Section 7
Addressing non-compliance
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The most common areas of non-compliance are:

- Shortened consultations
- Shortened notice period for ending or changing funding arrangements
- Not assessing the impact on service users or beneficiaries of a change to funding arrangements
- Lack of attempts to minimise monitoring burdens

Of course prevention is better than cure. The Compact isn't just a list of principles to bring out when things go wrong.

Established relationships and high awareness of Compact principles improve Compact compliance and can avoid breaches happening in the first place.

However, raising a challenge is not necessarily a negative move. Sometimes relationships improve as a result of a challenge. Using the Compact to challenge non-compliance can result in decisions being changed, bad practice being improved, and can enable more effective partnership working.

For an example of this, see the Thurrock case study in the publication Local Compacts at Work which can be found in the Resources section of the Compact Voice website: www.compactvoice.org.uk.

“The Compact is a tool for us both [voluntary and community and statutory sector] to use to get the best out of partnership working. It’s not a weapon for the voluntary sector to use.”

Liz Louch, Chief Executive, Ipswich and District Council for Voluntary Service

“The emphasis is on good relationships. You don’t get public partners round the table if they think it’s a council bashing exercise. It’s important that the VCS know that it’s important to abide by it and are operating within the Compact. For example you are obliged to inform the council if you are having a problem. It’s not a one way street.”

Sue Graham, Compact and Networks Officer, One Voice Network County Durham

“[In this section:]
- How to challenge non-compliance
- The Compact Advocacy Programme
- The Compact and public law

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### Reasons for non-compliance

<table>
<thead>
<tr>
<th>Reason</th>
<th>Considerations</th>
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<tbody>
<tr>
<td><strong>Unavoidable</strong></td>
<td>Effort should still be made to mitigate the negative impact of non-compliance. In the case of a shorter consultation period, the public sector body should make every effort to circulate the consultation as widely as possible and assist with gathering responses.</td>
</tr>
<tr>
<td>Crisis or external factors overrode Compact compliance, for example a consultation less than 12 weeks long</td>
<td></td>
</tr>
<tr>
<td><strong>Mistake</strong></td>
<td>Anyone distributing funds on the government’s behalf must adhere to the Compact. When entering a new partnership, or when working with new staff, ensure they are briefed on the local Compact.</td>
</tr>
<tr>
<td>Lack of awareness or understanding of the local Compact principles or spirit, for example a prime contractor and/or their supply chains have not been adhering to the Compact</td>
<td></td>
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<tr>
<td><strong>Management implementation failure</strong></td>
<td>Work towards getting high-level buy-in to the Compact. Leadership on Compact compliance will encourage wide-spread Compact working. Consider recruiting senior-level Compact champions across both sectors</td>
</tr>
<tr>
<td>Non-compliance with commitments or agreed procedures/processes not followed, for example Compact-compliance is not written into departmental business plans</td>
<td></td>
</tr>
<tr>
<td><strong>Deliberate</strong></td>
<td>This requires a serious review of the whole relationship. Engage relevant stakeholders and lobby decision makers for change. Consider enlisting the help of an external facilitator.</td>
</tr>
<tr>
<td>Manipulation, control, political expediency or exploitation of inequality in relationship, for example a public sector body disregards the need to assess the impact on service users before deciding to reduce or end funding</td>
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How to challenge non-compliance

Most local Compacts have mediation or dispute resolution procedures for addressing or resolving non-compliance. Usually the first step is to discuss the non-compliance and find solutions or learning points.

“The bit I always felt we got wrong was the dispute resolution process. The original was quasi-legal, but in practice getting everyone together around one table and working through issues was more effective than adversarial type processes outlined in the original Compact.”

Martin Howie, Director, Voluntary Action Lewisham

The Compact Advocacy Programme suggests the following before making a challenge:

1. **Research:** Build up a timeline and get an idea of how many other local organisations might be in the same position. Consider collaborating.

2. **Identify:** Which parts of the local (or national) Compact have not been followed?

3. **Decide on your objectives:** What do you want to achieve? Is it realistic? What would be a satisfactory result?

4. **Who should you contact?** Who are the relevant people in the public sector body? Should your local Council for Voluntary Service (CVS) be kept in the loop? Who are your local Compact officers? Would you like Compact Advocacy to review your plan of action? Do you want to take it as far as contacting your local media, Member of Parliament or Local Government Ombudsman?

5. **Action:** Raise your concerns at the earliest possible time in the best way. Is it meetings, phone calls, letters? See the TravellerSpace example at the end of this section for a model letter.

