

# Consultation

## Overview & Scrutiny Committee

25 November 2021

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# Topic

- What do we mean by *consultation*?
- 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

The process for delivering consultations and information on costs are both detailed in the report.

# What do we mean by *consultation*?

Consultation	Engagement
<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)

# What do we mean by *consultation*? (2)

Local government is trending towards increasing levels of involvement.

**Co-production** – working with service users and/or organisations from design to delivery. All / almost all decisions are shared

**Co-design** – involving service users and/or organisations in designing services. These influence decisions but do not ‘see it through’

**Engagement**

**Consultation**

Doing with

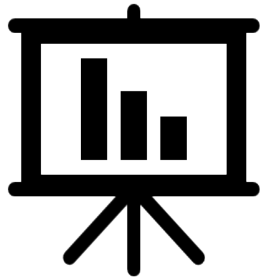
Doing for

Level of involvement



# What do we mean by *consultation*? (3)

Methods of consultation include....



Polls



Questionnaires  
(including online)



Interviews



Focus groups



Various other online  
methods, such as  
mapping and forums

# Delivery of consultation across the Council

## Corporate Strategy Service

- A role of the Service is to support consultation (advice, guidance and delivery) both internal and external
- Support is available for each stage of the consultation process
- Does not: deliver all consultation activities; monitor and coordinate all consultation across the organisation; have a budget for consultation

## Services across the Council

- Most services use the support of the Corporate Strategy Service
- Place-based services deliver much of their own consultation activities (staff resource and specialist knowledge)

# Delivery of consultation across the Council (2)

## Examples

### Corporate Strategy Service

- Housing Allocation Strategy
- Proposed changes to the Council Tax Reduction Scheme
- Proposed changes to resident permit tariffs in Controlled Parking Zones
- Child Neglect Strategy
- Playschemes for children with disabilities
- Leisure activities for children with Special Educational Needs
- Fairer Enfield (equalities and diversity policy)

### Place-based services

- Low Traffic Neighbourhoods
- Local Plan
- Cycling infrastructure (including cycle lanes)
- Road improvement schemes (for example, no right turns and reduced speed restrictions)
- Proposed implementation of Controlled Parking Zones
- Town Centre Management (for example, Let's Talk Angel Edmonton)
- Enfield Green & Blue Strategy

# Legal considerations: when should the Council consult

Legal Services provide advice around these issues.

## 1. Statutory provisions

For example:

- Housing Act 1985
- Anti-social Behaviour, Crime and Policing Act 2014
- Electoral Administration Act 2006
- Road Traffic Regulation Act 1984 (amendment in-force from 30 April 2020 to 4 May 2021 to improve social distancing and promote active travel)
- The Equality Act 2010



# Legal considerations: when should the Council consult (2)

## 2. Doctrine of Legitimate Expectation (Common Law)

Becoming the most important aspect of the law of consultation (Consultation Institute).

Now seen as common law whereby the courts recognise consultees rights to expect a fair process which incorporates guidance and management promises. It applies where:

- There has been a clear promise of consultation
- Official guidance/policies implies a promise to act in a particular way
- There is 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

# Legal considerations: delivering consultation

Whether or not there is in law an obligation to consult, where consultation is embarked upon it must be carried out *fairly*.

## 1. Contained in relevant legislation (e.g. Housing Act)

Contain details of, for example, who should be consulted, objectives of the consultation and length of consultation period.

## 2. General Data Protection Regulation

- Personal data will often be used in consultations (e.g. to identify potential participants and personal information requested)
- The collection and subsequent processing of data will fall under the GDPR

# Legal considerations: delivering consultation (2)

## 3. Case law (including the Gunning Principles)

The primary reference in terms of case law is provided via the *Gunning Principles*:

- Proposals are still at a formative stage
- There is sufficient information to give ‘intelligent consideration’
- There is adequate time for consideration and response
- Conscientious consideration must be given to the consultation responses before a decision is made

# Standards relating to consultation

## Best practice principles (Consultation Institute)

The Corporate Strategy Service references the set of best practice principles laid out in The Consultation Institute Charter:

- Integrity
- Visibility
- Accessibility
- Transparency
- Disclosure
- Fairness
- Publication

Can also be used as a checklist for assessing quality of a consultation

## Standards relating to consultation (2)

### **Market Research Society Code of Conduct (2019)**

For 60 years, the CoC has been regarded as the foundation of good quality, ethically robust market and social research whilst complying with data protection legislation.

Guidance to supplement interpretation and application of the CoC (e.g. those relating to carrying out research with vulnerable people and questionnaire design).

Applied to the work of Corporate Strategy Service when using research methods (e.g. questionnaires and focus groups).

# Role of equalities impact assessments

Equalities impact assessments (EQIAs) should accompany a major consultation.

Corporate Strategy Service has raised awareness of EQIAs, and provided guidance on when they should be used and how to complete them.

EQIAs help provide focus on how these consultations should be delivered.

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

- View of the majority of respondents may be significantly different to those who maybe most impacted by the proposals
- Alternative suggestions put forward by respondents may not be viable
- The majority may not support the proposals but it could be that most of the negative impacts can be addressed or there has been a misunderstanding of the potential impacts of the proposals
- Disagreement can sometimes be with the statutory requirement behind the proposal
- The number of responses may be low
- Consideration of other factors (e.g. costs, staff resource, logistics and meeting legal requirements)

# Key issues

- Consultations considered as referenda
- Budget restrictions (impacting on participation levels)
- Sometimes, lack of interest in the topic or not wanting to be involved in decision-making with the Council
- Low circulation (and lack of) of local printed press
- Low participation levels among those in the east of borough
- Respondents not reflecting the population



**Any questions?**