

**Norwich City Council**  
**SCRUTINY COMMITTEE**

## **Item No 7**

REPORT for meeting to be held on 10 January 2013

### **Community Right to Challenge Process**

**Summary:**

At it's meeting on 14 March 2012 Cabinet resolved to:

- (1) to accept expressions of interest under the Community Right to Challenge duties annually only between 1<sup>st</sup> March and 30<sup>th</sup> April, commencing 2013
- (2) determination of those expressions will under normal circumstances take no more than seven months and be reported to Cabinet each September for ratification and follow generally the process outlined in Appendix 2
- (3) the procurement process resulting following the acceptance of any expression will start no sooner than three months and no later than six months following acceptance

Link to report to Cabinet:

<http://www.norwich.gov.uk/CommitteeMeetings/Cabinet/Document%20Library/22/REPCabinet08LocalismAct20120314.pdf>

**Conclusions:**

The authority needs to publish information relating to a process which enables relevant bodies to submit expressions of interest relating to the Community Right to Challenge.

**Recommendations:**

To review and comment on the proposed process, with a particular focus on the proposed governance arrangements for the scheme and to make any recommendations to Cabinet.

**Contact officer:**

Anton Bull  
Executive head of business relationship management  
t: 01603 212326  
e: anthonybull@norwich.gov.uk

## **1.00 Background**

- 1.01 The Localism Act became law in November 2011 and the implementation of its various parts has been phased in.
- 1.02 This report considers the steps needed to prepare and publish a process for relevant bodies to express an interest in accordance with Part 5 Chapter 2 “Community Right to Challenge” (CRtC).
- 1.03 The implementation date for this part of the Localism Act was 27 June 2012. At the time the authority published the following information “Expressions of interest can be made between 1 March and 30 April 2013, and then at the same time each year thereafter.” Link to full web page:  
<http://www.norwich.gov.uk/YourCouncil/Pages/CommunityRightToChallenge.aspx>
- 1.04 This report proposes a process for receiving, evaluating and determining any expressions of interest received.

## **2.00 The Community Right to Challenge**

- 2.01 The community right to challenge process as summarized by the Department for Communities and Local Government (DCLG) is shown in Appendix A.

## **3.00 The proposed process for receiving, evaluating and determining expressions of interest**

- 3.01 The proposed process is illustrated in the following appendices:
  - Appendix B Proposed web page content.
  - Appendix C Expression of interest application form.
  - Appendix D Expression of interest application form guidance.
  - Appendix E Frequently asked questions.

## **4.00 The Evaluation Process**

- 4.01 Once all expressions of interest have been received they will be evaluated between 1 May and 30 July each year.
- 4.02 Pre-scrutiny of evaluation of any community challenges and recommendations before being sent to Cabinet will ensure robust review of decision. Scrutiny and Cabinet papers should be above the

line (as far as is possible). This would then enable representation from those submitting the expression of interest as well as public scrutiny of the decision making process. The head of service whose service was under challenge would need to provide expert advice and knowledge, but should not be part of an officer review panel. Arrangements would need to be made for this support if the HoS was involved in a challenge via a mutual. If an expression of interest proceeds to procurement then Contracts working party could be involved to guide the procurement process.

4.03 Composition of an officer review panel is therefore suggested to include at least:

- Chief Finance Officer (S151 officer - financial and BV duties)
- Corporate Leadership Team member under which affected service sits
- Lead officer from transformation programme
- Other HoS to act as challenge

Provision of expert advice and knowledge

- HoS of affected service as advisor / specialist (not decision making)

4.04 The panel will review expressions of interest (EOI) and consider if any of the following reasons for rejection apply:

- a) the EOI is NOT in writing
- b) the EOI is NOT from a relevant body
- c) the EOI is NOT for a relevant service
- d) the council has already decided to stop the service
- e) the council has already started a procurement exercise for the service
- f) the council has already started negotiating with a third party about the service
- g) the council has already published its intention to consider provision by two or more employees
- h) the service is integrated with NHS services and disintegration could cause harm
- i) the EOI contains information which is materially incorrect or inadequate
- j) acceptance of the EOI is likely to lead to contravention of an Act, statutory duty or other law

In the following circumstances the panel may ask for a revision to the EOI. The panel will then consider the EOI or the amended EOI where one is provided and consider if any of these grounds for rejection apply:

- k) the EOI contains inadequate financial information about the applicant
- l) the EOI does not show that the relevant body will be capable of providing or assisting the service by the time the procurement exercise starts

- m) the EOI does not clearly identify the service or area it applies to
- n) the EOI does not clearly identify proposed outcomes
- o) the EOI does not show how proposed outcomes will improve or promote social, economic or environmental well-being.

