



Empowering the voluntary sector

Issue 1, July 2006



Welcome

Welcome to the first newsletter of the 'Empowering the Voluntary Sector' project, funded by the Big Lottery and delivered by the Public Law Project (PLP) in partnership with the National Association for Voluntary and Community Action (NAVCA).

What does the project offer?

Training

The project will provide training to equip the voluntary sector with the skills to negotiate effectively with public bodies on issues such as challenging funding cuts, failures to consult on policy changes, and local authority decisions concerning the provision of services. There is be a minimal charge of £25 per person. Course dates will be announced shortly, but if you require further information in the meantime about the training programme, please contact Terry Perkins, the project's training officer, at NAVCA. Tel: 0114 278 6636 x 163 or email: terry.perkins@navca.org.uk

Advice

Our advice line 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
Tuesdays	10am to 1pm
Wednesdays	2pm to 5pm
Thursdays	10am to 1pm



Or you can email us: evs@publiclawproject.org.uk

If you would like to go on the email list for the project's quarterly newsletters, please email h.jones@publiclawproject.org.uk

All voluntary sector organisations in England are able to access these services and benefit from the provision of general and/or specialist legal advice and training on public law principles and remedies.

Public law – the bigger picture

“We are still not fully at the table. We are not yet truly the third sector. Some of the attitudes we encountered in 1994 are the same ones we face now. We are still not truly taken seriously or granted the same respect as the private or public sector. When local authorities make cuts where do they look first? – at the profit margins of the private company who regularly fail to meet their targets? No of course not – they look at the small grant or contract that the small local voluntary organisation has to work with offenders or asylum seekers.”

Stuart Etherington (NCVO Chief Executive) in a speech to NCVO's Annual Conference in February 2004, entitled 'Present tense, future perfect?'

There are many bodies in England and Wales whose decisions affect the lives of individual people in a whole variety of ways. These public bodies include government ministers, departments and agencies, local authorities, the police, prisons, schools, statutory tribunals, and regulatory and supervisory bodies. Their decisions have a particularly significant impact on the quality of life of those facing poverty and disadvantage. The decision may

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determine whether a subsistence welfare benefit is granted, whether health care is provided, or whether the voluntary sector is to be funded.

It is sometimes thought that where public bodies are given a discretion in a particular field, they may exercise it in whatever manner they think best. This is not correct. Whatever a public body does, it must be able to point to some legal provision, which permits it to act in such a way. Thus if the action (or inaction) is based on an erroneous interpretation of the law, or where the decision-making process is unfair or biased, then those who are detrimentally affected by the decision or process have the right to challenge it using one of the remedies available.

Not only may a successful challenge to an adverse decision mean that the community gains or maintains access to a vital service or benefit, but the very experience of acting on injustice is an empowering one that combats the roots of social exclusion.

This project aims to equip groups within the voluntary and community sector with the knowledge, tools and support to be able to apply public law principles when dealing with the public sector, whether it be in relation to their funding or to policy decisions made affecting their client group.

To achieve this we offer a telephone advice line backed up by a national training programme. We are also able to take on individual cases.

We will issue newsletters quarterly giving updates on the project is going up and down the country including full details of training events, success stories and other information.

Did you know?

If a public body tells you that it is going to act in a certain way, the courts have interpreted this as a promise, and may regard it as an abuse of power (and therefore unlawful), for the body to subsequently break its promise to you. The court refers to this as an action which creates a 'legitimate expectation' that it will be carried out. For example, this may cover promises to hold consultations, to make decisions using a particular process, or even promises to give you some tangible benefit such as the right to occupy a property for some period of time.

Of course, the rule is not absolute – circumstances do change and sometimes promises cannot be kept. The court will however expect the public body to have very good reasons for breaking its promise to you.

Public law remedies

The project advises on the whole range of remedies open to an organisation or individual wishing to challenge a decision (or a failure to make a decision), from negotiation and mediation, invoking Compact principles, through to the Ombudsmen and judicial review. Here, Dave Bland, an adviser at Riverside Advice, an agency providing specialist welfare benefits advice and representation to people with mental health difficulties, describes his experiences with the last of these – judicial review.

“I was aware how vital our services were to our clients. So when our funders tried to end the project, we used public law to challenge their decision and keep our funding in place.

