

## COMMUNITY RIGHT TO CHALLENGE – Nottingham City Council's Approach

### What is the Community Right to Challenge?

The Community Right to Challenge is detailed in the Localism Act. It enables voluntary and community bodies, two or more employees of a local authority who wish to form a mutual organisation, and parish councils to express an interest in running a local authority service. These are defined as 'relevant bodies' in the legislation. Councils will have to consider an Expression of Interest (Eoi) from a relevant body against a set of criteria. If the Eoi is accepted, an open and competitive procurement exercise is triggered. In any procurement process resulting from an Eoi, the organisation that is ultimately awarded the contract may not be the one who originally made the challenge. If the Eoi is turned down the council must publish the reasons for this.

The Government has issued Statutory Guidance on the Community Right to Challenge which can be found here:

<http://www.communities.gov.uk/publications/localgovernment/righttochallengestatguidance>

### Are there other ways for Voluntary and Community Organisations to engage in service delivery?

The Right to Challenge is not the only mechanism for engaging with the Council on service delivery. Voluntary and Community Organisations already play a vital role in designing and delivering services across the Council. We recognise the valuable role the Voluntary and Community Sector (VCS) has to play in the delivery of local services and are committed to working closely with organisations to ensure that they are in a position to be able to participate in the Commissioning cycle. VCS organisations can take part in tendering processes (bidding) for services that the City Council wants to buy for the benefit of its citizens.

Nottingham City Council has developed a Commissioning Framework with the VCS and a Corporate Procurement Plan to provide a consistent and transparent approach to the way we commission and procure services for the City. The Quality and Commissioning Directorate reviews a number of service areas each year and commissions services on behalf of the Council. Please contact the Market Development Team on 0115 876 5941 or [crtc@nottinghamcity.gov.uk](mailto:crtc@nottinghamcity.gov.uk) for advice on the most appropriate route and timing.

The Nottingham Commissioning Framework is available here:

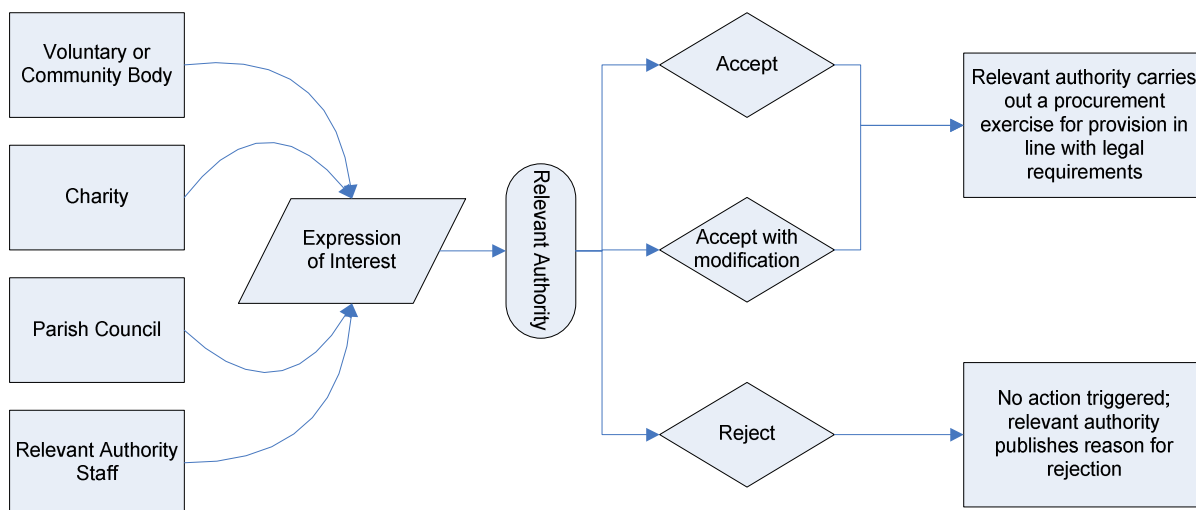
<http://www.nottinghamcity.gov.uk/article/23840/Commissioning-of-Adult-Children-and-Family-Services>

All tenders above £50,000 are advertised on Source Nottinghamshire:

<http://www.sourcenottinghamshire.co.uk/>

### Submitting an Expression of Interest

The Community Right to Challenge operates broadly as follows:



### Who can submit an Expression of Interest (Eoi)?

The Act sets out the criteria for ‘relevant bodies’ as voluntary and community bodies, charities, parish councils and two or more employees of the relevant local authority. A voluntary body is a body that is not a public or local authority, the activities of which are not carried out for profit. A community body is a body which is not a public or local authority, the activities of which are primarily for the benefit of the community.