4.06 The council will not accept EOI's for contracts that already exist unless there is less than 24 months or less of the existing contract left to run.

4.05 Once evaluation has been completed by the officer panel then recommendations will be forwarded for review by the Scrutiny committee in July (they do not usually meet in August) and a final decision made at each September's Cabinet meeting.

**5.00 Cabinet Review and Decision**

5.01 Each September Cabinet will review the evaluation team's recommendations and decide which expressions of interest will be accepted and proceed to the procurement stage.

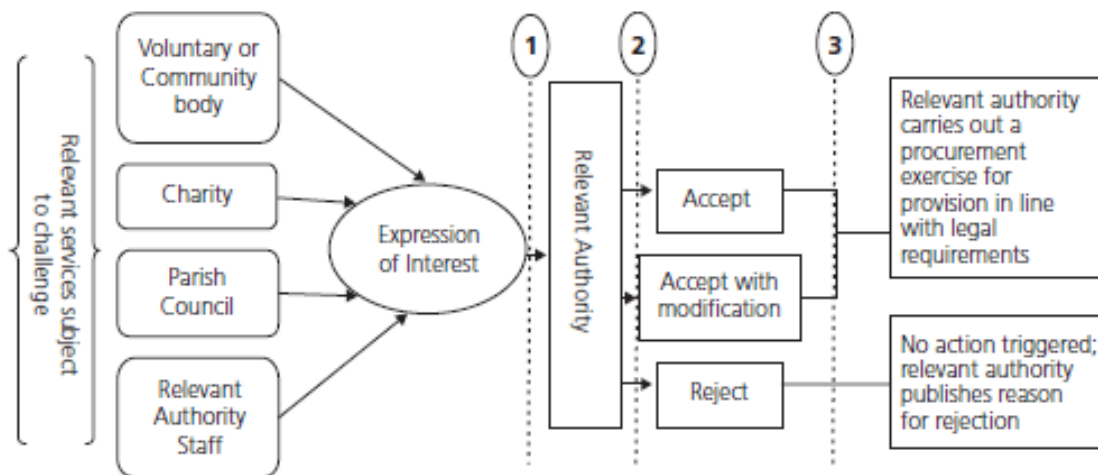
**6.00 The Procurement Process**

6.01 The expressions of interest that are accepted by Cabinet and progress to the procurement stage will follow the following timetable:

<b>Annual timetable – commencing 2013</b>	
1 Oct to 31 Dec	Preparation of tender documents and procurement process
1 Jan to 30 Sept	Procurement process
1 Oct to 30 March	Contract award and mobilisation with selected supplier
1 April	Contract start date

## Community Right to Challenge

The process is summarised by DCLG as follows:



This introduces three timelines illustrated above:

1. Commissioning cycles – EoI only acceptable at certain points
2. Response – time between submission and notification of decision
3. Procurement – minimum and maximum times between acceptance and initiation of a procurement process

It is these timetables and deadlines referred to within the body of the report

There are some **areas where meanings are defined**. Some of this is within the Act itself whilst other parts may come from subsequent guidance and, potentially, case law:

- a) Relevant Authority – as a district council we are automatically included and therefore subject to potential challenge
- b) Relevant Services – under s.81(5) of the Act there may be some specific exclusions from challenge, although as yet none have been identified. However the DCLG says it is clear that “**functions**” rather than services are excluded. Previous consultation documents suggested that “a function is a duty or power that requires decision-making by the responsible person or body, whereas a service does not”. By way of example it suggests determination of planning applications is a function whilst waste collection is not. Therefore some activities we undertake requiring decisions may fall outside the scope of this legislation (perhaps parts of planning and homelessness). Definitions of decisions and functions may become tested in the courts over time
- c) Relevant Body – these are bodies enabled to submit a CRtC. It excludes public bodies and councils but does include staff. It also states that the making of a surplus does not in itself preclude a body. Bodies do not need to have a local connection and could be national charities for example, with or without local branches. If joint bids are

made with, for example, a private firm providing back office support, that bid is still to be considered as the “relevant body” is still leading it

Details about what **should be included in an EoI** may to an extent be within the remit of local authorities. However information within the September 2011 DCLG policy statement as well as general government direction around Open Public Services (and a presumption toward plurality of provision) suggest that guidance will aim to prevent being overly prescriptive in what should be submitted.

