

## **ACCESS TO JUSTICE**

### **Best Practice on public consultations**

#### **Ministry of Justice presentation**

*(Sandra Marcantonio)*

I am going to talk to you briefly about Best Practice. Please bear in mind several issues. This presentation has been put together quickly following a request last week; I have not been actively involved in these consultations; and the consultations have been undertaken in the light of the current economic situation. This means that funds are limited and savings have had to be made in most areas of public spending.

#### **Public Consultations: Best Practice**

- First of all, consider whether the changes or introduction of measures would require a consultation, remembering ALWAYS that it is critical to consult lawfully. Consider your obligations under domestic, European and international law.
- Identify ALL of the potential stakeholders that need to be engaged. Draw up a list of all interested parties that you will seek views from, ensuring that you consult with those who will have to put the changes into practice. At the same time, ensure that there is a reasonable opportunity for anyone affected by the changes to contribute.
- It is a good idea to engage stakeholders in a logical order. For example, in the UK we recently undertook a Legal Aid

consultation. We started with the professional bodies - the Law Society and Bar Council - then progressed through to medium sized stakeholder groups, and finally smaller individual stakeholders. Gather opinions and trends as you go. Encourage stakeholders to participate at the outset so that they can influence the process.

- Ensure that all stakeholders are valued and given equal access or treated equally.
- Wherever possible, start with an open dialogue. This may not always be possible, but if it is, ask the stakeholders for their opinion or solutions. Ask them for their ideas, rather than presenting them with something that is a foregone conclusion.
- Ensure that the consultation document is drafted with the appropriate balance of accessibility for the intended audience - for example, a document that enables the generalist to make points and that also allows or encourages a specialist to make the detailed points that they might want to contribute. It is a good idea to advertise any consultation at a local level.
- Consider the use of a “critical friend”; for example, discuss options with a willing stakeholder that you believe would give honest and robust and reasoned opinions.
- Consulting can be very productive. Responses are very often extremely useful and can inform your decision on whether and how to move forward with the proposals. For example in the United Kingdom in one recent consultation on potential changes to Legal Aid, the Government did not pursue two of the proposals upon which they had

consulted. This demonstrates that consultations are undertaken with an open mind.

- If need be and of course if possible, consider a joint enterprise with an organisation that is closer to those affected by the changes than perhaps you are as a public body. For example, ask a leader in the field to hold the consultation event, with you playing the role of facilitator.
- You should be realistic about what can and cannot be achieved. Do not give the stakeholders false hope, be honest and frank about what you hope to and can actually achieve. If necessary you could have a list of options, if for example choices need to be restricted for reasons of cost. BUT try not to have too limited a choice.
- Where possible, manage the expectations of stakeholders.
- When undertaking consultations, consider how you might achieve the best results, for example “Roadshows” or round the table discussions. If choosing the latter format, ensure that discussion groups have a wide variety of stakeholders and experience. Consider whether you want all discussion groups at such an event to consider all questions or just a selection. Would it be better for example to ask individuals to focus on their area of interest or expertise, in order to achieve a more in depth response?
- Think about who might present any potential event. Should it be an independent expert or a member of the public body? Either of these options has benefits. Think about managing the event. Ensure that you have a multi-

disciplinary, knowledgeable and effective team. Ensure you field enough staff with the appropriate level of knowledge for the subject matter.