



Consultation Policy

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Title	Corporate Consultation Policy		
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Distribution List

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CONTEXT

Middlesbrough Council is committed to involving stakeholders in shaping the town and the services they receive. Consultation and engagement are the key ways the Council interacts with and involves local communities, providing them with opportunities to have a say over the services that affect their lives.

PURPOSE

The purpose of this policy is to set out when and how the Council will undertake consultations to ensure compliance with statutory and best practice requirements.

SCOPE

This policy applies to all employees, contractors and consultants of the Council who undertake consultation or community engagement activity on behalf of the Council.

POLICY DETAIL

Definitions

Consultation	Consultation is the process of dialogue with citizens and stakeholders based upon a genuine exchange of views, with the objective of informing decisions, policies or programmes of action. It gives the local community a voice in the democratic process and helps elected members and officers understand and consider public views and concerns when making decisions about local public services. Consultation is finite, with a clear beginning and end, and so is different from engagement, which is ongoing.
Community Engagement	Community engagement is the on-going process of developing relationships and partnerships so that the voices of stakeholders and partners are heard.
Community engagement principles	<p>The principles of community engagement good practice:</p> <ul style="list-style-type: none"> • Publication: Participants have a right to receive feedback on the final output, and on the eventual outcome of the process • Integrity: Intentions must be honest, and with a genuine willingness to listen and be influenced • Visibility: There should be a real effort to make all of those who have a right to participate aware of what's going on • Accessibility: There needs to be reasonable access, using appropriate methods and channels and catering for hard-to-reach groups • Transparency: Things submitted need to be made public and data disclosed, unless there's a specific reason to make them exempt • 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 need to be representative of the spread of opinion.

LEGISLATIVE AND REGULATORY FRAMEWORK

The Council will consult when:

- there are specific statutory provisions which state that a consultation *must* happen, and may also prescribe *how* this must happen e.g. within planning and environmental policy;
- the doctrine of legitimate expectation (common law) applies i.e. we've previously promised we would consult, we have done in the past and / or the impacts of planned changes are clearly significant; or
- where the legal rights of particular individuals, groups, or organisations may be affected e.g. as set out in the Equality Act 2010, the Council's Impact Assessment policy or in Best Value Duty Statutory Guidance.

It does not need to consult where the above do not apply.

Some of the statutory duties in relation to consultation are in place which the Council must comply with include:

Best Value Statutory Guidance	To fulfil the Best Value Duty under Section 3(2) of the Local Government Act (1999), the Council has a duty to consult those who use or are likely to use services provided by the authority at all stages of the commissioning cycle, including the decommissioning of services.
Local Government Finance Act 1992 Section 65	The duty to consult representatives of non-domestic ratepayers on the Council's expenditure plans.
Local Government Finance Act 2011	Duty to consult the introduction of localised council tax reduction schemes.
Childcare Act 2006 (Section 5d)	Duty to consult before any significant changes are made to children's centre provision.
Children and Families Act 2014	Duty to consult children, parents and young people in relation to reviewing educational, training and social care provision, when considering local priorities and outcomes as part of joint commissioning arrangement and EHC plans and duty to consult parents on the contents of draft education, Health and Care plans.
Planning and Compulsory Purchase Act 2004, Town and Country Planning Regulations 2009, The Statement of Community Involvement (SCI)	Sets out the Council's policy for involving the community in the preparation of local development plan documents and in the consideration of planning applications.
Health and Social Care Act (2012)	Duty to consult and involve patients, the public and representatives in the planning or commissioning of local health services.
Equality Act 2010, Section 149 Public Service Equality Duty (PSED)	Consultation may be required to comply with the Council's equality duty. Consultation with people with different protected characteristics can provide an evidence base to assess the impact of decisions on those affected. The need for consultation is dependent upon the relevance and proportionality of the anticipated impact.

Doctrine of legitimate expectation	Common law - where there is a reasonable expectation that consultation will be undertaken because previous decisions on similar issues have been consulted upon by the Council or there has been a formal commitment made to consult prior to taking a decision.
Fairness	An implied duty to consult in order to meet common law obligations to act fairly when making decisions as a public body.

