



**Councillor Call for Action**  
best practice guidance



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## 1. introduction

**For some time Government has been pursuing the aim of giving more power to local people and local ward councillors. This aim has run through both 2006's "Strong and prosperous communities", and 2008's "Communities in control" White Papers.**

Ward councillors play a central role in the life of a local authority, as a conduit for discussion between the council and its residents and as a champion for local concerns. To bolster councillors' ability to carry out this second role, the Government has enacted, in the Local Government and Public Involvement in Health Act 2007, at section 119, provisions for a "CCfA" (CCfA), providing members with the opportunity to ask for discussions at scrutiny committees on issues where local problems have arisen and where other methods of resolution have been

exhausted. This section amends the Local Government Act 2000, with the result that the CCfA provisions form section 21A of that Act.

The Act also makes provision in section 236 for councils to delegate some of their functions to individual councillors, to allow them to make decisions at a ward level which will bring real improvements to their local areas. Authorities who use the powers under s236 (which are optional in nature) will be able to use this guidance to see what opportunities lie in linking these issues together to provide real results for local people and to make themselves more responsive to local need. Section 237 of the Act inserts a new section 100EA into the Local Government Act 1972, which provide powers to put forward regulations requiring councils to publicly record decisions made under s236.

## legislative context

Section 21A of the 2000 Act, 119, section 236 of the 2007 Act and section 100EA of the 1972 Act sit in the context of significant changes being made to local authorities more generally – particularly in the arena of partnership working.

CCfA should be seen in light of these wider changes. More powers for overview and scrutiny functions to work more closely with partners and across organisational boundaries (through joint committees, for example), will mean that scrutiny will be in a stronger position to resolve a wide range of policy issues, including local issues arising through CCfA itself.

Councillors sit at the centre of this process. Their democratic mandate is vital in challenging existing practice, opening up the decision-making process to the

public and helping councils to change and improve. CCfA will bring consistency to the way in which councillors can act as catalysts for improvement in local government, and amongst local government's partners.

## purpose and objectives of CCfA and delegated powers under s236

CCfA is about helping councillors to resolve issues and problems on behalf of their residents. Section 236 will further bolster this role, giving ward members powers to respond directly to local need. CCfA should not be regarded as merely a “scrutiny process”. Being able to use it effectively will require councils to consider making improvements to a wider range of council functions, including support for councillors' ward work, the complaints process, call-in, petitions and others.

This guidance is not about providing authorities with a prescriptive of view of how councils must set about putting CCfA into practice. It provides a steer to those authorities who are keen to use CCfA to its maximum possible effect. It will provide guidance for those authorities who wish to use their powers to delegate functions under s236, and suggest ways that this might be done so as to complement CCfA and existing neighbourhood working arrangements.



The successful operation of CCfA will rely on several broad principles being recognized, and supported, in local authorities. These principles are:


- Transparency in decision-making, and the involvement of scrutiny in the decision-making process at some level
- A willingness to identify mistakes and shortcomings, and a recognition of the need to resolve problems through discussion
- An understanding (among senior officers and executive members in particular) of the role that scrutiny can play to help a council to improve its services
- An understanding, and a wish to bolster and support, the role that ward councillors play as champions and leaders of their communities.

This guidance should be viewed in the context of these principles.

CCfA will be a means of “last resort” in a broad sense, with issues being raised at committee after 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.

Discussions about how to put CCfA procedures in place should focus on outcomes and resolutions for councillors, and by extension the local community, not processes. Sign-up will be required by partners and the executive while individual authorities are putting together their CCfA processes. Senior level officer and member commitment is necessary for maximum effect.

Authorities will try to give effect to the objectives of CCfA in differing ways. However, authorities who take the approach of doing no more than “complying with the legislation” will miss the opportunities that CCfA, and the power to delegate functions under s236, brings to strengthen the effectiveness of the scrutiny function.



**In Tunbridge Wells**, the CCfA process has been supported by the scrutiny team but is a council wide process. All heads of service are expected to champion and help resolve CCfAs. The focus has been on resolving issues outside of the scrutiny process and using scrutiny as a last resort for issue resolution when the ward councillor can take it no further.

### **the content of this guidance**

This guidance consists of several worked examples generated through four scenarios to illustrate the numerous different interactions between CCfA and other issues. Suggestions will be offered for a number of potential problems that might be encountered along the way, based on evidence from local authorities who have

already done some preparation for CCfA. Full information about the approach adopted by a wide range of local authorities can be found in a background evidence document being made available alongside this guidance.

The guidance will also cover section 236 of the 2007 Act and section 100EA of the 1972 Act, and will look at the delegation of functions in the wider context of providing more autonomy to ward members to make decisions.

The guidance will then offer what could be regarded as ideal resolutions for the worked examples given, reflecting the different approaches that different authorities might take towards CCfA.





## 2. the scenarios

All four scenarios take place in the borough of Ceal Valley (CVBC), which is in Leffshire, a two tier area. It is a semi-urban area with several medium-sized towns. For the purposes of the scenarios, their events take place in March 2011, just under two years into the implementation of CCfA. Although Ceal Valley is a two-tier authority, many of the solutions will be equally relevant to a unitary council.

This section sets out the background to the scenarios. Sections 3, 4 and 5 will explore some of the policy and practice issues which they raise. Section 6 will then return to the scenarios, setting out ways in which the CCfA issues might be resolved.

The four scenarios are as follows:

1. A scenario which looks at the political difficulties which might be encountered
2. A scenario which looks at the way in which CCfA will demand engagement with partners
3. A scenario which looks at issues around “systematic failure”
4. A scenario which looks in detail at the concept of “resolution” .



## scenario 1

Joy lives in Market Horton, the largest town in the borough. She formed a campaign group last year to try to sort out problems in their local park, which her house overlooks. Along with a group of residents from other houses which abut the park, they went to their ward councillor, Cllr Bristow, to raise several issues, namely:

Because the park has no gates, and hence cannot be locked at night, it has become a magnet for anti-social behaviour. Joy thinks that this emanates from the residents of a nearby bail hostel. She has found drug paraphernalia discarded in the areas where they usually congregate.

The park is in a poor state of repair. Joy and her group think that the untended nature of the park is putting off people from using it, and that the fact that it is

ill-used means that people from the bail hostel are more inclined to loiter there.

Cllr Bristow approached the Cabinet Member for Environmental Services, Cllr Mitchell. They are in the same political group. Cllr Mitchell told him that,

- The park cannot be locked at night, as a public right of way passes through it
- The council cannot do anything about the bail hostel, as this is the responsibility of the National Probation Service
- There were originally plans to renovate the park but these had to be shelved six months ago as part of budget cuts necessitated by the council's Revenue Support Grant, which was less than expected.

Cllr Mitchell said that, although she sympathised, there was nothing that could be done about the situation in the short term. Cllr Bristow met Joy and her group to relay this information back to them and discuss what further action they might take. The meeting was inconclusive.

Cllr Bristow's fellow ward councillor, Cllr Mokal, is in the opposition group. He is the minority group's spokesman on environmental services and leisure. He heard about the response and wrote a letter to the local paper saying that,

"this penny-pinching approach is typical of the executive of Ceal Valley Council, to whom next year's balance sheet is more important than providing for the safety and security of its citizens."

In the letter Cllr Mokal invited interested residents to attend a public meeting which his Group Office set up, to which were invited the manager of the bail hostel, the Director of Environment and Planning at the council, the Sergeant from the local Safer Neighbourhoods Team (SNT) and Cllr Mitchell.

All the invitees (except the manager of the bail hostel) attended, as did Cllr Bristow. The meeting was bad-tempered, due to personal animosity between Cllrs Mokal and Mitchell, and the fact that council elections are approaching. Cllr Mitchell reiterated the points that she had made previously and stated that, in the short term, there was very little that she could do about the matter. The Sergeant of the SNT stated that he already ran regular patrols in the park.

As a result of the meeting, the following events have occurred:

Cllr Mokal has “formally raised” (in his words) a CCfA over issues relating to the park. Cllr Mitchell has approached the Director of Legal and Governance (D/L&G), through the Leader, stating that the CCfA is politically motivated and should consequently be refused on the grounds of it being a vexatious request.

- Joy is in the process of gathering names for a petition. She is considering making a formal complaint under the council’s complaints procedures.
- Cllr Bristow has approached the Chairman of the Overview and Scrutiny Committee to advise him of the situation. The Chairman has advised that the long list for next

year’s work programme contains a review on public green spaces across the borough and both councillors have now approached Cllr Mokal, suggesting that these issues should perhaps be looked at in a “more strategic” way as a part of that review, as they clearly have implications across the borough.

## scenario 2

Cllr Anthony is a ward councillor representing a ward, Falstead South, which straddles the River Ceal. Last autumn there were serious floods which were covered in the local and national press. Several hundred houses were inundated. A short scrutiny review was carried out at the time which looked at new draft plans for flood protection for Falstead and the surrounding area, concluding that the new plans should combat similar severe weather events in the future.

However, the prospect of the flood defences being implemented as planned now looks in doubt. Cllr Anthony has seen a confidential document, prepared by the county council in conjunction with the Environment Agency, which recommends that the defences be

planned to meet a “once every twenty years” flood surge rather than a “once every hundred years” flood surge (thereby making them more susceptible to be overwhelmed in the case of extremely serious flooding).

He has approached the Chairman of Overview and Scrutiny to express his wish to make a CCfA.





### scenario 3

A significant rise in the number of complaints being made about rubbish and recycling collection has occurred in the last few months. Most have been “resolved”, in that they have been dealt with individually by the service concerned, but new complaints on the same issues seem to keep recurring.

The most common complaint is that rubbish collectors have “rejected” recycling that has been left out by residents (ie it has not been taken away). This seems to be due to new recycling rules for residents brought in as a result of an agreement at the county’s Joint Waste Committee.

