

THANET DISTRICT COUNCIL

Councillor Call for Action (CCfA)

Draft/Protocol

April 2010

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Councillor Call for Action Protocol - CCfA

Introduction

Councillor Call for Action (CCfA) was introduced under Section 119 of the Local Government and Public Involvement in Health Act 2007 (the Act) and came into force on 1 April 2009. The statutory requirement to implement CCfA applies to all Councils in England (with the exception of Parish / Town Councils) regardless of their executive arrangements.

The Act enables any Member of the Council to refer to an Overview & Scrutiny Committee / Sub-Committee any local government matter or any crime and disorder matter which affects their ward.

Limitations

It is important to recognise that CCfA is not guaranteed to solve a given problem. CCfA can provide a method for discussing such problems and, through discussion, trying to overcome them.

It is the responsibility of the Ward Councillor to provide evidence of the actions that have been taken so far to identify possible solutions to the issue(s).

Issues excluded from referral as a CCfA

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

- Individual complaints concerning personal grievances or commercial issues;
- Any matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman), for example:
 - Planning and licensing applications and appeals
 - Council Tax / Housing Benefits complaints and queries
 - Issues currently under dispute in a court of law
- Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the Overview & Scrutiny Committee or any of its Sub-Committees.

A referral, provided it is not an excluded matter (see above); will ensure that the matter is included on the agenda of the Overview & Scrutiny Panel. It is then up to the Members of the Panel to decide whether or not to take the matter further.

A referral made to the Overview & Scrutiny Panel is seen as being at the end of the CCfA process (the last resort) and not the first step.

Steps to be taken, prior to making a Councillor Call for Action referral

Prior to a Councillor referring a matter as a CCfA to the Overview & Scrutiny Panel, a Councillor must have tried to resolve the issue / problem themselves using all mechanisms and resources available to them at Ward level. Councillors should:

- If a local crime and disorder matter, raise the issue through the Community Safety Partnership to find a way to resolve the issue;
- Ensure that all relevant partner organisations have been informed of the issue and given enough time to resolve the issue, for example through formal letters written on behalf of constituents, discussion at public meetings, petitions, communication with local Members of Parliament (MPs) and Councillors in other authorities etc;
- Ensure that all relevant internal potential routes to solution have been followed, for example informal discussions with officers and / or members, questions at committees etc;
- Ensure that this is not an issue that is currently being or should be pursued via the Council's Corporate Complaints Procedure ;
- Ascertain whether or not any other form of local scrutiny is investigating the issue, e.g. Kent County Council.

How to make a Councillor Call for Action referral

If the issue / problem is still not resolved the Councillor can refer it to the Overview & Scrutiny Panel as a Councillor Call for Action. To do this the Councillor should:

- Complete a CCfA Request Form by hand or electronically, outlining what the issue is and what steps have been taken to seek a resolution. The request for a CCfA should include:
 - The name of the Councillor and Ward they represent
 - Description of the topic
 - Why the topic is being raised
 - Who it affects
 - What solutions have already been tried
 - What outcomes or solutions required
 - Evidence to support the CCfA
 - Is the CCfA currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints' process?
 - Are there any deadlines associated with the CCfA of which the Overview & Scrutiny Panel needs to be aware?
- The Democratic Services & Scrutiny Manager will receive the referral form either by post or electronically, log it to track its progress and assess the issue to ensure that it is not a matter excluded from referral to Overview & Scrutiny. In accordance with Rule 8 of the Overview and Scrutiny Procedure Rules, a referral form should be received by the Democratic Services & Scrutiny Manager at least two weeks before the date of a meeting of the Overview & Scrutiny Panel if it is to be included on the agenda for that meeting;

- The Democratic Services & Scrutiny Manager will inform the Chairman of the Overview & Scrutiny Panel and the item will be included on the next available Committee agenda. The Councillor will be informed whether or not their referral has been successful.

Decision of the Overview & Scrutiny Panel whether to take the matter further

In deciding whether or not to take the matter further the Panel will consider:

- Anything that the Councillor has done in relation to this matter; and
- Representations made by the Councillor as to why the Panel should take the matter up.

