



# Empowering the voluntary sector

Issue 5, March 2008



Welcome to the latest edition of our newsletter. We start with a piece by Louise Whitfield, Project Solicitor at the Public Law Project, which discusses an important High Court case in which issues around the Compact and its enforceability were canvassed. We then have a piece about public law in action from Nigel Bacon, from the Warrington Council for Voluntary Service. Finally our 'Did You Know' section on Equality Duties is being repeated because of its importance for the sector – with a practical example of how they have been used in practice.

## 1. The case of Berry

The casework team at PLP has been busy with a number of cases involving voluntary sector organisations, including one which went all the way to trial last November. This was the case of *Berry v Cumbria County Council* in which a service user of Age Concern South Lakeland brought a public law challenge against the Council's decision to introduce charging for day care services. The voluntary sector was very involved in the case as they had been the main means by which the Council had claimed it had properly consulted over the proposal. In fact, many service users and VCOs were concerned that there had been no effective consultation, that the Compact had been breached and that the Council had failed to take into account the impact of people either refusing to pay or not being able to afford the charges: in rural Cumbria any drop in numbers could lead to day care centres closing and reduce even further the services available to disabled and older people, and their carers.

Mrs Berry was directly affected by the charging proposals. We obtained legal aid for her and issued proceedings. The Council indicated they would defend the case, but did then agree to undertake a further consultation; we argued this was inadequate as it still didn't provide the groups or their users with enough time or information as part of the process. We therefore advised Mrs Berry to fight on and the case was

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heard in the first week of November. The judge agreed that the first consultation process was flawed and that the Council at that stage had acted unlawfully. However, he found that the new consultation undertaken after proceedings were issued was good enough and that therefore the Council's decision to go ahead with charging for day care should not be quashed.

It was disappointing not to have won at the trial. However, the local groups involved felt that along the way they had, in fact, gained considerable ground with the Council, who were now fully aware that they must consult properly over service changes and that the VCS could no longer be pushed around. This has already meant that there has been a very effective consultation over the proposed closure of residential homes with the VCS fully involved.

The judge also made comments on two issues of interest to the sector generally. Firstly, we had raised the issue of whether there had been a breach of the Compact and that as a result the Council's decision to go ahead with charging was unlawful. The judge deliberately ducked making a specific finding on this but did say that the Compact was, "more than a wish list...it was a commitment of intent between the parties". He clearly thought it was relevant when considering the Council's failure to consult properly with the sector, although he would not go so far as to say that it amounted to contractual terms.

Secondly, the Council tried to argue that Mrs Berry did not have standing – or sufficient interest – to bring the claim as she would not be directly affected; she would not be liable for any charges and the Council said the local VCOs should have brought the case. The judge rejected these arguments. He was clear that on the basis of her attending the centre which faced a potential drop in numbers as a result of charges being introduced, Mrs Berry did have sufficient interest to bring the case. This endorses our view that service users, even if they may not lose a service entirely, are entitled to bring a challenge based on their concerns about potential changes to those services.

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The groups involved said they had no regrets about going ahead with the case as they felt they had managed to maintain a good working relationship with the local authority, who would now consult them properly and far more carefully in the future.

The full judgment is available on PLP's website, ([www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)).

## 2. User piece

### **Nigel Bacon, Chief Executive, Warrington CVS**

In January 2007 we received a letter out of the blue from our PCT informing us that grant funding for our core services and for a project we run would be terminated at the end of March – less than three months' notice and no discussion or consultation. We quickly learned that we were not the only ones. Most voluntary sector organisations in funding arrangements with the PCT had received a similar letter.

I arranged to meet with the Chief Executive of the PCT, but it was very clear there would be no movement in the PCT's position. A 'council of war' was established with all the affected organisations represented and it was agreed that we should look to taking further action. We contacted the Public Law Project for guidance, and after explaining the situation, Louise Whitfield offered to take on the case. Louise wrote to the PCT's Chief Executive but again the response was discouraging, so we planned for the next stage. We identified individuals who would suffer detriment if the service they had relied upon was to be withdrawn. This allowed us to threaten the PCT with judicial review.

The response was fairly swift and quite different in nature. It was agreed that the funding would continue while the PCT consulted with the affected organisations and gave them an acceptable period to secure alternative funding. It was also agreed that a new process would be established for voluntary sector organisations to apply for funding from the PCT.

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In the end we received funding at the same level as last year for an extra seven months. An investment process was established whereby any organisation can put forward a proposal to the PCT. Each proposal then needs to secure a 'sponsor' from the commissioning team who will work with the applicant organisation to frame the bid, which then goes before an assessment panel. The panel then makes a recommendation which goes before the PCT Board for ratification. I have been invited to be a part of the assessment panel. The first bids are now coming through for the panel to assess, but so far none have gone 'upstairs' to the Board. Although it is still early days, the process seems to be robust and is certainly a more positive and co-operative engagement than we experienced earlier in the year.

