



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:	Gemma Bradshaw
Position:	Policy Adviser - Communities and Transport
Name of organisation (if applicable):	Age UK
Address:	Tavis House, 1-6 Tavistock Square, London, WC1H 9NB
Email:	gemma.bradshaw@ageuk.org.uk
Telephone number:	020 303 31467

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?

Services should be considered based on the principles set out in answer to question 2.

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

Explanation/comment:

In the consultation a distinction is made between functions and services. Age UK welcomes the exemption of functions from the right to challenge as it is crucial that they remain the responsibility of the local authority.

There are however circumstances where the delivery of a function and a service can become blurred. In adult social care local authorities have assessment duties, but there are other parts of care that may overlap with this duty. For instance, it is difficult to draw a clear distinction between care management and support planning/brokerage. There is also a question about who has the responsibility for conducting reviews with people who are directing their own support and how these are triggered. Support brokers may also assist people with self-assessment. Local authorities should still however have a responsibility to offer proper assessment to people whether or not they are deemed likely to be self funders or excluded by eligibility criteria. Government guidance should clarify, with clear examples, the distinction between what can and cannot be challenged based on whether it is a function or service.

The local authority will need to consider the right to challenge in terms of existing duties, in particular the public sector equality duty. Therefore, the impact on equality for people who work, study or live in the authority's area should be a consideration in whether a service can be challenged. In addition, they should consider whether acceptance of the challenge would disadvantage vulnerable groups, notably those groups that can be identified by any of the protected characteristics as set out in the Equality Act 2010.

There should also be consideration of:

- any objections from service users, who should be fully involved in the commissioning cycle of needs assessment, analysis, design and evaluation; and
- the effect of acceptance of the challenge on the continuity of the relevant service.

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:

--

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:

There should be consideration of all public bodies operating locally being included within the definition. The right to challenge should fit with aims to better provide co-ordinated services locally. There are particular cross-overs between social care and health, where joint commissioning already exists. Without local health providers being included it could lead to a service being exempt from the right to challenge, because it is technically an NHS rather than local authority commissioned service. As long as general principles are adhered to then the right to challenge should be opened up to local public services.

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:

The process of using this new right should be as simple and open as possible to ensure it is inclusive, with a broad range of people getting involved.

There should be a flexible approach to the expression of interest (EOI), at the same time this can be balanced with reducing the burden on local authorities and reassurance for existing providers.

Groups should be able to submit an EOI at any time. Local authorities may find it useful to know that their services are being challenged and consider this in the preparation for future commissioning. The group should be notified of the process and when the EOI will be formally reviewed.

There should be a minimum period of two months each year when all EOI are considered fully. This period should be widely promoted to seek new EOI on all relevant services, from a range of groups.

Wherever possible this time period should be related to the commissioning process for the service being challenged. There should also be an opportunity for the community to present an EOI when the council is planning to decommission a service.

The process for the right to challenge needs to be clear and transparent. This is crucial for local confidence in the process and long term accountability.

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

Explanation/comment:

See response to Q5.

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

Explanation/comment:

There are some broad statements in the list of information that need to be clearly defined. For instance, the need for evidence of 'social value', 'value for money' and 'proof they are capable of providing' could be interpreted differently by different local authorities and different organisations. There should be more guidance on the evidence that would be needed to meet this requirement.

The local authority will also need to be open about the performance of the current service provision. The organisations submitting the right to challenge would need to have access to a broad range of information to show their proposal has value in comparison to the existing service, for instance the outcomes and financial implications.

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

Explanation/comment:

Further to the response in question 2, information should be provided that shows the relevant body submitting the EOI have considered the possible impact on equality; the views of service users; and continuity of service.

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?

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?

See question 5. A maximum of four weeks after the closure of the period when local authorities are considering EOI. This would mean that any

organisation that entered an EOI at the end of the period would still get a prompt response.

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

Explanation/comment:

Grounds: submitted outside a period specified by the relevant authority.

In this instance the EOI should not be automatically rejected. Instead it should be deferred to the period when the local authority is considering EOI (see question 5). This arrangement will meet the aim of pluralism and making sure that as broad a range of organisations as possible get involved.

Grounds: Would deliver poorer value for money

The organisations submitting the right to challenge would need to have access to a broad range of information to show their proposal has value in comparison to the existing service, for instance the outcomes and financial implications of the current service.

Using value for money as a grounds for rejection highlights a potential contradiction between increasing the number of providers in the sector and the need to save money. While on the one side the government is suggesting more community based organisations should be involved in public service provision, procurement of large contracts, often across local authority boundaries, is more likely to meet financial demands.

The EOI should be seen as the start of a conversation about better service provision.

Grounds: Another EOI has been accepted

This could present conflict between rival EOI, which in some cases may be seeking different changes to the service. There should be consideration of all EOI in the period before the commissioning of the service begins. For instance, the first EOI may have challenged the whole of the service whereas the second EOI challenges one part of it. Both should be considered when formulating the commissioning process.

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

Explanation/comment:

Following on from the suggestions for principles to exempt services from the right to challenge (question 2), this should also be a consideration for specific EOI: the possible impact on equality; the views of service users; and continuity of service.

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?

--

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?

For services that are currently local authority provided there should be a maximum of six months between accepting the expression of interest and the procurement exercise. This should allow for preparing and undertaking a fully engaged commissioning process, of which procurement is the end result.

There will be different maximum periods required where the EOI fits in with a currently contracted service.

Section 9 – Support and guidance

Q15. What support would be most helpful?

Explanation/comment:

The regulations must provide everyone with the support they need to engage. The community right to challenge is not simple to use. It will first require an understanding of how the right to challenge works and the limits to implementing it. If they decide to submit an Expression of Interest there are a range of skills needed, which might include setting up a community organisation; business planning; access to capital or revenue funds; engaging with service users. There needs to be a level playing field in the

commissioning process between community based organisations and those from the public and private sector.

We believe that, at the very least, local authorities should be required to publish guides on new community powers. This should be taken further to provide access to the training and skills to support communities through this process.

There should be further consideration of the capacity building packages needed to make this an inclusive community right, reaching out to socially excluded older people.

In addition to this detailed feedback should be provided to unsuccessful bidders after the process so that agencies can learn lessons for the future.

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?

Community Focus: There should be an emphasis on community throughout the use of this power. The organisation, whether private or voluntary sector, should have to demonstrate their connection to the community, through representation or their ability to grow or sustain social capital.

Good Commissioning: The way that the right to challenge has been formulated assumes the challenge is to the delivery of the service rather than the way that the service was specified. Government guidance should emphasise the right to challenge can suggest new ways of meeting better outcomes, as opposed to simply replicating the services that already exist but with different providers. There is a danger that services could become disjointed, fragmented and driven by cost rather than quality. Robust strategic management of commissioning should be central to public service reform.

END