

(Forest Heath District Council & St Edmundsbury Borough Council)

Councillor Call for Action Protocol

1. Introduction

- 1.1 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.*
- 1.2 The Act enables any member of the Council to refer to the Overview and Scrutiny Committee any **local government matter** or any **crime and disorder matter** which affects their ward/division.¹
- 1.3 The power to refer a matter is available only where the matter is of direct concern to the ward or division 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.

2. Limitations

- 2.1 It is important to recognise that CCfA is not guaranteed to solve a given problem. CCfA can provide a method for discussing such problems and, through discussion, trying to overcome them.

3. Issues excluded from referral as a CCfA

- 3.1 The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 excludes the following matters from referral as a CCfA:
- Individual complaints concerning personal grievances or commercial issues.
 - Any matter relating to an individual or entity where there is already a statutory right to a 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
 - 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 or any of its sub-committees.²
- 3.2 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

¹ For definition of a local government matter and a local crime and disorder matter please see explanatory notes pages at Appendix 3.

² For definition of vexatious and discriminatory matters please see explanatory notes pages at Appendix 3.

up to the members of the Committee to decide whether or not to take the matter further.

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

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

- 4.1 Prior to a councillor referring a matter as a CCfA to the Overview and 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 the issue, for example through formal letters written on behalf of constituents, discussion at public meetings, petitions, communication with local MPs and councillors in other authorities etc.
 - Ensure that all relevant internal potential routes to solution have been followed, for example informal discussions with officers and/or members, questions at committees, motions on the agenda at full Council etc.
 - Ensure that this is not an issue that is currently being or should be pursued via the Council's complaints procedure.
 - Ascertain whether or not any other form of local scrutiny is investigating the issue, eg Suffolk County Council.

5. How to make a Councillor Call for Action referral

- 5.1 If the issue/problem is still not resolved the councillor can refer it to the Overview and Scrutiny Committee as a "Councillor Call for Action". To do this the councillor should complete and submit to the Scrutiny Officer a CCfA Request Form outlining what the issue is and what steps have been taken towards a resolution. The request form is attached as Appendix 1, is available on the Council's Intranet, or from the Scrutiny Officer. The request form for a CCfA includes:
- The name of the councillor and ward they represent.
 - Title of the CCfA and date of submission.
 - A brief synopsis of what the main areas of concern are?
 - Which organisations have been contacted in trying to resolve the issue.
 - Responses received from those organisations.
 - Whether the Committee has considered a similar issue recently, and how this issue differs from that?

- Whether the issue should be considered through the Council's Complaints Procedure?
- Whether the issue relates to a quasi-judicial matter such as development control or licensing?
- Whether a similar or related issue is the subject of a review on the current work programme?
- Whether the issue is currently being looked at by another form of local scrutiny?
- The potential for scrutiny of the issue to produce real improvements?
- Whether the CCfA is currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints process.
- Whether there are any deadlines associated with the CCfA of which the Overview and Scrutiny Committee needs to be aware?

5.2 Members are required to produce all their evidence regarding actions already taken in relation to the issue, and responses received from organisations contacted, at the time of submitting the CCfA Request Form.

5.3 The Scrutiny Officer will receive the referral form either by post or electronically, log it to track its progress, and, with the advice of the Service Manager (Shared Legal), assess the issue to ensure that it is not a matter excluded from referral to the Overview and Scrutiny Committee.

5.4 The Service Manager (Shared Legal) will, if necessary, advise the Member that more evidence should be added in any section of the CCfA submission, although it will be the decision of the referring Councillor as to whether he or she chooses to provide more evidence, or wishes to submit the form in its original state.

5.5 The Scrutiny Officer will inform the Chairman of the Overview and Scrutiny Committee that the item will be included on the next Committee agenda. The councillor will be informed whether or not their referral has been successful.

5.6 A successful referral will ensure that the CCfA will be placed on the next 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. Decision of the Committee whether to take the matter further

6.1 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. (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.*

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

- Is the 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 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).
- Is this an issue currently being looked at by another form of local scrutiny, e.g. Suffolk County Council?
- And, as with all scrutiny, 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?

6.3 In considering the CCfA, the Overview and Scrutiny Committee may invite the relevant Portfolio Holder, Chief Executive, Director, Assistant Director or external organisation to discuss the issue with the Overview and Scrutiny Committee and answer any questions.

