

# Public Document Pack



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## CONSTITUTIONAL REVIEW WORKING PARTY

7 OCTOBER 2009

A meeting of the Constitutional Review Working Party will be held at **2.00 pm on Wednesday, 7 October 2009** in the Austen Room, Cecil Street, Margate, Kent.

### Membership:

Independent Members: R Hills (Chairman) and Mr B Hinchley (Vice-Chairman);

Councillors: D Green, Gregory, Harrison, Latchford and Mrs Roberts

## SUPPLEMENTARY AGENDA

- | <u>Item<br/>No</u> | <u>Subject</u>  |
|--------------------|---|
| 4.                 | <b><u>CONSTITUTIONAL REVIEW CYCLE 2009/10 - SUNDRY ISSUES</u></b> (Pages 1 - 40)<br>Report of the Head of Legal and Democratic Services to follow.  |
| 5.                 | <b><u>LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 - ADOPTION OF REVISED POLITICAL ARRANGEMENTS</u></b> (Pages 41 - 44)<br>Report of the Head of Legal and Democratic Services to follow. |
| 6.                 | <b><u>LEADER'S AND CHIEF EXECUTIVE'S REPORTS TO COUNCIL</u></b> (Pages 45 - 46)   |

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## Constitution Review Cycle 2009/10 - Sundry Issues

To: **Constitution Review Working Party - 7 October 2009**

By: **Harvey Patterson, Monitoring Officer**

Classification: **Unrestricted**

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**Summary:** **To consider sundry issues requiring further consideration by the Working Party in the 2009/10 cycle of meetings**

### **For Decision**

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#### **1.0 Sundry Issues**

1.1 In addition to receiving reports in relation to the adoption of revised political arrangements, a review of the discharge of Planning functions and a proposal to establish the effective scrutiny of the Crime and Disorder Reduction Partnership, a review of the Constitution by the Monitoring officer has identified the scope for numerous consequential drafting amendments. Apart from the 'Councillor Call for Action' (CCFA) specifically addressed below, these are set out **Annex 1**. It is proposed that at this stage Members note the Annexe and instruct the Monitoring Officer to bring detailed drafting amendments to the next meeting of the Working Party for consideration and approval.

#### **2.0 Councillor Call For Action - 'CCFA'**

2.1 For some time the Government has been pursuing the aim of giving more power to local people and local ward councillors as evidenced in the two White Papers issued in 2006 titled "Strong and Prosperous Communities" and "Communities in Control". In these ward councillors are seen to play a central role in the work of the Council as a conduit for discussion between the Council and its residents and a champion for local concerns. To enhance councillors' ability to carry out this role the Government enacted Section 119 of the Local Government and Public Involvement in Health Act 2007 which confers the right on all councillors to refer a 'local government matter' to an Overview and Scrutiny Committee - the so called "Councillor Call for Action" (CCFA). A local government matter is one which is relevant to the functions of the Council which affects all or part of the electoral area for which the member is elected or any person who lives or works in that area – and is not an "excluded matter" (see below). Consequently, the intention is that this new power will afford a ward member the opportunity of having a scrutiny committee consider a localised issue or problem where all other methods of resolution have been exhausted.

- 2.2 As to the 'excluded matters' which may not be referred to an overview and scrutiny Committee under the provisions, the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 excludes the following matters from a CCFA:
- A local crime and disorder matter (dealt with elsewhere);
  - Any matter relating to a planning decision;
  - Any matter relating to a licensing decision;
  - Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment; and
  - Any matter which is vexatious, discriminatory or not reasonable.
- 2.3 In deciding whether to exercise the CCFA, the ward member will be required to have regard to any guidance issued by the Secretary of State. The Secretary of State has not issued any formal guidance although advisory guidance has been published by the Centre for Public Scrutiny and Improvement and Development Agency titled 'Councillor Call for Action – best practice guidance' - attached as **Annex 2**
- 2.4 Finally, if the Overview and Scrutiny Panel decides not to exercise any of its powers in relation to a CCFA (e.g. investigate the matter and report recommendation to the Cabinet or Council), it must notify the member of its decision and the reasons for it.
- 2.5 Four main constitutional reforms are necessitated by these provision. Firstly, it will be necessary to amend Rule 8 of the Overview and Scrutiny Procedure Rules to enable any ward member to have a CCFA item placed on the agenda of, and discussed by, the Overview and Scrutiny Panel. Secondly it will be necessary to amend the Terms of Reference of the Overview and Scrutiny Panel to include the power to deal with a CCFA. Thirdly, it will be necessary to decide who can exercise the power to decide that a purported CCFA is an 'excluded matter' that may not be considered by the Panel. In this regard it will also be necessary to ensure that the priorities and work programme of the Panel are not hijacked by the overenthusiastic use of the CCFA at the expense of other means of citizen redress such as the use of the Corporate Complaints Procedure or the exercise of a right of review or appeal. It is therefore recommended that a CCFA is capable of rejection on any or all of the following grounds:-
- The issue falls into one of the excluded matters/relates to a regulatory matter
  - The issue does not relate to the powers or duties of the Council
  - The issue does not affect all or any part of the ward of the member promoting the CCFA or any person who lives or works in that ward
  - The issue is currently or has been the subject of a CCFA
  - The issue is already or has been the subject of a CCFA by another member
  - The issue is currently being dealt with under the Councils Corporate Complaints procedure.

