



Effective Consultation: **Hansard Society Response to the Cabinet Office Consultation**

1. Introduction: The Hansard Society is an independent, non-partisan education and research charity that works to strengthen parliamentary democracy and encourage greater public involvement in the democratic process. Our work encompasses a broad range of areas, from institutional reform, to the impact of information and communications technology on politics, to engaging young people in the political process. We welcome the Cabinet Office review of the government's consultation policy, to which we are pleased to be able to contribute.

In the course of our work, we have often considered the issue of public consultation. Recently, the *Digital Dialogues* project, an independent review of ways in which central government can use information and communication technology (ICT) to enable and enhance public engagement, put forward recommendations about how the current system could be reformed.¹ We are also currently undertaking a project on the legislative process, *Law in the Making*, which is studying the impact of public consultation on policy and law.²

1.1 Consultation and political engagement: The Hansard Society believes that public consultation is an essential component of the democratic process and is pleased that there is more consultation in policy making than ever before. An effective consultation has the potential to improve the quality of policy and legislation and also enhance public engagement in the democratic process.

With respect to the latter, however, it is essential to be realistic. The Hansard Society's annual *Audit of Political Engagement* has repeatedly found that most people do not feel they have a say in how the country is run, although 69% claim they would like to have

¹ R. Ferguson (2006; 2007), *Digital Dialogues, Interim and Second Phase Reports* (London: Hansard Society/Ministry of Justice).

² For more information about the project, which is sponsored by the Nuffield Foundation, see A. Brazier, S. Kalitowski and G. Rosenblatt (2007), *Law in the Making: A Discussion Paper* (London: Hansard Society), which can be downloaded at: http://www.hansardsociety.org.uk/assets/Nuffield_Report_Complete.pdf.

such a say.³ Yet only a small portion of the public is willing to try to influence government policy and an even smaller number – 14% – say they would be willing to take part in a governmental or parliamentary consultation.⁴ A mere 4% have actually done so.⁵

This could be due to the fact that there is increasing evidence of cynicism about the consultation process, with critics viewing it as nothing more than an elaborate public relations exercise for government.⁶ It has been reported that the government has ignored the results of high-profile public consultations such as the Preventing Extremism Together task force and citizens' juries on the future of the NHS.⁷ Earlier this year the High Court ruled that the government's public consultation on nuclear power had been 'seriously flawed' and 'manifestly inadequate and unfair'.⁸ Stakeholders have called the replacement consultation an 'expensive sham'.⁹

Furthermore, those who are willing to participate in consultations do not represent a broad cross-section of society; they are overwhelmingly middle-aged, white, well-educated and financially well-off. For example, those educated to at least A-level standard are ten times more likely to be willing to take part in a parliamentary or government consultation than those without any educational qualifications.¹⁰ The increased use of consultation also provides greater opportunities for lobbyists and pressure groups, which are becoming more widespread and professional, to promote their interests, although opinion is divided over how much influence they actually exert.¹¹

While future consultations should endeavour to reach out beyond the 'usual suspects', it is unlikely that increased consultation, even if carried out more innovatively, will act as a panacea for political disengagement since those most likely to be disenchanted with politics are also the least likely to participate in consultations. We take the view that one of the most effective ways to address political disengagement is to strengthen established representative institutions such as Parliament, and make them more accessible and responsive to the public.

1.2 Government consultation and Parliament: Parliament provides a vital link between government and the governed that is particularly useful in the consultation process. The Hansard Society believes the most effective government consultations are those that feed into Parliament, often via select committees, and we call on the government to ensure that consultation does not exist in isolation of Parliament.

³ In the 2007 *Audit*, only 33% of respondents agreed that 'when people like me get involved in politics, they can really change the way the country is run.' See Hansard Society and Electoral Commission (2007), *An Audit of Political Engagement 4* (London: Hansard Society/Electoral Commission), pp. 36-37.

⁴ Hansard Society and Electoral Commission (2007), *An Audit of Political Engagement 4* (London: Hansard Society/Electoral Commission), p. 48.

⁵ Hansard Society and Electoral Commission (2007), *An Audit of Political Engagement 4* (London: Hansard Society/Electoral Commission), p. 48.

