

Consultation Protocol: Our approach to preparing for consultation



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Walsall Council



The
Consultation
Institute

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1.0 Introduction

Effective consultation is about understanding what people think and taking this into account as part of the decision-making process. This consultation protocol provides a consistent best practice approach for how we will prepare, conduct and evaluate public consultations.

This protocol, aimed at staff carrying out consultation, is designed to support the delivery of high quality consultation that is effective, fair and lawful which ultimately leads to better decision making. Conducting consultation that is fair and lawful also minimises the risk of legal challenge which can be very costly and time consuming.

1.1. What is consultation?

“Consultation is the dynamic process of dialogue between individuals or groups based on a genuine exchange of views, with the objective of influencing decisions, policies or programmes of action.” (The Consultation Institute)

Consultation is essentially all about listening to, understanding and taking into account the genuine views of all interested parties with the purpose of informing a decision. Consultation is part of an ongoing process of engagement and may be formal or informal, depending on our statutory requirements. It should always start as early as possible in the decision-making cycle.

1.2. Why consult?

Listening and responding to the people and communities of Walsall (and where appropriate outside of the borough) is fundamental to the decision-making process, providing vital information and feedback about the diverse needs of people who live, work, study, visit or do business in the borough.

Consultation is a key element of how we will deliver the council’s purpose and corporate priorities. View the Council’s Corporate Plan here: www.walsall.gov.uk/corporate-plan

1.3. When should we consult?

Whilst informal listening and engagement is an on-going process, formal consultation takes place whenever we want to make changes or plans which will affect others. In some circumstances, individual services will have their own statutory requirements to ‘formally’ consult which they must follow e.g. spatial planning, children’s services and adult social care.

We should also consult whenever we have said we will - and when there is a legitimate expectation from our citizens to do so.

1.4. Who should we consult?

Some types of statutory consultation require us to consult with a list of statutory consultees. Generally, we should consult with those directly and indirectly impacted by any proposals and this should include both current and prospective service users’ as well as key stakeholders such as local businesses and partner organisations.

2.0 Background

2.1. What are the various stages of consultation?

Aside from the ongoing administrative preparation and planning there are three core stages of the formal consultation process with each stage requiring different approaches: -

1. **Pre-consultation** – An early stage of informal listening and engagement designed to understand priorities and preferences in more depth and to explore the full range of issues and uncover any alternative ideas. Pre-consultation will help with the identification of key stakeholders and design of the consultation questionnaire.

Feedback gathered in this phase is *not* typically used for the basis of decision making but may be used to decide whether to proceed or retreat from formal consultation and can be used as the basis for deciding on the criteria which will be applied to evaluate the various alternative ideas.

At this point, viable alternatives are converted into options and these can be appraised. Option appraisal is the process of carefully evaluating the various ideas based on a set of agreed criteria, including an assessment of cost benefits. Option appraisal is also used to identify any preferred options (which must be publicly declared) as well as for shortlisting purposes.

Making too many assumptions or introducing predetermination at this stage can impede our ability to demonstrate that we have an ‘open mind’ about proposals which can subsequently leave the Council exposed to the prospects of a Judicial Review (see section 4.0).

2. **Formal consultation - dialogue period** – having a defined start and end point that gives people sufficient time to respond, this phase formally seeks views through the use of recognised methods such as questionnaires, focus groups and public meetings.

Careful monitoring of this phase is required to ensure that responses are received from a wide and representative sample of the identified stakeholders. Flawed or inadequate consultation during this phase poses significant risks to the council that could result in a legal challenge (see section 4.0).

3. **Post consultation and evaluation** – during this stage the findings from the dialogue period are synthesised into a report (the ‘output’ of the consultation) alongside an updated equalities assessment which is considered by decision makers. This report should cover all submissions made to the Council, such as letters and petitions.

It is important to ensure that the evaluation report is free from bias, is based on fair interpretation of what has been said and is made available with plenty of time for consideration so that decision makers can consider it thoroughly. Failure to do this could result in a legal challenge (see section 4.0)

Once a decision has been taken (the ‘outcome’ of the consultation), it should be communicated to those who took part in the consultation.