- The relevant Cabinet Portfolio-holder/Director has not had the opportunity of dealing with the issue.
- The issue is currently being dealt with by the relevant Cabinet Portfolio-holder/Director.
- The issue could be resolved by the use of the ward members ward based budget allocation

2.6 Fourthly, it follows from the above that will be necessary to develop and agree a protocol for dealing with a CCFA from inception by a ward member to consideration by the Overview & Scrutiny Panel. The protocol might be expected to:

- outline the objectives of CCFA
- set out the steps that a ward member could be expected to take **before** having recourse to CCFA (e.g. has the issue been taken through the complaints process?)
- set out the bases upon which a CCFA will not be considered;
- set out the steps for making a CCFA request; and
- describe the process through which the CCFA request will be handled from receipt to consideration at the relevant Overview Committee.

### **3.0 Corporate Implications**

#### **3.1 Financial**

3.1.1 None Specific

#### **3.2 Legal**

3.21 As set out in the report

#### **3.3 Corporate**

4.3.1 None Specific

#### **3.4 Equity and Equalities**

3.4.1 None Specific

### **4.0 Recommendations**

4.1 That the report be received and noted

4.2 That the Monitoring Officer be instructed to bring detailed drafting amendments in relation to the sundry issues identified in Annex1 to the next meeting of the Working Party

4.3 That the Monitoring Officer be instructed to bring detailed drafting amendments and a draft Protocol in relation to the Councillor call For Action to the next meeting of the Working Party

**5.0 Decision Making Process**

5.1.1 The recommendations of the Constitution Review Committee are considered by the Standards Committee who make final recommendations to Council. Council will determine the date by which any constitutional reform is to take effect, e.g. immediately, from the beginning of the next financial year or from the date of the Annual Meeting

Contact Officer: *Harvey Patterson, Head of Legal & Democratic Services*  
Reporting to: *Richard Samuel, Chief Executive*

**Annex List**

Annex 1 *List of Sundry Issues*  
Annex 2 *Councillor Call for Action – best practice guidance' CFPS/IDEA*

**Background Papers**

<b>Title</b>	<b>Details of where to access copy</b>
<i>No background papers</i>	

## SUNDRY ISSUES

### A. SPECIFIC ISSUES

1. Councillor Call for Action
2. Recognition of General Purposes Committee
3. Standards Local Assessment and Determination Framework including TOR for Sub-Committees.
4. Questions from Members and the Public - specify cut off time and date? e.g. 2.00 p.m. on Thursday before Council
5. Time of meetings - 6.00, 6.30, 7.00 p.m. (What of day time meetings)
6. Delegation to Cabinet Leader to establish Cabinet Advisory Groups
7. Recognition of Lead Member Appointment
8. Scheme of Delegations to Officers/|Decision Making Guide/Report Template

### B. CONSEQUENTIAL DRAFTING AMENDMENTS - WORK LIST

#### Constitution Summary:

- Para 3 - Standards now has a disciplinary role;
- Para 4 - Cabinet - Fails to mention individual decision making powers, Key decisions, Forward Plan and the obligation to pre-publish dates of ordinary Cabinet Meetings
- Para 5 - Scrutiny **must** be consulted on (i) the Budget and (ii) when Policies within the Policy Framework are developed (but not amended) Also need to mention the Scrutiny role in relation to CRDP and CCFA?
- Para 6 - Needs to include Governance & Audit and General Purposes
- Para 8 - will need to include right to complain to Standards Committee, to submit a Petition, to make information requests and to be provided with information in accordance with the Councils Publication Scheme.

#### Articles

2.02 Office will begin on date of declaration of acceptance of office

Article 2.03 (b) (ii) - Councillors have a right to disclose confidential information in certain circumstances e.g. if you have the consent of a person authorised to give it or if required by law or to a third party for the purpose of obtaining professional advice provided third party agrees to maintain confidentiality, or if reasonable and in the public interest, in good faith and in accordance with the authorities reasonable requirements - see Para 4 of the Members Code of Conduct -

Article 3.01 - Add the rights to make information request, receive information in accordance with the Council's publication scheme and complain to the Standards Committee if a members is considered to have failed to comply with any of the requirements of the Members Code of Conduct..

