



# Empowering the voluntary sector

Issue 6, August 2008



Welcome to the sixth edition of the newsletter.

We begin with a piece that follows up on a theme explored in a previous newsletter, about using Complaints Procedures effectively. This piece, written by PLP lawyer Ravi Low-Beer, explores some of the dos and don'ts when funders allege non-compliance with their conditions of funding. It is based on experience in helping a number of small VSOs.

We also feature a special article written by Louise Whitfield, about the fall out from the Cumbria case. Louise and PLP acted for a claimant seeking a judicial review of the local council's decision to introduce charging for day care. The case itself failed, but the fact that it was pursued has changed the landscape in Cumbria.

Our regular "Did you know" article focuses on where to find legal advice on private law disputes.

Our final article, written by Terry Perkins, looks back over the first two years of the project and provides an overview of its outputs to date.

The project team want this newsletter to reflect your successes in negotiating with public bodies using the principles of public law. If you have a story you wish to share with others, please email [terry.perkins@navca.org.uk](mailto:terry.perkins@navca.org.uk) with an outline of the issues you have faced, the tools you used and the outcome achieved. We will then publish as many of these successes as possible.

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## Lessons for VSOs – Be fair to yourselves and insist others are fair to you!

Ravi Low-Beer, PLP

**Do** make a note of conversations with grants officers, particularly where this results in a change to the agreed project outputs or outcomes. Consider confirming all agreements and discussions in writing.

**Don't** allow misunderstandings to happen. Be proactive – so for example where site visits are carried out by grants officers, record what is discussed, what is requested and what is inspected so as to prevent misunderstandings arising as to whether requests for inspection and clarification were complied with.

**Do** be clear about the allegations that are being made against you by the funder, and the basis on which they are made. Where withdrawal or recovery action is contemplated, it is both unreasonable and unfair to require you to make representations to prevent the threatened withdrawal or recovery action without you knowing details of the case against you.

**Don't** guess what the allegations are. If they contain insufficient detail, ask for more information. Reports are inevitably prepared by the funder, ask to see copies as a matter of fairness, and if necessary, under the Freedom of Information Act.

**Do** sort out your admin and record-keeping. VSOs should always keep their project records logically and efficiently, so that they can easily be produced on inspection or in response to allegations. You are not giving yourselves a fair chance if you don't.

Much of this may seem like commonsense and it is.

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## Losing the battle, but winning the war: reflections on unsuccessful litigation

“It was a wake-up call to the statutory bodies”

Louise Whitfield, PLP

As reported in the last newsletter, last year PLP helped to bring a judicial review case on behalf of two local Age Concern groups in Cumbria against the local council’s decision to introduce charging for day care. The case was about the council’s failure to consult with the voluntary sector and with service-users on this major change in service delivery. The case went to trial and the judge held that whilst the council had acted unlawfully at the start of the process in relation to their first decision on day care charging, their second decision was lawful and should stand. After the trial, the groups were very positive about the experience, despite having lost and felt that they had gained a lot on behalf of the sector.

However, when we advise the sector on public law disputes, many groups express concerns about damaging their relationship with their funder if they bring a legal challenge. There is an understandable fear of biting the hand that feeds you and that losing a case will leave individual groups or the whole sector worse off. I therefore asked the groups in Cumbria to tell me what they thought of the process overall and what had been achieved in a wider context.

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Valerie Brook from Age Concern Eden commented:

“In answer to your question, following the Judicial Review, Sonia [chief officer of Age Concern South Lakeland] and I had a **very positive meeting** with the Cumbria County Chief Executive. During the winter months the new PCT consultation 'Closer to Home' in the north of the county took place in respect of the future of the Community Hospitals and locality based care. The consultation process was **well thought out and**

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**extensive**, the documents were a little late in being distributed and consequently the deadline for responses was extended by one month. Representatives from the PCT attended regular meetings of 'Action for Health' where you will recall representatives of many of the voluntary organisations in Cumbria attend. I am certain that the JR [judicial review court case] had an effect. Also the Modernisation of Cumbria Care (the in-house provider) was taking place at about the same time and again a **robust consultation process** was put in place particularly in respect of the modernisation of existing residential homes. Chief officers/directors of the five Age Concerns in Cumbria were **invited to chair the locality meetings and meetings for residents** and their families in the homes. Independent advocacy services were also put in place for residents and another independent organisation engaged to put together a report which has just gone to the Cumbria County Council Cabinet. In my opinion the Judicial Review was certainly a **wake up call** to the statutory bodies particularly in respect of how a consultation process should be conducted and I believe that **we have made a difference and gained respect** for supporting the views and wishes of older people that we represent.”

This illustrates that despite losing the case, the experience clearly had a positive impact on not only the county council who were defending the proceedings, but also other local public bodies, such as the PCT, who were involved in providing and funding local services via the voluntary sector.

We hope that this will encourage groups to challenge public bodies despite the potential risks involved and that our casework will continue to have a wide impact to improve public body behaviour.

