



The Compact & Public Law

An overview

EVS Master Classes 2008



Legal status of the Compact

- In contract law: no legal status, can't rely on it to sue for breaches
- In maladministration: could be breach but so far no investigation by ombudsman:
 - alleges no jurisdiction because "contractual or commercial transactions"
 - no investigations by Omb to date
 - new powers for the Commissioner to look at breaches?

In public law (1)

- National Compact is policy adopted by central government
- Local compacts specifically signed up to by local public bodies
- Guidance/policy should be taken into account (basic public law principle)
- Failure to do so could be public law wrong/ground for JR challenge

In public law (2)

- Compact and codes could create “legitimate expectation” (especially of consultation)
- Breach of this could render decision unlawful
- Public law wrong/ground for judicial review
- Only argued in one case to date...

R(Berry) v Cumbria County Council

- Case about introduction of care charges
- Failure to consult
- Very short consultation period with limited info and only few groups consulted
- Compact referred to Cabinet Code on Consultation – recommends 12 week consultation period/full written process

Legal arguments presented

- Claimant (on behalf of VCOs)
 - legitimate expectation
 - unreasonable not to adhere to it
 - no 12-week written consultation exercise
- Defendant (local authority)
 - shouldn't read too much into Compact
 - total consultation was over 12 weeks and adequate in any event
 - Compact is just a "wish list"

Judge's ruling (para 44 of judgment)

- More than a wish list, but less than a contract
- Commitment of intent
- Parties free within reason not to comply with it
- 12 week consultation period:
 - must have come from somewhere
 - indication of appropriate period
 - a yardstick

Where does this leave us?

- Arguments are still live
 - Berry case didn't turn on it but helped to bolster claimant's position
 - Judge took it seriously although ducked deciding the case on this basis
- Some want Compact to have statutory basis
 - could undermine purpose
 - could just lead to more litigation
 - unlikely to get government support



Everything to play for...

- Raise Compact arguments early on
- Point out legitimate expectation it creates
- Ask public body if they've considered it
- If not, why not?
- Use Compact Advocacy team at NCVO and get legal advice from PLP



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