⁶ See The Power Inquiry (2006), *Power to the People, The Report of Power: An Independent Inquiry into Britain's Democracy* (London: The Power Inquiry), p. 110.

⁷ M. Bright, 'Citizen's advice,' *New Statesman*, 6 September 2007.

⁸ 'Nuclear plans go back to public,' *BBC News*, 22 February 2007.

⁹ J. Vidal, 'New nuclear row as green groups pulls out,' *The Guardian*, 7 September 2007.

¹⁰ D. McHugh (2006), 'Wanting to be Heard but Not Wanting to Act? Addressing Political Disengagement,' *Parliamentary Affairs* 59:3, p. 549.

¹¹ See P. Parvin (2007), *Friend or Foe? Lobbying in British Democracy* (London: Hansard Society).

One prime example of this approach is pre-legislative scrutiny, which we have long advocated and which makes direct links with the parliamentary process. This form of consultation focuses on draft legislation and provides an important mechanism for collaboration between the executive, legislature and electorate, allowing for a wide range of interested parties to be consulted about a piece of legislation at an early stage. The draft legislation, which often follows a green or white paper consultation, is formally scrutinised by a parliamentary select committee which takes evidence from the public. The 2002 Communications Bill provides a particularly innovative example of the process. A Joint Committee of both Houses was established to undertake pre-legislative scrutiny which took evidence from interested parties and the public using an online discussion forum, the first of its kind used to consider draft legislation. Two of the Committee's key recommendations on the Bill came directly from suggestions made on the forum.

The Hansard Society has also called for increased post-legislative scrutiny, which allows Parliament to review and evaluate the effects and consequences of an Act following its implementation.¹² It can take evidence from experts, pressure groups and those directly affected by the legislation, providing another mechanism for involving the public in much the same way as pre-legislative scrutiny. Following the Law Commission's 2006 report on post-legislative scrutiny,¹³ we hope that the government will take steps to adopt a formal system to review the effects of legislation which will allow input from the public.

Parliament-centred consultation methods such as pre- and post-legislative scrutiny are commendable because they produce clear lines of accountability and outcomes: the publication of a select committee report which mandates an official government response; the opportunity for a parliamentary debate on the committee's report; and the formation of concrete legislation in most cases. Moreover there is increasing evidence that pre-legislative scrutiny in particular makes a real difference to the content of legislation.¹⁴

2. Response to the Consultation Questions

2.1 The government's Code of Practice (Question 1): The articulation of a formal consultation policy and the establishment of a Code of Practice are welcome developments, and greatly assist non-governmental organisations such as the Hansard Society to assess the performance and impact of government consultations. The Code is satisfactory as a guide of best practice for government staff involved in stakeholder and general public consultation. However, our research has found that departmental observance of the Code is inconsistent and opaque.¹⁵ Some departments have approached the Code conservatively as a law to be followed to the letter without

¹² See A. Brazier (2005), *Issues in Law Making Series: Post-Legislative Scrutiny* (London: Hansard Society).

¹³ Law Commission (2006), *Post-Legislative Scrutiny*, Cm 6945.

¹⁴ See J. Smookler (2006), Making a Difference? The Effectiveness of Pre-Legislative Scrutiny, *Parliamentary Affairs* 59:3, pp. 522-535.

¹⁵ R. Ferguson (2006; 2007), *Digital Dialogues, Interim and Second Phase Reports* (London: Hansard Society/Ministry of Justice).

deviation, while others have consciously used the Code as a cover for doing the 'bare minimum'. While both approaches ensure consultation takes place, they do nothing to improve policy making and levels of engagement.

The Hansard Society was commissioned in 2005 to evaluate the use of innovative web-based consultation methods by government agencies, departments and ministerial offices; eighteen case studies were compiled between 2005 and 2007. We found there was a lack of confidence in the Code amongst many of the policy teams, and as a result they departed from the Code when they had the opportunity. Both the Review of Political Party Funding and the Sustainable Development Commission made a deliberate effort to depart from the Code, which was facilitated by their independence from a minister. This involved innovative facilitation methods and tools mobilised in the interests of broadening and deepening the consultation base and ensuring that at the close of the activity there was a 'consultation trail' showing how conclusions had been reached.

