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# The purpose of the guide

**01.01** The community right to challenge is a key part of the government’s initiative to bring local government services in England closer to the people.

**01.02** This publication aims to give practitioners a plain-language guide to the working of challenge, to what difference it makes to existing law and practice in the commissioning of services, and to what the CJC believes may be the hardest questions which may arise.

**01.03** It was drafted for the CJC by a working party comprising:

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- Norma Atlay, Strategic Director of Finance, Policy & Governance, North Herts District Council
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- David Kelly, Corporate Group Legal Services Manager, Surrey County Council
- John Serle, change consultant
- Bernard Wyld, editor, Scala News
- Julian Smith, Policy Support Officer, CIPFA, secretary
- Will Werry, consultant, chair

in consultation with Matthew West, Community Right to Challenge Team, Department for Communities and Local Government.

## WHO CAN CHALLENGE

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**01.04** Challenge is not, like freedom of information, a right available to absolutely anybody. The Localism Act gives only ‘relevant bodies’ the right to challenge. They exercise it by making expressions of interest in whatever services they would be interested in providing.

**01.05** Relevant bodies are, broadly speaking, any two or more employees of the local authority in question; and any parish council or third sector body.

**01.06** Expressions of interest (EOIs) themselves have to pass several statutory tests before they have to be accepted. The guide therefore starts with the following parts:

- Part 02 – The requirements of the Localism Act
- Part 03 – The bodies entitled to express interest.

## WHAT FOLLOWS FROM CHALLENGES

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- 01.07** The general purpose of the Act is to require competition for any services for which valid EOIs are made. Challengers may then take part in the competition, though subject to the same requirements as any other service providers. There is no express statutory requirement for any particular procurement option to be taken, or avoided; on the contrary, authorities are required to conduct procurement exercises *‘appropriate to the value and nature of the contracts which would be awarded’*.
- 01.08** Successful challenges nevertheless have the effect of overriding many of authorities’ normal client discretions as to packaging. The composition of the resulting packages often **conflict with previous packaging strategies**.
- 01.09** Successful challenges also make some profound differences to the *circumstances* in which procurement exercises are conducted. These different circumstances may include:
- the entry into the market of new and unfamiliar service providers, including consortia with unusual pairings of members. These new service providers are all likely to have **unfamiliar strengths and weaknesses**, which tenderer selection and tender evaluation criteria need to pick up
  - the intense **public and political interest** in the results. How well did the challengers do in competition? Some commentators may blame the failure of unsuccessful challenges on what they see as the bureaucratic and indiscriminating nature of conventional procurement exercises; other commentators may blame what they see as injudicious outsourcing on insufficiently thought-through statutory changes. In their own interests practitioners will need to adopt some novel criteria and procedures, and try to make sure that these criteria and procedures are seen to be fair and relevant.

## CONTENTS

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- 01.10** Competition is a vast and constantly changing subject. This guide is however addressed solely to the special features of competition when it follows challenges. It does this in the following parts:
- Part 04 – Packaging
  - Part 05 – Contract conditions
  - Part 06 – Notices and advertisements
  - Part 07 – Selecting tenderers
  - Part 08 – Evaluating tenders
  - Part 09 – Variants
  - Part 10 – The position of in-house teams
  - Part 11 – The procurement workload.
- 01.11** It concludes with the following appendices:
- Appendix A – Cost, which is extracted from Part 95 – Cost of the CJC online *Standing Guide to the Commissioning of Local Authority Work and Services*
  - Appendix B – Glossary.

**01.12** The Localism Act does not use the terms:

- **EOI** – this abbreviation is however much-needed
- **challenging** or **challengers**. The Act refers instead to submitting expressions of interest, and to the relevant bodies which submit them. Challenging and challengers are however unambiguous, and widely used, so this guide uses them too.

**01.13** The guide also refers to **challenges**. The term is not always unambiguous because distinctions sometimes have to be made between EOIs which have not, or not yet, been accepted; and those which have. The guide therefore refers when necessary to **successful challenges**; this means challenges which have been accepted, not those in which challengers won the ensuing competitions.

**01.14** The guide contains references in brackets to statutory sources and other guidance. Lists of sources can be found at the end of the parts.