Article 4.01 - Statutory - BVPP no longer exists. Local Transport Plan is a KCC document. Development Plan is now the LDF. Non Statutory - should exclude Food Law Enforcement Plan as not a key policy document (and Food Safety is not a Cabinet function so why the Cabinet should be responsible for developing the Food Law Enforcement Plan is beyond me) and should include the Council's Corporate Plan, Leisure Strategy etc

Article 4.02 (k) - Does Part 3 make the position on local choice functions clear?

Article 6 - Committee or Panel ?

Article 6.02 (ii) and (iii) - Statutory right to hold officers to account is **not** limited to chief officers

Article 6.02 (vi) surely '*their*' work programme?

Annex to Article 6 - TOR need to refer to holding CDRP to account and role in CCFA

Article 7 - Refer to Cabinet Leader throughout

Article 7.02 ...and portfolio responsibilities should be notified to Council at the annual meeting.

Article 7.03 - If 'Strong Leader' model is adopted Cabinet Leader elected by Council to the fourth day following the next ordinary day of election.

Article 7.04 (d) Should Chief Executive be the proper officer for this purpose?

**Note to Article 8.01**

- Add General Purposes Committee
- Remove JTB - it is a joint Committee so shouldn't be here
- JTB deals with Highways and Transport which are County level Cabinet functions - but as the Joint Committee is with a district Council, KCC Cabinet Leader is able to appoint any member who represents an electoral division on the area of the district - whether a Cabinet member or not. However, District Council appointments are made by the Cabinet and should consist of Cabinet Member only - See Article 11.02 (d) for an explanation of this)

Article 9.02 (d) An independent members must be appointed as Chairman. Add to prescribed Agenda for annual meeting.

Article 9.03 TOR need to include Local Assessment and Determination Frameworks

Article 9.04 - ditto

Article 9.05 (a) - Need to resolve appointments to Sub Committees

Article 10.02 (b) - This now a prejudicial interest so member must withdraw.



Article 11.02 (a) - Joint arrangements are exercised through joint Committees

Article 12.01 (e) - Add Monitoring Officer reporting to the Head of Paid Service

Article 12.02 (b) - Check for accuracy

Article 12.03 (e) - Add Referrals by Assessment and Review Sub Committees

Article 12.03 - (g) and (h) MO competent to advise on financial impropriety

Article 12.04 (d) CFO competent to advise on powers, authority to take decisions and maladministration. Delete reference to elected Mayor

Article 13.03 (b) Key decisions:-

Financial test needs reconsideration plus delete any reference to an electoral division.

Community impact test is reasonably good apart from (iv) which should refer to two or more wards and the making of policy amendments a key decision - which only confuses key decisions with the Policy Framework.

Article 13.08 - Delete 'criminal responsibility' as the Council does not do this.

Article 14.02 - Delete Contracts Procedure Rules and replace with Contracts Standing Orders (throughout Constitution).

Article 14.04 and 14.05 - Delete reference to MO.

Article 15.02 (a) - add CRWP and delete (b) and (c)?

**Schedule 1** - Add Budget and Policy Framework Procedure Rules

### **Part 3 Section 1 - Local Choice Functions**

Cabinet - Delete 2

Council - Delete 1 Housing Benefit Review Boards abolished.

### **Section 2 - Planning Committee-**

Need improved TOR

Fails to record that a Cabinet member cannot be Chairman?

P1 - Delete - This is a Cabinet Function.

P2 - Amend - Has not removed the power to determine these applications. Applications that do not accord with the Core Strategy or a DPD may still be determined by officers if not called in.

P10 - Delete. Planning Committee has no power to do this - This is a function of Scrutiny

Cross refer to Scheme of Delegations to Officers and to Planning Protocol?

### **Licensing Board**

TOR out of date. Includes repealed functions and excludes new legislation such as Gambling Act and Clean Neighbourhoods and Environment Act

42. Can't exclude statement of licensing policy otherwise no consideration Committee.

**Standards Committee** - Updated TOR and include Sub-Committees TOR

Appeals Panel - delete

Governance & Audit

12. Whistleblowing - already with Standards Committee - Delete or amend?

### **Joint Transport Board**

Delete - This is a Joint Cabinet Committee?

### **CRWP**

Has evidently failed to agree its own TOR!

Why CRWP and Standards?

