



Empowering the voluntary sector

Cuts challenge update August 2010



Working with



Managing the cuts

As a follow-up to our recent cuts briefing, this short paper aims to update on recent casework carried out by our advocacy and legal teams and to provide you with an action plan you can use when faced with cuts. To gain the most from this paper please read in conjunction with the Cuts Challenge newsletter published in July 2010 (in your packs).

What do I need to do if faced with cuts?

Public law wrongs and Compact problems can arise from a single event, but all too often they will come to light as part of a sequence of events or a long drawn-out process. It is important that you not only try to identify the crucial decision or action taken by the public body but also when you first became aware of the problem or failure to act. You must act quickly, as some solutions have tight deadlines, and it is often far easier to resolve a dispute at an early stage.

Firstly, identify what precisely the public body has done, and what, briefly, are you complaining about?

Asking key questions will help you identify the particular issue at hand. Once you have identified what has gone wrong, this will help you to decide how it can be put right and what remedy (or solution) to try. Even if there has been a sequence of events, or a long drawn-out process, try to identify the crucial decision or action taken by the public body and when you first became aware of the problem or failure to act.

- If it's a decision, is it in a letter, was it made at a meeting – by whom, when and how?
- If it's an action, where was it recorded and how did you find out about it?
- If it's a failure to act, what is it that the public body has failed to do?
- Does it have a power to carry out an action? Did they fail to exercise that power?

- Does it have a duty to carry out an action? Is it in breach of that duty?
- Are there any Compact commitments that are applicable to the decision or action?

Once you have identified these issues you need to gather information and then identify what can be done firstly in-house and secondly what help and support our advice teams can provide.

Information gathering

- Ask the public body for their internal documents on their decision-making process (e.g. policy, guidance, criteria on how they award grants and set their budgets) – consider using the Freedom of Information act if necessary.
- What documents do you have that relate to the dispute (e.g. your service level agreement, correspondence with the public body)?
- Keep minutes of all meetings.
- Make notes of all telephone conversations.
- Follow up all discussions on crucial issues, even if they are relatively informal, via email or letter.
- Ask the difficult questions even if you might not like the answer, including within your own teams.

Problem analysis

- What has gone wrong?
- Can you sum up what you want to challenge in one sentence? This will help to focus your mind.
- Is it a series of mistakes by the public body, or one major error?
- Have you got anything wrong? If this is the case, discuss with the advice team – all may not be lost.
- Was there anything you could have done to avoid the problem?
- How have you presented your case to the public body? Is it clear about what your problem is? A crisp, clear and succinct letter is a very effective tool; the advice team can help with putting into context public wrongs and breaches of the Compact.

Remember, in a situation that may mean that you are facing closure or service users are at risk of losing vital services, judicial review may be the

only option to you. It can be prudent to view resolving a dispute from that point of view and then work backwards through other methods in order to find the best method for you.

Regardless of which method of dispute resolution will suit your needs, the best method of starting the resolution process is to open a dialogue with the public body and try to identify a way forward. To this end, the use of the Compact as a method of dispute resolution is more likely to provide a non-adversarial route to solving the issues that have arisen. Consider your reaction to being the recipient of a challenge – would you prefer to have a meeting in order to negotiate a way forward or face a judicial review?

Points to consider

(See the article by Diane Astin on judicial review in your pack)

- Judicial review is a remedy of last resort and you must have tried – or at least considered – all other options.
- Even if you prove the public body has acted unlawfully, the judge may not give you the order you want for a variety of reasons: good administration, the way you have behaved in the dispute, if your case has been overtaken by events.
- **You must act quickly: a court case must be issued promptly and within three months of the date of the decision you are complaining about.**
- Even if the court awards a fresh decision the public body may still arrive at the same end decision. Remember public law is about the process and not the merit base.
- Judicial review is very expensive – can you fund the claim? Funding for cases can be sought from the Legal Services Commission, but you will need support from the PLP. Also it will need to be sought from an individual (most likely a service user) rather than the organisation. The legal team will be able to provide advice on this and how to manage the case if the service user is vulnerable.
- Court proceedings can damage working relationships, but remember, to date, evidence shows that challenge actually builds relationships rather than destroy them.

Casework update

It is of course no surprise that most of the enquiries and cases that have come to the EVS team are focused on cuts to funding.

There are stories and examples around the country of cuts to the voluntary sector's budgets in local areas, such as proposals in Croydon to reduce the money available by a third <http://www.cvalive.org.uk/> and Liverpool City Council cutting their grant programme from three years to 12 months <http://www.thirdsector.co.uk/news/Article/1021263/Liverpool-City-Council-cuts-grant-programme-three-years-12-months/>.

While the advice teams cannot campaign for these cuts not to happen, or challenge local authorities on the merits of their decisions, we do want to ensure that any such decisions and policies are taken with appropriate consultation and engagement with the voluntary sector.

Public Law Project

- We are about to issue a claim for judicial review against a London PCT which has serious financial problems and has decided to run an extremely foreshortened consultation/review in order to reduce the funding for voluntary sector providers of mental health services. The issue appears to be that the PCT has insufficient funds to continue the funding but is nevertheless acting in breach of public law/equality law in the way they propose to implement the decision.
- We are also being consulted by several London voluntary organisations that face funding cuts because of a proposal for London local authorities to cease to be part of the London Council's grants programme (set up by the GLC many years ago under Ken Livingstone). Our advice is to take an active part in the current consultation and that the decision has not yet been taken so cannot yet be challenged. Although in theory this is only a reorganisation and local authorities claim they will continue to fund local organisations, it's obviously going to mean a reduction in funding overall and will prejudice pan-London projects.

- We are also receiving a large number of enquiries from law centres and other voluntary agencies who have not been awarded sufficient 'matter starts' by the LSC to continue either giving legal advice in a particular area of law or function at all (e.g. an organisation that offers two areas of law but has been awarded matter starts in only one and cannot therefore continue to function). These kind of enquiries are more about procurement than public law but we want to work with other organisations (LAG, LAPG, LCF) to offer advice on the public law aspects of any dispute.

Compact Advocacy

The recent news from Thurrock is an example of good practice and we hope that other areas around the country follow suit. Following wide consultation with local groups which provided robust information about the likely impact of cuts, Thurrock concluded that investment in the voluntary sector was the best way to ensure key services were effectively delivered. They have therefore ring fenced funding for local groups and decided not to make any cuts at this time www.compactvoice.org.uk/category/news/thurrock-%E2%80%93-no-cuts-local-groups-despite-difficult-times

The case study below is one example of how organisations have been affected and what kind of angle we can take on advocacy.

Recipients of CLG's Migration Impact Fund were halfway through their three-year funding agreement and expected payment as usual in April 2010. When this failed to turn up, they chased their payments and were told this was delayed due to Purdah – government restrictions of activities in election times. Organisations were also told not to make commitments until future payments were confirmed.

When Compact Advocacy contacted CLG asking for the payments to be made and criticising the lack of communications around the delay, they were told organisations should have known about Purdah and that there was no guarantee of future funding. Compact Advocacy and many of the affected organisations continued to put pressure on CLG to pay what they owed organisations and to make urgent decisions about the future of the funding. In June organisations were finally told they would receive the first six months'

funding and a few weeks later it was confirmed that there would be no more funding after the six months.

Although the organisations are naturally disappointed about the end of funding, they were at least given three months' notice and were, belatedly, paid what they were owed. Compact Advocacy will bring the issues around Purdah and lack of communication to the attention of the Cabinet Office to ensure something similar does not happen at the next election.