*“...we are seeking to achieve a balance between ensuring a relevant authority has sufficient information to reach a decision...and avoiding a disproportionate burden on relevant bodies”*

The DCLG policy statement suggests that areas for inclusion will include:

- a) Details of the relevant body (including consortia, sub-contractors)
- b) Details of their financial situation
- c) Details of the service they wish to challenge
- d) Details of their ability to participate in subsequent procurement exercise
- e) The case to show it is capable of providing the service
- f) Outcomes to be achieved and improvements for users

**Refusal** will only be permissible on one or more grounds set out by the Secretary of State (SoS). The DCLG policy statement suggests the following will be allowed reasons:

- a) the relevant body is not suitable to provide the relevant service;
- b) the service is exempt from the Right and therefore not a relevant service;
- c) the service has been stopped or de-commissioned or a decision taken to do this;
- d) the expression of interest is submitted outside a period specified by the authority during which they can be submitted;
- e) the relevant service is already the subject of a procurement exercise or negotiations for a service agreement;
- f) the expression of interest is frivolous or vexatious;

Some of these are strictly procedural such as the window for submission or already under contract. However other grounds will be subject to definition and determination.

Other grounds are also being considered. This may include “unsatisfactory, inadequate or incorrect information” in the EoI. Specifically the policy statement says this “will ensure consistency with the PQQ template for procurement provided by the OGC”.

Grounds will also include where acceptance “would lead to contravention of

an enactment or a rule of law". This would cover for example equalities duties as well perhaps as best value duties. It will be interesting to see whether, for example, BV duties can be invoked to reject an EoI where that submission would lead to the break up or cherry picking of a service and leave only an expensive residual service in the hands of the authority.

The DCLG policy statement makes clear that acceptance of an EoI does not remove or vary any legal duties around **procurement**:

*"...the provisions do not make any changes to procurement law...the procurement exercise (should) be appropriate having regard to the value and nature of the contract that may be awarded as a result."*

This specifically includes OJEU regulations and of course our own standing orders and schemes of delegation.

Under s.83(8) when considering the EoI we must "consider whether acceptance...would promote or improve the social, economic or environmental well-being of the authority's area". Furthermore when running a procurement process following acceptance we must "consider how it might promote or improve the social, economic or environmental well-being of the authority's area by means of that exercise."

## Proposed web page content

### Community Right to Challenge

The Localism Act 2011 came into force on 15 November 2011. One of the main requirements of the Act is to introduce new powers for local communities, including a Community Right to Challenge.

The Community Right to Challenge provisions commenced on 27 June 2012 and form an important part of the Government's plans to create the conditions for communities to play a bigger part in shaping the running of local services.

Under the Act, a defined 'relevant body' such as a charitable organisation, voluntary or community body or a town or parish council will be able to express an interest in providing a local authority service subject to certain exceptions. Under the new law, councils must respond to this challenge and consider the positive impact the proposal could have on the community.

If a challenge is rejected the council must publish the reasons for this. When a challenge is accepted the council must run a competitive procurement process.

If you are considering making a challenge please contact the council first for an initial discussion. It may be that there are alternative ways of achieving the outcomes you are seeking.

<b>Annual timetable for making a challenge – commencing 2013</b>	
1 March to 30 April	Expressions of interest must be received by Norwich City Council.
1 May to 31 July	Evaluation and determination of expressions of interest
September	Cabinet report on expressions and recommended decisions
Late September	Notification of Cabinet decisions
Assuming acceptance of the expression:	
1 Oct to 31 Dec	Preparation of tender documents and procurement process
1 Jan to 30 Sept	Procurement process
1 Oct to 31 Dec	Mobilisation with selected supplier
1 April	Contract start date

We have developed the following information and guidance for relevant bodies in support of a challenge.

[Expression of Interest form](#)  
[EOI guidance information](#)  
[Frequently asked questions](#)

#### More Information

[Guide to the Localism bill](#)  
[Community Right to Challenge Government website](#)  
[Community Right to Challenge – Government Policy statement](#)  
[My community Rights website](#)



For additional information and queries please contact:

Procurement Team  
Norwich City Council  
City Hall  
Norwich  
NR2 1NH

T: 01603 212412

E: [procurement@norwich.gov.uk](mailto:procurement@norwich.gov.uk)

### Community Right to Challenge - Expression of Interest Form

Please refer to the Expression of Interest Guidance notes for support on completing this form.