### **Council???**

Why isn't there a Boundaries and Electoral Arrangements Committee? - i.e a deliberative Committee to make recommends to Council on items 1-13 (apart from appointment of ERO and Returning Officer)

18. Council can now confirm byelaws too.

22. Power to appoint staff needs to refer to and harmonise with Officer Employment Procedure Rules. It doesn't as Rule 21 of OEPR states that a Committee or Sub Committee of the Council will appoint both Chief Officers and deputy Chief Officers.

### **Section 3 Cabinet Functions**

3 A - General Powers - needs to be numbered and urgent key decision will still require notification to or consent of scrutiny chairman.

D. Port of Ramsgate - overlaps with I.

E Community Portfolio - Probation Orders? Demoted tenancies?

Table Should include Lead Members?

### **Section 4 Scheme of Officer Delegations**

1.7 typo

1.8 Statutory functions of CFO and MO are delegated to their appointed deputies

1.9 Only Chief Executive can authorise a CHIS

3.8 Needs to be modified in the light of TOR of General Purposes Committee.

5.16 Suspended?

6.7 Surely Director of Environmental Services?

7.14 Should be in consultation with Director of Regeneration in relation to use of Council land

9.1 Needs to include renewals

9.4 Needs more detail

9.7 This is wrong - Thanet applications cannot be determined by an officer (KCC applications can) and 9.7 (iii) illustrates the confusion - a member or officer application will not be a TDC application.

9.9 Needs rewording

9.19 Power to issue enforcement notices should be delegated (?) and what about Temporary Stop Notices?

9.20 Can't jointly decide anything as it can't deal with deadlock - and why the Applications Manager (wrong title) who is a Regeneration employee.? Obligation to determine in consultation with Head of Legal & Democratic Services.? (HOLADS)

9.28 In consultation with HOLADS as enforcement by prevention means seeking an injunction - see 12.4 .

9.29 LGA 1982 - surely LG(MP)A 1982.

9.30 Can't be all functions as approving Gambling Licensing Policy is a Cabinet Function- See Gambling Act Licensing Policy which actually contains the scheme of delegations

9.34 Not a Cabinet function or not a Planning Committee function?

9.35 Obligation to have regard to objections

10.9 Surely in consultation with Regeneration (Estates)

11.3 Section 16 and 17 LGHA 1989? Do they empower delegation of powers of appointment to Officers

12.10 - Not jointly

12.19 - Intention to do what?

12.20 Suspended?

Note Not practical to always consult with Portfolio holder and 'those officers' does not make grammatical sense

13.1 What of the other powers?

## **Section 5 Joint Arrangements**

Add TOR for JTB

## **Part 4 Rules of Procedure**

### **Council Procedure Rules**

1.1(vi) will change with Strong Leader

1.2(v) and(vi) Conflicts with power of Leader to appoint to outside bodies whether Cabinet function or not. (Leaders delegated powers).

2.1 (ix) insert Chief Exec Report and - re-number.

7.0 Who is the Corporate Programme Manager? Surely HOLADS or Democratic Services Manager (DSM)

8.0 Delete Corporate Programme Manager

10.0 Quorum - Can't apply to Licensing Sub Committee and Standards Sub-Committee. Quorum for Standards also requires presence of one independent member.

12.0 Petitions will change with Statutory Procedures.

12.3 Should there be a latest time?

13.3 Delivered to DSM by 10.00 a.m.? Also the right is to question the Cabinet so should not refer to 'members of the Council'

13.6 HOLADS OR DSM?

14.4 Deliver to DSM by 10.00 a.m.?

14.9 line two. DSM?

14.9 (iv) DSM?

15.1 DSM?

15.2 DSM?

19.10 That the meeting continue beyond 10.30 p.m.??

22.2 DSM?

22.3 Refer to CPR for Extraordinary Meetings surely?

24.1 Of the Committee, Sub- Committee or Working Party of the Cabinet or Council or both?? Also there is no Management Appraisal Board or Appeals Panel.

25.1 Reverse (i) and (ii) and add Monitoring Officer

25.1 (v) DSM?.

30.0. Surely Reference to CPR14 should be to CPR 14.3 to 14.8 (14.1. 14.2 and 14.9 is purely for Council meetings)

32.0 (1) Amend to add HOLADS instead of Head of Service. Substitute DSM for Corporate Programme Manager.

32.(3) - DMS?

CPR needed for Public Speaking at Planning Committee?