This issue has come to the attention of a number of councillors. Several have independently approached executive members and officers about it. Cllr

Mokal (minority party spokesman on environmental services and leisure) asked a question at Cabinet and received the following response:

Cllr Mitchell (Cabinet Member for Environment and Leisure): Through you, Chair, may I say to Cllr Mokal that he is quite wrong in his assertions? We said when the new recycling provisions were brought in last year that there would be period of adjustment while people get used to the new system. I’ve accepted before that there were teething problems in the north of the borough, and we’ve provided a full apology to residents who were affected by this. I accept that we’re still getting complaints but as our message gets out there, those complaints are going to go down and people are going to see how these new policies are cost effective and

deliver a more efficient service to local people.

Cllr Mokal has also sent a letter stating his concerns to the County Joint Waste Committee, and to a local newspaper, but neither has resulted in a reply which provides more, or different, detail to that given by Cllr Mitchell, as reproduced above.

Dissatisfied with this response, Cllr Mokal has decided to approach the Chairman to bring a CCfA to the next meeting of the main Overview and Scrutiny Committee.





## scenario 4

Recent performance information shows that results at a school in Walpert, a small town close to the district and county boundary, have fallen dramatically. It is generally accepted and has been admitted in a report to the county council's Lifelong Learning Overview and Scrutiny Sub Committee last year that part of the reason for the fall in standards is poor maintenance of the buildings. The school is due to move to a new site around half a mile away, but construction has been repeatedly postponed. This is because the new site incorporates a large new leisure centre, responsibility for which lies with the district council, but significant delays, caused in part of the bankruptcy of the principal building contractor, have impacted upon the construction of the school

buildings. The decision to build the leisure centre was subject to a call in at CVBC.

Cllr Gallimore is a district and county councillor and a governor at the school concerned. He wants to raise a CCfA at county level to deal with the education issue, and at district level to deal with the issue relating to the leisure centre. The county council has repeatedly insisted that the issue is out of their hands, and that it is for CVBC to resolve. The county's Director of Children's Services has also made it clear to members that he has "no direct powers" to influence what decisions individual schools make about their maintenance budgets. He has said, however, that he "understands" why the head is unwilling to carry out significant repairs to a building which will be

demolished imminently. The head has stated that CVBC should pay his school for the delay, and consequent lower standards, caused by the late completion of the leisure centre.

CVBC themselves have stated to Cllr Gallimore that:the issue cannot be resolved to his satisfaction, as there is no way to speed up the construction process of the new leisure centre. The Director of Leisure and Recreation has stated that, consequently, there is very little that a CCfA would be able to accomplish on this point.



## 3. specific issues arising

### 3.1 powers to exclude issues from CCfA

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 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.*

In many cases, councils will feel that they already have local procedures in place for dealing with problematic requests for things like motions, official “question times” or complaints, and that these principles can be applied to CCfA requests to comply with the spirit and substance of the regulations.

“Vexatious” and “persistent” – it is probably best if seeking to define what is meant by the word “vexatious” to refer to the Freedom of Information Act. Guidance to the Act 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 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<sup>1</sup>.*

Issues around persistency are implied by this definition.

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<sup>1</sup> Further information can be found in the Information Commissioner’s Office briefing, “Vexatious or repeated requests”, which can be found at [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

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. For example, scenarios 1 and 3 present situations where the councillor bringing the call for action could be regarded by as acting in a “vexatious” manner, but the subject matter and validity of the CCfA itself is probably not. It should be the subject matter, rather than the personality of the councillor or the way in which he makes the request, that is the deciding factor.

### scenario 1

Here, Cllr Mokal is clearly using the CCfA process as a way in which to challenge the majority party. But it is still a valid issue. Political motivation for a CCfA does not make it invalid –

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.

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.

Where a request for a CCfA is clearly vexatious, councils will need to take steps to give detailed reasons for this decision to the councillor concerned. There may 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”) 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 (in cases where there is no material difference in the relevant circumstances).*

This definition can easily be amended to deal with other forms of discrimination, such as discrimination for reasons of sex and/or race.

Public bodies are required to comply with the Equality Act and with the various other pieces of legislation

covering anti-discrimination, such as the Race Relations Act, the Disability Discrimination Act and the Sex Discrimination Act, and the statutory equalities duties which arise from them.

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.

**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 (that is, through the complaints process) are expressly excluded. However, see section 4.1 for ways in which information from complaints could be used to support a CCfA.

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 own merits.

### **3.2 “formal process”**


Some authorities have expressed worry and concern that CCfA will require them to establish a detailed, formal process for dealing with CCfAs, or to

restructure their scrutiny committees.

Other authorities have similarly stated that they already have a process in their constitution, which enables councillors to propose items for scrutiny committee agendas. There is an argument that, consequently, further formal processes are unnecessary.

There is a balance to be struck here. The purpose of CCfA is to assist in the resolution of local issues of concern, and any procedures that authorities bring in to govern the operation of CCfA should obviously concentrate on this key aim. This guidance will also show that some processes and procedures are necessary to ensure that CCfA is targeted and relevant, and that it occupies a central role in improving services, but that these should not be too prescriptive.





**In Birmingham**, a system for dealing with CCfAs has now been introduced. Popularly called the “gateway system”, it is explicitly designed to highlight the “long stop” nature of CCfA, and to signpost members to a wider range of methods for resolving their issues. It is designed to ensure that issues are considered in the right place at the right time, and recognises that most opportunities to effect change or delivery improvements will lie outside of the final stage CCfA procedures. The process was developed through a consultation process that involved a number of local organisations (such as the council’s key partners under the Local Area Agreement, or LAA) the intention being to reassure these organisations (who might be

affected by CCfA) of the long stop nature of the procedures themselves, and to ensure that members were fully signed up to a clear and comprehensive methodology in the future. Other authorities might consider that such a consultation process will ensure that issues around political motivation – covered in 3.1 above – could be avoided.

**In South Norfolk**, a system similar to CCfA called “Community Reference” has been in action for some time. It is operated according to five broad principles, which do not represent set criteria for “approving” or “rejecting” a call for action, but which do provide guidance, within which councillors have the freedom to come to their own decisions. This highlights that while some guidance is necessary, councils should not attempt to

prepare guidance for CCfA that will limit the way it operates to a few preset circumstances, or that will set out blanket “exceptions” to CCfA, including particularly difficult hurdles that must be overcome in every circumstance. Systems will need to be light touch and flexible to allow CCfA to be a relevant option for members to use to solve intractable problems.

Councils will need to think about what members will want to get out of CCfA when they are thinking about formal procedures for calls for action.

### scenario 3

Cllr Mokal will have to think carefully about any criteria that the council have developed to define whether it is appropriate for this issue to be brought to committee as a CCfA. He will need to think about whether all possible routes have been explored to resolve the recycling issue, and about whether he needs to clarify exactly what he hopes and expects to get out of the CCfA process. He will also need to think about whether his issue is really appropriate for CCfA, as it is a general one and does not relate to a specific locality. CCfA is designed to assist members in dealing with local issues – this problem being one that affects the whole borough, it is perhaps best dealt with another way.

To ensure that CCfA discussions at committee are focused, and not adversarial in nature, **Cambridgeshire County Council** have adopted a particular way for these discussions to be conducted. Members, including the Cabinet Member, who is invited to attend, have an opportunity to ask factual questions of one another before the committee consider the issues behind the CCfA. The formal step of inviting the Cabinet Member ensures that Cabinet accountability is enhanced, and will ensure that policy, as well as implementation, problems can be discussed.



Too much restriction on discussions, and too much of a focus on procedures, would work to limit openness and meaningful discussion. If this happens, it will have an adverse effect on the resolution of the problem under discussion. Local authorities need to be careful when considering how “formal” their “formal processes” should be.

That said, councils should also see the development of processes for CCfA as an opportunity to:

- Look at the range of other solutions open to members to solve problems
- Examine the way in which scrutiny is perceived in the authority
- Assess how CCfA could help councils, the public and local partners to work together
- Assess how the development process

for CCfA itself could help to deliver this aim.

The resolutions to this guidance’s scenarios (which can be found at section 6) will demonstrate this in practice, and the next section, on “resolution”, will also go into this issue in more depth.

This is why, following Birmingham’s example, the process of putting together systems for CCfA can help authorities and partners see it as much wider than merely being a “scrutiny issue”.

### **3.3 the concept of “resolution”**

This is arguably the issue at the centre of CCfA – ensuring that CCfA actually helps councillors to resolve intractable issues.

The purpose of CCfA is to provide resolution where other techniques

might not be able to. Consequently, the first step is to try to ascertain whether an issue can be, or has been, resolved through other means.

A course of action that could lead to a successful resolution for one issue might not for another. For example, in the scenarios:

#### **scenario 1**

A public meeting, arranged by a councillor, was held.

A review into the general issue is already on the work programme.

The executive have been approached for a detailed response.

A petition is being submitted.

A complaint is being made.

An FOI request is being made.

### scenario 2

As of yet, nothing has been done to try to resolve the issue, although a short scrutiny review was carried out into the matter previously.

### scenario 3

A question was asked at Cabinet.

A letter was sent to the Joint Waste Committee

### scenario 4

An informal approach has been made to officers/members at county and district level.

An informal approach has been made to the head teacher.

There are a huge range of tools that councillors can use to influence change and resolve problems, formal and informal, such as:

- Questions at committee
  - 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 MPs
  - Communication with councillors in other authorities;
  - Web or e-mail based campaigns
- ...and many others.

**At Kirklees**, attempts are made to filter issues to ensure that CCfAs are specific to a particular locality, and that scrutiny can add value. Normally CCfA issues are cross-cutting. A guide, with a checklist, is provided to allow members to make a judgment as to whether there are other routes available before pursuing a CCfA. Kirklees have tried to ensure that the process is one that exhausts all other methods before a CCfA is raised – although “potential” CCfAs are “logged”, so that even when the criteria are not met the logging process itself can act as an impetus for the council to resolve an issue.

It is important to recognise that CCfA is not guaranteed to solve a given problem. What CCfA can provide is:

Recognition that an issue is significant enough for time, attention and resources to be spent in trying to resolve it;

- 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 the ward councillor.

All of these factors make resolution easier to come by.

