

Bolton Council

Report to: Cabinet

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Report of: Director of Corporate Resources

Report No: CEX037

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Report Title: Consultation Policy, Toolkit and Delivery Plan

Non-Confidential: This report does **not** contain information which warrants its consideration in the absence of the press or members of the public

Purpose: To explain the current arrangements with regards to consultation, the responsibilities of the council and the programme of activities to address the issues identified and make key recommendations.

Recommendations: That Cabinet

- i. Approve the Consultation Policy
- ii. Approve the Consultation Toolkit
- iii. Note the development of activities in other areas

Background Doc(s):

Appendices / Attachments

- Appendix A Consultation Policy
- Appendix B Consultation Toolkit
- Appendix C Delivery Plan

Summary: This report informs members of the current arrangements and responsibilities of the council with regards to consultation. It provides a Consultation policy, toolkit and delivery plan for approval and makes key recommendations.

1 INTRODUCTION AND BACKGROUND

- 1.1 Bolton Council is committed to listening to local people and enabling residents, partners, visitors and businesses to shape their neighbourhoods and the services they receive. In order to support delivery of the council's priorities, it is important that we develop a defined process to involve our residents, businesses and partners.
- 1.2 The Bolton2030 Vision has been refreshed with new governance and momentum. One of the key themes within Bolton2030 is Strong Engaged Communities, this paper feeds into the work being undertaken and is reflective of best practice in this area.



- 1.3 This paper also fits closely with the Council's Values and Behaviours. Consultation will enable the council to be more **accountable**, will **make a difference**, will encourage **honesty and respect**, demonstrate **determination** and involve **working together** across the council and with partners.
- 1.4 Effective consultation can help us target services towards what people want and need, improve the delivery of services, test options for service change, prioritise services, and make better use of limited resource. It can also enable those who live, work and visit the borough have a real opportunity to influence the decisions that affect them.
- 1.5 Not undertaking consultation in the correct way will put the council at risk of legal, financial and reputational challenge. High profile judicial reviews have demonstrated that projects can be successfully challenged for inadequate consultation. Please see 2.3 for more details.
- 1.6 The team currently undertakes consultation when approached by individuals within directorates, hence a defined strategy and operational plan for consultation are needed.

- 1.7 There is no central repository of public consultation results - so staff, residents or stakeholders cannot easily find out what has been consulted on or what the results / outcomes are. Consultation does not currently link into other 'insight' (e.g. complaints, customer data, customer profiles) nor does it link in with consultation undertaken by partner organisations meaning that the council could be missing out on valuable insight and intelligence.
- 1.8 This report seeks to address some of these issues. The consultation policy is aimed at public consultation rather than staff consultation and does not replace any procedures that are currently in place for statutory consultations e.g. planning applications. It should also be noted that consultation is only one element within a range of participatory activities. Consultation goes beyond information giving by actively seeking, listening to and taking account of people's views before making decisions or setting priorities, but it does not usually allow for people to be actively involved in the design process. Sometimes it will be more appropriate to use more informal ongoing engagement or collaborative approaches like co-design. Conversations are ongoing with colleagues in the Vision Partnership to develop a co-ordinated approach to community involvement and will be taken forward as part of the Strong Engaged Communities task and finish group.

2 COUNCIL RESPONSIBILITIES

- 2.1 There are no clear rules surrounding how local authorities should consult but it is possible to extract from case-law key factors that should steer a public authority, and in turn, the courts in determining whether consultation has been undertaken correctly. The Consultation Institute (a well-established, not for profit best practice institute) identifies two areas of focus which should be used to decide when consultation must occur:

- i) When statutory legislation imposes an express duty to consult e.g. closure of children's centres / planning / NHS. (It is important to note that there are specific duties to 'involve' under the Health and Social Care Act 2012)
- ii) The Doctrine of Legitimate Expectation – now seen as common law whereby courts recognise consultees rights to expect a 'fair' process.

Legitimate expectation applies:

- when there has been a promise of consultation
- where official guidance or policies imply a promise to act in a particular way
- where there is a withdrawal of a 'benefit' with significant impacts to be considered
- where the nature of the relationship would create unfairness if there were to be inadequate consultation

- 2.2 Cabinet Office Principles and recent case law have emphasised that consultation requirements will vary from one context to another and should be assessed on an individual basis. The burden is therefore on public authorities to decide how, when, with whom and how widely to consult.
- 2.3 When public authorities have found themselves in a judicial review process it is because they haven't followed the Four Gunning Principles (as derived from the court case R v Brent London Borough Council, ex parte Gunning (1985):
1. Consultation must take place when the proposals are still at a formative stage
 2. Sufficient reasons must be put forward for proposals to permit 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

