



Best Practice Guidance to Public Consultation

Introduction

The purpose of consultation is to ensure that there is meaningful public engagement in decision making in Derbyshire. Putting local people at the heart of the decision making process is key, with decision makers demonstrating how they have used this intelligence to inform and influence the design and delivery of services.

The purpose of this document is to:

- Encourage organisations to view the public as a vital resource who can help them solve the significant financial and other resource issues they face
- To improve the quality of engagement in developing ideas and options for service change
- To help organisations and members of the public understand best practice and the legal requirements around consultations, and promote genuine and meaningful public consultation that is not just a box ticking exercise.

What is Engagement?

Engagement is about having an open conversation with the public which allows them to input their views and ideas in the planning, design and development of options for change. It is about establishing the issues, e.g. the impact of change, and possible scenarios for change.

What is Consultation?

Formal consultation is governed by law, and seeks the views of the public on proposals put forward.

There must be a reasonable length of time allocated to consultation, and consultations must be open and accessible.

A formal consultation must give people the opportunity to influence the outcome of a decision. There must be appropriate access to information, and clear options for consideration.

Healthwatch Derbyshire advocate the need for more meaningful 'Engagement' prior to 'Formal Consultation'.

All public sector organisations should adhere to the following Best Practice Principles, developed by The Consultation Institute which apply to engagement, consultation and equalities analysis.

- **Integrity** - be honest and truthful about what can and cannot be influenced
- **Visibility** - so people know about it
- **Accessibility** - to all stakeholders affected by the change
- **Transparency** - always be clear about the purpose for engaging
- **Disclosure** - all information needs to be provided
- **Fair interpretation** - how the outputs of the consultation are converted to feedback and used to influence decisions
- **Publication** - to explain what is happening and why

All public sector organisations must adhere to the **Gunning Principles** which are a legal requirement, and which are reviewed in any legal challenge.

1. A consultation must be at a time when proposals are still at a **FORMATIVE** stage.

This is to avoid the charge of pre-determination. If there is only one option in a consultation, there needs to be robust justification for this. An organisation can state a preferred option.

2. Sufficient reasons must be put forward for the proposal to allow for **INTELLIGENT CONSIDERATION AND RESPONSE**.

This means that there needs to be enough information to inform someone how the organisation arrived at the option(s) they did, so that they can provide a meaningful response or alternative ideas. So sufficient information for an intelligent response could involve a lot of information for some people. This does not have to be provided in the consultation document, but the document needs to tell someone where the additional information can be found, e.g. the website, or how it can be requested.

3. **ADEQUATE TIME** must be given for consideration and response.

An organisation needs to consider how much time it will take to reach everyone who needs to have the opportunity to have a say during the consultation, including those with protected characteristics. Twelve weeks is often cited as the advisory standard period for consultation but there may be some cases where a shorter period is adequate. There is no minimum time, but less than four weeks could be challenged. Consultations should consider the impact of key holiday periods, such as Christmas, and summer holidays.

4. The product of consultation must be **CONSCIENTIOUSLY** taken into account.

Organisations need to show how consultation responses have impacted on the decision they make at the end. They are required to publish a report to evidence this.

Although not part of the Gunning Principles, Healthwatch Derbyshire would also expect to see evidence of engagement and consultation with the **RIGHT PEOPLE**. We would want to see how organisations have arrived at the list of stakeholders they intended to involve.

In addition to these principles, health organisations i.e. those receiving funding from the Department of Health need to meet four further requirements known as the Lansley Tests:

- Firstly: There must be clarity about the clinical evidence base underpinning the proposals
- Secondly: They must have the support of the GP commissioners involved
- Thirdly: They must genuinely promote choice for their patients
- Fourthly: The process must have genuinely engaged the public, patients and local authorities.

The process of consultation that constitutes good practice is best divided into FIVE stages.

Our recommendations for each of these five stages are as follows:

1. Establishing the Case for Change

- The focus at this stage should be on enabling people, including members of the public, to gain an understanding of the evidence that creates the 'need for change', and what the financial or other resource restrictions are, so they can help develop the best options for change
- An initial impact screening should be conducted to help identify those who may be affected by the changes that are being considered.

2. Pre-consultation

- This stage is about testing the 'case for change' determined in stage 1
- This should occur over an appropriate length of time, with timescales that allow for public engagements activities that support meaningful engagement
- The aim is to test the early development of scenarios and their likely impact, to feed into the options development (stage 3 below). Involving the public at this stage means issues related to service delivery can be discussed, e.g. access to services
- Engagement should encourage dialogue and debate, explore the impacts of different scenarios, and how negative impact could be mitigated against
- A full impact assessment should be undertaken to identify the sections of the community that will be most affected. This information should then be used to identify sections of the community that should be prioritised for engagement
- A clear audit trail of engagement activities should be created and maintained.

3. Options Development

- At this stage information from the pre-consultation stage is used as the starting point for developing 'options for change'
- All options must be viable, i.e. there cannot be an option to do nothing if this is not sustainable, as this would not be deemed a legitimate option
- Healthwatch Derbyshire advise using co-production to decide on options, using a variety of stakeholders, including members of the public
- By the end of this process organisations must be able to present a clear rationale for why they have decided on the options they will consult on, either through a record of the debate that has taken place, or through the scoring system they have applied
- This analysis should be published, and it should be clear why options were chosen, and why others were discarded
- The impact assessment should be updated with regards to the options that have been chosen.

4. Consultation

- The options developed in stage 3 above should now be presented to the wider population for their views, to help make better informed decisions. This information should include the reasons why the options are being proposed
- Consultation should be undertaken for an appropriate and proportionate length of time, taking into account the time of year and the extent of the changes being proposed

- Public consultation should be as accessible as possible to include anyone directly affected by the proposed change, as well as the wider public who may access the new service now or in the future. This includes providing multiple methods for accessing the information, providing interpretation and translation services, if required
- It should be clear how people can respond to and give their views on the proposals
- An impact assessment should be available and updated based on findings
- A variety of opportunities should be available for the public to discuss the options. Genuine open dialogue and discussion is key, and should not be seen as less important than questionnaires
- If there are any changes to the proposal or related information this should be made available to the public
- People should be told how they can be kept informed and involved in future developments.

5. Post-consultation

- Adequate time needs to be set aside for this stage, which is to consider the findings of the consultation and use these to inform any decisions. The process for doing this should be communicated to stakeholders
- Once the final decision has been made, it should be communicated, alongside how the feedback from the public has informed that final decision
- Where the decision is different from the majority of public opinion, this should be explained, and a rationale given
- The findings of the consultation should be easily accessible to the public
- Following the decision, next steps need to be fully explained.

In addition to these five stages, all public sector organisations must also have 'Due Regard' to the Equalities Act 2010. Section 149 contains the Public Sector Duty, with regards to consultation this means that:

- During any consultation process, and at all stages, there must be a commitment to eliminate discrimination, and advance equality of opportunity. Organisations need to be working towards a less unequal society, planning future investments to be inclusive, and managing change to avoid discrimination/disadvantage
- Equalities analysis should be recorded, and published
- Engagement with stakeholders and members of the public needs to take into account the protected characteristics, and organisations should be actively seeking their views
- Claims made regarding impact that might cause discrimination must be investigated
- The 'Brown Principles' - Brown v Secretary of State for Work and Pensions (2008) should be followed.

For more information about any aspects of this Best Practice Guide, please contact Karen Ritchie at Healthwatch Derbyshire on **01773 880786** or karen@healthwatchderbyshire.co.uk.

If you require this document in an alternative format please contact us

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