

Colchester Shopmobility - Challenging withdrawal of funding and failure to comply with the DDA.

The Problem

Colchester Shopmobility is a service based in Colchester town centre that provides wheelchairs and scooters to help people with limited mobility to shop and independently enjoy the facilities in the town centre. During opening hours, mobility equipment is available to disabled people to hire at affordable rates. The service is particularly important for those disabled people who are not able to get their wheelchair or mobility scooter to the town centre (for example because they live too far from the town centre to be able to travel there independently, and cannot load their mobility equipment into a car or taxi). The scheme is managed by Colchester Community Voluntary Services (CCVS) with funding from Colchester Borough Council. On 26 January 2009, the council wrote to CCVS to give notice that it would cease funding the Shopmobility service in three months. The reason was stated to be that they were shifting resources elsewhere within the voluntary sector, as the council considered this would help a greater number of vulnerable people. CCVS replied on 9 February asking for the decision to be reviewed on the basis that without funding from the council, the service would close. However, on 17 February, the council wrote back maintaining its decision.

The Action

CCVS referred the case to the NCVO Compact Advocacy team. The time for applying for judicial review is “promptly and in any event within three months” of the date of the decision (in this case 26 January). It is important to note that CCVS’ request that the council reconsider its decision (9 February) did not necessarily affect that deadline. So it was important that CCVS referred the case to the Compact Advocacy team without delay.

Compact Advocacy considered the facts and then referred the case to the Public Law Project (PLP). PLP lawyers made contact with CCVS, and asked whether CCVS could identify any service users who would be 1) adversely affected by the closure of the service; and 2) eligible for legal aid. CCVS put PLP in touch with a disgruntled service user (JN), who instructed PLP to act as his solicitor. PLP advised JN that the council’s decision to terminate Shopmobility’s funding was unlawful because:

1. The decision was taken without consultation.
2. The council had failed to discharge its duty under the Disability Discrimination Act (1995) to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity between disabled people and others, and had unlawfully failed to take into account the impact of terminating the service on disabled service users.

PLP prepared a letter to the council on JN’s behalf. The letter threatened to apply for judicial review if the council did not confirm within 14 days that it would reinstate its funding of the service pending a consultation process and a disability impact assessment. Every local authority must appoint a monitoring officer to monitor decision-making within the authority. The role is often undertaken by a senior officer such as the Head of Legal Services. If the monitoring officer considers that a decision or act of the authority is unlawful, s/he has a statutory duty to intervene.

(For more information on monitoring officers see Circulation article 409.8). PLP's letter was sent to the council's monitoring officer in order to ensure that it was looked at by a senior officer. In an ideal world, the seniority of the officer considering a letter threatening litigation would not matter. In this case, however, the council's failure to consult was so stark, that getting the case before an officer of sufficient seniority and authority to intervene was considered important to avoid unnecessary litigation.

The Outcome

Thankfully, the outcome was positive: the council's monitoring officer responded by accepting that the decision to terminate the council's funding of the service had been taken without consultation (as required under the Compact), and without discharging the council's duties under the Disability Discrimination Act. The monitoring officer confirmed that funding would be reinstated while the decision was reconsidered in accordance with a proper lawful process.