



# Dacorum Borough Council

## Community Right to Challenge Guidance

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# Foreword

The Localism Act 2011 is driving a shift in power away from central government and handing it back to communities, giving them more opportunities to take control locally. The new community rights in the Act will help to create the conditions for communities to play a bigger part in shaping the world around them.

The Localism Act recognises the potential of mutuals and other such organisations to provide high-quality services at good value, and through the Community Right to Challenge gives voluntary and community groups, parish councils and local authority employees the right to express an interest in taking over the running of a local authority service that they think they can run differently or better.

The Coalition Government is encouraging more public services to become mutually owned as it recognises the potential of mutuals and other such organisations to provide high-quality services at good value. The Government thinks that innovation in public services will offer better results for local communities. The community right to challenge is an opportunity to explore all the good ideas from communities about how services can be reformed and improved to better meet local needs, and to work with groups who believe they can run services differently and better.

# Introduction

This guidance has been adapted from the Community Right to Challenge statutory guidance and sets out Dacorum Borough Council's approach to the right to challenge. The relevant statutory law is contained in Part 5, Chapter 2 of the Localism Act 2011 and The Community Right to Challenge (Expressions 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.

The Regulations:

- a) Specify information required in an expression of interest;
- b) Specify grounds whereby an expression of interest may be rejected;
- c) State which kinds of services are excluded from the Right; and
- d) Add certain fire and rescue authorities as relevant authorities.

The guidance only applies to England.

A glossary of terms is at Annex B at the end of this guidance.

Links to further information resources are contained in Appendix C.

# Section 1

## Relevant authorities and relevant bodies

1.1. The community right to challenge refers to two sets of bodies:

(a) 'Relevant authorities' which are the bodies that must consider expressions of interest and, where they accept an expression of interest, carry out a procurement exercise for the service. Dacorum Borough Council ("the Council") and Hertfordshire County Council ("the County Council") are each 'relevant authorities'

(b) 'Relevant bodies' are those bodies eligible to submit expressions of interest to deliver relevant services on behalf of relevant authorities.

This is explained below

### Relevant authorities

1.2. For the purposes of this Guide, the Council is a relevant authority and the Guide concentrates on the Council's services, but the Act lists other bodies that count as relevant authorities. Please refer to the national guidance 'Community Right to Challenge' which can be found on the following link <http://www.communities.gov.uk/documents/localgovernment/pdf/2148165.pdf> for further details.

### Relevant bodies

1.3. These include:

(a) A voluntary or community body;

(b) A body of persons or a trust which is established for charitable purposes only;

(c) A parish council; and

(d) Two or more employees of the relevant authority

(e) The Secretary of State can extend the list by regulations.

#### *Voluntary and community bodies*

1.4. A voluntary body is a body that is not a public or local authority, the activities of which are not carried on for profit. It can generate a surplus provided it is used for the purposes of its activities or invested in the community.

1.5. A community body is a body which is not a public or local authority, the activities of which are primarily for the benefit of the community.

1.6. The definitions of voluntary and community body are intended to cover a wide range of civil society organisations. They reflect the required characteristics of such bodies rather than referring to types of organisational

structure. This allows for flexibility to accommodate future forms of civil society organisation.

1.7. The Government expects the definition of voluntary and community body to include but not be limited to the following types of organisation:

- Community benefit societies (a type of industrial and provident society);
- Co-operatives whose activities are primarily for the benefit of the community (another type of industrial and provident society);
- Community interest companies;
- Charitable incorporated organisations; and
- Other incorporated forms of body such as companies limited by guarantee or shares where the company's Memorandum and/or Articles of Association state that the company's objects are in the interest of the community, rather than to make a profit for shareholders.

1.8. The way in which groups demonstrate community benefit will vary depending on their legal form and the associated requirements. Some examples are given below.

<b>Type of body</b>	<b>How community benefit is evidenced</b>
Co-operative society	A body must register with the Financial Services Authority. It must set out the society's rules, including its activities, its character and how it is organised. This is where social and community objectives should be demonstrated <sup>1</sup> .
Community benefit society	A body must register with the Financial Services Authority. Its reasons for registering must demonstrate its social objectives. It must state the society's rules and describe its activities, character and how it will be organised. It must also describe how its activities will benefit which communities, and how any surplus will be used. Its rules must not allow profit or the society's assets to be distributed to members, but that they are used to further the society's objectives <sup>2</sup> .
Company limited by guarantee or shares	A body for community interest registering with the Registrar of Companies at Companies House must provide a memorandum of association and articles of association. It may have an objects clause stating its aims and purpose. Although such objects may be commercial, if the business is a social enterprise, they must also relate to social and/or environmental objectives <sup>3</sup> .

