

North Tyneside Council Report to Cabinet Date: 11 March 2013

ITEM 7(b)

Title: Community Right to
Challenge

Portfolio(s): Finance

Cabinet Member(s): Cllr Judith Wallace

Report from Directorate: Chief Executive's Office

Report Author: Viv Geary, Head of Law and Governance Tel: 6435339

Wards affected: All

PART 1

1.1 Purpose:

In follow up to the previous report to Cabinet of 14 May 2012, to inform Cabinet of the prospective introduction of the Community Right to Challenge under the Localism Act 2011 and seeking authority for certain initial steps, this report proposes the principles to be adopted for the operation of the Community Right to Challenge in North Tyneside following the introduction of relevant regulations and statutory guidance, and seeks suitable authorisation to take forward implementation of CRTC on the basis of those principles.

1.2 Recommendations:

It is recommended that Cabinet:-

- (1) Agree the principles for the implementation of the Community Right to Challenge in North Tyneside as set out in this report; and
- (2) Authorise the Head of Law and Governance, in consultation with the Strategic Director of Finance and Resources, the Client Manager – Audit, the Democratic Services Manager, relevant Heads of Service and the Cabinet Member for Finance, to formulate and publish policy and procedural guidelines for the operation of the Community Right to Challenge by the Authority on the basis of those principles, and to take forward implementation of the CRTC accordingly.

1.3 Forward Plan:

Twenty eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 6 February 2013.

1.4 Council Plan and Policy Framework

This report has no direct link to the Council Strategic Plan 2012-2015 or to the Sustainable Community Strategy 2010-13.

1.5 Information:

1.5.1 Background

The Localism Act 2011 introduced a new Community Right to Challenge (CRTC). This provides external organisations and existing employee groups with the opportunity to express an interest in providing or assisting with the provision of a service, or a part of a service, on behalf of local authorities. Authorities are required to consider such Expressions of Interest (Eols) and are only able to reject Eols on limited statutory grounds. Where an Eol is accepted, the Authority must take forward a procurement exercise in respect of that service, within a time period specified by the Authority. The CRTC is part of a suite of community rights contained within the Localism Act 2011 which came into force on 1 April 2012. The Community Right to Challenge provisions themselves came into effect on 27 June 2012.

Cabinet received a report on 14 May 2012 on the prospective CRTC provisions and authorising initial steps for implementation of the new provisions in advance of these coming into force. Following the publication in June 2012 of the Community Right to Challenge (Expressions of Interest and Excluded Services)(England) Regulations 2012 ("the regulations"), and the associated statutory guidance, this report updates Cabinet on the requirements associated with implementation of CRTC and proposes for approval key principles for the implementation of CRTC in North Tyneside.

1.5.2 Expressions of Interest: eligible bodies and services

The statutory guidance issued in June 2012 defines the '**relevant bodies**' who are entitled to submit an Eol proposing service delivery either in their own right, or in partnership with a private sector partner as a joint venture. The relevant bodies are as follows:

- A voluntary or community body;
- A body of persons or a trust which is established for charitable purposes only;
- A Parish Council;
- Two or more employees of the relevant authority; or
- Any other person or body as specified by the Secretary of State by regulations.

A 'voluntary body' means a body, other than a public or local authority, the activities of which are not carried on for profit. The fact that a body's activities generate a surplus does not prevent it from being a voluntary body so long as the surplus is used for the purposes of those activities or invested in the community. A 'community body' means a body that carries on activities primarily for the benefit of the community.

The regulations have clarified that the CRTC applies to all '**relevant services**', of the local authority, being broadly services that the Authority has the power to delegate. (The Authority's statutory functions are out of scope and therefore cannot be subject to an Eol challenge.)

The following limited number of services are specifically excluded from the CRTC under the regulations:

- (1) Until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by a relevant authority or by the Primary Care Trust;
- (2) Until 1 April 2014, a relevant service commissioned by an NHS body on behalf of a relevant authority;
- (3) A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.

It is open to the Authority to specify a period during which Eols may be submitted, either for all services, or for particular services. This is designed to limit the burden on authorities by enabling the process for submissions to align with any service commissioning cycles, or the expiry of contracts for services provided by a third party provider on behalf of the Authority. If the Authority chooses to adopt a specific period during which Eols can be submitted, then it is entitled to refuse to consider any Eol submitted outside of that time.

1.5.3 Expressions of Interest:- Requirements

Relevant bodies interested in submitting an Eol will be required to submit a minimum set of information as required by law. Amongst the key information required at this stage will be the following:

- Details of the financial position of the relevant body;
- The capacity of the relevant body to successfully manage and deliver the service in question;
- Sufficient information about the relevant service to identify it and the geographical area to which the expression of interest relates; and
- Where an expression of interest is received from an employee group, details of how that body proposes to engage with other employees of the authority who are affected by the expression of interest.

