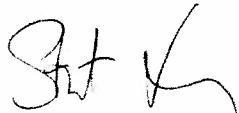




**Haringey** Council

<b>Report for:</b>	Cabinet	<b>Item Number:</b>	
<b>Title:</b>	Community Right to Challenge		
<b>Report Authorised by:</b>	Stuart Young, Assistant Chief Executive 		
<b>Lead Officer:</b>	Stuart Young, Assistant Chief Executive Bernie Ryan, Head of Legal Services		
<b>Ward(s) affected:</b>	All		<b>Report for Key/Non Key Decisions:</b> Non-Key

### 1. Describe the issue under consideration

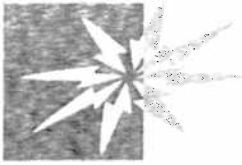
- 1.1. The Community Right to Challenge (CRTc) came into force on 27 June 2012 and gives community groups the right to express an interest in providing or assisting in providing local services.
- 1.2. A window for receiving Expressions of Interest, as permitted by section 82(2) of the Localism Act was agreed by the Leader at Cabinet Member Signing on 20 June 2012. The window will be 1 March to 30 April annually.
- 1.3. Regulations have since been made which detail the basis on which Expressions of Interest must be assessed.

### 2. Cabinet Member introduction

- 2.1 Legislation requires councils to consider Expressions of Interest under the Community Right to Challenge. This paper explains the process by which Haringey will do this.

### 3. Recommendations

It is recommended that members:



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- 3.1. note the approach to managing the Community Right to Challenge pursuant to Regulations issued under the Localism Act 2011, and
- 3.2. approve the delegation of powers for decisions on Expressions of Interest (EOI) to:
  - (a) Relevant Directors for EOI with a value up to £250,000
  - (b) The Chief Executive for EOI with a value of £250,000 and above.

## **4. Other options considered**

None.

## **5. Background information**

- 5.1. The Community Right to Challenge (CRTc) forms part of the Localism Act 2011 and gives community groups and charities - "relevant bodies" - the right to challenge councils to run local services, by making an Expression of Interest (EOI).
- 5.2. Only these groups ("relevant bodies") are eligible to submit an Expression of Interest (EOI) to provide or assist in providing one or more of the Council's services. Whilst only relevant bodies are eligible to submit an EOI, these groups are permitted to work in partnership with other organisations - with other relevant bodies and/or non-relevant bodies. The Right only applies to the provision of services - it does not provide for delegation of Council functions.
- 5.3. There are a limited number of exemptions for services where the CRTc does not apply. Primarily these include services relating to individuals with complex individual health or social care needs and services which are commissioned and managed by individuals or representatives by direct payments.
- 5.4. Requirements for what an EOI must contain are prescribed in Regulations, including financial information and capability to run the service. The Council can ask for further information to be supplied but this is optional and applicants do not have to provide information outside of the scope of the Regulations. Any such additional information, where received, may not be used as evidence on which to reject an EOI. Officers have designed a form to help relevant bodies submit their EOI and to make sure that sufficient information is available to make a decision.
- 5.5. EOI that do not provide the information prescribed can be rejected in accordance with Regulations. However, neither the Regulations nor the Statutory Guidance specify the detail of the information that should be provided. Organisations are likely to provide varying degrees of information and an individual EOI will need to be considered in the context of the service to which it relates. Guidance has been produced to assist officers in determining EOI in accordance with the Regulations.
- 5.6. The Localism Act 2011 provides that the Council must consider an EOI if it is submitted in writing and complies with requirements as specified in Regulations. The process for assessing of EOI is prescribed in Regulations and there is no scope for the Council to appraise bids outside of this. Where an EOI is accepted (or cannot be rejected) the Council must carry out a procurement exercise for the service. This will take place under existing procurement law. The approach for assessing EOI is set out in section 7 of this report.
- 5.7. The timescales for considering an EOI are for the Council to determine and it must publish these details on its website. The proposed timescales were agreed by the Leader at Cabinet Member Signing on 20 June 2012 and are designed to align with commissioning cycles as well as providing sufficient time for consideration of more complex EOI. The Council was