3 **EXAMPLES OF LEGAL CHALLENGE**

- **Gunning 1:** *Moseley v Haringey Council* – The Local Authority's consultation exercise relating to the introduction of its council tax reduction scheme was considered unlawful because the consultation documents failed to refer to any other options which it had considered for addressing the shortfall in funding. The Supreme Court held that alternative approaches should be set out even if only to explain why they were not appropriate. It is acceptable for the decision maker to have a preferred option, but there must be genuine potential for that preference to change as a result of consultation.
- **Gunning 2:** *Capenhurst v Leicester City Council* – The local authority undertook a consultation to determine how it would fund voluntary sector projects, stating in its consultation documentation that it proposed only to finance projects that delivered “core” service, without making it clear what “core” services actually were. The High court held that the failure to make clear the criteria on which the decision would be made was unlawful.
- **Gunning 3:** *Baker v Devon County Council* – A five-day warning given to residents of a care home of a meeting to determine whether it should be closed was held to be inadequate.
- **Gunning 4:** *Morris v Newport City Council* – The council proposed the introduction of an age limit for vehicles licensed as taxis. During the consultation the taxi drivers' association made a number of representations. Points raised by the taxi drivers' association were not mentioned in the summary of consultation responses provided to the Cabinet member to whom responsibility for considering the committee's recommendation was delegated. The High Court held that in the absence of any indication that the association's “*main and biggest*” point had been taken into account in the decision-making process was a “*material and important deficiency*” in the consultation process which rendered the decision to impose an age limit unlawful.

4 **DELIVERY UPDATE**

A plan of activity has been developed to address the current gaps in provision. As detailed below.

4.1. **Consultation Plan**

- 4.1.1 Meetings are being arranged with Directorate Leadership Teams to develop a two-year consultation plan based on the options included in the budget report 2019-21, directorate plans, the Bolton-2030 vision, strategic projects and evaluation of events / campaigns. A process will be developed (based on Cabinet Office principles) to prioritise what needs to be consulted on. The plan will be reviewed on a quarterly basis.

4.2 **Consultation policy**

- 4.2.1 Following an evaluation of best-practice across a number of local authorities, a policy has been developed to provide guidelines and best practice for consultation within the council.

This policy can be found at Appendix A. The consultation policy sets out the why, when, how and with whom we consult, and outlines the council's responsibilities.

4.3 Consultation toolkit

- 4.3.1 Following an evaluation of best practice across local authorities, a consultation toolkit has been developed to help directorates undertake their own consultation. The toolkit will help ensure consistency and quality. This consultation toolkit can be found at Appendix B.

4.4 Consultation portal

- 4.4.1 Work has begun with the web team to amend the council's consultation page www.bolton.gov.uk/consultations to show current, past and future public consultations. This is so that staff, residents and stakeholders can find out what has been consulted on, the outcomes of previous consultations and to raise awareness of upcoming ones. The web page should be complete this Spring. As part of this exercise we will undertake a comparison between our own consultation portal and [Citizen Space](#) a product currently used by GMCA and Stockport Council.

4.5 Changes to administrative processes

- 4.5.1 The cover sheet of committee reports will be amended to add consultation. This will encourage report authors to consider whether consultation should be undertaken and will remind decision makers to consider the outcome of consultation in their deliberations.

4.6 Elected member and senior council officer training

- 4.6.1 Additional training will be given to members and senior officers to reflect responsibilities around consultation and the new consultation policy and processes.

4.7 Establish a consultation group

- 4.7.1 A group of officers has been identified across key organisations within the Vision 2030 partnership to form a 'consultation group'. It is proposed that these officers meet quarterly and also develop an effective virtual communication network. The purpose of the group would be to provide a joined up approach to consultation by sharing and disseminating best practice, sharing results and encouraging joint commissioning of consultation where appropriate.

4.8 Delivery Plan

- 4.8.1 The policy and toolkit will need to be embedded in the organisation. A delivery plan can be found at Appendix C.

5. IMPACTS AND IMPLICATIONS:

Financial

- 5.1 There may be a cost for any training requirements if provided by an external company.
- 5.2 The council could be at risk of legal, financial and reputational challenge if consultation is not undertaken in accordance with the policy.

Legal

- 5.3 The council could be at risk of legal, financial and reputational challenge if consultation is not undertaken in accordance with the policy.

HR

- 5.4 Not applicable

Other

- 5.5 Not applicable

6. CONSULTATION

- 6.1 Senior managers within the council and representatives from partner organisations have been consulted in the development of the policy and toolkit.
- 6.2 The product of consultation must be conscientiously taken into account when decisions are being made. This report, policy and toolkit will help ensure consultation is carried out appropriately.

7. EIA

- 7.1 Under the Equality Act 2010, the Council must have due regard to:
- Eliminating unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act;
 - Advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
 - Fostering good relations between people who share a protected characteristic and people who do not share it.
- 7.2 At this stage it is not anticipated that the proposals will have a disproportionate impact on any of Bolton's diversity groups.

8. RECOMMENDATIONS

- 8.1 The Cabinet is recommended to:
- i) Approve the Consultation Policy
 - ii) Approve the Consultation Toolkit
 - iii) Note the development of activities in other area