

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

2 JULY 2009

COUNCILLOR CALL FOR ACTION AND SCRUTINY OF CRIME AND DISORDER ISSUES

Report from: Deborah Upton, Assistant Director Housing and Corporate Services

Author: Julie Keith, Head of Democratic Services

Summary

This report invites the Overview and Scrutiny Committee to comment on proposed changes to the Constitution to give effect to new powers for councillors designed to help them solve problems in their wards. The new powers are known as the 'Councillor Call for Action' (CCfA) and came into effect on 1 April 2009.

It also explains new arrangements for the scrutiny of crime and disorder issues and the new requirement for this responsibility and associated provisions to be assigned to a designated Overview and Scrutiny Committee with effect from 30 April 2009.

This report will be considered by the Cabinet on 14 July and at the Council meeting on 30 July 2009.

1. Budget and Policy Framework

- 1.1 With the exception of minor changes, all changes to the Constitution are a matter for decision by the Council following consideration of the proposals by the Monitoring Officer. The Monitoring Officer has delegated authority to make minor changes, with a copy being supplied to all Group Leaders and Whips within 14 days of any minor changes being made.
- 1.2 Changes to the Constitution are now required to give local effect to the provisions of the Local Government and Public Involvement in Health Act 2007 relating to the introduction of a Councillor Call for Action and timescales for responses to Overview and Scrutiny reports and recommendations together with provisions in the Police and Justice Act 2006 relating to arrangements for scrutiny of issues relating to crime and disorder.

- 1.3. These new powers for Overview and Scrutiny Committees may have a positive impact in delivery of LAA target NI4 – the percentage of people who feel they can influence decisions in their locality. In addition there are a range of LAA indicators relating to crime and disorder.

2. Background

- 2.1 The new powers and duties are contained in the Local Government and Public Involvement in Health Act 2007, and the Police and Justice Act 2006.
- 2.2 The CCfA is derived from s119 of the 2007 Act, and came into force on 1 April 2009. The 2007 Act inserted a new section 21A into the Local Government Act 2000. The publication of best practice guidance for the CCfA has been awaited prior to bringing forward recommended local arrangements for Medway. The guidance was published on 13 February 2009 and this report sets out the proposed way forward for Medway having regard to that guidance.
- 2.3 The national guidance on CCfA also includes information on the optional power to delegate council functions under s236 of the 2007 Act to individual ward councillors to make decisions at ward level. Regulations have been issued in respect of recording of, and publicity for, such decisions. It is proposed to defer consideration of this aspect and to bring forward options for implementation in Medway only if Members express a wish to take this forward at a local level.
- 2.4 This report needs to be considered in the context of other initiatives and existing mechanisms such as:
 - The new powers for Overview and Scrutiny Committees in relation to scrutiny of the LAA and partner organisations and the introduction of partners' legal obligations to provide information to Overview & Scrutiny Committees
 - The Council's Complaints procedure
 - The existing work programmes for Overview and Scrutiny Committees and
 - Petitions - The Local Democracy, Economic Development and Construction Bill (known as the Local Democracy Bill) currently going through Parliament contains a new duty for Councils to respond to petitions and give citizens greater power to hold local authorities to account and influence local services.
- 2.5 The CCfA entitles all Councillors to refer a "local government matter" to an Overview and Scrutiny Committee. This is defined as a matter "which relates to the discharge of any function of the Authority, affects all or part of the electoral area for which the Member is elected or any person who lives or works in that area, and is not an excluded matter".
- 2.6 The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 "the Order" excludes certain issues

from the definition of “local government matters” for the purposes of Section 21A. Such excluded matters are as follows:

- matters where a person has an alternative avenue to resolve an issue (i.e. through a statutory right of review or appeal, other than a complaint to the Local Government Ombudsman);
- planning decisions;
- licensing decisions;
- matters which are vexatious, discriminatory or not reasonable to be included in the agenda or discussed at a scrutiny committee (e.g. if the issues would be detrimental to community cohesion).