The Review and the Commission both succeeded in encouraging the participation of people who had not previously contributed to consultations, most of whom expressed satisfaction with the exercises and said that they would participate again given the opportunity.¹⁶ While the Code represents a minimum standard, too often policy teams find it intimidating or a convenient excuse. While other policy teams engaged in programmed consultation may not be able to replicate the approaches of the Review and Commission exactly, there is much that they could learn from their creativity.

2.2 Consultation length (Question 2): On the face of it, twelve weeks would appear to be a sufficient timescale in which to carry out a public consultation. However, it is only acceptable when that time is dedicated to gathering submissions and not used to squeeze in design, testing and marketing. On the other hand, there are circumstances in which the standard consultation period could conceivably be reduced. It would seem to be particularly plausible in times of emergency or where the technical focus of a consultation may call for concentration on a small group of experts who can easily respond in a shorter time period (so long as an explanation for such a decision is provided prior to being actioned). Shorter consultation periods could be augmented by placing greater emphasis on an ongoing programme of public engagement which would lead to the establishment of 'communities of interest' with a potentially greater appreciation of policy (due to their ongoing exposure to its development) and willingness to participate in formal consultation when the opportunity is presented.

2.3 Monitoring observance of the Code's criteria (Question 3): Monitoring Code compliance within departments and across Whitehall could be significantly improved. Our research has revealed a mixed picture. While some departments have built up a reputation for regular and robust consultation, others are considered less effective or well-disposed toward gathering stakeholder input beyond 'trusted circles'. Some departments make use of all the resources available to their consultations, while others

¹⁶ R. Ferguson (2006; 2007), *Digital Dialogues, Interim and Second Phase Reports* (London: Hansard Society/Ministry of Justice).

go through the motions, and often only when consultation is unavoidable. All departments have 'consultation coordinators' and some even have specialist teams providing assessment and advise on engagement methods to their policy teams. The allocation and performance of these teams across Whitehall varies, and many policy teams are unaware that their department can provide this form of support.

During the course of our research we have noted that the collation and distribution of impact assessment is frequently too piecemeal and insubstantial. While departments should be free to set their own agendas and assign resources as they see fit, more could be done at a central, corporate level to encourage departments to enhance their consultation. The Better Regulation Executive provides some central support and assessment, but this is minimal. The remit of such a body should be expanded, not to 'police' consultations but to provide guidance, promote the visibility and effectiveness of consultation coordinators and provide a hub for collection and dissemination of good practice across the Whitehall policy community. Such a body should also play a role in promoting public awareness of government consultations by taking on responsibility for publishing departmental performance reports inside and outside of government, particularly, but not exclusively, in cases of good practice.

2.4 Consulting for the right reasons at the right time (Question 5): At a basic level, there are four points around the policy cycle: assessment, design, realisation and review. The *Digital Dialogues* initiative looked at examples of government consultation at each of these stages. Examples include the Law Commission's annual review of legislation (assessment), the Department for Work and Pensions' public forum on its welfare reform green paper (design), the Planning Portal's forum on planning procedure for local authority planning officials (realisation), and the Office of National Statistics' consultation blog on small area geography policy (review).

Consultations have financial and logistical implications that may price or time them out as regular options. In such cases, policy teams should consider supplementing official programmed consultations with ongoing engagement. This engagement activity might build on a consultation base and provide an opportunity for those responding to a consultation to monitor subsequent developments, increasing efficacy and transparency. Alternatively, a 'constituency of interest' could be established to provide policy teams with the opportunity to interact with stakeholders when a full-scale consultation is less appropriate or unfeasible. Such activity could also be drawn upon to improve the design, prominence and take-up of consultations. While consultation should never be carried out for consultation's sake, clearly government can and does already consult at various times on policies that are in various states of development. Such practice could be codified and promoted.

2.5 How best to seek stakeholder input (Question 6): Preliminary research from the Hansard Society's inquiry into the legislative process reveals that stakeholders from across the public, private and voluntary sectors, many of whom claim to have positive and constructive working relationships with the government, are sceptical of the consultation process. A number of stakeholders reported that consultations vary

considerably and do not always seem 'genuine'. Many questioned whether participating in consultations is an effective means to influence policy. One interviewee from a small charity criticised the predominant 'pro forma approach', which she feels at times 'seems designed with particular stakeholder groups in mind or to produce a particular set of responses.' Steps must be taken to counter these common criticisms from the people the government consults regularly.

