

Pre-Opening Resource

Section 10 Consultation: General guidance

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**New
Schools
Network**

Introduction

Before your free school can open, your group is required by law to inform the local community of your plans and allow it to respond to them.

This consultation is a necessary and important element of the pre-opening stage. If your group does not carry it out adequately then the Secretary of State (SoS) will not sign the funding agreement necessary for your free school to open.

The format your consultation takes, who you consult and what you ask them will depend on your local circumstances. Because these circumstances will inevitably be so different, the Department for Education (DfE) does not issue specific guidance on the consultation process.

NSN has therefore published this guidance on how to carry out an effective consultation. It outlines some of the key issues you will need to consider when planning your consultation, offers insights from free schools which have carried out high quality consultations in the past and suggests what your group can do now to prepare for it.

When using this guidance, please be aware that it is issued on a general basis for information only and does not constitute legal advice. If your group has specific issues relating to your consultation, you should seek legal advice.

The consultation process

The law

Your group's requirement to hold a consultation is set out in Section 10 of the Academies Act 2010 (the Act) which applies to free schools since they are legally academies. This section of the Act can seem vague, but it has important implications for your free school.

Section 10 requires that anybody entering into 'Academy arrangements' with the SoS in relation to a school should 'consult such persons as the person thinks appropriate' on 'whether the arrangements should be entered into.'

In this case, the 'Academy arrangements' refer to the funding agreement which your group (as the academy trust) needs to enter into with the SoS before your free school can open. This is essentially a form of contract, which sets out the conditions under which your free school will be funded by the DfE.

The effect of the Act is to place a legal obligation on your group (as the academy trust) to consult interested parties on the content of your proposed funding agreement, your intention to enter into it with the SoS and, by extension, your plans to open a free school which is bound by it.

Why it matters

The importance of this consultation process goes beyond the legal requirements set out in the Academies Act, though these are obviously fundamental.

Once you have completed your consultation, officials at the DfE will review it and the consultation report will form part of the assessment of the impact the opening of the free school will have on maintained schools, academies, institutions within the further education sector and alternative provision in the area in which the institution is proposed to be, or is, situated. This is a key factor in the overall consideration made by the SoS as to whether he/she will enter into a funding agreement with your trust. Not carrying out an adequate consultation could therefore delay the signing of your funding agreement, which may affect the ability of your free school to open on time.

In addition, the consultation offers your group a chance to respond to any reasonable local concerns about the opening of your free school. If the DfE feel that you have not responded to these concerns in an adequate way, then they may recommend that the signing of your funding agreement be delayed.

The consultation also represents a great opportunity for you to work on the marketing of your free school. Many free school groups have found that the intensive marketing undertaken during the consultation has increased awareness amongst local parents and led to an upsurge in the number of children being registered for the school.

More generally, you should see the consultation as an opportunity to engage local stakeholders in your plans, including groups and organisations that may not have been aware of your application. Listening to the views of local stakeholders and developing your plans accordingly, will help you to develop your plans in a way that ensures that your free school is better integrated into the community.

Key decisions

The flowchart below outlines some of the key questions you will have to ask about how to conduct your consultation and the key decisions you will have to make.



In the sections below there is further detail about the decisions you will have to make with regard to each of these key questions.

What you need to consult on

As set out above, your group has a legal obligation to consult ‘such persons as the person thinks appropriate’; in short, this will include all groups or people upon whom you believe the opening of your school will have an impact. The key question you must ask respondents is whether they agree that your trust should open the new free school.

As you will not have agreed the terms of your funding agreement yet, you should refer any interested parties to the standard funding agreement available on the DfE website, [here](#), and point out any necessary changes that you have already agreed with the DfE.

In addition, it is also important that your group consults on issues related to your free school which may be outside the funding agreement. This will be crucial in order to demonstrate to the DfE that you have consulted interested parties on the particularities of your project. Issues on which groups commonly consult interested parties include, but are not limited to:

- Your site plans, including any building work
- Access and transport plans
- How the school will impact on the local community?
- The demand for the school
- Your approach to admissions
- SEN and other policies
- The vision and ethos of your school

Whenever you consult on any aspect of your plans, it's important that you select the information you release into the public domain carefully and think about the potential consequences of doing so. For example, when consulting over your site plans you need to take into account whether naming a particular site could constitute a breach of confidentiality, or could leave Free Schools Capital (FSC) in a poor negotiating position as they attempt to acquire it.

Who you need to consult

The groups or stakeholders that you are required to consult will vary according to your particular situation. It is likely that the issues you feel it is appropriate to consult on will inform who you consult with. Ultimately, you know your local context best and it will be up to you to decide who the 'appropriate persons' to consult within it are.

Groups or stakeholders who are commonly consulted include, but are not limited to:

- Potential parents of pupils / pupils who are likely to be interested in or affected by the opening of your school
- Relevant local authorities
- Local politicians
- Schools in the surrounding area
- Local residents
- Local community groups

It is important that you open up your consultation to any group/stakeholder that could have an interest in the opening of your school, even if they may have concerns about, or have previously been opposed to some of your plans.

