

Impact of the Community Right to Challenge and Community Right to Bid

This briefing applies to English local authorities however the findings may be of interest to local authorities in Scotland (considering the development of a Community Empowerment and Renewal Bill) and within Wales and Northern Ireland when considering community engagement issues.

Key issues:-

- The Community Right to Challenge and the Community Right to Bid were introduced under the Localism Act 2011 and subsequent regulations.
- This briefing provides an analysis of responses to an APSE member survey on the impact and take up of these new 'community rights'.

1. Introduction

The Community Right to Challenge and the Community Right to Bid (otherwise known as the 'Assets of Community Value Regulations') were amongst a new set of community rights introduced under the Localism Act 2011. Since the introduction of the new rights councils (within England) have looked at ways to ensure that they are compliant with new obligations. However many APSE member authorities reported that they felt the regulatory nature of the new community rights did not enhance working with charities, or third sector organisations, and in some cases the new regulatory framework could 'put off' these groups from becoming involved in local service delivery.

As a result of these concerns being expressed APSE undertook a survey of member authorities to establish the take up of the new rights and attitudes towards implementation. This briefing highlights the findings of the survey.

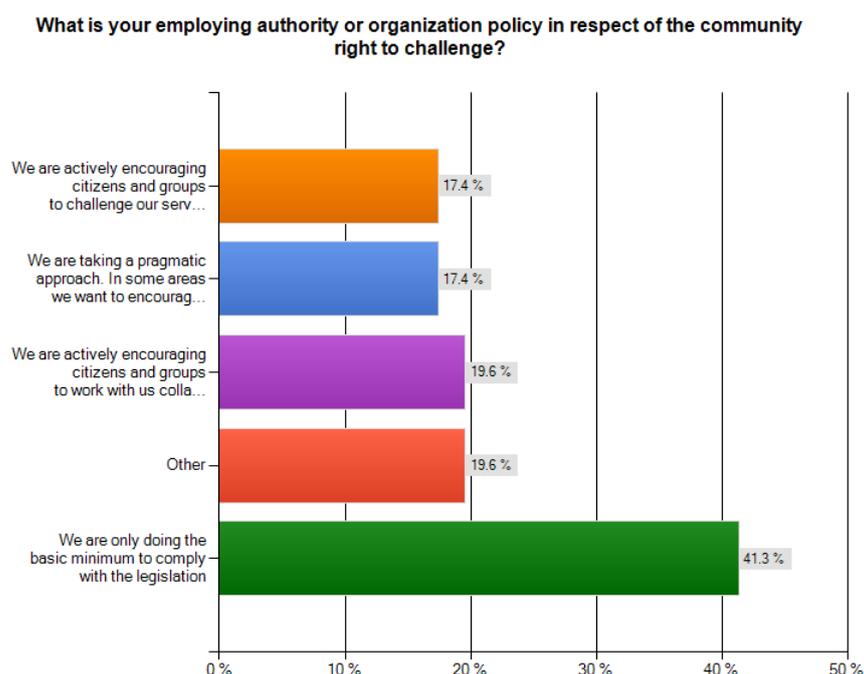
2. Take up of the Community Right to Challenge

Of 56 respondent local authorities just 6 had received an expression of interest in running part or all of a local service from a local charity or non-profit making body (based within the local authority boundaries) with 1 authority reporting an expression of interest had been received from a charity or non-profit making body outside of the local authority's immediate area. Just 7 authorities reported that they had received interest from staff groups wishing to form a staff cooperative or mutual.

Many additional written comments reported that the level of understanding of Community Right to Challenge was low amongst residents and that there general 'apathy towards the new rights'.

2. Policy towards the Community Right to Challenge

The survey sought to establish attitudes and policy at a local level towards the Community Right to Challenge. Whilst some councils are actively encouraging take-up of the new community rights others may view the rights as burdensome and prefer other means to engage with local groups. 41.3% of respondents said that they are only doing the 'basic minimum' to comply with the legislation whilst 19.6% said that they are actively encouraging take-up of the new rights. A further 17.4% reported that they are taking a pragmatic approach to the issue; in some areas they wish to encourage challenges but in other areas a lesser approach if there is no obvious benefit to residents or services. A further 19.6% reported that they are actively working with citizens to encourage take up of the new community rights.



