

June 2024

The monthly summary of  
consultation matters by  
Consultation Guru –

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# Consultation Catch-up



What was meant to have been a sunny picture from a holiday on Italy's Amalfi coast appears as the Consultation GuRU shrouded in unseasonal fog, which I've taken as a metaphor for the way **General Elections often serve to obscure more than they reveal**. Current consultations continue *sotto voce*, but new important debates are held pending the outcome. Important legislation with implications for public engagement (e.g. Football fans engagement/consultation, Martyn's law, Tobacco & Vapes etc) also fell, though some will be resurrected in a new Parliament. Whoever wins, expect a deluge of public consultations over the summer.

## Best of the Blogs

### Gen Election 2024: Doorstep Dialogues as a form of consultation?



#### (Blog 69)

Is this just an Urban Myth?

Do politicians really engage in the cut and thrust of political debate as they tour the doorsteps in the coming weeks? At election time, why do so many claim to have '*consulted their constituents*' when they are mostly just on a handshake parade? In this reflection, I hope I'm assessing objectively what actually goes on and pointing out that it's not really a substitute for full-on, genuine consultation ....

### Organisation-wide stakeholder engagement (Blog for TRACTIVITY)

I'd already agreed to write a piece for TRACTIVITY on the need for stakeholder management



to be viewed as an enterprise-wide application, when Paula Vennells' appearance at the **Post Office Inquiry** gave me the perfect case study for the perils of the silo mentality where one department hasn't much of a clue what the others' know ... I propose three important steps that other organisations should consider to avoid similar pitfalls.

### If a Minister promises a 'consultation', is it okay just to launch a



#### 'call for evidence'? (Blog 68)

Terminology matters! It's not a slip of the tongue when Ministers commit to a 'consultation'. Yet over the years there have been many attempts to by-pass the process and this latest one is about barriers to the acceleration of **community energy** – a really important element on the path to net-zero. The promised 'consultation' magically morphed into a 'call for evidence' and this Blog explores the difference between the two processes.

SPOILER ALERT: when you respond to a consultation, you are protected by legally-enforceable safeguards. If you answer a 'call for evidence' ... .. good luck!

**On Page 2, I outline the unnoticed legal case that may have big implications for the Law of consultation and the Book Review is James O'Brien's 'How they Broke Britain'**

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## Instant insights

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- **Has the Definitive GUNNING FIVE Court case arrived?** Barely noticed, as the judgment arrived a day or so before Rishi Sunak had his bright idea for 4<sup>th</sup> July, the pressure group **LIBERTY** succeeded in its challenge to declare unlawful new Government regulations to amend the **laws affecting public protest**. In [Nat Council for Civil Liberties v Home Secretary](#), two very experienced Judges ruled that the Government could not use secondary legislation for such a fundamental change – amending the definition of ‘*serious disruption*’. From a consultation angle, however, its significance in the clear view that it was not lawful for Ministers only to engage with a selected group of stakeholders – mostly the police. The Court ruled it **was** a voluntary consultation (clearing up some confusion from the Eveleigh Court of Appeal judgment), that the Gunning Principles applied – and beyond that, fairness required that other key stakeholders should also have been involved. It provides eight specific reasons for having a ‘*balanced, not a one-sided approach.*’ and confirms the emergence of a separate – fifth principle – that to be lawful a consultation must engage with those impacted by the proposals. One note of caution. The Government is bound to appeal, but it is a deeply controversial issue where a new administration may think better of it. In the meantime, will the *period of sensitivity* preclude an appeal?
- In another a recent law of consultation case, ([Daw, Startin & Boulton v Staffs CC](#)) the High Court provides a lovely vignette of interest to local government, and maybe others. Farmers objected to a decision by the Council to refuse an ‘*agricultural vehicles exemption*’ for a ban on traffic turning left or right on the A515. Had the decision been taken following pressure from local Councillors before a consultation had been concluded – a clear case of pre-determination? Or had the decision been taken later, having satisfied the **Gunning Four** principle? It turned on the interpretation of emails and minutes routinely found in Councils and other organisations who never expect them to be subject to forensic legal analysis. In this case, the Council officer was found to have acted properly and only decided **after** the consultation. But it could have gone either way. Key message: Be ultra-careful not only to ensure that decisions are not taken in advance, but that documentation clearly shows this to be the case.
- In the coming days, hundreds of organisations will publish their case for initiatives from a new Government. One that took my attention this week was from the English **County Councils Network**. Called the [Manifesto for Counties](#), it highlights the plight of adult social care, children’s services, Special Educational Needs (SEND) and much else. Like other Councils, these – as well as net-zero initiatives are desperate for investment which neither Labour nor Tories can deliver. See my February analysis of Councils’ financial distress and my pleas for ‘*co-prevention*’ to save vital local services. ([Blog 59](#))

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## Straws in the wind

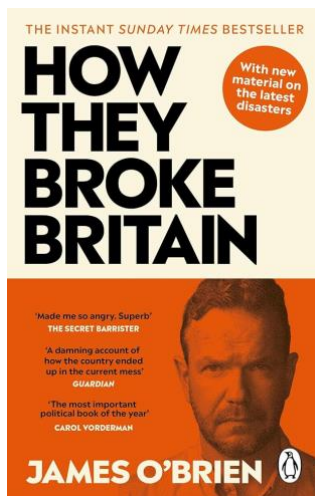
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## The Reading List

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O’Brien is the nearest thing the UK has to a left-of-centre shock-jock, and in this relentlessly strident polemic, he stands against the wall, a whole range of those he blames for our decline ...and fires. Apart from Rupert Murdoch and the lies O’Brien thinks he’s published, he targets Paul Dacre (*Daily Mail*), Matthew Elliot (*Taxpayers Alliance* etc), Nigel Farage, Dominic Cummings, Liz Truss and inevitably, Boris Johnson. Corbyn, Cameron, and even Andrew Neil (*The Spectator* etc) are there too but his main analysis is how disastrous BREXIT has been and how this rogues-gallery of apologists and a compromised BBC still camouflage its impact. Sunak, and anyone that follows has merely inherited a massively weakened country, systematically shorn of its values and judgement. It’s a good, if depressing read, and not really recommended for enthusiastic supporters of any of the above. For a critical insight into the manipulations of the right in British politics, however, it may be one of the best books in recent years.

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