

# Councillor Call for Action Protocol

## 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), and came into force on 1 April 2009. The statutory requirement to implement CCfA by 1 April 2009 applies to all councils in England (with the exception of parish councils) regardless of their Executive arrangements.

Any Member of the Council may refer to the Scrutiny Committee any local government matter or any crime and disorder matter which affects their ward.

The power to refer a matter is available only where the matter is of direct concern to the ward which the councillor represents. 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.

## 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.

## Issues excluded from referral as a CCfA

The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012 excludes the following matters from referral as a CCfA:

- (a) any matter relating to a planning decision;
- (b) any matter relating to a licensing decision;
- (c) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment;
- (d) 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 Improvement and Scrutiny Committee or any of its sub-committees.

(unless, in relation to (a), (b) and (c) above, the allegation is either that a function for which the Council is responsible has not been discharged at all or that its discharge has failed or is failing on a systemic basis).

In addition, the Council has determined that the following matters be also excluded from CCfA:

CCfA should not seek to ask the Council to determine:-

- Personal or commercial issues
- Specific or individual employee relations
- Disciplinary or grievance matters
- Matters which are subject to formal or statutory appeal processes or are sub-judice

- Individual appeal cases, for example, Planning, Licensing applications or appeals
- Decisions of the Standards Committee or Regulatory Committees

CCfA should not contain:

- Offensive, intemperate, inflammatory, sarcastic or provocative language or language to which those reading could reasonably take offence
- False or defamatory statements
- Information which is protected by a court order
- Commercially sensitive or confidential material
- The names of individuals, or information whereby they may be easily identified, in relation to criminal accusations

CCfA should be submitted in good faith and be decent, honest and respectful.

CCfA will be rejected if defamatory, frivolous or offensive.

During politically sensitive periods, such as before an election, politically controversial material will be restricted.

CCfA which do not follow these guidelines will be considered inadmissible, in which case petitioners will be informed in writing of the reasons why.

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 Scrutiny Committee. Advice on admissibility can be obtained from the Public Scrutiny Office whose contact details are provided on the web site. In cases of dispute, the 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 Scrutiny Committee. It is then up to the Committee to decide whether or not to take the matter further.

A referral made to the Scrutiny Committee is seen as being at the end of the CCfA process (**the last resort**) and not the first step.

### **Steps to be taken, prior to making a Councillor Call for Action referral**

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

- If a local crime and disorder matter, raise the issue through the Community Safety Partnership to find a way to resolve the issue.
- 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.
- Ensure that all relevant internal potential routes to solution have been followed, for example informal discussions with officers and/or members.
- Ensure that this is not an issue that is currently being or should be pursued via the Council's complaints procedure

## **How to make a Councillor Call for Action referral**

If the issue/problem is still not resolved, a Member can refer it to the Scrutiny Committee as a "Councillor Call for Action". To do this the Councillor should:

- Complete a CCfA Request Form by hand or electronically, outlining what the issue is and what steps have been taken towards a resolution. The request for a CCfA should include:
  - The name of the Councillor and ward they represent.
  - Title of the CCfA
  - Why they think the issue should be looked at by the Scrutiny Committee
  - A brief synopsis of what the main areas of concern are
  - What evidence do you have in support of your CCfA?
  - Which areas or community groups are affected by the CCfA?
  - What prior action has been undertaken to try and resolve the issue prior to requesting a CCfA?
  - Is the CCfA currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints' process?
  - Are there any deadlines associated with the CCfA of which the Scrutiny Committee needs to be aware?
- The Public Scrutiny Office will receive the referral form either by post or electronically, log it to track its progress and assess the issue to ensure that it is not a matter excluded from referral to scrutiny.
- The Public Scrutiny Office will inform the Chairman and Vice-Chairman of the Committee that the item will be included on the next Committee agenda.
- The Councillor submitting the CCfA will be invited to attend the meeting of the 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 Scrutiny Committee. The Scrutiny Committee will then decide whether or not to take the matter further.

## **Decision of the relevant Scrutiny Committee whether to take the matter further**

In deciding whether or not to take the matter further, the Scrutiny 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. (Councillors have the option of either presenting their CCfA form without supporting papers or by preparing a report setting out their views. Any reports prepared by councillors would be circulated along with the agenda and other reports for the meeting). *This information will need to take account of the disclosures of exempt information as prescribed in Part 1 of Schedule 12A of the Local Government Act 1972.*

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

Is the Scrutiny Committee satisfied that all reasonable attempts have been made to resolve the issue by the ward councillor? And do the responses

received by the referring Councillor demonstrate that the matter is not being progressed?

- Has the Scrutiny Committee considered a similar issue recently – if yes, had the circumstances or evidence changed?
- 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.
- 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?
- Is this a case that is being or should be pursued via the Council's corporate complaints procedure?
- Is it relating to a "quasi-judicial" matter or decision such as planning or licensing?
- 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).
- 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 Scrutiny Committee may invite the Chief Executive, Directors, Assistant Directors or external organisation to discuss the issue with the Committee and answer any questions, if the Committee considers this relevant.

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

If the Scrutiny 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. This could include:

#### **Before holding a formal hearing:**

- Asking the service area(s)/partner organisation(s) to respond to the CCfA.
- Establishing a Task and Finish Group to undertake a more in depth review.

#### **At the formal hearing:**

- Asking for further evidence and/or witnesses to be brought to a future meeting then making recommendations to the relevant committee/partner organisation.

#### **Potential outcomes**

Following a formal hearing, there are a number of potential outcomes from the Scrutiny Committee meeting:

- The Scrutiny Committee could determine not to make a report (perhaps because it is not considered the right time to consider a particular issue), with the ward Councillor notified in writing;
- The Scrutiny Committee could determine that it is a complex issue that requires further investigation and commission a scrutiny review of the issue;
- The Scrutiny Committee could write a report and make recommendations on the CCfA to the Cabinet, Full Council or partner organisation.

Once the Scrutiny Committee has completed its work on the CCfA referral, the

member who made the CCfA referral will receive a copy of any report or recommendations made. The reply will also be printed on the Council's website (unless there are reasons why the committee treats the matter as an exempted item and as a result the report will not be made public).

## **Timescales**

Once the 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 Scrutiny Committee agenda.

If the Scrutiny Committee agrees to take the matter forward, the matter will usually be placed as an item on the next available agenda. In exceptional circumstances, for example where there are unavoidable time constraints, a separate meeting may be convened.

Should a CCfA hearing result in recommendations to the Cabinet or Full Council being made, a response to the recommendations, setting out any action it intends to take, within 28 days of the recommendations being placed on an agenda.

Should a CCfA hearing result in recommendations to partner organisation, such organisations will also be requested to make a response to the recommendations, although it must be recognised they are under no legal obligation to do so.

## **Explanatory Notes**

### **1 Definition of a local government matter and a local crime and disorder matter:**

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:

- Relates to the discharge of any function of the authority;
- 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
- Is not an excluded matter.

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:

(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 that affects the electoral area represented by the member, or the people who live or work in that area.

### **2 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 Scrutiny Committee is to be excluded”.

#### **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.

#### **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) if on the grounds of the religion or belief of B or of any other person except A, A treats B less favourably than he treats others. This definition can easily be*

*amended to deal with other forms of discrimination, such as discrimination for reasons of sex and/or race. So a discriminatory CCfA might be one which implies or states that a group of people or an area receives better, or worse, services on account of that group's predominant religion, race, sex or other characteristic, as covered by discrimination legislation.*

### **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.

### **3 Structure of the CCfA hearing:**

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