If the DfE feel that you have not done so, they may contact these groups/stakeholders directly in order to be able to advise the Secretary of State effectively.

How long to consult for

There is no specified length of time for a consultation but you have to allow long enough to be able to notify the right groups of the plans for your school and enable them to express any views. You should also give yourself enough time to respond to any comments by either providing further explanation or even amending your plans if that is required or possible.

As a guide, a **six-week** consultation period is considered minimum good practice – but some groups may find that in their particular case they need to lengthen this period or, in some exceptional cases, that they are able shorten it.

When to carry out your consultation

When planning *when* to hold your consultation, you should bear in mind that:

- a) Your consultation needs to have taken place and to have been reported on by the DfE before the SoS will be able to sign the funding agreement for your free school
- b) If your plans change significantly then you will need to re-open the consultation process

As a result, your group will need to find a balance between these two competing priorities: conducting your consultation at a time when you are confident that most of your plans are settled, but not waiting so long for them to be in place that you end up delaying the signing of your funding agreement.

You should discuss with your delivery officer at the DfE when they intend to have finalised the funding agreement and plan the timing of your consultation process accordingly. Bear in mind that even where you are not able to consult on finalised plans, the clearer you can be in presenting the consultation, the less additional work you will have to undertake if you need to re-open it for any reason.

The timing of your consultation is also likely to have an effect on what you are able to consult interested parties on. For example, since you will need to have shown that you have consulted on the site that will be named in your free school's funding agreement, ideally your plans in this area should be well developed. However, since you may not have firm plans on your site until quite late on in the pre-opening stage and since you may not be able to name your site for the reasons given above – you may not be able to consult on specific information. In this case, you could instead set out your potential site options (explaining which one of these is your preferred option), or identify a proposed catchment area for the school.

You should also consider how your consultation fits into the wider plans you have for marketing your free school. Since it can be an effective means of raising awareness of your free school, try to ensure that you make the most of this by following it up with a renewed focus on securing admissions for the school.

The DfE recommend that you should launch your consultation during phase 2 of pre-opening and produce your report on it, including key findings and your response to them by the end of phase 3. This means that you should be bringing your plans together during phase 1, when you can ask your DfE lead any questions you have on how and when to carry out the consultation. The timescales will vary depending on your opening but, in practical terms, this means that if you are opening in September, your consultation will generally need to be carried out in the February of that year, with your report then being written soon after.

Re-opening your consultation

As mentioned above, if your plans change significantly (for example in relation to the site named originally or your admissions process) then you will need to re-open the consultation process.

Depending on the reasons for re-opening the consultation, it may not be necessary to go through the entire consultation process again. It may be sufficient to re-open the consultation for a shorter time, to canvas further views from those they have already consulted with or to engage with those who are likely to be directly affected by your new plans.

How to consult

You will likely have carried out an informal consultation process within your community when completing your application to set up a free school. For example, you will have asked local parents/pupils what they think of your free school plans in order to gather evidence of demand and are likely to have had some dialogue with the local authority, especially if you are an alternative provision or special free school. Though you cannot use this previous work as evidence for your consultation report, you should think about how you can build on it effectively, for example by going back to some of the contacts you spoke to previously.

The statutory consultation requires you to formalise this process by broadening the range of stakeholders you contact about your plans, extending the scope of the questions that you ask them and collecting their feedback in a more systematic way.

When planning how you will manage your consultation you will need to consider:

- **How will you make your consultation open to different stakeholders?**

If you are utilising a website or online survey, how will you ensure access for respondents without a computer? Will you utilise mailshots, leaflets, open meetings, media announcements, or a combination of the above? If you are in an area with a diverse population, might some materials need to be translated?

- **What information will you need to provide stakeholders?**

What documents can you use to effectively communicate the school's vision and ethos?

- **What is the best way of providing this information to them?**

Will you send documentation direct to different stakeholders or make it available to them on your website?

- **How you will gather responses to your consultation?**
How will you collect verbal responses at meetings so that they can be presented as evidence?
- **How will you respond to any issues raised by your consultation?**
What further information could you offer groups on different issues? In which areas are you willing to amend your plans in response to local concerns?
- **What happens if you encounter significant opposition during your consultation?**
Trusts must escalate to their delivery officer if they experience significant opposition by local residents during or following the consultation or if the local authority becomes unsupportive of the project.
- **How you will present the results of your consultation to the DfE?**
What is the best format for distilling all the issues raised by your consultation into one document? The most effective way is to produce a report of the key findings which provides quantitative and qualitative information, details of methods, timings, who you consulted, the questions you asked, and what steps, if any, have been taken as a result of the responses.
- **How can you make your consultation accessible to all?**
Do you need to translate your consultation documents into other languages that are spoken in your area?

Whichever way you decide to conduct your consultation it is essential that you always consider how to do it time and cost efficiently (see the case studies below for examples of how groups have used their resources) and how you will collect feedback and report on your activities.

