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Know your rights: Consultations

What is a consultation?

A consultation is when a public body asks for people's views on the public body's proposals to change their services or policies in some way. Consultations are a very important part of the decision-making process, helping to ensure that those who use public services are at the heart of the changes that affect them.

In terms of cuts to services used by people with a learning disability, the consultations we are most interested in are those held by local authorities, or councils. This fact sheet will outline when there should be a consultation, how to respond to a consultation, and how to challenge a consultation that is not good enough. There is also a bit of information on impact assessments, which usually include a consultation.

When should there be a consultation?

The guidance on when to hold consultations is quite vague and open to interpretation. Consultations will usually only be put out when local authorities are making **significant changes to services**, e.g. closing a day centre or changing the amount that they charge people.

Local authorities do not always have a legal duty to consult when changing services. A legal duty to consult can come from a **specific promise or practice**, e.g. previously saying a consultation would be held on a particular proposal. A legal duty can also come from the size of the impact of the proposal, e.g. closure of a residential care home.

However, those affected by the changes the local authority is proposing can have a **'legitimate expectation'** to be consulted, which, practically speaking, amounts to the same thing as the local authority having a legal duty to consult. Whether an expectation is legitimate or not is obviously open to interpretation, but service users and their families can sometimes legally challenge a local authority's decision on the basis that they were denied the opportunity to have their say on the proposals.

If you know significant changes are expected to your services, it might be a good idea to ask the local authority if and when a consultation will take place, so you can be prepared to respond fully and in good time.

If, following a consultation, the proposal changes significantly from the one consulted on, the local authority should **re-consult** to find out opinions on the new proposal. This is only for substantial changes in policy, though, and not small changes to a policy due to the original consultation or new information coming to light.

A **lack of consultation**, either when one is legitimately expected or there is a legal duty to consult, can be grounds to challenge a decision. You should request that the local authority holds a consultation, stating your reasons. You should make it clear that if they do not, you will take the matter further. **If they refuse, you should seek legal advice.**

What will a consultation look like?

A consultation will usually consist of a document setting out what the local authority's **proposals** are and a **questionnaire** asking people what they think of the proposals. The proposals might not always be as clear as they should be, e.g. they might say 'We want to build a brand new day centre with opportunities to meet new people and try new activities', but not mention that this means closing five current day centres for people with very different needs and merging them into one.

When consulting on changes to services for people with a learning disability, the local authority should provide **easy read** versions of all documents as well as other alternative formats, such as braille or audio. A good consultation should also include **consultation meetings**, where someone from the local authority meets with those affected by the proposals, listens to their views and answers their questions. These meetings should be available on a 1:1 basis or in a group setting and give you the opportunity to speak and not just listen.

How should you respond to a consultation?

Firstly, make sure you have **all relevant information** from the local authority and that you **fully understand** it. It is essential that you know exactly what the proposals mean and what the consequences will be for people's day-to-day lives. This is not always clear from the consultation documents, so you might need to ask the local authority to clarify what their exact plans are.

If the local authority holds consultation meetings or events, go along and **have your say**. This can be a good opportunity to ask questions and your views might make more of an impact in person than as just one response to a questionnaire.

When completing the questionnaire, **respond clearly to every point raised**; don't assume anything is obvious or implied. We know people often don't see the point in responding to consultations, thinking the local authority has already made its decision, or find them difficult to respond to. But consultations are a **really good opportunity** to make your voice heard, and the more responses the local authority receives, the more they should listen. A consultation is also a chance for people to **put forward an alternative** plan. For example, if they say they want to increase choice for service users by closing a day centre, but you think they could increase choice by keeping the centre open but making changes to it, you can suggest this. Your alternative plan should at the very least be considered by the local authority.

Can you challenge a consultation that isn't good enough?

Whether to hold a consultation or not is, to a certain extent, at the local authority's discretion, but there are **clear rules** that local authorities have to follow once a consultation is launched. Once a local authority decides to consult, it must consult properly, regardless of whether it had a duty to consult or not.