3.0 Equalities

Paying due regard to equality characteristics and evidencing that the views of 'interested parties' have been sought and taken into account is a vital part of the decision-making process.

S.149 of the Equalities Act 2010 states that public bodies must have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. There are nine protected characteristics: -

1. Age
2. Disability
3. Gender reassignment
4. Marriage and civil partnership
5. Pregnancy and maternity
6. Race / ethnicity
7. Religion or belief
8. Gender
9. Sexual orientation.

Under the Public-Sector Equality Duty, due regard must be given to the requirements of the Equality Act 2010. Consideration must be given to the potential impact any decision may have on groups of people with protected characteristics. This means we must take particular care to ensure that we seek the views of protected equality groups who are often 'seldom heard'. Undertaking an initial equalities analysis at the pre-consultation stage and updating this throughout the consultation is an essential part of the process. You should therefore incorporate equalities monitoring into your consultation design, ideally including specific equality questions in your data collection tools e.g. in your questionnaire.

Consideration should be given to the changing socio-demographics of the borough e.g. emerging communities, and up to date data, drawn from a range of internal and external sources, should be accessed and used to inform the approach to consultation.

So that an individual or individuals are not precluded from responding to a consultation, reasonable adjustments may need to be made, including the provision of information in alternative formats e.g. larger print, easy read or the provision of support to help them respond in their own language.

3.1. Equality Impact Assessments

Requirements for public bodies to consider equality impact originate in the Equality Act 2010 and are usually referred to as the Public-Sector Equality Duty. Walsall Council has a set procedure for checking the impact on people with certain characteristics protected by the Act called an Equality Impact Assessment (EqIA).

3.2. When is an EqIA *not* required?

Where it is clear from initial consideration that a proposal will not have any effect on equality for any of the protected characteristics, no further analysis or action is necessary. This does not mean, however, that there is no requirement for general consultation.

For further information including questions to include in equality monitoring, completing an initial equalities analysis and EqIAs visit: http://inside.walsall.gov.uk/equality_and_diversity-7

4.0 The Law of Consultation

4.1. The Gunning principles

Consultation must be fair and lawful. The failure to consult in this way risks the challenge of Judicial Review in a court of law which is not only very costly but may also cause significant delays to the decision-making process and may result in the need to re-consult.

Case law has resulted in a set of principles known as the 'Gunning principles' which set out the legal expectations of what constitutes robust and appropriate consultation. The emphasis of the four Gunning principles is on 'fairness'.

The Gunning principles state that: -

G1 consultation must take place when the proposal is still at a formative stage;

The decision-maker cannot consult on a decision that it has already made (or has seen to have been made). Otherwise, consultation is not only unfair (the outcome has been pre-determined) but it is also pointless.

Asking for new ideas and alternatives as well as consulting on more than one option shows that we are open to influence. Although not a legal requirement, consulting on multiple options demonstrates that the consultation is meaningful and not contrived. If there is a preferred option or initial views on options, then it should be made clear. If only one option exists then we must be able to demonstrate how and why other options have been discounted. Any new, well-formed proposals that come forward during the consultation process must be considered.

G2 sufficient information to allow for intelligent consideration and response;

All evidence and information relating to potential options 'that could make a difference' to a consultee in terms of how they interpret the options must be made available or published in a readily understandable format. Proposals should be specific. No new information should come to light during the consultation period or 'late in the day'. It is important to ensure that any evidence cited in consultation papers is clearly referenced, factually correct and sufficiently detailed. Take particular care when presenting graphics, such as maps and statistics.

G3 adequate time must be given for consideration and response;

Unless statutory time requirements are prescribed, there is no minimum time frame within which the consultation must take place. The decision-maker may have adopted a policy as to the necessary time-frame (e.g. Compact with the voluntary sector), and if it wishes to depart from that policy it should have a good reason for doing so. Otherwise, it may be guilty of a breach of a legitimate expectation that the policy will be adhered to. The rules of Purdah should be followed, holiday periods avoided and flexibility allowed in order to accommodate possible extensions to the consultation period.