6.4 If the committee decides not to accept the CCfA referral it must inform the councillor and provide reasons.

6.5 If the Committee decides to accept the CCfA referral, it must 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:

- A meeting taking place between the Chairman and Vice-Chairman of the Overview and Scrutiny Committee, relevant officers, Scrutiny Officer, Assistant Director (HR, Legal and Democratic Services), Services Manager (Shared Legal) and the Member

submitting the CCfA at which a definitive list of witnesses for the CCfA hearing will be drawn up together with question plans for each witness as appropriate.

- Asking the service area(s)/partner organisation(s) to respond to the CCfA.
- Setting up a research group to undertake a more in depth review.

At formal hearing³

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

7. Potential outcomes

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

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

7.2 Once the 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 made available on the Councils website, unless the matter was an exempt item, in which case the report cannot be made public.

8. Timescales

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

8.2 If the Committee agrees to take the matter forward, the hearing will usually be held 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.

8.3 Should a CCfA hearing result in recommendations to Cabinet being made, the Cabinet will usually respond to the recommendations, setting out any action it intends to take, within 28 days of the date of the Cabinet agenda on which the recommendations were placed.

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

³ Any formal hearing will be run along similar lines to a call-in hearing. Please see explanatory notes pages at Appendix 3 for further details.

Appendix 1

Councillor Call for Action Request Form

This form should be used by any Councillor who would like the Overview and Scrutiny Committee to consider a Councillor Call for Action in their ward.

Councillor:

Address/contact details:

The Ward you represent:

Title of your Councillor Call for Action:

Date of Submission:

Please give a brief synopsis of the main areas of concern, including any community groups affected by the CCfA

Evidence Section

Which organisations have you contacted in trying to resolve this issue (please attached relevant documentation)

What responses have been received from those organisations, and how do those responses demonstrate that the matter is not being progressed? In particular, have the organisations been given sufficient time to progress the issue (please attach relevant documentation)

Has the Committee considered a similar issue recently – if yes, please evidence how the circumstances or evidence have changed

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 there a similar or related issue which is the subject of a review on the current work programme?

Is this an issue currently being looked at by another form of local scrutiny, eg Suffolk County Council?

**As with all scrutiny, 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?
Please provide details.**

Is the CCfA currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints' process?

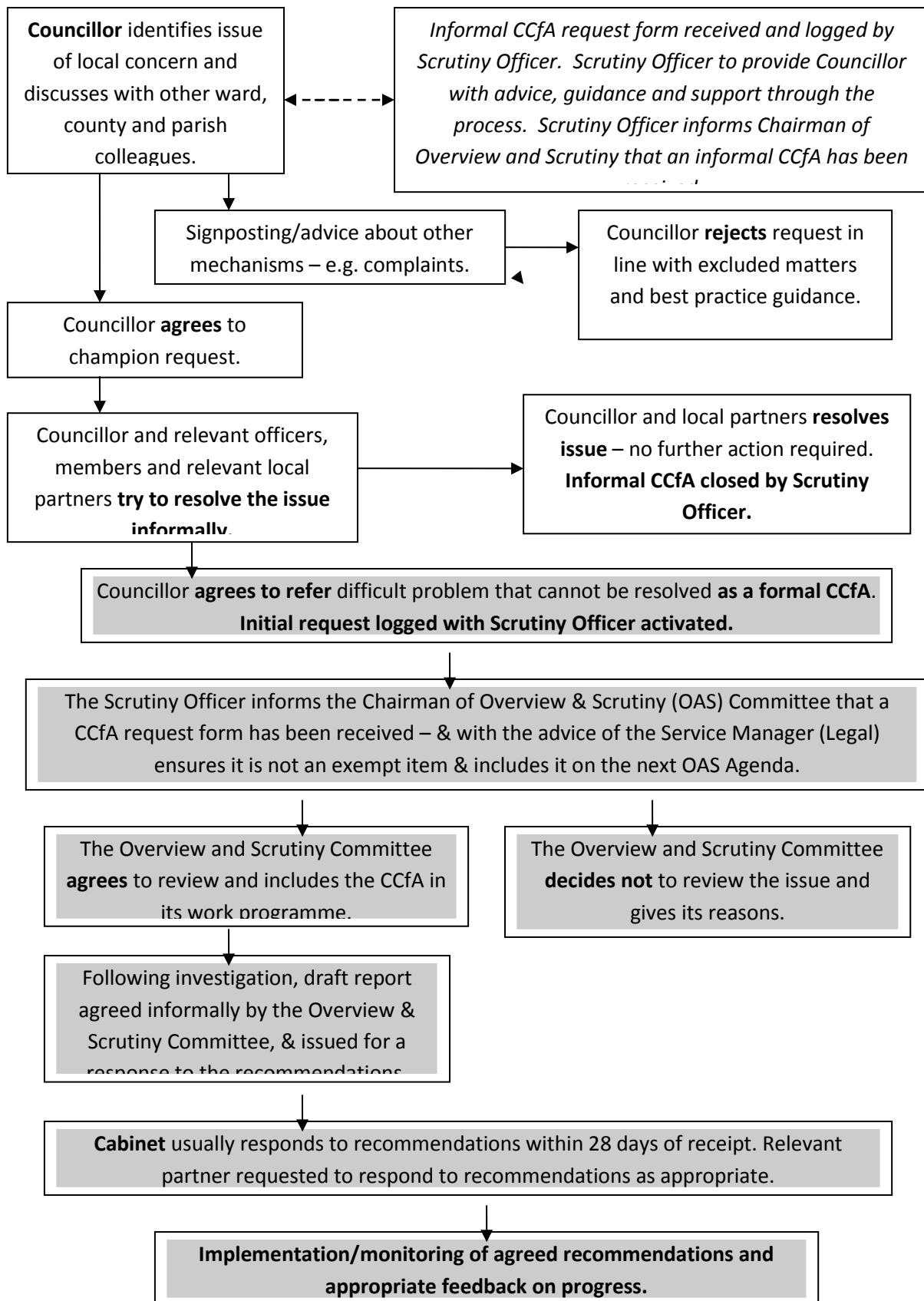
Are there any deadlines associated with the CCfA of which the Overview and Scrutiny Committee needs to be aware:

