

## London Borough of Enfield

### Overview and Scrutiny Committee (25 November 2021)

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**Subject: Consultation**

**Cabinet Member: Cllr Nesil Caliskan**

**Executive Director: Ian Davis**

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#### **Purpose of Report**

1. To provide information on the following (further details in the 'Main Considerations for the Panel section of the report):
  - Delivery of consultation across the Council
  - Legal considerations: when should the Council consult
  - Legal considerations: delivering consultation
  - Standards relating to consultation
  - Role of equalities impact assessments
  - Challenges faced by services in using responses to inform decision-making
  - Key issues

#### **Relevance to the Council Plan**

2. Consultation can be used to deliver all themes and priorities in the Council Plan.

#### **Background**

3. This report was produced following a request from OSC members.

#### **Main Considerations for the Panel**

4. **The difference between consultation and engagement**
5. The terms 'engagement' and 'consultation' are often used considered to be the same thing. However, they are different. The table below provides useful distinctions between the two (see Table 1).

Consultation	Engagement
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<b>One-off process:</b> Usually for a specific strategy or service change	<b>Ongoing process</b>
<b>Top-down:</b> The organisation decides what to discuss and how	<b>Equal:</b> The organisation and communities decide what to discuss and how
<b>One-way:</b> Communities speak to the organisation	<b>Two-way:</b> Communities and organisation speak to each other
<b>Organisation focused:</b> What the organisation needs to achieve its aims	<b>Community-focused:</b> What the community needs to achieve its aims
<b>Competitive culture:</b> Puts the organisation on defence and community on offence	<b>Collaborative culture:</b> Creates a collaborative culture of shared ownership
<b>Formal rules:</b> Legally enforceable rules	<b>No formal rules</b> (apart from possible terms of reference)

Table 1

6. The table highlights the importance in ensuring consultation is well considered. After all, consultation is competitive by nature, dialogue is one-way and the organisation establishes what to discuss and how. It is generally a process in which the relationship between parties is not equal. In addition to the relationship elements, there are legal considerations to consider.

7. Across the Council, consultation activities are primarily delivered in the form of questionnaires, polls, interviews and public meetings.

### 8. The role of the Corporate Strategy Service in delivering consultation and engagement

9. Based in the Chief Executive's Unit, the Corporate Strategy Services provides business critical support to the Council in several key areas:

- Strategy and policy development– Including focused support for delivering Fairer Enfield, Climate Action and Early Help
- Voluntary and community sector support and empowerment
- Member-led and staff events
- Public affairs
- Engagement and consultation (including collecting feedback on behalf of other services, which cannot always be clearly distinguished from consultation)

10. Within the Council, consultation and engagement are not centralised functions and the Service is not involved in all consultation and engagement delivered by the organisation. It is not the role of the Corporate Strategy Service to coordinate, monitor and evaluate

consultation and engagement delivered by other services in the Council. However, support is provided upon request.

11. The Corporate Strategy Service administers and coordinates, for the purposes of engagement, various meetings and other fora involving key strategic partners and other stakeholders. For example, the Equalities Board, Faith Forum, Voluntary Sector Steering Group, Friends of Parks ACM, Older People Partnership Board and Enfield Youth Parliament. The Service is also involved in delivering engagement on specific projects, such as the engagement in developing the Children and Young Peoples Plan with schools.
12. Most often, engagement is delivered by the relevant services. For example, tenant engagement is delivered by the Housing Service and engagement relating to town centres has been delivered by the Economic Development Service.
13. In relation to consultation, the Corporate Strategy Service is involved in delivering activities on behalf of, and in partnership with, services across the Council. The amount of public consultation activities in which the Service is involved in varies from year to year. On average, around 40 to 50 consultation activities each year.
14. The following list gives an indication of the variety of areas in which the Service has supported public consultation (since January 2019):
  - Housing Allocation Strategy
  - Proposed changes to the Council Tax Reduction Scheme
  - Proposed changes to resident permit tariffs in Controlled Parking Zones
  - Parks Events Strategy
  - Public Space Protection Orders (refresh)
  - Planning Enforcement Plan
  - Changes to the planning system
  - Polling Districts and Polling Places Review
  - Playschemes for children with disabilities
  - Leisure activities for children with Special Educational Needs
  - Wilbury Way wetlands
  - Oakwood Park wetlands
  - Hazelbury Green improvements
  - Gambling Policy
  - Sexual health services
  - Fairer Enfield Policy
  - Changes to Special Guardianship Orders
15. The amount of staff resource dedicated to each project will vary significantly, with some being light-touch and others being full-time projects over several weeks. In addition to public consultation, the Service delivers internal consultation activities (for example, pulse surveys and questionnaires relating to the health and wellbeing of staff) and the collection of feedback.

