

5. COUNCILLOR CALL FOR ACTION PROTOCOL

5.1 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), 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.

The Act enables any Member of the Council to refer to an Overview & 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.

5.2 Limitations

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.

5.3 Issues excluded from referral as a CCfA

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

1. a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 (local authority scrutiny of crime and disorder matters),
2. any matter relating to a planning decision
3. any matter relating to a licensing decision
4. any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
5. any matter which is vexatious,
6. any matter which is discriminatory or
7. any matter where it not reasonable to be included in the agenda for, or to be discussed at, a meeting of the Overview and Scrutiny Committee or at a meeting of a sub-committee of that committee. The Overview and Scrutiny Committee considers the following matters are not reasonable matters for such inclusion:

- 7.1 *complaints concerning personal grievances or commercial issues (which may be referred for consideration under the Councils grievance or complaints procedure)*
- 7.2 *Any matter which is currently the subject of legal proceedings or contemplated legal proceedings*
- 7.3 *Any matter relating to staff disciplinary matters that identifies any individuals*
- 7.4 *Any matter which contains defamatory statements or offensive language*
- 7.5 *Any matters that have already been considered under CcfA (or are substantially similar to matters previously considered) within the previous 12 months*
- 7.6 *Any matters that are the same or substantially similar to matters previously under the Council's corporate complaints procedure within the previous 12 months*
- 7.7 *Any matter relating to the conduct of a Councillor under the relevant code of conduct provisions*
- 7.8 *Any other matter of any description specified in an order made by the Secretary of State under Section 21 of the Local Government act 2000*

Provided that any matter in category 2, 3, or 4 of the Excluded Matters shall not be excluded if it consists of an allegation that a function for which the authority is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis, notwithstanding the fact that the allegation specifies or refers to a planning decision, a licensing decision or a matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to review or right of appeal conferred by or under any enactment

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.

5.4 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 Overview & Scrutiny Committee, a Councillor **must** have tried to resolve the issue/problem himself or herself 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, e.g. Suffolk County Council.

5.5 How to make a Councillor Call for Action referral

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 a CCFA Request Form 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 the issue should be looked at by the Overview & Scrutiny Committee?
 - A brief synopsis of what the main areas of concern are?
 - Evidence to support the CCfA?
 - The areas or community groups affected by the CCfA?
 - What has been done already to try and resolve the issue prior to requesting a CCfA?
 - Consideration as to whether the CCfA is the subject of legal action by any party or is being examined by a formal complaints' process.
 - Key dates associated with the CCfA, which the Overview & Scrutiny Committee needs to be aware?
- The Monitoring Officer will receive the referral and assess the issue to ensure that it is not a matter excluded from referral to Overview & Scrutiny Committee.

- If the issue is not an excluded matter, Committee Services will be responsible for logging the CCfA and referring it to the appropriate Head of Service. The Head of Service will be responsible for preparing a written response for consideration by the Overview & Scrutiny Committee.
- Committee Services will inform the Chairman of the Overview & Scrutiny Committee that the item will be included onto the Committee agenda and the Councillor submitting the CCfA will be informed of the date of the meeting.

A successful referral will ensure that the CCfA will be placed on the next appropriate agenda of the Overview & Scrutiny Committee. It is then up to the members of the committee to decide whether or not to take the matter further.

5.6 Decision of the 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. (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).

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 by the ward Councillor have been made to resolve the issue? 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 Councillor's ward?

In considering the CCfA, the Overview & Scrutiny Committee may invite the relevant Councillor Champion, Chief Executive, Head of Service or representation from an 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 must decide how it intends to take the matter forward and include the CCfA in its work programme.

5.7 Potential outcomes

Following a committee meeting, there are a number of potential outcomes:

- The 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 Committee could determine that it is a complex issue that requires further investigation and commission a scrutiny review of the issue;
- The Committee could prepare a report with the existing evidence and make recommendations on the CCfA to the Executive.

Once the Committee has completed its work on the CCfA referral the Councillor 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, www.ipswich.gov.uk

5.8 Timescales

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

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

Should a CCfA review result in recommendations to the Executive, the Executive must respond to the recommendations, setting out any action it intends to take, within 28 days of the recommendations being placed on its agenda.

Should a CCfA review 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.

