

How to guide

How to meet legal obligations in your public consultation process

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Introduction

This paper pools what we know about how to carry out a public consultation in a legal fashion. It was drafted by Peter Bates on behalf of the [East Midlands Academic Health Science Network](#) (EMAHSN) as part of its work on Public Leadership. Several people have contributed ideas¹, but further opinion, references and suggestions for improvement are very welcome.

This introduction provides a general outline only and does not constitute formal legal advice, so EMAHSN cannot accept any liability for any acts or omissions arising from information here. As it collates information from a variety of sources from different time periods, you should seek professional advice about exactly which items are relevant to your situation. Please contact shahnaz.aziz@nottingham.ac.uk to suggest improvements or tell us how you have made use of this paper.

¹ The following people kindly responded to an inquiry or sent information about this issue: Alex Rucke Keene (39 Essex Chambers). None of them are responsible for the final text! The bulk of the work on this document was completed in 2016 with minor amendments made since then, but not a full scale review, edit and update.

Public authorities have a legal obligation to consult the public before changing things. This *How To* guide provides a general outline of what law the requires so that staff working for public authorities can meet their obligations and members of the public can hold them to account. The core messages are distilled into simple points while the appendices provide links to the law, government policy and caselaw.

A note on language and the scope of this paper

In this paper, the term:

- *Public contributor* means a patient, service user, carer or member of the public who brings their lived experience of using health services to help improve services and research.
- *Consultation* means “a process of dialogue with citizens and stakeholders which has a defined start and end date and informs a decision about a new proposal or a policy or service change. It excludes longer term engagement work.”² Caselaw has established the principle that the specific word ‘consultation’ does not have to be used for the requirement to consult to apply.
- *Co-production* of public services means “the public sector and citizens making better use of each other's assets and resources to achieve better outcomes and improved efficiency.”³

Preliminary thoughts

The government has a strategy on public consultation⁴ and NHS England has also published a general statement⁵. In addition, many local publicly funded organisations have their own consultation strategy which is available to the public. See the strategy for Bristol⁶ as an example. In addition, particular

² Bristol City Council (undated) *Code of good practice on consultation*

³ <http://www.govint.org/?id=327>

⁴ The updated UK Government principles on consultation can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

⁵ <http://www.england.nhs.uk/wp-content/uploads/2013/09/trans-part-hc-guid1.pdf>

⁶ <http://goo.gl/hYij4y>.

aspects of public life may have their own strategy, such as, for example, the Statement of Community Involvement⁷ which is required under planning legislation.

There may be some variation in the extent to which different kinds of organisations are responsible for consultation. Commissioners have a duty to seek stakeholder views before deciding what services to purchase⁸, while provider agencies have their choices somewhat constrained by the details of their contract for the provision of services.

We note that public consultation is linked to, but separate from, the processes by which patients are in control of their own care; and the process by which people feedback their satisfaction with the service they have received in order to stimulate service improvement.

Whilst the public have a legal right to be consulted, both the governing bodies of public sector organisations on the one hand, and national and local politicians on the other, also have responsibilities to exercise judgement and make decisions. The interplay between these different stakeholders will vary according to the topic under discussion, and so consultation is not an alternative to the democratic process.

Metaphors are often used to aid thinking about public consultation. For example, one way to think about the different roles that can be played in a consultation is to view it as a ladder. The original proponent of this metaphor⁹ gave each rung a degree of devolved power, ranging from the lowest rung where people are consulted in order to exploit them through to the highest rung in which services are completely user-controlled. There is a danger of misinterpreting this metaphor, and assigning unintended meanings¹⁰. The goal is not always the top of the ladder, and people or organisations on higher rungs are not necessarily better than those further down. This shows that care is needed when using metaphors.