### **Access To Information Procedure Rules**

1.0 Apply to Sub Committees other than Standards Assessment & Review Sub-Committees.

2.0 Include EIR 2004

7.0 Delete CPM

9.1 Who is Proper Officer? HOLADS?

9.2 Legal obligation is six years, not four.

11.4 Table is incomplete - replace

14.0 (a) Five clear days, not three

16.0 (d) - ditto

Last sentence of 16.0 Exempt key decision will not be taken in public

18.1 What Policy Scrutiny Panel?

20.1 Five clear days

### **Budget & Policy Framework Procedure Rules**

2.0 The NB at the end. Delete 'framework'

6.0 (a) What Executive & Policy Scrutiny Panel?

### **Cabinet Procedure Rules**

1.6 These must be pre- published so conflicts with this rule.?

Generally - Where is the power to fix a meeting after an adjournment (e.g. cannot complete business in time or meeting becomes inquorate) or to call and extraordinary meeting - as Council Procedure Rules for these do not apply - See CPR 30.0 which apply only CPR 24 to Cabinet Meetings.

### **Overview & Scrutiny Procedure Rules**

1.0 (b) Add CDRP and CCFA Roles

5.0 One half? - we say so everywhere else

16.0 Whipping Declarations to go on Agenda??

### **Standards Committee Hearings Procedure**

Amend - Out of date as ignores local assessment and the fact that Hearings are conducted by a dedicated Sub-Committee

### **Financial Procedure Rules**

Ensure they are the most up to date.

### **Contract Standing Orders**

OK

### **Officer Employment Procedure Rules**

OK

### **Prescribed and Other Standing Orders**

Delete SO's 1 to 10 as covered by OEPR

Delete SO 11 as covered by Council PR 21.4 and CPR 21.5 goes further than 11.

Delete SO 12 - Not needed by virtue of restriction on business in Council PR3.1

So no purpose to SO 13 - delete

### **Part II Standing Order Relating to Staff**

Delete and replace with CDC stuff in the OEPR

### **Part III - SO's relating to Executive Plans Strategies and Estimates.**

Delete and add to Budget and Policy Framework Procedure Rules

### **Appendix 1 Proper Officer Functions**

Section 96 LGA - Doesn't apply

Replace Corporate Programme Manager with DSM

S 151 – amend to DCR and

204(3) – repealed

Section 225- HOLADS/Legal Services Manager (LSM)

Section 236 (9) and (10) – HOLLADS and LSM

Section 238 HOLADS/LSMS

LG(MP) A 1976 - Section 41 HOLADS/DSM

LGHA 1989 – Section 5 HOLADS NB Deputy is appointed not nominated

National Assistance Act 1948 etc. – re write

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**Councillor Call for Action**  
best practice guidance



1. <b>introduction</b> .....	7
2. <b>the scenarios</b> .....	12
<i>Setting out four scenarios which cover a wide range of issues relating to CCfA. These will be referred to in subsequent sections.</i>	
3. <b>specific issues arising</b> .....	19
<b>3.1 powers to exclude issues from CCfA</b> .....	19
<i>What is and what isn't a "vexatious request"?</i>	
<i>Under what circumstances would it not be appropriate to bring a CCfA?</i>	
<i>What are the key issues excluded from the CCfA process?</i>	
<b>3.2 "formal process"</b> .....	21
<i>Is CCfA some kind of formal process? Do we need detailed process maps defining how CCfA will operate?</i>	
<b>3.3 the concept of "resolution"</b> .....	25
<i>The focus of CCfA is on resolution of problems, but how should members ascertain whether that resolution has occurred, or whether their expectations are realistic?</i>	

4. <b>specific interactions with</b> .....	29
<b>4.1 corporate complaints</b> .....	29
<i>What happens if a CCfA is made when a similar issue is being dealt with through the complaints process? How will we know?</i>	
<b>4.2 petitions / deputations</b> .....	30
<i>What if a petition is going through on the same issue at the same time? Is CCfA necessary in this context?</i>	
<b>4.3 existing Overview and Scrutiny work</b> .....	31
<i>How can CCfAs capitalise on other ongoing or prospective scrutiny work? How can scrutiny use CCfAs to inform its own work programme?</i>	
<b>4.4 councillors' existing ward work</b> .....	32
<i>How will work carried out in the ward by a councillor be used to support CCfA?</i>	
<b>4.5 community safety CCfA procedures</b> (under the Police and Justice Act) .....	32
<i>What happens when an issue is raised which is partially or entirely related to community safety? Should CCfA work differently?</i>	

