

Norwich City Council
SCRUTINY COMMITTEE

REPORT for meeting to be held on 9 April 2009

INTRODUCING COUNCILLOR CALL FOR ACTION

- Summary:** With effect from 1 April 2009, the Local Government Act 2000 will be amended by section 119 of the Local Government and Public Involvement in Health Act 2007 to require the executive arrangements of local authorities in England to include provision for any elected member to make a Councillor Call for Action. The amendment also specifies a number of excluded matters that can not be subject to a CCfA.
- Conclusions:** The Councillor Call for Action empowers councillors to require overview and scrutiny committees to consider issues of local concern working with the recently published guidance to support them in exercising these powers. A Councillor Call for Action also exists in the Police and Justice Act 2006 to raise crime and disorder issues at the responsible Scrutiny Committee for Crime and Disorder Reduction; at Norwich this is the main Scrutiny Committee.
- The CCfA with relation to the Local Government and Public Involvement in Health Act will be in force from 1 April 2009. The CCfA with relation to the Police and Justice Act comes into being on 31 April 2009. Although the legislation that sits behind both CCfA's comes from different Acts, the guidance suggests that the actual CCfA protocol can be designed to accommodate both.
- Recommendation:** To endorse the Norwich City Council Call for Action Protocol and recommend that the Council adopts this as an approach.
- Contact Officer:** **Scrutiny Officer** – 01603 212491 stevegoddard@norwich.gov.uk
- Exec Member:** **Alan Waters** – 01603 437162 a.waters@cllr.norwich.gov.uk

1. Where does the Councillor Call for Action come from?

- 1.1 The Councillor Call for Action is one in a range of measures introduced in the 'Creating Strong, Safe and Prosperous Communities' White Paper (2006) and the 'Communities in Control: real people, real power' White Paper (2008). Some of these measures were enacted in the Local Government and Public Involvement in Health Act 2007, whilst others are contained in the Local Democracy, Economic Development and Construction Bill, which received its first reading in Parliament in December 2008.
- 1.2 Crime and disorder matters are dealt with separately in the Police and Justice Act 2006, for which guidance is expected from the Home Office in April.
- 1.3 The overall intention of these measures is to empower local people and communities, not least by improving local accountability and strengthening the role of councillors at Ward/Division level.

2. Guidance and development of a Councillor Call for Action Protocol

- 2.1 The Government has generally left Councils to decide how exactly CCfA's will work in their authority. However, 'best practice guidance' has been published jointly by the Improvement and Development Agency and the Centre for Public Scrutiny. The guidance has only been published for a couple of weeks, but in the meantime the Norfolk Scrutiny Network of officers have been working together towards agreeing a common protocol based on the 'best practice guidance' that can be adopted at our respective Councils - **attached**.

3. Before making a Councillor Call for Action

- 3.1 Guidance makes it clear that CCfA's are intended as a last resort, to be used when all other means of resolving an issue have proved to be unsuccessful. As a minimum, it is expected that the member concerned will have approached the following:
 - any relevant local service manager (partner or Council)
 - any relevant partnership bodies or local groups
 - the relevant Executive member
 - the relevant County Councillor(s)

4. How to Make a Councillor Call for Action

- 4.1 Please see the Protocol and Guidance - **attached**.



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, and came into force on 1 April 2009.
- 1.2 The Act enables any member of the Council to refer to the 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, and Issues currently under dispute in a court of law.

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

- 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.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 Scrutiny Committee. It is then up to the members of the Committee to decide whether or not to take the matter further.
- 3.3 A referral made to the Scrutiny Committee is seen as being 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 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 Safer Norwich 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, 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 Norfolk 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 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 available on e - councillor or from the Scrutiny Manager. The request form for a CCfA includes:

- The name of the councillor and ward they represent
- Title of the CCfA and date of submission
- Why you think the issue should be looked at by the Scrutiny Committee
- A brief synopsis of what the main areas of concern are

² For definitions of vexatious, discriminatory and not reasonable please see explanatory notes pages at Appendix 3.

- What evidence you have in support of your CCfA
- Which areas or community groups are affected by the CCfA
- What you have done to try and resolve the issue prior to requesting a CCfA (Any letters, emails etc should be appended to the form that show you have tried to resolve the issue).
- 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 The Scrutiny Officer will receive the referral form, log it to track its progress, and, with the advice of the Head of Legal and Democratic Services, will assess the issue to ensure that it is not a matter excluded from referral to the Scrutiny Committee.

5.3 The Scrutiny Officer will inform the Chair of the 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.

5.4 A successful referral will ensure that the CCfA will be placed on the next agenda of the 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 are expected to present their CCfA and to write a brief covering report setting out their views, for consideration of the Scrutiny Committee. If however they wish not to submit a written report it is possible to update the Scrutiny Committee orally. Any reports prepared by councillors will be circulated with the agenda alongside the CCfA referral form.

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 have 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, eg Norfolk 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 Scrutiny Committee may invite the relevant Portfolio Holder, Chief Executive, Director, Head of Service or external organisation to discuss the issue with the 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:

- 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 Executive/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;

³ Please see the explanatory notes pages at Appendix 3 for further details.

- The Committee could write a report and make recommendations on the CCfA to the Executive, Council and/or relevant 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 report will also be made available on the Council's 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 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 Executive being made, the Executive will usually respond to the recommendations, setting out any action it intends to take, within 28 days of the date of the Executive 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.