⁷ For example, see http://www.hinckley-bosworth.gov.uk/info/856/local_plan_2006_-_2026_formerly_ldf/394/statement_of_community_involvement_sci

⁸ See <https://drive.google.com/file/d/0B-eEBUNkfmj9ekd5aUxhSVhmeG8/view>

⁹ <http://lithgow-schmidt.dk/sherry-arnstein/ladder-of-citizen-participation.html>

¹⁰ Begum N (2006) *Doing it for themselves: participation and black and minority ethnic service users* London: Social Care Institute of Excellence and Racial Equality Unit.

Ten Principles for Consultations

The points below are distilled from legislation, government policy and caselaw, with the details of these sources in the appendices.

1. **Essential.** When planning or changing services the need to consult must be considered, even if the outcome is a decision not to undertake formal consultation. If plans change part-way through, it may be necessary to start again.
2. **Proportionate.** Those people most affected by the changes have the most substantial rights to be heard. On some occasions, it may be sufficient to confine the consultation to representative bodies. Avoid excessive and disproportionate cost to the public purse¹¹.
3. **Embedded.** Formal consultation processes must go hand in hand with coproduction approaches.
4. **Tailored.** The type of consultation must be related to the needs of the community and the issue concerned, and reach the full range of affected people, especially by engaging effectively with seldom heard groups.
5. **Influential.** The people consulted will not expect every single piece of their advice to be followed, but should be able to point to instances where their views have made a difference.
6. **Timely.** The consultation should begin before the decision has been made, run for long enough to gather public views¹² and close in time for these views to be properly considered before a decision is made. Public

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf. Preventing excessive costs to the public purse may impact the resources of community groups. In 2016, South Hunsley Swimming Club asked for a judicial review of a decision to close their pool. The case was deemed 'totally without merit' by the judge and the club was ordered to pay the legal fees of both sides (around £20,000). See <https://www.consultationinstitute.org/consultation-news/south-hunsley-pool-campaigners-must-pay-20k-bill-judge-judge-rules-case-totally-without-merit/>.

¹² "Where it is appropriate, and enables meaningful engagement, conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames or a more informal approach." The Compact (Cabinet Office 2010) para 2.4). Holiday periods should extend these times according to the following rule - Holiday period assumptions: Easter = 5 Working Days (1 Week); Summer (August) = 22 Working Days (4.2 Weeks); Christmas = 6 Working Days (1.1 Week). This more recent government [document](#) issued in October 2013 says that a period of 2-12 weeks is acceptable, depending on the nature of the issue, and the capacity of the groups being consulted to respond should be taken into account.

bodies generally avoid public consultations in local or national election periods.

7. **Open.** Key documents that will influence the decision should be made public and the public should be told the basis on which the decision will be made. The consulter may have a forward planning document or a preferred option, but should provide information about this to the consultees. While a staged process may be acceptable, this should not be designed to limit discussion of all the options.
8. **Transparent.** A range of methods should be used to reach the relevant community, rather than relying on a single means of communication. Documents should be free of jargon and the matters to be decided should be clearly explained in a digestible form. Be clear which aspects are open to change and which matters have already been decided. After the consultation has closed, publish information showing how many responses were received, a summary of what was said, and describe what difference the consultation has made. Balance this transparency with appropriate protection of personal and confidential data.
9. **Focused.** The public should be presented with a selection of proposals that they can consider. A general proposal is insufficient, but needs to be specific about which services are to be affected and their impact. A single proposal with no alternatives, or one that excludes some key issues or options is unlikely to be acceptable to the courts.
10. **Done properly.** Once the organisation embarks on a consultation process, whether it is compulsory or not, it must be carried out properly. Collating and summarising responses may be done by someone other than the decision-makers, but they must be clear that key themes have not been omitted. Data must be handled properly.