<sup>1</sup> Further information is available at: [http://www.fsa.gov.uk/pubs/forms/MS\\_appform\\_notes.pdf](http://www.fsa.gov.uk/pubs/forms/MS_appform_notes.pdf)

<sup>2</sup> Ibid

<sup>3</sup> Further information is available at: <http://www.businesslink.gov.uk>

- 1.9. Some voluntary and community bodies may be unincorporated associations - for example, an unincorporated association where the stated purpose of the association in its constitution is primarily to benefit the community, but normally bodies delivering contracts for the Council should be incorporated with limited liability, to limit the risk to individual members. If a relevant body identifies a need to incorporate in order to be capable of providing a relevant service in its expression of interest, the period between an expression of interest being accepted and a procurement exercise starting (see Section 8) will provide an opportunity for this.

#### *Charitable bodies*

- 1.10. Bodies of persons or trusts established for charitable purposes only may be a voluntary or community body, but are eligible to use the right.

#### *Parish Councils*

- 1.11. Parish councils are not relevant authorities, but they are relevant bodies and can submit an expression of interest to provide services relating to Council functions. The term "parish council" includes town councils.

#### *Employees of the relevant authority*

- 1.12. Two or more Council employees are eligible to use the right to challenge. Employees are expected to form an employee-led structure to take on running services but are not expected to have finalised all of their arrangements before submitting an expression of interest. These arrangements would normally be finalised between an expression of interest being accepted and a procurement exercise being carried out.

#### *Partnership working*

- 1.13. Whilst only relevant bodies are eligible to submit an expression of interest, they may do so in partnership with other relevant bodies and/or non-relevant bodies, such as commercial concerns that are already carrying out work of a similar nature, possibly under contract for another council. Such cooperation may strengthen a relevant body's case that it is capable of providing the service. Where a relevant body proposes to deliver a service in partnership with one or more other bodies, certain information must be provided in the expression of interest in respect of all partners (see later and in the [government guidance](#) at Section 4).
- 1.14. Some relevant bodies will wish to form, or be part of a joint venture. Incorporated joint ventures (the joint venture is a body in its own right) will need to meet the definition of a relevant body to submit an expression of interest. One or more bodies in a contractual joint venture (co-operative arrangements between two parties that keep their separate identities) must meet the definition of a relevant body.

# Section 2

## Relevant services

- 2.1. The community right to challenge applies to all relevant services. A relevant service is a service provided by or on behalf of the Council in the exercise of its functions, except services which are excluded from the right by the Government.

### *Functions and services*

- 2.2. The right only applies to the provision of services. It does not provide for delegation of the *functions* of the Council. The responsibility for the function itself remains with the Council. The things that the Council is required to do or may do, its functions, are many and varied as will be the services that it may be necessary to provide in order for the Council to carry out those functions.

#### **What constitutes a function and a service?**

##### **Example: Planning**

Section 70(1) of the Town and Country Planning Act 1990 gives powers to local planning authorities to grant or refuse planning permission where a planning application is made to the authority. The right does not allow for the function of determining planning applications to be provided by a third party.

But, for example, the *processing* of a planning application as opposed to making the decision, may be carried out by a third party on behalf of the authority.

### *Delegation of functions*

- 2.3. The Council, in common with virtually all local authorities, has arranged for other local authorities (which includes parish councils) or named committees or officers to discharge some functions, using powers in section 101 of the Local Government Act 1972. It has and can arrange for other local authorities (which includes parish councils) to do so under the same powers. Where this is done the Council remains ultimately responsible for the discharge of the function. In the same way, other councils can ask this Council to exercise their functions. Services relating to those functions remain within the scope of the right, unless they are excluded in the Regulations.

### *Excluded Services*

- 2.4. Services commissioned by the Council on behalf of the NHS fall outside the scope of the right
- 2.5. Further services are excluded from the community right to challenge, either for a limited period or permanently: These exclusions mainly refer to services



provided by or commissioned by the NHS and/or County Councils and are not set out in detail here, but the [statutory guidance](#) gives more details on these

*Jointly commissioned/provided services and shared services*

- 2.6. Services can be shared, jointly commissioned, or jointly provided by two or more relevant authorities. For example, Westminster, Hammersmith and Fulham and Kensington and Chelsea Councils share the job of providing for education, adult social care and children's services in the respective London boroughs. If the Council receives expressions of interest for jointly provided services, it will liaise with its partner authorities to agree a timescale for a procurement exercise.
- 2.7. Other services will be shared, jointly commissioned or jointly provided by the Council together with one or more relevant authority and also together with one or more non-relevant authority, e.g. a local authority working with an NHS body. Here the application of the right will depend on:
- a) Whether the service is excluded (See the [statutory guidance](#)); and
  - b) Where responsibility for the function lies.