Section 21A(ii) also provides that a local crime and disorder matter (within the meaning of Section 19 of the Police and Criminal Justice Act 2006) – see paragraph 2.10 below – is an excluded matter.

- 2.7 The guidance advises that it is not appropriate for individual complaints (i.e. complaints made by an individual resident which relates to the individual service provided to him or her) to be the subject of a CCfA, as procedures (i.e. the complaints process) already exist for resolving such issues. However, scrutiny should play a role where it is felt that a series of complaints demonstrate a “systematic failure” in a particular service area.
- 2.8 The Government’s view is that the work of resolving community concerns is an important part of a local Councillor’s role, and that the CCfA is a useful additional tool. It recognises that certain matters are best dealt with through existing mechanisms (e.g. planning and licensing applications) or other statutory appeals processes.
- 2.9 The Government considered that the remit of the Local Government Ombudsman is so wide that to exclude all such matters would make virtually every matter an excluded matter.
- 2.10 The crime and disorder scrutiny provisions of the Police and Justice Act 2006 took effect from 30 April 2009. Regulations and Home Office guidance have now been published. In summary the legal provisions, regulations and guidance:
- require local authorities to designate an Overview and Scrutiny Committee with power to review or scrutinise decisions made, or other action taken in connection with the discharge by the responsible authorities of their crime and disorder functions and to make reports or recommendations to the Council or Cabinet with respect to the discharge of those functions. (Note: the responsible authorities are those responsible for crime and disorder strategies. These are the Council, the police force, the police authority, the fire and rescue authority and the PCT – in other words, the Community Safety Partnership)
 - allow the designated Crime and Disorder Committee to co-opt additional members with or without voting rights although the Home Office guidance seems to encourage informal contributions or participation by others as non-voting members

- require the designated Crime and Disorder Committee to meet to review or scrutinise the decisions made, or other action taken, in connection with the discharge by the Community Safety Partnership of its crime and disorder functions no less than once in every twelve month period effective from 30 April 2009
- require responsible authorities to provide information requested by designated Crime and Disorder Committee and for an officer or employee of responsible authorities or a of a co-operating body to attend meetings subject to reasonable notice being given
- require the Council, Cabinet and responsible authorities and co-operating bodies to consider any report or recommendations from the crime and disorder committee, to respond in writing within 28 days and to have regard to the report or recommendations in exercising its functions
- encourages the crime and disorder committee to include in its work programme a list of issues it needs to cover during the year which should be agreed with the Community Safety Partnership, to develop a protocol for scrutiny of crime and disorder and to ensure that overview and scrutiny activity complements the role of the police authority in holding the police to account by, for example, appointment of one of the designated Crime and Disorder committee to the Police Authority.
- require local authorities to make arrangements to enable any member of the Council who is not a member of the Crime and Disorder Committee to refer any local crime and disorder matter to the Committee and for the Committee to have power to make a report or recommendations to the Council or Cabinet. This is the crime and disorder CCfA.

2.11 For the purposes of the crime and disorder CCfA the definition of a local crime and disorder matter means a matter concerning (a) crime and disorder (including, in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment,) or (b) the misuse of drugs, alcohol and other substances, which affects all or part of the ward for which the member is elected or any person who lives or works in the area.

3. Options

3.1 The Council must make changes to the Constitution to provide for the CCfA , the scrutiny of crime and disorder matters and new statutory timescales for the Council and Cabinet to respond to Overview and Scrutiny Committee reports and recommendations. The delegation of decision-making powers to ward Councillors is optional.

4. Guidance on how CCfA might work

4.1 In Medway the Business Support Overview and Scrutiny Committee has a co-ordinating role in relation to linked and thematic business but each Overview and Scrutiny Committee has power to determine its own work programme. It is envisaged that each Overview and Scrutiny Committee should deal with any Councillor CCfA within its respective terms of reference. CCfA matters will have to be integrated into work

programmes in the most expedient way and with procedures to ensure that the capacity of Committees to deal with other important overview and scrutiny work is not compromised.