<p><b>1. In order for an expression of interest to be considered please specify which of the following categories your organisation relates to: (see guidance note 1)</b></p>		
Category of Organisation		Organisation Name and Address (Please provide relevant registration number if you are a charity or social enterprise)
<p><b>Voluntary/ Community body</b> Unincorporated associations e.g. an unincorporated association where the stated purpose of the association in its constitution is primarily to benefit the community.</p>	√	
<p><b>Two or more members of Norwich City Council staff</b> Two or more employees of the relevant authority are eligible to use the right. We expect employees to form an employee-led structure to take on running services under the right. Employees are not expected to have finalised all the arrangements before submitting an expression of interest.</p>		
<p><b>Charitable Organisation</b> Bodies of persons or trusts established for charitable purposes only may be a voluntary or community body, but are eligible to use the right.</p>		
<p><b>Partnership working</b> Where a relevant body is working in partnership with other relevant and/or non relevant body. In this case information must be provided in respect of all partners.</p>		

**2. Please provide details of the person who we should contact to discuss the expression of interest (See Guidance note 2)**

<b>Name:</b>	
<b>Address:</b> (If different from Q1)	
<b>Telephone No:</b>	
<b>Mobile No:</b>	
<b>E-Mail Address:</b>	

**3. Please provide details of the service to which the expression of interest relates. (where known please include full name and current geographical area of where the service is currently delivered)**

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**4. Do you intend on utilising existing council assets/resources?  
(If 'Yes' please give specific details. If 'No' please go to Q5)**

<b>Council Assets</b>	<b>Required (√)</b>	<b>Details of What is Required</b>
Council Owned Computer or Telecoms Equipment		
Council owned office equipment		
Existing council buildings		
Council employees		

**5. Please provide details of the outcomes you propose to deliver in the delivery/or part delivery of the service to which your expression of interest relates: -**

*(Please note that there are three priority areas of value. Please indicate how your proposal will positively impact on one or more of these).*

**(a) How does your proposal promote the SOCIAL wellbeing of the area?**

**(b) How does your proposal promote the ECONOMIC wellbeing of the area?**

**(c) How does your proposal promote the ENVIRONMENTAL wellbeing of the area?**

**6. What are the key targets outputs which will determine whether your proposal is successful in promoting the Social, Economic and Environmental wellbeing of the area**

**7. How will your proposal support good value for money for people in the area?** *(Please include indicative costings based on how you intend on running the relevant service).*

**8. Where known, does your expression of interest impact on existing Norwich City Council staff? (If 'Yes' please give details). Where a challenge affects existing staff engaged in the delivery of the service the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) come into force.**

**9. Do you intend to deliver the service as part of a partnership arrangement with a third party organisation? (If 'Yes' please give details).**

**10. Please detail below your organisation's technical skills, resources and capability to be able to deliver the service.**

**11. Please detail below your organisation's financial capacity to be able to deliver the service.**

*In signing this expression of interest my organisation is aware that if the expression of interest is accepted that it will be subject to a formal and open competitive procurement exercise*

**Signed:**

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**Position in Organisation:**

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**Date:**

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Thank you for your expression of interest. Please be aware that there are clear guidelines stipulating who can and who cannot submit an expression of interest. Norwich City Council will notify you if any further information is required to support your expression.

Receipt of every expression of interest will be acknowledged within 15 working days. The proposals will then be considered and responded to after the Council Cabinet meeting in the September of the year that the expression of interest was submitted.

<p><b>Please send completed Expressions of Interest to: -</b></p> <p><b>procurement@norwich.uk</b></p> <p><b>Or alternatively:</b></p> <p><b>Procurement Team Norwich City Council City Hall Norwich NR2 1NH</b></p>	<p><b>For any further information, please contact the Procurement team on:</b></p> <p><b>01603 212412</b> <b>or</b> <b>procurement@norwich.gov.uk</b></p>
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**Expression of interest application form guidance.****Community Right to Challenge – Guidance Notes**

**This document is to be used to support the completion of the Community Right to Challenge ‘Expression of Interest’ form. The guidance notes are set out in the same format as the EoI for ease of use.**

**Question 1:**

**In order to be able to submit an expression of interest we must be sure that you or your organisation meets the requirements of the Community Right to Challenge. We therefore need you to let us know which of the accepted categories your organisation fits in.**

**Column 2:** Tick the relevant box that your organisation relates to. (you may tick more than one)

**Column 3:** Enter the Name & Address of your organisation (If your organisation has a regional or national address, please provide details of the address where the challenge will be dealt with). If you are a charitable organisation you must provide your charity number.