Only relevant services (i.e. those provided by or on behalf of a relevant authority in the exercise of its functions) are within the scope of the right; and only the relevant authority is required to consider and act on expressions of interest, though others are not prevented from doing so.

# Section 3

## Submitting expressions of interest

3.1 The Council will **not** specify time periods during which expressions of interest (EOI) will be accepted. An EOI will be accepted at any time for any relevant service (See section 2 for 'Relevant services') excluding those services which are already contracted to a third party (See section 6 for 'Grounds for rejecting an expression of interest' (EOI)). Full details of services which are already contracted out can be found in the contracts register at <http://www.dacorum.gov.uk/default.aspx?page=3588>

3.2 Expressions of interest (EOI's) should be submitted to;

**Postal Address:**

Mark Brookes, Group Manager – Legal Governance  
Dacorum Borough Council  
Civic Centre  
Marlowes  
Hemel Hempstead  
Hertfordshire  
HP1 1HH

**Email:**

mark.brookes@dacorum.gov.uk

3.3 When an EOI has been received the Localism Review Panel will assess the EOI and make a decision about timescales for procurement based on the complexity of the service (See section 8 for 'Period between an expression of interest (EOI) being accepted and a procurement exercise starting'.)

# Section 4

## Expression of Interest Requirements

### Guidance Notes

To exercise your right to challenge you will need to complete an expression of interest (EOI) and submit it to Mark Brookes, Group Manager – Legal Governance  
mark.brookes@dacorum.gov.uk

This guide will help you to structure and write your proposal. See appendix C for additional guidance when preparing your EOI.

### ***Promoting or improving the social, economic or environmental well-being***

EOIs should demonstrate how the proposal might offer social, economic or environmental benefits to the community and take into account social considerations, **over and above the provision of the service**. This could include creating jobs, improving environmental conditions. An example is given below of how one organisation provides social value.

#### **Example: Social Value**

Bulky Bob's, a social enterprise, has won contracts with Liverpool City Council and other authorities to collect reuse and recycle bulky household waste. Bulky Bob's reuses and recycles 70% of the furniture and white goods, reducing the environmental impact and saving councils money in landfill costs. They have helped over 34,000 low-income families gain access to affordable furniture and run training programmes which have provided more than 250 long-term unemployed people with skills and experience. They assess that the social benefits to the community are 2.5 times the initial investment.

#### ***Service user needs***

Proposals in EOIs must meet the needs of service users. In demonstrating how your organisation will deliver outcomes that meet the needs of service users, you may refer to evidence such as needs assessments prepared by the Council, or other sources.

#### ***Employee engagement***

EOIs should demonstrate how employees of the relevant body will engage with employees of the relevant authority. The level of employee engagement should be appropriate and proportionate to the size and nature of the service and the numbers of employees directly affected by the EOI – this should be decided upon locally. Well-established staff engagement and governance channels could play a part.

**Example: Employee engagement good practice**

When some 1,200 staff from Hull Primary Care Trust transferred to a social enterprise under the Right to Request scheme, face-to-face meetings, intranet updates and staff clinics formed their employee engagement.

# Expression of Interest Form

The Council requests further information to be supplied in the EOI than that which is outlined in the statutory regulations. As such, this information is not a requirement for considering an EOI nor will it be used as grounds on which an EOI is rejected, but may be beneficial in creating a broader picture of the proposed idea. Additional information requests are followed by 'optional'.

If you are proposing to deliver a service/s or any part of a service/s in consortium or using a sub-contractor – the information in paragraphs 4 and 2 c must be given in respect of each member of the consortium and each sub-contractor as appropriate.

Please ensure that you have read all the supporting documentation before completing this form.

## 1. Summary

- Set out your overall intent, summarising the benefits. optional
- Demonstrate how you meet the definition of a relevant body (see Section 1)

## 2. Aims and Objectives

- **Vision** – what is the driving force behind the organisation? optional
- **Mission** – the mission statement is a summary of what the organisation does or intends to do, for whom and where.
- In particular, a) how the provision or assistance will promote or

improve the social, economic or environmental well-being of the borough; and b) how it will meet the needs of the service users.

- How are the services delivered now, and how does your idea improve on that? **optional.**

**3. Range of services** – a description of the service/s that your proposed organisation will provide. This could include a range of services or a single service area.