- 4.2 The CCfA guidance states that the successful operation of CCfA will rely on several broad principles being recognised, and supported, in local authorities. These principles are:
- Transparency in decision-making, and the involvement of scrutiny in the decision-making process at some level.
 - A willingness to identify mistakes and shortcomings, and a recognition of the need to resolve problems through discussion.
 - An understanding (among senior officers and cabinet members in particular) of the role that scrutiny can play to help a council to improve its services
 - An understanding, and a wish to bolster and support, the role that ward councillors play as champions and leaders of their communities.
- 4.3 The Guidance makes the following points:
- 4.3.1 CCfA goes beyond the existing power scrutiny members have to raise issues. This new power gives all councillors the ability to call for debate and discussion at a committee on a topic of neighbourhood concern.
- 4.3.2 Under the 2007 Act scrutiny committees will have the power to request information from certain partner organisations and to invite representatives from partner organisations to attend where relevant. CCfA is therefore an opportunity to bring about solutions for local problems using the influence that scrutiny can provide in bringing together a range of partners and produce innovative thinking around an issue. The relevant provisions of the 2007 Act came in to force on 1 April 2009, but these merely permit the Secretary of State to make regulations. Draft regulations had not been published at the date this report was drafted.
- 4.3.3 CCfA should not however be regarded in isolation, as part of the overview and scrutiny function alone. Being able to use it effectively requires using a range of other functions, including support for councillors' ward work, the Council's complaints process, call-in and petitions.
- 4.3.4 If a CCfA is accepted, a discussion should take place at the committee meeting on how to achieve the outcomes that the member championing the CCfA is seeking. The committee would, in appropriate cases, explore potential solutions, and may make recommendations that certain actions be taken.
- 4.3.5. Guidance for Members will be important to help in identifying what can and cannot be pursued as a CCfA. This should include signposting to alternative resolutions. This is important as a CCfA must be used only

as a **last resort**, when all other attempts at resolution have failed. It is not designed to provide an immediate solution, but high-profile community discussion of an issue involving all stakeholders. It offers the chance to bring a pressing issue to a wider audience and to discuss such issues in a neutral forum.

- 4.3.6 There are a wide range of alternative avenues councillors can pursue to influence and resolve problems, formal and informal, such as: discussions with officers, questions at Committee, formal letters on behalf of constituents, petitions, motions to council, and letters to local MPs.
- 4.3.7 Discussion of CCfA issues at an Overview and Scrutiny Committee will not necessarily resolve the issue immediately. However, the CCfA process is intended to act as a spur for members and officers to work together to jointly develop policies to overcome the problem.

5. Examples of a CCfA

- 5.1 Under Section 21A of the 2007 Act, a CCfA needs to relate to a 'local government matter'. This could be interpreted narrowly, to mean only those issues under the direct control of the authority. However, the guidance states that to give full effect to CCfA the interpretation of 'local government matter' needs to be broader.
- 5.2 This broader interpretation includes issues relating to the Council's partners, in line with the area focus of Comprehensive Area Assessment (CAA), and the fact that an authority's duties increasingly impact on other organisations, and involve partners within and outside the Local Strategic Partnership (LSP).
- 5.3 Examples of when councillors might use CCfA include:
- Series of road accidents in a particular location generating demand for traffic calming measures
 - Sustained poor performance at a local school
 - Continuing trends in poor performance around, for example, refuse collection or recycling (the guidance confirms that this would only be appropriate if it related to a specific locality)

6. Crime and Disorder CCfA

- 6.1 As explained in paragraphs 2.10 and 2.11 above a different Act of Parliament, the Police and Justice Act 2006, sets out a CCfA for crime and disorder and community safety issues. The provisions for the 'crime and disorder CCfA' are essentially identical to the general CCfA. Section 19(3b) of the Act gives members who are not members of the Crime and Disorder committee the right to refer any local crime and disorder matter to the committee. Members of the committee will have the statutory right to refer to the committee any matter which is relevant to the functions of the committee (s21A Local Government Act 2000, inserted by s119 of the 2007 Act).

