

## Judicial Review – monster or friend?

**Conrad Haley**, Director of the Public Law Project, explains how this unique form of legal action can protect you from abuses of power by public bodies.

Judicial review is a unique form of legal action invented not by Parliament, but by the judges, in order to restrain abuses of power by public bodies. It is the classic tool used to defend the underdog in cases where there is no other equally effective remedy available. It is the public law enforcer.

It is also unique in terms of style. The procedure is intended to ensure that administrative decision-making is not paralysed by the prospect of claims, or by the way in which they are pursued. So any claimant for judicial review must first obtain the permission of a judge in order to proceed at all, and in so doing must apply promptly (usually within three months, but sometimes sooner where the question concerns the allocation of scarce resources). All parties are expected to co-operate with the court, and take a candid 'cards on the table' approach. The judge also has discretion to refuse permission for judicial review, or a remedy, even when a public law wrong has been committed.

### **A way to challenge**

It has provided a mechanism by which unfair (or straightforwardly bad) decisions affecting voluntary organisations have been successfully challenged and the decision-makers held accountable for their actions. Such challenges have arisen as a result of any one of a number of factors – including inadequate consultation,

broken promises, or unfair decision-making processes.

However, there remains a reticence within the sector to consider bringing such challenges. Worries are expressed over the costs of such proceedings and over the possible damage to relationships that may follow.

### **Who pays?**

Judicial review is expensive – lawyers need to be paid. If the case is unsuccessful, then the other side's lawyers will need to be paid as well. This puts the process out of reach of all but the best resourced within the sector (even though their size and influence makes it less likely that they would need to resort to litigation in the first place). However, this ignores the position of those that rely upon the services the sector provides. They are often the poorest and most disadvantaged and with a great deal to lose if their services are withdrawn. For these service users, legal aid is potentially available to pay for lawyers and to protect them from having to pay the costs of their opponent. Of course, they will need to show the legal aid authorities (the Legal Services Commission) that the organisation suffering the funding cut has no funds to bring litigation, and that there is no realistic prospect of any fighting fund being created to pay for it. As a result, none of our clients, or the groups they are service-users of, have had to pay any legal fees, or been liable for any of the costs of the case.

## Relationships

In our experience, judicial review litigation does not destroy relationships between the sector and their public body funders. Perhaps surprisingly, it has very often improved them. We believe that this has come about because of a visible equalisation in the balance of power, with the sector respected more because they (or their service users) are prepared to make a stand. They are treated more seriously, with the public bodies genuinely seeking ways of avoiding litigation in the future. These comments are echoed by the organisations themselves when writing of their experiences in the newsletters produced by the Empowering the Voluntary Sector project (see below).

## Consider all options

Of course, any public law problem involving the sector requires a consideration of the relative merits of a whole range of possible remedies, such as the local Compact arrangements, the Ombudsman, mediation and other forms of alternative dispute resolution, as well as litigation. Judicial review may not be the most appropriate remedy in the circumstances. But without this consideration taking place at an early stage, with lawyers skilled at analysing all the alternatives, opportunities to resolve disputes in the most favourable way will be lost. When used appropriately, judicial review can provide an effective and speedy resolution, with the court able to provide injunctions freezing the effect of any decisions, (or ordering continuation of funding), pending any trial. A call to the Public Law Project advice line will ensure that such an analysis will take place and an informed decision made. Judicial review can be your pet monster.

## Empowering the Voluntary Sector

The Empowering the Voluntary Sector (EVS) project is a partnership project between the Public Law Project and NAVCA. It provides access to the legal advice discussed in the body of the article. This advice is free to third sector organisations facing public law disputes. The EVS project leaflet enclosed with this edition of *Circulation* gives an overview of the project and the contact details for the advice line.

The project also provides low cost workshops to the third sector. The aims of the workshops are to help those attending to:

- develop an understanding of the principles of public law
- identify when a public body has not acted lawfully
- understand the actions available to you.

The project also provides a quarterly newsletter; the latest edition is also enclosed with this issue of *Circulation*. This lists the workshops planned until June and how to book. The newsletter also looks at a recent Judicial Review involving the third sector and an outline from a user of the advice service on the actions and outcomes in a recent dispute between the sector and a PCT.

## Further information

For further information and details of the services offered by Empowering the Voluntary Sector, see the leaflet enclosed with this edition of *Circulation* or visit [www.navca.org.uk/evs](http://www.navca.org.uk/evs)