**4. Finance** – provide information about the financial resources of your organisation.

## 5. Stakeholder engagement

- **Employee engagement** – staff-led enterprises must identify other employees of the Council that will have to be involved and informed in the development of the EOI.
- How would your organisation manage the transfer of staff under TUPE?  
**optional**
- **Other stakeholders** – identify other stakeholders who will be affected by your EOI, this will include service users, community organisations and partner organisations. **optional**

Once stakeholders are identified, consider the following questions in relation to each of them:

- What is their involvement in the idea?
- What interest do they have in developing the idea?
- How will the change affect them?
- What influence do they have on plans?
- Who else needs to be engaged?

**6. Partnership/collaboration** – if your proposal includes an intention to work in partnership or collaboration with existing enterprises or other service areas and organisations, you should outline the details here. You should also illustrate how this will benefit service users and the wider community, for example through improved community engagement and ownership. **optional**

**7. Risks** – list and briefly describe the risks that are immediately obvious in relation to the project. This may relate to staff skills in certain areas, such as financial management, leadership and governance. It may also include competition and the nature of the market for the services you wish to provide. **optional**

**8. Timescales** – provide a general statement as to the approximate length of the project and show approximate milestones. State that detailed timescales will be provided if this EOI is approved. **optional**



**9. Costs** – it is unlikely that you will have a full understanding of the costs at this stage. You might wish to give an indication of what you think the costs of setting up and running the organisation will be and recommend that a full feasibility study be carried out if the submission is successful. **optional**

**10. Governance** – you will need to consider how you will involve staff and the local community in the management and direction of the organisation. Some mutuals, for example, have service users as members and directors of the organisation. **optional**

# Section 5

## Notifying decisions on expressions of interest

The Council will publish the time periods it will take to notify the relevant bodies of its decision on an EOI on the Council's website [www.dacorum.gov.uk/localism](http://www.dacorum.gov.uk/localism)

Within thirty days after the close of the period specified on the Council's website, or within thirty days after receipt of the EOI, where a timescale has not been specified, the Council will contact the relevant body, that has submitted an EOI in writing (by letter or e-mail) to state the timescale within which the Council will make its decision.

The time periods will be decided by the Localism Review Panel which will be attended by representatives from Legal Governance, Procurement, and the relevant Service which is the subject of the EOI.

The Localism Review Panel will assess the EOI and make a recommendation to the relevant Cabinet Portfolio Holder as to whether or not the EOI should be accepted. The final decision as to whether an EOI should be accepted rests with the Portfolio Holder.

In assessing time periods required the Localism Review Panel will consider the following factors:

- The need to notify relevant bodies of a decision within a reasonable period;
- The nature, scale and complexity of the service to which EOIs relate (for example is the service shared with one or more other relevant authorities, or jointly commissioned with one or more other public bodies?);
- The complexity of the EOI received (for example do they propose radical change to the way a service is delivered?);
- The likely need to agree modifications to EOIs in order to accept them (see Section 7); and
- The timescales for any existing procurement/contract cycle relevant to the service which an EOI relates to, or any other relevant authority processes. These may include Council or Cabinet decision making or budget setting processes

## Section 6

# Grounds whereby an expression of interest may be rejected

- 6.1. The Council may only reject an EOI on one or more of the grounds specified in the Regulations. These are listed below.
- 6.2. If the Council decides to modify or reject an EOI, it will give reasons for that decision in its notification to the body that submitted the EOI. It will also publish notification on the Council's website.

### **Grounds whereby an Expression of Interest may be rejected**

1. The EOI does not comply with any of the requirements specified in the Localism Act 2011, Section 81(1) or in regulations made by the Secretary of State under section 81(1)(b)
2. The relevant body provides information in the EOI which in the opinion of the relevant authority, is materially inadequate or inaccurate.
3. The relevant authority considers, based on the information in the EOI, that the relevant body or, where applicable-
  - (a) any member of the consortium of which it is a part, or
  - (b) any sub-contractor referred to in the EOIis not suitable to provide or assist in providing the relevant service.
4. The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority 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 relevant service is already the subject of a procurement exercise.
7. The relevant 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 relevant authority 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 relevant authority considers that the expression of interest is frivolous or vexatious.
10. The relevant 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.

#### *Inadequate and inaccurate information*

- 6.3. A judgement on the adequacy and accuracy of information supplied by a relevant body must be based only on the information that the Council may require (see Section 4). It needs to have sufficient information on which to base a decision on whether or not to accept an EOI. It may consider whether sufficient and accurate information is given, for example, on financial resources, the area to which the relevant service relates, or how the proposal will meet service user needs. If it considers that the information in an expression of interest is inadequate or inaccurate it may ask the relevant body for further information.