16. Some services deliver their own consultation activities. For example, those relating to place-based issues are often delivered by the relevant services within the Place Department. Primarily, because of the technical knowledge and staff resource required. The Place Department have recently delivered consultation activities in the following areas:

- Low Traffic Neighbourhoods (LTNs)
- Healthy Streets (for example, cycling infrastructure and parklets)
- Road improvement schemes (for example, no right turns and reduced speed restrictions)
- Local Plan and other planning policy related work
- Proposed Controlled Parking Zones
- Town Centre Management (for example, Let's Talk Angel Edmonton)
- Enfield Green & Blue Strategy

17. These projects may also involve engagement elements.

18. The focus of the remainder of this report is consultation.

### **19. Legal considerations: when should the Council consult**

20. There are two main areas to focus on when deciding if there is a need to consult:

- Statutory provisions (including, relevant legislation such as the Housing Act)
- Doctrine of legitimate expectation (common law)

#### *21. Statutory provisions*

22. There are requirements to consult detailed in specific legislation relating to the topic of consultation. These include (examples in brackets):

- Housing Act 1985 (changes to the management and maintenance of council housing or a change in policy or practice that is likely to substantially affect secure tenants)
- Anti-social Behaviour, Crime and Policing Act 2014 (proposals to implement Public Space Protection Orders)
- Electoral Administration Act 2006 (polling districts and polling places reviews)
- Road Traffic Regulation Act 1984 (proposed traffic orders relating to a range of measures, such as introducing a one-way street or banned turns)<sup>1</sup>

23. An example of a more general legal consideration is the need to deliver on our obligations detailed in the Equality Act 2010. Under the Act we must have “due regard” to a variety of equalities objectives (Equality Act 2010, Section 149) and consequently, equality analysis (formally Equality Impact

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<sup>1</sup> During the Covid-19 pandemic: Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020. This was withdrawn on 4 May 2021. The amendments included were intended to speed up the time it takes for traffic authorities to make the traffic orders that are needed to put in place measures to deal with the effects of coronavirus, including the need to encourage social distancing and promote active travel, for example, walking and cycling.

Assessments) must be carried out to demonstrate that decision-makers are fully aware of the impact that changes may have on stakeholders. The concept of “due regard” was reinforced in 2012 during the review of the Public Sector Equality Duty which “requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities”.

#### *24. Doctrine of Legitimate Expectation (Common Law)*

25. According to The Consultation Institute, the ‘Doctrine of Legitimate Expectation’ is rapidly becoming the most important aspect of the law of consultation. It is expected a consultation should take place in those instances where:

- There has been a clear promise of consultation
- Official guidance or policies implying a promise to act in a particular way
- There is a withdrawal of a benefit with significant impacts to be considered (for example, reduction of a service)
- The nature of the relationship would create unfairness if there were to be inadequate consultation

#### **26. Legal considerations: how a consultation should be delivered**

27. Whether or not there is in law an obligation to consult, where consultation is embarked upon it must be carried out fairly and, if applicable, consistent with relevant legislation. The Council also needs to ensure compliance with the General Data Protection Regulation (2018).

#### *28. Specific legislation relating to the issue*

29. In relation to some issues, legislation will provide requirements on how consultation activities should be delivered (for example, the Housing Act). This may include, for example, references to who should be consulted and the period of consultation.

30. If the Corporate Strategy Service receives a request in which there are legal requirements contained within specific legislation on how to deliver the consultation, the client is asked to engage Legal Services for expert advice.

31. There are also other legal considerations that impact on how a consultation should be delivered:

- General Data Protection Regulation 2018
- Case law (including the *Gunning Principles*)

#### *32. General Data Protection Regulation 2018*

33. We will often collect personal data for use in a consultation, and therefore the collection and subsequent processing of that data will fall under the General Data Protection Regulation (GDPR). Even if the data is simply being collected and then stored, with no active steps being taken to 'use' it, the conditions set by the GDPR will still apply (for example, ensuring appropriate security of the data, or making sure we are not holding more data than is necessary).

34. GDPR needs to be considered when:

- We are using databases to produce a contact list of those who we will send details of the consultation
- We are looking to request personal data from participants in the consultation (this data should only be used for the reasons stated)
- Considering what data is shared and with whom

35. The Corporate Strategy Service will look to ensure compliance with GDPR at all stages. When the Service is unsure of what action should be taken, this is referred to the Council's Data Protection Officer for advice and guidance.