3. Volume and take-up of the Community Right to Challenge

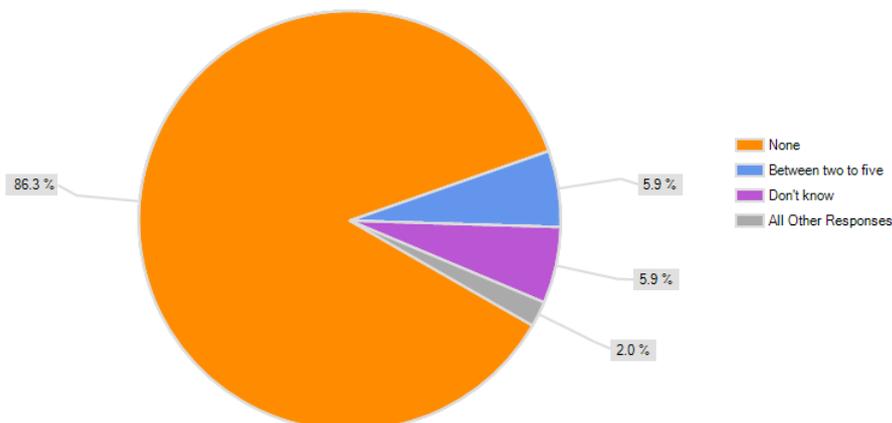
With over 86% of respondents reporting that they had not received any official expressions of interest in running services of those that had received expressions of interest these were limited; in volume terms between just one and five expressions had been received - so authorities are not receiving voluminous quantities of expressions of interest even when some interest has been noted locally.

When asked for commentary on the volume and take up of expressions of interest many responses point towards a more collaborative, rather than prescriptive approach, to working with local community groups, charities and the third sector.

'As we actively work with other local groups, Town and Parish Council's for example, to devolve services to a local level we are not expecting a great interest in the Community Right to Challenge in the short term'

'We have received 3 initial enquiries but no formal challenges. Having spoken to the groups involved (both local groups and staff) it is unlikely a formal challenge will materialise'

How many challenges have you received under the community right to challenge?

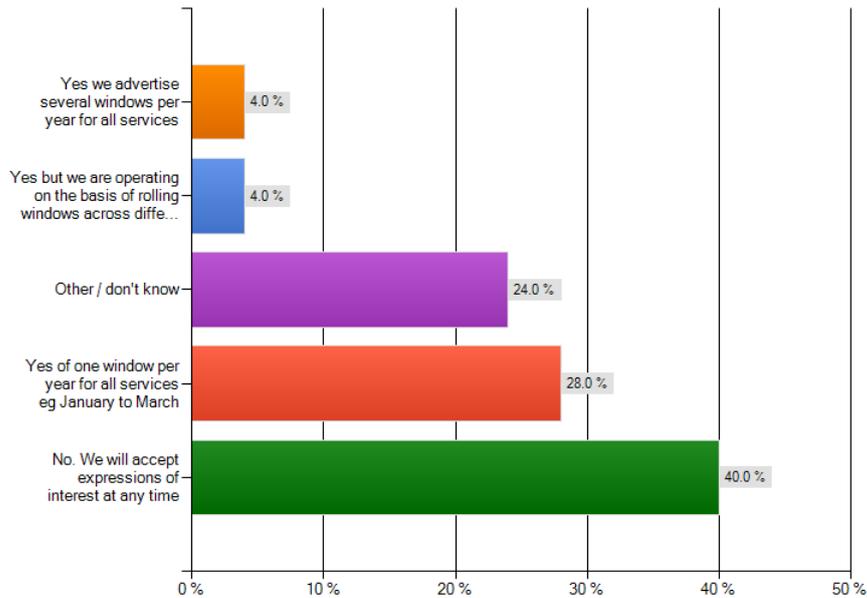


Amongst the small number of authorities that reported receipt of an expression of interest only one authority reported that it had asked for that expression of interest to be modified. This appears to be consistent with concerns expressed in workshops run by APSE with member authorities, being that modifications to expressions of interest could send out the wrong message, for example, when a modification may still be insufficient for the expression of interest to be ultimately accepted. In the majority of cases however expressions of interest have simply not been forthcoming from the eligible groups.

4. Managing the timetable for expressions of interest

Under the regulations local authorities have a choice to either accept an expression of interest at anytime or to advertise 'windows' as to when they would be open to accept expressions of interest, in running part or all of their services at specific times (this is to help align with commissioning cycles for services). 40% of authorities reported that they will accept expressions of interest at anytime - in other words they have not specified a window for receipt of expressions of interest. 28% of respondents said that they had identified one set window per year for all services and some of the cited reasons for this were reported as allowing the cycles to align with service planning in the January to March period. The remaining authorities operated on either 'rolling windows' with a timetable aligned to service reviews and when they might welcome expressions of interest or several windows across the year when expressions of interest may be submitted. Of the 24% of 'other / don't know' responses the additional information provided indicates that many authorities have yet to determine their approach to the timetable or windows available for expressions of interest to be received and considered.