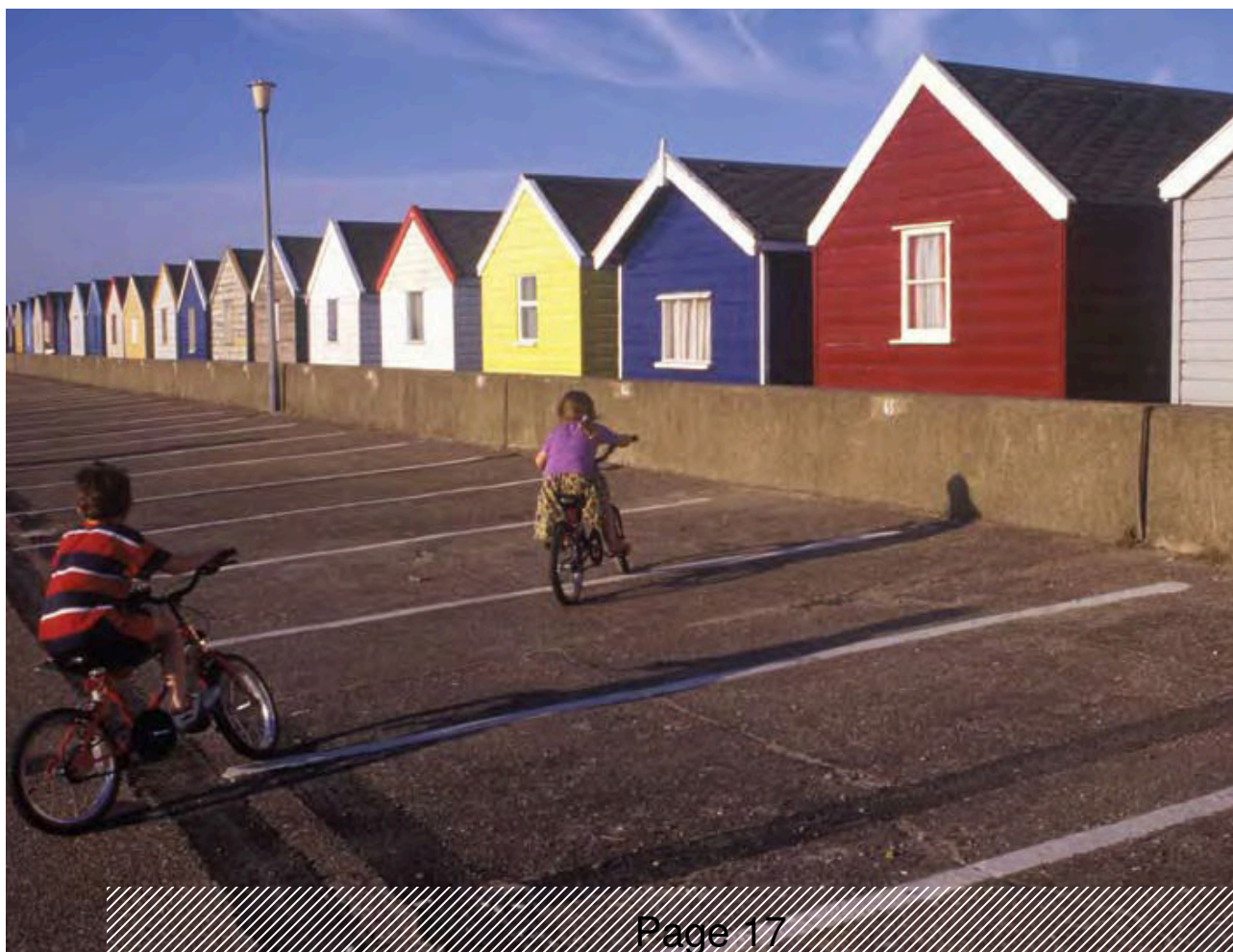


**4.6 two tier and multi ward areas**..... 33  
*What happens when a CCfA is made in a two-tier area, or when a CCfA relates to a number of wards?  
How and when should different council tiers interact with one another?*

**4.7 other partners**..... 34  
*What happens when another partner is involved?  
What if a partner is involved who is not a “partner” under the 2007 Act?*

5. **delegated powers – s236**..... 37  
*How can councils use delegated powers under s236 of the Act to put give further power to ward councillors? How do the delegation of council functions to ward councillors affect CCfA?*

6. **scenario resolutions** ..... 45  
*Returning to the scenarios set out in section 2, how will CCfA enable the issues in these scenarios to be resolved? What innovative ways or working – further to sections 3, 4 and 5 – could be brought into play to increase scrutiny’s effectiveness?*



## 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.

7

### introduction

#### 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.

<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)

#### specific issues arising

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.

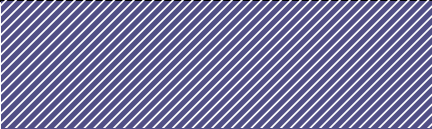
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specific issues arising

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

## other interactions

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.

