

Good government requires good consultation

The Government is in the process of introducing a new code practice for consultation exercises; yet the current code is ignored in large parts of Government and the quality of consultation varies from excellent to dire. This paper examines this under-valued part of the policy-making process.

No public servant would quarrel with the notion that effective consultation is an essential part of the policy-making process. The reasons were usefully spelled out in the Cabinet Office *Code of Practice on Written Consultation*, published in 2000 –

- The main purpose is to improve decision making by ensuring that decisions are soundly based on evidence; that they take account of the views and experience of those affected by them; that innovative and creative options are considered, and that new arrangements are workable.
- Effective consultation ought to ensure that everyone concerned feels they have had their say, or at least that their interests have been taken into account.
- Without consultation with a wide cross section of the public, openness and accountability of government could be impaired.

The Code, which is binding on UK departments and agencies, was intended to make good consultation standard practice rather than something largely dependent on the approach adopted by particular ministers and officials. It laid down seven consultation criteria: build the timing of consultation into the planning process, be clear about the purpose of the consultation, keep a consultation document simple, make consultation documents widely available, allow 12 weeks for consultation, carefully and open-mindedly analyse responses and make the results widely available with reasons for decisions taken, and monitor and evaluate consultations. The Prime Minister wrote an introduction to the code, seemingly indicating the importance that was placed on it within government.

Three years on, the Government is reviewing the Code. Sadly, that way it is doing so is not a model of best practice. While it is consulting about proposed changes it has produced no analysis of the effectiveness of the current Code; rather it has largely confined itself to publishing the percentage of consultation documents that meet the 12 week criterion.

Evaluation of current practice

The current Code requires departments to evaluate consultations and to make available annual statistical and qualitative assessments. The Better Regulation Task Force, in its Annual Report 2001/2002, said that “there is not much sign” that departments are reviewing their own consultation exercises as required by the code, with the DTI being singled out as an honourable exception.

My own analysis of departmental websites suggests the following -

- Consultation exercises have generally improved and the code has been of significant benefit in this respect. However, performance varies greatly between departments and, in the case of poorly performing departments, within them as

well. Broadly speaking, those departments that have a corporate approach to consultation have a generally good record. The websites of such departments provide easy access to all consultation documents, analysis of responses and feedback statements. The DTI and DEFRA are among the best performing departments in this respect. In departments where there is no corporate approach, as is the case for ODPM and DfT, then the quality of consultation varies considerably.

- Much of the compliance with the code is on process rather than substance. In particular some departments seek to assume that provided they have a 12 week consultation period then that is all that matters.
- Analysis of consultation responses and feedback to those participating in consultation exercises is very poor.
- The impact of consultation on the policy-making process is not at all clear and can lead to considerable frustration.
- Consultation documents remain not always accessible, with the government centrally and individual departments seemingly incapable of keeping websites up-to-date.

It is interesting to note in passing that the Treasury considers itself exempt from the Cabinet Office guidelines even though they are mandatory. It has published its own code which is significantly less onerous than the Cabinet Office code.

Key issues

There are several key issues that must be addressed if the consultation process is to be improved significantly.

The importance of good consultation is not generally accepted within government. The impression is sometimes given that consultation has become a box ticking exercise with departments feeling that they must formally consult so that they can tick the box, but with the process not significantly influencing the policy-making process. The result has been government decisions which represent poor policy-making because policy-makers have chosen not to consult properly or alternatively have chosen to consult but have ignored the results.

The consultation process is biased. The organisations best able to respond to consultation exercises are industry groups and one issue pressure groups, the majority of which are dominated by middle class interests. The consumer is often left out of the process, with disadvantaged consumers fairs particularly badly. It is no use a government department simply saying that it welcomes views from consumers and consumer groups. They are not in a position to offer views unless they are resourced to do so. As a result, on the vast majority of public consultations affecting consumers, the consumer input is at best modest and often non-existent.

This can be addressed only by positive action. This could include funding a consumer body to provide an effective response or by departments commissioning consultants to

prepare a consumer view which must include either drawing on existing surveys of consumer opinion or conducting such surveys.

The consultation process is not transparent. The respondents to consultation exercises are predominantly organisations claiming to represent particular interest groups. Policy-makers and others studying the responses have no easy means of knowing whether the British Widgets Association, for example, is a large trade association representing a major industrial sector producing evidence that is well researched and based on the views of the members, or rather whether it is one man operating from Wapping. Similarly, it is often difficult to identify who should be consulted. It is important that policy-makers and others can easily identify interest groups and know who they represent. Ideally, there should be a proper directory of interest groups.

Analysis and feedback of consultation responses need to be improved considerably. In practice, many analyses simply count votes. That is, the one word response from an individual is weighted as highly as a carefully drafted response from a major representative body based on consultation with its own members. This practice will inevitably lead to representative bodies organising write-in campaigns. This is wasteful and will not improve the policy-making process. Most analyses of consultation responses do not name names – in sharp contrast with the approach of parliamentary committees. This does not help the policy-making process. The process is surely assisted if it is known which organisations have certain views.

Best practice is to publish promptly an analysis of responses to a consultation exercise and to publish subsequently a feedback statement indicating how the consultation has influenced the policy.

Departments generally do not adequately evaluate the effectiveness of their consultation policy and practice. The 2000 Code had four measures designed to ensure reasonable evaluation –

- The appointment of a consultation co-ordinator in each department and agency to ensure that the code is complied with.
- A requirement that departments should monitor consultations regularly and should seek to develop internal expertise in effective consultation.
- A requirement that departments should evaluate consultations once complete, perhaps with an independent involvement.
- A requirement for departments to make available annual statistical and qualitative assessments.

These requirements have largely been ignored by government departments. The response has been to water them down in the new version of the Code. The requirements need to be considerably strengthened. The consultation process is often fictitious with respondents telling the Government what they think the Government wants to hear as long as does not adversely affect them. There is therefore a reluctance to point to practical problems and an unwillingness to complain about the process. It is good practice to evaluate the effectiveness of the consultation process, both for individual

policies and for the department as a whole. This is not difficult. It involves a desk study of relevant documents, interviews with the key officials and telephone interviews with the key stakeholders.

Finally, if the consultation mechanism is to work effectively then *consultation documents need to be readily accessible*. The central register is not functioning effectively; fewer than a third of all consultations are recorded on it. The best departments (eg DTI and DEFRA) have a direct link to consultations from their home page and consultations then being divided into current and closed with consultation responses also being published. In the case of the worst departments consultation documents and subsequent papers, to the extent that they are on the website at all, are accessible only if one knows exactly where to look.

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