

**THE COMMUNITY RIGHT TO CHALLENGE**

*To:* Cabinet

*Date:* 27 November 2012

*From:* Director of Law and Governance

*Electoral division(s):* All

*Forward Plan ref:* Not applicable *Key decision:* No

*Purpose:* To set out the key implications of the new Community Right to Challenge Legislation and propose measures to assist in its management.

*Recommendation:* It is recommended that Cabinet:

- a) Note the contents of the report and
- b) Agree the preferred option for arrangements for managing Expressions of Interest (EOIs) as detailed at 2.2.
- c) Agree the process for dealing with EOIs as proposed in Appendix 2.
- d) Where a service is undergoing review and the window does not fit with the timetable for the review, agree to receive EOIs at a specified point in the consultation process.

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## 1. INTRODUCTION & BACKGROUND

- 1.1 The Localism Act became law in November 2011 and the various elements of the Act are being implemented in phases throughout 2012. The Act includes a new 'Community Right to Challenge', which will allow voluntary and community bodies, charities, parish councils, and groups of 2 or more local authority staff to bid to express an interest in the running of services that the Council currently provides. Private sector providers can support the above providers in their challenge.
- 1.2 Under the Act, relevant bodies can submit an Expression of Interest (EOI) in running a service, which the local authority is required to consider and respond to. If the local authority accepts the EOI, it must run an open procurement exercise, which the challenging body can participate in, alongside other organisations.
- 1.3 The Right to Challenge applies to both services that a local authority delivers directly itself and those which it delivers through contracts with external providers. The Right to Challenge applies to all local authority services, with the exception of :
- services provided by the authority for named individuals with complex individual health or social care needs.
  - services commissioned in conjunction with the health service and services commissioned by an NHS body on behalf of the local authority, which are excluded until April 2014 to allow NHS commissioners to become operational.
- 1.4 The statutory guidance draws a distinction between services provided by local authorities, which are subject to the Right, and statutory decision-making functions, which are not. It gives the example of the determination of planning applications as a function that would be excluded, but suggests that the processing of planning applications would not.
- 1.5 The regulations specify a number of grounds under which a local authority can reject an EOI. These are listed at **Appendix 1** to this report.
- 1.6 If the local authority believes it would otherwise reject an EOI, it can ask for further information to inform its decision or seek to agree a modification to the EOI with the challenging body.
- 1.7 Drawing on the guidance and work undertaken by other local authorities Officers have developed a process for implementing the Right to Challenge within Cambridgeshire County Council. A draft process and timescales for each step is set out at **Appendix 2**.

## 2. PREFERRED OPTION TO MANAGE

- 2.1 The provisions relating to the Right to Challenge are very prescriptive and there is limited scope for local flexibility in implementing the scheme. However, there are a number of areas of flexibility including the opportunity to specify specific windows to accept challenges. A number of options have been considered for local implementation ranging from accepting challenges at any time to accepting challenges for different services during different windows. Following this review the recommendation is to adopt the process detailed below.
- 2.2 The Officer recommendation is to adopt a single specific window of two months every four years to accept challenges. This approach has the advantage that it will minimise the administrative burden and disruption to the Council of frequent challenges both on internal and externally provided services. The four year cycle is also consistent with the average duration of our supplier contracts.
- 2.3 This option does hold a risk that it may be viewed as not fully meeting the spirit of the legislation, however this risk can be mitigated by introducing the first window in June / July 2013 and retaining the option of reviewing the proposed four year window if the first window is considered successful. It is recommended that any decision to move away from the proposed four year cycle would be subject to separate Cabinet approval.
- 2.4 By adopting this window it will allow decisions to be reached on EOIs by the following January Committee cycle. This would allow consideration of an EOI to be factored into the budget process during the Autumn. For simpler EOIs, it may be possible to reach a decision sooner than this.
- 2.5 If the EOI is accepted in the January Committee cycle, commencement of a procurement exercise would normally be by the following April and this would give services and community bodies enough time to prepare to engage in the procurement process.
- 2.6 The Council is obliged to specify publicly, details of the window for accepting EOIs; the maximum period between receipt of an EOI and notification of a decision; and the minimum and maximum period between acceptance of an EOI and commencement of a procurement exercise. This information is summarised in **Appendix 2** and will be published after Cabinet approval.
- 2.7 The regulations state that the local authority can reject the EOI on the grounds that accepting it would constitute a breach of a statutory duty. The Council could potentially reject an EOI for elements of a service if accepting it would impact upon its ability to achieve the Best Value Duty under the Local Government Act 1999.
- 2.8 However, the Council would have to balance this with a consideration of the social, economic and environmental value of any proposal over and above the provision of the service. This could include creating local jobs, improving local skills, increasing local volunteering opportunities or improving environmental conditions. This is reflected in the Best Value Duty and the Public Services

(Social Value) Act 2012. The Right to Challenge regulations state that EOIs must include details of how the proposal will “promote the social, economic or environmental well-being of the authority’s area”.