#### other interactions

#### 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 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

37

### delegated powers under s236 and s100EA

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.

delegated powers under s236 and s100EA

### 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

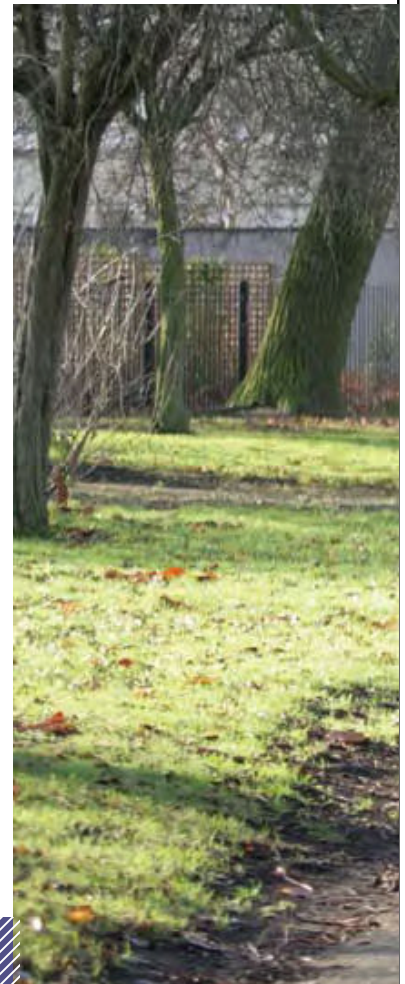
When they are made, delegated decisions will need to be recorded under s100EA of the 1972 Act. Precise arrangements – including timescales for publishing decisions, if these are thought to be appropriate – can be made by individual authorities. However, it may be most effective for councils to record 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.

45

### scenario resolutions

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 all 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>

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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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## Local Government and Public Involvement in Health Act 2007 - Adoption of Revised Political Management Arrangements

To: **Constitution Review Working Party - 7 October 2009**

By: **Harvey Patterson, Monitoring Officer**

Classification: **Unrestricted**

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**Summary:** **To consider the available options and steps to be taken in order to adopt new political management arrangements**

### **For Decision**

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#### **1.0 Background**

- 1.1 By virtue of Part 3 and Section 64 of the Local Government & Public Involvement in Health Act 2007 ('the Act') the Council will be required to consult on and adopt one of the two political governance models prescribed by the Act, namely the Leader and Cabinet Executive model and the Mayor and Cabinet Executive model .
- 1.2 The Leader and Cabinet Executive model under the 2007 Act differs slightly from what that Act calls the "old style" Leader and Cabinet model (under the LGA 2000). The main differences are:
- (i) Under the "old style" arrangements a Leader could be "strong" or "weak". With a "strong" Leader the Cabinet is appointed by the Leader. With a "weak" Leader the Cabinet is appointed by the full Council. Under the 2007 Act the Cabinet must be appointed by the Leader. TDC currently appoints the Leader and Deputy Leader and the Cabinet Leader then elects the Cabinet
  - (ii) Under the "old style" arrangements it was possible for the Constitution to make provision with respect to the allocation of executive functions amongst the Cabinet – that is to say the Constitution could specify the terms of reference and portfolios of the Leader, the Cabinet collectively and individual Cabinet Members. Under the 2007 Act the Cabinet Leader will decide these matters, i.e. the position will be the same for a Leader as for a directly elected Mayor. In practice this means that in future the Leader will determine the portfolio allocation of executive functions without the input of full Council.
  - (iii) Under the "old style" arrangements the Constitution "may include provision with respect to...the election and term of office of the executive leader" – that is to say, the Leader's term of office is for the full Council to decide when approving the Constitution. Under the 2007 Act the Leader's term of office (in the case of a Council operating whole-council elections) will be four years.
- 1.3 In the Mayor and Cabinet Executive model the Mayor is directly elected for four years, appoints the Cabinet and determines their portfolios. He or she cannot be removed from office by the Council