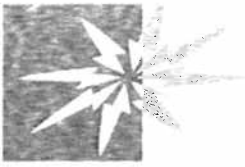


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also able to set a window of time during which it will accept EOI. In Haringey, this will be 1 March to 30 April annually. Not all local authorities have set windows for receiving EOI and some are open to receiving EOI at any time. Officers are monitoring neighbouring authorities who are currently open to EOI in an effort to gauge how popular the Right is proving.

### **6. Assessment criteria and grounds for rejection**

- 6.1. The grounds for assessing EOI are prescribed in Regulations. The Regulations set out the grounds on which local authorities can reject an expression of interest. There is no other scope on which to refuse an EOI. The Council must adhere to the grounds for rejection. Whilst there is no appeals procedure for the CRtC, decisions by the Council will be subject to judicial review and therefore grounds given for rejection should clearly state why such criteria was not met.
- 6.2. Many of the grounds for rejection listed below are procedural and there is limited scope for local discretion. There are 10 regulatory grounds on which an EOI can be rejected :
  1. The EOI does not comply with one or more of the requirements specified in the Act and regulations
  2. The body submitting the EOI provides information 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 EOI, that the relevant body, member of consortium or sub-contractor, is not suitable to provide or assist in providing the service
  4. The EOI relates to a service where a decision, evidenced in writing, has been taken by the Council to stop providing that service
  5. The EOI relates to a relevant service -
    - a. provided, in whole or in part, by or on behalf of the relevant authority 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 relevant authority, critical to the well-being of those persons
  6. The 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 2 or more specified employees of that authority propose to establish
  9. The Council considers that the EOI is frivolous or vexatious
  10. The Council considers that acceptance of the EOI is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty
- 6.3. The Council must also consider whether acceptance of an EOI would promote or improve the social, economic or environmental well-being of an authority's area. This is required under 3 different legislative duties: the Localism Act 2011, the Best Value Duty and the Public Services (Social Value Act) 2012. The application of these duties will form a significant part of Haringey's assessment of EOI.



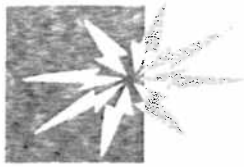
6.4. Regulations under the Localism Act specify that EOI must contain information as to how the relevant body will promote social value and under the Localism Act the Council is required to consider the same factors in carrying out any subsequent procurement exercise on acceptance of an EOI. The extent to which services deliver on social, economic and environmental priorities is also intrinsic to the Best Value Duty – the Council must consider how it can maximise any additional benefit that can be created above and beyond the benefit of merely the services themselves. Further, the Public Services (Social Value) Act 2012 requires local authorities at the pre-procurement stage to consider how the service being procured might improve the social, economic or environmental well-being of an area, and how the authority might secure that improvement in the procurement process itself. Given that the CRtC is a pre-procurement process the Public Services (Social Value) Act 2012 will apply in the assessment of an EOI.

## **7. Overview of the proposed process for managing the CRtC**

7.1. The proposed approach for managing the CRtC is outlined below:

- I. Strategy and Business Intelligence (S&BI) will act as the central contact point for receiving EOI. The relevant service head or director will be informed of any EOI received that affect their service area(s). Upon closure of the window officers in S&BI will meet with Legal Services and Procurement to conduct an initial sifting exercise of the EOI received (Assessment Stage 1).
- II. EOI at this stage will be checked against basic criteria as set out in Regulations. This initial stage of assessment aims to filter out any EOIs that clearly do not meet the criteria, for example insufficient information provided or that the service to which it relates is already the subject of a procurement exercise.
- III. EOI that pass Assessment Stage 1 will then go forward for further assessment by an evaluation team (Assessment Stage 2). This team will be set up on a case by case basis, but at a minimum it will involve a senior officer from the relevant service and officers from S&BI, Legal, Finance and Procurement.
- IV. The process for assessment is prescribed by Regulations and there is no scope for appraisal of bids outside of this. EOI will be assessed on whether the regulatory grounds for rejection are applicable.
- V. Where an EOI is eligible for rejection under the Regulations, officers can approach the body submitting an EOI with a view to modifying the proposal.
- VI. If the EOI is accepted (or it cannot be rejected), it will trigger a procurement exercise under existing procurement procedure. This will put the service as detailed in the EOI out to competitive tender on the open market.