- 6.2 Although the Police and Justice Act requires crime and disorder issues to be considered by a specially designated 'Crime and Disorder Committee', in practice this does not require the setting up of a separate committee and does not require separate arrangements. In Medway the relevant committee is currently the Regeneration, Community and Culture (RCC) Overview and Scrutiny Committee.

7. Procedures and guidance

- 7.1 This Council's Overview and Scrutiny rules currently entitle any member of an Overview and Scrutiny Committee to include an item on the agenda for the next available meeting of the Committee. Any six members of the Council who are not members of the Overview and Scrutiny Committee may also give notice of an item they wish to be included on an agenda.
- 7.2 In order to implement the new right for any member to raise issues of concern in their ward under the CCfA and to implement the provisions relating to scrutiny of the Community Safety Partnership it will be necessary to make some amendments to the Council's Constitution. The recommended changes are set out in Appendix one to this report. Appendix 1 also proposes minor changes to the Overview and Scrutiny rules to reflect new statutory timescales for the Council, Cabinet (and responsible authorities in the case of crime and disorder matters) to respond to reports and recommendations from Overview and Scrutiny Committees.
- 7.3 Appendix two sets out proposed guidance and procedures to assist Members in pursuing ward based issues via the route of a CCfA, or through alternative channels with the aim of achieving quick and effective resolutions and making referral to an Overview and Scrutiny Committee a measure of last resort. This guidance has been drafted in light of the experience in the pilot CCfA Councils and taking into account the national guidance published by the IDeA, the Centre for Public Scrutiny and the Home Office. These procedures will need to be reviewed and potentially revised in the light of experience and to refine the interactions between CCfAs and petitions when the Local Democracy Bill is enacted.

8. Proposed next steps

- 8.1 The regulations relating to CCfA generally came into effect on 1 April and the crime and disorder scrutiny regulations and guidance have now been published and came into effect on 30 April. It is proposed that the required changes to the Councils constitution and associated guidance for Councillors on how the process will work in practice as set out in Appendices 1 and 2 to this report should be presented to the Cabinet on 14 July and to full Council on 30 July together with any comments from this Overview and Scrutiny Committee. All Members of the Council have already received bulletin summarising the new powers and it is proposed to offer a briefing session for all Members in August. The RCC Overview and Scrutiny Committee will be invited to develop

the detailed arrangements for scrutiny of the Community Safety Partnership and any associated protocols.

9. Risk Management

9.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. The following table sets out the risks arising from this report.

Risk	Description	Action to avoid or mitigate risk
Timescale for implementation	Councillors may be approached by members of the public requesting action under CCfA before the Council has formally agreed the procedures later in July	All Councillors to be advised of proposed approach and to use the existing facility to refer items to OSCs
Conflict with existing Council procedures	CCfA could cut across other established mechanisms for handling complaints and ward based issues	Procedures should ensure that issues logged as a CCfA are screened to ensure that other appropriate channels have been tried without a satisfactory outcome
OSC work programmes becoming overloaded	Multiple CCfAs being referred to Overview and Scrutiny Committees could reduce the capacity for other scrutiny business to be dealt with	Government guidance states that referral of CCfA to an O and S Committee should be a measure of last resort and this will be built into Medway's procedures
Insufficient staffing resources to administer the process	No additional resources have been allocated within Democratic Service or Member Services to administer the process or support Members	Resource implications will need to be reviewed in the light of experience.

10. Consultation

10.1 This Committee is being consulted on proposed changes to the Constitution and associated guidance on implementation of the CCfA before they are submitted to the Cabinet for onward referral to full Council on 30 July.