Appendix 1: Relevant laws¹³

Year	Legislative instrument	Details
2001	Health and Social Care Act 2001	Section 11 creates a statutory duty to involve the public in health and social care decisions regarding (a) the planning of the provision of those services; (b) changes in the way the services are provided; and (c) the operation of the services.
2005	Disability Discrimination Act	Adopted the Human Rights Act ¹⁴ and brought in the Disability Equality Duty
2006	National Health Service Act	Duty to involve the public. Section 242(1B) says” Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways) in: (a) the planning of the provision of those services; (b) the development and consideration of proposals for changes in the way those services are provided, and (c) decisions to be made by that body affecting the operation of those services.”

¹³ Further history is at <http://www.nsun.org.uk/assets/downloadableFiles/NIPServiceUserInvolvementinPolicy2.pdf>
There is also a summary of policy and legislation especially related to mental health which is available at <http://www.nsun.org.uk/assets/downloadableFiles/4Pi-SERVICEUSERINVOLVEMENTINHEALTHANDSOCIALCAREPOLICY.V62.pdf>

¹⁴ Beresford, P. and Croft, S. (2001) 'Service users, knowledges and the social construction of social work', *Journal of Social Work* vol 1, no 3, pp 295–316.

2007	Local Government and Public Involvement in Health Act	<p>All councils and some other public bodies have a legal duty to inform, consult and involve local people. Councils must consider providing information to, consulting with and involving local people in decisions about how it provides services, and the opportunity to be involved must reach a wide range of local people who would be affected by planned changes.</p> <p>Section 138 placed a new general duty on every local authority in England to take such steps as it considers appropriate to secure that representatives of local persons (or of local persons of a particular description) are involved in the exercise of any of its functions, among other things by being consulted about the exercise of the function. Even if the eventual decision is that consultation is not required for a specific change, it is still necessary for every local authority, before starting the decision-making process, positively to consider whether public consultation is appropriate.</p> <p>Section 234 inserts sections 17A and 24A into the 2006 Act. These sections impose a new duty on Primary Care Trusts and Strategic Health Authorities, at times directed by the Secretary of State, to prepare a report: (a) on the consultation carried out (or proposed to be carried out) before making its commissioning decisions; and (b) on the influence that the results of the consultation have on its commissioning decisions.</p>
2010	Equalities Act	<p>Replaced most of the Disability Discrimination Act, but retained the Disability Equality Duty. S.149 'public bodies must have due regard to a range of equalities aspirations.'</p>
2012	National Health Service Act	<p>Amended the National Health Service Act 2006 Act s. 242(B), specifically by withdrawing the option of meeting the duty to consult through patient representative groups, such as charities or pressure groups, to be met by involving patients directly or through their representatives. Under s.13Q and s.14Z2 of the 2012 Act the duty to consult applies only to involvement with service users or potential users. However, changes to the range of health services available to patients must be consulted on. The duty is to 'involve', and one way of doing this is to consult.</p> <p>S.14Z13 requires Clinical Commissioning Groups to consult its constituents and engage its Health and Wellbeing Board.</p>

Appendix 2: Government policy and guidance

Year	Policy Document	Details
2006	DH guidance on the National Health Service Act 2006 ¹⁵ . <u>Real Involvement: Working with people to improve health services</u>	Duty to involve the public. Guidance on the section 242 consultation duty sets out the principles of involvement, which must be clear, accessible and transparent, open, inclusive, responsive, sustainable, proactive and focused on improvement. It is for the NHS body to decide which is the best method for the proposal in question whether focus groups, storytelling, shadowing, blogs, interviews, leaflets and formal consultation, Consultation needs to be adequate both in terms of time and content and appropriate to the scale of the issue being considered
2006	Department of Health (2006) <i>Our health, our care, our say</i>	Promised a 'strong voice for people using services and for local communities in the way in which the whole health and care system is designed and works'.
2007	<i>Putting people first: A shared vision and commitment to the transformation of adult social care</i>	Set out a shared cross-government vision for adult social care, which aimed to be 'the first public service reform programme which is co-produced, co-developed, co-evaluated and recognises that real change will only be achieved through the participation of users and carers at every stage'.
2008	Dept Business, Enterprise and Regulatory Reform. <i>Code of Practice on Consultation for Government Departments'</i>	Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible, though subsequent stakeholder consultation on the details of a proposal may be reduced to six weeks.
2009	<i>United Nations Convention on the Rights of Persons with Disabilities</i>	UK Government ratified this convention in 2009. It adopts a rights-based approach to involvement.
2010	<i>Equity and excellence: Liberating the NHS.</i>	Sets out an approach to partnership for patient-centred care: 'We want the principle of "shared decision-making" to become the norm: no decision about me without me'.