More should be made of alternative and supplementary consultation methods which seek to lower the barriers of entry; diversify the pool of consultation respondents; encourage a richer mix of quantitative and qualitative data; and counter perceptions about the lack of value in consultation. The common consultation methods of written submissions (postal and email), interviews, hearings and focus groups are important but represent only a small selection of methods and tools available to government consultation. Some additional methods are more innovative than others – for example, citizens' juries are popular and increasingly mainstream, whereas participatory budgeting appears to have potential but has undergone little serious testing.

The Hansard Society has been assessing the value of information and communications technology (ICT) to government consultations and engagement activity through the study of eighteen live consultation and engagement exercises. We looked at three types of web-based software: blogs, forums and webchats. Blogs were observed to work best where engagement is ongoing over a long-term period, forums are good for periodic, structured deliberation with large groups, and webchats are useful as one-off real-time events.

ICT-led engagement methods are not replacements for conventional offline methods, and perform best when used as an element of a 'mixed economy' approach. Nevertheless, ICT-based tools offer a number of advantages over their offline equivalents, including:

- Asynchronicity = Participation is not restricted by place and time;
- Ubiquity = ICT is a pervasive feature of education, leisure and work;
- Scalability = Systems can be mobilised quickly and their modularity means that resource can be added or reduced dependent on need;
- Traceability = Systems routinely collect qualitative and quantitative data about user profiles and activity;
- Efficiency = The technology need not be expensive and savings can be made as a result of the numbers of participants who can be coordinated online.

Perhaps the most important finding from our research is that online opportunities to engage have attracted those who have not been active in the policy process previously.¹⁷ As a cross-sample of the forums evaluated in the first phase of *Digital Dialogues* shows, for example:

¹⁷ R. Ferguson (2006; 2007), *Digital Dialogues, Interim and Second Phase Reports* (London: Hansard Society/Ministry of Justice).

- In the DWP's welfare reform web forum, 83% had never participated in a government or parliament consultation before;
- In the Communities and Local Government web forum on the local government white paper, 82% participated in a government consultation for the first time;
- In the Food Standards Agency web forum on the regulation of food businesses, 59% took part in their first consultation.

It was the online mechanism - combined with an interest in the subject matter and the opportunity to deliberate with policy makers - that motivated engagement. In some instances these were members of the public with passing interest and limited knowledge of the subject area, in others new participants would be regarded as technical experts.

Each tool, whether it is online or offline, has a particular use and level of potential combination with other methods. Identifying which tools to use and when is complex and, and therefore requires further piloting and evaluation before definitive guidance can be provided.

2.6 Awareness-raising (Question 7): Professional lobbyists and pressure groups, which are becoming increasingly widespread and professional, make it their business to keep track of government consultations.¹⁸ The public, on the other hand, rarely have the time or inclination to do so. Despite the increased availability of newsletters, email alerts, a web-based register and occasional marketing activity, consultation teams still seem reluctant to move beyond rudimentary techniques for raising public awareness. Much could be done to improve awareness-raising around consultations amongst stakeholders as well as the general public. Each consultation should benefit from its own promotional activity. This could be divided into: 1) media campaigns with appropriate press and broadcasters; 2) securing advocacy from private and public sector bodies; and 3) paid-for marketing.

2.7 Reporting back to stakeholders (Question 8): In addition to promoting awareness of upcoming consultations, every opportunity should be taken to raise awareness of consultation outputs and outcomes. However, we have found that feedback compliance and quality varies greatly across departments. The testing and provision of a basic pro forma for consultation teams guiding their production and dissemination of feedback would be beneficial, as would a centrally administered 'audit' of feedback on an annual basis. We also recommend that departments release full copies and transcripts of consultation responses and the data sheets compiled to influence decision making, providing there would not be a threat to the national interest or individual rights. Where possible, we also believe it would be in the interests of better policy making to allow consultation respondents to review a draft of the government's response to the consultation within a limited time period.

