

January 2024

A monthly summary of consultation matters by Consultation Guru – Rhion Jones.

The coming year will be defined by continuing international tensions, challenging economic issues and a partisan General Election.

For a time, there will be a period of 'purdah' which I've often felt has been misused by politicians to sidestep some difficult issues.

In 2024, however, I believe nothing will stop a continuous stream of important public consultations, and I foresee a regular queue of claimants going to the High Court to challenge decisions where consultation has been inadequate.

Of the 20+ Judicial Reviews I've studied, many have real significance.

In [Blog 55](#), I have provided a brief commentary on the year's key cases. It also includes links to the relevant judgments and specific Consultation GuRU Blogs and articles where I consider some of them in detail.

Consultation Catch-up



From Blog 55, and in chronological order, these are the most relevant cases I have looked at in 2023, and why they are important....

- [The Holland Park School parents](#). A late 2022 case – considered in 2023, and significant because although the parents failed to persuade the Court that the 'engagement' was unlawful, the Judge assumed that the Gunning Principles applied, and effectively sets a precedent for the future interpretation of Guidance affecting school academies (See <http://tinyurl.com/subvykfv>)
- [The Kerb Height Guidance case](#). Brought by Sarah Leadbetter, and confirmed that the revised Guidance on inclusive mobility had not been consulted upon properly. (Briefly covered in <http://tinyurl.com/3fbfhr2j>) Although the Court of Appeal refused to quash the Guidance, the initial finding re consultation holds.
- [The Shropshire Council](#) case at the Supreme Court. This overturned judgments that allowed the Council to grant planning permission for land which was subject to a statutory trust in favour of the local community for recreational purposes and had failed to consult as a required by a 1972 Act.
- [The Sexual entertainments venues case in Bournemouth](#). Poor advice given to Councillors - that they could disregard some *consultee* responses relating to moral rather than site-specific objections to venue licenses. An otherwise satisfactory consultation became unlawful because key responses were not conscientiously considered (i.e., Gunning Four). (Full commentary <http://tinyurl.com/e44cwth8>)
- [The Court of Appeal decision on Eveleigh](#) – where it overturned the Binder decision of 2022, which had ruled against the Dept of Work & Pensions over its Disability strategy. Whilst preparing for it, they held a 'consultation' but when it failed to observe the Gunning Principles, tried to claim it only a survey. The High Court disagreed (if it quacks like a duck ... etc). But the Court of Appeal disagreed and suggested that the circumstances where the Principles apply may be more restricted than previously thought. A critical commentary can be found at <http://tinyurl.com/bdevmwfm>
- [ASLEF & other Unions v Sec of State for Business](#). The High Court quashed Regulations to enable recruitment of strike-replacement staff without consultation. The Government had sought to rely instead on a consultation six years earlier and whose output had never been published, but the Court ruled against it. (See <http://tinyurl.com/bdevmwfm>)
- [The Anti-ULEZ London Boroughs v Mayor London](#). Five Councils failed in challenging the consultation on Sadiq Khan's Ultra-low emissions zone, but the case highlighted the risk of obscure technical impact assessments and contested question drafting. (Full commentary in <http://tinyurl.com/bh94sf5j>)
- [The Badger Culling case](#) in Northern Ireland, where the Dept of Agriculture, Environment & Rural Affairs failed to disclose the methodology it used to select the preferred option of non-selective controlled shooting of badgers. (See commentary at <http://tinyurl.com/iwuc8fz6>)
- [The Pickering Fisheries case](#). Potentially the most significant case as DEFRA was found to have provided inadequately specific information about its plans to improve water quality on a river-by-river basis as to enable a lawful consultation to take place. (Referred to in <http://tinyurl.com/3fbfhr2j> with further discussion soon)
- [Bournemouth Christian Concern](#). A very recent judgment that considers the Public Space Protection Order to restrain the activities of those wishing to protest around an Abortion clinic. Campaigners failed to show that the Chief Constable had not been properly consulted in person.

GuRU insights

- Gillian Keegan enters 2024 with two important and contentious public consultations to oversee. On December 19th the Education Secretary launched a consultation on the long-awaited [Guidance for Schools](#) on the polarising topic of [Gender-questioning children](#). It did not receive a universal welcome, but not entirely for the reasons you'd expect. The Confederation of Schools Trusts remarked "*We have repeatedly asked the Department not to publish major documents and consultations at the end of term and during holidays, which can add significant workload to school leaders and cause unnecessary confusion for staff and families.*" On the substance, however, the season of goodwill appears to have prevailed with both sides of the debate keeping their powder dry. The most contentious development to date has been a leak that Government lawyers fear that the Guidance, as currently drafted, might expose some schools to legal action if they refuse some requests. Will the consultation help to bring civilised debate to an often-angry and intemperate controversy? Surprisingly maybe, the consultation launched a week earlier, on replacing 'A' levels with the proposed [Advanced British Standard qualification](#) has provoked even more hostility. Geoff Barton, leader of ASCL, described it as "*headless chicken policymaking*" and other Unions have said it was "*difficult to imagine a more pointless waste of energy and time*". The sheer scale of the change is certainly off-putting, and to any seasoned consultation-spotter, this is clearly the first of a shoal of such exercises before it comes into being. The document is called [A World Class education system](#) – so no lack of ambition it seems. Take a look at the 50-odd substantive questions on the [online survey](#) however, and you may be forgiven for thinking that many of them seem as if designed to enable future Secretaries of State (Sorry Ms Keegan) to conclude that it is neither affordable or desirable. Worth watching though – especially from the perspective of [The Politics of Consultation](#)
- The other pre-Xmas delight was Michael Gove's announcement of the new, post-consultation update of the [National Planning Policy Framework or NPPF](#). 26,000 people responded to the consultation in early 2023 and the relative silence from the Dept of Levelling Up, Housing and Communities may reflect its difficulties reconciling the perceived need for 'planning reform' with assuaging blue-wall Conservative MPs anxious not to inflict unrestrained housing growth on their electorates. There had also been serious concerns about restricting opportunities for local people to have their say. In the event, changes to the NPPFs appear hardly revolutionary. It says something if the most interesting features are a tougher stance against dilatory 'statutory consultees'! What is clear is that Councils will under increased pressure to have up-to-date agreed local plans, and if they do, they will be spared the annual updating of housing targets. There is protection for some neighbourhood plans and, in theory a boost for 'community-led' developments. If ever there was scope for community dialogue, here it is.
- Part of Gove's announcement was for a £29m [Planning skills development fund](#). Seeing this, I recalled a meeting with Rosie Pearson of the [Community Planning Alliance](#) as she told me how little her (admittedly unrepresentative) membership trusted planners to listen to local voices. This is why consultation and engagement skills should feature prominently in any skills investment programme.

Appreciation



For five years during my time with the [Consultation Institute](#), I had the pleasure of working with [Keith McCallum](#), who sadly died on 24th December. As others have noted, he worked with many Institute Associates and clients throughout the UK and beyond to provide first-class consultancy on public and stakeholder engagement. He was a very brave man, having suffered from cancer since long before I met him. He will be remembered as a great friend and diligent colleague. (see <http://tinyurl.com/yx2cun8p>)

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