

Community Right to Challenge

FREQUENTLY ASKED QUESTIONS (FAQ)



Q1 *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” (CRtC from hereon in). The CRtC came into force on the 27 June 2012.

This new right gives ‘relevant body’ new powers to challenge and take over a ‘relevant’ 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.

Q2 *Can anyone use this right to challenge a council service?*

No, you need to be from what is classed as a ‘relevant body’ may express an interest in running a local authority service under the right.

Q3 *What is a ‘relevant body’?*

The Act lists the following as relevant bodies:

- A Parish or Town Council
- 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 Castle Point Borough Council employees
- Any other person or body specified by the Secretary of State by regulations

Q4 *How do I apply?*

By completing the Expression of Interest (EOI) 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 form. This requires you to provide details:

- About your organisation
- The service that you want to deliver and the geographic scope of this
- How you will deliver the service e.g. on your own or in partnership with others
- Evidence of your financial capacity and organisational capability (technical skills, experience etc) to demonstrate that you have the capacity to participate in any subsequent procurement exercise *
- The benefits of your proposal e.g. how it will promote or improve the social, economic or environmental wellbeing of the area and the measures that you plan to put in place to demonstrate this

* If you are a **newly formed voluntary / community bodies** or **emerging staff mutual** you are not expected to have finalised all of your operational arrangements before submitting an EOI to run a service. That said we require you to provide evidence on this submission to demonstrate that by the time of any

procurement exercise that you will be **capable** of providing or assisting in providing the relevant service for which this EOI relates.

Q5 *Can an EOI be made at any time?*

The act states that a relevant body may submit an EOI to a relevant authority at any time **but** that the local authority may specify periods during which EOI in respect of a particular relevant service, may be submitted.

Castle Point Borough Council has set a window of between 1st July and 31st July each year.

Q6 *Are there any exempt services and if so what are they?*

The expression of interest must relate to the provision of, or assisting in the provision of, a 'relevant service', which means any service which is currently provided by or on behalf of the authority. However, there are some 'excluded services which cannot be the subject of an expression of interest:

- Services provided in partnership with NHS bodies, or by an NHS body on behalf of the authority (until 01 April 2014)
- A service provided to a named person with complex individual health or social care needs; or
- A service which includes the exercise of a statutory power which cannot be delegated e.g. the setting of Council Tax or the determination of a planning application is not legally capable of being undertaken by anyone other than the local authority, and so cannot be the subject of an expression of interest.

So, an expression of interest can relate to services such as management and maintenance of playing fields or parks, refuse collection and re-cycling, running a leisure centre, or operation of off-street car parks. Equally, a team of authority staff might consider taking on a back office activity.

Whilst consultation with interested parties as part of the contract 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.

Q7 *Can a challenge be declined?*

Yes. There are 10 grounds on which the authority may reject a valid expression of interest:

1. That the expression of interest does not meet the statutory requirements, because it is not from a relevant body or is not for a relevant service;
2. That the supporting information is inadequate or incorrect;
3. That any member of the body making the bid, or of their consortium, is not suitable to provide the service. This would cover absence of a necessary qualification, or past conduct;
4. That the authority has already taken a formal decision to cease to provide the service. So an expression of interest cannot be used as a means to challenge an authority's decision to close a facility or cease a service;

5. That taking this service in isolation would result in a loss of integration with NHS services to the detriment of users of the integrated service. This prevents expressions of interest un-picking integrated Section 75 arrangements;
6. That the service is already the subject of a procurement exercise.
7. That the authority is already in negotiations in writing with a third party for the provision of the service;
8. That the authority has already published its intention to consider the provision of the service by a body to be set up by 2 or more employees;
9. That the expression of interest is vexatious or trivial; and
10. That the acceptance of the expression of interest is likely to lead to a breach of law or statutory duty. This would cover an expression of interest which would require delegation of statutory powers which cannot be delegated or where it would lead to a breach of the authority's duty to secure best value, for example by causing greater cost by the break-up of shared service arrangements.

The Act also requires the authority, in considering an expression of interest, to consider whether the acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the area, but this does not form a separate ground for rejecting an expression of interest.

The council does have discretion to accept an EOI even if it fails on one of these grounds if it thinks that the service area would benefit from an open procurement exercise.

Q8 *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.

Q9 *When will I be told if my expression of interest is successful?*

If there is a problem with the form itself then you will be contacted within 14 working days.

If the form has been correctly completed then you will be notified within 60 or 90 days depending on whether the area you have expressed an interest in is already subject to an existing contract or not.

Q10 *Who can I speak to for more information?*

If you would like more details about the contract schedule, procurement process or process for determining EOI please contact our Head of Civic Governance at ahorgan@castlepoint.gov.uk