More practical examples of “resolution”, and what it might look like, are provided in the final section on the scenarios, at section 6 of this guidance.

Defining the resolution – both before and after a CCfA, there needs to be discussion of what “resolution” really is.

Will a matter have been successfully resolved when:

- A response has been received from Cabinet?
- The councillor is satisfied that the required outcome (as judged by him or herself) has been attained?
- The person or persons who drew the issue to the attention of the councillor is satisfied with the outcome?
- The Overview and Scrutiny Committee are satisfied with the outcome?

This clearly has the potential to be a complex issue. A pragmatic solution might involve:

- The councillor bringing the CCfA being clear at the outset as to what he or she expected to get out of the process
- The committee discussion focusing on these expected outcomes
- The committee challenging the expected outcomes at the outset, if they felt that these outcomes were unreasonable.

This would mean that the success of the CCfA could be judged against these initial objectives.



## 4. other interactions

### 4.1 corporate complaints, and call-in

The regulations on exclusions (referenced in 3.1 above) specifically excludes complaints and appeals from CCfA. It is not appropriate for individual complaints (that is, a complaint made by an individual resident which relates to the individual service that the council provides to him or her, such as the collection of their own rubbish or a report which may have been written about them by a social worker) to be brought to the attention of the council through the CCfA process, as procedures already exist for resolving such issues.

Scrutiny can and should play a role where it is felt that a series of complaints demonstrate a “systematic failure” in a particular service area, and where it is felt that scrutiny

consideration can add to a discussion of that failure. The statutory instrument dealing with exclusions states that systematic failure, even in an area where individual complaints on an issue are possible, will mean that an issue should not be excluded.

#### scenario 1

In scenario 1, Joy is considering making a complaint, but on its own this does not provide a reason to exclude Cllr Mokal's CCfA – furthermore, the complaint is not about the service that she receives from the council as an individual, but an issue which affects her community at large.

#### scenario 3

In scenario 3, the large number of complaints on the same issue demonstrate a systematic failure. Regardless of the subject matter, where this occurs scrutiny is in a position

to make a contribution. In this case, scrutiny has the opportunity to consider why it is that the number of complaints is still high, even though individual complaints are often quickly and successfully resolved.

Authorities may find it useful to draw on complaints information when evidence for a CCfA is being drawn together.

A similar position exists with call-in. If councils are worried that CCfA will give members an opportunity to have a “second bite of the cherry” where a previous call-in on the same matter has failed – or that CCfA will provide an additional opportunity for members to challenge executive decisions – seeking cross-party agreement about CCfA and how it works from the start should reduce the potential for problems. There is, however, the opportunity for

evidence gathered for a previous call-in to be considered as part of a CCfA.

#### scenario 4

A previous call-in on the decision to build the leisure centre failed, but since that decision was made the nature of the issue has changed, because of the contractor’s bankruptcy. The fact that there has been a previous call-in is therefore relevant, but the circumstances of the call-in and the CCfA are clearly different here. CCfA is adding something to the process, not duplicating what has happened before.

#### 4.2 petitions and deputations

Government is bringing in provisions relating to petitions as part of the Local Democracy Bill.

#### scenario 1

Joy is preparing a petition which will be submitted to the council in due course. The council will presumably deal with

the petition according to its existing procedures, which were amended in line with the Local Democracy Bill (when it was enacted) in order to enable petitions to be considered more effectively. Consequently, it can be expected that the petition will be brought to a council committee at some stage in the near future – and that a substantive discussion will take place.

#### Councils should:

- Be prepared to think about the ways in which they can link petitions with CCfAs, using the opportunity to listen to members and local people
- Think about ways in which an expected petition could make the discussion on a CCfA (and the quest for a solution to the problem) more effective

- Seek to plan their systems with flexibility, to allow them to refine the interactions between CCfAs and petitions when more detailed powers come into force after the passage of the new Local Democracy Bill through Parliament.


### 4.3 existing Overview and Scrutiny work

Members may feel constrained as to the decisions they make, if a CCfA relates to a piece of scrutiny work that is on the work programme.

#### scenario 1

There is already a piece of work on the scrutiny work programme, which will look at public green spaces. Although the Chairman of Overview and Scrutiny is keen to consider the CCfA issue as part of that piece of work – possibly for political reasons – will this help the issue to be resolved effectively?

It is valuable for CCfA issues to feed into the broad scrutiny work programme, and vice versa. Authorities should remember that the purpose of CCfA is to give members more of a voice, and that as scrutiny itself is member-led process, CCfA can sit comfortably alongside existing methods for placing items on the scrutiny work programme. In fact CCfA can help make the work programme more relevant and timely, and give it a higher profile with local people.



**In Harrow**, steps were taken to link processes likely to be used for CCfA to existing tools for putting together the scrutiny work programme. The authority's scrutiny committees were reorganised and, in preparation for CCfA, scrutiny leads were created for different subject areas (mirroring the Local Area Agreement subject “blocks”), replacing more traditional committee chairs and vice-chairs. Ward councillors would be able to go to these leads to raise issues of local concern. Issues raised in this way could be dealt with as a “CCfA” as a one off item on the committee work programme or the decision could be made that more detailed work was required, taking the form of a more in depth scrutiny review. This process was designed to ensure that scrutiny could be responsive to short term issues, but that it could use the intelligence from such issues to inform longer term pieces of work.

#### 4.4 councillors' existing ward work scenario 1

In scenario 1, a public meeting has already been held in the local area, and work has been carried out both by Cllrs Mokal and Bristow that would normally be regarded as being "ward work".

However, at some point, a decision has to be made that an attempt has been made to resolve an issue through these ordinary means, and that this attempt has failed. Where should councils draw the distinction?

The key to this issue lies in thinking about what CCfA is there to do. It is not an "alternative" to normal ward work, but a long stop – a technique to be used when other methods for resolving an issue have not succeeded. It is all part of the same continuum.

There will come a point where a councillor will feel that he or she has

exhausted their powers as a ward member, and when they feel that they need to call on the resources of the scrutiny function to get the outcome they need for their local community. This is the point where CCfA will be of importance.

#### 4.5 community safety issues

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 version being discussed in this document.

Crime and disorder issues are required by the Police and Justice Act to be considered by the 'crime and disorder committee'. This includes crime and disorder CCfAs. In practice this should not require crime and disorder CCfAs to be dealt with in a different way:

- in authorities with a subject-based committee structure, CCfAs will go to the relevant committee
- in authorities with only one overarching committee and a system of task and finish groups underneath it, the overarching committee can be designated as the 'crime and disorder committee'.

Councils who envisage that problems might arise from their committee structure which will lead to their having to deal with crime and disorder CCfAs "differently" to other CCfAs should:

- Remember that the forum for discussion is less important than the fact that the issue should be discussed together, in its entirety
- Consequently, seek to reach agreement between committee chairs about which committee will hear a



CCfA with both crime and disorder and other components, in order not to split CCfA issues up.

#### scenario 1

Here, a crime and disorder issue has arisen in conjunction with the more general point on parks maintenance. Cllr Mokal will want to consider both issues in the same way and under normal circumstances this is what would happen. However, as the district council has a subject-based sub-committee structure, at first glance it looks like the CCfA should be divided up into one “crime and disorder” CCfA and another “2007 Act” CCfA. Cllr Mokal will probably opt instead to have the entire discussion at the designated crime and disorder committee, to minimise the risk of issues falling between the cracks. Even having the discussion at this committee rather than the Environment and

Culture Sub-Committee will not affect the resolution of the issue as all the relevant people will still be invited to take part.

Local authorities will need to liaise closely with Crime and Disorder Reduction Partnerships to consider how CCfA will operate. More information is provided below, in section 4.7.

#### 4.6 two tier areas

All of the scenarios above take place in a two tier area, and two in particular – scenarios 3 and 4 – relate directly to two-tier issues.


#### scenario 3

This is an issue which covers waste – an issue which falls between district and county councils in terms of responsibilities. The district is responsible for collection, and the county is responsible for disposal. The district and county scrutiny committees

could use a CCfA as an opportunity to work together to solve this common problem.

#### scenario 4

Here, there are really two issues, which are linked together. The first is the decline of educational standards. The second is the delay in construction of the leisure centre complex, which is felt to have caused this decline. The issues could be dealt with separately – however, given the connections, it seems sensible that the district and county councils should have agreed a process by which it can be arranged that they be dealt with in the same place – either at district or county level.



Issues which cut across organisational boundaries offer particular opportunities for overview and scrutiny.

**In Cumbria**, a joint committee of all local authorities is being created to commission scrutiny work, supported by a jointly funded scrutiny officer. Part of this officer's remit will be to monitor issues being raised through CCfA,

and to co-ordinate the way that different authorities deal with these issues to minimise the potential for duplication (including duplication between CCfA and different scrutiny work programmes). This has been designed to encourage further joint working between county and district councils. A similar approach could also operate between unitary authorities in the same geographic area.

This approach provides an opportunity for authorities to align their scrutiny work programmes to ensure that they complement each other. It goes beyond the scope of CCfA alone, but will make CCfAs easier to be carried out effectively. Success here will depend on the executives of the authorities agreeing that they will give evidence to scrutiny bodies in other authorities when asked, even though current legislation does not require them to do so.

#### **4.7 other partners**

As mentioned in the introduction, CCfA is being introduced alongside other powers for scrutiny in the 2007 Act. Important among these are powers to scrutinise a wide range of national, regional and local bodies not previously subject to local authority challenge. Naturally, existing partners – the health service and the police in particular – will also be included, and

CCfA provides another opportunity for scrutiny functions in councils, and external partners, to form closer links.

Local government matters – under section 21A, 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, 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).

## scenario 2

This scenario involves a partner, the Environment Agency, who have a responsibility for flood defence. The EA are one of the partners who, following the 2007 Act, will have additional responsibilities regarding providing information to local scrutiny committees – although they will not be specifically required to attend committee meetings.

Success in dealing with CCfA issues that involve partners will usually involve those partners having been a part of the initial discussions leading to CCfA being established in an authority. If a partner has been part of those discussions (as they were, for example, in Birmingham) it makes it more likely that they will be willing to work with scrutiny committees to resolve local issues. Partners need to understand

that CCfA can be a useful tool for them as well.

