

Part 5

Councillor Call for Action Protocol

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Councillor Call for Action Protocol

1. Introduction

The “Councillor Call for Action” (CCfA) was introduced under Section 119 of the Local Government and Public Involvement in Health Act 2007 (the Act).

The Act enables any Councillor to refer to an Overview and Scrutiny Committee any local government matter or any crime and disorder matter (see appendix 2). The Overview and Scrutiny Procedure Rules in Part 4 already provide the opportunity for any Councillor to raise an item at a meeting of the Overview and Scrutiny Committee by sending a written request to the Democratic Services Manager, who will ensure that the item is placed on a future agenda for consideration by the Committee.

A Councillor can refer a matter even if no citizen has asked him/her to consider it, and there is no requirement for councillors in multi-member wards to agree – any of them can refer a matter.

2. Limitations

It is important to recognise that CCfA is not guaranteed to solve a given issue. CCfA provides a method for discussing such issues and, through discussion, trying to overcome them.

3. Issues excluded from referral as a CCfA

The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 excludes the following matters from referral as a CCfA:

- (a) Individual complaints concerning personal grievances or commercial issues;
- (b) Any matter relating to an individual or entity where there is already a statutory right to review or appeal (other than the right to complain to the Local Government Ombudsman), for example:
 - Planning and licensing applications and appeals;
 - Council Tax/Housing Benefits complaints and queries;
 - Issues currently under dispute in a court of law.
- (c) Any matter which is vexatious, discriminatory or not reasonable (see Appendix 2 for definitions) to be included on the agenda for, or to be discussed at, a meeting of the Overview and Scrutiny Committee.

4. CCfA referrals should not contain:

- (a) offensive, intemperate, inflammatory, sarcastic or provocative language or language to which those reading could reasonably take offence;
- (b) false or defamatory statements;

- (c) information which is protected by an interdict or court order;
- (d) commercially sensitive or confidential material; or
- (e) the name of individuals, or information whereby they may be easily identified, in relation to criminal accusations.

The Democratic Services Manager, in consultation with the Chairman, will assess an issue to ensure that it is not a matter excluded from referral to Overview and Scrutiny.

5. Key Points on CCfA referrals:

- (a) CCfA should be submitted in good faith and be decent, honest and respectful.
- (b) CCfA will be rejected if defamatory, frivolous or offensive.
- (c) During politically sensitive periods, such as before an election, politically controversial material will be restricted.
- (d) CCfA which do not follow these guidelines will be considered inadmissible, in which case the Councillor will be informed in writing of the reasons why.
- (e) CCfA which are the same or substantially similar and which are lodged by or on behalf of the same person or organisation will be considered inadmissible unless more than a year has passed since the original CCfA was considered by the Overview and Scrutiny Committee. Advice on admissibility can be obtained from the Democratic Services Manager, whose contact details are provided on the website. In cases of dispute, the Overview and Scrutiny Committee shall decide whether a petition is admissible.

A referral, provided it is not an excluded matter (see above), will ensure that the matter is included on the agenda of the Overview and Scrutiny Committee. It is then up to the Members of the Committee to decide whether or not to take the matter further.

6. Steps to be taken prior to making a Councillor Call for Action referral

Prior to a Councillor referring a matter as a CCfA, a Councillor **must** have tried to resolve the issue/problem themselves, using all mechanisms and resources available to them at ward level. Councillors should:

- (a) If a local crime and disorder matter, raise the issue through the Test Valley Partnership to find a way to resolve the issue. For further details contact the Council's Community Engagement Manager – Community Safety.
- (b) Ensure that all relevant partner organisations have been informed of the issue and given enough time to resolve it, for example through formal letters written on behalf of constituents, discussion at public meetings, petitions, or communication with local MPs.
- (c) Ensure that all relevant internal potential routes to solution have been followed, for example informal discussions with Officers and/or Members.

- (d) Ensure that this is not an issue that is currently being or should be pursued via the Council's Complaints Procedure.

7. How to make a Councillor Call for Action referral

If the issue/problem is still not resolved, a Councillor can refer it as a "Councillor Call for Action".