Consulting properly means:

- **in good time within the decision-making process**, leaving enough time for the local authority to consider the responses before a final decision is reached
- with **enough information and time for respondents to make an informed response**. The period of consultation should be **between 2 weeks and 12 weeks** – with a longer time period for a more significant change – and it is the local authority's duty to **inform and engage** all interested parties
- with **genuine consideration of responses**, not just paying 'lip service' to them.

If a consultation does not meet these requirements, the local authority has **broken the law**. Local authorities often fail to stick to these rules. Common failings include a consultation period that isn't long enough to give everyone affected the chance to respond, failure to provide easy read versions or adequate information about the proposals (or even failure to publicise the consultation at all), and ignoring responses (sometimes the final decision is announced before the consultation has even finished).

In many cases we believe that a two-week consultation period would barely allow members of the public to even become aware of the consultation, let alone engage with it and respond. Significant time needs to be built into a consultation timescale to allow communication with members of the public, promotion of the consultation, or the organisation of meetings and events, where necessary. This is even more crucial when consulting with people with a learning disability and their families, and such a short minimum makes this virtually impossible in our view.

The government set new **Consultation Principles** in 2016 that local authorities should follow:

1. Consultations should be **clear and concise**. Use plain English and avoid acronyms.
2. Consultations should have a **purpose**. Do not consult for the sake of it.
3. Consultations should be **informative**. Give enough information to ensure that those consulted understand the issues and can give informed responses.
4. Consultations are only **part of a process** of engagement.
5. Consultations should last for a **proportionate amount of time**.
6. Consultations should be **targeted**. Consider the full range of people, business and voluntary bodies affected by the policy, and whether representative groups exist.

If a local authority does not consult properly you should request that they consult again and rectify the previous failings, stating your reasons. You should make it clear that if they do not, you will take the matter further.

If the local authority does not cooperate, you should seek legal advice. Decisions can be challenged purely on the basis of a lack of effective consultation.

Equality impact assessments

According to the **public sector equality duty**, local authorities must have due regard to the impact of their decisions on the equality of disabled people. This includes considering the effect of their policies in relation to **the need to eliminate discrimination, harassment or victimisation, advance equality of opportunity and foster good relations between non-disabled and disabled people.**

The local authority does not have to achieve these things (the elimination of discrimination, etc.), but must have **due regard to the need to do these things**. If it can be shown that the local authority did not have due regard, they have broken the law. It would be difficult for a local authority to claim it had due regard to the impact of their decisions on the equality of disabled people if they hadn't consulted disabled people on changes to their services.

Fulfilling this duty should, but doesn't have to, include carrying out an **equality impact assessment**. An equality impact assessment usually involves holding a consultation and doing research into the possible consequences of a policy, in order to determine whether a proposal would affect a particular groups or groups (in terms of disability, age, gender, etc.) adversely. A good equality impact assessment should look at how a proposal will change people's services and support and what that will mean for their everyday lives.

When responding to an equality impact assessment, if you can show that the proposal has a disproportionately negative affect on disabled people compared to non-disabled people this could prevent the proposal going ahead.

There have been very few legal challenges looking specifically at equality impact assessments, but there have been successful challenges on the grounds of a **lack of regard for the equality duty**, which would usually include a poor or non-existent consultation and/or equality impact assessment.

If you think a local authority has not carried out a proper equality impact assessment when changing the services they provide, you should let them know you will challenge this unless they do so. **Again, if the local authority does not listen, you should seek legal advice.**

Further information

If you want more information on the guidance on consultations, go to www.bis.gov.uk -> policies -> better regulation. If you want more information on equality impact assessments, go to www.equalityhumanrights.com -> advice and guidance -> public sector equality duty.

If you want general information about your rights, you can ring the **Mencap Direct Helpline**. The Helpline is an advice and information service for people with a learning disability, their families and carers. To speak to the helpline please call 0808 808 1111.

Mencap also has a number of other factsheets which you may find useful, including on:

- Rights under the Care Act
- Eligibility for care and support
- Personal Budgets

To request any of our factsheets or a *Don't cut us out!* campaign guide, please contact the publications team at publications@mencap.org.uk or 0207 696 6905.