



Empowering the voluntary sector

Issue 4, October 2007



Welcome to the fourth edition of the newsletter.

We feature an article written by Judith Bell, Service Manager, Norfolk Family Mediation Service, showing how the principles and tactics learned in the project are being applied within the big bad world, and a feature on LawWorks, a further source of legal advice for the sector. Also, given the launch of the new Commission for Equality and Human Rights, we highlight the new Equality Duties in our 'Did You Know' section, and discuss their relevance to the VCS.

However, we begin with a piece written by Louise Whitfield, a PLP lawyer, about complaints procedures and how to use them effectively.

Making – and pursuing – a complaint to a public body

Public law disputes, such as challenging a decision to withdraw funding, can be dealt with within the public body's complaints procedure. This may be the only remedy in certain circumstances, particularly where judicial review is inappropriate or unavailable. It can give a voluntary and community organisation the opportunity to overturn a decision that has gone against them. It is therefore vital that the complaint is presented effectively, and – **equally important** – followed up effectively when the public body responds. This article looks briefly at these two issues: how to make an effective complaint and how to pursue it with the public body.

Making an effective complaint

Start by getting a copy of the relevant complaints procedure; find out who deals with complaints and what the timescale is; are there any deadlines or special forms to use; establish what the complaints procedure covers.

Even if you are complaining to the person or department that made the decision you wish to complain about, it is still worth setting out the

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factual events that have led up to the complaint. Refer to and enclose copies of any relevant documents. Use a time line to set out the key dates and events. Identify in an opening summary sentence what you wish to complain about. Use bullet points or numbered paragraphs to clarify the different aspects of your complaint (e.g. rudeness by a staff member, delay, being provided with inaccurate information). Focus on the main issues and try to leave out the trivia.

Once you've drafted your complaint, go back through it and take out any emotional or over the top language. Try to avoid personalising the complaint.

Explain clearly the impact of the public body's action on your organisation and service-users, e.g. why it is disastrous for your funding to be withdrawn.

Ask the public body to acknowledge receipt; refer them to the time limits set out in their internal complaints procedure that you expect to have a full response by; ask them to confirm who will be dealing with it, and to provide full reasons for any further decisions; ask them for copies of documents that you do not have that are relevant to the complaint.

Pursuing an effective complaint

Often a public body will fail to deal with a complaint promptly. Diarise when you expect a response by, and chase the public body as soon as this deadline has passed if you have not yet had a response. If they are unable to reply within the time stipulated in their complaints procedure, they should give a reason and a new date for responding by. If you hear nothing, you are entitled to escalate the complaint to the next stage.

When you do get a response to your complaint, consider carefully whether the public body has really responded properly. They should have undertaken a two-stage process and set this out (in some shape or form) in their response. First, they should have checked the facts as to what has happened (to establish whether they agree with you, particularly if there are any disputes over the facts), and then secondly,

they should have made a decision as to whether they should take any action in response to your complaint (i.e. is the complaint justified and what should they do to put matters right). This analysis will assist you in deciding whether to pursue the complaint further if the public body still finds against you.

For example, is there a dispute over the facts which can never be resolved? Or has the public body ignored the evidence you have presented without any explanation? If the facts are agreed, has the public body found against you because they do not accept they have done anything wrong, or because they do not think they can do anything to put it right?

In a recent case we advised on, a major public body funder had suspended funding to an organisation because of allegations by a member of the public concerning the running of a particular project. The investigation dragged on with no information being provided to the organisation about the allegations or how long the process would take; they were not given the opportunity to comment on the allegations and faced closure as a result of the suspension of funding. The VCO made a formal complaint to the funder about all these issues; they were as concerned about the process as they were about the delay. The funder responded but dealt only with the issue of delay providing a factual explanation, but no justification, nor any reason for the unfair process. The VCO decided to move the complaint to the next stage as it was apparent the funder was not going to address their complaint properly.

The purpose of complaining can sometimes be not just to resolve your own dispute but to stop a public body doing the same thing again to another organisation. In the case described above, it would appear that the public body had no concerns about its unfair process, and ignored the complaint about these issues. It was therefore necessary for the VCO to pursue the complaint to the next stage (an “independent complaints reviewer”) to ensure that not only was their complaint properly dealt with, but that the public body funder in question was more likely to avoid these mistakes in the future.

User piece

Judith Bell, Service Manager, Norfolk Family Mediation Service

I attended an Empowering the Voluntary Sector workshop in March (2007) and, very shortly after, found myself negotiating with a local district council over a new service level agreement (SLA) to provide mediation services to prevent homelessness in 16 and 17 year-olds.