Even partners who are not mentioned in the 2007 Act should see the opportunities that CCfA can offer them in working more closely with local councillors and, by extension, with local people. Local councillors can provide valuable advice to partners on local concerns and difficulties and are a vital conduit for information and discussion.



## 5. delegated powers under s236 and s100EA

**Section 236 of the 2007 Act give powers to authorities to formally delegate powers to individual councillors to carry out any function of the authority. Section 100EA of the Local Government Act 1972 requires decisions made by councillors under these delegated powers to be formally recorded.**

It is important to note that these powers are separate to existing powers that can be given to individual members of the council's Cabinet to make decisions.

Many councils already make provision for councillors to be able to deal with issues of local concern directly. Some operate systems of neighbourhood committees or neighbourhood forums (also called area forums by some authorities), with the power to spend small amounts of money

on ward issues. This has always been discretionary, and it is up to councils themselves to decide whether neighbourhood working is right for their local community. However, the powers given under s236 to support additional delegation of powers could make these systems more attractive in other authorities. Section 236 goes beyond the delegation of budgets (for example, "neighbourhood budgets"), however, and allows ward members to make decisions which might previously not have been open to them.

### **delegating functions scenario 1**

In many circumstances, neighbourhood working has been seen as a way to solve local problems – especially local environmental problems, like the issues in the park. Councils can target money in particular wards, with ward members deciding exactly how this money will

be spent. Here, s236 could be used to give wider powers to the ward members to resolve the problem themselves. For example, members could be given the power – jointly or separately – to supplement existing police provision, and to fund local environmental improvements.

Although section 236 gives broad powers to delegate “any function” of the authority to an individual member, there are obviously some that will be more appropriate than others. It would not be appropriate to delegate powers to make planning, or licensing, or social care decisions, for example. But delegated powers could be used to allow councillors to play a more active role in a wide range of policy areas.

Functions that could be delegated include:

- Powers to supplement local safer neighbourhood teams with additional officers
- Powers to effect repairs or improvements to streets – including putting in place road-calming measures
- Powers to develop and oversee youth activities and facilities in the ward
- Powers to provide grants to local groups to carry out community projects
- Powers to target particular local problems which might cut across a number of different council departments and/or other partners – for example, tackling public health problems in a given ward based on demographic information. This could include local action on issues such as childhood obesity and diet.

Different functions will need to be delegated in different ways.

Most functions can be delegated directly by full council. However:

- Functions already delegated to cabinet members can be delegated directly to another individual member by that cabinet member.

The effective use of these powers will require members, and officers, to begin thinking about the way in which services are provided in different ways.

Members will need to think about:

- How they can use their own local knowledge to support any new powers they are given by their councils
- Whether they might need additional support in exercising delegated functions, for example legal advice
- How they will ensure that decisions

they make under delegated powers are evidence-based

- How they will be supported if their decisions are challenged, for example by judicial review
- How they will publicly record the decisions they make under these powers.

Officers will need:

- To be prepared to work closely with members to develop their skills and expertise
- To provide advice to ensure that delegated functions are exercised effectively
- To give prompt effect to decisions that are made under delegated powers
- To think about how decisions made by a councillor under these powers will be recorded.

**Westminster City Council** has probably gone further than most in the extent to which it has already sought to empower ward members through devolving significant ward budgets of £100,000 to them to spend on a range of projects and functions locally. In the absence of s236 powers enabling the council to delegate these budgets and functions directly, Westminster requires ward members' "decisions" to be signed off by the relevant cabinet member. However, even with this limitation, ward members have been able to achieve significant improvements for their localities:

- Using their budget to lever extra resources from the PCT to support a team of community gardeners who promote volunteering in local gardening projects
- Introducing a local advice service to help maximize the incomes of local people

- Employing a community outreach worker to organize resident-led activities for older people and holiday activities for teenagers.

All of their projects are based on local community surveys and other consultation activities which mean that the ward councillors' decisions are based on a real understanding of community needs and priorities. This will minimize the possibility of any challenge to their decisions as they can point to a clear evidence base and public consultation. The ward councillors also produce regular newsletters updating local people on progress with ward projects, enhancing local accountability and awareness of what councillors can do for local residents. S236 will enable more councils to consider similar ward councillor empowerment approaches in an even more direct way.

### **practicalities of delegation**

Most councils will probably see amendments to the constitution as the most useful method to put in place delegated powers for councillors. However, requiring a constitutional change every time the council wishes to alter the functions which are being delegated to members would not be appropriate. Councils will probably wish to examine the way in which they delegate powers to cabinet members, or to neighbourhood forums or committees, and see how the powers under s236 will fit into these existing frameworks.

#### **Councils could:**

- Establish “enabling powers” in their constitution for the use of these delegations, which could remain dormant until members saw a need to activate them

- Delegate certain functions to local councillors across the board, thus enabling the authorities to plan more strategically for the provision of local budgets, and even to reorganize services to provide an area focus
- Use the delegation powers more sparingly, to tackle specific issues in specific wards in response to a particular challenge.

Different approaches will be more, or less, compelling in different authorities depending on existing practice and culture. Councils should, however, develop a clear policy to define when and under what circumstances a function will be delegated.

However, the possibility that political bias might be alleged in some authorities means that an individual decision on functions to be delegated should not itself be a decision

delegated to a cabinet members, or to Cabinet (particularly if Cabinet is one-party). If a decision is made that functions will be delegated in an ad hoc manner – as described above – steps will need to be taken to ensure that the decision on delegation is not influenced by party political considerations. Councils should think about the way in which CCfAs could influence these decisions, which is the subject of the next section.

### **links with CCfA**

Where councils have decided to take advantage of the powers under s236, they will find that there are some close links with CCfA. Members exercising delegated powers will have more opportunities to resolve issues locally without having recourse to CCfA processes (depending on the issue). CCfAs on particular issues may encourage councils to use s236 to



delegate powers to members to resolve those issues locally – further improving the council's responsiveness to local issues.

### **delegating to wards / delegating to individual members**

The powers in the Act relate to the delegation of powers to individual members, but councils may need to put steps in place to ensure that delegated powers are used jointly between all members representing a certain ward - particularly in the case of wards where political representation is split between two or more parties. This may not involve the official delegation of functions to all three ward members as a "group", but in practice the delegation of functions to councillors in the same ward will mean that those councillors will need to work together to ensure that the decisions that they each make complement each other.

Local practice and guidance will need to emphasise this issue – especially in multi-party wards.

### **recording delegated decisions and accountability**

When they are made, delegated decisions will need to be recorded under s100EA of the 1972 Act. Precise arrangements – including timescales for publishing decisions, if these are thought to be appropriate – can be made by individual authorities. However, it may be most effective for councils to record the delegations they make in their official schedule or scheme of delegations to minimise the possibility of decisions being challenged.

The need to record decisions exercised under delegated powers complements the provisions requiring similar records to be kept for cabinet member decisions. The requirement in

s100EA is being put in place to ensure that decision-making carried out by members is open and transparent, and is accompanied by a right, exercisable by scrutiny functions, to hold members to account for decisions they have made by having them attend committee meetings, under s120 of the Act. This may provide a useful opportunity for local authorities to think about the way that their neighbourhood bodies link up to their scrutiny function (a point made more widely elsewhere in this document with respect to CCfA).

While councils will need to put provisions in place to allow the recording of these decisions, the assumption should not be made that this will demand increased bureaucracy. Where functions will be delegated under s236, councils should:

- Provide members with training to allow them to fulfil these roles effectively. Doing so will naturally lessen later administrative requirements
- See the requirement to record decisions as an opportunity to highlight good work being carried out by members in local communities, and to share good practice across the borough
- Present members with short checklists or guidance advising of the principles that should be used in exercising their powers, and the people they should consider when doing so
- Link s236 and s100EA with existing neighbourhood working; for example, suggesting that members make decisions at neighbourhood forums, in public, and that those decisions be recorded in the minutes for those meetings.







## 6. scenario resolutions

The big challenge with CCfA will be in seeing how issues themselves will be successfully resolved, rather than ensuring that issues pass through the necessary procedural hoops. This necessitates a return to the idea expressed at the start of this document, that a “whole council” approach to resolving issues of public concern will be necessarily to maximise the impact that CCfA has.

This section also refers back to points expressed in section 3.4, above.

CVBC has neighbourhood working but it is more active and effective in some wards than in others. There is a history of some wards having successfully used delegated powers given by s236 in the past and a reporting regime has been established which requires functions to be both delegated and exercised in public, at neighbourhood forums

themselves, with the decision being reported in the minutes.

### scenario 1

The Chairman of Overview and Scrutiny discussed with Cllr Mokal what he expected from the CCfA process. Cllr Mokal stated that, in the short term, he wanted levels of crime in the park to fall and for people to feel safer, but in the long term, he wanted the people living near the park area to feel that they could feel that the park actually belonged to them.

The Chairman decided against considering the CCfA as part of the upcoming public green spaces review, as he thought that the pressing nature of the CCfA meant that this was unwise. Recognising that there were crime and disorder implications, and being unwilling to “separate out” these issues from the other wider concerns,

he decided that the CCfA should be considered by the council’s Community Safety Scrutiny sub-Committee (in consultation with the Chairman of that committee).

Broadly the same people attended the committee meeting as had attended the public meeting chaired by Cllr Mokal, with the addition of the manager of the bail hostel. The Cabinet Member for Environment and Leisure (Cllr Mitchell) also attended – her portfolio including community safety issues.

The council has adopted a loose structure for CCfA matters when dealt with at committee, which involves the Chairman providing a short introduction to the issues and then inviting Cllr Mokal to briefly outline his objectives in bringing the CCfA, as explained to the Chairman beforehand.

Other members of the committee were able to ask some short questions to clarify some of Cllr Mokal's concerns, which helped to partially defuse the political overtones of the discussion – the structured nature of the discussion also helped to focus members on the policy issues rather than the personal relationships involved.