11. Financial and legal implications

- 11.1 The legal provisions are set out in the body of the report.
- 11.2 No additional resources have been made available to administer the CCfA process and this may impact on the capacity to handle matters logged as potential CCfAs as quickly as Members would wish.

12. Recommendations

- 12.1 To note that the Regeneration, Community and Culture Overview and Scrutiny Committee will be the designated Committee for scrutiny of crime and disorder in Medway and that the Committee will be asked to develop detailed procedures and protocols for implementation of this new power
- 12.2 To note the recommendation to Council that no action should be taken at this stage to implement the new power to delegate decision-making to ward Councillors
- 12.3 To refer any comments to Cabinet on 14 July on the proposed changes to the constitution and the associated guidance on CCfA as set out in Appendices 1 and 2 to this report.
- 12.4 To note that there will be a briefing for all Members of the Council on implementation of CCfA during August

Lead officer contact

Deborah Upton, Assistant Director Housing and Corporate Service
01634 332133 deborah.upton@medway.gov.uk

Background papers

Sections 119, 122 and 236 of the Local Government and Public Involvement in Health Act 2007
Sections 19 and 20 of the Police and Justice Act 2006
Crime and Disorder (Overview and Scrutiny) Regulations 2009
Councillor Call for Action: Best Practice Guidance published by IDeA and Centre for Public Scrutiny
Councillor Call for Action: A New Voice for Members (Summary)
Home Office guidance for the scrutiny of crime and disorder matters
Medway Council's Constitution

Councillor call for action and scrutiny of crime and disorder – proposed changes to Constitution

Section and page number	Proposed change
Chapter 2 Articles of the Constitution Article 6 paragraph 6.2 Page 2.11	Add extra bullet points <ul style="list-style-type: none"> • consider local government and crime and disorder matters raised under Councillor Call for Action procedures
Chapter 4 Rules Part 5 Overview and Scrutiny rules Pages 4.41 – 4.58	Add paragraph 9.4 on page 4.43 9.4 Any member of the Council who is not a member of the relevant Overview and Scrutiny Committee has the right to refer a local government or crime and disorder matter affecting his or her ward to the relevant Overview and Scrutiny Committee. The power to do this is known as raising a Councillor Call for Action (CCfA) but must be exercised in accordance with the guidance and procedures set out in section 23 of the Overview and Scrutiny rules. Any Councillor who is already a member of the relevant Overview and Scrutiny Committee and who wishes to refer a local government or crime and disorder matter to the Committee may do so under rule 9.1 but must have regard to the guidance in section 23 if the matter being raised is a CCfA.

Section and page number	Proposed change
<p>Chapter 4 Rules Part 5 Overview and Scrutiny rules Pages 4.41 – 4.58</p>	<p>Add paragraph 9.5 on page 4.43</p> <p>9.5 If the relevant Overview and Scrutiny Committee decide not to review or scrutinise a matter or not to make a report or recommendations to the Council or Cabinet (as appropriate) following the referral of a local government or crime and disorder matter to the Committee in accordance with paragraph 9.4 of these Rules the Committee must notify the Councillor who made the referral of its decision and the reasons for its decision.</p>
<p>Chapter 4 Rules Part 5 Overview and Scrutiny rules Section 11 – Reports from Overview and Scrutiny Committees (this will include joint O&S meetings) Page 4.43</p>	<p>Delete existing paragraph 11.3 of the Overview and Scrutiny rules and substitute:</p> <p>11.3 Where the Overview and Scrutiny Committee makes a report or recommendations to the Council or Cabinet (as appropriate) the Committee may publish its report or recommendations and must by notice in writing require the Council or Cabinet (as appropriate) to consider the report or recommendations, and to notify the Overview and Scrutiny Committee what (if any) action it proposes to take. This must be done within 2 months of the Council or Cabinet receiving the report or recommendations or (if later) the notice. For crime and disorder matters (including crime and disorder CCfAs) the Council or Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonable possible, as soon as reasonably possible thereafter. The Overview and Scrutiny Committee must provide the Councillor who made the referral of the local government or crime and disorder matter in accordance with paragraph 9.4 of these Rules a copy of any report or recommendations made to the Council or Cabinet after consideration of that referral by the Overview and Scrutiny Committee. If the O&S Committee has published its report then Cabinet will publish its response.</p>