**Question 2:**

**Please provide us with details of the person who will be the contact for the Expression of Interest**

**Line 1:** Please provide the name of the person who is authorised to submit and discuss the Expression of Interest form and if successful is able to discuss the expression itself

**Line 2:** Please provide the address for any correspondence relating to the submission to be sent. This only need to be completed if the address is different from the one entered in question 1.

**Line 3:** Please provide the telephone number of the person quoted in line 1.

**Line 4:** If possible, please provide the mobile phone number for the person quoted in line 1.

**Line 5:** Please provide the e-mail address of the person quoted in Line 1.

**Question 3:**

**Please provide details of the service to which the expression of interest relates**

Please provide us with details of the service which your organisation is expressing an interest in running. It is important that you are as clear as possible as to which service you are expressing an interest in and the scope and level of the service.

As an example, you may be expressing Interest in a specific part of a service at a specific site rather than the whole service or you may be interested in delivering the whole of the service.

It is particularly important that this question is completed as correctly and accurately as possible as this could delay or invalidate your expression. If you wish to check that you have got the right details then please contact us via the details at the bottom of this form



#### Question 4:

**This question asks whether there are any current council owned assets which you may require in order to run the service. The availability of these assets would be subject to further regulations.**

**Line 1:** Please provide details of any computer equipment, including servers and telephone equipment that may be required in order to run the service. Please also supply details of any council systems that the service would require access to.

**Line 2:** Please provide details of any council-owned office equipment that would be required in the running of the service.

**Line 3:** Please provide details of any (or any part) of any council buildings that would be required in order to run the service.

**Line 4:** Please provide details of any current council employees who would be required in order to run the service. Please note that in the majority of cases the current employees would have rights to continue to be employed by any transferred service (TUPE).

#### Question 5:

**As part of the expression of interest we require information on how your proposal will positively affect the social, economic and environmental outcomes for the community in which the service is located or for the council as a whole.**

**Question 5.1:** Please provide details of how your proposal will affect the social wellbeing of the area.

**Question 5.2:** Please provide details of how your proposal will affect the economic wellbeing of the area.

**Question 5.3:** Please provide details of how your proposal will affect the environmental wellbeing of the area.

#### Question 6:

**In order to measure how successful you are in improving the social, economic and environmental outcomes by the proposal you are submitting we require you to detail the indicators that will identify whether this is the case. All measures listed should have evidence of the data identifying the before and after the proposal has been implemented.**

**Examples:**

**Examples of the measures that could be provided are:-**

The numbers of people using the service

The numbers of people aged 16-24 using the service

The numbers of people aged 65 and over who are using the service

The percentage of people in the area who have used the service

A percentage fall in the crime rate in the local area

The percentage of older people in the local area who feel safe

The proposal will need to provide current data and anticipated data.

If your organisation is unable to find relevant data to measure improvement then please contact the performance team on the number shown at the bottom of the form who can advise.

**Question 7:**

**In order to evaluate your proposal we require your projections of the cost of running the service.**

Please outline the projected costs and income of running the service over the next three years. This should include all costs including any residual costs that may be levied by the council. The costs should also identify any council staff that may transfer over with the transfer of the service to your organisation.

**Question 8:**

**Your proposal may impact on existing council staff who are involved in running the service. In most cases the current council employed staff will have rights under TUPE regulations when they transfer to the new organisation (including Pension and redundancy liabilities).**

Please identify all current staff employed in the service and any impact that the proposal will have on these staff?

**Question 9:**

**This question is intended to ask whether your organisation will be delivering the service on their own or whether they will be delivering it in partnership with another organisation.**

Please identify any the name and address of any other organisations who you will be working with to deliver the service.

**Question 10:**

**This question is designed to ensure that your organisation has the necessary skills and capacity to be able to deliver the service.**

Please explain the skills and capacity that your organisation has to be able to deliver the service. This could include areas such as Financial Management; Human Resources; Legal knowledge and Project Management.

**Question 11:**

**This question is designed to ensure that your organisation has the financial resources and capacity to be able to deliver the service.**

Please demonstrate that your organisation has the financial resources and capacity to deliver the service.

## **Community Right to Challenge – Frequently Asked Questions**

### **1. What is the Community Right to Challenge?**

The Localism Act came into force on 15 November 2011. One of the principal provisions of the Act is to introduce new powers for local communities, including a “Community Right to Challenge”.

