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The monthly summary of  
consultation matters by  
Consultation Guru –

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# Consultation Catch-up



## Why a new Government must clean up consultations and restore trust in politics

A new Government needs to clean up consultations. The regular procession of Ministers taken to Court by disgruntled *consultees* has been an embarrassment for years. Their lawyers try to defend irresponsible instances of cutting corners, and there is not the slightest will or process for enforcing the *Government Consultation Principles*. We need an Independent **OFFICE of PUBLIC ENGAGEMENT** - to ensure that the Gunning Principles and other rules are properly followed. Labour wants to restore trust in politics. If it wins this week, here is one great way to restore confidence and credibility in the dialogue with citizens.

[Read Blog 73](#) and my case for urgent reform

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### Best of the Blogs

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### [If Manifestos were Consultation Papers? Would they meet the standard for 'intelligent consideration'?](#) (Blog 71)



I read all the Manifestos and started wondering! What if these were consultation papers? Would they be acceptable? Or would we all rush to the High Court saying we couldn't possibly give them 'intelligent consideration'? Terribly artificial, I know, but it prompted a range of reflections on what I call a "portmanteau of intentions ..." a phrase I've never used before!

### [Anti-protest regulations were unlawful because the consultation was one-sided: Closing a Gunning loophole?](#) (Blog 70)



High Court judges have ruled that Suella Braverman's Regulations giving the police more power to intervene in protests were unlawful, in part because the Home Office chose *only* to consult the Police and other enforcement agencies. Government lawyers who tried to argue that this wasn't really a consultation, but 'targeted engagement' – just of those who approved the changes - rightly deserved to lose the case. This judgment reinforces my view that there is emerging a GUNNING FIVE principle – that you must consult those affected.

On Page 2, I discuss two important recent judgments with implications for the Law of consultation and the Book Review is Tim Bale's (almost) comprehensive "The Conservative Party after BREXIT"

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## Instant insights

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- June is a favourite month for Courts to hand down judgments from judicial reviews – and we are seeing several this year. Two important ones are significant for those interested in Consultation law. Much press publicity featured the decision of the Supreme Court in the case of [R \(Finch\) v Surrey County Council](#). This has immense implications for decarbonisation as it rules that when a planning application is received for the extraction of oil, the public must be consulted on an [Environmental Impact Assessment](#) that not only estimates the greenhouse gas emissions arising *directly* from the project – but also those that result from the downstream combustion of the oil (*Indirectly*). There is considerable argument – and two of the five Judges dissented saying that the Aarhus Convention which underpins UK regulations never intended local decision-makers to have to research the broader climate consequences of oil and gas extraction. Stand-by therefore for ferocious industry lobbying just at the time when they will face a less sympathetic Government. My takeaway is that it demonstrates how critical **Impact Assessments** are becoming to the lawfulness of consultations, and that the need to acquire and deploy specialist skills to research, write and summarise these complex documents becomes a core competence for public bodies and consultancies that advise them – and not just in the fields of planning and energy.
- The second case is one that excites even more strong feelings in many communities, for it is yet another illustration of the injustices heaped on the ‘Windrush’ immigrants. In [R \(Donald\) v Home Secretary](#) the the Black Equity Organisation and others argued that the Home Office was wrong to have rejected three of the recommendations made by Wendy Williams CBE’s *Lessons Learned* Report. Pritti Patel told Parliament that she would be ‘*accepting the recommendations in full.*’, but her successor, Suella Braverman rejected three of them. Campaigners claimed that they had a *procedural legitimate expectation* of a consultation before such a controversial decision such as this be taken, and the Judge agreed with them. Moreover the Home Secretary’s decision was disproportionately prejudicial to Windrush victims because “*a cause of the scandal was a failure to listen to the voices of those from the Windrush community*” and to be open to external scrutiny. It was therefore unlawful. This case has a number of implications for Government decision-making and also for the treatment of equality and human rights, so I expect to write about it in more detail soon.

**Consultation GuRU is now delivering up-to-date Briefing and Courses on the law of consultation; email or call for details**

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## The Reading List

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[Prof Tim Bale](#) has produced a [dense but devastating history](#) of the last eight years of Conservative chaos. He tends towards long sentences with multiple bywords and lots of parentheses, as if something can only make sense if it’s explained by three other sub-plots. And that’s probably the point. His relentless narrative first of Theresa May’s doomed bid to agree a softer BREXIT, then Boris’ gung-ho disregard for anything that seemed problematic, can only sound believable in the context of a Party united only by its confusion. In describing the fall of PM Johnson, he enters ground already covered rather better by others (e.g., Sebastian Payne. Ben Riley Smith and Anthony Seldon) and his account of Truss and early Sunak is relatively perfunctory. If only he’d waited till the final *denouement*! But then, like many of us, he never realised how soon it would come. This could have been the timely requiem for a once great party. Instead, it tells an incomplete story and although he acknowledges that so many of the Tories’ woes arose from the infatuation with BREXIT, neither he – nor the Party - seem to have grasped quite how big a disaster it has been.

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