

# **INCREASING VOLUNTARY SECTOR INFLUENCE**

**Using public law and the Compact to  
strengthen your relationships with Public  
Bodies**

# Learning aims

To gain a clear understanding of how the use of the Compact and public law can strengthen relationships with public bodies

To explore the methods of challenging poor decision making by public bodies

To explore and consider how equality issues impact on the role of the representative.



# Housekeeping

Breaks

Facilities

Health and Safety

Fire



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# Ground Rules

- Respect
  - Each others viewpoint, cultures & experiences
  - The right to participate and contribute
  - The right to challenge in a non-judgemental manner
- The need for confidentiality; what's said in the room stays in the room
- Support each other in the learning environment, recognising the safety of the environment
- Keep to time in activities and refreshment breaks
- Set mobiles to silent or off. If a call needs to be taken, please leave the room

## Learning objectives

- Understand the difference between private and public law
- Identify when a decision or action taken by a public body may be unlawful
- Identify the key points of the compact how it relationship to public law
- Explore the methods of challenging poor decision making by public bodies



# What is Public Law?

Set of **legal rules** which ensure that bodies carrying out public functions:

- Discharge their legal duties
- Do not abuse or exceed their powers  
(HRA 1998 may overlap with Public Law – seek specialist advice)



Basic **legal** premise:

- You can do what you like unless it is illegal;
- A public body can only do what it is legally allowed to do



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# Private Law vs. Public Law

## Private Law

Court decides who is right and who must pay

Only the direct party to a claim can bring a case

## Public Law

Court looks at public bodies behaviour and intervenes to correct

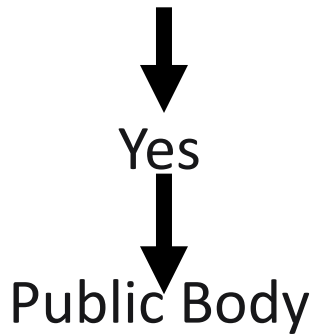
Anyone with sufficient interest can bring a case



# Who does Public Law apply to?

- Public Bodies – bodies delivering government function
- Usually obvious where a body is a public one e.g. local authorities, CCGs, NDPBs, BLF.
- General question to ask:

Is it authorised by an Act of Parliament or carrying out a 'government function'?





# Public functions

- What is meant by 'public function'?
  - **Delivering a function to the public in the broader sense:**

Funding

Housing

Transport

Tax/Benefits



- Which public bodies do you work with?

# Where does Public Body authority derive from?

- Actions fall into 2 categories: **DUTIES** and **POWERS**
- Come from **Acts of Parliament** or **Secondary Legislation**
- Supported by guidance – **internal and external**
- Guidance can be departed from where there is **good reason**
- Public body cannot refuse access to guidance docs.
- **The Compact is a form of guidance**



Best Value Statutory Guidance



# Identifying Public Law Wrongs

- Illegality
- Fairness
- Irrationality
- Maladministration



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# Making a Challenge: Illegality and Unfairness

- **Illegality:**
  - Must apply law correctly
  - Ask the right questions and undertake sufficient enquiry when deciding an issue
  - Must not fetter their discretion e.g. putting in criteria which can't be achieved by many VCSOs
  - Must not exceed their powers
- **Unfairness:**
  - Clear decision making processes (*Right to fair hearing*)
  - Must follow agreed procedures
  - Give reasons for decisions
  - No breaches of legitimate expectation

# Making a Challenge:

## Irrationality and Maladministration

- **Irrationality:**
  - Must make rational and reasonable decisions e.g. funds for advice work going to a play scheme
  - **Test of reasonableness**
  - Difficult to prove
- **Maladministration:**
  - Public Law wrongs having a lower level of “effect” on services/ provision
  - Poor administrative practice

# The Compact: An Overview

- An agreement between Government and civil society organisations
- **PURPOSE – strengthen partnership**
- Based on a set of outcomes
- Commitments put outcomes into practice – commitments for both parties
- Accountability measures

 HM Government

## The Compact

The Coalition Government and civil society organisations working effectively in partnership for the benefit of communities and citizens in England.

