

Subj: **Regulation 36 Healthwatch - legal opinion**
Date: 16/04/2013 18:32:12 GMT Daylight Time
From: andy@independentaction.net
To: brianfisher36@btinternet.com, cj@pcaw.org.uk, dinah.lane@mvdauk.org.uk,
eiri_ohtani@yahoo.co.uk, Jake@hcvs.org.uk, KNunan@vac.org.uk, les@huckfield.com,
MBAlexander03@aol.com, mbarker@riseup.net, sally.young@cvsnewcastle.org.uk,
tony@valewisham.org.uk

Hi everyone,

I'm sending this to the various people that I've had contact with over the debacle of the Healthwatch regulations. When I first saw this regulation, my first impulse was to try and find out what the form of words would actually mean in Law, if tested and, in particular, the precise meaning of the word 'incidental'. In the meantime, there was a meeting with Norman Lamb who appeared conciliatory and the DoH guidance to clarify the 'restrictions on activities of a political nature'. This followed the earlier government statement in the lords by Lord Howe. All of this appeared to represent a backing off by the government which is to be welcomed.

However, I'm still really concerned about these regulations and the 'restrictions'. This is partly specific - will s36 be used to silence or, more likely, discourage dissent? If push comes to shove then will the regulations trump DoH guidance etc? Partly more general - why was this regulation regarded as desirable and necessary in the first place? Nothing like this has appeared previously. What's going on politically behind the scenes? When and where will this kind of formulation, about how civil society groups will be 'allowed' to operate, appear elsewhere. It's already in definitions of 'social enterprise' apparently and voluntary groups on a vast scale are all being told how they need to recast themselves as.... yes 'social enterprises'.

So anyway, I did go ahead and I've got an informal legal opinion from public law interest firm. The main points from this feedback were:

- The wording of the regulation is confusing and the logic behind the regulation obscure
- But the DoH guidance is a significant document and would be paid close attention to in any dispute
- And this does seem to incorporate some safeguards as to campaigning activity regarding relevant Law and policy.
- Given that local Healthwatch is only just starting the above is probably enough to preclude any more formal action at this point - the view would be 'well let's wait and see'
- This also relates to the possibility of judicial review of the regulation - there will have to be a complainant for the action to be taken. So something has to go wrong before you can complain.

So the conclusion I took was that there are no grounds, nor practical possibility, for legal action at this stage but that it would be a good idea to keep a close eye on what is happening locally, bearing in mind the deliberately ambiguous wording of the regulation and the background 'meta-language' of the whole affair.

In NCIA we still think that this a very worrying development and we are keen to work with others in watching and talking about what is happening with the implementation of

Healthwatch. Malcolm, I imagine that we can look to NALM to lead on that or is someone else on the case? We're keen to work with and help others, where we can, who are moved to view Healthwatch from a critical perspective or stance, given the very suspicious circumstances of its birth.

Regards to all,

Andy

from NCIA
21 Yoakley Road
London N16 0BH
0208 800 7509
www.independentaction.net