- (a) Complete a CCfA Request Form, outlining what the issue is and what steps have been taken towards a resolution..
- (b) The Democratic Services Section will receive the referral form, log it to track its progress, and the Democratic Services Manager, in consultation with the Chairman, will assess the issue to ensure that it is not a matter excluded from referral to scrutiny.
- (c) The Democratic Services Manager will inform the Chairman of the Overview and Scrutiny Committee, the Leader and the Chief Executive that the item will be included on the next Committee agenda.
- (d) The Councillor submitting the CCfA will be invited to attend the meeting of the Overview and Scrutiny Committee to speak in connection with the issue.

A successful referral will ensure that the CCfA will be placed on the next agenda of the Overview and Scrutiny Committee. The Committee will then decide whether or not to take the matter further.

A summary of the CCfA process is attached at Appendix 1.

8. Decision of the Overview and Scrutiny Committee whether to take the matter further

In deciding whether or not to take the matter further, the Committee will consider:

- Anything that the Councillor has done in relation to this matter; and
- Representations made by the Councillor as to why the Committee should take the matter up. *This information will need to take account of the disclosures of exempt information as detailed in the Access to Information Procedure Rules in Part 4.*

The criteria the Committee will use to decide whether or not to take the matter further include:

- (a) Is the Committee satisfied that all reasonable attempts have been made to resolve the issue by the Ward Councillor?
- (b) Do the responses received by the referring Councillor demonstrate that the matter is not being progressed?
- (c) Has the Scrutiny Panel considered a similar issue recently – if yes, have the circumstances or evidence changed?

- (d) Is there a similar or related issue which is the subject of a review on the current Work Programme? It may be more appropriate to link the new issue to an existing review, rather than hold a separate CCfA hearing. Relevant time pressures on resolving the CCfA should be taken into account.
- (e) Have all relevant service areas or partner organisations been informed and been given enough time to resolve the issue? What response has the Councillor received?
- (f) Is this a case that is being or should be pursued via the Council's Complaints Procedure?
- (g) Is it relating to a 'quasi-judicial' matter or decision such as planning or licensing?
- (h) Is the issue part of an individual's own personal agenda (an issue of genuine local concern should have an impact on the local community)?
- (i) Does the matter referred have the potential for scrutiny to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring Member's Ward?

In considering the CCfA, the Committee may invite the Chief Executive, Deputy Chief Executive, Head of Service or external organisation to discuss the issue with the Committee and answer any questions, if the Committee considers this relevant.

If the Committee decides not to accept the CCfA referral it must inform the Councillor and provide reasons.

If the Committee decides to accept the CCfA referral, it will decide how it intends to take the matter forward and include the CCfA in its work programme or refer to a relevant Scrutiny Panel.

9. Potential outcome

Following consideration of the CCfA by a Panel, a report will be produced and recommendations made to the Overview & Scrutiny Committee. Once the Committee has completed its work on the CCfA referral, the report and minutes will be published on the Council's website in the usual way.