Have you specified a 'window' in which you would be prepared to receive community right to challenge expressions of interest



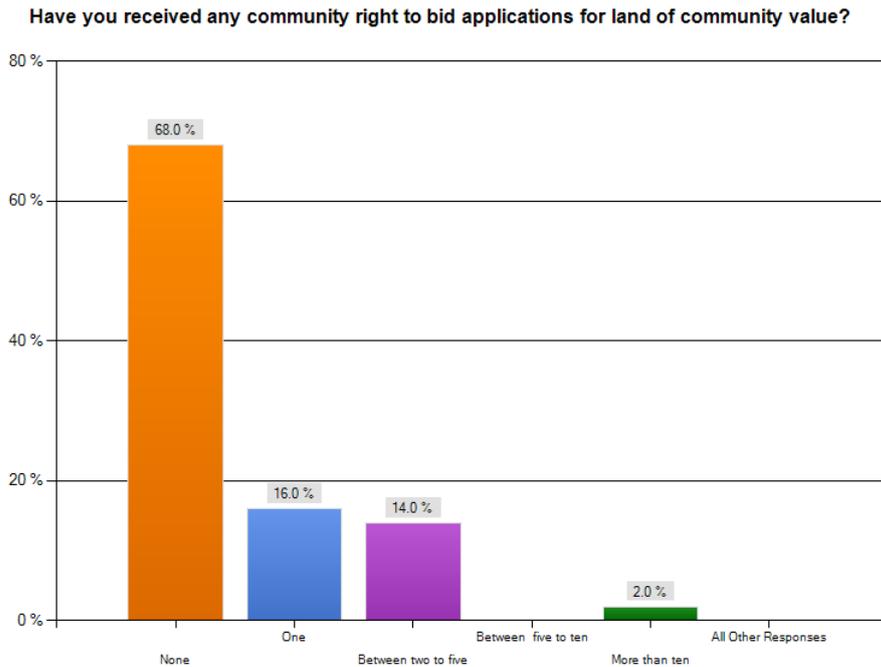
5. Land of community value (Community Right to Bid)

This new right was originally described as a 'Community Right to Buy' but the new right does not confer on local authorities, or indeed private land owners, any obligation to sell land to community groups nor does it confer any right to the money that would be needed to purchase the community land or asset.

This new right was however designed to provide a moratorium to allow community groups the time to consider how they might go about purchasing land or assets, such as, for example, a library building or a post office. The complexity of the process introduced by the regulations was a concern for many APSE member authorities; they felt that whilst they were under a duty to set up new lists of land listed as 'assets of community value' or to keep records of land which had not been listed as land of community value (following a community bid for classification) the regulatory burden would outweigh the interest in taking up this new right. These concerns would appear to be supported by the survey results.

68% (of the 80% of authorities able to answer this question) had received no interest in the community right to bid, whilst 16% had received only one expression of interest in having land listed as being 'land of community value' with 14% receiving between 2 and five bid applications. Only 2% reported receipt of more than ten applications.

Of those bids received a common theme of applications related to pubs, markets and in one instance a scout hut. A further interesting report came from one authority reporting a bid from a neighbouring parish council to purchase land that straddled a car park owned by one of the authorities to draw the land into the ownership of the parish council. Rather than the take-up of the right to bid amongst organised community groups it would appear that parish councils may be in a position to better explore possible bids for land of community value. However the issue of funds, to ultimately purchase any land that is subject to being listed as land of community value, will remain a barrier for many groups.



In terms of whether to accept or reject a request for land to be listed, as land of community value, many authorities were of course unable to answer this question due to the low take up of applications; however amongst those that had received bids it would appear to be a 50/50 split between acceptance, that land is listed as land of community value, and those that were rejected. Some authorities also reported that the applications were also withdrawn by the community group making the initial approach (to have the land listed as land of community value). Many had taken an approach to have constructive discussions with the landowners. Interestingly in many cases the land was privately rather than publically owned land or premises.