Please complete and return the form to either:

St Edmundsbury Borough Council
Christine Brain (Scrutiny Officer)
West Suffolk House
Western Way
Bury St Edmunds
Suffolk
IP33 3YU

Forest Heath District Council
Christine Brain (Scrutiny Officer)
District Offices
College Heath Road
Mildenhall
Suffolk
IP28 7EY

Appendix 2 – Summary of CCfA Mechanism



Appendix 3 - 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 overview and 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 Overview and Scrutiny Committees structure for dealing with call-in hearings.

The following protocol is intended to formalise the conduct of CCfA hearings and the preparation work carried out in the run-up to such a hearing. It should be noted that the protocol may be varied to meet the requirements of any particular circumstances.

Prior to the hearing

1. Shortly after the Overview and Scrutiny Committee agrees to take forward a CCfA to a full hearing, a meeting will take place between the Chairman and Vice-Chairman of the Overview and Scrutiny Committee, relevant officers, Scrutiny Officer, Assistant Director (HR, Legal and Democratic Services), the Service Manager (Shared Legal) and the Member submitting the CCfA, at which a definitive list of witnesses for the CCfA hearing will be drawn up, together with question plans for each witness as appropriate.
2. The CCfA Request Form and any additional papers provided by the referring councillor will be published with the agenda for the meeting.
3. The referring councillor and relevant Portfolio Holder(s), officers and partners will be invited to the meeting.
4. Any other relevant external witnesses will be invited to the meeting.
5. Seven days’ notice of a request to attend the meeting will be given to all participants. If a question plan is to be produced, seven days’ notice of the questions planned will also be given to participants.
6. Prior to the meeting any member who may have a conflict of interest will be given relevant advice by the Monitoring Officer.

The hearing

1. The CCfA hearing will normally be the first item of business on the agenda, in order that participants and other witnesses are not kept waiting.
2. Participants and witnesses will be placed around the table with the Committee if space permits, but if there is a large number of witnesses or other attendees at the meeting, they may be required to wait in a separate seating area or the public gallery.
3. The referring councillor will be invited to make a presentation outlining his or her reasons for referring the matter as a CCfA. A question and answer session will follow.
4. Any other parties relevant to the hearing, for example Portfolio Holders, officers or partners, will be invited to make presentations outlining their response to the CCfA. Question and answer sessions will follow.
5. Any other relevant external witnesses will be invited to make a presentation to the Committee without interruption, following which there will be a question and answer session. Any witness at a CCfA hearing who does not have a question plan, but is asked for his or her views on a particular issue, will be invited to speak for no more than three minutes.
6. Witnesses will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.
7. The referring councillor will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.