Decision-makers will have to form a judgment as to what period of time is appropriate for the consultation. Where there has been prior discussion about the issue, then it may reasonably decide to limit the time for formal consultation. On the other hand, where the information to be disclosed is complex, or not well known to consultees, it may consider that a greater period of consultation is required.

G4 the product of consultation must be conscientiously taken into account;

If the decision-maker does not properly consider the material produced by the consultation, then it can be accused of having made up its mind; or of failing to take it into account; 'pre-determination'. Keeping decision makers updated throughout the consultation period reduces the risk of this and ensures their thinking is informed throughout the process and in advance of the decision being made.

The decision-maker does not have to personally read every response provided in the consultation process. However, where a summary is provided, this will need to be comprehensive and accurate. It is always sensible to make available to the decision maker all of the underlying materials, so that they can access them if they wish.

5.0 Data Protection

Any personal data and / or sensitive personal data you collect must be processed in accordance with the Data Protection Act 1998 and other related legislation.

Personal data means data which relate to a living individual who can be identified:

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

Sensitive personal data means personal data consisting of information as to -

- (a) the racial or ethnic origin of the data subject,
- (b) political opinions,
- (c) religious beliefs or other beliefs of a similar nature,
- (d) membership of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) physical or mental health or condition,
- (f) sexual life,
- (g) the commission or alleged commission by them of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.

Failure to process personal/sensitive personal data appropriately, exposes customers / residents to risk, may also result in a fine or other enforcement action but also damages our integrity which can impact on response rates and resident's willingness to participate in the future. As such, online and offline questionnaires should feature a relevant privacy notice / data protection statement (see section 5.2).

There are eight data protection principles, as depicted below:



5.1. Privacy Impact Assessment (PIA)

The Information Commissioners Office (ICO) encourages organisations to ensure that privacy and data protection is a key consideration in the early stages of any project, and then throughout its lifecycle.

Privacy impact assessments (PIAs) are a tool that you can use to identify and reduce the privacy risks of your projects. A PIA can reduce the risks of harm to individuals through the misuse of their personal information. It can also help you to design more efficient and effective processes for handling personal data. The General Data Protection Regulations (GDPR) 2018 require you to complete a Privacy Impact Assessment (PIA) when processing any personal / sensitive data.

Further information on PIAs is available here:

http://inside.walsall.gov.uk/what_is_privacy_by_design_.htm

5.2. Privacy Notices

When conducting consultation, whether in a printed questionnaire or face to face, it is important that the respondent is clear who is collecting and processing the information they provide and how their information might be shared and used.

Often referred to as the small print, a privacy notice should tell people who you are, what you are going to do with their information and who it will be shared with. It can also tell people more than this. For example, provide information about people's rights of access to their data or our arrangements for keeping their data secure. Whatever you include in your notice, its primary purpose is to make sure that information is collected and used fairly.

For more information on Data Protection or Privacy Notices visit: www.ico.org.uk or email the council's Information Rights Team informationrights@walsall.gov.uk

6.0 Preparing to consult

6.1. Key questions for designing an approach to consultation

Your answers to the following questions will create the foundations of a consultation brief which can be used to complete a detailed consultation plan (see section 6.8), or research proposal if you are commissioning research from an external agency.

- What is the business problem? Why is the consultation needed?
- What are the aims and objectives of the consultation? What specifically do you want to find out?
- How will the findings be used? What decisions will be made?
- What information or data already exists (internal or external) which may be used to inform the consultation?
- Who is the target population, including people with protected equality characteristics? Who are your stakeholders and interested parties?
- What level of statistical accuracy and robustness is required? Are there statutory requirements?
- What methods might be used to gather the information you need? Open questioning and dialogue to gain a rich understanding of thoughts and feelings and / or the collection of numbers and statistics through closed questioning?
- What are the reporting requirements?
- What is the timescale? What dates should be avoided?
- What is the budget for carrying out the consultation?
- How will feedback be provided, demonstrating how what people have said has been used to inform decision making?