#### *Suitability of relevant body*

- 6.4. The judgement of suitability must be based on the requirements for information to be included in an EOI (see Section 4). For example, the Council may judge that a relevant body does not have the financial resources to undertake the service, or does not demonstrate that it will be able to partake in a procurement exercise. It may judge that the relevant body does not have the approved or qualified staff that can carry out the service. The judgement on suitability must not be based on information other than that which the relevant authority may require under the Regulations.

#### *Relevant authority has stopped/decided to stop providing the service*

- 6.5. The community right to challenge is not a mechanism to force the Council to provide services it has stopped providing, or has taken a decision to stop providing. But the Council cannot reject an EOI on the ground that it is *considering* whether or not to continue to provide a service.

#### *Continued integration*

- 6.6. The Council may reject an EOI if it is related to any integrated services (i.e. a relevant service which is provided by or on behalf of the Council to a person who also receives a service provided or arranged by an NHS body) where it considers that the continued integration of the services is critical to the well-being of the persons in receipt of the integrated services. This may affect health, health-related and social care services, such as services for frail and older people, and those with issues relating to mental health, dementia, learning and physical disabilities.

- 6.7. Not all integrated services will be subject to this ground for rejection. The examples below illustrate how this may be assessed for day centres for adults with a learning disability.

**Example 1: Integration critical to the well-being of persons**

A day centre for individuals with complex needs. The health and social care staff work side by side to deliver personal care support and medical treatment to individuals who require considerable monitoring and individual care.

**Example 2: Integration not critical to the well-being of persons**

A day centre for individuals with mild to moderate needs where they gain support with daily tasks, undertake a range of activities, including for example activities which may help them find employment, and also receive health advice.

- 6.8. If the Council receives an expression of interest for a service where this ground for rejection may apply, it will seek advice from the NHS body in assessing it. As a minimum, the NHS body should be informed that an EOI has been submitted and is being considered by the relevant authorities.

*Authority entered negotiations with a third party*

- 6.9. This ground for rejection seeks to achieve a balance between giving groups the opportunity to submit EOIs and allowing processes, such as negotiations for a grant agreement, that are sufficiently progressed to be concluded. If an authority is merely considering options for future service provision, one of which is to negotiate for a third party to provide the service, this ground for rejection could not be applied.

*Authority published its intention to consider mutualising the service*

- 6.10. Under the Government's public service mutuals policy, employees proposing to establish a public sector mutual are encouraged to do so in a way that that gives employees a high degree of control. More information can be found at: <http://mutuals.cabinetoffice.gov.uk/>
- 6.11. This ground for rejection seeks to achieve a similar balance to that relating to negotiations in paragraph 6.9 above. It allows relevant bodies to submit EOIs before the point at which the Council has published its intention to consider the provision of a relevant service by an organisation that will be established by 2 or more specified employees. Once past that point, this ground for rejection allows such processes that are sufficiently progressed to continue.
- 6.12. To use this ground of rejection the Council will first have to have published their intention to mutualise. How this is done will be determined by the Council should the situation arise, but the Council has several options, including putting a statement on its website, the normal publication of minutes of a Cabinet or Committee meeting, or by an announcement in a speech. As the Council will have to show evidence of appropriate publication, such that it is easily accessible to and is likely to come to the attention of any relevant body, it is best that this be decided on a case by case basis so that it can be targeted in the best manner rather than try to adopt a 'one size fits all' solution

*Frivolous or vexatious*

- 6.13. An EOI which is likely to cause distress or irritation without justification, or if it is aimed at disrupting the work of the Council or harassing individual officers or members is vexatious.. A request could be considered frivolous if it is apparent that it is not a genuine offer to provide a service and lacks any serious purpose. The Council will reject EOIs which are complaints disguised as expressions and not genuine offers to compete to carry out a service

*Likely to lead to contravention of rule of law/statutory duty*

- 6.14. This ensures that the Council is not required to accept an expression of interest which would put it in breach of the law.

**Example:**

The Safeguarding Vulnerable Groups Act 2006 prevents anyone included on the Children's Barred List from providing childcare services. If a relevant body proposed that employed staff who were on the list would run such a service then the EOI could be rejected on the grounds that acceptance would be likely to contravene a rule of law.

- 6.15. The Council must also comply with its best value duty when procuring services, which requires it to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Guidance on the best value duty was published in September 2011<sup>4</sup>

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<sup>4</sup> <http://www.communities.gov.uk/documents/localgovernment/pdf/1976926.pdf>

# Section 7

## Modifying an expression of interest

- 7.1 If it appears to the Council that it would otherwise reject an EOI, it may seek instead to agree to it being modified. Any modification must be agreed with the relevant body. If an agreement cannot be reached, the Council may reject the EOI. Some illustrative examples of where a modification may lead to successful submission are given below.