The criteria the Committee will use to decide whether or not to take the matter further will include:

- Is the Panel satisfied that all reasonable attempts have been made to resolve the issue by the Ward Councillor? Do the responses received by the referring Councillor demonstrate that the matter is not being progressed?
- Has the Panel considered a similar issue recently – if yes have the circumstances or evidence changed?
- Is there a similar or related issue, which is the subject of a review on the current scrutiny work programme? It may be more appropriate to link the new issue to an existing review, rather than hold a separate CCfA hearing. Relevant time pressures on resolving the CCfA should be taken into account;
- Have all relevant service areas or partner organisations been informed and been given enough time to resolve the issue? What response has the Councillor received?
- Is this a case that is being or should be pursued via the Council's corporate complaints procedure?
- Is it relating to a 'quasi-judicial' matter or decision such as planning or licensing?
- Is the issue part of an individual's own personal agenda (an issue of genuine local concern should have an impact on the local community);
- Is this an issue currently being looked at by another form of local scrutiny, e.g. Kent County Council?
- And, as with all scrutiny, does the matter referred have the potential for scrutiny to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring Member's ward?

If the Panel decides not to accept the CCfA referral it must inform the Councillor and provide reasons.

If the Panel decides to accept the CCfA referral, it must decide how it intends to take the matter forward and include the CCfA in its work programme. This could include:

Before holding a formal hearing:

- Asking the service area(s)/partner organisation(s) to respond to the CCfA;
- Setting up a working party to undertake a more in-depth review

At formal hearing:

- Asking for further evidence and/or witnesses to be brought to a future meeting then making recommendations to the relevant Committee/partner organisation.

In considering the CCfA, the Overview & Scrutiny Panel may invite the relevant Cabinet Portfolio holder, Chief Executive, Director Service Manager or external organisation to discuss the issue with the Overview & Scrutiny Panel and answer any questions, if the Committee considers this relevant.

Potential outcomes

Following a formal hearing, there are a number of potential outcomes from the Panel meeting:

- The Panel could determine not to make a report (perhaps because it is not considered the right time to consider a particular issue), with the Ward Councillor notified in writing;
- The Panel could determine that it is a complex issue that requires further investigation and commission a scrutiny review of the issue;
- The Panel could write a report and make recommendations on the CCfA to the Cabinet or relevant partner(s).

Once the Panel has completed its work on the CCfA referral, the Member who made the CCfA referral will receive a copy of any report or recommendations made. The Democratic Services & Scrutiny Manager will also publish the report on Modern Gov and on the Council's website <http://www.thanet.gov.uk> unless there are reasons why the Panel considers the matter is an exempt item and as a result the report cannot be made public.

Timescales

Once a CCfA has been assessed as not being a matter that is excluded from referring to Overview & Scrutiny, the item will be included on the next available Committee agenda. (Remember- in accordance with Rule 8 of the Overview and Scrutiny Procedure Rules, a referral form should be received by the Democratic Services & Scrutiny Manager at least two weeks before the date of a meeting of the Overview & Scrutiny Panel if it is to be included on the agenda for that meeting).

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

Should a CCfA hearing result in recommendations to the Cabinet, Cabinet must respond to the recommendations, setting out any action it intends to take at its next scheduled meeting.

Should a CCfA hearing result in recommendations to partner organisations, such organisations will also be requested to make a response to the recommendations, although they are under no legal obligation to do so. Any response received will be reported back to the Cabinet and the Overview & Scrutiny Panel.

THANET DISTRICT COUNCIL

Councillor Call for Action (CCfA) Request Form

This form is for District Councillors to raise topics of concern to Thanet District Council to enable investigation by the Overview & Scrutiny Panel, or other method as appropriate.

To ensure that Scrutiny's work is most effective, Members must provide evidence of what they have previously done to try to resolve the issue. When deciding which topics to scrutinise, the primary aim is adding value to the work of the Council, focusing on the things that matter most and which make a real difference to the local community.

