



# Empowering the voluntary sector

Issue 9, August 2009



## Welcome to the ninth edition of the newsletter.

This edition has a particular focus on using the Compact to resolve disputes with public bodies. The first article is a case study from Compact Advocacy that demonstrates how the team was successful in advocating on behalf of an organisation providing support and advice to migrants and refugees in a dispute surrounding unfair withdrawal of European funding. Staying with the Compact, the team has drawn up some advice on how you can use the Compact to help protect your funding through the economic downturn. Our next two articles come from Ravi Low-Beer at the PLP. In the first, Ravi outlines a case in which a local authority was successfully challenged, using the Disability Discrimination Act (1995), over their decision to unfairly remove funding from a Shopmobility service. This case also highlights the seamless advice service provided by Compact Advocacy and the Public Law Project. The second article looks at the role of the Monitoring Officer in the local authority. Our “Did you know” section continues with an overview of the support provided by the Compact Voice team in helping you to manage your local Compact. Finally, we have a list of the workshops available from September to December.

### Stop Press!

As you are aware, the Compact is currently under review. The new draft of the Compact is now out for consultation. Please find time to take part in this important process. The consultation will close on 12 October 2009. To find the consultation paper, go to [www.compactvoice.org.uk/consultation](http://www.compactvoice.org.uk/consultation)

NAVCA members wishing to be part of the NAVCA response or who wish to share their comments should email [barney.mynott@navca.org.uk](mailto:barney.mynott@navca.org.uk)

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## Praxis - using Compact to challenge unfair withdrawal of funding

Daniel Fluskey - Compact Advocacy Team

### The problem

Praxis is a centre in East London which provides advice and support services to migrants and refugees from all over the world, as well as being a meeting place for displaced communities. The organisation had applied successfully to a government agency which was administering a European Fund and they entered into an agreement to run a three-year project, starting in January 2008. In August 2008 the government agency wrote to Praxis terminating the agreement without notice and without having made the first payment that was due to Praxis on signing the contract. Praxis felt that the decision to terminate funding in this way was in breach of the contract that they had with the government agency and not consistent with the Compact. They also had started delivering on the outputs of the agreement, but had not been paid.

### The Compact issue

Funding and Procurement Code: 7.6 – Government undertakes to give enough notice of the end of grants or contracts; this should be a minimum of three months. 5.8 – Departments and Agencies should make payments on time.

### The action

Praxis wrote to the government agency setting out the issues that they had with the way that their funding was terminated. We wrote to the government agency as well raising our concerns with the process and the inconsistencies with the Compact. The government agency, after some time, recognised that there were problems with the termination of funding, but that because the source of the money was the European Commission, they were ultimately answerable to them and had to abide by certain conditions over the fund, regardless whether they were consistent with the Compact

*Praxis felt that the decision to terminate funding in this way was in breach of the contract that they had with the government agency and not consistent with the Compact.*

or not. We spoke in more depth with the government agency and the national department which they are a part of and requested a meeting for all parties, including the Compact Champion from the national department, to discuss the issues.

### **The outcome**

At the meeting, Praxis understood some of the points that the government agency raised about why they had made the decision to terminate the agreement. Praxis were also able to state their position about the process by which it had happened, how it had affected their organisation and the project, and that they had started performing under the contract but with no payment from the government agency. We were able to put the issues into context with the principles of the Compact, which the government agency accepted. The successful outcome of the meeting was that the government agency wrote to Praxis offering to meet the costs that they were owed from when the contract was first signed. In a wider context, we were also pleased that although the government agency had said originally that due to the money being a European Fund this would 'override' the commitments in the Compact, our position that the Compact applies to all arrangements and relationships between Government and the voluntary and community sector was accepted.

## **Key Compact principles for the economic downturn**

### **Compact Advocacy Team**

The economic downturn and its resultant financial constraints have led many people in the voluntary and community sector to feel worried about the future. Knowing these key Compact principles will guide you through this difficult time and help to ensure the best possible outcomes for voluntary and community organisations.

### Consultation Code

Public bodies should be working closely with the sector during the downturn to ensure the best possible outcomes for communities. This has already happened in many places.

*3.1 The Government undertakes to consult the sector on issues that are likely to affect it, particularly where Government is proposing new roles and responsibilities for the sector.*

*11.1 For written consultations, wherever possible 12 weeks should be allowed.*

*11.2 Where less than 12 weeks is allowed the document should specify the reason why a shorter response time has been set.*

**Tip: Don't wait till consultations come out. Ask what is happening and confirm it will be Compact compliant. Offer solutions and ways you can help.**

### Funding and Procurement Code

In a downturn public bodies may be tempted to shift risks to the voluntary and community sector, or to not pay on time. If a public body is changing a programme in response to the downturn, they should involve the sector. The benefits of this collaborative approach are clear.