The project is funded by Cardiff Local Health Board (the LHB, which is similar to a primary care trust or health authority in England), and had been running for a number of years. In 2004, the Authority decided to carry out a review of its funding of the

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voluntary sector and this included a review of the advice project. We scored highly and were confident that we would secure further funding: no other project provided this service in the city and we had the support of other organisations including public bodies, such as local hospitals, due to the specialist nature of our work and the high quality service we provided.

After some delay, we received a letter from the Authority saying they would not renew our funding, as we were not “delivering health outcomes in line with the Service and Financial Framework”. We were stunned and attempted to challenge this, but there was no appeal process available. The Authority then also raised an argument that in law they did not have the power to fund us in any event. They had never put this to us before, nor did they seem clear about whether this was their real reason.

I was aware that a public body could be challenged by judicial review if their actions were unfair. I therefore contacted the Public Law Project (who were involved in the Leicester case where a funding cut to the voluntary sector was successfully challenged), to see if they could help us. My organisation did not have any funds to instruct lawyers or bring legal action. However, I knew that a number of my clients were very concerned about the closure of the project as they would not have any representation at their benefits appeals, nor be able to get help with new applications. I referred my clients to PLP and as they were eligible for legal aid, PLP advised them how to challenge the Authority’s decision.

Another group running a mental health project for young people had been faced with a similar situation: good results in the review, but a decision to withdraw funding regardless of this. Neither of us had been given the opportunity to challenge the proposals, nor were we given proper reasons for the decisions. Both groups felt

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Despite attempts to resolve the dispute in correspondence, the Authority would not budge. Both projects' funding was due to run out in March 2005, and it was already mid-December. PLP advised issuing judicial review proceedings, the court process for challenging a public body's behaviour. When the claim was served on them, the Authority conceded on all the arguments about fairness. They also agreed to carry out a fresh review for the other group that was challenging the decision to withdraw funding. However, for us, the Authority maintained their argument that they did not have the power to fund us and we had a full hearing about whether this was correct in law.

Unfortunately, the judge in the High Court agreed with the Authority, but immediately gave leave to appeal because it was such an important case. When we went to the Court of Appeal, the Department of Health intervened to agree with our position: that the Authority did have the power to fund an advice project. We won the appeal and the Authority agreed to continue to fund us for another three years.

My clients were very pleased indeed. The court case has kept the project running, which means they can still get the specialist help and representation that they need. The case also clarified the law, and made it clear that health authorities and PCTs can fund advice projects. We used public law to keep our funding in place and to keep providing services for our clients.”

Who are we?

The Public Law Project is a national legal charity, founded in 1990, which aims to improve access to public law remedies for those whose access is restricted by poverty or some other form of disadvantage. Within this broad remit, PLP has adopted three main objectives:

- increasing the accountability of public decision makers;
- enhancing the quality of public decision making, and
- improving access to justice.

PLP is the leading public law VCO (voluntary and community organisation), and is seen as one of the main resources for advice and training in public law. It has provided services to assist the clients of advice agencies, law centres, community groups and solicitors in private practice, over the last 15 years. In addition to the provision of legal services, PLP undertakes research into aspects of public law, funded by major trusts such as the Nuffield Foundation.

Louise Whitfield – project solicitor, PLP

Louise qualified as a solicitor in 1997 and joined PLP in 2003. She carries out casework and provides advice to other advisers via PLP's specialist support line, funded by the Legal Services Commission. She also develops and delivers training and is involved in the Project's policy work on a number of issues. Louise has advised numerous VCOs in disputes with public bodies, helping to secure fair decisions and maintain funding and services for local people.

The National Association for Voluntary and Community Action (NAVCA) is the national voice of local voluntary and community sector infrastructure in England. Its 360 members work with 140,000 local community groups and voluntary organisations which provide services, regenerate neighbourhoods, increase

volunteering and tackle discrimination in partnership with local public bodies.

NAVCA's purpose is to promote local voluntary and community action nationally. It does this by providing its members with information, advice, networking and learning opportunities, support and development services. In turn, it draws on its members' experience to influence government and contribute to national policy. It also works closely with other national bodies to ensure a collaborative approach to policy development.

Terry Perkins – training officer, NAVCA

Terry joined NAVCA in early April as Public Law Training Officer after ten years with national charities. During that time, he was involved with developing and designing training programmes, project management and strategic support. He has also worked in the NHS and in the retail sector. Outside of NAVCA, Terry is an active volunteer with St. John Ambulance. He takes the lead on Child and Vulnerable Adult Protection issues in the Humberside area and uses his professional nursing qualification to support clinical activity at public events.