**Legal requirement to consult and deciding if you need to consult**

As part of our democratic responsibilities we are required to consult to enable members of the council to make fully informed decisions about council policies and service proposals.

Consultation and Engagement should be a primary consideration when decisions are being made about issues affecting the lives of people who live or work in Barnet. Residents and other stakeholders should be given the opportunity to give their views before a final decision is made.

Before you think about whom you need to consult, or what methods you should use, it is important to be clear why you are undertaking consultation. This means having clarity of the council’s legal obligations in terms of formal and informal consultation:

**Legal requirement**

There are a variety of legal requirements why you may be required to formally consult, ***firstly a statutory duty,*** secondly ***a common law duty of fairness,*** and ***thirdly a legitimate expectation based on custom and practice or promise of consultation.***

**Best Value Duty to Consult**

The council is under a statutory general Best Value Duty to consult when reviewing its service provision and polices as laid out in the [Local Government Act 1999](http://www.legislation.gov.uk/ukpga/1999/27/section/3) and the more recent [Best Value Statutory Guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5945/1976926.pdf) 2011.

It is up to local authorities to decide how to fulfill the duty to consult, subject to a reasonableness test. The best value duty is a duty to consult with representatives of tax-payers, service users and other interested parties.

**The guidance states:**

‘To achieve the right balance – and before deciding how to fulfill their Best Value Duty – authorities are under a Duty to Consult representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services. In the interests of economy and efficiency, it is not necessary for authorities to undertake lifestyle or diversity questionnaires of suppliers or residents’.

**You have a legal duty to formally consult if:**

* The law requires it – for example is there statute that sets out strict guidelines on how you should consult, i.e. the consultation on options on our Council Tax scheme, the Finance Act stipulates strict guidance on the consultation process for consulting on a new Council tax Scheme,
* There is a sound political reason to do so,
* An expressed commitment, promise or assurance was made to consult,
* We’ve consulted before and set a binding precedent that we will again (a legitimate expectation),
* The policy or service change affects specific people who rely on the service,
* To enable the council to understand equality impacts and comply with its [**Public Sector Equality Duty.**](10.%20Equalities%20Duty.docx)

**You don’t need to formally consult if:**

* The issue is minor or trivial where the changes will not affect our residents or service users.
* Adequate consultation has taken place at an earlier stage.

**BARNET COUNCIL – CASE STUDY**

In 2013, a resident of the London Borough of Barnet challenged a major outsourcing decision by her local council. She argued, in part, that she had a legitimate expectation that her council should have observed Guidance applicable to the best value provisions of the 1999 Local Government Act, and consulted more extensively.

Although the resident lost her case because she was deemed to have issued the challenge out of time, the Judge clearly indicated that her expectation was reasonable.



**Finance and Business Planning – Medium Term Financial Strategy 2017/18 to 2019/20:**

**“The demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of any existing benefit or advantage than when the claimant is a bare applicant for a future benefit.”** (Lord Denning)

This means that extra care is needed to meet the requirements of fairness when you are taking away an existing benefit or service from people. Given this, there may be more reason to consult.

Decisions should have already been taken about whether consultation is necessary on savings being made in the 17/18, however this will not be the case for everything. Ideally all budget service specific consultations for 2017/18 should be completed and fed into the committee decision process by October 2016, prior to publishing the 2017/18 savings. If they have not been completed by then they will need to be completed by the 31st January 2017 the latest. Please continue to seek advice from Legal and Consultation about whether it is necessary, bearing in mind the criteria mentioned above.

As proposals are developed in full for the rest of the MTFS savings you should carefully review whether these will impact on customers and if consultation will be required. Consultation should happen in the previous year that you are planning to make the savings, and be completed by the October of the previous financial year. Again please continue to seek advice from Legal and Consultation about whether it is necessary

**However, there may be instances you will need to informally consult and engage with residents and stakeholders:**

Informal consultation and engagement[[1]](#footnote-1) may be required when developing your plans for future of service delivery, polices, strategies or a business case before going out to formal consultation.

Informal consultation and engagement can be used to help identify who is likely to be affected by your plans or to involve residents and service users in the development of your services, policies, strategies or a business case.

When developing your consultation and engagement plan you need to ensure you include the different phases of consultation and engagement, making it clear when you will be conducting formal consultation and when you will be conducting informal consultation.

If you’re not sure, or want advice on any of the above, contact Rosie Evangelou.

1. Please refer to the whole engagement spectrum [↑](#footnote-ref-1)