¹⁵ Department of Health (2007) 'Duty to involve patients strengthened: Briefing on section 242 of NHS Act 2006,' London: Department of Health.

2012 Cabinet Office <i>Consultation principles</i>	<ul style="list-style-type: none"> • Focus on on-going consultation with patients and their representatives • NHS bodies proposing changes to local health services should identify key stakeholder groups and engage with them as early as possible. • Longer and more detailed consultation will be needed where contentious issues are at stake and smaller, vulnerable organisations could be affected. • Consultation should be digital by default, using other methods for seldom heard groups • Information should be easy to understand, clarify the main issues and be sufficient to enable stakeholders to make an informed response.
2013 NHS England <i>Planning and delivering service changes for patients</i>	<ul style="list-style-type: none"> • It suggests that involving service users in the development of proposals is good practice and commissioners should involve patients and the public in the early stages of building a case for change. • Ongoing dialogue with patients and the public should be maintained in the process of implementation following a decision.
2013 <i>Transforming Participation in Health and care</i>	<p>Presented an engagement cycle that asks for:</p> <ul style="list-style-type: none"> • Community engagement to identify needs and aspirations • Public engagement to develop priorities, strategies and plans • Patient and carer engagement to improve services • Patient and carer engagement to monitor services and • Patient, carer and public engagement to procure services

2018 *General Data Protection Regulations (in force from 25 May 2018)*

The GDPR provides individuals with the following rights over their data held by organisations.

- **The right to be informed** that data is being collected, the identity of the data controller etc.
 - **The right of access** to the data itself and the purpose for collecting and processing it, storage and transfer.
 - **The right to rectification** of inaccurate or incomplete data.
 - **The right to erasure** of personal data.
 - **The right to restrict processing.**
 - **The right to data portability** – so that people receive their personal data in a common format that supports re-use.
 - **The right to object** to the processing of their personal data on certain grounds.
 - **The right to be free of automated decisions** based on personal data that will create significant effects for that individual.
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Appendix 3: Caselaw¹⁶

Date	Hearing	Relevant finding
1981	Ex p Bushell [1981] AC 75	<ul style="list-style-type: none"> • There is not necessarily an obligation to state the disadvantages of a proposal
1985	R v Brent LBC, ex p. Gunning (1985) LGR 168	<p>The 'Gunning Principles' for consultation:</p> <ul style="list-style-type: none"> • When proposals are still at a formative stage • Sufficient information to give intelligent consideration • Adequate time for consideration and response • Responses must be conscientiously taken into account.
1986	R v Sec of State for Social Services ex parte AMA	<ul style="list-style-type: none"> • A 14 day consultation period was not long enough
1988	Nichol v Gateshead MBC (1988) 87 LGR 435	<ul style="list-style-type: none"> • It can be lawful to consult only representative bodies provided the court considers it fair to do so
1996	R v London Borough Of Lambeth Ex Parte N [1996] ELR 299, R v Secretary of State for Social Services ex parte Association of Metropolitan Authorities [1986] 1 WLR 1	<ul style="list-style-type: none"> • Responses must be conscientiously taken into account in finalising the decision - "the essence of consultation was the communication of a genuine invitation to give advice and a genuine receipt of that advice"
1997	R v North East Devon Health Authority ex parte Pow	<ul style="list-style-type: none"> • Consulters must give sufficient time for responses to be made and considered. A public body cannot dispense with consultation in reliance on urgency of its own making • The mere fact that the grounds of opposition are already known or that it is well understood that the opposition is widespread and deeply felt does not mean that there is no room for a process of consultation