ROLES AND RESPONSIBILITIES

Executive	Responsible for agreeing the Consultation and Engagement Policy is in place and giving due regard with consultation where it has been undertaken by the Council to inform proposals being considered by Executive.
All Council committees	Responsible for having due regard to consultation where it has been undertaken by the Council to inform proposals being considered by that committee.
Head of Policy, Governance and Information	Responsible for ensuring a policy is in place to govern consultation to ensure the Council complies with legislative and common law responsibilities.
Head of Neighbourhoods	Responsible for the Council's approach to community engagement.
Data and Analytics team	Responsible for ensuring consultations undertaken using the Council's online portal adhere to this policy.
Employees, contactors and consultants	When undertaking consultation or community engagement on behalf of the Council they must ensure compliance with this policy.

REVIEW

This policy will be reviewed every three years, unless there is new legislation or amendments to the common law of 'fairness' which would require the policy to be updated earlier.

Supporting documentation

- **Appendix 1 – Consultation guidance**

Appendix 1: Corporate Consultation Guidance

When to conduct a consultation

In general terms, consultation should be considered when there is a statutory duty, or where feedback from the public is needed to inform decision making. The decision whether to consult or not will depend on the issues, the nature and the impact of the decision.

The following list is not exhaustive, but consultation may be appropriate when undertaking the following:

- development/ review of policies/strategies/procedures;
- Council budget reductions/ investment proposals;
- service reviews;
- commissioning and decommissioning of services;
- quality assurance of services;
- actions to meet equality duties;
- ceasing payment to voluntary/community groups; or
- if the Council has, as a matter of practice, consulted on a particular decision in the past, that will give rise to a 'legitimate expectation'¹ that it will do so again.

The more serious or significant the impact, the more likely it is that the views and concerns of those potentially affected should be sought before a decision is taken.

Consultation Content Requirements

Once a decision to consult has been taken, the content of the consultation is governed by the common law duty of 'fairness'. The principles of 'fairness' have been decided by the Supreme Court and are known as the 'Gunning Principles'.

The Council's duty to consult is governed by a common law duty to act 'fairly'. The UK's highest court has endorsed the basic requirements of a 'fair' consultation; these are known as the Gunning principles.

- consultation should occur when proposals are still at a formative stage;
- should give sufficient information on what is being consulted upon and reasons for any proposal to permit intelligent consideration and response;
- should allow adequate time for consideration and response;
- there must be clear evidence that the decision maker has considered the consultation responses or a summary of them, before taking its decision;
- the degree of specificity regarding the consultation should be influenced by those who are being consulted; and
- the demands of fairness are likely to be higher when the consultation relates to a decision which is likely to deprive someone of an existing benefit.

The principles mean that in some circumstances, for a consultation to be considered lawful, the consultation document should not only refer to a 'preferred option', but also include other considered options and outline reasons why they may be unacceptable. For example, when designing or making changes to the Council's Tax Reduction Scheme, it would be considered unlawful for the consultation document to be premised on the assumption that any shortfall would

¹ 'Legitimate expectation' is based on the idea that members of the public can rely on public bodies to act in particular ways. A 'substantive expectation' applies to specific policies or decisions and 'procedural expectation' which applies to process. The principle has been set by case law.

be met entirely by reductions in Council Tax Benefit and that there were no other options considered.

Equality Monitoring

Public Sector Equality Duty requires local authorities to have 'due regard' to the impact of changes on those with protected characteristics under the Equality Act 2010. To ensure services are delivered fairly the following may be collected:

- age
- disability
- gender / sex registered at birth
- Ethnicity
- religion or belief
- sexual orientation

Examples of circumstances in which consultation may not be appropriate

- Changes tightly prescribed by legislation.
- For minor or technical amendments to regulation or existing policy frameworks.
- Where adequate consultation has taken place at an earlier stage.

Responsibility for consultations

Responsibility for service area consultations remains with the individual service area, with support from the Governance, Policy and Information service who will provide advice upon request and facilitate access to the Council's online consultation portal. Advice and support should be sought using the Consultation Portal email address.

There are a small number of services areas that have been permitted to facilitate and conduct consultations using products outside of the corporate approved online portal for agreed purposes only, listed as follows. Exemptions must be permitted by the Governance, Policy and Information service.

Non-compliance with this policy may result in a legal challenge, known as a judicial review being brought against the Council and could result in the decision being overturned.