7.2. It is proposed that the decisions to accept or reject EOI should be taken by officers. It is recommended that Directors have responsibility for the same level of decision-making as contained in the Contract Standing Orders in the Council's Constitution, that is, concerning EOI with a value of up to £250,000. For EOI with a value of £250,000 and above, it is recommended that decisions are delegated to the Chief Executive. The rationale for this is that the process for managing the CRtC is largely procedural and prescribed in Regulations. Decisions regarding EOI would be taken in consultation with the Leader or relevant Cabinet member. All decisions taken by officers would be reported to Cabinet in the autumn of each year following the EOI window.



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### **8. Comments of the Chief Finance Officer and Financial Implications**

- 8.1. Given that this is a new piece of legislation, it is not possible to gauge the level of public interest in the Right and indeed this could differ year on year. It is therefore difficult to accurately plan for a specific level of financial resource that may be required.
- 8.2. The type of resource is most likely to be officer time taken to undertake the assessments as set out in Section 8 above. If any EOI triggers a procurement exercise, this should be considered as a normal business as usual activity and be met from existing resources.
- 8.3. It is recommended that a review is undertaken around June or July 2013 assessing the volume of EOIs received, the officer time involved etc. which if significant should be considered as part of the following year's budget setting process.

### **9. Head of Legal Services and Legal Implications**

- 9.1. The Head of Legal Services has been consulted on this report.
- 9.2. The process for assessing Expressions of Interest (EOI) is in accordance with the Community Right to Challenge (Expression of Interest and Excluded Services) (England) Regulations 2012 and the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012.
- 9.3. Legal Services has been involved in the drafting of guidance to assist officers in assessing EOI in accordance with these Regulations. Further advice and support will be given to officers as required during the assessment process.
- 9.4. There is no appeals process for EOI that are rejected. The decisions of the Council will be subject to judicial review and as such, the reasons for rejection and why such criteria was not met will need to be stated clearly.
- 9.5. Any EOI that is accepted, or cannot be rejected, will trigger a procurement exercise under existing procurement procedure. This will put the service as detailed in the EOI out to competitive tender on the open market.

### **10. Equalities and Community Cohesion Comments**

- 10.1. The Council will need to bear in mind the Public Sector Equality Duty (s149 Equality Act 2010) when implementing the Right. This requires this Council to:
  - eliminate discrimination, harassment and victimisation;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **11. Head of Procurement Comments**

- 11.1. The Head of Central Procurement has been consulted on this report. The procurement implications are contained within the body of this report and we are continuing to support the ongoing development of this project.



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11.2. Both the initial evaluation of the EOI and any subsequent procurement project that is triggered by a successful EOI could have a resource implication for CPU that may impact on other procurement projects; but at this stage we are unable to forecast these demands.

### **12. Policy Implications**

12.1. The Community Right to Challenge is one of a series of community rights introduced by the Localism Act. These include the Community Right to Bid (for Assets of Community Value), the Community Right to Build and Neighbourhood Planning. The Right to Bid does have the potential for direct implications for the Community Right to Challenge. It is foreseeable, for example, that a community group may seek to list council buildings as a community asset whilst simultaneously seeking to run a service from it through the right to challenge.

### **13. Use of Appendices**

None

### **14. Local Government (Access to Information) Act 1985**