¹⁶ Much of this came from <http://davidwolfe.org.uk/wordpress/archives/268>

1999	R v North and East Devon HA ex p Coughlan [1999] EWCA Civ 1871	<p>Lord Woolf defined the nature of consultation by setting out three essential features:</p> <ul style="list-style-type: none"> • It must be undertaken at a time when proposals are still at a formative stage; • it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; and • the product of the consultation process must be conscientiously taken into account when the ultimate decision is taken.”
2001	R (Kides) v South Cambridgeshire DC [2001] EWHC Admin 839	<ul style="list-style-type: none"> • The people actually making the decision do not need to read every consultation response in order to have conscientiously taken them into account. They are entitled to rely on others to summarise responses.
2001	R (Lloyd) v Dagenham London Borough Council [2001] EWCA Civ 533; R v Lambeth London Borough Council, ex p. N [1996] ELR 299	<ul style="list-style-type: none"> • The obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response
2001	R v Camden ex p Cran (1996) 94 LGR 8; Wainwright v Richmond on Thames CO/3605/2000 11 April 2001 [44]	<ul style="list-style-type: none"> • The extent of consultation depends on all the circumstances
2002	R (Medway Council) v Secretary of State for Transport [2002] EWHC 2516 (Admin) at [32]	<ul style="list-style-type: none"> • Consultation on a single option: A public body can consult on a single, preferred, option but that is unlikely to be lawful unless other options are identified and the preferred option explained in a way which allows consultees properly to argue in favour of alternatives
2002	R (Smith) v East Kent Hospital NHS Trust [2002] EWHC 2640 (Admin); R v Shropshire HA ex p Duffus[1990] 1 Med LR 119 at 223; R (Carton) v Coventry City Council (2001) 4 CCLR 41, 44C-E.	<ul style="list-style-type: none"> • The consulter should not prematurely preclude options from consideration
2002	R(Madden) v Bury MBC [2002] EWHC (Admin) 1882	<ul style="list-style-type: none"> • The reasons given for what is proposed must include a candid explanation

2003	Anglian Water v Environment Agency [2003] EWHC 1506	<ul style="list-style-type: none"> • Where the decision-maker has access to important documents which are material to the determination, and whose contents the public would have a legitimate interest in knowing, then those documents should be disclosed in the consultation process.
2004	R (Beale) v Camden [2004] LGR 291	<ul style="list-style-type: none"> • The reasons given for what is proposed must include an explanation of the factors or criteria which the consuler considers important to its decision-making
2004	R (Capenhurst) v Leicester City Council [2004] EWHC 2124 (Admin)	<ul style="list-style-type: none"> • The reasons given for what is proposed must include a true explanation
2006	R (Edwards) v Environment Agency (No. 2) [2006] EWCA Civ 877	<ul style="list-style-type: none"> • The obligation to provide information to consultees can require the provision of significant amounts of information, and in a form which allows consultees properly to understand and make “meaningful and informed representations” on what is being consulted upon
2006	R(Parents for Legal Action Ltd) v Northumberland [2006] ELR 397, [2006] EWHC 1081 Admin	<ul style="list-style-type: none"> • There is no objection in principle to consulting/deciding in stages (eg issues of principle followed by issues of implementation
2006	R(Sadar) v Watford BC [2006] EWHC 1590	<ul style="list-style-type: none"> • The process must be substantively fair and have the appearance of fairness • All issues being consulted upon must be at a formative stage so is it no good consulting just on issues of timing and implementation where the principle has already been decided upon • If the consuler has formed a provisional view, those being consulted should be informed of this so as better to focus their responses
2007	Central and East Cheshire PCT FS50101815	<ul style="list-style-type: none"> • The consuler should release information about the organisations who responded to the consultation, but not provide names and addresses of individual consultees.