1.5.4 Acceptance or Rejection of Expressions of Interest

The Council is required to respond to all Eols within 30 days of receipt, informing the relevant body of the timeframe within which the decision on acceptance or rejection will be made. Whilst recognising that services differ greatly in levels of scope and complexity, the Authority will nonetheless aim to ensure that all decisions on whether to accept or reject an expression of interest will be made within a maximum period of six months from receipt of the expression, as agreed by Cabinet on 14 May 2012.

Authorities may only reject an Eol on one or more of the grounds specified in the regulations, as follows:

1. The Eol does not comply with the requirements of the Act or the regulations.
2. The applicant body provides information in the Eol which in the opinion of the Authority is inadequate or inaccurate in a material way.
3. The Authority considers, on the basis of the Eol, that the applicant body (or any member of a consortium of which the applicant is part, or any sub-contractor referred to) is not suitable to provide or assist in providing the relevant service.
4. The Eol relates to a service which the Authority has determined to stop providing.

5. The EoI relates to a service which is provided (in whole or in part) by or on behalf of the 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 the continued integration of such services is, in the opinion of the Authority, critical to the well being of those persons.
6. The service is already subject to a procurement exercise.
7. The Authority 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 Authority has published its intention to consider the provision of the service by a body that two or more specified employees of the Authority propose to establish.
9. The Authority considers that the EoI is frivolous or vexatious.
10. The Authority 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.

1.5.5 Key principles proposed for implementation of CRTC in North Tyneside

(a) Time periods for receipt of Expressions of Interest for specific services

It is open to authorities to determine the period when particular services are open for the receipt of EoIs. At its meeting on 14 May 2012 Cabinet decided, as an initial step, that it would accept EoIs between 1 June and 31 July in each year. However this decision was taken before publication of the regulations and formal clarification of the wide-ranging scope of services which are now subject to CRTC. Given that scope, it will be impractical for all council services to be open to challenge during the same period.

It is therefore proposed that consultation is undertaken with all relevant service areas to determine the commissioning cycles associated with contracts for services which are currently provided by third parties, and on the basis of those cycles determine and specify the periods when EoIs may be submitted in respect of the respective services, to align with those cycles and the attendant opportunity for potential procurements. This will involve review of the Contracts Register operated by the Procurement service, which in future will include details of the potential window for receipt of EoIs in respect of the service(s) associated with each contract listed. In addition the Authority will issue an annual notice (in April/May each year) of the window of opportunity for potential procurements in the upcoming year. These arrangements will allow for a structured approach to the receipt and management of any EoIs in respect of particular services.

In short therefore, the proposed approach will be as follows:

- In relation to services which are currently subject to third party contracts:
 - The Authority's revised Contracts Register will indicate, in respect of each contract for delivery of a council service, the time window for receipt of EoIs in respect of that service;
 - An annual notice will be published indicating which services are due to be subject to a procurement exercise in the following 12 months, and specifying a period for receipt of EoIs in respect of each such service.

- In relation to council services which are currently undertaken by the Authority in-house:
 - Eols will be invited in the period 1 June to 31 July in any year (the period agreed by Cabinet on 14 May 2012), to allow for consideration and determination of an Eol in the context of current and future budget setting.

(b) Receipt and determination of Expressions of Interest

Where an Eol is received, in accordance with the statutory guidance the applicant body must be notified within 30 days of the timescale within which the Authority will provide its decision as to whether the Eol is accepted or rejected.

Any Eol submitted to the Authority would in the first instance be checked by Democratic Services to ensure that it meets the statutory requirements and any other requirements specified by the Authority (e.g. that it has been submitted during a valid period for receipt of Eols for the service in question).

Where information is missing or an expression of interest is unclear, Democratic Services will advise the applicant body of this to provide an opportunity for the Eol to be appropriately amended to secure that it is technically compliant. All technically compliant Eols will be formally forwarded to the relevant Head of Service for detailed consideration in consultation with the relevant Cabinet Member. As agreed by Cabinet on 14 May 2012, the decision as to whether an Eol is accepted or rejected by the Authority must be provided within 6 months of receipt of the Eol.

As agreed by Cabinet on 14 May 2012, decisions in relation to the acceptance or rejection of Eols relating to contracts with an estimated value of up to £500,000 will be the responsibility of the relevant Head(s) of Service; while decisions relating to the acceptance or rejection of Eols relating to contracts with an estimated value in excess of £500,000 will be referred to Cabinet for determination.

Accordingly, following referral of an Eol to the relevant Head of Service, he/she will in consultation with the relevant Cabinet Member, consider the Eol and will provide a report detailing:

- Any recommendations on whether to accept or, reject the Eol;
- Where rejection is proposed, any relevant grounds for rejection of the Eol, under the specified grounds provided for in the legislation;
- Whether the expression of interest will enhance or promote the social and economic well being of residents of the Borough of North Tyneside;
- Whether and in what way the expression of interest is consistent with North Tyneside's strategic objectives as detailed in the Sustainable Community Strategy and/or any relevant Council Plan (or other strategic document);
- Whether the expression of interest presents any potential conflict with planned procurement;
- Any financial implications arising from the recommended decision;
- Where relevant, a proposed timetable for procurement arising from the Eol.