*2.9 Government undertakes to provide whenever possible an opportunity for the voluntary and community sector to contribute to programme design.*

**Tip: Speak to them about possible changes before they happen and ask for assurance there will be a meaningful opportunity to contribute.**

*4.8 The Government undertakes to discuss risks up-front and place responsibility with the public sector body or voluntary and community organisation best able to manage them*

**Tip: Get out the compact and explain that there should be a conversation about the issue. Be firm about proper payment,**

*If a public body is changing a programme in response to the downturn, they should involve the sector.*

**monitor it closely and challenge it early. The Government has undertaken to pay invoices within 10 days.**

*7.5 The sector undertakes to plan in good time for different situations to reduce any potential negative impact on both beneficiaries and the organisation.*

### **Community Code**

Community groups and others that access key communities, such as BME groups, are sometimes seen as soft targets. The Compact recognises their importance, the value they bring, and the preventative work they do.

*3.2 The government promises to help create and maintain the conditions and support that help community groups to succeed.*

**Tip: Speak to them about possible changes before they happen and ask for assurance there will be a meaningful opportunity to contribute.**

Thinking through the likelihood of different scenarios, and planning accordingly, due to the recession is vital and can help ensure your organisation is best equipped to deal with any future challenges that you may have to face.

For any further advice or information, contact the Compact Advocacy Team on 020 7520 2460.

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## Challenging withdrawal of funding and failure to comply with the Disability Discrimination Act

An example of the advice teams working together

Ravi Low-Beer, PLP

### Background

Colchester Shopmobility is a service based in Colchester town centre that provides wheelchairs and scooters to help people with limited mobility to shop and independently enjoy the facilities in the town centre. During opening hours, mobility equipment is available to disabled people to hire at affordable rates. The service is particularly important for those disabled people who are not able to get their wheelchair or mobility scooter to the town centre (for example because they live too far from the town centre to be able to travel there independently, and cannot load their mobility equipment into a car or taxi).

The scheme is managed by Colchester Community Voluntary Services (CCVS) with funding from Colchester Borough Council. On 26 January 2009, the council wrote to CCVS to give notice that it would cease funding the Shopmobility service in three months. The reason was stated to be that they were shifting resources elsewhere within the voluntary sector, as the council considered this would help a greater number of vulnerable people. CCVS replied on 9 February asking for the decision to be reviewed on the basis that without funding from the council, the service would close. However, on 17 February, the council wrote back maintaining its decision.

### What action was taken

CCVS referred the case to the NCVO Compact Advocacy team. The time for applying for judicial review is “promptly and in any event within three months” of the date of the decision (in this case 26 January). It is important to note that CCVS’ request that the council reconsider its decision (9 February) did not necessarily affect that deadline. So it was

important that CCVS referred the case to the Compact Advocacy team without delay.

Compact Advocacy considered the facts and then referred the case to the Public Law Project (PLP). PLP lawyers made contact with CCVS, and asked whether CCVS could identify any service users who would be 1) adversely affected by the closure of the service; and 2) eligible for legal aid.

CCVS put PLP in touch with a disgruntled service user (JN), who instructed PLP to act as his solicitor. PLP advised JN that the council's decision to terminate Shopmobility's funding was unlawful because:

1. The decision was taken without consultation.
2. The council had failed to discharge its duty under the Disability Discrimination Act (1995) to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity between disabled people and others, and had unlawfully failed to take into account the impact of terminating the service on disabled service users.

PLP prepared a letter to the council on JN's behalf. The letter threatened to apply for judicial review if the council did not confirm within 14 days that it would reinstate its funding of the service pending a consultation process and a disability impact assessment.

Every local authority must appoint a monitoring officer to monitor decision-making within the authority. The role is often undertaken by a senior officer such as the Head of Legal Services. If the monitoring officer considers that a decision or act of the authority is unlawful, s/he has a statutory duty to intervene. (For more information on monitoring officers see Circulation article 409.8).

PLP's letter was sent to the council's monitoring officer in order to ensure that it was looked at by a senior officer. In an ideal world, the seniority of the officer considering a letter threatening litigation would not matter. In this case, however, the council's failure to consult was so stark, that getting the case before an officer of sufficient seniority and

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*The letter threatened to apply for judicial review if the council did not confirm within 14 days that it would reinstate its funding...* authority to intervene was considered important to avoid unnecessary litigation.

