



# Empowering the voluntary sector

Special Edition July 2010



Working with



## Cuts – to challenge or not to challenge

In this special edition of the EVS newsletter we explore the processes and remedies that voluntary and community organisations can use when challenging cuts.

The Government has announced significant cuts to most departments' budgets, and all local authorities are making cuts to public services and grant programmes. This is already having an effect on voluntary organisations around the country and there will inevitably be those whose entire funding is cut.

This guide gives advice on how the Compact, public law and equalities duties can be used when challenging cuts. However, each situation is different and this should only be used as a general guide.

**Specific advice for individual cases should be sought from the EVS advice team as soon as a problem is identified. For contact details please see the end of this note.**

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## Relevant Compact and public law principles

### The Compact

The Compact does not say that cuts can't be made, but it does say how public bodies should behave when making them. The Compact states that before making cuts to an organisation's funding, public bodies must:

- assess the impact on beneficiaries
- discuss potential implications with organisations and give them a chance to respond
- give at least three months' notice.

### Public law

Public bodies must act in a legal, fair and rational manner. Before making a decision they must:

- take into account relevant information and disregard irrelevant information
- give those affected a chance to be heard
- follow their own procedures and keep to their stated commitments (unless there is a good reason not to)
- comply with any legal duties, including under equality legislation (see below).

### Equalities duties

Public bodies must also ensure they have had due regard to their equalities duties. This means they must take a proactive approach to eliminate discrimination and promote equality and consider if their decisions are likely to have an impact on equality of opportunity.

## Remedies

Although the Compact is not legally binding, it is an agreement that public bodies have signed up to and it has support from central government.

Serious breaches of public law and equalities duties can sometimes be challenged by judicial review. Cases must be brought promptly and no later than three months after the decision was taken. However, it is not as simple as saying that anything that breaches public law can be successfully challenged in the courts. This became clear recently in the case of the Campaigning Research Programme (see case study below).

Don't forget that less serious breaches of public law may be dealt with by using the public body complaint process or the ombudsman schemes.

## Resources

For further details on the processes outlined above the following web archived articles from previous newsletters will give you more details on how to use them effectively.

- 2010 [Judicial Review](#) (pdf, 1.49MB)
- 2010 [The Ombudsman Service](#) (1.50MB)
- 2009 [LawWorks Electronic Advice](#) (pdf, 749KB)
- 2009 [Using the advice team](#) (pdf, 737KB)
- 2009 [Monitoring Officers](#) (pdf, 0.97MB)
- 2009 [Using Compact in the economic downturn](#) (pdf, 999KB)
- 2008 [Private law](#) (pdf, 997KB)
- 2008 [Protecting your organisation](#) (pdf, 994KB)
- 2007 [Making a complaint](#) (pdf, 0.97MB)
- 2007 [Equality duties](#) (pdf, 999KB)
- 2006 [What does it mean when a public body says it will consult?](#) (pdf, 995KB)
- 2006 [Freedom of information](#) (pdf, 997KB)

These and other resources that may be of use can be found at [www.navca.org.uk/services/learningopps/evs/resources.htm](http://www.navca.org.uk/services/learningopps/evs/resources.htm)

## Case study

### Campaigning Research Programme – Office of the Third Sector

In November 2009 the Government decided to cut the Campaigning Research Programme, from which around 30 small organisations had been awarded grants. The grant agreements had already been signed when the Government made its decision to cancel the programme, and there was no consultation with affected groups.

It could be argued that this decision was unlawful in public law, as groups had a legitimate expectation they would receive the grant. Similarly, in some cases there may have been a breach of contract. However, the Government had promised to reimburse the expenses incurred by the organisations who had been awarded the grants. In the circumstances it was unlikely a court would order the Government to continue with the grant programme and, if the organisations took action for breach of contract, damages (compensation) would have been the most likely outcome, which the Government had already offered to pay. This meant a legal challenge was unlikely to succeed.

## What to consider before challenging

The decision to challenge funding cuts, what to challenge and how all depends on the circumstances. Before you decide next steps you should consider the following:

**Consultation:** If the public body has not conducted a consultation and taken time to consider the responses, there may be grounds for challenge.

**Impact assessment:** Public bodies have specific duties towards people with protected characteristics, such as BME groups, the disabled and women. If no impact assessment has been done, this might be grounds for a challenge.

**Notice:** The Compact states a minimum of three months' notice, but your funding agreement may say more. Even if you don't retrieve all your funding, you may succeed in getting an extended notice period.

**Services:** Will the services you provide be provided by anyone else, for example by the public body itself, or will service users be left without? If the latter, and there is an identifiable legal error in the process, then service users themselves may be able to bring a challenge

**Funding agreement:** Do you have a grant or a contract? If it is a contract this is harder for a public body to end it early. Look at the clauses around terminating the agreement.