There have been spin-offs throughout the LSP with all partners keen not to repeat the experience. I have been told that the voluntary sector gained respect for its stand and is seen as more 'professional' as a result. Organisations within the sector have worked together to achieve a common outcome and as a result strengthened relationships.

We knew all along that we could not expect funding to be re-instated long term, but we have secured additional funding in the short term, we have established a process for future funding applications and we have enhanced the reputation of the sector. Clearly it is highly unlikely that any of this would have been achieved without the advice, support and intervention of Louise Whitfield and the Public Law Project, so our sincere thanks to one and all.

### 3. Using the Equality Duties

There is now a general anti-discrimination duty placed upon public bodies, applicable to race, gender and disability discrimination, which requires such bodies to have due regard to the need to eliminate unlawful discrimination, to promote equality of opportunity; and to promote good relations. Disability discrimination legislation goes even further and requires public bodies to take steps to take account of

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disabled persons' disabilities (even where that involves treating disabled persons more favourably); to promote positive attitudes towards disabled persons; and to encourage participation by disabled persons in public life.

These general duties are supplemented by additional specific duties, such as a requirement on public bodies to publish Equality Schemes setting out how they propose to meet the relevant general duty. These can usually be accessed via the body's own website.

This means that the public bodies have to consider the possible impact of their decisions, policies and procedures upon those within the community that are protected by anti-discrimination legislation (e.g. BME groups, women, or those with disabilities). Therefore, if they are considering cuts to funding for organisations serving or representing these groups, they may well be obliged to:

- conduct a full impact assessment of the proposed cuts;
- in the case of services for those with disabilities, square their decision with their additional duties towards this group;
- consider any other options that achieve the objective of saving money in ways that impact less upon the protected groups.

For obvious reasons, this process must be completed **before** any final decision is made. A failure to follow this process may well render any final decision unlawful.

PLP has been representing Southall Black Sisters, a group that provides a range of services to women including specialist services for BME women who have been victims of domestic violence. They have been funded for many years by Ealing Council in West London, but in the summer of 2007, the Council began a consultation process based around service provision for men and women who had been victims of domestic violence. The Council did not intend to increase the budget

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that was available for this work, nor set out how the specialist services for BME women could be maintained.

SBS came to us for advice as they were concerned that their service users – a particularly vulnerable group – would lose services and that no race or gender equality impact assessments had been done. Under the law that protects women and BME groups, if a local authority introduces a new policy which is likely to have an adverse impact, the council must do equality impact assessments. As far as SBS were concerned none had been done and we advised that the Council's failure might be unlawful and could be challenged using judicial review proceedings if it indicated that they were not meeting their general duties to promote race and gender equality.

When we first approached the Council about this, they indicated that decisions on the grants for the new services would be taken and then impact assessments carried out. They said the assessments were under way, but we were concerned that none of the key service-user groups had been consulted on these or knew anything about them. We therefore advised two of SBS' service users that we thought the Council's position was unlawful and that the only way to get them to re-think their decisions would be to make a formal threat of judicial review. We did so, and got legal aid for the service users in case we had to go ahead with the court case. The Council backed down at the last minute and agreed to withdraw their decisions about the new services and to do the impact assessments including a full consultation process.

This is now under way and we are awaiting the results. Although the Council may still decide to change how they fund domestic violence services, the group and their users feel they have effectively used the law to force the Council to check what the implications for BME women will be and to take any necessary action to minimise any adverse effect.

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## 4. 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 2198 at the following times:

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

Or email: [evs@publiclawproject.org.uk](mailto:evs@publiclawproject.org.uk)

The project is running workshops in the following areas:

- Cumbria 11 March (EVS57)
- Redcar 12 March (EVS49)
- Kensington 19 March (EVS51)
- Bolton 2 April (EVS55)
- Bodmin 10 April (EVS56)
- Hatfield 17 April (EVS75)
- Harlow 22 April (EVS58) Full
- Stoke on Trent 29 April (EVS72)
- Gravesend 1 May (EVS63) Full
- Taunton 8 May (EVS37)
- Darlington 14 May (EVS60)
- Burnley 13 May (EVS66)
- Peterborough 4 June (EVS67)
- Bristol (BME organisations) 11 June (EVS74) Full
- Wolverhampton 17 June (EVS69)
- Croydon 19 June (EVS45)

For booking forms and further details please go to [www.navca.org.uk/evs](http://www.navca.org.uk/evs) or email Terry Perkins at [terry.perkins@navca.org.uk](mailto:terry.perkins@navca.org.uk)