

**REPORT TO:** CMT  
General Purposes Committee

**DATE:** 26 February 2009  
12 March 2009

**DEPARTMENT:** Resources/DCPI

**REPORTING OFFICER:** Head of Legal and Democratic Services  
(*Mr P Jordan*)  
Scrutiny Officer (*Mr M Codman*)

**SUBJECT:** **COUNCILLOR CALL FOR ACTION  
SUGGESTED COUNCIL PROCEDURES**

**WARD/S AFFECTED:** All

**FORWARD PLAN REF:** N/A

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**1.0 PURPOSE OF REPORT**

**1.1** To advise the Committee of the new requirement to deal with councillor call for action under Section 119 of the Local Government and Public Involvement in Health Act 2007 and ss 19(3) – 19(6) of the Police and Justice Act 2006

**2.0 RECOMMENDATIONS**

It is recommended that:

- 1 The process set out in this report for the operation of Councillor Call for Action be adopted from the April 2009 Council meeting, subject to a review in 12 months time.
- 2 The Head of Legal and Democratic Services be authorised to draw up a Councillor Call for Action Protocol for inclusion in Part 5 of the Constitution and to make any minor constitutional changes and/or clarification required to implement the approved procedure.

- 3 Chief Officers ensure that potential CCFAs are progressed within their departments with the aim of resolving them prior to formal consideration by Overview and Scrutiny
- 4 The Head of Legal and Democratic Services and the Scrutiny Officer develop guidance for Officers and Members on the operation of Councillor Call for Action including awareness/training sessions.
- 5 Partner organisations are informed of any processes/procedures implemented.

### **3.0 ALTERNATIVE OPTION CONSIDERED AND RECOMMENDED FOR REJECTION**

3.1 None applicable.

### **4.0 THE REPORT**

4.1 The Local Government and Public Involvement in Health Act 2007 and The Police and Justice Act 2006 put in place provisions for a Councillor Call for Action (CCFA). These will come into force from 1<sup>st</sup> April 2009, when local ward councillors will be able to invoke a “Councillor Call for Action” and the Local Authority’s Constitution must include provisions which:-

- (a) enable any member of an overview and scrutiny committee of the authority to refer to the committee any matter which is relevant to the functions of the committee;
- (b) enable any member of a sub-committee of such a committee to refer to the sub-committee any matter which is relevant to the functions of the sub-committee, and
- (c) in the case of a local authority in England, enables any member of the authority to refer to an overview and scrutiny committee of the authority of which he is not a member any local government matter which is relevant to the functions of the committee.

4.2 Other provisions in Part 5 of the Local Government and Public Involvement in Health Act 2007 also come into effect on 1 April 2009. These relate to scrutiny’s powers to request information from named partners and for those responsible partners to “have regard” to scrutiny recommendations. This therefore means that Overview and Scrutiny can potentially resolve CCFAs involving other organisations and for them to act on any recommendations. The list of named partners is set out in Section 104 of the 2007 Act and is very extensive, covering most public bodies with functions in the district.

4.3 In order to exercise the power at paragraph 4.1(c) above, a councillor must have regard to guidance issued by the Secretary of State.

4.4 Certain matters are excluded from the “Councillor Call for Action” (CCFA). These include individual planning and licensing decisions and the Secretary

of State may add other categories of exemption by order.

- 4.5 The Centre for Public Scrutiny /IDeA has issued draft Best Practice Guidance on the issues arising from this initiative. The guidance is quite lengthy and discursive, however, a number of useful themes are highlighted. These are discussed below.
- 4.6 From initial discussions the Scrutiny Officer has established that there have been a range of reactions to this development with authorities. It is important that we seek to avoid a complex and bureaucratic process in seeking to respond to the new requirements and the best approach would appear to be to view CCFA as a refinement and extension to the normal casework of a Councillor, rather than as an entirely distinct process.
- 4.7 The salient point is that a reference to overview and scrutiny is only to take place when other reasonable avenues to resolving the problem have been exhausted. At the same time, Councils should avoid putting unnecessary barriers in the way of Councillors seeking to exercise this option.
- 4.8 What is clear is that CCFA should not be seen as just an Overview and Scrutiny issue. The emphasis should be on resolving any potential CCFA's before they result in referral to Overview and Scrutiny and this requires recognition and commitment Council-wide.
- 4.9 It is also recognised that there will be some awareness/training sessions required for both Officers and Members. The experience from pilot authorities has also indicated that some discussion with named organisations is appropriate for any processes introduced, particularly concerning the approach to be taken when a CCFA is to be considered by Overview and Scrutiny.
- 4.10 Whilst it is unlikely that individual complaints would or should result in a CCFA there are circumstances in which a series of complaints might be subject to this action, since they might indicate a systematic failure in the service or activity concerned.
- 4.11 Two points arise here. First Members would have to utilise their own records of casework to establish such a pattern – although there is the possibility of using the Customer Relationship Management system operated by the Customer Services Unit for this purpose. Second, it is probably more likely that potential CCFA issues will cross traditional service and departmental/organisational boundaries. These are much more likely to be about problems in a locality or for a particular group of people and need a Council-wide approach potentially involving other organisations. Within the Customer Services Unit there is considerable experience and expertise in determining how best to route a multi-themed issue and it may be that Members may wish to utilise this potential source of assistance.
- 4.12 Issues of co-ordination within a multi-functional organisation such as a local authority can be complex but this can become even more difficult when partner organisations become involved.