The Committee concluded that although it might not be possible to deliver “significant” improvements, it might only require small improvements in maintenance and upkeep to effect a change. Even though the manager of the bail hostel attended the meeting, it proved impossible to come to an agreement over the hostel's residents, although it was agreed that he would attend future meetings to carry out a conversation with local people.

Following the discussion, the Chairman

summed up what had been discussed and asked whether any of those attending could, on the basis of the discussion, suggest concrete steps that could be taken now to deliver improvements, and to resolve Cllr Mokal's concerns. With resolutions coming from the Committee, rather than solely from Cllr Mokal, Cllr Mitchell's contribution was more constructive and this time some clear solutions were identified.

- Cllr Mitchell suggested that functions could be delegated to the neighbourhood forum for Cllr Mokal and Bristow's ward under s236, allowing them and their other ward colleague to decide at that forum – along with local residents – what changes could be made to deliver real environmental improvements. This would hopefully have the benefit of

defusing the political situation, by ensuring that ward councillors had to work together to solve the problem. It was agreed that the first forum would be held after the election

- The Chairman and other members made the suggestion that delegated functions could be used to support voluntary work carried out by local residents to improve the landscaping in the park as part of a Friends' Group, which could be set up by Joy's pressure group and given formal recognition by the council. However, this would need to be subject to further discussion
- The Committee agreed that the lessons learned from the issues arising in the park should be considered as part of the more general scrutiny review into public green spaces due to be undertaken

in a few months time – this would also provide an opportunity to check on the outcome of the Committee's recommendations.

In this instance, the CCfA process was used as a way to kick-start a dialogue about the resolution of local problems. It should be noted that some problems remained outstanding.

### scenario 2

The Chairman, upon discussing the matter with Cllr Anthony, was able to conclude that not all avenues had been exhausted, and that Cllr Anthony had actually sought to use CCfA before trying to resolve the issue through other means.

The Scrutiny Manager provided Cllr Anthony with the council's CCfA guidance. The document highlights the numerous different ways in which councillors can use their powers to

resolve local issues, including arranging a meeting with the Cabinet Member. Cllr Anthony was initially unwilling to meet the Cabinet Member, as they were members of different political parties, so the Chairman of Overview and Scrutiny also attended in order to provide some advice on how he thought that the scrutiny function could assist in the consideration of what was a high-profile issue.

At Cllr Anthony's meeting with the Cabinet Member, he was told that the document was a draft which set out a number of options. He was told that a final decision had not yet been made, and the Cabinet Member agreed on balance that the issue required further public discussion. At the meeting, the Cabinet Member was keen to take up the issue herself, and to engage in private discussions

with the Environment Agency and others. However, the Overview and Scrutiny Chairman commented that, given the public interest in the matter, it might be wise to supplement this private dialogue with a more public discussion. He suggested that the relevant Overview and Scrutiny Sub-Committee convene a challenge panel, involving members of the public and the Environment Agency, to examine the policy issues in more detail. It was agreed that this would draw on the findings of the earlier scrutiny review as an evidence base. The Cabinet Member agreed with this approach on principle but present recognised that its success would rely on the attendance and enthusiasm of the Environment Agency.

This is an example of CCfA being used as a catalyst for resolving

issues through different means. It demonstrates that even where a CCfA is not brought “formally” (ie where the process is not “badged” as being a CCfA) the culture and ethos of CCfA, in promoting councillors’ roles as “changemakers” in their local community, is still crucial.

### scenario 3

Cllr Mokal wanted to bring a CCfA both at district and council level to deal with this issue. Discussing the issue with the Scrutiny Manager and the Chairman of Overview and Scrutiny, both thought that not all possible avenues had been exhausted before a CCfA could be brought – citing the need to communicate and liaise with the county council. Moreover, they thought that CCfA was not the correct tool, as the issue was a general one rather than being specific to a locality. Cllr Mokal disagreed. Cllr Mokal

also disagreed with the Chairman’s conclusion that, as the issues derived from individual complaints, it could not be considered by Overview and Scrutiny in any case, as it was excluded. Cllr Mokal reminded the chairman of the provision to consider issues where a series of complaints indicates a “systematic failure” in delivering services.

The three of them referred to the council’s CCfA guidance, which states that where an issue is cross-cutting, like this one, an attempt should have been made by the councillor to involve all other bodies before a CCfA is considered, in line with CCfA being a “long stop” procedure. Cllr Mokal agreed to carry out further discussions with other local authorities before taking the matter further.

Working with officers and other members, Cllr Mokal agreed that actually his issue had two main points – firstly, the short term issue around rejected recycling, but secondly a more general point about the policy change that had led to this, and the more general principles around waste reduction. He also accepted that the issue he was raising was not specific to a particular neighbourhood, which is a requirement of the council’s CCfA guidance.

Cllr Mokal agreed that the more general policy point should be resolved outside of the context of CCfA. He suggested that steps should be put in place for four district councils and the county council to carry out some joint work into waste minimisation. The agreement of those councils is being sought, but Cllr Mokal has stated that he reserves the



right, if that review is unsuccessful, to raise a CCfA at the county council.

In the short term, Cllr Mokal has agreed that the next meeting of the relevant sub-committee should receive detailed performance information on the waste and recycling service, to try to ascertain whether his initial conclusions were correct, and to allow the committee to come to a judgment on further action.

#### scenario 4

Cllr Gallimore has spoken to the Scrutiny Manager, the Chairman of Overview and Scrutiny and to the Cabinet Member about what he wants to get out of the CCfA. Although there is agreement that all other avenues appear to have been exhausted – Cllr Gallimore has tried without success to resolve the issue in a variety of ways – there is scepticism that a CCfA, and the consequent discussion at committee, would release the logjam.

Cllr Gallimore insists that it would at least demonstrate that the council had recognised the seriousness of the issue and that it was trying to do something about it. He mentioned the friction that had developed between the head teacher and the district council and suggested that bringing all parties together at committee to discuss the issues might help to improve working relationships, if nothing else. On this basis – and considering that the criteria for a CCfA are met – the Chairman agreed that the issue could be considered at committee. Following discussions with the Chair of Overview and Scrutiny at the county council, the decline in standards at the school is something which the county's Performance and Finance Sub-Committee will monitor itself.

The committee discussion was carried out with the aim of trying to improve communication between the different people involved, and trying to develop some joint understanding of the challenges that each was being placed under. It was the first time that the head teacher, the county's Director of Children's Services, the district's Cabinet Member for Recreation and Leisure and the county's Cabinet Member for Lifelong Learning all sat down and considered the issues. Although the central matters were not resolved, some of the tensions were able to be resolved, particularly between the head teacher and the district council – consequently ensuring that the CCfA was "resolved" according to Cllr Gallimore's revised expectations.

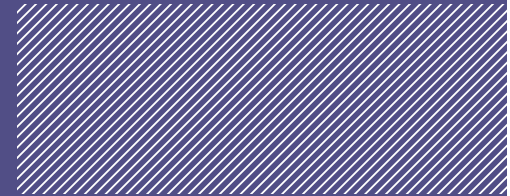
## 7. conclusion

The resolutions to our scenarios raise the point that neither members nor officers can expect CCfA to provide immediate solutions to all their problems. Many complex problems take months and years to resolve. CCfA can provide a method for discussing such problems and, through discussion, trying to overcome them.

As mentioned in the introduction, the best authorities will see CCfA as an opportunity to look more generally at all the ways in which councillors can resolve problems local to their ward, using CCfA as the last of a number of different techniques to provide this resolution. This is why it is particularly important, as this guidance has stressed, to look at CCfA in the light of wider issues relating to neighbourhood working, and the new powers to delegate council functions under s236.

### **further reference:**

- A background evidence document was drafted during the development process of this guidance, which contains much more detail about the practices already adopted by a variety of councils in England in preparing for CCfA. This is available at <http://www.cfps.org.uk> or <http://www.idea.gov.uk>
- The Statutory Instrument containing details of matters to be excluded – along with an explanatory note of the provisions – can be found at <http://www.opsi.gov.uk>
- The Statutory Instrument containing details of the recording requirements for the delegation of functions is being published shortly and can also be found at <http://www.opsi.gov.uk>



Those requiring further advice and information on CCfA should contact Ed Hammond at the Centre for Public Scrutiny on 020 7296 6595.

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**CONSTITUTION COMMITTEE**  
**19<sup>th</sup> MARCH 2009**

**AGENDA ITEM**

**The Councillor Call for Action and Enhanced Scrutiny Powers**

**Report of the Assistant Director of Law & Administration**

1. Introduction

1.1 The Councillor Call for Action (“CCfA”) follows from the government white paper “Strong & Prosperous Communities”. It is intended to enable councillors to identify issues of significant concern to their local communities, then to seek to resolve problems by talking to the local authority and other service providers and if they cannot resolve matters to refer them to an overview and scrutiny committee (“OSC”). The CCfA is not intended to be used for vexatious complaints but to deal with issues of real importance to the local community. Currently the law enables only a member of an OSC to place a relevant matter on the committee’s agenda, and this is reflected in the GCC constitution.

1.2 It is important to bear in mind exactly what the powers of an OSC are. It is able to make reports and recommendations to the Council’s executive, and to Council, but it is not able, and will not be able, to prescribe any particular course of action.

2. The new provisions.

2.1 The relevant sections of the Local Government and Public Involvement in Health Act 2007 (“the Act”) relating to the CCfA will come into force on 1<sup>st</sup> April 2009. There will then be a duty on the Council to enable any member to refer a local government matter relating to his local area to the relevant OSC. The new arrangements have to be embodied in the Council’s constitution. The provisions of the new duty are, briefly

- The local member must be able to ensure that a local government matter is included on the agenda of an OSC and is discussed at a meeting of the committee.
- The local member must have regard to guidance issued by the Secretary of State. Currently there is best practice guidance issued by the Centre for Public Scrutiny at the behest of the government but no Secretary of State Guidance. A copy of the Centre for Public Scrutiny Guidance is attached at Annex A
- In considering whether or not to accept the referral from the local member the committee may have regard to any powers the member

may have to exercise functions in his electoral division (this power has not currently been delegated to local members in Gloucestershire), and also to any representations made by the local member as to why it would be appropriate for the committee to consider the matter.

