

Executive Summary

Compact Voice welcomes the opportunity to respond to the MoJ's consultation on proposals for further reform on Judicial Review. Our submission does not aim to respond to all the questions posed by the Government's consultation. We wish to express concern about the lack of evidence justifying the need for the proposed changes, and the short period during which consultation has been permitted, which is in breach of the national Compact. We will also address specific issues within the consultation that we are particularly concerned about.

About the Compact

The Compact is the agreement between government and the voluntary and community sector (often referred to as civil society). It sets out a way of working that aims to ensure that the Government works effectively in partnership with the voluntary and community sector to achieve common goals and outcomes for the benefit of communities and citizens in England.

It considers areas such as policy and service design and delivery, funding arrangements, promoting equality and strengthening independence. Every government department, as well as Non-Departmental Public Bodies, Arm's Length Bodies and Executive Agencies, are signed up to the Compact. The Office for Civil Society is responsible for making sure that the Government is putting the Compact into practice.

As well as the national Compact, most areas in England also have a Local Compact. Local Compacts share many of their basic principles with the national Compact. Local Compacts will be developed and signed up to by a variety of partners which can include voluntary and community sector organisations, councils, health and social care organisations, police, fire, and housing, amongst others.

By following the ways of working set out in local Compacts, communities have benefited from greater involvement in policy design, improved reach and understanding by local public bodies, better commissioning and procurement, and stronger support for the voluntary and community sector.

About Compact Voice

Compact Voice represents the voluntary and community sector on the Compact. We are cosignatories on the national Compact, and negotiated its content on behalf of the sector, based on the views and opinions of our members.

Compact Voice's activities and output are determined both by our membership and board, which includes representatives from infrastructure organisations such as NAVCA, NCVO, ACEVO, Voice4Change England, Social Enterprise UK and others. A full list of board members is available on the Compact Voice website.

We provide information, training, support and advice on better working in partnership to both sectors nationally and locally, represent the voluntary and community sector's interests to government, and champion the principles of the Compact.

Further information about our work and the resources available, including a number of case studies, can be found on our website: www.compactvoice.org.uk

Introduction

Compact Voice considers Judicial Review to be a vital tool in holding the government and other public bodies to account. We understand that government is keen to ensure a "rebalancing of Judicial Review so that it operates in a more proportionate manner without undermining how government is held to account, allowing scarce taxpayer funded resources to be focused where they should", however we do not believe that these proposals will achieve this. Compact Voice is concerned that the proposed changes could have a serious effect on voluntary and community sector (VCS) organisations, and that they contravene numerous principles in the Compact; most significantly Principle 1.1 which states the government will undertake to: "Respect and uphold the independence of CSOs to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise that may exist".

We have outlined our concerns in more detail below.

Concern One: Short time frame for consultation

The first consultation on Judicial Review took place for only six weeks over the Christmas period (2012). The second consultation on 'Transforming Legal Aid' was open for eight weeks, as is the present Judicial Review consultation. All three consultations go against principal 2.4 of the Compact: "Where it is appropriate, and enables meaningful engagement, conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames".

Compact Voice has spoken to MoJ various times regarding this eight week consultation. While Compact Voice appreciate that efforts have been made to engage with relevant stakeholders through a variety of methods the lack of sufficient consultation time is still disappointing. It prevents meaningful and effective engagement with relevant stakeholders. The issues raised in this paper are important and could have serious implications for a variety of organisations so the full 12 week consultation period should have been given in order for organisations to understand the implications of the proposed reforms and respond appropriately.

Concern Two: Lack of evidence

Compact Voice is concerned that these reforms have been made without a complete and thorough evaluation of the evidence. The government states that “the use of judicial review has expanded massively in recent years”; and “there has been significant growth in the use of judicial review”. Compact Voice is concerned that the evidence presented by the government is not sufficient enough to substantiate this claims. We are also deeply concerned about the claim “unmeritorious cases which may be brought simply to generate publicity [...] judicial reviews are brought by groups who seek nothing more than cheap headlines”. Compact Voice feel that Government has not produced enough evidence to support this assertion and it presents a misrepresentation of the purpose of Judicial Review.

Concern 3: Issues of Standing – Questions 9 and 10

Compact Voice is concerned that the proposed reforms to ‘standing’ appear to misunderstand the role of Judicial Review. Judicial Review is used for the prevention of public wrongs, as opposed to the vindication of private rights, and is of particular importance to marginalised groups who may not be well represented in law. Compact Voice believes that all members of society should be allowed to have an interest in the proper administration of their society.

Proposed changes to Judicial Review that emphasize the claimant must have a direct and tangible interest in the outcome distorts the purpose of Judicial Review. It could become almost impossible for a VCS organisation to bring forward a case, as they may not be able to show they have a direct and tangible interest in the outcome of the proceedings. This could ultimately mean that some decisions by public bodies could become unchallengeable if directly affected individuals cannot be found, and VCS organisations are effectively barred from using Judicial Review.

Judicial Review needs to be maintained as a critical check on the power of the State, providing an effective mechanism for holding public bodies to account and ensuring their decisions are lawful.

Compact Voice believes that the current test of ‘sufficient interest’ applied by the judiciary is appropriate and the government should not legislate to amend the current test.

Concern 5: Protective Cost Orders – Questions 26-30, and 34

Compact Voice is concerned about the proposed changes to Protective Cost Orders (PCO). The current method of using PCO ensures an equality of resources between the claimant(s) and defendant. Courts already have principles that are applied and considered when issuing a PCO and they are used for cases where the court is satisfied there is a strong public interest.

Compact Voice feels that by reducing access to PCOs, some parties are prevented from bringing forward legitimate Judicial Review claims because of the possible costs they could incur. The proposed reforms on PCOs coupled with the changes to standing would result in a situation where any claimant who was granted standing would then be prohibited from a PCO.

Concern 6: Interveners – Questions 11, 31 and 32

As stated above, Compact Voice is concerned about the lack of evidence to substantiate the claim that 'judicial review is being used as a campaigning tool'.

Interveners can play a crucial role in a Judicial Review. The courts already have a system to decide whether to permit interveners and this is when they believe they have expertise to bring to the legal argument and can expedite the judge's decision making process. The Court would not permit third parties to intervene if they believed it was for campaigning purposes.

Imposing additional cost burdens on interveners again suggests a misunderstanding of Judicial Review as it would discourage interveners participation in issues where there is a strong public interest.

Conclusion

Compact Voice accepts that the government may feel there is scope to reform and improve the current judicial review system, but we believe these proposals will not achieve this. Our particular concerns, as highlighted above, are that many of the changes appear to work against principle 1.1 of the Compact. They put barriers in place that would discriminate against many legitimate cases.

We therefore recommend that a proper evidence base is built up, and proposals for reform are formulated on this basis. This should be followed by a full consultation in respect of the 12 week period as required by the Compact.

Our chair Simon Blake would welcome the opportunity to talk to the Rt Hon Chris Grayling to discuss this matter further.

To discuss this response in further detail, please contact Compact Voice on compact@compactvoice.org.uk.