### **Example 1: Part of a service not subject to challenge**

The Council runs a number of supervised play areas in its district. A relevant body submits an EOI to run all of those Council-run play areas. The Council has taken a decision to close one of them, meaning it is no longer a relevant service. The Council may propose to the relevant body that their EOI be modified to relate only to the remaining play areas.

### **Example 2: Inadequate information**

A relevant body submits an EOI to run the waste collection services. It does not complete the financial information section. The relevant body proposes modifying the expression of interest to include this information.

### **Example 3: Suitable body**

A relevant body submits an EOI to run a local youth club. It sets out how the outcomes it proposes to achieve will meet the needs of service users, but bases this on a survey of 3 out of the 250 young people who use the club. The relevant authority proposes modifying the EOI to include sufficient information on which it can base its decision to accept or reject.

## Section 8

# Period between an expression of interest being accepted and a procurement exercise starting

8.1 The Council will specify time periods between an EOI being accepted and a procurement exercise starting. This will vary depending on the scale and complexity of the service. The notification of the time period will be published on the Council's website [www.dacorum.gov.uk/localism](http://www.dacorum.gov.uk/localism).

8.2 All services which are already contracted out to a third party will be in the contract register online (<http://www.dacorum.gov.uk/default.aspx?page=3588>) with details of when that cycle will be coming to an end. Any EOI received for a service which has been contracted to a third party will not be accepted (See section 6 for 'Grounds for rejecting an expression of interest').

8.3 When setting a time period between an EOI being accepted and a procurement exercise starting the Council will seek to;

- Provide a fair, reasonable and realisable opportunity for employees and other bodies to bid in the procurement exercise for a service.
- Set procurement timescales based on the nature, scale and complexity of the service being procured.
- Build in existing commission cycles and Council or Cabinet decision making schedules.



# Section 9

## The procurement exercise

If the Council accepts one or more EOIs for a relevant service, it must carry out a procurement exercise for the service. The procurement exercise must be appropriate to the value and nature of the contract and must comply with procurement law. (The value of a service is defined as the total value of the service over the period of the contract)

Where the value of the service is expected to exceed the European Union Tendering Thresholds contained in the Public Contract Regulations 2006 (“the Procurement Regulations”), then the procurement exercise must follow the Procurement Regulations. Further information can be found at: [http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

Where the Procurement Regulations do not apply, or are listed in Part B of the Regulations, then the procurement exercise must follow the Council’s Procurement Standing Orders which are available on the DBC website [www.dacorum.gov.uk/procurement](http://www.dacorum.gov.uk/procurement)

Part B Services include: Hotel & restaurant services, transport by rail or water, supporting & auxiliary transport services, legal services, personnel placement & supply services, investigation & security services, education & vocational health services, health& social services, recreational, cultural & sporting services.

### *Consideration of social value in the procurement exercise*

The Council will consider how both the procurement exercise and the accepted EOI would promote or improve the economic, social or environmental well-being of the Council’s area. This must be consistent with the law applying to the awarding of contracts. The Council may include social clauses in contracts provided they comply with the relevant requirements. These are explained in the European Commission publication *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*.

### *Example of social value in a procurement exercise*

In a procurement exercise for its school transport services, London Borough of Waltham Forest asked bidders to demonstrate how their proposal could contribute to efficiencies and give added value to the service. This accounted for 10% of the assessment score and gave bidders the opportunity to demonstrate how they could

achieve a wider impact from their service to local community. The contract was won by HCT Group, a social enterprise. It proposed to reinvest any profits into a learning centre for long-term unemployed people in the borough.

#### *Relevant authorities competing in their own procurement exercises*

It is unlikely to be possible for an in-house team to submit a formal bid as part of a tender process because an in-house team will not be a separate legal entity that could submit a tender and contract with the relevant authority. An in-house team may in certain situations submit a proposal that could be considered alongside the tender process but evaluating an in-house bid that makes use of authority premises, assets and employees against tenders submitted from external organisations is extremely difficult and any attempt to do so risks being challenged by an unsuccessful provider. As the community right to challenge requires that acceptance of an EOI will lead to a procurement exercise, relevant authorities should consider very carefully the consequences of considering an in-house bid at the same time.