¹⁸ P. Parvin (2007), *Friend or Foe? Lobbying in British Democracy* (London: Hansard Society).

2.8 Consultation fatigue (Question 9): 'Consultation fatigue' has caught on as a concept, but fatigue is not so much a problem as 'consultation frustration' or 'disappointment' (see 2.5 above). Preliminary research from our project on the law making process has revealed that even the most seasoned stakeholders would prefer to be consulted than not, with one senior public affairs adviser telling us that 'it is always better to know than not to know.' Moreover, as mentioned earlier, only 4% of people have actually taken part in a government or parliamentary consultation in the previous three years.¹⁹ Any consultation fatigue is thus likely to affect only a small number of people and could be reduced by addressing the legitimate concerns of regular consultees as well as recruiting a larger segment of the population to take part in consultations.

2.9 Other issues: Consulting young people (Question 10): Children's involvement in matters affecting them is laid down as a fundamental right in Article 12 of the United Nations Convention on the Rights of the Child.²⁰ As government decisions affect young people as much as they do adults, it is vital they are consulted. Citizenship Education, which is increasingly recognised as a fundamental part of the school curriculum, is empowering pupils to voice opinions with confidence. Participating in consultations allows young people to gain further self-assurance and self-worth and a sense of their own responsibilities to society. However, consultation must not be done for consultation's sake; young people, like adults, are sophisticated consumers who will quickly recognise the futility of talk without action.

The Cabinet Office has identified some of the challenges to consulting with young people, who 'may be particularly difficult to reach', acknowledging that 'it is important to engage proactively' and that 'written consultation is not the only or even always the most effective means of consultation.'²¹ We concur that written consultations are not always appropriate and have extensive experience of using the a range of formats to consult young people about key public policy issues, including video, face-to-face contact and the internet.

HeadsUp (www.headsup.org.uk) is a Hansard Society-moderated online forum where young people can discuss topical political issues with both their peers and decision makers such as MPs. Launched in 2003, HeadsUp has around 4,000 registered users and hosts five three-week forums each academic year on issues ranging from climate change, to the constitution, to animal cruelty. Relevant elected representatives, particularly ministers and members of parliamentary committees, are recruited to take part; on average, nine decision makers contribute to each forum. Discussion centres on three or four key themes to ensure the debate is structured, and comprehensive background material is provided on-site to help inform the debate. Once the debate has closed, it is summarised in a forum report and sent to the relevant parliamentary committee, government department and minister for response. These responses are then circulated to all of the registered users of the HeadsUp website.

¹⁹ Hansard Society and Electoral Commission (2007), *An Audit of Political Engagement 4* (London: Hansard Society/Electoral Commission), p. 48.

²⁰ See <http://www.unicef.org/crc/>.

²¹ Cabinet Office (2007), *Effective Consultation* (London: Cabinet Office), p. 6.

We have found HeadsUp to be an invaluable tool in assisting young people in getting involved in political debate and contributing to the decision making process, albeit in an informal way. That the results of a HeadsUp forum on a Children's Commissioner for England were raised in both a House of Commons debate and in a standing committee demonstrates the effectiveness of using the web to consult young people.

2.10 Options (Questions 11 & 12): The Hansard Society's preference is for 'Option 3: A principles-based option' because it puts objective-setting and stakeholders at the core of the consultation process. It also allows flexibility for government - at a corporate and departmental level - to make decisions about the formality of consultations, the methods used and the resources allocated.

The drawback with this option is that the current Code is already largely principles-based and we have seen that it is interpreted in a range of (sometimes conflicting) ways. Nevertheless, these hazards can be mitigated by placing objectives and stakeholders at the core of consultation design, and by following our aforementioned recommendations which advocate increasing corporate leadership and support; bringing a diversity of consultation methods into the mainstream; establishing feedback standards; and doing more to raise awareness of participation opportunities and outcomes.

3. Conclusion: This paper has made a number of practical recommendations on how the current consultation process can be improved. It has also called for a greater role for Parliament and pre- and post-legislative scrutiny in the consultation process. In addition, our *Law in the Making* project is currently considering the policy impact of consultation and will make further recommendations for improvement and change. We will be happy to discuss our findings with the government following the publication of our report in spring 2008.

**Hansard Society
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