The Compact Advocacy Programme

The Compact Advocacy Programme is able to mediate disputes on your behalf, and help you try to reach an agreement. See the following Compact Advocacy Programme example for more details. They have also published a short guide called Effective Dispute Resolution Tactics, which is available in the Advice and Support section of www.ncvo-vol.org.uk.

The Local Government Ombudsman is another option that can be used if the local council’s actions have caused an injustice.

Further information can be found at:

- Compact Advocacy Programme website: www.ncvo-vol.org.uk/compactadvocacy
- Compact Advocacy Case Studies: www.ncvo-vol.org.uk/compact-case-studies
- The Accountability and Transparency Guide: www.compactvoice.org.uk
The Compact and public law

Sometimes compliance can be encouraged by showing how the Compact links to the law by:

- Illustrating how it supports the implementation of legal requirements. For example Compact principles can be used to help deliver the public sector duty on equality by facilitating partnerships which can reach groups protected by equality legislation.

- Showing how following Compact principles reduces the likelihood of a legal challenge. Some aspects of the Compact overlap with public law duties. For example although there is no duty in public law to consult, there is a duty to give those affected by a decision a fair hearing.

“One of the difficulties has been people having some belief in the Compact’s strengths. That’s why we linked it with the judicial reviews and public law.”

Belinda Lowis, Chief Officer, Chester-le-Street CVS (pictured above)
How does the Compact relate to public law?

The Compact is part of a public sector body’s policy framework. A public sector body’s policies and its previous behaviour can amount to the creation of legitimate expectation, a public law concept. If, for example, a council normally consults on major changes and normally adheres to Compact commitments around consultation, it could be argued that there was legitimate expectation that they would consult on a major policy change.

For example, in the court case of R (Berry) v Cumbria County Council in 2007, Judge Mackie said: “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.”

Judicial review

A public sector body’s decision can be subject to a judicial review: a court case where the judge looks at the public sector organisation’s behaviour. Judicial review cannot decide that a decision is wrong, just that the way that the decision was made was wrong.

A judicial review challenge needs to be made as promptly as possible and within three months of when the decision you are challenging was made.

Remember - it can cost nothing to use the Compact, but taking a public sector body to court requires a solicitor and you may end up liable for the other side’s costs as well.

Example: Southall Black Sisters

A well-known public law case concerned Ealing Council withdrawing funding from Southall Black Sisters, who provide services to all BME women in Ealing experiencing domestic violence. The council intended to fund a service to “all individuals irrespective of gender, sexual orientation, race, faith, age, disability, resident within the Borough of Ealing experiencing domestic violence”.

Southall Black Sisters made the point that specialist provision does not undermine social cohesion. Ultimately Ealing Council withdrew from the case, but the judge still made a ruling, quoting: ‘the Compact … emphasises the importance of independent, non-profit organisations run by, for and located within black minority ethnic communities.’

Further details of this case can be found on the Public Law Project’s website at www.publiclawproject.org.uk.
Example: TravellerSpace, Cornwall
Using the Compact to challenge and clarify policies

TravellerSpace supports Gypsies, Irish Travellers and New Travellers in Cornwall and the South West to access the services and opportunities available to the wider community and to have a voice in decision and policy making processes.

TravellerSpace were informed by their local council that they were not eligible for Discretionary Rate Relief (DRR) as they were a single interest group and not (yet) a registered charity. In response they made a ‘Freedom of Information’ request to the council’s Equality & Diversity Officer and discovered that DRR was granted to other apparently single issue groups. TravellerSpace sent a letter pointing this out and referencing the equality and diversity codes of the Cornwall Compact:

"TravellerSpace wishes to access the Cornwall Compact mediation process as we feel Cornwall Council has breached the code, particularly with regards to Equality & Diversity."

The Compact states that Cornwall Council must ‘Operate fair and equal access, by groups, to funding programmes, particularly those that impact significantly on the ‘protected characteristics’.

Gypsies and Travellers are legally recognised as ethnic groups and are protected from discrimination by the Equality Act 2010.

Travelling people make up a significant proportion of our society and yet remain one of the most marginalised groups. For TravellerSpace, Discretionary Rate Relief is a form of funding that we are being denied.

TravellerSpace copied the letter to all councillors and the Chief Executive of the council. The matter was resolved within ten days. DRR was granted. TravellerSpace have since become a registered charity.

How Compact Voice can help:

We can
- Advocate and intervene on your behalf
- Support you to challenge non-compliance
- Refer you to the Compact Advocacy Programme
- Provide examples of how poor decisions have been challenged elsewhere.