**The outcome**  
Thankfully, the outcome was positive: the council's monitoring officer responded by accepting that the decision to terminate the council's funding of the service had been taken without consultation (as required under the Compact), and without discharging the council's duties under the Disability Discrimination Act. The monitoring officer confirmed that funding would be reinstated while the decision was reconsidered in accordance with a proper lawful process.

### Lessons to be learnt

This case study illustrates the advantages of:

1. prompt action by a third sector organisation threatened with funding cuts
2. successful inter-agency working
3. the use of the local authority monitoring officer to ensure an unlawful decision is reviewed promptly at a senior level within the authority.

## The Role of the Monitoring Officer

Ravi Low-Beer, PLP

(This article also appeared in NAVCA Circulation Edition 409, June 2009)

There are a number of potential legal remedies that can be considered when a public body takes a bad decision. They include complaints procedures (to the decision maker, and thereafter, if appropriate, to an ombudsman); appeal rights (where a right of appeal exists); and litigation. Most remedies operate after the event, and cannot prevent a decision from being implemented. But not all. Aside from seeking an injunction within court proceedings to prevent implementation of a decision (which is a complicated, expensive and rarely available procedure), there are two cheap and simple measures that can be used

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to prevent local authorities' decisions being implemented. They are 'monitoring officers' and 'call-in procedures'.

### Monitoring Officers

Every local authority has a statutory duty under section 5 of the Local Government & Housing Act (1989) to appoint a monitoring officer to monitor the decision-making processes within the authority. The role of monitoring officer is often undertaken by a senior officer in the council such as the Head of Legal Services. A key duty of the monitoring officer is to review "any proposal, decision or omission by the authority" to ensure that the authority is not guilty of maladministration, and does not breach any statute, any statutory code of practice or any "rule of law". If the monitoring officer considers that any such breach may have arisen or is likely to arise, s/he has a duty to prepare a formal report to the authority and to send it, as soon as practicable after it has been prepared, to each councillor.

The monitoring officer's report suspends implementation of the decision that is being challenged. The local authority's executive must consider the report at a meeting held not more than 21 days after copies of the report are first sent to councillors. The decision remains automatically suspended until the end of the first business day after the meeting. In practice, the monitoring officer usually has sufficient authority within a local authority (as a senior officer) to be able (if persuaded that a decision is wrong) to ensure that it is reconsidered by a local authority without going through the formal report-preparing procedure.

Of course if the monitoring officer is not persuaded that a decision breaches any statute, statutory code of practice or rule of law, or otherwise constitutes maladministration, a complaint to him or her will not help the complainant. But where the error is clear, a complaint to the monitoring officer can prevent implementation and short-circuit a complaints procedure, and should therefore be considered in these circumstances.

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### Call-in procedures

Every local authority has a statutory duty under section 21 of the Local Government Act 2000 to set up one or more overview and scrutiny committees. The purposes of such committees are (1) to review or scrutinise the authority's decisions; and (2) to make reports or recommendations to the authority with respect to the discharge of its functions. While a decision of the executive is being considered by an overview and scrutiny committee, it cannot be implemented, and if the committee is persuaded that the decision is wrong, it can require the authority to reconsider it.

A person or group that wishes to challenge a local authority's decision can therefore seek to prevent implementation by triggering the call-in procedure, i.e. by persuading an overview and scrutiny committee to consider the decision.

The procedure for getting a decision called in varies from authority to authority. It is important to be aware of the time limit for a decision to be called in (typically five days) and how many councillors on which committee are required to request that a decision be called in.

This information is likely to appear in the authority's procedure rules, which should be available on its website or on request. Once the necessary number of councillors has been persuaded to call a decision in, an overview and scrutiny committee can hold a hearing at which it can require officers and members to attend to give evidence. The procedure rules will often specify the time within which a hearing must take place following a call-in. After the hearing, the committee can require the decision-maker to reconsider the decision.

*A person or group that wishes to challenge a local authority's decision can therefore seek to prevent implementation by triggering the call-in procedure...*

It should be born in mind that a majority of an overview and scrutiny committee will usually belong to the governing party. This means that where there is a consensus among the governing party that a contentious decision should be made, the call-in procedure may not succeed in getting it changed. But particularly where, for example, the error in the decision is clear, and the governing party is split (so that

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further ventilation of the issue may secure the right result), the call-in procedure should be considered.