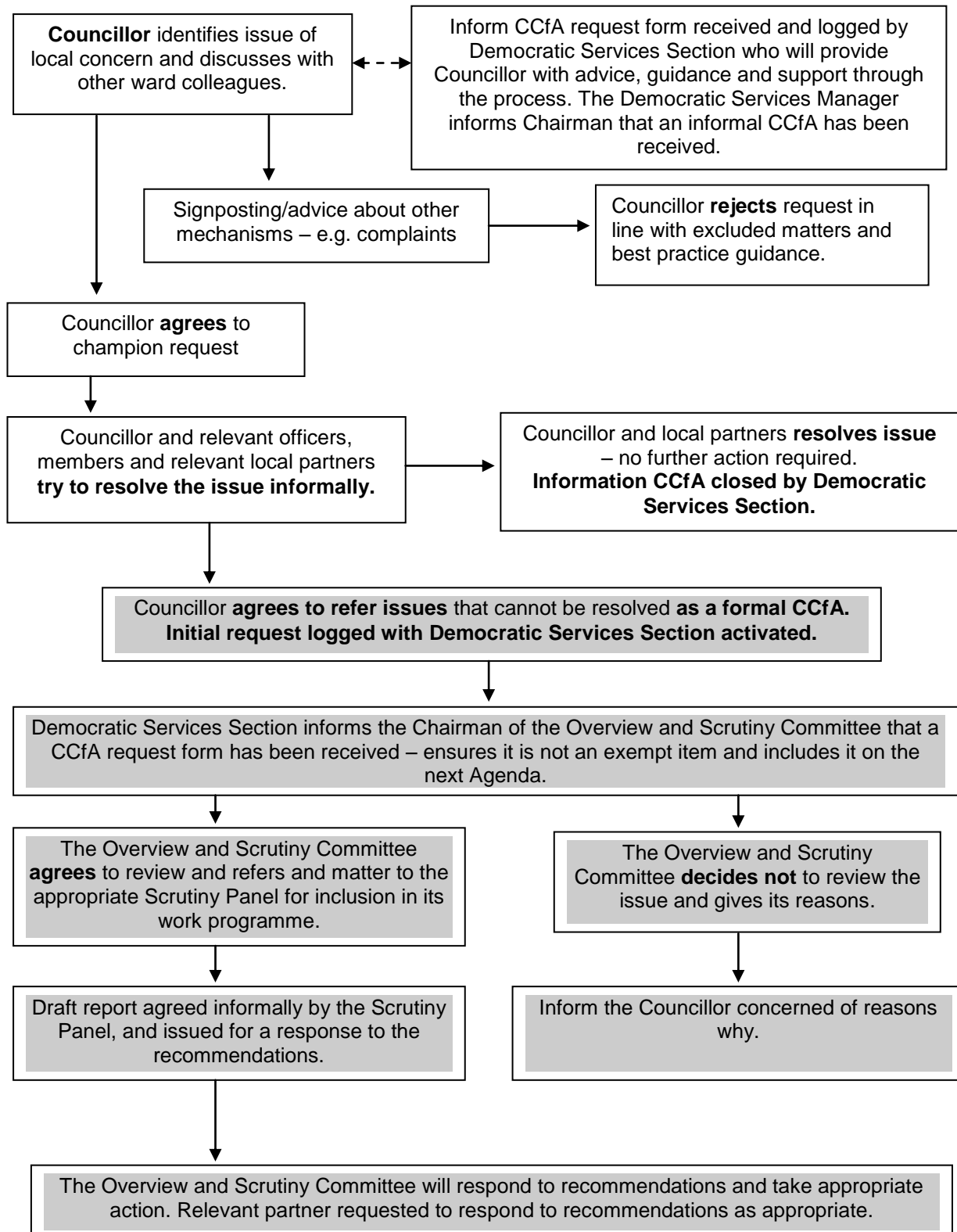
10. Timescales

Once a CCfA has been assessed as not being a matter which is excluded from referring to scrutiny, the item will be included on the next available Overview and Scrutiny Committee agenda.

11. Structure of the CCfA hearing

A CCfA hearing will be based on the Overview and Scrutiny Committee's structure for dealing with call-in hearings.

Summary of CCfA Mechanism



Explanatory Notes

12. Definition of a local government matter and a local crime and disorder matter

(a) Local government matter

For the purpose of the Act a local government matter, in relation to a member of a local authority is one which:

- (i) relates to the discharge of any function of the authority;
- (ii) affects all or part of the electoral area for which the referring member is elected or any person who lives or works in the area (ie it must be specific to a particular locality); and
- (iii) is not an excluded matter.

(b) Local crime and disorder matter

A local crime and disorder matter, in relation to a member of a local authority, has been defined to mean a matter concerning:

- (i) 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
- (ii) the misuse of drugs, alcohol and other substances that affects the electoral area represented by the member, or the people who live or work in that area.

13. Definitions of “vexatious” “persistent” “discriminatory” and “not reasonable”

Statutory regulations deal with matters that can be excluded from CCfA, stating that “any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee is to be excluded”.

(a) Vexatious/Persistent

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 easy 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. Similarly, a request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

CCfAs need to be looked at on their merits, rather than on the basis of who is bringing them, or whether somebody thinks there is an ulterior motive for them being brought.

Where a request for a CCfA is clearly vexatious, detailed reasons for coming to this decision will be given to the councillor concerned. There could, however, be instances where changes to the scope of the CCfA, or its focus, could make it more acceptable while still meeting the councillor's requirements.

(b) Discriminatory

Modern interpretations of the word "discrimination" both direct and indirect are provided at Chapter 2 of Part 2 of the Equality Act 2010.

(c) 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.