#### *Transparency*

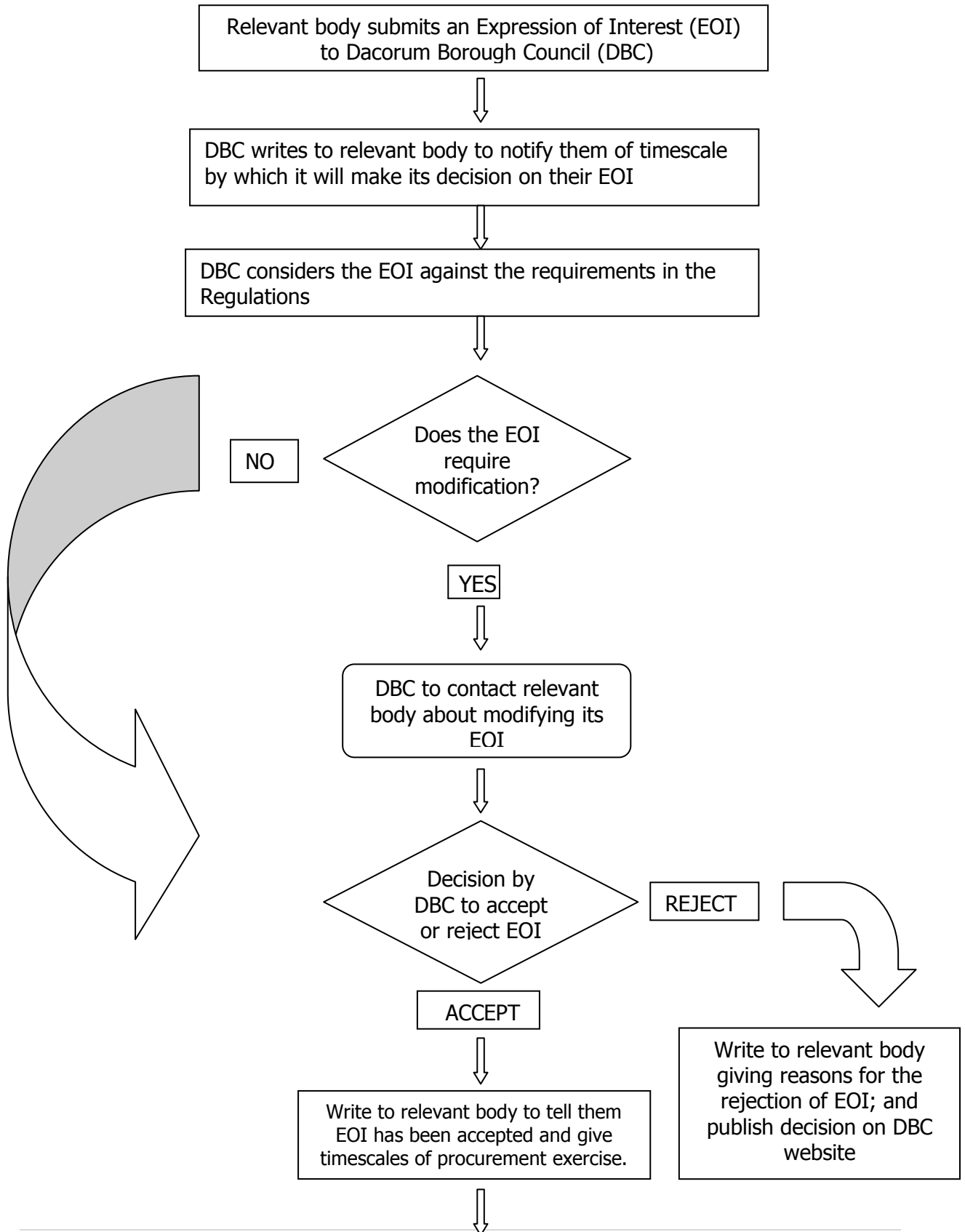
The Council complies with the DCLG's Code of Recommended Practice on publishing new contracts and tenders information as part of the government's transparency agenda.

A list of contracts can be found on the Contract Register available on the Council's website <http://www.dacorum.gov.uk/default.aspx?page=3588>

The Council advertises its tender opportunities on the Supply Hertfordshire e-tendering portal <http://supplyhertfordshire.g2b/info> , suppliers and relevant bodies are encouraged to register on this site, so they can be alerted to any relevant tender opportunities. In addition, tender opportunities suitable for Small/Medium sized Businesses are also advertised on Contracts Finder: [www.contractsfinder.businesslink.gov.uk](http://www.contractsfinder.businesslink.gov.uk)

Where the value of the service is expected to exceed the European Union Tendering Thresholds, then it will be advertised in the Official Journal of the European Union. [www.ted.europa.eu/](http://www.ted.europa.eu/)

# Appendix A - Process Map



# Appendix B – Glossary of terms

**The Council** - Dacorum Borough Council

**NHS body** - Except where another meaning is given in paragraph 2.7 of this Guidance, NHS body has the same meaning as set out in the National Health Service Act 2006.

**Pre Qualification Questionnaire** - A stage in the procurement process used to shortlist organisations to be invited to tender. The questionnaire assesses the suitability of organisations' commercial, technical and financial capabilities.