### **3. ENGAGING WITH THE VOLUNTARY AND COMMUNITY SECTOR**

- 3.1 It will be important to consider how the Council engages with voluntary and community groups in relation to the Right to Challenge. There is already a level of awareness of the opportunities presented by the Right to Challenge amongst local organisations and this is likely to increase once the regulations and guidance are more widely disseminated and understood.
- 3.2 It is recommended that the Council engages proactively to ensure that there is an understanding of our approach and details of the open Procurement process that will follow if a challenge is accepted.

### **4. RESSPONDING TO INTERNAL CHALLENGES**

- 4.1 The Localism Act also gives two or more Council employees in the affected service the opportunity to submit an EOI to run the service. The intention of this provision is to encourage proposals from groups of local authority employees who might be able to deliver services in a more efficient or innovative way. However, where services are subject to a service review, the submission of an EOI by affected staff could delay this process.
- 4.2 In the event that a procurement process is triggered for a service currently provided internally, the in-house service team will not be able to submit a legal tender until a separate legal entity is created. The Council will need to assess tenders from other providers against any in house bid in an objective and transparent way.

### **5. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING**

#### **5.1 Developing the local economy for the benefit of all**

There are no significant implications for this priority; however there will be the opportunity for local community groups to express an interest in providing services. This could be done with the support of local private sector providers.

#### **5.2 Helping people live healthy and independent lives**

There are no significant implications for this priority; however a successful challenge may result in services being delivered in a different way.

#### **5.3 Supporting and protecting vulnerable people**

There are no significant implications for this priority; however a successful challenge may result in services being delivered in a different way.

#### **5.4 Ways of Working**

The following bullet points set out implications identified by officers for leadership and working locally:

- We will provide leadership in working with our partners and communities to ensure they understand the opportunities from the legislation and we will work to remove barriers for communities who wish to express an interest in providing services.
- We will engage locally with relevant groups as defined in paragraph 3.1 & 3.2.
- Where a successful challenge results in a procurement process we will ensure that local economic growth is considered as part of the process.

## **6. SIGNIFICANT IMPLICATIONS**

### **6.1 Resource and Performance Implications**

The report above sets out details of significant implications in Section 2 although this will only be significant if the Council receives numerous EOI's.

### **6.2 Statutory, Risk and Legal Implications**

The report above sets out details of significant implications in Section 2.

### **6.3 Equality and Diversity Implications**

The proposal will have no equality or diversity implications.

### **6.4 Engagement and Consultation Implications**

The report sets out details of planned engagement in Section 3.

### **6.5 Public Health Implications**

There are no significant implications within this category

<b>Source Documents</b>	<b>Location</b>
Communities and Local Government Community Right to Challenge Statutory Guidance.	LGSS Procurement, 2 <sup>nd</sup> Floor Octagon Cambridge.

## **APPENDICES:**

Appendix 1 - Grounds for Rejecting a Right to Challenge and Information required on an EOI

Appendix 2 - Proposed process and timescales for dealing with EOI's

## **Appendix 1 – Grounds for Rejecting a Right to Challenge and Information required on an EOI**

### **Grounds for rejecting an Expression of Interest (EOI)**

- The local authority considers that the EOI is frivolous or vexatious.
- The service is integrated with a service provided by the NHS and the continued integration of the service is critical to the well-being of service users.
- The service is already the subject of a procurement exercise.
- The local authority has entered into negotiations with a third party to provide a service, and at least part of these negotiations has been conducted in writing.
- The service has been stopped, or a decision has been taken in writing to do this.
- The local authority considers, based on the information in the EOI that the relevant body or any sub-contractors are not suitable to provide or assist in the provision of the service.
- The relevant body provides inadequate or incorrect information in the EOI.
- The local authority considers that accepting the EOI would contravene the rule of law or a breach of a statutory duty.

### **Information that must be contained in an EOI**

- Information about the financial resources of the relevant body submitting the EOI.
- Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the EOI will be capable of providing or assisting in providing the relevant service.
- Information about the relevant service and the geographical area that the EOI relates to.
- Information about the outcomes to be achieved by the relevant body, including:
  - How the provision will promote or improve the social, economic or environmental well-being of the relevant authority's area.
  - How it will meet the needs of the users of the relevant service.
- Where the relevant body consists of local authority employees, how the relevant body proposes to engage other employees of the local authority who are affected by the EOI.