2007	R (Greenpeace Ltd) v Secretary of State for Trade and Industry [2007] EWHC 311 (Admin)	<ul style="list-style-type: none"> • It is not permissible to rely on ‘mediation by opinion makers’ for (e.g.) complex financial information • If fairness requires it then the consulter may be obliged to provide consultation responses from some consultees to others for the latter’s comment • The court will not strain to find technical defects which will make the obligations imposed on public bodies unworkable.
2008	R v Secretary of State for the Home Department, ex p. Harry [1998] 1 WLR 1737 at 1748; R (Greenpeace Ltd) v Secretary of State for Trade and Industry [2007] EWHC 311 (Admin); R (Eisai Ltd) v National Institute for Health and Clinical Excellence [2008] EWCA Civ 438;	<ul style="list-style-type: none"> • An invitation also to provide “any general comments you may have” can lead to the inference that underlying issues are in play
2009	Bard v Secretary of State for Communities and Local Government [2009] EWHC 308 (Admin)	<ul style="list-style-type: none"> • Where the decision was being informed by private representations, those representations needed to be made available to consultees • It should be clear what is being consulted upon: where only ‘issues’ are raised, consultees are entitled to proceed on the basis those are the issues and not some underlying decision of principle: could they reasonably foresee that, following consideration of responses, the issue of principle would be decided?
2009	Breckland v Boundary Commission [2009] EWCA Civ 239 [45, 69]	<ul style="list-style-type: none"> • The word ‘consultation’ does not have to be used for a requirement to consult to apply. • Consultation cannot be conducted in a vacuum, and it is necessary for there to be some form of proposal to which consultees can respond. • The relevant information must be presented in a form which is digestible for those to whom it is addressed. • An authority cannot rely on the press and others to make such information more intelligible. • Where the issue is a boundary change ‘persons who may be interested’ include the public as a whole

2009	Coughlan (see footnote 2); R v Brent LBC, ex p. Gunning (1985) LGR 168; but note Breckland v Boundary Commission [2009] EWCA Civ 239 [43]	<ul style="list-style-type: none"> • The consulter must 'take such steps as they consider sufficient'
2009	Ex p US Tobacco [1992] QB 335, 370F-G; Abbey Mines v Coal Authority [2008] EWCA Civ 353; Electoral & Boundary Commission v Forest Heath [2009] EWCA Civ 1296 [41]	<ul style="list-style-type: none"> • There is no general obligation to disclose unpublished internal advice
2009	Miller v North Yorkshire County Council [2009] EWHC 2172 (Admin) at [49]; Bard v Secretary of State for Communities and Local Government [2009] EWHC 308 (Admin) [96]	<ul style="list-style-type: none"> • Depending on the circumstances, further consultation may be required on matters and issues that the initial consultation may have thrown up
2011	Albert Court Residents Association and others, and Westminster City Council v The Royal Albert Hall	<ul style="list-style-type: none"> • The consultation was not a legal requirement, but once embarked upon, it had to be carried out properly.
2011	Evans v Lord Chancellor [2011] EWHC 1146 (Admin)	<ul style="list-style-type: none"> • Although there is no general obligation to disclose unpublished internal advice or representations from other consultees, that remains subject to the overarching requirement to give sufficient reasons for consultees to be able to respond intelligently
2011	R (Edwards) v Environment Agency (No. 2) [2006] EWCA Civ 877 [103]; Electoral & Boundary Commission v Forest Heath [2009] EWCA Civ 1296 [44]; R (Greenpeace Ltd) v Secretary of State for Trade and Industry [2007] EWHC 311 (Admin); ex p East [1996] ELR 74, 88; ex p Baker [1995] 1 All ER73 at 88; Evans v Lord Chancellor [2011] EWHC 1146 [32]	<ul style="list-style-type: none"> • If the public body fundamentally changes its proposal mid-process or is minded to proceed in a way which was not part of the proposal consulted upon, then basic fairness may require it to re-consult or consult afresh on the changed proposal • There is no general obligation to disclose representations from other consultees • The process must be fair
2011	R (Lowther) v Durham County Council [2001] EWCA 781 at [98] per Pill LJ; Trillium v Tower Hamlets [2011] EWHC 146 (Admin); Wainwright v Richmond on Thames CO/3605/2000 11 April 2001 [64-67]:	<ul style="list-style-type: none"> • The process by which responses are considered must be a fair and neutral one and not omit significant material points.
2011	R (Madden) v Bury Metropolitan Borough Council [2002] EWHC 1882 (Admin); Vale of Glamorgan v Lord Chancellor [2011] EWHC 1532 (Admin)	<ul style="list-style-type: none"> • Information can be supplemented during the process, but the less information that is provided at the outset, the more likely it is to be unfair to provide substantial information later in the process

