

Defending the voluntary sector

This case falls within one of The Public Law Project's identified priority areas of work. We are currently seeking funding to establish a dedicated unit offering advice to voluntary sector groups and their users in relation to decisions affecting them made by public bodies.

R (Capenhurst) v Leicester City Council [2004] EWHC 2124 (Admin)

Facts: The claimants represented six voluntary organisations that had been funded by Leicester City Council until it decided, in February 2004, to cease its funding later that year. This decision followed a change in political control of the council, which led to a change in the funding criteria for voluntary organisations. The claimants complained of a number of failings in the consultation process undertaken by the council before making the decisions, in particular that it had failed to inform them of the new criteria for continued funding or of matters to which it would attach crucial importance in making its decision.

Decision: Silber J allowed the judicial review and quashed the decisions. Fairness required that the consultation had to be meaningful, and the council had to be open and transparent about the decisions that it was taking. Adopting the guidelines in *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213, 258, at para 108 and *R v Secretary of State ex p Doody* [1994] 1 AC 531, 550, the judge held that, once the council had chosen to consult, it was obliged to do so fairly. It must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response. Consultation will be unfair if a consultee either did not know the factors to be adopted by the decisionmaker or ought not reasonably to have known of them. What a consultee ought reasonably to have known about the factors depends on all the relevant circumstances and may well be different in each case.

In informing funded organisations that Leicester City Council would only fund those bodies which 'are delivering core services that the council would otherwise wish to provide by direct provision ...', the authority had failed to state what 'core services' were and what changes would be made to the previous priority categories for funding, or other critical aspects of the funding criteria adopted. Although inadequate consultation will not automatically lead to a decision being quashed, in most cases it will do so because it is rarely possible to be certain that the outcome, after fair consultation, would have been the same. In particular, adopting the decision of Bingham LJ in *R v Chief Constable of Thames Valley ex p Cotton* [1990] IRLR 344: unless the subject of the decision has had the opportunity to put his/her case, it may not be easy to know what case s/he could or would have put if s/he had had the chance; experience shows that what is confidently expected is by no means what always happens; it is generally desirable that decision-makers should be reasonably receptive to argument and it would be unfortunate if a complainant's position became weaker as the decision-maker's mind became more closed; the court should not stray into evaluating the substantial merits of a decision; appearances matter; and the right to be heard is not to be lightly denied.

This write-up was originally published in *Legal Action* and written by Kate Markus and Martin Westgate.