Although Eois can only be submitted by relevant bodies, they can propose to deliver services in partnership with other organisations (both relevant bodies and non-relevant bodies). Information about all the organisations involved in the partnership will need to be included in the Eoi.

### Which services can be “challenged”?

Relevant services are defined as “a service provided by or on behalf of a relevant authority in the exercise of its functions in relation to England.” There are some services which are excluded from the right in secondary legislation. These include:

- where direct payments to individuals are made in lieu of services (personal budgets);
- services commissioned in conjunction with health services or commissioned by the NHS on behalf of a relevant authority; and
- services commissioned in respect of a named person with complex individual health or social care needs.

### When can Eois be submitted?

Where services are already commissioned/ procured or there is a commissioning review / procurement plan already in place, we aim to ensure that the Right to Challenge aligns with those cycles by setting periods when Eois can be submitted for particular services. You can find information on when Eois can be submitted from the strategic review programme timetable which can be downloaded from the Council’s CRTC webpage (<http://www.nottinghamcity.gov.uk/article/26492/Community-Right-to-Challenge>). For services that are not in this timetable, there will be a three month annual window for submission of Eois immediately following the approval of the City Council’s budget. This is usually at the City Council meeting in March.

The Community Right to Challenge does not apply if a service has already been decommissioned or stopped or a decision has been made to do this.

Please contact the Market Development Team on 0115 876 5941 or [crtc@nottinghamcity.gov.uk](mailto:crtc@nottinghamcity.gov.uk) for advice on timing.

### **What information should be included in an EoI?**

The Statutory Guidance (see link above) sets out the information on what is required in an EoI. In brief, the Expression of Interest would need to set out:

- How they meet the definition of a relevant body;
- Details of any partners or sub-contractors;
- Information about the financial resources of the relevant body;
- Evidence that the relevant body will be capable of providing the service;
- Information about the service being ‘challenged’;
- Information about the outcomes to be achieved, in particular;
  - How the proposal will promote or improve social, economic or environmental well-being;
  - How the proposal will meet the needs of service users.
- Where the relevant body consists of employees of the relevant authority, details of how they propose to engage with other affected employees

A template EoI is available for download from the Council’s Community Right To Challenge webpage (<http://www.nottinghamcity.gov.uk/article/26492/Community-Right-to-Challenge>).

### **How will it be assessed?**

The headline assessment criteria are:

- Eligibility - whether the organisation is a ‘relevant body’ and is considered suitable to provide the service; whether the service in question is in scope of the CRTC
- Legality - whether the EoI complies with the requirements of the Localism Act or Regulations; whether the proposal would comply with procurement law or would involve breaking an existing contract and whether any legal or statutory requirements associated with the service would be met;
- Value - whether the proposal would meet the council’s best value duty and demonstrate social value, including supporting Nottingham City Council’s equalities duties.

### **What happens next?**

We will respond to an EoI within 30 days specifying the maximum period that it will take to notify the applicant of our decision. Different periods will be specified for different cases, depending on factors such as the monetary value, scale and complexity of the proposal.

Where it is felt that minimal changes to the EoI would raise it to an acceptable level, there is provision for requesting modifications. Modifications must be agreed with the relevant body.

If the EoI is rejected, we will publish the reason for rejection.

If the EoI is accepted, a procurement exercise is triggered and will be carried out within the normal legal framework. This means that if the contract is for a service, or is of a value, to which the Public Contracts Regulations 2006 apply, the procedures for advertising, tendering and awarding contracts will be followed. Where the service is of a value below this threshold, then we will follow our standard procurement processes and the principles in Nottingham's Commissioning Framework.

Any procurement exercise will be competitive and open meaning that tenders can be submitted from any organisation: public, private or voluntary. **It is important to note that the organisation that is awarded the contract may not be the one who originally made the challenge. The fact that any organisation has their EoI accepted by the Council grants no special status or rights to that organisation in the procurement exercise.**

**For further enquiries about Nottingham City Council's Community Right to Challenge policy, please contact the Market Development Team in the Quality and Commissioning Directorate on 0115 876 5941 or [crtc@nottinghamcity.gov.uk](mailto:crtc@nottinghamcity.gov.uk)**

Further information and advice from the Government is available via the Community Rights website: <http://communityrights.communities.gov.uk/>