

Report to Constitution and Members' Services Standing Scrutiny Panel

Date of meeting: 6 April 2009



Portfolio: Leader

Report of: Policy and Research Officer

Subject: Councillor Call for Action

Officer contact for further information: C Overend (01992 564243)

Democratic Services Assistant: M Jenkins (01992 564532)

Recommendations:

- (1) That the Panel notes the introduction of the Councillor Call for Action (CCfA) and address the constitutional issues arising consequent upon its introduction; and**
- (2) That the Overview and Scrutiny Committee include a review of the effect of the CCfA in the work programme with particular reference to the Overview and Scrutiny Procedure Rules, the petition procedure, the compliments and complaints procedure and the delegation of officers/member bodies to deal with the new procedures under the Act.**

Report:

Introduction/Background:

1. The Local Government and Public Involvement in Health Act 2007 empowers all Councillors to refer issues of concern related to Council functions for consideration by the relevant Overview and Scrutiny Committees of their local authorities. In addition, the Police and Justice Act 2006 (which proposed a 'Community Call for Action' on crime and disorder matters. The latter is referred to as a separate report) has been amended by the 2007 Act to bring these provisions into line with the 'Councillor Call for Action'. (The CCfA is derived from Section 119 of the 2007 Act and inserts a new Section 21A into the Local Government Act 2000). The original intention was to introduce these powers in 2008 but the implementation date is now 1 April 2009. However, the CCfA is a power rather than a duty and it is recognised that the arrangements will vary from one local authority to another and will be developed over a period of time.
2. The Council has been awaiting the publication of best practice guidance on the CCfA prior to assessing the impact of the proposals on existing constitutional arrangements and how it might best be applied locally. This guidance was published on 17 February 2009 and this report sets out further information in the light of that guidance and the proposed arrangements for local use having regard to that guidance.
3. The national guidance also includes information on the optional power to delegate Council functions under Section 236 of the 2007 Act to individual Councillors to make decisions at ward level. Regulations will be issued in respect of publicity for recording such decisions.

4. This report needs to be considered in the context of other initiatives and existing mechanisms such as:
 - The Council's Complaints Procedure;
 - The Annual Work Programme for Overview and Scrutiny;
 - Petitions - The Local Democracy, Economic Development and Construction Bill (known as the Local Democracy Bill) currently going through Parliament contains a new duty for Councils to respond to petitions giving citizens greater power to hold local authorities to account and influence local services.
5. The CCfA provision entitles all Councillors to refer a "local government matter" to an Overview and Scrutiny Committee once they have exhausted all other means of resolving the issue. This is defined as a matter "which relates to the discharge of any function of the Authority, affects all or part of the electoral area for which the Member is elected or any person who lives or works in that area, and is not an excluded matter".
6. The Overview and Scrutiny (Reference by Councillors) (Excluded Matters (England) Order 2008 "the Order" excludes certain issues from the definition of "local government matters" for the purposes of Section 21A, which relate to individuals, or concerning planning and licensing matters and issues which are vexatious, discriminatory or not reasonable to be included in the agenda or discussed at a Scrutiny Committee (e.g. if the issues would be detrimental to community cohesion). It also excludes issues relating to individuals or entities where there is already a right to a review or appeal (other than a complaint to the Ombudsman). Section 21A(ii) also provides that an excluded matter is a local crime and disorder matter (within the meaning of Section 19 of the Police and Criminal Justice Act 2006).
7. The work of resolving community concerns is an important part of a Councillor's role. The CCfA is regarded by Government as a useful additional tool for Councillors in attempting to perform this role effectively. It recognises that certain matters are best dealt with through existing mechanisms (e.g. planning and licensing applications) or other statutory appeals processes.

What is different about CCfA?

8. CCfA goes beyond the existing power scrutiny members have to raise issues. This new power gives all Councillors the ability to call for debate and discussion at a committee on a topic of neighbourhood concern. The powers are limited to issues affecting single Council wards (Nonetheless, many such issues, or at least aspects of them, are likely to be repeated in other wards at other times. Thus any decision as to how to deal with a referred matter, might well have a bearing on how similar issues arising in the future are dealt with).
9. Under the 2007 Act, Scrutiny Committees have the power to request information from certain partner organisation and to invite representatives from partner organisations to attend where relevant. CCfA is therefore an opportunity to devise solutions for local problems using the influence that scrutiny can provide in bringing together a range of partners and in producing innovative thinking around an issue.
10. CCfA should not, however, be regarded in isolation, as part of the scrutiny function alone. For it to be effective, requires use of a range of other facilities, including support for Councillors' ward work, the complaints process, call-in and petitions.
11. If a CCfA is accepted, a discussion would take place at the Committee meeting on how to achieve the outcomes that the Member championing the CCfA is seeking.