## **Implementation Time Scale and Requirements**

- 2.1 The Council must consult the public and other interested person for a minimum 12 week period before drawing up proposals for a change in its political governance arrangements. In drawing up its proposals the Council will have regard to the responses to the public consultation as well as the extent to which the proposals if implemented, would be likely to assist in securing continuous improvement in the way in which the Councils functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 2.2 The Council must then resolve by not later than **31 December 2010** which of the two available governance models it proposes to adopt and the Council must pass this resolution at an Extraordinary General Meeting specifically convened for this purpose. The new governance arrangements will then come into force on the third day following 'a relevant election' - in the case of Thanet the whole Council elections in May 2011 will be a relevant election.
- 2.2 Give that there must first be a minimum three months consultation period before the Council publishes a proposal, that the proposal must include an adoption timetable (and may include a proposal to hold a referendum) and given also the requirement to complete the process and adopt the preferred model by 31 December 2010, it may be advisable for the Council to begin the process in this cycle of meetings by considering and developing a reasoned preference for one of the available models as this would form the basis of the public/interested person consultation exercise. If this is agreed the Head of Legal and Democratic Services, will report to the next meeting of the Working Party with a short paper on the advantages and disadvantages of each model. In addition, although the recommendations of the Working party will be considered by the Standards Committee and full Council so all members will have the opportunity of influencing the decision, it would be appropriate to consult the party groups via the Group Leaders on their preferred model.
- 3.0 Corporate Implications**
- 3.1 Financial**
- 3.1.1 There will be a consultation cost for which no discrete budget exists, However if consultation is deferred until the next financial year it will be possible to include an appropriate amount in the budget build for 2010/11.
- 3.2 Legal**
- 3.21 As set out in the report
- 3.3 Corporate**
- 3.3.1 Research indicates that Councils with strong leader executive arrangements tend to be higher performing than Councils with weak leader executive arrangements. As both models are "strong leader" models, either has the capacity to support the 'Modern Council' Corporate Plan theme.
- 3.4 Equity and Equalities**
- 3.4.1 None Specific
- 4.0 Recommendation(s)**
- 4.1 That the report be received and noted.

4.2 That the Working party determines whether to begin the processes necessary to change the Councils political governance and management arrangements in this cycle of meetings.

## **5.0 Decision Making Process**

5.1.1 The recommendations of the Constitution Review Committee are considered by the Standards Committee who make final recommendations to Council. Council must first consult the public before drawing up its proposal and adopting them at and Extraordinary General Meeting.

Contact Officer: *Harvey Patterson, Head of Legal & Democratic Services*  
Reporting to: *Richard Samuel, Chief Executive*

### ***Annex List***

*None*

### ***Background Papers***

#### **Title**

*No background papers*

#### **Details of where to access copy**

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## Constitution Review - Reports to Council by the Chief Executive and Cabinet Leader

To: **Constitution Review Working Party – 7 October 2009**

By: **Harvey Patterson, Monitoring Officer**

Classification: **Unrestricted**

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**Summary:** **To recommend amending the Council Procedure Rules to enable the Chief Executive and Cabinet Leader to present reports to Council.**

### **For Decision**

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#### **1.0 Details**

1.1 This presentation of reports by the Chief Executive and Cabinet Leader at the last Council Meeting caused some consternation due to the apparent lack of constitutional authority in the Council Procedure Rules.

1.2 In fact reports from the Cabinet are already a standing item at ordinary meetings of Council - see Council Procedure Rule (CPR) 2.1 (ix) - but these are subject to questions without notice from members pursuant to CPR 14.1. Consequently, it is recommended that in future any Leaders Report is taken under this and that the current CPR 12.1 (ix) is amended to read:-

*'receive reports from the Cabinet Leader, Members of the Cabinet and the Council's Committees etc.'*

1.3 So far as the Chief Executive's Report is concerned, the Working Party is asked to consider and approve the principle of receiving information reports from the Chief Executive after questions from the public and the transaction of any business for the last Council Meeting. Members must also decide whether such reports should also be subject to questions without notice from members and, if so, CPR 2.1 can be amended to include a new CPR 2.1 (ix) reading as follows:-

*'receive any report from the Chief Executive and receive questions and answers on such report'.*

#### **2.0 Corporate Implications**

##### **2.1 Financial**

2.1.1 None

##### **2.2 Legal**

2.21 As set out in the report

##### **2.3 Corporate**

2.3.1 These reports will enable the Council to be kept informed of the progress of significant corporate initiatives and service innovations.

## **2.4 Equity and Equalities**

2.4.1 None Specific

## **3.0 Recommendation**

3.1 That approval be given to the inclusion on the agenda for ordinary meetings of Council items relating to the receiving of reports from the Chief Executive and Cabinet Leader in the manner recommended in the officer's report and that Council Procedure Rule 23.12 be amended accordingly.

## **4.0 Decision Making Process**

4.1.1 The recommendations of the Constitution Review Committee are considered by the Standards Committee who make final recommendations to Council. Council will determine the date by which any constitutional reform is to take effect, e.g. immediately, from the beginning of the next financial year or from the date of the Annual Meeting of Council.

Contact Officer: *Harvey Patterson, Head of Legal & Democratic Services*  
Reporting to: *Richard Samuel, Chief Executive*

### ***Annex List***

*None*

### ***Background Papers***

#### **Title**

*No background papers*

#### **Details of where to access copy**