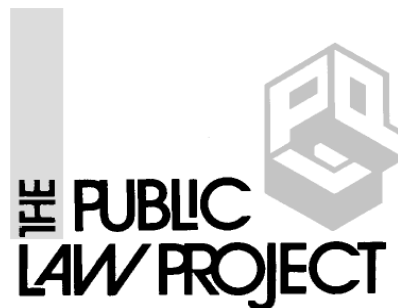


The Duty to Consult:
Cases Involving the Voluntary Sector
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In a case which has had widespread ramifications for the people of Leicester, last year the Public Law Project represented a number of service-users of various voluntary groups in a judicial review against Leicester City Council, *R (Capenhurst) v Leicester City Council* [2004] EWHC 2124 (Admin). The case raised several issues about fair consultation processes by public bodies when funding community organisations and provided a useful review of public law principles regarding consultation.

In 2003, Leicester City Council had a new political administration which decided it wanted to change the way it funded the voluntary sector. Specifically, they had decided they only wanted to fund work that was providing “core services”. The Council reviewed all the groups with funding and wrote to a substantial number of them to say that they were minded to cease funding them. The groups were given 28 days to comment, and then the Council considered the comments and made decisions.

We were contacted by six groups all of whom were faced with losing all their funding from the local authority and were therefore likely to close. This included, for example, a women’s centre that had 10 employees, had been running for 23 years and whose current grant from the Council was £92,000 per annum. The Council were not tinkering with small projects here and there; their decisions were likely to lead to well-established groups closing and making their workers redundant, leading to significant gaps in service provision.

The letters proposing the cuts were brief and vague and had no explanation of what “core services” were, or why the groups were suddenly not providing these. In the last voluntary sector review, the groups had all been categorised as providing strategic or statutory services. The Council did not provide any explanation of the change in their criteria since the last review.

Silber J found in favour of the Claimants. The thrust of his decision was that once undertaken the consultation must be fair. He could find no evidence that the Council had explained their new criteria properly or alerted the groups to the true definition of “core”, which, as the proceedings developed, turned out to be services which met the Council’s statutory requirements.

The judgment relied on the descriptions of fair consultation set out in *R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213 and *R v Secretary of State*

ex parte Doody [1994] 1 AC 531. Coughlan had established that, "To be proper, consultation must...include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response." Doody echoed this: "Since the person affected cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer." Leicester City Council had not come close to providing the gist or sufficient reasons. The groups had not been able to give either intelligent consideration to the proposals or an intelligent response.

Although the judge emphasized the fact that unfairness in the process did not automatically entitle the Claimants to a fresh consultation, he considered the position in relation to each group in turn and found in their favour.

One of the striking aspects of the Council's defence was that it initially did not accept that public law principles applied at all. Its position was that it was only bound by the contracts between it and the groups and therefore giving them notice and an opportunity to make representations was sufficient. This appears to be a common misconception of public bodies dealing with voluntary organisations that they fund: they see the arrangement as being within the private law arena only, and that concepts of legitimate expectation and fair consultation do not apply.

PLP has now been involved in a number of similar cases advising groups on public law remedies. In one case we represented service-users of voluntary groups who had had funding withdrawn by their local Single Regeneration Budget Community Partnership. In some ways the situation was even more extreme than in Leicester: the public body had given no thought to conducting the process of funding cuts fairly and had failed to consult, not even giving the groups a chance to make representations. Following the issue of proceedings, the decision was withdrawn and an undertaking given to review the funding comprehensively and consult widely.

A worrying feature of both these cases and others we have come across is the view often held in the voluntary sector that nothing can be done to change a decision even where it is unfair or unjust. Accountability of public decision-makers does not only come at the ballot box. Individual decisions can be challenged successfully by judicial review and frequently this can produce real benefit to whole classes of people affected. Solicitors are usually well aware of the types of cases where judicial review can be effective in the well known "franchise categories". It is important not to forget that any decision by a public body in the public law sphere can be the subject of a challenge and to be aware that one of the most useful principles of public law, often honoured in the breach, is the duty to consult.

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