

Righting Public Law Wrongs: Challenge Unfairness

Compact Voice Briefing: For Voluntary Groups April 2010

Public Law

Public bodies should follow the Compact, giving full and proper consideration to the commitments and undertakings in it when making decisions, and justifying any departure from them. Although the Compact is a voluntary agreement and its commitments aren't legally binding in the same way contracts are, public bodies that sign up to the Compact commit themselves to following its principles. Breaching Compact principles may mean that the decision taken has also breached public law principles

“...the Compact is more than a wish list but less than a contract. It is a commitment of intent between the parties concerned.”

There are four categories of public law wrongs:

- illegality
- unfairness
- Irrationality
- maladministration.

This briefing will consider an aspect of public law which covers both unfairness and maladministration – legitimate expectation.

Legitimate Expectation

A legitimate expectation arises “Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area...” *By jointly designing and entering into the Compact, a commitment of intent is shown and a legitimate expectation created that its commitments will be followed.*

While a legitimate expectation may have arisen through the Compact it does not necessarily mean that this is enforceable. There are circumstances that may justify a public body departing from its policy or practice. *This legitimate expectation can only be departed from where the decision is “objectively justifiable as a proportionate measure in the circumstances.” Anything not objectively*

How legitimate expectation applies

A legitimate expectation is essentially a promise. So, if a public body promises an individual something (such as a home for life) then it would be manifestly unfair, and therefore illegal, to take this away from them.

“For many voluntary organisations, the main area where legitimate expectation may be most relevant is that of consultation.”

A further example could be a public body not following a particular procedure when allocating funding. If they had published their process, and then this wasn't applied consistently in your organisation's application, this could breach your legitimate expectation about how the procedure would be run.

If funding is to be withdrawn from your organisation, or so severely cut that your beneficiaries will lose a service, courts have found that a legitimate

If there has been a regular pattern of past behaviour of consulting with your organisation and beneficiaries, or a promise has been made that they will consult with you in the future which never transpires, then this legitimate expectation will be strengthened.

Regardless of its legal standings Compact Voice firmly believes that public bodies and voluntary organisations are obliged to follow Compact undertakings.

Follow these tips

- While the decisions and actions of public bodies are open to scrutiny by the courts, in practice there is a high standard that has to be met for them to do so. Furthermore, any potential legal action needs to begin promptly and in any case within 3 months of the decision being made.
- *Don't delay - if you feel that there is a decision that is inconsistent with the Compact and potentially unfair, irrational, or unreasonable then contact the Empowering the Voluntary Sector partnership at evsAdvice@ncvo-vol.org.uk or 020 7520 3161. If you leave it too long you may not be able to bring a challenge.*
- Keep as much relevant information as you can. If a promise has been made to you that a consultation will happen, or there is a past history of consultations, then keep that documentation.
- *The more that a decision can be shown to go against a legitimate expectation, the stronger your case and argument will be.*
- As the Compact is a policy that public bodies have signed up to it creates the general guidelines to demonstrate what appropriate actions should be like. Public bodies can depart from this only where there is a justifiable and proportionate reason – otherwise the courts may decide that it is an unfair practice.
- *Try and get all the reasons, background, and information around how a decision is made and on what basis. If it can't be shown that the departure from the Compact is justifiable then it may be a breach of legitimate expectation and therefore an unfair decision which can be challenged in the courts.*

This guide is part of a series, found on the Compact Voice website at www.compactvoice.org.uk/resources. Other titles include:

- CAA and Local Compacts
- Compact partners approach public sector cuts together
- New financial year - use your Compact
- Raise the profile of your Local Compact
- Think Big by Thinking Small - boosting small group participation
- Righting Public Law Wrongs: Unfairness and Maladministration

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