

LITIGATING THE CUTS: PRACTICALITIES PLP CONFERENCE WORKSHOP

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Documents:

- Can you find the record of the decision?
- Can you find what the decision-makers took into account?
- Look for committee reports, minutes of meetings, agendas, consultation documents and responses¹
- Good local authority websites (and some central govt and health body websites) will have all these available
- Campaign orgs often have friendly local councillors who can find out what's going on/when decisions are due to be made
- **Follow the money and understand the budget and reserves**
- Equality schemes and EIAs?
 - should be published
 - may reveal consultation arguments worth pursuing

Targets and timing:

- What decision are you attacking?
- Who made it: what's the decision-making body and what decision-making process do they use?
- When was the decision taken?
- Is this a "final" decision or part of a process?
 - See for example *R (JG & MB) v Lancashire County Council* – a challenge to the budget setting decision and subsequent cuts to adult social care
- When did the grounds for JR arise?
 - CPR54.5: time limit for issuing is "promptly" and "in any event not later than 3 months after the grounds to make the claim **first arose**"
- Should you attack before final decision taken?
 - See for example *R (Hajrula & Hamza) v London Councils* – a challenge to the consultation process before decision made
- Will you be premature or risk being too late?
 - Do you risk running out of time to save the services – see below re issuing etc.

¹ Take time to manage the documentation from the outset; you will almost certainly need investigative help.

Funding:

- legal aid for individual service-users
 - linked certificates will be given a global costs limit; you may reach HCC contract threshold faster
 - do you need generic file plus individual files
 - D may attack you for using “front men/unthinking elements”
- investigative help (emergency certificate) granted under devolved powers? And then use DP to amend emergency certificate?
- Special Cases Unit – Brighton currently deal with cuts cases
- Significant Wider Public Interest
 - only need to rely on this if prospects of success borderline or costs benefit test not met
 - read the Funding Code so you understand precisely how the SWPI test works
- can anyone else fund the litigation?
 - fighting funds: read and understand Funding Code and guidance
 - campaign groups/voluntary sector organisations²
 - PCOs
- getting free help on complex cases:
 - PLP’s public law specialist support advice line
 - early input from counsel

Clients/voluntary sector groups:

- are you representing individuals or a group?
- who’s instructing you/who are you advising?
- manage expectations and control information/circulation of advice
- working with groups:
 - staff v trustee board³
 - who provides information
 - who makes decisions
 - can they make statements
 - use PLP resources for people who want to know more about JR

Publicity/lobbying/campaigns:

- litigation is only one tool in the toolbox
- what are the wider concerns of the clients/groups involved
- the importance of being heard
- your input in publicity

² Have they got any free reserves they can spend on litigation? Charity Commission advises having at least three months, but best practice six months, of running costs in free reserves. Would adverse costs order close them down? Do their charitable aims allow them to litigate?

³ Trustee boards often include local councillors so be careful who you advice emails are circulated to; the flipside is that they often have useful inside info on how decision-making processes work.

- can a letter before claim be the tipping point?
 - Taxicard scheme in Lambeth
 - Legal aid for immigration applications under DV Rule

Issuing, trial and beyond:

- work out your timetable before you start and think through remedies/final orders
- when will you need your final order by to protect services?
 - you will need to understand the budget-setting timetable and any statutory requirements
- what interim relief do you need to hold the ring?
 - are services already being wound down
 - will they be impossible to revive
- should you be encouraging anyone to intervene?
 - see PLP's "Third Party Interventions: a Practical Guide"
- advising on the new process if claim succeeds (use legal help if legal issues over new process and its legality)
- can you get a win out of a loss?
 - Sedley quote in *Domb*: regularly used by local disability rights campaigners
 - *R (Berry) v Cumbria County Council*: better involvement for group in future consultations
 - Importance of equality, recognition, being heard