Section and page number	Proposed change
<p>Chapter 4 Rules Part 5 Overview and Scrutiny rules Section 12 – Making sure that overview and scrutiny reports are considered by Cabinet Page 4.44</p>	<p>Add the following to the last sentence in paragraph 12.1 :</p> <p>..... and shall respond to the Overview and Scrutiny Committee within 2 months of receiving the report or recommendations.</p> <p>Add additional final sentence to paragraph 12.1:</p> <p>For crime and disorder matters (including crime and disorder CCfAs) the Council or Cabinet and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonable possible, as soon as reasonably possible thereafter.</p>
<p>Chapter 4 Rules Part 5 Overview and Scrutiny rules Page 4.52: Section 22 - Terms of Reference of Overview and Scrutiny Committees</p>	<p>Add paragraph xiv to paragraph 22.1 on page 4.51 - General Terms of Reference</p> <p>xiv To deal with any local government matter referred to the Committee under the provisions for raising a Councillor Call for Action subject to the guidance and procedures set out in section 23 of the Overview and Scrutiny rules.</p>

Section and page number	Proposed change
<p>Chapter 4 Rules Part 5 Overview and Scrutiny rules Page 4.58: Section 22 .2 (d)- Terms of Reference of Regeneration, Community and Culture Overview and Scrutiny Committee</p>	<p>Add paragraph xxvi to 22.2(d) Terms of Reference of the Regeneration, Community and Culture Overview and Scrutiny Committee</p> <p>xxvi scrutiny of the work of the Community Safety Partnership and the partners who comprise it, insofar as their activities relate to the partnership itself and to consider crime and disorder CCfAs (in accordance with the guidance and procedures on the CCfA as set out in section 23 of the Overview and Scrutiny rules)</p>
<p>Chapter 4 Rules Part 5 Overview and Scrutiny Rules New section 23 covering guidance and procedures for Councillor Call for Action</p>	<p>Add Appendix 2 t o this report (entitled “Guidance and procedures for Councillor Call for Action”) as Section 23 to the Overview and Scrutiny rules</p>

Proposed addition to Overview and Scrutiny Rules in Chapter 4, Part 5 of the Councils Constitution – add as section 23

Guidance and procedures for Councillor Call for Action

1. What is a Councillor Call for Action?

Councillor Call for Action (CCfA) is a process for a councillor to act on behalf of residents to resolve a local issue of concern, acting **as a last resort** for people who cannot get issues resolved through any other means. Ward councillors should be looking to identify CCfAs in their community, but CCfAs can also be raised by local people directly with their ward councillors. It will still be up to councillors to recognise whether an issue is a CCfA and whether it is appropriate to champion that issue.

The decision to raise and champion a CCfA lies with individual councillors. The CCfA, alongside proposals which will require a much wider range of agencies to formally cooperate with scrutiny in the future, is intended to provide greater emphasis to the work undertaken by councillors in their communities as community advocates and champions, and to further increase the accountability of public service providers to local communities.

CCfA is a legal requirement from April 2009 and councillors are under a **duty** to consider requests from members of the public on certain issues.

2. What's new about the CCfA?

What distinguishes the CCfA from items and topics already raised by councillors for consideration by scrutiny is:

- **Any** member can raise a CCfA issue for scrutiny to consider
- The focus of the CCfA is on **neighbourhood** or **locality** issues and specifically the **quality** of public service provision at a locality level.
- The CCfA represents a genuine local **community** concern (based on local councillors' judgements) and
- It is a **persistent** problem which the local councillor has been **unable to resolve** through local action and discussion with relevant services and agencies.