2.2 Members may note from the Guidance that Birmingham City Council have put in place a Gateway process whereby local members are encouraged to take problems through an escalation process and only use the CCfA as a last resort. (see page 23 of the Guidance).

2.3 It is felt that a similar process would be beneficial for Gloucestershire. A copy of such a protocol is attached at Annex B. Committee members' views on this would be welcome. It is not proposed that the protocol itself would be added to the Constitution.

2.4 If the OSC decide not to accept the referral from the local member they must notify the member of their decision, and the reasons for it.

2.5 When they have considered the matter the OSC must provide the member with a copy of any report or recommendations which it makes to Council or Cabinet (subject to the exclusion of any confidential or exempt information). If any information is excluded there should, if appropriate, be a short summary of the information to ensure the document is comprehensible.

2.6 The type of matter which a local member may refer is "a local government matter", defined in the Act as one relating to a local government function affecting the electoral area of the member or any person who lives or works in the area, as long as it is not an "excluded matter".

2.7 Excluded matters are defined in a statutory order and comprise those relating to planning and licensing; any matter relating to an individual where they have a right of appeal, such as school admissions or social care complaints; and any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or to be discussed at a meeting of an OSC. However an issue is not excluded if it is an allegation that a function is the subject of a systematic failure. In addition, crime and disorder issues are excluded. The Centre for Public Scrutiny Guidance (pages 19 to 21) covers excluded matters.

2.8 For Gloucestershire the proposal is that the CCfA should be made to the Overview and Scrutiny Management Committee, which is able to set up task groups if appropriate.

### 3. The proposed "Gateway" process.

3.1 The CCfA is initiated by the local member, and they are expected to "filter" cases referred by a member of the public before they reach the OSC either by resolving the issue or by deciding that it does not require further action (the Act states that Councillors "may" refer matters to the Committee – there is no compulsion to do so). The gateway process will provide guidance

to local members as to the different ways of tackling a local problem, how to decide that complaints require no further action (including how to deal with vexatious complaints) and how residents are to be informed of the decision.

3.2 Thus the guidance will help local members in their attempts to resolve the matter. Next, it will help service providers (both within the Council and in partner agencies) understand the basis on which members may be approaching them and the rationale for members' requests. Finally, if a matter is referred to an OSC, the OSC will have certain expectations about what action has been taken thus far to resolve the issue. What will be accepted as "evidence", will be set out clearly in the procedure, as will any timescales. The "gateway" to triggering scrutiny involvement will therefore consist of a local member demonstrating what efforts have been made to resolve the matter, in line with the guidance which they have been given.

#### 4. Enhanced Scrutiny powers

The Act also widens the powers of an OSC, namely:

4.1 An OSC may require a local member to come before the committee to answer questions about a function which is exercisable by the local member in his area (not relevant to Gloucestershire yet).

4.2 Section 122 of the Act (in force 1/4/09) adds new provisions into the Local Government Act 2000 ("LGA 2000") regarding scrutiny powers - (not just in relation to the CCfA).

##### 4.2.1 **Section 21B LGA 2000**

Where an O & SC makes a report or recommendations to the Council or Cabinet (except in relation to crime and disorder) -

- The OSC may publish the report or recommendations
- The OSC must by notice in writing require Council or Cabinet to consider the report or recommendations; to respond to the OSC indicating what action (if any) the Council or Cabinet propose to take; if OSC has published the report, to publish the response; if OSC provided a copy of the report or recommendations to the local member, to provide that member with a copy of the response - all within 2 months of the date when the Council or Cabinet received the report, recommendations or notice. The Council or Cabinet must comply with the requirements specified in the notice. These provisions are all subject to rules about confidential and exempt information.

##### 4.2.2 **Section 21C LGA 2000**

Where an OSC report or recommendation to Council or Cabinet relates to a local improvement target in the Local Area Agreement (except for crime and disorder), the OSC may serve a notice on a relevant partner requiring them to

have regard to the report or recommendations in exercising their function. A copy of the report or recommendation must be sent with the notice, and the relevant partner (except a health service body) will be under a duty to comply with the requirement specified in the notice.

I am not proposing to include reference this new power in the Constitution at this stage.

4.3 The following further enhanced scrutiny powers require regulations to be issued by the Secretary of State, and these are still awaited.

4.3.1 Section 121: adds a new section 22A LGA 2000 and provides for information to be provided to OSC by relevant partners of the Council.

4.3.2 Section 123 provides for there to be regulations in respect of joint overview and scrutiny committees of local improvement targets.

4.3.3 Provisions relating to the scrutiny of crime and disorder matters.

## 5. Amendments to Overview and Scrutiny Procedure Rules in the Constitution.

Amendments consequent upon the changes to the law as detailed above are attached, in tracked mode, at Annex C, and with the tracked changes accepted at Annex D.

### **RECOMMENDED THAT:**

1. The Committee considers the implementation of the CCfA in Gloucestershire
2. The changes to the Constitution set out in Annex D are approved by the Committee and are recommended to full Council for adoption.





## **COUNCILLOR CALL FOR ACTION: GATEWAY PROCESS**

### **1 Introduction**

The Local Government and Public Involvement in Health Act 2007 will introduce the councillor call for action from 1 April 2009. This protocol sets out how elected members of Gloucestershire County Council can make use of this new power.

### **2 What is a councillor call for action?**

- 2.1 The prime aim of the councillor call for action (CCfA) is to support elected members in achieving improvements for their local areas. In their day to day roles councillors identify issues of significant concern to their communities. They seek to resolve problems by talking to the council and other service providers. If they cannot resolve a particular issue they are now able to refer it to an overview and scrutiny committee for further investigation.
- 2.2 The new legislation extends overview and scrutiny powers so that any member of the council (and not just a member of the relevant committee) can refer matters to an overview and scrutiny committee. The matters that can be referred may include those that the council and its partners are delivering through the local area agreement.
- 2.3 [Not in force yet]The Police and Justice Act 2006 makes provision for a CCfA for crime and disorder and community safety issues. In practice, referrals made relating to these issues should be dealt with in the same way as other CCfAs.

### **3 Outline of the process**

- a) Councillor resolves the issue at a local level
- b) If this is not possible, the councillor refers the issue to the Director of Law and Administration who will send it to the lead members of the Overview and Scrutiny Management Committee.
- c) Relevant members, partners and officers agree how the CCfA is to be handled.
- d) The CCfA is considered at the next scheduled meeting of the Overview and Scrutiny Management Committee unless the chairman accepts that the matter needs to be considered urgently, in which case a special meeting of the committee will be arranged.

- e) The Overview and Scrutiny Management Committee agrees a resolution for the CCfA.

Each of these areas is discussed in more detail as follows.

#### **4 Activity to resolve issue**

- 4.1 Before referring a matter to overview and scrutiny it is important that councillors make use of existing mechanisms. The emphasis is on councillors resolving issues at an early stage by making use of existing local mechanisms.
- 4.2 Councillors will need to be able to demonstrate that they have taken reasonable steps to resolve the matter. **Appendix 1** provides some guidance on the sorts of activity that it is expected that a councillor will have undertaken before making a request to overview and scrutiny.

#### **5 Referral to overview and scrutiny**

- 5.1 If the councillor is unable to resolve the matter, then they will be able to refer the matter to the Overview and Scrutiny Management Committee.
- 5.2 Councillors will be expected to exercise some judgment over what is referred to overview and scrutiny. Issues that should be referred are those which have wider policy or strategic implications, are indicative of a broader issue or are particularly problematic.
- 5.3 If a councillor is satisfied that they have a viable CCfA, they should complete the form included at **appendix 2**. This formal notification should be sent to the Director of Law and Administration.
- 5.4 The lead members of the Overview and Scrutiny Management Committee will consider the request and inform the councillor whether they accept the CCfA. In the event of disagreement, the matter will be referred to the committee.
- 5.5 Reasons the lead members may not agree to take the CCfA forward to the committee could include:
- Not enough information has been provided
  - More could be done to resolve the issue at a local level
  - The CCfA is, or has stemmed from, a vexatious complaint
  - The matter has recently been examined by overview and scrutiny
  - The matter is the subject of an ombudsman complaint or other official complaints procedure.
  - The matter falls under excluded matters. For example: planning, education and licensing appeals.

- 5.6 The councillor has the opportunity to reply to the lead members with further information to substantiate the CCfA.
- 5.7 If the CCfA is accepted, the relevant cabinet members, senior officers and partners will be notified by the Director of Law and Administration.

## **6 Determining how each CCfA is to be handled**

- 6.1 To allow the lead members of the Overview and Scrutiny Management Committee to make an informed decision, it is suggested that they hold a meeting with the relevant councillor to agree how the CCfA is to be handled. This meeting would be an opportunity for them to agree the key questions to be answered, the information required, who needs to be involved and the timescale.
- 6.2 Relevant partners, cabinet members and senior officers should be involved in the CCfA at an early stage. It is necessary to get a balance between involvement to resolve issues at the earliest opportunity and not involving people unnecessarily.
- 6.3 It is also a critical part of the process in making sure that councillors are fully aware of the roles, responsibilities and priorities of the organisations concerned. This should help to ensure that neither the public nor councillors have unrealistic expectations of what can be achieved.

## **7 Role of the Overview and Scrutiny Management Committee**

- 7.1 The Overview and Scrutiny Management Committee will hear from relevant witnesses, including the member submitting the CCfA, and will determine the matter as follows:
- Write a report setting out the committee's findings and recommendations
  - Decide that it is a complex issue requiring further investigation and refer the matter to another body for more detailed scrutiny. This could be another scrutiny committee or a task group set up specifically to look at a particular issue.
  - Decide not to make a report. This might be because it is not considered to be the right time to consider a particular issue.
- 7.2 In any event (subject to the rules on confidential and exempt information) the outcome of the meeting will be published and details sent to the member who submitted the CCfA, relevant cabinet members and partners.
- 7.3 Where cabinet members and partners are requested to take action to resolve a particular issue they will be asked to make a formal response to a future meeting of the Overview and Scrutiny Management Committee.

