



Community Right to Challenge

Consultation response form

We are seeking your views on the following questions on the Government's proposals to introduce a Community Right to Challenge.¹ **If possible, we would be grateful if you could please respond by email.**

Please email: crtchallenge@communities.gsi.gov.uk

Alternatively, we would be happy to receive responses by post. Please write to:

Community Right to Challenge Consultation Team
Department for Communities and Local Government
5/A3 Eland House
Bressenden Place
London SW1E 5DU

The deadline for submissions is 5pm on Tuesday 3 May 2011.

(a) About you

(i) Your details

Name:	Nick Davies
Position:	Policy and Information Officer
Name of organisation (if applicable):	Children England
Address:	Unit 25, Angel Gate, City Road, London, EC1V 2PT
Email:	nick@childrenengland.org.uk
Telephone number:	02078333319

¹ DCLG (2011) Proposals to introduce a Community Right to Challenge: Consultation paper. see: www.communities.gov.uk/corporate/publications/consultations

(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response	<input checked="" type="checkbox"/>
Personal views	<input type="checkbox"/>

(iii) Please tick the *one* box which best describes you or your organisation:

Voluntary sector or charitable organisation	<input checked="" type="checkbox"/>	
Relevant authority (i.e. district, London borough, county council)	<input type="checkbox"/>	
Parish council	<input type="checkbox"/>	
Business	<input type="checkbox"/>	
Other public body (please state)	<input type="checkbox"/>	
Other (please state)	<input type="checkbox"/>	

(iv) Do your views or experiences mainly relate to a particular type of geographical location?

City	<input type="checkbox"/>	
London	<input type="checkbox"/>	
Urban	<input type="checkbox"/>	
Suburban	<input type="checkbox"/>	
Rural	<input type="checkbox"/>	
Other (please comment)	<input type="checkbox"/>	

(vi) Would you be happy for us to contact you again in relation to this consultation?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

(b) Consultation questions

Section 2 – Which services should not be subject to challenge?

Q1. Are there specific services that should be exempted from the Community Right to Challenge?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If Yes, why?

Many children's and family services are already widely contracted out to external providers, with our members competing to deliver tens of millions of pounds worth of services on behalf of local authorities every year. These contracts with the voluntary and community sector have been shown to both reduce costs and improve quality and as such we would expect that large scale commissioning would continue. In most cases these services should be open to challenge under the new proposals, on the principle that they represent public spending and service provision for which public authorities are still accountable. However, it is important to recognise that many VCS organisations add investment on top of statutory contracts with their charitable income, and that in some cases this charitable funding can be worth considerably more than the statutory funding. Any matched funding that goes into creating the totality of a local service must be taken into consideration by the local authority when determining whether to accept a challenge to current provider arrangements, and whether comparable levels of total investment in the local community could be maintained by any other provider.

Most critically, it is essential that grant awards are not conflated with service contracts won through competitive tender (a mistake that is made by local authorities and even central government departments with worrying regularity). Although grant agreements have become increasingly onerous and outcome focussed, there are still important legal differences. Whereas contracts are usually offered on an open competitive basis, with a specification of services to be delivered and a binding agreement between the parties, grants are normally awarded to help fund or develop an existing service, with far less specification, and no requirement for competition in who receives it. At its heart, the difference comes down to ownership. Whereas with a service contract, the service is ultimately owned by the funder, with a grant, the service is owned by the provider. Services which are owned by voluntary and community groups should not be subject to challenge.

Q2. Are there any general principles that should apply in considering which services should be exempt?

Explanation/comment:

Services funded by grants should be exempt.

Section 3 - Relevant bodies and relevant authorities

Q3. We are minded to extend the Community Right to Challenge to apply to all Fire and Rescue Authorities. Do you agree?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

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Q4. Should the current definition of relevant authority under the Community Right to Challenge be enlarged in future to apply to other bodies carrying out a function of a public nature? If yes, which bodies?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

Our members gave lukewarm support to this proposal. Whilst they were confident of the ability of the voluntary and community sector to deliver high quality public services, they were concerned about the unintended consequences of extending this policy before it has even been piloted.

We are also concerned that the terms 'service' and 'function' are not sufficiently well defined, with a significant grey area between the two. As such, it is unclear to us the potential scope of this proposal. For example, does a Youth Offending Team count as a function of a local authority or a service provided to its residents.

Section 4 - When a relevant authority will consider Expressions of Interest

Q5. Should regulations specify a minimum period during which relevant authorities must consider Expressions of Interest?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

We agree with the Government that it is sensible for local authorities to be able to synchronise their budgeting and commissioning processes with the Community Right to Challenge. However, the window for submitting Expressions of Interest must not be so small as to prevent effective challenging of services

Q6. If a minimum period is to be specified, what should this be?