Originally the council had made enquiries about what services we were already providing to other local councils in this field of work. They had also asked for a sample of another council's SLA. I provided a copy which had been "anonymised" to remove all references to that particular council and also any monetary references. The various appendices mentioned were not included. I made it very clear that this was being provided for information only.

The whole process of getting to the point of them providing a sensible SLA was then extremely painful and took five months. They had used the previous SLA almost completely but many significant errors were made such as references to *blank* appendices and wholly inappropriate references to other clauses within the agreement. At one point their solicitor suggested that I should be asked to make the corrections as she was under the (wrong) impression I had originally written the document. One final addition on their part to the agreement was that all our employees must be notified of their "whistle blowing" policy. When I then requested a copy of this policy they had to ask their legal department if we were allowed to see it!

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Having been on the NAVCA workshop gave me the confidence to continually challenge their work until I was satisfied that it was correct. I have only worked in the voluntary sector for a couple of years having spent 19 years as a manager in a high street bank. The whole world of dealing with public bodies was completely alien to me, as is the length of time it takes to get anything done! The workshop was very informative and helped me to understand what duties and powers public bodies have.

And finally... the neighbouring council has just sent us an SLA for a similar service. They have obviously asked their colleagues “down the road” for a copy of the SLA that we had just completed because they managed to get their own address wrong – having left the other council’s address in...

LawWorks

LawWorks is a national charity whose aim is to increase the delivery of voluntary legal services to individuals and communities in need, by supporting and facilitating lawyers to do pro bono (i.e. voluntary) work. These objectives are achieved through a series of projects, which include free legal advice to community groups, mediation services, legal advice clinics and student initiatives.

The LawWorks for Community Groups project delivers free legal advice to community groups, small charities and social enterprises via a network of volunteer lawyers. The advice is provided by volunteer lawyers who work within law firms or legal departments of companies. The project usually receives applications for legal assistance via an online application form. In 2006, the project case-managed over 300 requests for assistance, including requests for advice on: company law; employment law; intellectual property and property law.

In addition, the project runs free legal training seminars for community groups and small charities, all delivered on a pro bono basis by volunteer lawyers. These seminars are usually delivered in conjunction with a local CVS. This year we have already delivered seminars with Voluntary Action Camden, Southwark Action for Voluntary Organisations and Kensington & Chelsea Social Council, to name a few. The subjects included in these seminars have been:

- Data protection
- Employment law
- Best legal structure for an organisation

The Community Groups project has, over the last couple of years, successfully assisted in sourcing legal advice for a number of charities and community groups with a low income.

To find out more, please visit: www.lawworks.org.uk

Did you know?

On 1 October 2007, the new Commission for Equality and Human Rights (CEHR) was launched. Its stated purpose is “to reduce inequality, eliminate discrimination, strengthen good relations between people and protect human rights”. The CEHR will bring together the work of the three existing Commissions – the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission – taking on all of their powers as well as “new powers to enforce legislation more effectively and promote equality for all”.

One of its primary tasks must surely be to increase the awareness of the General Equality Duties that are placed on public bodies. These duties are obligatory and should underpin everything a public body does. For example, in relation to any decision that impacts upon the VCS, the body must have regard to its duty to eliminate unlawful discrimination, promote equality of opportunity and promote good relations in terms of race, gender and disability. It must also take steps to take account of disabled persons’ disabilities (even where that involves treating disabled persons more favourably), promote positive attitudes towards disabled persons and encourage participation by disabled persons in public life.

There is a simple test that can be carried out to check the degree of compliance. Take, for example, a funding decision. Ask for evidence of the following:

1. Has the body considered whether the withdrawal of funding might impact upon BME groups, upon men or women, or upon the disabled?
2. If so, has it undertaken a formal impact assessment?

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3. Has it considered the results of the assessment?
 4. Has it considered whether its objective (saving money) can be achieved in a way that impacts less upon the protected groups?

If the public body had not gone through this process, then its ultimate decision may well be unlawful. Contact PLP for further advice.

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:

Mondays	2pm to 5pm	Wednesdays	2pm to 5pm
Tuesdays	10am to 1pm	Thursdays	10am to 1pm

Or email: evs@publiclawproject.org.uk

The project is running workshops in the following areas:

- Hereford, 6 Nov (EVS46)
- Reading, 14 Nov (EVS38)
- Wansbeck, 21 Nov (EVS39)
- Leighton Buzzard, 28 Nov (EVS40)
- Leeds, 4 Dec (EVS41)

For booking forms and further details please go to www.navca.org.uk/evs or email Terry Perkins at terry.perkins@navca.org.uk