6.2. Issues Papers

We should engage early whenever possible. Conducting pre-consultation not only shows we are open to influence, but it also provides an opportunity to flush out key issues which can be explored in more detail during the formal consultation phase. The culmination of pre-consultation is typically an Issues Paper.

6.3. Option Appraisal

Option appraisal is necessary to demonstrate that the Council has put forward a fair set of choices. The option appraisal process allows a number of different options to be explored and evaluated against a set of agreed criteria, which may lead to the selection of a preferred option. It will be necessary to document how the options which are put forward in a consultation paper have arisen. In particular, how they have been derived and why any options have been discounted (if applicable).

6.4. Stakeholder mapping

Stakeholders should be identified in advance for targeting purposes but also to reflect on take-up at a later date and to ensure that the consultation has subsequent representativeness. Developing a stakeholder map will help create an effective consultation plan (see section 6.8) and a communications and engagement plan (see section 6.5).

Further information on issues papers, option appraisal and stakeholder mapping is available here: <http://inside.walsall.gov.uk/consultation>

6.5. Communications and engagement planning

These plans are useful to define how stakeholders will be actively engaged and how project communications (such as information on the web) is maintained, They might incorporate a schedule of events and promotional materials (such as posters) and be the basis of an initial set of frequently asked questions.

You access the council's communications strategy and communications plan template here: <http://inside.walsall.gov.uk/communications>

6.6. Consultation Mandate

It is good practice to have an agreed scoping document at the outset which is clear about what can and cannot be influenced. This will help define what submissions are permissible and provide clarity for participants as well as decision makers.

6.7. Analysis Plan

An analysis plan is used to describe how feedback will be handled and analysed. For example, it may define a set of research questions and describe how the collected data will support answering them. It should be the basis on which the consultation evaluation report is developed and will help evaluators in the design of the questionnaire.

Further information on a consultation mandate and analysis plan is available here: <http://inside.walsall.gov.uk/consultation>

6.8. Consultation Plan

All consultation requires the completion of a detailed consultation plan which sets out exactly why, how, when and with who you intend to consult and acts as a formal record of the consultation activity. The consultation plan, which may be updated over time, means the consultation you carry out is carefully planned and considered.

The council's consultation plan template is available here: <http://inside.walsall.gov.uk/consultation>

7.0 Consultation best practice principles

The following best practice principles are recommended when conducting consultation activity:

1. Consultation will be genuine, conducted when proposals are at a formative stage and when there are still many possible outcomes.
2. The purpose of the consultation will be made clear and we will detail what can and cannot be influenced, who is eligible to take part, who is taking the decision and when the decision will be taken.
3. Consultation will be conducted to a high standard, be well planned, co-ordinated and, where appropriate, joined up.
4. We will communicate clearly and in a range of formats, providing sufficient, balanced information to allow for intelligent consideration and without knowingly omitting or distorting any key facts.
5. Wherever possible we will consult on a range of options and always declare our preferred option. The process of appraising options and alternatives will be transparent and robust.
6. Consultation will be inclusive, ensuring that all those who wish to have their say are enabled to do so and are aware of the ways they can respond. Engagement methods will be designed to suit the needs of key stakeholders, utilise multiple channels and having regard for accessibility and those with protected characteristics.
7. We will give people a reasonable amount of time to respond to the consultation across a number of channels. The duration of a consultation will take into account the urgency of the decision, time of year and impact of any proposals.
8. Data will be processed in accordance with all appropriate legislation including the Data Protection Act 1998. Results will be carefully analysed and reported accurately without bias.
9. Findings from consultation will be carefully and conscientiously taken into account before any decision(s) are made.
10. Results, outcomes and learning will be transparently fed back as appropriate to those involved in the consultation and the wider population. We will publish findings within 12 weeks of the closing date or explain why this has not been possible.