Remember, the DfE will need firm evidence that you have carried out the consultation process appropriately before they can recommend that the SoS enters into the funding agreement with your free school.

Costs

The cost of carrying out your consultation will vary depending on a number of factors, including:

- Whether you choose to buy in any degree of project management support
- How widely you choose to consult the community
- How long you choose to run your consultation process for

- What tools (internet, press etc.) you choose to use to carry out the consultation
- How much informal consultation work you have carried out already

Whichever way you choose to manage your consultation, it is likely to consume a fairly significant element of your pre-opening grant. The experience of groups opening free schools recently suggests that a reasonable benchmark would be around £9,000 – though this figure varied widely and some were able to produce theirs much more cheaply. Of this, the majority of your budget is likely to be spent on the design and implementation of the consultation (around £7,000-£8,000) with a smaller amount being spent on the production of your consultation report (around £1,000-£2,000). Clearly, the more materials or support purchased, the greater the cost will be. When considering how to plan your spending, remember that the most important element of the consultation is how you conduct it, not how you report it. It isn't necessary to have the report produced professionally, so you may well be able to save money by doing it 'in-house' – which can then be spent on reaching the community more effectively.

Top tips

As the case studies below show, groups' experience of the consultation process differs widely depending on their local context and the nature of their proposals.

However, the common issues they faced suggest that it is important to:

- Prepare your questionnaire carefully, making sure that it covers the legal requirements while also taking into account your local circumstances
- Handle any controversial issues relating to your project sensitively. Consider in advance what these issues are likely to be and how you will respond to them. You must tackle these issues directly, but try to frame questions which relate to them so that they are likely to produce positive, constructive responses
- Make the most of your local knowledge. Even if you are using a project management company or working with a sponsor to deliver your consultation, your understanding of the community will be invaluable in ensuring that it is directed effectively and avoids unnecessary controversy

- Be as open as possible with the widest number of stakeholders as possible. Using the press to help publicize your consultation is a good tool for showing your attempts to do this
- Use your resources strategically. Your consultation is likely to require you to send out hundreds of documents and then analyse responses to them carefully. Planning how you will manage the logistics involved - for example, how you will record information - will save you much time, money and effort. The case studies suggest that using online resources is likely to help improve your efficiency in this
- Embrace the consultation process. Enabling the community to have some input in the design of your school will help to reduce local tensions and make the school more likely to win support in the long term. The consultation is also an ideal opportunity to educate local people about what you are doing and why it will benefit them. Try to see it as a positive experience for your free school, rather than just a box you have to tick.

What you can do now

You should not underestimate the work involved in setting up the consultation process and should begin planning how you will approach it well in advance.

Some of the key issues your group should start considering during phase 1 of the pre-opening process include:

- How much support your group will need in conducting the consultation and how you will budget for this in your pre-opening grant. If you are unsure whether you have sufficient capacity, consider contacting the NSN Delivery Team at helpdesk@newschoolsnetwork.org to use our free diagnostic tool to assess your team's readiness for this, and other areas of pre-opening
- Which elements of your plans would you most like to consult the community on, or which are likely to be particularly controversial
- Who the key stakeholders in your community and how is it best to communicate with them
- What information about your school will you need to provide to these stakeholders?

- How will you respond to issues raised in the consultation?
- At what point in the pre-opening process do you feel it would be most appropriate to open your consultation, recognizing when key issues confronting your group (e.g. – buildings) are likely to be resolved
- Which issues might force you to re-open your consultation and under which circumstances would you do so
- How will you impart the results of your consultation to the DfE and the SoS

Links and further information

The [DfE's pre-opening guidance](#) contains a summary of your responsibilities around your statutory duty to consult and sets out what support you can expect from them as part of this.

NSN's [budget tool](#) provides examples of how free schools have spent their pre-opening grant and helps you to plan your spending. It includes examples of what free schools spent on their consultation.

New Schools Network Delivery Programme

NSN has supported free school groups in pre-opening since 2014. NSN's unrivalled knowledge and experience has been informed by our work with over 70% of open and approved free school groups throughout the application and pre-opening phases.

The NSN Delivery Programme has been designed to address the challenges of the rigorous pre-opening process. The NSN Delivery Programme fills gaps in capacity and/or capability, providing a range of support options to prepare schools for a successful opening. We provide tailored support whether you are newly approved to open a free school or if you are already deep into the pre-opening phase, and to all phases and types of free school.

[Delivery Programme services offer support for each key milestone across pre-opening:](#)

Services following your approval into pre-opening

- Project Set-Up
- Project Development Grant
- Governance (Advisory or Plan Delivery)
- Site and Buildings
- Pupil Recruitment and Marketing
- Section 10 Consultation

Services for your final year of pre-opening

- Site and Buildings
- Funding and Finance
- Education Brief
- Media Training
- Readiness to Open Meeting

You can [download our brochure](#) for more information on each service. If you are interested in one or more of NSN's pre-opening services, please contact us at helpdesk@newschoolsnetwork.org or call 020 7537 9208. We would be happy to discuss how we can support your free school project and send you a price list of our services.

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