of view, 27% of the organisations seeking advice were from London, 12% from the North West and just 5% were national organisations.

The marketing of the legal service was not just down to NAVCA and PLP; over 30% of clients said they knew of the advice line from NAVCA and the training sessions and almost 20% had heard about it by word of mouth. Many infrastructure organisations were cited as the source of information.

*...we have delivered around 100 workshops, training well over 1,100 representatives from third sector organisations...*

The evaluation also identified the reasons for using the advice line. Most calls to lawyers were in respect of funding cuts, reviews or changes, closely followed by issues surrounding consultations and decision-making. A large number of calls dealing with planning and lease changes for community buildings were also taken.

How did users rate the service? The advice line was commended for its speed, quality of response, support and sensitivity. Comments to the evaluators included:

- *“PLP were extremely sensitive and knowledgeable”*
- *“Dedicated, clear and passionate – exactly what you need”*
- *“Knowing the backup is there gives us confidence if we have to challenge”*

The training programme has been equally successful. We started the training in September 2006 and to the end of the project we have delivered around 100 workshops, training well over 1,100 representatives from third sector organisations against our target of 70 workshops training around 900 people. The training has taken place right across England, from Cornwall to Cumbria, in the main hosted by local infrastructure organisations (LIOs). Links have been made with national and regional organisations such as Woman’s Resource Centre and ROTA to deliver training.

The workshops have been attended by a variety of organisations, not just LIOs, with 52% of the groups attending representing frontline organisations. The types of groups attending have also been varied, for example, around 10% from the BME and faith communities and 15% from groups representing service users with disability and mental health issues.

We have also seen a spread in the type of person attending: 10% were trustees, 47% were from management teams and 43% were from development and delivery teams.

The training has been well received throughout the project. The post-training evaluations identified that 74% of participants gave the highest score of 4 (where 1 was the lowest score) in response to the question whether the trainer met their expectations, and a further 24% gave a score of 3.

There were similarly high scores for the style of training (69% gave 4 and 28% gave 3); the usefulness of the day (75% gave 4 and 24% gave 3); and the usefulness of the training for their workplace (80% gave 4 and 19% gave 3). Comments made by attendees during the evaluation interview include:

- *“it was empowering and affirming”*
- *“the best day’s training I have ever done”*
- *“Tremendous, it put a lot of things into place”*

Similar results were achieved for the quality and usefulness of the resources.

In summary, the project has more than achieved its targets and has made tremendous in-roads to achieving its aims.

## Workshop details

At the time of writing, we are in the process of planning the next round of workshops. We will send out information on locations and dates as soon as we have confirmation, and, as always, you can always check for your nearest course by going to [www.navca.org.uk/evs](http://www.navca.org.uk/evs).

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