36. *Case law*

37. The primary reference in terms of case law is provided via the *Gunning Principles*. These were coined by Stephen Sedley QC in a court case in 1985 relating to a school closure consultation (*R v London Borough of Brent ex parte Gunning*). Sedley defined that a consultation is only legitimate when these four principles are met:

- *Proposals are still at a formative stage* - a final decision has not yet been made, or predetermined, by the decision makers
- *There is sufficient information to give 'intelligent consideration'* - the information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response
- *There is adequate time for consideration and response* - there must be sufficient opportunity for consultees to participate in the consultation. There is no set timeframe for consultation (unless specified in relevant legislation such as the Housing Act), as the length of time given for consultee to respond can vary depending on the subject and extent of impact of the consultation
- *Conscientious consideration must be given to the consultation responses before a decision is made* - decision-makers should be able to provide evidence that they took consultation responses into account

38. To clarify, in relation to the principle of 'proposals are still at a formative stage', this means a public authority cannot wait until it has identified a definite solution. A public authority must embark on the consultation process and be prepared to change course if persuaded to do so. It is fine for a public authority to consult on a preferred option or even a decision in principle, provided the consultation document is clear on what the other

options are (*Nicol v Gateshead* (1988) 87 LGR 435, applied in *R (M) v Haringey* [2013] EWCA Civ 116).

39. These Gunning Principles were reinforced in 2001 in the ‘Coughlan Case’ (*R v North and East Devon Health Authority ex parte Coughlan*), which involved a health authority closure and confirmed that they applied to all consultations, and then in a Supreme Court case in 2014 (*R ex parte Moseley v LB Haringey*), which endorsed the legal standing of the four principles. Since then, the Gunning Principles have formed a strong legal foundation from which the legitimacy of public consultations is assessed and are frequently referred to as a legal basis for judicial review decisions.
40. The Corporate Strategy Service work within these principles when supporting the delivery of consultation. If the Service believes there is a legal risk relating to the Gunning Principles, Legal Services will be engaged.

#### **41. Standards relating to consultation**

42. To deliver effective consultation, the Corporate Strategy Service references the Market Research Society Code of Conduct (2019) and The Consultation Institute Charter.

43. *Market Research Society Code of Conduct (2019) and supplementary guidance*

44. The Code<sup>2</sup> is intended to be a high-level guide to ensuring market and social research is high quality, ethically robust at all stages of the research process: from scoping the objectives of the research to how the findings are reported. To supplement and interpret the Code, the Market Research Society has produced detailed guidance on more specific issues. For example, guidance on delivering research with vulnerable adults and how a questionnaire should be designed.

45. The Corporate Strategy Service primarily references the Code and guidance when developing the approach to consultation, design of the data collection methods (for example, polls, questionnaires and focus groups) and when reporting the data.

#### *The Consultation Institute Charter*

46. When developing consultations, the Service references the set of best practice principles laid out in The Consultation Institute Charter. The principles are as follows:

- *Integrity* – Intentions must be honest, and with a genuine willingness to listen and be influenced

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<sup>2</sup> <https://www.mrs.org.uk/pdf/MRS-Code-of-Conduct-2019.pdf>

- *Visibility* – a real effort to make all of those who have a right to participate aware of what's going on
- *Accessibility* – reasonable access, use of appropriate methods and channels and adjustments made to cater for hard-to-reach groups
- *Transparency* – data should be disclosed unless there's a specific reason to make them exempt. In addition, explanations for decisions taken following a consultation, should be made public
- *Disclosure* – all relevant material and context should be disclosed by the Council, and in return residents should disclose the full range of local opinion
- *Fairness* – assessments and interpretations of consultations need to be objective. Decisions should be representative of the spread of opinion
- *Publication* – participants have a right to receive feedback on the final output, and on the eventual outcome of the process

47. These can also act as a checklist for assessing the quality of a consultation

#### **48. Equalities impact assessments**

49. Equalities impact assessments should accompany a consultation in which major service or policy changes are being proposed.

50. The Corporate Strategy Service requests that clients refer to their equality impact assessment to help decide on how these consultations should be delivered. For example, the impact assessment should help to identify groups we should make extra efforts to reach out to as part of the consultation process.

#### **51. Costs**

52. The Corporate Strategy Service does not have a budget to deliver consultation activities and does not charge services for the support provided. Services will be required to pay any costs associated with the consultation. For example, the cost of posters and leaflets. Other potential costs may relate to printing hard copy questionnaires, postage and refreshments (the latter relating to focus groups, public meetings and workshops).