**Relevant authority** - Public body listed in the Act and the Regulations whose services can be challenged under the community right to challenge. The Act lists district, county and London borough councils as relevant authorities. Certain fire and rescue authorities are added as relevant authorities in the Regulations.

**Relevant body** - A body listed in the Act which can express an interest in providing a relevant service. The Act lists voluntary and community bodies, bodies of persons or trusts established for charitable purposes only, parish councils and two or more employees of the relevant authority as relevant bodies. Other persons or bodies can be specified as relevant bodies by regulations.

**Relevant service** - A service provided in the exercise of any of a relevant authority's functions, either by the relevant authority using its own workforce, or provided on its behalf under a service contract or some other arrangement, unless such a service is excluded from the community right to challenge in the regulations.

**The Act** - The Localism Act 2011

**The Regulations** - The Community Right to Challenge (Relevant Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 and the Community Right to Challenge (Requirements for Expressions of Interest and Excluded Services) (England) Regulations 2012.

**The Right** - The community right to challenge.

# Appendix C - Resources

## Guides and Toolkits

### **Community Right to Challenge Statutory Guidance:**

**<https://www.gov.uk/government/publications/community-right-to-challenge-statutory-guidance>**

### **The Localism Act 2011:**

#### **What does the Localism Act mean for community organisations?**

<http://locality.org.uk/wp-content/uploads/Community-Rights-and-the-Localism-Act.pdf>

### **Social Enterprise Coalition – The Right to Run**

[http://www.socialenterprise.org.uk/uploads/editor/files/Publications/Right\\_to\\_Run\\_final.pdf](http://www.socialenterprise.org.uk/uploads/editor/files/Publications/Right_to_Run_final.pdf)

## Central Government Support

**Mutuals Information Service** The Mutuals Support Programme provides professional support to new and developing mutuals so they can overcome barriers to growth. <http://mutuals.cabinetoffice.gov.uk/>

### **Mutuals Support Programme**

The Mutuals Support Programme is designed to help promising mutuals develop by providing the professional expertise and advice they do not have access to and can't fund themselves. <http://mutuals.cabinetoffice.gov.uk/documents/mutuals-support-programme-criteria>

### **Pathfinder Programme**

12 pathfinder projects have been set up with fledgling mutuals being set up by public sector employees- with the intention to help government establish the type of support and structures that employee-led mutuals in the public sector will need on an on-going basis. <http://mutuals.cabinetoffice.gov.uk/sites/default/files/documents/Mutual%20Pathfinder%20Progress%20Report.pdf>

## **Mutuals Taskforce**

Will drive reform at the centre of government.

<http://mutuals.cabinetoffice.gov.uk/about>

# **Websites**

## **My Community Rights**

<http://mycommunityrights.org.uk/community-right-to-challenge/>

## **HM Gov Community Rights**

<http://communityrights.communities.gov.uk/>

# **Support Organisations**

## **The Charity Commission**

Charity commission has produced guidance on the legal and good practice issues that charities need to consider around delivering public services.

<http://www.charity-commission.gov.uk/Publications/cc37.aspx>

## **NAVCA: Local Commissioning and Procurement Unit**

NAVCA's Local Commissioning and Procurement Unit provides practical information, advice and guidance on public service delivery by voluntary sector organisations.

They work with support and development organisations to provide information, resources and help to improve local commissioning in communities.

<http://www.navca.org.uk/lcpu>

<http://www.navca.org.uk/stratwork/positions/procurement>

There are various relevant discussion groups at <http://www.navcaboodle.org.uk> but you will need to create a profile to access it.

## **NCVO: Support for Public Service Delivery**

NCVO provide support, advice and networking for the public, private and voluntary and community sector working together, delivered through their Public Service Delivery Network and Public Services team.

<http://www.ncvo-vol.org.uk/psdnetwork>

<http://www.ncvo-vol.org.uk/psd>

## **ACEVO**

The Association of Chief Executives of Voluntary Organisations (ACEVO) provide a number of resources on commissioning and procurement, including:

Factsheets and publications

<http://www.acevo.org.uk/Services+Resources/Procurement+Commissioning/Publications+Factsheets>

Frequently Asked Questions

<http://www.acevo.org.uk/Services+Resources/Procurement+Commissioning/FAQs>

Case studies based on real procurement and commissioning processes

<http://www.acevo.org.uk/Services+Resources/Procurement+Commissioning/Case+Studies>

### **Social Enterprise UK**

A social enterprise is a business that trades for a social and/or environmental purpose. Social Enterprise UK offers advice and support for anyone starting, growing or moving to a social enterprise.

<http://www.socialenterprise.org.uk/advice-support>