Created in partnership with Compact Voice, representing civil society organisations on Compact matters

# History of the Compact – Key dates!

- **1998** – First national Compact launched
- **From 2000 onwards** – Codes and local compacts published
- **2007** - Commission for the Compact established
- **2009** - A refreshed national Compact is published
- **2010** – Renewed national Compact published with accountability measures



# The status of the Compact

- Fundamental factor – **voluntary status**
- Compact underpinned by Public Law principles

## **R (Berry) v Cumbria County Council**

*“It seems to me that the Compact was more than a wish list but less than a contract. It is a commitment of intent between the parties concerned.”*

Taken from paragraph 44 of the judgment made by His Honour Judge Mackie in the above case.  
(November 2007)



# What is in the national Compact?

- Commitments for Government and VCS – put outcomes into practice
- Five overall outcomes for Government and VCS:
  - **Strong, diverse and independent civil society**
  - **Effective and transparent design and development of policies, services and programmes**
  - **Responsive and high-quality services**
  - **Managing changes to programmes and services**
  - **Equal and fair society**

# Accountability measures

- The **Parliamentary Ombudsman** will investigate on behalf of complainants in cases in which the Compact has not been upheld
- Includes the EVS advice line based at NVCO

 HM Government

## The Compact Accountability and Transparency Guide

Helping to build stronger partnerships between the Coalition Government and civil society organisations.

Created in partnership with Compact Voice, representing civil society organisations on Compact matters

# The Compact and You

## How to use it:

- **Take it to meetings** with statutory partners to use as a tool for partnership working
- Use it as a **guide** to develop **good relationships with funding bodies**
- Use it to **challenge bad practice** by a statutory partner or another voluntary and community organisation
- Use it to **resolve disputes** with funders and policy makers
- Use it to **develop good practice** within your organisation by implementing the Third Sector undertakings

# Making a Challenge: Next steps

- **Problem Analysis:**
  - What went wrong – chronology setting out key facts
  - Public Law Wrongs?
  - Compact non-Compliance?
  - Impact analysis – service user, organisation, community
- **Decide on your objectives (see remedies)**

# Making a Challenge: Next steps

- **Information Gathering:**
  - All documents relating to the dispute
  - Ask public body for their internal documents including minutes and relevant guidance
  - Follow up discussions on crucial issues and ask difficult questions
- **Get support:**
  - Compact Voice - [www.compactvoice.org.uk](http://www.compactvoice.org.uk)

# What am I Entitled to? - Remedies

1. **Local Compact Dispute Resolution** – non-adversarial route
2. **Compact Advocacy** – Compact breach is also likely to be a Public Law breach
3. **Complaints** – point out public law wrongs and Compact wrongs, public body may reconsider decision
4. **Ombudsmen Schemes** – where there is maladministration. You must use the body's complaints procedure first. Ombudsmen considers a list of examples of maladministration e.g. bias, neglect, inattention, delay
5. **Judicial Review** – Court case possibly leading to settlement out of court or quashing of decision

# How can the Compact and public law help you in your local area?

- Think about your own experiences
- Effect on your organisation/ beneficiaries/ community
- How can you use Public Law and Compact
- Additional support?



# Equality considerations and obligations





# Learning objectives

- Identify the importance of equality legislation for those delivering public functions
- Review key points of the Equality Act 2010, focusing on the Public Sector Equality Duty and relate these to the process of impact assessment
- Briefly review public law challenges based on failure to assess equality



# Equality legislation in England

The Equality Act 2010 replaces a wide range of legalisation including:

- The Equal Pay Act 1970;

- The Sex Discrimination Act 1975;

- The Race Relations Act 1976;

- The Disability Discrimination Act 1995;

One piece of legislation outlining the equality requirements for private, public and voluntary sectors.

# Why Change?

- Old provisions were difficult to navigate and failed to achieve harmony;
- Consolidates and replaces previous discrimination legislation;
- Extends protection to 9 protected characteristics rather than previous three areas of race, gender and disability;
- The new Act makes discrimination unlawful in circumstances not covered previously e.g. direct discrimination by perception.

# Working to achieve equality

## Equality legislation:

- Presumes there is equality;
- Acknowledges UK is diverse;
- Presumes UK should provide equality of opportunity and freedom from discrimination.



## Rationale for equality:

- Ensures resources invested in public services benefit all those they are aimed at;
- Services must be relevant, inclusive, well delivered and cost effective – **not one size fits all.**

# The Equality Act 2010

- Became an Act of Parliament in April 2010;
- Around 80% of the act came into force in October 2010;
- The General Duty came into force in April 2010;
- The Public Sector Specific Duty came into force in the summer of 2010;
- Other parts of the act will be phased in gradually;
- The socio-economic and the dual discrimination duties were NOT enacted



Equality Act 2010

# The new protected characteristics

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Marriage and civil partnership
- Race
- Religion or belief
- Sex
- Sexual orientation

# Prohibited Conduct

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation
- Relationships that have come to an end

# What are public bodies and how should they behave?

- In broad terms, a public body is an organisation that carries out a governmental function, for example, a local authority, a CCG, a government department
- Public bodies must
  - Act lawfully and fairly
  - Not exceed their powers.