### Examples of the steps which a councillor could be expected to have taken before submitting a councillor call for action to overview and scrutiny

1) The relevant complaints procedures have been complied with

If the issue appears to be that a standard service has not been provided, or not provided to a sufficient standard, then the councillor should check that the relevant complaints procedure has been used, and that the service provider has responded to the complaint.

2) The service manager has been approached

The issue may at its core be that local people feel that the standard service is not the right one for local conditions, and therefore the matter may be a question of making some slight adjustments at management's discretion. The councillor would therefore be expected to have discussed the matter with the service manager in an attempt to secure the change. Again, this could apply across the range of partner agencies.

3) Relevant partnership bodies or local groups have been approached

It is more likely though that matters which merit a councillor call for action are more complicated than the former examples. One likely possibility is that the matter requires attention from a number of agencies acting in partnership. The councillor should in such cases demonstrate that local partnership bodies have had an opportunity to respond. In Gloucestershire, there are 18 neighbourhood co-ordination groups and it may be appropriate for a councillor to raise an issue at a meeting of the group that covers their local area.

4) The relevant cabinet members have been approached

The councillor may come to the view that a pattern of conditions in the local area can only be addressed through a substantial policy change. In that case, the scrutiny committee will expect to see that the councillor has approached the relevant cabinet members and at least given them a reasonable opportunity to respond.



**Councillor call for action request**

To: Director of Law and Administration  
c/o Scrutiny Team, Democratic Services

Date: \_\_\_\_\_

Summary of issue and why it should be raised with scrutiny committee: \_\_\_\_\_  
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Action taken including list of people and organisations already contacted \_\_\_\_\_  
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\_\_\_\_\_

Key dates (if relevant) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_  
Name (printed): \_\_\_\_\_

Continue on a separate sheet, if necessary

**9. MEETINGS OF THE OVERVIEW AND SCRUTINY COMMITTEES (OTHER THAN THE OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE)**

9. There shall be six ordinary meetings of each overview and scrutiny committee (other than the Audit Committee which shall determine its own meetings schedule and Overview and Scrutiny Management Committee) in each municipal year.
10. Extraordinary meetings of overview and scrutiny committees (other than the Overview and Scrutiny Management Committee) may be called by the
- 10.2.1 chairperson of the relevant overview and scrutiny committee
  - 10.2.2 Chairperson of the Overview and Scrutiny Management Committee after consultation with the membership of the Overview and Scrutiny Management Committee
  - 10.2.3 at least one quarter of the overview and scrutiny committee membership signing a notice to the Chief Executive or
  - 10.2.4 the Chief Executive.

**11. QUORUM**

- 11.1 A meeting of an overview and scrutiny committee cannot take place unless the greater of 3 or one quarter of the whole number of its members, who have voting rights are present.
- 11.2 Members appointed under Overview and Scrutiny Procedure Rule 6, shall not be counted as part of the quorum except in relation to business where they have voting rights.

**12. WORK PROGRAMMES**

- 12.1 The Overview and Scrutiny Management Committee will be responsible for setting its own work programme taking into account the priorities defined by the Cabinet. In setting the work programme the Overview and Scrutiny Management Committee will also take into account the wishes of its members including any non-voting co-opted members.
- 12.2 The work programme of the overview and scrutiny committees will be drawn up by each committee taking into account the wishes of the members including the non-voting co-opted members. The work programme should also include any requests from the full Council and the Cabinet for advice on particular issues.
- 12.3 The work programme of each overview and scrutiny committee will be reviewed by the Overview and Scrutiny Management Committee to ensure that their activities are co-ordinated.

**13. AGENDA ITEMS**

Any member of an overview and scrutiny committee shall be entitled to give notice to the Chief Executive that he or she wishes an item relevant to the functions of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Executive will ensure that it is included on the next available agenda.

**14. COUNCILLOR CALL FOR ACTION**

14.1 Any member of the Council shall be entitled to give notice to the Director of Law & Administration in accordance with the Council's Gateway process that he or she wishes a local government matter relevant to the functions of an overview and scrutiny committee to be included on the agenda for and discussed at the next available meeting of the Council's overview and scrutiny management committee.

14.2 A local government matter is one relating to a local government function affecting the electoral area of the member or any person who lives or works in the area, unless it is an excluded matter. An excluded matter is a crime and disorder matter, a planning or licensing matter, one relating to an individual where a right of appeal exists or any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussed at a meeting of an overview and scrutiny committee.

14.3 If the overview and scrutiny management committee decide not to accept a referral from a member under 14.1 the committee must notify the member of their decision and the reasons for it. In considering whether or not to accept a referral the committee may have regard to the representations made by the local member as to why it would be appropriate for the committee to consider the matter, and also the extent to which the provisions of the Council's Gateway process have been observed.

#### **145. POLICY REVIEW AND DEVELOPMENT**

145.1 The role of the overview and scrutiny committees in relation to the development of the Council's policy framework and budget is set out in the Policy Framework and Budget Procedure Rules.

145.2 An overview and scrutiny committee can, additionally, at the request of the Cabinet, assist in the development of policy options that lie outside the policy framework and budget.

145.3 Overview and scrutiny committees may within their annual work programme review the success of policy and its implementation over time and make recommendations.

#### **156. REPORTS FROM SCRUTINY COMMITTEES**

16.1 Where an overview and scrutiny committee makes a report to Council or Cabinet it may publish the report or recommendations.

16.2 The committee must by notice in writing require Council or Cabinet as appropriate, within two months of the date on which it receives the report or recommendations, or (if later) the notice, to

16.2.1 consider the report or recommendations

16.2.2 respond to the overview and scrutiny committee indicating what (if any) action the Council or Cabinet propose to take

16.2.3 where an overview and scrutiny committee has published the report or recommendations, publish the response

16.2.4 where the overview and scrutiny committee provided a copy of the report or recommendations to a member, provide a copy of the response to the member

16.3 The publication of reports or recommendations is subject to the exclusion of any exempt or confidential information as defined in paragraphs 3 and 4 of the Rules on Access to Information.

~~156.41~~ Reports from overview and scrutiny committees, except the Audit Committee, relating to executive matters will normally be submitted to the Cabinet for consideration. Reports relating to non executive matters can be submitted by an overview and scrutiny committee to any other Council body or to any external body. In exceptional circumstances (which shall be specified in the minutes), an overview and scrutiny committee may make a report direct to full Council.

~~156.52~~ If the report proposes a departure from or change to the agreed policy framework or budget, the full Council will consider the matter having regard to advice, if any, received from, the Cabinet.

~~15.63~~ If an overview and scrutiny committee cannot unanimously agree on one single final report to the Cabinet, to any other Council body or exceptionally, to the full Council, then one separate report may be prepared and submitted for consideration along with the majority report.

~~156.74~~ The Cabinet, the other Council body or, exceptionally, the full Council, shall consider the report(s) from the overview and scrutiny committee at the next available meeting unless the matter which is the subject of the report(s) is scheduled to be considered by the Cabinet within two months from the date the report(s) was adopted by the overview and scrutiny committee. In such cases the report(s) of the overview and scrutiny committee shall be considered by the Cabinet when it considers the matter. The Cabinet may refer the overview and scrutiny committee report(s) to the Leader of the Council or a Lead Cabinet Member for consideration and response.

~~156.85~~ This rule does not apply to the call in of Cabinet decisions: reports that result from call ins are dealt with under the Cabinet Procedure Rules.

~~156.96~~ Reports from Audit committee are regulated under 21.2 below

## **~~167.~~ MEMBERS AND OFFICERS GIVING ACCOUNT**

~~167.1~~ Any overview and scrutiny committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function within the area of its terms of reference. As well as reviewing documentation, in fulfilling its scrutiny role, it may require any member of the Cabinet, the Chief Executive or any officer to attend before it to explain in relation to matters within its remit:

- any particular decision or series of decisions;
- the extent to which the actions taken implement Council policy; or
- their performance;

and it is the duty of those persons to attend if so required.

~~167.2~~ Where any member or officer is required to attend an overview and scrutiny committee under this provision, the Chairperson will inform the Chief Executive who shall, in turn, inform the member or officer in writing giving, where practical, fifteen days notice of the meeting. The notice to the member/officer will state the nature of the item on which he or she is required to attend to give account and whether any papers are required for production for the Committee. Where it is necessary to produce a report then the member or officer concerned will be given sufficient time to allow preparation of that report.



167.3 Where, in exceptional circumstances, the member or officer is unable to attend on the required date then an alternative date for attendance may be arranged following consultation with the Chairperson of the relevant scrutiny committee.

167.4 An overview and scrutiny committee may not scrutinise a decision of an officer acting under delegated powers, unless the decision is a key decision

## **187. ATTENDANCE BY OTHERS**

An overview and scrutiny committee or a Group Director (in consultation with the chairperson and other political groups' lead members) may invite people other than those referred to above to address it, discuss issues of local concern and/or answer questions. It may, for example, wish to hear from residents, stakeholders and members and officers in other parts of the public sector and may invite such people to attend. Attendance is, of course entirely optional.

## **189. CALL-IN AND REVIEW AND SCRUTINY OF DECISIONS**

189.1 All executive decisions, whether made by the Cabinet, the Leader of the Council, Lead Cabinet Member and key decisions by an officer under delegated powers, but which have not been implemented may be called-in under the call-in procedure rules.

189.2 Subject to Overview and Scrutiny Procedure rule 167.4, all executive and non-executive decisions, whether made by the Cabinet, Leader of the Council, Lead Cabinet Member or an officer under delegated powers and whether implemented or not, may be reviewed and scrutinised by the Overview and Scrutiny Management Committee which may then report on such review and scrutiny to the Cabinet or, in exceptional circumstances (which shall be determined by the committee and recorded in the minutes), to the full Council. For the avoidance of doubt, review and scrutiny in accordance with this Overview and Scrutiny Procedure Rule 18.2 shall not be affected by the Call In Procedure Rules or affect implementation of any decision.