2011	R v North and East Devon Health Authority, ex p. Coughlan [2001] QB 213; R(Forest Heath DC) v Electoral Commission [2010] PTSR 1227 [54]; Vale of Glamorgan v Lord Chancellor[2011] EWHC 1532 (Admin)	<ul style="list-style-type: none"> • Phased or staged consultation is acceptable provided the stages are not so rigidly defined as to, in effect, preclude full consideration (and response in relation to) the issues in the round
2011	R(Legal Remedy UK) v Secretary of State for Health [2007] EWHC 1252 (Admin); Milton Keynes v Secretary of State for Communities and Local Government [2011] EWHC 1060 (Admin)	<ul style="list-style-type: none"> • The full package must be sufficiently identified as part of the final stage of publication, and there must be adequate time after publication of the final part of the package for the package to be considered as a whole and for representations to be made.
2011	R(Rahman) v Birmingham CC	<ul style="list-style-type: none"> • The Equalities Act 2010 s.149 duty must be kept in mind by decision makers throughout the decision-making process. • Consultees need to be able to find out about the impact of a decision.
2012	R ex p Williams & Dorrington v Surrey County Council	<ul style="list-style-type: none"> • Public bodies must have due regard to a range of Equalities aspirations.
2014	Draper v Lincolnshire CC	<ul style="list-style-type: none"> • The consultation should include reasonable alternatives
2014	R (ex parte LH) c Shropshire CC	<ul style="list-style-type: none"> • A general consultation about changing services is insufficient and the specific service to be changed or closed must be named and considered in particular.
2014	Flatley v Hywel Dda Health Board	<ul style="list-style-type: none"> • The existence of a forward planning document does not amount to pre-determination.
2014	R (ex parte Rusal) v London Metal Exchange	<ul style="list-style-type: none"> • The consultation should include the 'most likely practicable alternative',

2014 R (on the application of Moseley) v London Borough of Haringey [2014] UKSC 56.

- When a single option is preferred by the consulter, alternative approaches should be set out consultation documents, if only to explain why they are not appropriate.
- The judgment endorses six general principles: the four “Sedley criteria” plus two additional principles arising from wider case law.
 1. A consultation must be at a time when proposals are still at a formative stage
 2. The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response
 3. Adequate time must be given for consideration and response
 4. The product of consultation must be conscientiously taken into account in finalising any statutory proposals
 5. The amount of detail which must be provided to enable consultees to make a contribution will be influenced by their identity– people with technical knowledge of a subject will need fewer details than a member of the general public.
 6. More care is needed when an authority contemplates depriving someone of an existing benefit or advantage than when the person has not yet received that benefit.

2015 Kendall v Rochford DC & DCLG

- Insufficient to rely entirely on a website to consult with people

2018 [R \(The Law Society\) v The Lord Chancellor](#)

- Established the Leggatt/Carr Factors which are used to determine what information is relevant and needs to be published in order for consultees to be properly informed.
-