



Empowering the voluntary sector

Issue 2, November 2006



Welcome to the second edition of our newsletter. We start with a piece by Conrad Haley, the Director of the Public Law Project, which focuses on the status of local strategic partnerships and the role of the voluntary and community sector within them. We then have a short note on making requests under the Freedom of Information Act, news from a Lone Ranger in Salford, and finally our 'did you know section' on what 'consultation' actually means.

Are you a public body?

Is a local strategic partnership (LSP) a public body? And when making decisions on the allocation of public funding, are the members of that body undertaking public functions? An affirmative answer will mean that the LSP and its members will not only have to comply with public law and human rights obligations in their decision making, but would also be open to judicial review proceedings begun by those who wished to challenge those decisions.

Obviously, there are members of these partnerships that everyone already considers to be a public body, such as the local authority, the PCT and the police. But what about the voluntary and community sector (VCS) members of the partnership?

The Public Law Project is currently involved in a case which may provide the definitive answer to this question. However, in principle, we believe that the answer to the question must be 'yes'. How else can a body like an LSP be accountable for its actions other than being made subject to judicial review? This has to be a good thing, as it is essential that such a body operates fairly and makes decisions in the public interest.

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If you are not comfortable with the fact that the dividing line between the state and the VCS is blurring, then perhaps the time has come for the VCS to reflect upon its role and current direction of travel. We are noticing that the relationship between the VCS and government is increasingly talked of in terms of ‘partnership’ working. This often ignores (or masks) the realities of unequal power relationships and divergent interests, and assumes that there is an alignment between state and VCS interests.

Future newsletters will return to this subject, and will update readers on the legal issues.

How to seek information under the Freedom of Information Act 2000

You want to see detail of local authority policies and can't find them on the website? You want to see minutes of meetings where your project was discussed? You should consider making a request under the Freedom of Information Act. Here's a short guide as to how, 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 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 for standard letters
- See www.ico.gov.uk for fact sheets and other guidance from the Information Commissioner, the enforcement body for the Freedom of Information Act.

User piece

Jo Ward, Development Manager, Salford CVS writes:

A lone ranger in Salford!

I recently attended a brief session at the NAVCA conference with the Public Law Project and the following day was back on my home patch at a meeting around PCT and local authority commissioned services. This is made up of the great and the good from statutory partners who are responsible for commissioning on service level agreements (SLAs) and accountants responsible for managing the budgets.

The main discussion was around the process for reviewing and renewing SLAs that run out at the end of March 07. As the lone voluntary sector voice at the table it is easy for arguments to be lost and to only manage to get the minimum standards and fairness in place (even if they are a great and very fair bunch of people) but I was ready!

A casual “I do hope that all processes will be Compact compliant and you really must ensure that they adhere to public law as we don’t want to have to take anyone round this table to judicial review” was met with responses ranging from bewilderment (literal jaw on table stuff) to near panic! I did of course explain that processes needed to be open and to show clear criteria that were being followed and was terribly supportive and of course played the whole thing to the best advantage!

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So to the outcomes. Salford CVS was asked to draft the process to be followed by all commissioners when looking at renewal of SLAs. I’m sure it won’t be a surprise to hear that it is quite fair to the sector and contains all the things we want to see. Yes, they have to do a fair review, any concerns have to be put in writing with a realistic opportunity to address them, there must

be a minimum of six months notice of withdrawal, there have to be negotiated outcomes and there must be an opportunity for organisations to challenge any decisions...

I won't tell you about the phone call the following week from a contracting lawyer but I think they may be listening to what we've got to say.

So, not a bad afternoon's work. And as I've now been on an Empowering the Voluntary Sector workshop, watch out the rest of the world!

Did you know?

What does it mean when a public body says it will consult?

Consultation is a key part of good decision making. It allows the authority to gather up and consider the views of those potentially affected by its proposals and almost certainly means that it will make a better decision as a result.

In the context of VCS funding, groups may have a legitimate expectation of being consulted before a decision is made. This could be because they have a history of being consulted by the authority or the authority has made promises or given undertakings which the decision in question will affect. The latter may arise through promises given within local Compact agreements. It may also arise because the proposed decision is likely to affect BME groups or disabled people, and therefore engages recent legislation protecting these groups (this will form the basis of an article in a future newsletter).

The courts have developed a definition of what the basic requirements are for a proper and lawful consultation. So, in *R v Brent London Borough Council ex parte Gunning* (1985), the court laid down that a proper consultation will only have taken place where:

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1. it has been commenced at a time when proposals are at a formative stage, and
 2. the authority provided sufficient information for those consulted to give intelligent consideration and an intelligent response, and
 3. there has been adequate time for this purpose and
 4. the product of the consultation has conscientiously been taken into account when the ultimate decision is made.

It's really not rocket science! A failure to meet these standards may well render the final decision unlawful (as would a failure to hold a consultation at all, where one had been promised).

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 2193 at the following times:

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

Or email: evs@publiclawproject.org.uk

The project is running workshops in the following areas from January to March 2007:

- Southampton, 24 January 2007
- Tamworth, 29 January 2007
- Enfield, 6 February 2007

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- Derby, 13 February 2007
 - North Herts, 22 February 2007
 - Leeds, 7 March 2007
 - Norwich, 21 March 2007

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

The one-day workshop covers:

- What is public law and what are public bodies?
- What happens when things go wrong?
- What you can do when faced with these problems.

Feedback from the first courses has been excellent:

- “This kind of information needs to be more widely available in the sector”
- “I hate taking a day off work for training, but not today – a very good course”
- “I feel I now know enough about public law to feel confident to incorporate it (when necessary) in my negotiations with public bodies”
- “Very enjoyable learning experience”