- 4.13 Statutory Regulations exclude:
- “Any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at a meeting of overview and scrutiny or at a meeting of a sub-committee of that committee is to be excluded”. The reference to discriminatory relates to the Council’s obligations under the Equalities Act and is therefore clear.
- 4.14 “Vexatious and persistent” are more problematic terms. A persistent request for action may be entirely valid and so it is suggested that no potential CCFA issue should be ruled, solely on that basis. Deciding whether a matter is vexatious is more likely to be a balancing exercise. Taking into account all relevant circumstances of the case the key question is likely to be whether the request is likely to cause distress, disruption or irritation without any justified cause?
- 4.15 The Centre for Public Scrutiny advice goes on to discuss issues arising from a politically motivated CCFA. The focus is, however, on resolving problems and it may be, even on issues of high political tension that the mere act of discussing and considering a CCFA may be worthwhile. Certainly pre-set criteria for “Automatic rejection” on this or other points is unlikely to meet the requirements. Neither does expecting officers who are obliged to be “Non Party Political” to pronounce on the political motivation of a CCFA appear to be realistic or conducive to the efficient discharge of this function.
- 4.16 Appendix 1 to this report sets out the various suggested stages that would apply to the Councillor Call for Action (CCFA) process. As has been indicated, the first three stages are very much in line with normal councillor casework and assistance would be made available through the Customer Services Unit to record items or establish whether there was repeated public concern on a matter if Members required it.
- 4.17 It is considered that the only person who can decide whether an issue is appropriate for CCFA is the councillor concerned, having regard to any guidance issued and the need to avoid discriminatory or vexatious matters.
- 4.18 At that point, if the councillor is unhappy with the responses received they should identify the matter as a potential CCFA and contact Member Services.
- 4.19 Member Services staff will assist the Councillor in reviewing action and responses made to date to help establish whether there are any potential avenues of approach which might resolve the matter before resorting to a formal CCFA? It will be for the councillor to make the ultimate decision whether to utilise a call for action and he or she will have to justify their position if they are subject to criticism at the overview and scrutiny stage.
- 4.20 Once the Councillor has considered that the issue should be progressed as a formal CCFA then they should consult the Scrutiny Officer. The proposed CCFA will then be considered by the Chairman of the relevant Commission

and appropriate arrangements made with Officers and other organisations. As part of this process other sources for resolution work may be identified that could be pursued by the ward Member prior to it being considered by the Commission, alternatively, additional information could also be received from Officers/partner organisations that may resolve the issue prior to it being considered. After this process the CCFA will be considered at a Commission meeting.

- 4.21 All existing Member rights to request meetings with Executive Members, Committee Chairs (this latter category is expected to be relatively rare given the prohibition on individual quasi and judicial discussions) and Senior Officers will remain unchanged.
- 4.22 The attendance of such Members and officers at any Panel considering a CCFA can be required under Rule 14 of the Overview and Scrutiny Procedure Rules in the Constitution.
- 4.23 For the present it is suggested that no additional time limits are imposed on the CCFA process since the nature of the issues is likely to be varied and complex and if partner organisations are involved, timescales will be outside the Borough Council's direct control. Nevertheless, undue delay could, of course, constitute maladministration and be of interest to the Local Government Ombudsman although, on balance, it is considered that targets on timelines would be an unnecessary complicating factor, though this matter should be kept under review.
- 4.24 In addition to the areas already excluded by law, it is suggested that the Overview and Scrutiny Commission, when considering whether to further investigate or otherwise act upon a CCFA, should decline to do so in the following circumstances:
1. The matter is outside the jurisdiction of any of the bodies subject to scrutiny;
  2. Or is already subject to investigation by external authorities or proceedings under a separate statutory authorisation (for example Standards Committee or Employment Tribunal proceedings)
- 4.25 It may also be helpful to indicate that where a matter has already been considered by Scrutiny or substantially the same facts without change the Committee may decline to give the issue further consideration.
- 4.26 The Act also inserts an additional Section (21B) into the Local Government Act 2000 which enables an Overview and Scrutiny Committee to require the authority or Executive to consider a report or recommendation and respond to the Overview and Scrutiny Committee indicating what action they propose to take within 2 months of the report or recommendations or if later, the notice. This will apply to CCFA and more generally and will require an amendment to the Overview and Scrutiny rules in the Constitution.
- 4.27 The other central premise is that at each stage of this process the Member (or ultimately the Scrutiny body) should be prepared to give reasons for the decisions made. This also includes providing an explanation to any

appropriate member of the public on the outcomes of the discussions/work undertaken. This is an essential part of open and accountable local government.

## 5.0 CONCLUSIONS

- 5.1 In preparing this report certain assumptions have been made about the number and type of CCFA issues that are likely to be raised. Obviously, this involves a degree of speculation and these assumptions, together with the procedures outlined, will need to be reviewed in the light of experience.
- 5.2 The proposals as outlined and as illustrated in Appendix I offer the most appropriate balance between the need for a formal procedure and avoiding unnecessary bureaucracy.

### Background Papers - None

**OFFICER CONTACT:** Please contact Peter Jordan if you require any further information on the contents of this report. The officer can be contacted at Council Offices, Crescent Gardens by telephone on (01423) 556029 or by Email – peter.jordan@harrogate.gov.uk

### SUSTAINABILITY ASSESSMENT / POLICY CONSIDERATIONS

		Implications are		
		Positive	Neutral	Negative
A	Economy		✓	
B	Environment		✓	
C	Social Equity	✓		
i)	General			
ii)	Customer Care / People with Disabilities			
iii)	Health Implications	✓		
D	Crime and Disorder Implications		✓	

If all comments lie within the shaded areas, the proposal is sustainable.