Scrutiny reviews resulting from CCfA will be undertaken by Overview and Scrutiny Committees with an invitation to councillors from the affected locality to contribute to the discussion. There is an expectation that any scrutiny reviews resulting from CCfA on the **ward-based scrutiny issues** will be 'short and sharp', focused reviews - it is important that the public see this as a responsive and un-bureaucratic process which delivers tangible outcomes.

3. **What is expected of a local Councillor?**

Essentially Councillor Call for Action (CCfA) is a recognition of the work undertaken by ward councillors in taking up local issues on behalf of their communities. Councillors are expected to identify issues of local concern and act with and on behalf of their community to resolve those issues. It is up to Councillors using this guidance to decide:

- Which issues to take forward as CCfAs and champion;
- When an issue should be referred to the relevant Overview and Scrutiny Committee and
- When to reject an issue.

It is a matter of judgement for a councillor to decide which local matters to champion and each local councillor will be accountable to the local community for these judgements. Championing a request will mean taking the issue up on behalf of the resident(s) concerned and trying to resolve the problem by liaising with council officers, and/or outside agencies.

Councillors deal with issues of concern on behalf of their constituents as an everyday part of their constituency case work. The CCfA is not intended to add additional bureaucracy to these ward councillor requests, which will continue to be dealt with in the same way as they are now. If a councillor or a member of the public is uncertain about whether a request might be appropriate, the Head of Democratic Services and Head of Elections and Members Services can provide advice and assistance.

4. **Checklist for Councillors using a CCfA**

Initial consideration and actions:

- Discussion with other ward councillors (to check their actions and intentions and whether they can help).
- Take steps to resolve the issue through existing mechanisms such as contacting Council Officers (including the Overview and Scrutiny Team), liaising with other organisations, use of the Council's complaints procedure or petitions procedure, or checking whether it can be fed into an existing Task Group.
- If the issue is resolved, inform the resident of the outcome and the steps taken, including any difficulties or learning points.
- If the issues remain unresolved, consult the Overview and Scrutiny Team and if appropriate formally request that the item be considered by the relevant Overview and Scrutiny Committee.
- A Councillor must take in to account government guidance on CCfA in determining whether to refer a matter to the relevant Overview and Scrutiny Committee

[A flow chart of the CCfA process is attached to this guidance and takes you through each step of the process].

Reject if it is any of the following:

- An individual complaint (unless it is a series of individual complaints demonstrating “systematic failure” in a particular area)
- An issue relating to an “excluded” matter such as planning or licensing matter or another issue where individuals or entities have a right of appeal (other than a complaint to the Ombudsman)
- Vexatious, discriminatory or not reasonable (see notes at end).
- It is being used as a “second bite of the cherry” e.g. where a previous call-in has failed, or a petition has already been considered.

Accept if it is:

- An issue of genuine local concern; and
- All other avenues for resolution have been followed, and
- this now seems to be the most appropriate way to deal with it.

5. How does CCfA fit with the Overview and Scrutiny Committee Work Programmes?

Currently any member of an Overview and Scrutiny Committee (or 6 other members) can put an item on the relevant Committee agenda using the arrangements set out in the Councils Overview and Scrutiny rules. These arrangements remain unchanged.

The aim of Scrutiny is to be as strategic as possible, championing issues on behalf of the community so it is possible that a CCfA topic may already be included in an Overview and Scrutiny Committee work programme.

It is valuable for CCfA issues to feed into overview and scrutiny work programmes, and vice versa. The purpose of CCfA is to give members more of a voice, and scrutiny itself is a member-led process. CCfA can sit comfortably alongside existing methods for placing items on the scrutiny work programme. CCfA should make the work programme more relevant and timely.

Each Overview and Scrutiny Committee has the power to deal with CCfAs within its terms of reference. The Committee will be asked to identify if a CCfA is appropriate for scrutiny ensuring that the issues scrutinised and reviewed are of genuine community concern.