The Community Right to Challenge gives community or voluntary sector groups, as well as parish councils and council employees, new powers to challenge and take over a local service. Under the new law, councils must respond to this challenge and consider the positive impact the proposal could have on the community. If the proposal is turned down the council must publish the reasons for this.

### **2. When did the Community Right to Challenge come into force?**

The community right to challenge came into force with effect from 27 June 2012.

### **3. What is the basis of a challenge?**

Applicants must demonstrate that their proposal will enhance the “Economic, Social and Environmental wellbeing of the area”.

### **4. What is the basis for making a challenge?**

The basis of a challenge will be in the form of an expression of interest (EoI). An EoI must provide: -

- Details of the relevant service to which the EoI relates.
- Details of the outcomes to be achieved.
- The case for providing the relevant service including how the provision will promote or improve the social, economic or environmental well-being of the area.
- Details of their financial standing and their organisational capacity to participate in any subsequent procurement exercise.

### **5. Can anyone exercise the right to challenge a council service?**

Any ‘relevant body’ may express an interest in running a local authority service under the right.

## 6. What is a 'relevant body'?

The Act lists the following as relevant bodies: -

- A voluntary or community body
- A body of persons or a trust which is established for charitable purposes only
- A parish/town council
- Two or more Norwich City Council employees
- Any other person or body specified by the Secretary of State by regulations

## 7. Can an expression of interest be made at any time?

The act states that a relevant body may submit an expression of interest to a relevant authority at any time **but** that the local authority may specify periods during which expressions of interest, or expressions of interest in respect of a particular relevant service, may be submitted. The council has specified 1 March to 30 April each year as the specified period during which expressions of interest, or expressions of interest in respect of a particular relevant service, may be submitted. Any expressions of interest received outside of this period will be rejected. However, the expression of interest can then be resubmitted during the specified period.

## 8. Are there any exemptions and if so what are they?

(a) The following services are excluded from the community right to challenge, either for a limited period or permanently: -

- Until 01 April 2014, a relevant service commissioned in conjunction with an NHS body under a partnership arrangement or by a relevant authority and an NHS body or a Strategic Health Authority acting jointly.
- Until 01 April 2014, a relevant service commissioned by an NHS body on behalf of a relevant authority.
- Relevant children's centre services that have been commissioned jointly by a local authority and an NHS body will be excluded from the right temporarily until April 2014.
- A relevant service commissioned or provided by a relevant authority in respect of a named person with a complex individual health or social care needs will be permanently excluded.
- Services which are commissioned and managed by individuals or their representatives using direct payments do not fall into the scope of the community right to challenge.

(b) **The right does not provide for delegation of the functions of a relevant authority.** The responsibility for areas classed as 'functions' rather than services remain with the relevant authority. The services that relate to a function do however remain in the scope of the right. For example, The Crime and Disorder Act (1998) place a duty on local authorities to ensure there is appropriate provision of youth justice services. Whilst consultation with interested parties as part of the commissioning cycle can be undertaken, decisions on what services are provided and the location of such services remains a function of the authority. The community right to challenge does not apply here.

Individual parts of services with young people to prevent further offending may be provided by the local authority, or by a third party on behalf of the authority. The community right to challenge will apply here.

## **9. Can a challenge be declined?**

A challenge can be declined as long as the reasoning falls into one or more of the agreed criteria. Some of which is detailed below:

- The relevant body provides information in the EOI which is deemed to be inadequate or inaccurate.
- The relevant authority considers, based on the information in the EOI that the relevant body is not suitable to provide or assist in providing the relevant service.
- The EOI relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service.
- The EOI relates to a relevant service that is in whole or in part already commissioned in conjunction with an NHS body.
- The relevant service is already the subject of a procurement exercise.
- The relevant authority has already published its intention to consider the provision of the relevant service following an EOI that was submitted at an earlier date.
- The relevant service considers that the EOI is frivolous or vexatious.

## **10. What happens if a challenge is accepted?**

Once a challenge has been accepted the council's normal procurement rules will apply. Applicants will need to bid in competition with other interested relevant bodies and commercial organisations

## **11. How do I apply?**

By completing the Expression of Interest form which is available on the council's website and returning it by e-mail to the address shown on the form or by posting it to the address shown on the bottom of the form.

## **12. When will I be told if my expression of interest is successful?**

Receipt of every expression of interest will be acknowledged within 15 working days. The proposals will then be considered and responded to after the Council Cabinet meeting in the September of the year that the expression of interest was submitted.