53. The Corporate Strategy Service uses a specialist survey software that produces online (HTML) and hard copy questionnaires, as well as providing the use of an online platform that enables responses to be collected. In addition to consultation, the software and online platform is used for staff surveys, collecting feedback, to produce e-forms and to collate statutory returns for Government (for example, to establish what young people are doing post-16 education). The cost of the software and online platform is around £2,500 (cost varies depending on the number of completed online questionnaires/forms each year).

54. Place-based services use a different online platform, Bang the Table, that best meets their own consultation needs (for example, mapping tool function and organising consultations by theme).

55. Services may use research consultants to deliver some consultation activities. When requested, the Corporate Strategy Service will provide technical advice and guidance in developing procurement specifications to ensure the consultation is of a high quality and the Council receives value for money. However, the Corporate Strategy will not necessarily be informed when services commission research from external organisations.

## **56. Process for delivering consultations**

57. Prior to developing a consultation, the service is expected to have the appropriate Delegated Authority Report and, if required, have started to complete an Equalities Impact Assessment. If a service requests the assistance of the Corporate Strategy Service to deliver a consultation, they are asked if they have the appropriate authority and considered the equalities implications.

58. Following this, the consultation process should be as follows:

- Requesting the support of the Corporate Strategy Service (if required)
- Scoping out the overall purpose of the consultation and the objectives
- Producing the consultation strategy or proposal, if necessary (details include overall purpose and objectives, details of who should be consulted and details of consultation method)
- Developing the data collection method and accompanying documentation
- Signing-off materials (including, data collection method)
- Consultation period (for example, launch and closing of questionnaire)
- Cleansing data (for example, clean data, editing and coding of open-ended responses)
- Analysing responses
- Producing outputs
- Reporting of findings
- Using the data to inform decision-making

## **59. Challenges faced by services in using responses to inform decision-making**

60. The services are responsible for acting on the feedback from residents and other key stakeholders.

61. As stated earlier, consultations are not referenda. It is therefore not always a case of 49% agree and 51% disagree so the proposal, for example, is implemented. In addition to this, the issues subject to consultation are often nuanced and rarely binary.

62. In using the data to inform decision-making, the services may have to consider a number of issues, including:

- The view of the majority may be significantly different to those who could be most impacted by the proposals
- Participants may not be representative of the population as a whole (for example, due to over-representation of some groups)
- Alternative suggestions put forward by respondents may not be viable (for example, in several consultations, respondents have suggested Cycle Enfield funding be used to maintain or improve other services, build housing and remove parking charges in the borough)
- Most consultations delivered by the Corporate Strategy Service asked respondents how the Council can address the negative impact of proposals. The majority may not support the proposals but it could be that most of the negative impacts expressed by respondents can be addressed or there has been a misunderstanding of the potential impacts of the proposals. Thus, the number of those who disagree may be over-inflated
- Disagreement can sometimes be with the statutory requirement behind the proposal (for example, in Housing Allocation Strategy consultations, some have stated they disagree with proposals as they do not think Council housing should be available to those born outside of the borough)
- The number of responses may be low
- In addition to the data, the services must consider other issues, such as costs, staff resource, logistics and meeting legal requirements

### **63. Key issues**

64. There are several key issues and challenges we face when delivering consultations, including:

- Consultations viewed as referenda by some residents and stakeholders
- Budget available for consultation is restricted. As costs impact on promotional activity that can be used (for example, using posters across the borough) and availability of consultation documents (for example, hard copy questionnaires and pre-paid envelopes) this will impact on levels of participation
- Significant numbers may not want to be involved in local decision-making and some consultation topics may not be of interest to some. Both can impact on participation levels
- Local newspapers used to be an effective and low-cost means for promoting consultation activities. However, due to increasingly low coverage of local press in the borough, this has reduced the effectiveness of using these in reaching out to local people
- Comparatively low participation levels among residents in the east of the borough
- Difficulty in ensuring a representative sample for the consultation without responses being sometimes dominated by, for example, the views of a group of individuals who are likely to have a different

opinion to those who do not participate. Those often over-represented are those with protected characteristics

## **Conclusions**

65. Due to consultation being 'competitive' by nature, the Council establishing what to discuss and how, dialogue being one-way and the need to comply with legislation, it is important to ensure consultation is well considered. Consultation proposals or strategies may help with this.

66. Delivering consultation that is satisfactory to all residents and other stakeholders is not straightforward. However, many of the reasons for dissatisfaction can be avoided by:

- Ensuring compliance with legislation (statutory provisions) and the Gunning Principles
- Following best practice principles (for example, those detailed in The Consultation Institute Charter)
- Developing and delivering consultation consistent with the Market Research Society Code of Conduct (2019) and supplementary guidance

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**Appendices** Not applicable

**Background Papers** Not applicable