## **1920. PROCEDURE AT OVERVIEW AND SCRUTINY COMMITTEE MEETINGS**

Overview and scrutiny committees may plan and conduct their business in the manner that they determine is most likely to result in the effective, efficient and accountable discharge of their functions and, except the Health Overview and Scrutiny committee and Audit Committee, in accordance with any requirements of the Overview and Scrutiny Management Committee.

## **201. OVERVIEW AND SCRUTINY TASK GROUPS**

The Overview & Scrutiny task groups will work within the operating principles set out in the Panel Operating Principles set out in part 4 of this constitution

## **212. AUDIT COMMITTEE**

21.1 Overview and Scrutiny Procedure Rules 12, and 156 do not apply to Audit committee.

21.2 Audit Committee may report to any council or external body. In consultation with Overview and Scrutiny Management Committee it will annually report on its work to full Council

**9. MEETINGS OF THE OVERVIEW AND SCRUTINY COMMITTEES (OTHER THAN THE OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE)**

9. There shall be six ordinary meetings of each overview and scrutiny committee (other than the Audit Committee which shall determine its own meetings schedule and Overview and Scrutiny Management Committee) in each municipal year.
10. Extraordinary meetings of overview and scrutiny committees (other than the Overview and Scrutiny Management Committee) may be called by the
- 10.2.1 chairperson of the relevant overview and scrutiny committee
  - 10.2.2 Chairperson of the Overview and Scrutiny Management Committee after consultation with the membership of the Overview and Scrutiny Management Committee
  - 10.2.3 at least one quarter of the overview and scrutiny committee membership signing a notice to the Chief Executive or
  - 10.2.4 the Chief Executive.

**11. QUORUM**

- 11.1 A meeting of an overview and scrutiny committee cannot take place unless the greater of 3 or one quarter of the whole number of its members, who have voting rights are present.
- 11.2 Members appointed under Overview and Scrutiny Procedure Rule 6, shall not be counted as part of the quorum except in relation to business where they have voting rights.

**12. WORK PROGRAMMES**

- 12.1 The Overview and Scrutiny Management Committee will be responsible for setting its own work programme taking into account the priorities defined by the Cabinet. In setting the work programme the Overview and Scrutiny Management Committee will also take into account the wishes of its members including any non-voting co-opted members.
- 12.2 The work programme of the overview and scrutiny committees will be drawn up by each committee taking into account the wishes of the members including the non-voting co-opted members. The work programme should also include any requests from the full Council and the Cabinet for advice on particular issues.
- 12.3 The work programme of each overview and scrutiny committee will be reviewed by the Overview and Scrutiny Management Committee to ensure that their activities are co-ordinated.

**13. AGENDA ITEMS**

Any member of an overview and scrutiny committee shall be entitled to give notice to the Chief Executive that he or she wishes an item relevant to the functions of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Executive will ensure that it is included on the next available agenda.

**14. COUNCILLOR CALL FOR ACTION**

- 14.1 Any member of the Council shall be entitled to give notice to the Director of Law & Administration in accordance with the Council's Gateway process that he or she wishes a local government matter relevant to the functions of an overview and scrutiny committee to be included on the agenda for and discussed at the next available meeting of the Council's overview and scrutiny management committee.
- 14.2 A local government matter is one relating to a local government function affecting the electoral area of the member or any person who lives or works in the area, unless it is an excluded matter. An excluded matter is a crime and disorder matter, a planning or licensing matter, one relating to an individual where a right of appeal exists or any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussed at a meeting of an overview and scrutiny committee.
- 14.3 If the overview and scrutiny management committee decide not to accept a referral from a member under 14.1 the committee must notify the member of their decision and the reasons for it. In considering whether or not to accept a referral the committee may have regard to the representations made by the local member as to why it would be appropriate for the committee to consider the matter, and also the extent to which the provisions of the Council's Gateway process have been observed.

## **15. POLICY REVIEW AND DEVELOPMENT**

- 15.1 The role of the overview and scrutiny committees in relation to the development of the Council's policy framework and budget is set out in the Policy Framework and Budget Procedure Rules.
- 15.2 An overview and scrutiny committee can, additionally, at the request of the Cabinet, assist in the development of policy options that lie outside the policy framework and budget.
- 15.3 Overview and scrutiny committees may within their annual work programme review the success of policy and its implementation over time and make recommendations.

## **16. REPORTS FROM SCRUTINY COMMITTEES**

- 16.1 Where an overview and scrutiny committee makes a report to Council or Cabinet it may publish the report or recommendations.
- 16.2 The committee must by notice in writing require Council or Cabinet as appropriate, within two months of the date on which it receives the report or recommendations, or (if later) the notice, to
- 16.2.1 consider the report or recommendations
  - 16.2.2 respond to the overview and scrutiny committee indicating what (if any) action the Council or Cabinet propose to take
  - 16.2.3 where an overview and scrutiny committee has published the report or recommendations, publish the response
  - 16.2.4 where the overview and scrutiny committee provided a copy of the report or recommendations to a member, provide a copy of the response to the member
- 16.3 The publication of reports or recommendations is subject to the exclusion of any exempt or confidential information as defined in paragraphs 3 and 4 of the Rules on Access to Information.

- 16.4 Reports from overview and scrutiny committees, except the Audit Committee, relating to executive matters will normally be submitted to the Cabinet for consideration. Reports relating to non executive matters can be submitted by an overview and scrutiny committee to any other Council body or to any external body. In exceptional circumstances (which shall be specified in the minutes), an overview and scrutiny committee may make a report direct to full Council.
- 16.5 If the report proposes a departure from or change to the agreed policy framework or budget, the full Council will consider the matter having regard to advice, if any, received from, the Cabinet.
- 15.6 If an overview and scrutiny committee cannot unanimously agree on one single final report to the Cabinet, to any other Council body or exceptionally, to the full Council, then one separate report may be prepared and submitted for consideration along with the majority report.
- 16.7 The Cabinet, the other Council body or, exceptionally, the full Council, shall consider the report(s) from the overview and scrutiny committee at the next available meeting unless the matter which is the subject of the report(s) is scheduled to be considered by the Cabinet within two months from the date the report(s) was adopted by the overview and scrutiny committee. In such cases the report(s) of the overview and scrutiny committee shall be considered by the Cabinet when it considers the matter. The Cabinet may refer the overview and scrutiny committee report(s) to the Leader of the Council or a Lead Cabinet Member for consideration and response.
- 16.8 This rule does not apply to the call in of Cabinet decisions: reports that result from call ins are dealt with under the Cabinet Procedure Rules.
- 16.9 Reports from Audit committee are regulated under 21.2 below

## **17. MEMBERS AND OFFICERS GIVING ACCOUNT**

- 17.1 Any overview and scrutiny committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function within the area of its terms of reference. As well as reviewing documentation, in fulfilling its scrutiny role, it may require any member of the Cabinet, the Chief Executive or any officer to attend before it to explain in relation to matters within its remit:

- any particular decision or series of decisions;
- the extent to which the actions taken implement Council policy; or
- their performance;

and it is the duty of those persons to attend if so required.

- 17.2 Where any member or officer is required to attend an overview and scrutiny committee under this provision, the Chairperson will inform the Chief Executive who shall, in turn, inform the member or officer in writing giving, where practical, fifteen days notice of the meeting. The notice to the member/officer will state the nature of the item on which he or she is required to attend to give account and whether any papers are required for production for the Committee. Where it is necessary to produce a report then the member or officer concerned will be given sufficient time to allow preparation of that report.

- 17.3 Where, in exceptional circumstances, the member or officer is unable to attend on the required date then an alternative date for attendance may be arranged following consultation with the Chairperson of the relevant scrutiny committee.
- 17.4 An overview and scrutiny committee may not scrutinise a decision of an officer acting under delegated powers, unless the decision is a key decision

## **18. ATTENDANCE BY OTHERS**

An overview and scrutiny committee or a Group Director (in consultation with the chairperson and other political groups' lead members) may invite people other than those referred to above to address it, discuss issues of local concern and/or answer questions. It may, for example, wish to hear from residents, stakeholders and members and officers in other parts of the public sector and may invite such people to attend. Attendance is, of course entirely optional.

## **19. CALL-IN AND REVIEW AND SCRUTINY OF DECISIONS**

- 19.1 All executive decisions, whether made by the Cabinet, the Leader of the Council, Lead Cabinet Member and key decisions by an officer under delegated powers, but which have not been implemented may be called-in under the call-in procedure rules.
- 19.2 Subject to Overview and Scrutiny Procedure rule 17.4, all executive and non-executive decisions, whether made by the Cabinet, Leader of the Council, Lead Cabinet Member or an officer under delegated powers and whether implemented or not, may be reviewed and scrutinised by the Overview and Scrutiny Management Committee which may then report on such review and scrutiny to the Cabinet or, in exceptional circumstances (which shall be determined by the committee and recorded in the minutes), to the full Council. For the avoidance of doubt, review and scrutiny in accordance with this Overview and Scrutiny Procedure Rule 18.2 shall not be affected by the Call In Procedure Rules or affect implementation of any decision.

## **20. PROCEDURE AT OVERVIEW AND SCRUTINY COMMITTEE MEETINGS**

Overview and scrutiny committees may plan and conduct their business in the manner that they determine is most likely to result in the effective, efficient and accountable discharge of their functions and, except the Health Overview and Scrutiny committee and Audit Committee, in accordance with any requirements of the Overview and Scrutiny Management Committee.

## **21. OVERVIEW AND SCRUTINY TASK GROUPS**

The Overview & Scrutiny task groups will work within the operating principles set out in the Panel Operating Principles set out in part 4 of this constitution

## **22. AUDIT COMMITTEE**

- 21.1 Overview and Scrutiny Procedure Rules 12, and 16 do not apply to Audit committee.
- 21.2 Audit Committee may report to any council or external body. In consultation with Overview and Scrutiny Management Committee it will annually report on its work to full Council