Councillor Call for Action Request Form

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

Your contact details: Name (print):
Address:
Contact number:
Email address:

The Ward you represent:

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

Would you like the opportunity to speak to the Overview & Scrutiny Committee? Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you approached the Overview & 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 Overview & Scrutiny Committee:

Please give a brief synopsis of 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:

How have you tried to resolve the issue:

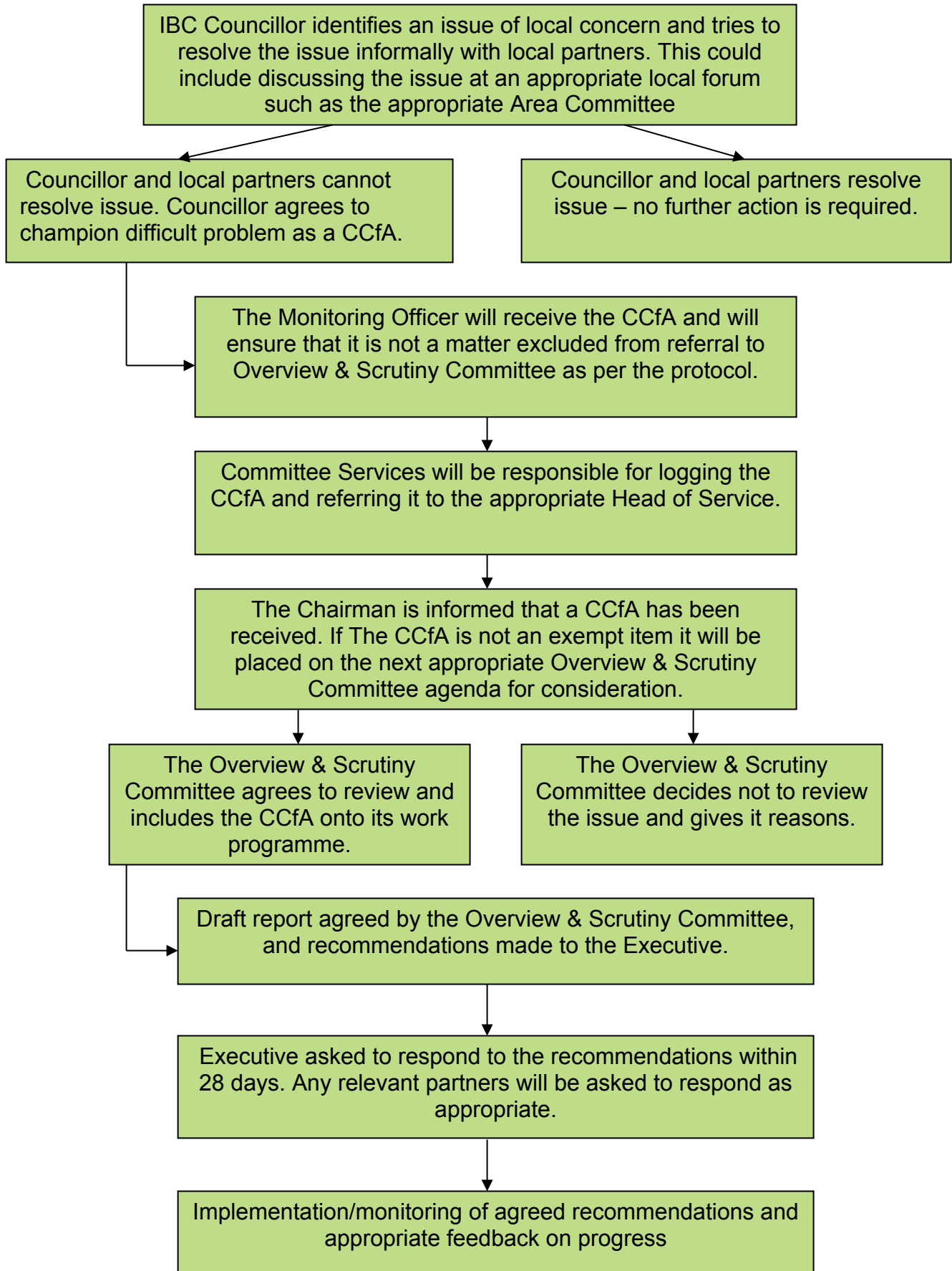
Is the CCfA currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints' process?

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

Please complete and return the form to:

Ipswich Borough Council
Monitoring Officer
15-17 Russell Road
Ipswich
IP1 2DE

Proposed CCfA Mechanism



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, “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 & 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.