In summary, the call in procedure (if the relevant councillors can be persuaded to invoke it):

- can buy time
- is a cheap and quick way of challenging implementation
- provides an additional opportunity for lobbying councillors.

## Did you know?

Compact Voice exists to help the voluntary and community sector get the most out of the Compact (extracted from the EVS training resource pack)

We believe the Compact is having a really positive impact on the voluntary sector, but it could be even greater. Compact Voice offers practical help and guidance on how to get the Compact working for your organisation, and we give voice to the sector's views on the Compact to national government, local government and other stakeholders.

We can be that voice because we have representatives from across the sector from small, local organisations to large national charities. Our networks have over 1000 members and are growing rapidly. We work closely with the Office of the Third Sector and the impartial Commission for the Compact to ensure the views of the sector have a strong place at the table.

While Compact implementation is patchy across the country, there are many areas where it has worked really well. To give just two small examples, in East Sussex the Compact has made a difference because the local strategic partnership scrutinises its progress, a communications group works to disseminate relevant messages to those working on the frontline and tailored training gives practical examples of how to use it. In Birmingham, the council developed its new commissioning strategy by involving the local third sector from the beginning; this has resulted in a

more strategic, and successful approach that many other bodies are looking to replicate. We aim to ensure that the Compact way of working is achieved across all relationships between national and local government and the sector.

### Practical steps to get the most out of Compact Voice

- **Join the Compact Voice Local Network**  
If you are a local organisation contact [paul.barasi@compactvoice.org.uk](mailto:paul.barasi@compactvoice.org.uk) to join the local network and find out what you can do to raise the profile and effectiveness of your local Compact. The network provides a platform to get all the latest local Compact news and allow organisations to share their thoughts and experiences in a confidential and informal way.
- **Join the Compact Voice National Network**  
If you're a national organisation, contact [paul.barasi@compactvoice.org.uk](mailto:paul.barasi@compactvoice.org.uk) to join the interactive forum. The site contains good practice examples on how the Compact can strengthen your organisation and allows you to share your own experience or find out about that of other organisations. The site has sub-groups on topics ranging from health delivery, to issues relevant to BME, faith and disability groups.
- **Get the most out of our website**  
[www.compactvoice.org.uk](http://www.compactvoice.org.uk) contains a wealth of information to help you get the most out your relationship with public bodies. This ranges from case studies and practical tips to how to link with policy processes such as the new performance frameworks.
- **Use us if you're running an event which involves the Compact**  
We have a range of materials to help you give presentations on the Compact or lead discussions on it. We also talk and facilitate at many events up and down the country. Or we can simply give advice on what's worked for us when explaining the Compact and how best to ensure it's implemented.

**Contact:**

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Visit: [www.compactvoice.org.uk](http://www.compactvoice.org.uk)

*What Makes a Successful Local Compact: A Project Report.*

Institute for Voluntary Action Research, 2008.

Available at: [www.compactvoice.org.uk/publications](http://www.compactvoice.org.uk/publications)

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## Details of advice line & training courses

The advice line run by Compact Advocacy in conjunction with the Public Law project provides free detailed Compact and legal advice to voluntary organisations on disputes involving public bodies' decisions and failures.

The advice line is available NOW on 020 7520 3161 at the following times: Monday to Friday 10.00 to 16.00

or email: [evsAdvice@ncvo-vol.org.uk](mailto:evsAdvice@ncvo-vol.org.uk)

The project is running workshops in the following areas:

- Taunton 8.9.09 (EVS127)
- Nottingham 10.9.09 (EVS128)
- Sunderland 22.9.09 (EVS129)
- Leeds 28.9.09 (EVS130)
- Cambridge (Full) 29.9.09 (EVS117)
- Southwark 30.9.09 (EVS132)
- Bristol 15.10.09 (EVS133)
- Cannock 20.10.09 (EVS134)
- Penrith 28.10.09 (EVS135)
- Essex 5.11.09 (EVS138)
- Havering 12.11.09 (EVS139)
- Northampton TBC (EVS141)
- Derby 1.12.09 (EVS142)
- Lewes 16.12.09 (EVS143)

To book your place on one of the workshops listed above go to [www.navca.org.uk/evs](http://www.navca.org.uk/evs) and follow the link for the national training programme or email [terry.perkins@navca.org.uk](mailto:terry.perkins@navca.org.uk). If you wish to host a workshop, details can also be found on the same web page.