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Where is the line
between
consultation and
informal
engagement in JR
claims?



White Paper conference: Judicial Review 2025
24th June 2025

Two out of three ain't bad?



The key case

R (Liberty) v Secretary of State for the Home Department [2025] EWCA Civ 571

Autumn 2022 - "Just Stop Oil" protests

1.12.22 – round table meeting

6.12.22 – draft policy instructions sent

14.12.22 – NPCC / MPS letter

15.12.22 – draft amendments sent

21.12.22 – NPCC / MPS response



“The National Police Chiefs Council, the Metropolitan Police Service, the Police and Crime Commissioners of the police forces whose areas include the M25, and National Highways were consulted on how to improve the response to highly disruptive protests at a roundtable chaired by the Prime Minister.”

The principles

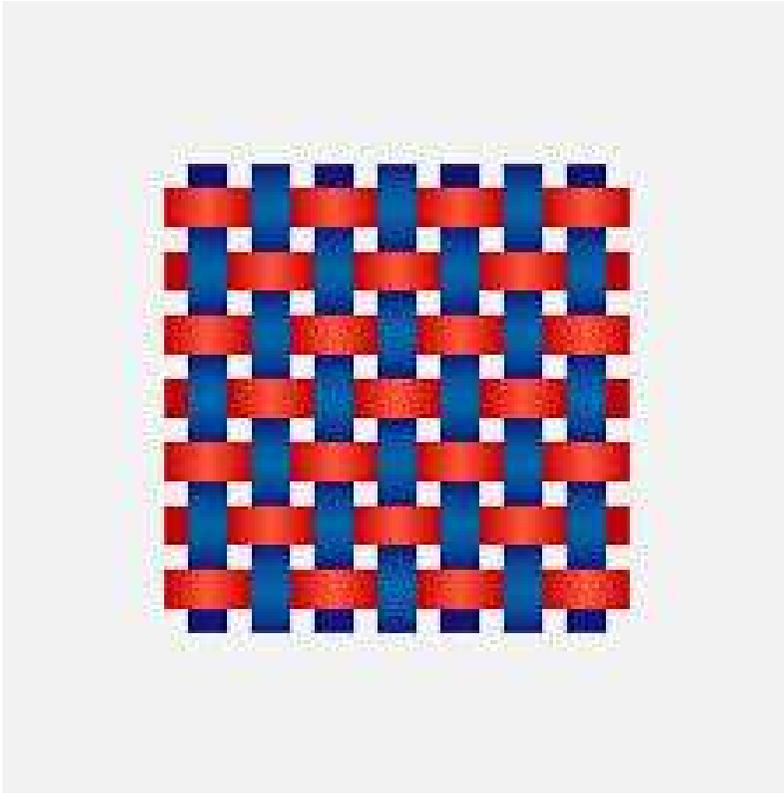
R (Plantagenet Alliance Ltd) v Secretary of State for Justice [2015] 3 All ER 261, §98(2)

- No general duty to consult interested persons before deciding upon a measure:
- But the duty can arise:
 - (i) under statute
 - (ii) where there has been a promise to consult;
 - (ii) where there has been an established practice of consultation;
 - (iv), where exceptionally a failure to consult would lead to conspicuous unfairness.



“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

The authorities



R (Milton Keynes Council) v Secretary of State for Communities & Local Government [2011] EWCA Civ 1575

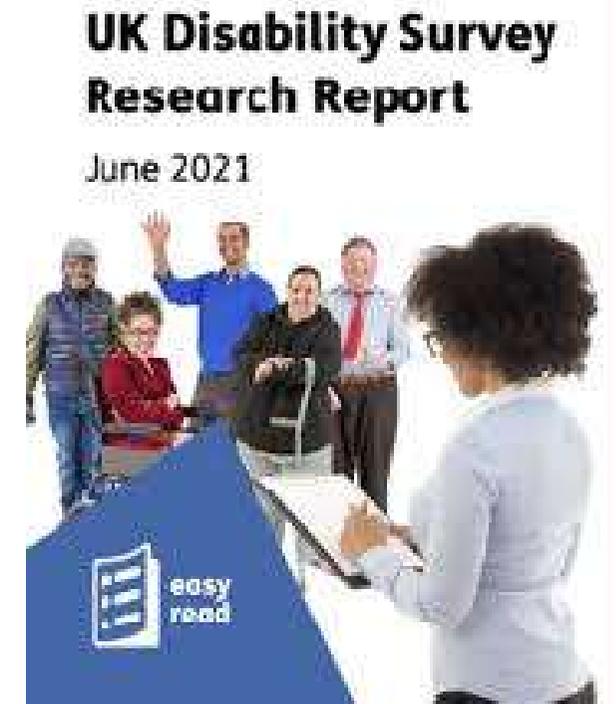
“I do not accept the submission that a decision-maker can routinely pick and choose whom he will consult. A fair consultation requires fairness in deciding whom to consult as well as fairness in deciding the subject matter of the consultation and its timing.”

R (Association of Personal Injury Lawyers) v Secretary of State for Justice [2013] EWHC 1358 (Admin)

“there may be circumstances where a selective consultation exercise will render a decision taken pursuant to it unlawful”.

R (Eveleigh) v Secretary of State for Work and Pensions [2023] 1 WLR 3599

- “In my judgment, the Gunning criteria are based on self-evident assumptions about the characteristics of the exercise to which they are able, and are intended, to apply. If the exercise in question does not have those characteristics, the Gunning criteria cannot apply to it.” §82
- (a) that there was a sufficiently crystallised proposal;
- (b) that it was likely that the proposal would impact a particular group (usually adversely); and
- (c) that the proposal was at a formative stage.



If Liberty were right...

“... the result would be make a huge inroad into the hitherto well-understood position that at common law the duty to consult is confined to the limited and specific classes of case identified in Plantagenet Alliance...”

Did the Secretary of State carry out a consultation?

- the Government's engagement with the policing bodies in December 2022 did not have the character of a formal consultation.
- It was not a process set up by the Government with a view to hearing arguments from a range of affected parties for and against the legislative and other changes which it was contemplating making.
- Rather, its purpose was to obtain the input of the policing bodies as the authorities with executive responsibility in the relevant field.



Fairness or rationality?

“As a matter of ordinary public law principles, I do not see why a decision-maker who is obliged to conduct a consultation, or who has voluntarily undertaken to do so, should not be under a duty to act both fairly and rationally when choosing whom to consult”

Further developments for consultation?

- Fairness or rationality?
- As a matter of ordinary public law principles, I do not see why a decision-maker who is obliged to conduct a consultation, or who has voluntarily undertaken to do so, should not be under a duty to act both fairly and rationally when choosing whom to consult.
- Speed of consultation responses?
- R (Liberty) v Equality and Human Rights Commission CA-2025-001381



LIBERTY CONTINUES LEGAL CHALLENGE AGAINST EQUALITY WATCHDOG

Posted on 10 Jun 2025

How do you turn the argument in your favour?

Hollie Higgins *“argued ... with conspicuous skill”*