The Committee receiving a CCfA will receive an initial report and relevant ward Councillors will be invited to take part in the meeting if they are not members of the Committee. The Committee will then take a view on next steps which may include a Task Group to review the issues in some detail. In deciding whether to take any further action the Committee will take in to account any representations made by the Councillor as to why further investigation or review is appropriate.

6. Consideration of a CCfA by an Overview and Scrutiny Committee

Ward Councillors and where possible representatives of the community concerned will be notified of the date of the meeting and invited to attend along with any other relevant bodies. The Chairman will provide a short introduction and the Councillor bringing the CCfA will be invited to outline their objectives and to answer questions from other members. The discussion will be structured to focus on the issue raised.

Overview and Scrutiny Checklist for determining a CCfA

The Committee will review the actions taken to date to resolve the issue and all of the criteria set out in paragraph 4 above. It may determine that no action should be taken, for example because:

- The applicant is a vexatious complainant and the issue is being or has been dealt with under the Council's Complaints procedure¹.
- The issue is currently going through the complaints procedure, and it is appropriate for this to be concluded.
- Ward Councillors have not explored the issue fully and exhausted all avenues.

Alternatively, it may conclude that the public interest is best served by setting up a Task Group to consider the matter in more detail. The Committee should endeavour where possible to identify an appropriate "resolution" of the issue.

Where a Committee decides not to take any further action in respect of a CCfA (such as to carry out a review of the matter) it will inform the member who referred the matter, in writing, of its decision and its reasons for that decision.

Notes

Definition of a Complaint

For the purpose of the Council's procedure the Council accepts the Local Government Ombudsman's definition.

"An expression of dissatisfaction by one or more members of the public about the Council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the Council itself or a person or body acting on behalf of the Council."

Exclusions from CCfA

Statutory Regulations state that *any matter which “is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee is to be excluded”*.

The relevant Guidance states as follows in regard to these terms:

“Vexatious” and “persistent” – it is probably best to refer to the guidance to the Freedom of Information Act which states that:

Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easier to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.

Issues around persistency are implied by this definition. However, a persistent request may well be entirely valid – it may relate to a systematic problem that has not been effectively resolved. A request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

Councils should not see politically motivated CcfAs, and CcfAs on subjects of high-profile political controversy, as a threat. They should be used as an opportunity for Members to defuse political rows and, jointly, to develop solutions that are satisfactory to all.

“Discriminatory” – a modern interpretation of the word “discrimination” is provided at section 45 of the Equality Act 2006, in relation to religion and belief, as follows:

A person (“A”) discriminates against another (“B”) for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A’s religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).

“Not reasonable” – it is suggested that, in the interests of transparency, authorities do not interpret “not reasonable” as being the same as the legal word “unreasonable”. It is best to consider it as a qualifier to the word “vexatious”, as a vexatious request is likely not to be reasonable, and a request that is not reasonable is likely to be vexatious.

Other exclusions – Regulations also state that issues should be excluded from CCfA when they relate to a planning decisions, licensing decisions and all other areas where a person has an alternative avenue to resolve an issue (that is, through a statutory review or appeal process). The Guidance also advises that individual complaints (i.e. a complaint made by an individual which relates to the individual service that the Council provides to him or her) should be excluded, as a complaints process already exists. This does not

apply, however, where a series of individual complaints demonstrate a “systematic failure” in a particular service area.

Specific criteria for “automatic rejection” of CcfAs under certain circumstances will not be the best way forward, because each CCfA will need to be looked at on its own merits.

Definition of a local crime and disorder matter for the purposes of CCfA

A matter concerning

- (a) crime and disorder (including in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) or
- (b) the misuse of drugs, alcohol and other substances

which affects all or part of the ward for which the member is elected or any person who lives or works in that area

(c) Councillor Call for Action Flow Chart