The Committee would, in appropriate cases, explore potential solutions, and may make recommendations that certain actions be taken.

12. These powers are for any Member of the Council to pursue. However, there are exceptions where CCfA is not appropriate. Statutory Regulations state that 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 Overview and Scrutiny Committee or at a meeting of a Sub-Committee of that Committee is to be excluded".
13. The guidance states as follows in regard to these terms:

"Vexatious" and "persistent" - it is probably best to refer to the guidance to the Freedom of Information Act which states that:

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 the key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.
14. 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. A request which some Members may regard as vexatious, for political reasons, may actually be entirely reasonable.
15. Councils should not see politically motivated CCfAs, and CCfAs on subjects of high-profile political controversy, as a threat. They should be used as an opportunity for Members to defuse political rows and, jointly, to develop solutions that are satisfactory to all. Nonetheless, Members might like to consider whether there should be a "purdah" period prior to elections when the CCfA provision would not be available.
16. "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") for the purposes of this part if, on grounds of the religion or belief of B, or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat others or would treat others (in cases where there is no material difference in the relevant circumstances).
17. "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.
18. "Other exclusions" - Regulations also state that issues should be excluded from CCfA when they relate to a complaints process. Planning appeals, licensing appeals and all other areas where a person has an alternative avenue to resolve an issue are expressly excluded. However, Section 4.1 sets out ways in which information from complaints could be used to support CCfA.
19. Specific criteria for "automatic rejection" of CCfAs under certain circumstances will not be the best way forward, because each CCfA will need to be looked at on its merits.
20. Members will be provided with routes to seek advice on what can and cannot be pursued as a CCfA. This will include signposting to alternative resolutions. This is important as a CCfA must be used only as a **last resort**, when all other attempts at resolution have failed. It is not designed to provide an immediate solution, but high-

profile community discussion of an issue involving all stakeholders. It offers the chance to bring a pressing issue to a wider audience and to discuss such issues in a neutral forum.

21. There is a wide range of alternative avenues Councillors can pursue to influence and resolve problems, formal and informal, such as: discussions with officers, questions at Committee, formal letters on behalf of constituents, petitions, motions to Council, and letters to local MPs.
22. Discussion of CCfA issues at Committee will not necessarily resolve the issue immediately. However, the CCfA process is intended to act as a spur for Members and officers to work together to jointly develop policies to overcome the problem.

Examples of a CCfA

23. Under Section 21A of the 2007 Act, a CCfA needs to relate to a "local government matter". This could be interpreted narrowly, to mean only those issues under the direct control of the authority. However, the guidance states that, to give full effect to CCfA, the interpretation of "local government matter" needs to be broader.
24. This broader interpretation 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).
25. Examples of when councillors might use CCfA include:
 - Long running issues of anti-social behaviour linked to substance misuse in a local park area
 - Continuing trends in poor performance around, for example, refuse collection or recycling (the guidance confirms that this would only be appropriate if it related to a specific locality)

...

Community Safety CCfA

26. A different Act of Parliament, the Police and Justice Act 2006, sets out a CCfA for crime and disorder and community safety issues. The provisions for the 'crime and disorder CCfA' are essentially identical to the general CCfA.
27. Although the Police and Justice Act requires these issues to be considered by the 'Crime and Disorder Committee', in practice this does not require the setting up of a separate committee or separate arrangements.