## Did you know?

Our advice line deals only with public law disputes. This means that most queries about contractual disputes are not within the scope of this project. However, there are two organisations that can arrange or provide free or low cost legal advice for you:

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### LawWorks for Community Groups

([www.lawworks.org.uk/?id=not\\_for\\_profits](http://www.lawworks.org.uk/?id=not_for_profits))

LawWorks for Community Groups say they can provide free legal advice to small charities, voluntary and community organisations and social enterprises in England and Wales via a network of volunteer lawyers. They say they can help you with matters such as:

- Company law advice: advice on contracts; how to incorporate the organisation as a company limited by guarantee; updating and amending the organisation's constitutional documents.
- Employment law advice: drafting, reviewing and updating employment contracts and staff handbooks.
- Intellectual property law advice: advice on registering a trademark and data protection issues.
- Property law advice: advice on lease terms; assistance with negotiating tenancy agreements.
- They can also help with issues of: charity law; tax/VAT law; insolvency and help in drafting contingency plans; insurance law; health and safety law; general contractual/commercial matters etc.

Apply for help via their online application form. If you would prefer to receive an application form, call them on 020 7929 5601.

### InterChange Legal Advisory Service

([www.interchange.org.uk/content/?q=node/4](http://www.interchange.org.uk/content/?q=node/4))

Interchange say they can provide affordable, practical and easy to understand legal advice to charities and other not-for-profit organisations and to people from a wide range of different backgrounds wishing to set up charities. They say they can provide assistance in the following areas:

- Charitable status and charity registration
- Legal structures and constitutions
- Company formation and management
- Employment issues (including representation at tribunals)
- Leasing and other property issues

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- Service level agreements and other contracts
  - Dispute resolution/Litigation
  - Data protection

The initial consultation or surgery is free. After that, they say any follow-up advice is charged for, but at affordable, low-cost rates.

Interchange Legal Advisory Service  
Interchange Studios  
Hampstead Town Hall Centre  
213 Haverstock Hill  
London NW3 4QP

Email: [legal@interchange.org.uk](mailto:legal@interchange.org.uk)

Tel: 020 7692 5860/5864

Fax: 020 7813 7493

## Empowering the Voluntary Sector – the first two years

Terry Perkins, NAVCA

The Empowering the Voluntary Sector project continues to prove to be a success as we enter year three. In year one the project delivered 17 workshops, training over 170 people to use the principles of public law and the legal advice line supported in the region of 70 organisations and as a result saved the sector around £250,000 in funds that would have otherwise been lost due to unfair cuts.

Year two saw a massive increase in the demand for training. In the period April 2007 to March 2008 the project ran 37 workshops, training over 410 people from third sector organisations. Participant feedback from these events remains extremely positive; over 98% of people attending highly rated the quality of training and the resources used. These results have been supported by the project's own internal

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evaluation and the external evaluation, a telephone interview carried out by an independent, professional evaluation team. Typical comments from participants include:

- “I found the training very useful and informative. It was a structured session, which gave clarity to the proceedings. After attending, I arranged for the trainer to give a session in my area. From feedback received, all found it useful and I would consider holding another session. It is not often people say they would attend that training again!” – Internal evaluation
- “Very enjoyable and informative day, well worth coming to, would recommend others to go, thanks very much” – Hastings
- “It opened up a whole new world to me” – External evaluation

A key outcome of the workshops is to increase the confidence of participants in negotiation with public bodies. In year two, around 72% of participants scored their confidence at the lower end of the scale before attending, whereas the post-workshop self-assessment saw around 90% scoring at the higher end of the scale; again this is supported by both internal and external evaluations.

The legal advice line also saw an increase in workload. During the year the team dealt with over 110 enquiries from different organisations; this was way over the expected number. From these enquiries, the team

then acted directly for 16 third sector organisations in a wide variety of cases including the judicial review outlined by Louise Whitfield in issue 5 and summarised above. The money returned to the sector is not thought to be as high as in year one; this is not due to any lack of success, but simply the logistics of the cases handled.

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The project has noticed that public law is becoming increasingly embedded into the sector, for example we have seen large organisations putting public law advice onto their web-based resources, infrastructure organisations passing

the message on to frontline groups, and the training becoming a recognised part of the development of both individuals and organisations.

What does year three hold for the project? Already we have trained more people in the period April to July than we did in year two – 170 this year compared with 113 last year. This trend does not appear to be diminishing. The lawyers at PLP are currently working on the high profile Southall Black Sisters Judicial Review as well as providing support to a number of other organisations.

The project is about to role out the information sharing process, a range of resources and support to allow organisations to share the key points of the learning from workshops in informal sessions. This has been delayed due to higher than expected workload within the project. Finally, the project is working to secure future funding for all aspects of the Empowering the Voluntary Sector project – more about this in the next edition of the newsletter.

## 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:

Monday to Friday 10.00 to 16.00

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

The project is running workshops in the following areas:

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- Winsford, 9 Sept (EVS76)
  - Hartlepool, 17 Sept (EVS77)
  - Wansbeck, 22 Sept (EVS85)
  - North Tyneside, 23 Sept (EVS82)
  - Islington, 25 Sept (EVS83) **(Full)**
  - Cambridge, 29 Sept (EVS89) **(Full)**
  - Billingshurst, West Sussex, 30 Sept (EVS84)
  - Bolton, 9 Oct (EVS86)
  - Leighton Buzzard, 14 Oct (EVS79)
  - Wokingham, 30 Oct (EVS91)
  - WRC, London, 4 Nov (EVS95) **(Full)**
  - Uckfield, East Sussex, 11 Nov (EVS87)
  - Melton Mowbray, 13 Nov (EVS90) **(Full)**
  - Hillingdon, 19 Nov (EVS92)
  - Slough, 20 Nov (EVS94) **(Full)**
  - Black Development Agency, Bristol, 25 Nov (EVS74)
  - Gloucester, 1 Dec (EVS93)
  - Dover, 4 Dec (EVS96)