Where the total value of the contract is up to £500,000, the report will formalise and substantiate the Head of Service's decision as to the acceptance or rejection of the EoI. Where the total value of the contract exceeds £500,000, the report with the Head of Service's recommendations as to acceptance or rejection of the EoI, will be submitted to Cabinet for consideration and determination.

If the expression of interest is accepted, the resulting procurement process must commence (in the case of contracts with an estimated value of up to £500,000) no earlier than 3 months and no later than 6 months from the date of acceptance, and (in the case of contracts with an estimated value in excess of £500,000) no earlier than 3 months and no later than 12 months from the date of acceptance.

The relevant body will then be notified of the acceptance or rejection of the EoI, within the timescale specified above. Where an EoI is accepted, the notification will include details of the timescale for a prospective procurement process. Where the EoI is rejected, the reasons for rejection will be fully detailed.

c) Formulation of full policy and procedural guidelines

This report requests authorisation for the Head of Law and Governance, in consultation with the officers listed at paragraph 1.2 and the Cabinet Member for Finance, to formulate and finalise policy and procedural guidelines for the operation of CRTC within North Tyneside, on the basis of the principles outlined above, and to thereafter publish such guidelines and progress the Authority's implementation of CRTC accordingly.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1 – Cabinet approves the recommendations at paragraph 1.2.

Cabinet may choose to approve the recommendations at paragraph 1.2 of this report in order to secure the Authority's compliance with its duties to implement the Community Right to Challenge.

Option 2 – Cabinet may choose not to approve the recommendations in 1.2.

Option 3 – Cabinet may refer the proposals back to officers for further consideration of specific issue(s).

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

Agreement of the proposals will ensure compliance with the Authority's statutory obligations in relation to implementation of the Community Right to Challenge and will secure a robust and managed process is implemented within the Authority for the receipt and consideration of EoIs under CRTC.

1.8 Appendices:

None.

1.9 Contact officers:

Wendy Innes, Senior Manager, Legal Services, tel. (0191) 643 5338

Sarah Heslop, Manager Commercial Team, Legal Services, tel. (0191) 643 5456

Andrew Lowe, Principal Procurement and Commissioning Officer, tel. (0191) 643 5651

Alison Campbell, Finance Business Manager, tel. (0191) 643 7038

1.10 Background information:

The following background papers/information has been used in the compilation of this report and are available at the office of the author:

(1) [Cabinet report dated 14 May 2012, Community Right to Challenge - Localism Act 2011](#)

(2) Localism Act 2011

(3) Community Right to Challenge (Expressions of Interest and Excluded Services)(England) Regulations 2012

(4) Community Right to Challenge - Statutory Guidance, June 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5990/2168126.pdf

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The policy and procedure will be delivered within existing resources and as such will have no direct financial implications. The submission of a successful Expression of Interest may however initiate a procurement process that may have financial implications, given that the Community Right to Challenge has the potential to further externalise provision of services. Any financial implications arising from any Expression of Interest received will be set out in the relevant report as detailed above. Any Expression of Interest that involves additional financial implications for the Authority that cannot be contained within the existing budget will be reported to Cabinet / Council as appropriate.

2.2 Legal

Legal requirements associated with the Community Right to Challenge provisions are detailed in the body of the report. Adoption of the proposals will ensure compliance with the Authority's obligations in this regard as well as securing a robust process for handling the scheme.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Consultation has been undertaken with the Procurement service, Democratic Services and with the Cabinet Member for Finance. The Council's strategic partner Balfour Beatty has also been consulted in relation to the implications for the Procurement service

associated with rollout of the CRTC in connection with reviewing and updating the Contracts Register for the purposes of CRTC.

2.3.2 External Consultation/Engagement

The introduction of CRTC is a statutory requirement designed to increase opportunities for third parties to run or assist in the running of council services. As such there is no specific requirement for external consultation in connection with implementation of the scheme.

2.4 Human rights

There are no human rights implications directly arising from the proposals.

2.5 Equalities and diversity

An Equality Impact Assessment would be undertaken in relation to any expression of interest received. This will include consideration of the impact of any proposal upon groups identified in equalities legislation.

The new scheme will be publicised to ensure relevant groups have the opportunity to participate, and will be taken forward in an open and transparent way to ensure that all eligible groups have an opportunity to express an interest.

2.6 Risk management

There are no risk management implications arising from this report. Any risks arising from any expression of interest would be fully assessed and taken into account.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from the proposals.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from the proposals.

PART 3 - SIGN OFF

- Chief Executive X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager Policy, Partnerships, Performance and Communications X