Existing Arrangements

28. There are a number of methods and/or mechanisms members can use to raise matters to influence change. These may be formal or informal, within or outside the Council's constitutional arrangements and include the following:
 - Overview and Scrutiny Committee/call-in
 - Questions at committee/council
 - Informal discussions with officers or other members
 - Formal letters written on behalf of constituents
 - Public meetings
 - Petitions and deputations
 - Motions on the agenda at full Council
 - Communication with local M.P.s
 - Communication with Councillors at other local authorities

- Web or e-mail based campaigns
29. In terms of the existing constitutional arrangements there is a mechanism through the Members' Bulletin whereby, once a year, councillors can submit requests through completion of the required form, for items to be referred to Overview and Scrutiny Committee. There is also a referral method through each Overview and Scrutiny Committee agenda providing Members with an opportunity to put forward suggestions for inclusion in the "reserve" programme for discussion at the appropriate time. Overview and Scrutiny Committee can also exercise the right to call-in, for reconsideration, decisions made but not yet implemented.
 30. The District Council has an official procedure for dealing with petitions set out in the Constitution. A minimum of 20 signatures is required. A petition is dealt with by Democratic Services staff who may refer it to the appropriate Portfolio Holder, Ward Councillors, appropriate Overview and Scrutiny Chairmen and any other relevant members as agreed by the Portfolio Holder. Following discussions involving the Portfolio Holder and relevant Director, a decision will then be taken on any action required including, where deemed appropriate, referral to the Cabinet. The Government is bringing in provisions relating to petitions as part of the Local Government Bill. It is not yet known what impact these provisions will have on the District Council's petition arrangements.
 31. There is also provision for Councillors to ask the Leader, or the Chairman of Overview and Scrutiny or a Portfolio Holder any question without notice on an item of the Executive or a Committee under consideration or, indeed, on any non-operational matter in relation to which the Council has powers or duties. Similarly, Members can put forward motions about matters for which the Council has a responsibility or which affect the Epping Forest District.

CCfA within Revised Arrangements

32. CCfA will be a means of "last resort" in a broad sense, with the process being used after all other avenues have been exhausted. As such, the process should make it easier for issues that would benefit from scrutiny consideration to rise to the surface, and for those issues which are best dealt with through other means to be signposted accordingly.
33. Nonetheless, CCfA has an important role to play and procedures for it need to be incorporated into the Council's Constitution. What CCfA can provide which the other arrangements referred to in paragraphs 29-32 above cannot guarantee, is the opportunity for a Member to raise a local matter affecting their ward to the Overview and Scrutiny Committee and guarantee it being discussed and debated in such a forum within a short time of the issue coming to their attention. Whilst the Committee is not compelled to take any further action, all the powers it has – to mount inquiries, to require information and to make reports and recommendations – are to be available to it.
34. Moreover the CCfA revolves around the concept of "resolution". What CCfA provides is a recognition that an issue is significant enough for time, attention and resources to be spent trying to resolve it, as it provides the following:
 - A public forum for discussion of the issues
 - An opportunity to discuss the issues in a neutral environment
 - An opportunity to discuss a problem with the explicit and sole aim of solving it
 - A high profile process owned by a Ward Councillor
35. CCfA can be and should be used in conjunction with other procedures/arrangements where appropriate. For example, thought should be given as to how it might be linked with the arrangements for dealing with petitions. It will also be valuable for CCfA issues to feed into the broad scrutiny work programme.

36. An important consideration is the need to identify an individual responsible for determining which issues should be dealt with through CCfA. For example, should all issues be referred to the Chairman of Overview and Scrutiny to decide whether CCfA and/or other scrutiny procedures are appropriate? And should there be a time limit for resolving CCfA issues?

Reasons for the Proposed Decision

37. Local authorities must provide arrangements for a CCfA to comply with the requirements arising from the Local Government and Public Involvement in Health Act 2007, and the Police and Justice Act 2006. It is important that Members understand and contribute to this development work which imposes new responsibilities on them and the Council.

Other Options for Action

38. The alternative option would be to not provide arrangements for the CCfA. This be a failure to comply with the legislation. The guidance set out in this report is devised from best practice guidance which has been tailored specifically for local use.

Resource Implications:

There will be no specific additional costs arising. CCfA requirements would need to be provided for within existing Overview and Scrutiny arrangements.

Legal and Governance Implications

The CCfA provision is derived from Section 119 of the Local Government and Public Involvement in Health Act 2007. The arrangements will be reflected in changes to the Council's Constitution.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Internal discussions between officers.

Background Papers:

Local petitions and Calls for Action Consultation published by the Government 27 December 2007;

Summary of responses and subsequent Government Response to local petitions and Calls for Action Consultation;

Councillor Call for Action: Best Practice Guidance;

Epping Forest District Council Constitution.

Impact Assessments:

Assessment of effects on Council Constitution plus internal arrangements and resources required for dealing with CCfA.