Appendix 1 - Councillor Call for Action Request Form

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

Councillor

The ward you represent:

Title of your Councillor Call for Action:
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Date of Submission:

Have you approached the Scrutiny Committee on the same issue in the past six months?
Yes <input type="checkbox"/> No <input type="checkbox"/>

Would you like your response by:
Email <input type="checkbox"/> Letter <input type="checkbox"/>

Why you think the issue should be looked at by the Scrutiny Committee?

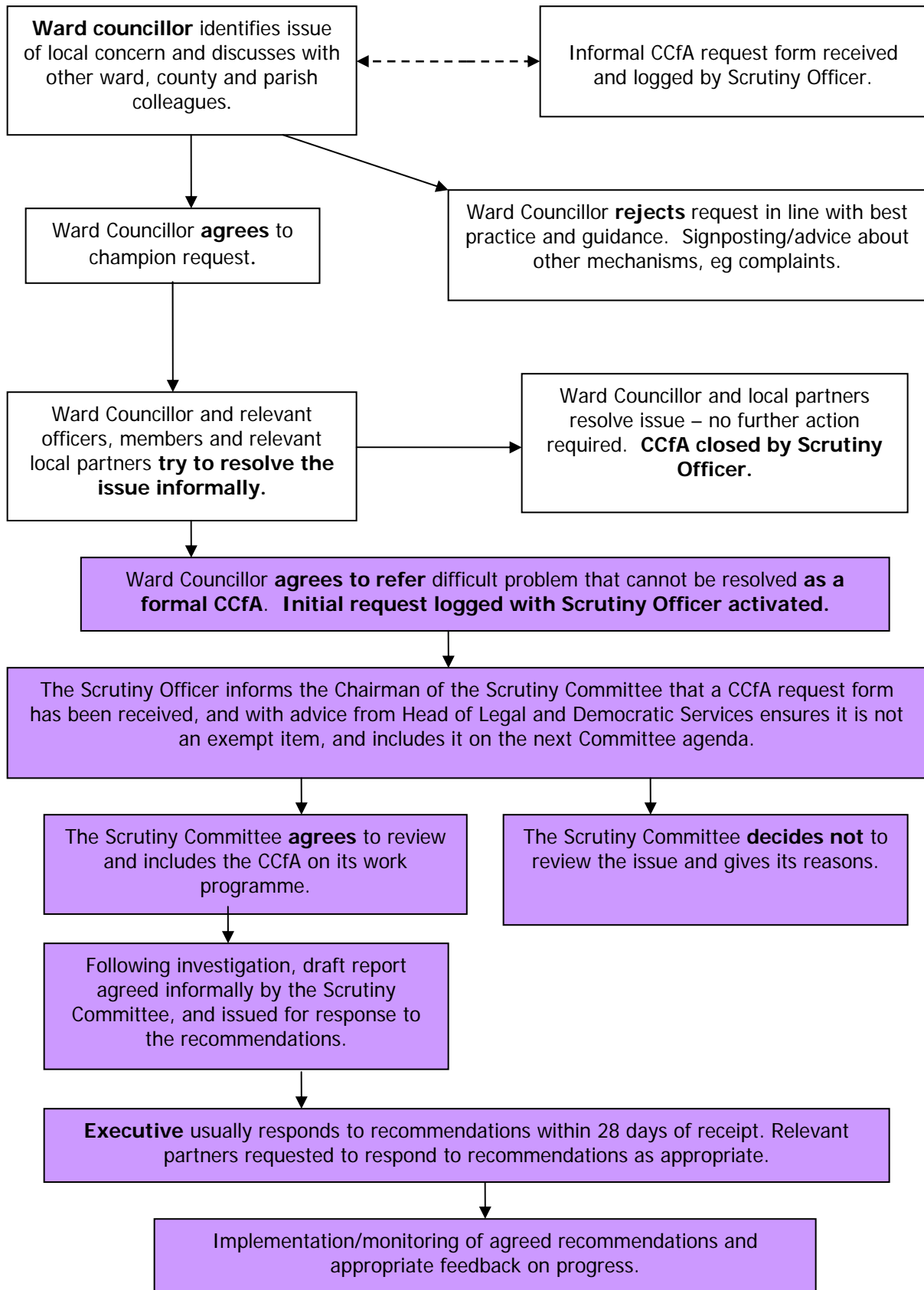
Please give a brief synopsis of the main areas of concern:

What evidence do you have in support of your CCfA?
Which areas or community groups are affected by the CCfA?
How have you tried to resolve the issue?
Is the CCfA currently the subject of legal action by any party (to your knowledge) or being examined by a formal complaints process?
Are there any deadlines associated with the CCfA of which the Scrutiny Committee needs to be aware?

Please complete and return the form to:

Scrutiny Officer
Legal and Democratic Services
City Hall
Norwich
NR2 1HN

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.

However, the guidance produced by the Centre for Public Scrutiny and Improvement and Development Agency advises that, to give full effect to CCfA, the interpretation of “local government matter” needs to be broader. This 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).

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.

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

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, however, that the protocol may be varied by the Chairman of the Scrutiny Committee to meet the requirements of any particular circumstances.

Prior to the hearing

1. The CCfA Request Form and any additional papers provided by the referring councillor will be published with the agenda for the meeting.
2. The referring councillor and relevant Portfolio Holder(s), officers and partners will be invited to the meeting.
3. Any other relevant external witnesses will be invited to the meeting.
4. 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.
5. 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.
3. The referring councillor will be invited to make a presentation outlining his or her main 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.
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.