7. Involvement of frontline services in the new rights.

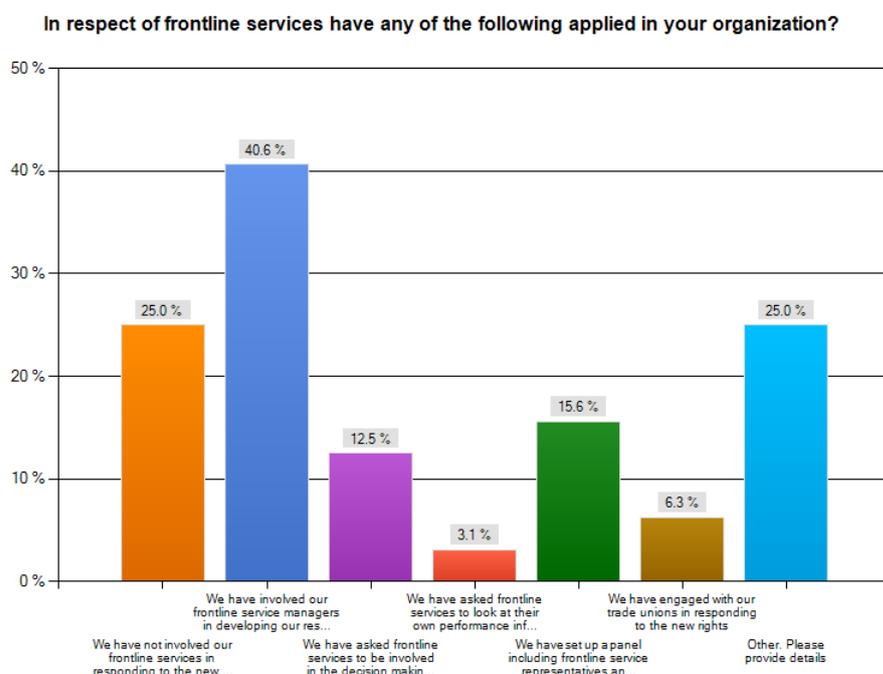
As the new rights introduce new dynamics to council services APSE wanted to explore the level of involvement of frontline services, in developing responses, to the new rights. For example a successful right to bid could see a resultant procurement exercise for all or part of a service and could therefore include an in-house bid for a service, against external competitors, in a manner similar to compulsory competitive tendering (CCT). Equally exploring whether a right to bid complies with a local authorities duty of best value may involve service data and financial data from frontline services.

Encouragingly over 40% of authorities have involved their frontline services in developing strategies and protocols for dealing with new community rights, 12.5% are also involving frontline services in the decision making processes with 15.6% reporting a panel will or does include frontline service representatives. However 25% reported that they have not involved their frontline services in the development of the new rights which is a concern if decisions are made on the impact on a service, in accepting a right to bid, in the absence of technical and operational knowledge about that service.

In many 'other responses' the narrative would appear to suggest that a number of authorities have developed the approach to new community rights through policy, procurement and legal teams alongside elected members. Others have looked to convene panels at a later stage in their internal processes, which would include frontline services, to consider expressions of interest, looking across the board at the impact of any expression of interest on:-

- Service integration and efficiencies
- Technical and operational ability
- Business and financial implications (particularly in bids for parts of services)
- Performance, best value and other statutory duties

Some also reported that frontline services have been encouraged to explore collaboration, rather than the route of the new community rights, as a more effective means to engage with communities, examples include friends of parks groups, local management boards of community facilities and 'street wardens'.



8. APSE comment

The survey findings provide a reasonable sample to look at the response from local authorities to the new community rights, and their approach to tackling these new duties, and dealing with new regulations and requirements.

It would appear that the take up of the new rights has been somewhat limited even where authorities have been open about their willingness to accept bids to run local services. Commonly cited barriers include finance in the case of land of community value and the inevitability of a procurement exercise in the community right to bid. Local authorities are adopting a more flexible approach to collaborative working with communities as opposed to working through a more prescriptive route.

APSE member authorities already have a long history of collaboration with residents, community groups and local businesses, in the design and delivery of local public services. Engagement with these groups is seen as critical to the success of frontline services and to help build sustainable local relationships and indeed local economic activity. Whilst councils actively encourage this it would appear many local authorities do not see the new suite of community rights as being a necessary addition to existing duties to collaborate and consult with local communities, and residents, under other existing measures.

It remains to be seen if there will be a future groundswell of interest in utilising the new community rights or whether they will remain something of a damp squib in terms of genuine take-up by local communities. A further concern expressed by some respondents is that there could be a gap created by genuine community groups that is filled by 'Trojan horse' interest from partnerships with private for profit companies; many authorities do not feel this would be in keeping with the aims of a localism agenda for local service delivery.

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