Explanation/comment:

We think that offering a three month window during which to present the case for challenge to current provider arrangements would be an adequate minimum. The three month period should precede the relevant budgeting and commissioning cycles for the type of service being provided, in order that any decisions to accept a challenge, and then to run an open competition for the resulting contract, can be appropriately planned and incorporated. Given that some services are planned and commissioned on three-year cycles, and yet others on shorter or longer timeframes, it should be for the local authority to ensure that the appropriate window for any challenges is well-publicised and timed. There will be a careful balance to be struck between ensuring the principle of widespread challengeability on the one hand, and ensuring against routine, ad hoc and destabilising challenges to existing service provision during the course of existing contracts on the other

Section 5 - Information to be included in an Expression of Interest

Q7. Do you agree with the proposed information to be included in Expressions of Interest?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

While we agree that the information proposed is appropriate for an 'Expression on Interest', we do not think that either the term or the principle of 'Expressions of Interest' are an appropriate mechanism by which to enact a 'right to challenge'. We understand the intended purpose of the 'right to challenge' as being to empower communities themselves. It seems perverse that only organisations who are in a position to contemplate becoming the alternative service provider could use this 'right' at all. This is, however, the effect of requiring an 'Expression of Interest' as the means of registering a challenge.

We think it should be possible to for a group of residents to challenge the local authority on the quality and cost of a service, without expressing an interest in running that service themselves. For example, a Residents' Association

should be able to challenge a local authority's refuse collection service arrangements, without having to prove that they are themselves a financially viable organisation with a history of successfully emptying people's bins elsewhere. Or groups of young people unhappy with the way careers advice is being provided to them should be able to challenge the authority as to whether it could do better with another provider, without them having to provide it for themselves! It seems strange that the Government should create a 'right' that only allows those with a commercial interest in a successful challenge to use it. Surely, it would be preferable if that was in fact the exception, and the majority of challenges were made by individuals or community groups genuinely concerned about the quality of service they receive, rather than the potential profit that they could make from running it. As currently stated, this is an organisational right to submit an Expression of Interest, not a Community Right to Challenge at all.

We therefore believe that the term 'Expression of Interest' should be removed from the process of the Community Right to Challenge. Expressions of Interest will of course be invited at the outset of any tendering process that results from a successful challenge. However the stage and form required for the process under this consultation should be called a 'Case for Challenge', and the requirements for what it should contain should reflect the possibility that a strong case may be made for change, without simultaneously being an expression of interest as a potential provider.

Q8. Is there further information you believe should be provided as part of Expressions of Interest?

Explanation/comment:

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Section 6 - Period for a relevant authority to reach a decision on an Expression of Interest

Q9. Should regulations specify a minimum period during which a relevant authority must reach a decision on an Expression of Interest?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If yes, what should this be?

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Q10. Should regulations specify a maximum period during which a relevant authority must reach a decision on an Expression of Interest?

If yes, what should this be?

We believe that two months should provide sufficient time for local authorities to reach a decision, even in cases where revisions are made to an Expression of Interest or other complications arise.

Section 7 – When an Expression of Interest may be modified or rejected

Q11. Do you agree with the above listed grounds whereby an Expression of Interest may be rejected?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Explanation/comment:

While they agree with the listed grounds, our members are concerned that without a suitable external review process the Community Right to Challenge is likely to lead to a large number of judicial reviews. In order to avoid this, we suggest that contested decisions should be assessed by non-neighbouring local authorities in much the same way as police forces investigate each other.

Q12. Are there any other grounds whereby relevant authorities should be able to reject an Expression of Interest?

Explanation/comment:

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Section 8 – Period between accepting an Expression of Interest and initiating an exercise for the provision of a contract for that service

Q13. Should minimum periods between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If yes, what should the minimum period be?

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Q14. Should maximum periods between an Expression of Interest being accepted and a relevant authority initiating a procurement exercise be specified in regulations?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If yes, what should the maximum period be?

3 months

Section 9 – Support and guidance

Q15. What support would be most helpful?

Explanation/comment:

<p>Our members believe that the maintenance of local fora such as Councils for Voluntary Service and wider regional groups such as those maintained by Children England are absolutely key to supporting VCS groups. Firstly, they provide an effective and efficient conduit by which local authorities can disseminate information to local VCS organisations, both large and small. Secondly, they act as a space where VCS groups can network and come together to discuss joint working. This will be particularly important for small organisations that may have to form consortia in order to be able to bid to deliver public services. Finally, local and regional infrastructure provides invaluable training, information and capacity building services.</p>

Q16. Are there issues on which DCLG should provide guidance in relation to the Community Right to Challenge?

Explanation/comment:

(c) Additional questions

Do you have any other comments you wish to make?

END