8.0 Further support, advice and guidance

8.1. Commissioning research

On occasions, usually when the appropriate resources do not exist internally, research may be commissioned from an external agency.

When commissioning research, agencies invited to quote should be provided with a clear and concise research brief (see section 6.0). The better the brief the better the research proposal and ultimately the research.

You must follow the appropriate procurement process.

For more information email procurement@walsall.gov.uk or call 01922 658471.

When selecting external agencies to invite to tender for the work, you are advised to use the Research Buyers Guide published by the Market Research Society. All providers included in the Guide adhere to the MRS Code of Conduct and conform to the highest industry professional standards.

For more information visit: www.theresearchbuyersguide.com

8.2. Corporate support and key contacts

If you need help planning or running any aspect of consultation please contact Anna King, anna.king@walsall.gov.uk or all 01922 652508.

Further information is also available on Inside Walsall: <http://inside.walsall.gov.uk/consultation>

For information, advice and guidance on all aspects of equalities and EqlAs please contact Irena Hergottova irena.hergottova@walsall.gov.uk 01922 655751.

Further information is also available on Inside Walsall: http://inside.walsall.gov.uk/equality_and_diversity-7

8.3. Directorate consultation reps

The following officers are on hand to advise you on various aspects of consultation:

Change and Governance

Vanessa Holding, 01922 652509 vanessa.holding@walsall.gov.uk

Patrick Morrison, 01922 650760 patrick.morrison@walsall.gov.uk

Childrens

Raji Bains, 01922 650718 raji.bains@walsall.gov.uk

Sue Blick, 01922 658916 sue.blick@walsall.gov.uk

Economy and Environment

Julie Birch, 01922 654291 julie.birch@walsall.gov.uk

Janet Read, 01922 654724 janet.read@walsall.gov.uk

Adult Social Care

Vicki Merrick, 01922 650764 victoria.merrick@walsall.gov.uk

Donna Mendonca, 01922 654429 donna.mendonca@walsall.gov.uk

8.4. Market Research Society (MRS) Code of Conduct



Published by the Market Research Society, the MRS Code of Conduct forms the foundation of good research. MRS members must adhere to the MRS Code of Conduct, however non-members are also encouraged to follow the Code which safeguards standards, promotes confidence and champions professionalism.

For more information visit: www.mrs.org.uk/standards/code_of_conduct

The MRS also publishes a range of specific guidelines to help you interpret and apply the MRS Code of Conduct, and to provide you with best practice advice when conducting research. Relevant guidelines include; research with children and young people, online research, conducting research in town centers, mystery shopping, qualitative research and questionnaire design.

For more information visit: www.mrs.org.uk/standards/guidance

8.5. The Consultation Institute (tCI)



tCI is a not-for-profit organisation which works to promote the highest standards of public, stakeholder and employee consultation by initiating research, publications and specialist events in order to disseminate best practice and improve subsequent decision-making.

Their aim is to help all those engaged in public or stakeholder consultation, absorb best practice, encourage innovation and improve its value to decision-makers, whilst providing an opportunity for professional networking.

Walsall Council is a corporate member of tCI. As a corporate member, every Walsall Council employee (subject to the demands of their job) can access a range of significantly discounted courses, workshops and conferences, regular briefing notes, e-news, papers and newsletters and access to expert advice via the member only web pages and the consultation enquiry line. For more information visit www.consultationinstitute.org

To register and get access to all the member benefits, please email catherine@consultationinstitute.org and ask for your unique membership number.

The Consultation Institute has independently quality assured this document.

9.0 Review

The protocol will be monitored via the council's consultation reps group. Its content will be reviewed and updated as required taking into account new policy developments, local requirements and changes in national policy and legislation.



Your notes



Your notes

For further information on this protocol please contact:

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Corporate Consultation Officer
Walsall Council
Change and Governance
Darwall Street
Walsall
WS1 1TP

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Web: inside.walsall.gov.uk/
<http://inside.walsall.gov.uk/consultation>