# Public Functions

A public function is a function delivered to the public in the broader sense

It could be described as service delivery by a public body:

Funding

Housing

Transport

Tax/ Benefits

Which public bodies do you work with?



# The Public Sector Equality Duty

General duty and specific duties

Extends to all protected characteristics

Applies to public bodies – listed at Schedule 19 and bodies carrying out public functions

Specific exemptions

- Immigration functions - in relation to race, religion, age and advancement of equality

- Judicial functions

- House of Commons and House of Lords

- Security services

# The Public Sector Equality Duty – The General Duty

Section 149 A public authority must, in the exercise of its functions, **have due regard** to the need to –

- 1. Eliminate discrimination, harassment, victimisation** and any other conduct that is prohibited by the Act;
- 2. Advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not;
- 3. Foster good relations** between persons who share a relevant protected characteristic and persons who do not;

## **‘Due regard’**

**Consciously thinking** about the three aims as part of the **process of decision-making**

**Due regard to the need to advance equality of opportunity** involves considering the need to:

- remove or minimise disadvantage

- meet the needs of people with protected characteristics

- encourage people with protected characteristics to participate in public life or other activities where their participation is low

**Fostering good relations:**

- tackling prejudice

- promoting understanding between people from different groups

# What is “due regard”?

- Means the level of consideration is appropriate in the given circumstances;
- Decisions are proportionate given the;
  - likely impact of decision or policy; and
  - size of public body
- Bodies must consider:
  - is policy or decision likely to have an impact on an equality group?
- If so, must consider the likely impact;
  - legal professionals are still looking for some form of Equality Impact Analysis to prove the fact.

# The need for equality impact assessment tools?

*“Having due regard to the aims of the general equality duty is about using good equality information and analysis, at the right time, as part and parcel of your decision-making processes.”*

Equality and Human Rights  
Commission



# Why bother?

Understanding the effect of policies and practices on people with different protected characteristics is an important part of complying with the general equality duty

Case law is clear

public bodies should be keeping records of their considerations when making decisions

If a public body is challenged

will be more difficult to demonstrate that it has had due regard if no proof

Specific duties make clear,

listed authorities are under an obligation to publish information to demonstrate compliance with the general equality duty

# What should be assessed?

- Organisational policies and functions
- Key decisions such as making cuts to services, including alterations that will have substantial effects to outcomes (this also includes new or altering legislation)
- Policies that set criteria or guidelines for others to use





## How is this balanced with all the protected characteristics?

- Not all decisions need benefit everyone equally
- May need to target particular problems
- The interplay between the different protected characteristics must be considered
- It must be remembered that it is not unlawful to treat people with a disability differently to those who do not have a disability

## When should it be done?

- Good practice as indicated by EHRC, should be an on-going, live process
- Case law has proven that any EqlA should be in place and thoroughly taken into account before decisions are made



# How should it be done

## No prescribed methodology

- Method used must fit the author's needs

- Must be effective and proportionate

- Must meet legal obligations (PSED)

- Strong consideration to be given towards  
engagement

  - sharing ideas with partners

  - reviewing processes against latest guidance

As already stated, must be a “live” process and not “ticking boxes!”

# Stages to ensuring a thorough assessment

- Prioritise policies in relation to equality and potential inequality
- Gather relevant information on possible impacts
- Analyse equality information with regard to likely impact of the policy
- Consider decision (s) to be made ensuring appropriate weight is given to equality, alongside other considerations

## Stages (continued)

- Choose a course of action
- Document findings and decisions, then publish
- Monitor actual impact and review policies



# Lord Justice Moses and SBS

*“The jurisprudence [legal theory] relative to the issues reinforces the importance of considering the impact of any proposed policy before it is adopted...”*

*“...equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption.”*

*“...before a full racial equality impact assessment had been undertaken, the Council acted unlawfully. Moreover it was wrong to fix on a solution with only the prospect of monitoring its effect on minorities in the future.”*

# Legitimate Actions

- Continue the policy
- Justify and continue the policy
- Change the policy
- Stop the policy



# Benefits of making an impact assessment

- Helps compliance with PSED
- Eliminates discrimination by identifying inequalities
- Policies will be designed to be more respondent to needs of communities and diverse staff
- Improved services and policies
- More open and accountable
- Promotes trust and trust among groups
- Identify and manage risk
- Providing effective means of quality control



# Guidance document

- Revised edition, January 2014
- Formerly published as Equality Analysis and the Equality Duty: a guide for public authorities
- This edition reflects the final version of the specific duty regulations
- This replaces the first edition of January 2011
- Available for download from EHRC website - [www.ehrc.org.uk](http://www.ehrc.org.uk)

