

Right To Challenge

Introduction

The Localism Act (Part 5, Chapter 2) provides a Community Right to Challenge in respect of relevant bodies wishing to deliver, or help deliver, services on behalf of the Council.

This Right is further explained in the Statutory Regulations and associated guidance. In essence, a 'relevant body' can submit an Expression of Interest to provide, or help provide a 'relevant service' on behalf of a 'relevant authority' (for the purposes of this guidance, the relevant authority is Bristol City Council)

What is a relevant body?

- a voluntary or community body
- a body of persons or a trust which is established for charitable purposes only
- a parish council (not applicable in Bristol)
- two or more employees of the relevant authority
- any other person or body specified by the Secretary of State by regulations

The definitions of a voluntary and community body are intended to cover a wide range of civil society organisations. They reflect the required characteristics of such bodies rather than referring to types of organisational structure. The guidance indicates that it is expected that relevant bodies that will be delivering contracts for local authorities to be incorporated with limited liability so as to limit the risk to individual members.

What is a relevant service? – the right to challenge applies to all relevant services. A relevant service is a service which is provided by or on behalf of the Council in the exercise of its functions, except those services which are excluded.

Excluded services include:

- Until 1 April 2014, those services commissioned by the Council on behalf of one or more health services (NHS body) under a partnership or joint arrangement.
- Until 1 April 2014, if a relevant service is commissioned by an NHS body on behalf of the Council
- Permanently excluded, services which related to named individuals with complex needs
- Services which are commissioned and managed by individuals or their representatives using direct payments do not fall within the scope of this Right to Challenge

Enquiries and the Expression of Interest (EOI)

A relevant body can express their interest to provide, or help provide, a relevant service on behalf of the Council. This process is formally triggered by the relevant body submitting an EOI to the Council, however, if you are thinking about getting involved in, or running a service we would encourage you to talk to us first about your ideas as using the Right to Challenge may not be the most appropriate route.

You will need to think about the following as part of any proposal:

- What do you know about the service already?
 - Is it already out to contract?
 - Who are the customers, what services are provided and what are the costs?
- Consider your capacity and strengths of your organisation
 - How can you add social value?
- Build your business case
 - Set out your model and how you meet users needs
 - Show how your model stacks up
 - Show how you will deliver the service and what credentials are
 - Be clear and concise

Officers from the Strategic Commissioning and Procurement Team will be able to help with any initial enquiry, please send an email to commissioning@bristol.gov.uk

In addition, general support is available through the following route:

- General information, support and case studies from the organisation called 'Locality' <http://mycommunityrights.org.uk/>
- The Community Rights grants programme can help with pre-feasibility (up to £10k) and feasibility work (up to £100k) from Social Investment Business (working with Locality) <http://www.sibgroup.org.uk/our-funds/>

If you subsequently decide to submit an expression of interest, this needs to be submitted in a specified format. Please download the EOI form from our webpage here.

The EOI requires the relevant body to provide comprehensive information about themselves and the proposed service they wish to deliver. Please note, the Council cannot accept an EOI unless they are submitted through this mechanism. If the service the subject of the EOI is proposed to be delivered by a consortium, or the relevant body wishes to use sub-contractors, the financial capacity of all consortium members/sub-contractors must be provided with the EOI.

Once an EOI has been submitted to the Council, this will be considered and a decision made as to whether accept or reject the EOI by a panel independent to the service area. The Council will let relevant bodies know the date by which they will receive a decision.

Acceptance of an EOI

If the Council accepts an EOI, then this will trigger a procurement process and the Council will give a date by which that procurement process will start. **Please note** that the relevant body which submits the EOI is not ring-fenced to deliver the service but will have to go through the full procurement process with the associated risk that the subsequent contract could be awarded to another organisation.

Rejection of EOI

The statutory regulations have prescribed grounds to the Council on which it can reject an EOI. These are:

- 1 The expression of interest does not comply with any of the requirements specified in the Act or in regulations
- 2 The relevant body provides information in the expression of interest which in the opinion of the Council, is in a material particular inadequate or inaccurate
- 3 The Council considers, based on the information in the expression of interest, that the relevant body or, where applicable:
 - (a) any member of the consortium of which it is a part, or
 - (b) any sub-contractor referred to in the expression of interestis not suitable to provide or assist in providing the relevant service
- 4 The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the Council to stop providing that service
- 5 The expression of interest relates to a relevant service:
 - (a) provided, in whole or in part, by or on behalf of the Council to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service; and
 - (b) the continued integration of such services is, in the opinion of the Council, critical to the well-being of those persons
- 6 The relevant service is already the subject of a procurement exercise

- 7 The Council and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing
- 8 The Council has published its intention to consider the provision of the relevant service by a body that two or more specified employees of that Council propose to establish
- 9 The Council considers that the expression of interest is frivolous or vexatious
- 10 The Council considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty

Modification of an EOI

It is possible for the Council to modify an EOI where it broadly wants to accept it but there is an error in the EOI which would prevent it from doing so. The example given in the regulations is where a relevant body submits an EOI to run twenty libraries, but the decision has been made to close one of those. The Council, with the agreement of the relevant body, could modify the EOI to nineteen libraries.

Publishing decisions

The Council is under an obligation to notify, in writing, the relevant body who has submitted an EOI of the Council's decision. The Council is under a further obligation to publish that decision on their website.

Time periods for submitting an EOI

The Council is permitted to specify time periods in which it will accept an EOI. The default position of the Council is that no time period will be set, **unless** expressly notified in the Commissioning Intentions Document. Please refer to this document to see if any time periods relate to the services you wish to express an interest in delivering.

Any questions

If you have any questions regarding the Right to Challenge, please email commissioning@bristol.gov.uk

Links

More information about the Community Right to Challenge can be found through these links:

[Localism Act \(Part 5, Chapter 2\)](#)

[The Community Right to Challenge \(Fire and Rescue Authorities and Rejection of Expressions of Interest\) \(England\) Regulations 2012 and explanatory memorandum](#)

[The Community Right to Challenge \(Expressions of Interest and Excluded Services\) \(England\) Regulations 2012 and explanatory memorandum](#)

[Statutory Guidance](#)

[Commissioning Intentions Document](#)

[Locality](#) - General information, support and case studies on the Community Right to Challenge

The [Community Rights grants programme](#) can help with pre-feasibility (up to £10k) and feasibility work (up to £100k) from Social Investment Business (working with Locality)