
Constitution Review Cycle 2009/10 - Sundry Issues

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

By: **Harvey Patterson, Monitoring Officer**

Classification: **Unrestricted**

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

For Decision

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

3.2.1 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

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Annex List

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

Background Papers

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