**History:** If you have been funded for a long time and the public body has a history of consulting you on important changes, you are in a better position to argue that you should have been involved in decisions around cuts.

## Typical scenarios

Below are three different scenarios where organisations are faced with cuts.

### Scenario 1:

Small Town Age Alliance is half way through a three-year grant agreement with Small Town District Council to run a drop-in service for older people. In a monitoring meeting their grants officer mentions there may be changes to their funding because of cuts from the Government.

Two weeks later the group receives a letter inviting them to a meeting with the council and other voluntary groups to discuss the financial implications of the national cuts. At the meeting the council announces they will have to cut their budget by 20%, and asks groups to help them review needs and current services, and identify potential savings. Over the next two months, groups are invited to one further consultation meeting, they are asked to take part in an impact assessment exercise and they receive a small amount to fund a meeting with service users to discuss their views.

After the two months are up, the council takes three weeks to make a decision, which it announces by letter to each organisation. All cuts are outlined as are the results of the impact assessment. Unfortunately, Small

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Town Age Alliance is told its funding will be cut by 75% in six months' time, leaving only a small amount for a specific health project. The council will expand some of its own services for older people in order to ensure its key commitments are met.

### To challenge or not?

Although there are some issues around length of consultation, the council has done fairly well in involving organisations in their decision making, and has undertaken an impact assessment. They have also given proper notice and are bringing some services in house. A challenge is unlikely to succeed.

### Scenario 2:

Middle Town Disability Youth has a rolling three-year contract with Middle Town Borough Council to run projects and services for young people with disabilities. In May they receive a letter saying their funding will be cut by 25% from July, giving only eight weeks' notice. The council explains this is due to severe funding cuts from national government and apologises for the short notice. They invite groups to a meeting to discuss how impacts on service users can be kept to a minimum. At the meeting groups raise concerns about the lack of notice and the negative consequences for young people with disabilities in the area. The council promises to consider this.

Two weeks later the group receives another letter, saying the funding cut remains at 25% but will be pushed back to ensure three months' notice, as stated in the contract. No mention is made of the effect on service users.

### To challenge or not?

Although the council gave proper notice, it hasn't demonstrated that impacts on service users have been taken into account. The council would need to screen for the impact of the decision and if impacts are identified, then a full disability equality impact assessment would be required. There has also not been a proper consultation, which will be required if the impact assessment is carried out. This decision may be worth challenging.

### Scenario 3:

Big Town Immigration Advice Service has received funding on an annual basis for 15 years. At their annual review meeting in March they are told funding will be provided as usual in April. When by May their funding has not arrived, they chase it with the council and are told two weeks later it is under review. They ask for a meeting but are told no decision has been made yet. Two weeks later, they receive an email saying that due to funding cuts from the national government, there will be no more funding available to them.

The group asks if there has been an impact assessment but is told there is no need for one as there are several other advice organisations in the area, open to the general public, where immigrants can also go.

### To challenge or not?

The council has breached several Compact principles and does not appear to have taken due regard of its equalities duties. This decision is worth challenging on the grounds of lack of consultation, lack of notice and lack of impact assessment. It could also be argued there is a legitimate expectation by the group that their funding would continue as there was no warning it may not.

## Key points

Remember that challenging often requires immediate action and that the EVS advice team is there to help you right from the beginning. We have seen a number of organisations who have missed out on the opportunity to challenge by judicial review, as the three months' time limit has passed.

In many cases the threat of judicial review is of more practical value than actually bringing a claim. Where there is a risk of judicial review the public body can be motivated to engage with the organisation in order to avoid litigation and resolve the dispute. There are several procedures worth considering, such as getting a decision reviewed by a local authority's overview and scrutiny committees, but these are all time dependent, and are more likely to succeed if there is a threat of litigation.

- **Act quickly!** Any legal challenge must be raised promptly and **no later than three months** after the decision was made.
- Write a chronology of all significant events, including letters, emails and verbal communication about funding.
- Look at your funding agreement and what it says about terminating the agreement.
- Read your Compact and identify where it has been breached.
- Look for the public body's own procedures regarding funding.
- If you have not been given reasons for the cut, write to the public body, asking for reasons for the cut, how and when the decision was made and the results of any impact assessment.
- Once you have all the information (or if you can't find the information you need) write to the public body outlining your concerns clearly and succinctly, stating what you wish them to do about the situation and asking for a prompt reply.
- If possible, state which Compact, public law and equalities principles you believe have been breached.
- **The advice team can help you prepare your case, helping you to identify what has gone wrong, what can be reasonably asked for or if you should consider commencing a formal challenge immediately.**
- **If you want help and advice, contact Empowering the Voluntary Sector advice line on 020 7520 3161 or by email [evsAdvice@ncvo-vol.org.uk](mailto:evsAdvice@ncvo-vol.org.uk)**