For this reason, Scrutiny does not get involved with individual cases or minor matters, which should be addressed through other channels, including the appropriate service area or Ward Councillor. Scrutiny does not deal with individual complaints, which should be directed through the Councils' Complaints Procedure.

Your contact details:

Name (print);

Address:**Contact number:****Email address:****The Ward you represent:****Description of the topic**

Please describe as fully as possible what the issue is with specific examples where possible.

Why are you raising the topic?

Please explain what has prompted you to raise the topic, e.g. concerns by residents, etc.

Who does it affect?

Please describe if any other wards / parishes are affected, or if it is local to your ward, how many residents are affected?

What solutions have already been tried?

Please describe what avenues to solve the issue have already been tried and the outcomes.

What outcomes are required?

Although a specific solution may not be possible, it will assist the Committee if you describe what outcomes or solutions you would prefer.

What evidence do you have in support of your CCfA?

Letters



Emails



Agendas/Minutes of meetings



Photographs



Film



Other (please specify)

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

What (if any) are the critical deadlines?

Please make clear if there are specific deadlines for this topic.


Would you like the opportunity to speak to the Overview & Scrutiny Panel?

Yes 

No 

Have you approached the Overview & Scrutiny Panel on the same issue in the past six months?

Yes 

No 

Would you like your response by:

Email 

Letter 

Signature:

Date of submission:

Please complete and return the form to:

Glenn Back
Democratic Services and Scrutiny Manager
Thanet District Council
Council Offices
Cecil Street
Margate
Kent CT9 1XZ

Overview & Scrutiny Committee Councillor Call for Action (CCfA) Guidance

The following questions are intended to assist Overview & Scrutiny Committee Members in deciding whether to take up or reject a matter referred as a Councillor Call for Action (CCfA). Positive answers indicate that the matter referred should be taken up and negative answers that they should not be taken up.

Question	Yes	No
1. Does the matter referred relate to a local government function?		
2. Does the matter referred affect all or part of the Member's ward, or anyone living or working in it?		
3. Is it confirmed that the issue referred is not an excluded matter, e.g. planning, licensing or legal procedure?		
4. Is it confirmed that no other relevant body / partner organisation is taking up the matter referred to Overview & Scrutiny as a Councillor Call for Action?		
5. Does the matter referred have the potential for Overview & Scrutiny Members to produce recommendations, which could realistically be implemented, and lead to improvements for anyone living or working in the referring Member's ward?		
6. Has the referring Councillor provided evidence of the steps s/he has taken to try to resolve the issue?		
7. Do the responses received by the referring Councillor demonstrate that the matter is not being progressed?		

Explanatory Notes

1. Definition of a Local Government matter and a local Crime and Disorder matter

Local Government matter

For the purpose of the Act a local government matter, in relation to a member of a local authority is one which:

- Relates to the discharge of any function of the authority;
- Affects all or part of the electoral area for which the referring member is elected or any person who lives or works in the area (i.e. it must be specific to a particular locality); and
- Is not an excluded matter

Local Crime and Disorder matter

A local crime and disorder matter, in relation to a member of a local authority, has been defined to mean a matter concerning:

- a) Crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment); or
- b) The misuse of drugs, alcohol and other substances that affects the electoral area represented by the member, or the people who live or work in that area

2. Definitions of ‘vexatious’, ‘persistent’, discriminatory’ and ‘not reasonable’

Statutory regulations deal with matters that can be excluded from CCfA, stating that ‘any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the Overview & Scrutiny Committee is to be excluded’.

Vexatious/Persistent

Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all circumstances of the case. There is no rigid test or definition, and it will often be easy to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.

Issues around persistency are implied by this definition. However, a persistent request may well be entirely valid – it may relate to a systematic problem that has not been effectively resolved. Similarly, a request, which some Members may regard as vexatious, may actually be entirely reasonable.

CCfA’s need to be looked at on their merits, rather than on the basis of who is bringing them, or whether someone thinks there is an ulterior motive for them being brought.

Where a request for a CCfA is clearly vexatious, detailed reasons for coming to this decision will be given to the Councillor concerned. There could, however, be instances where changes to the scope of the CCfA, or its focus, could make it more acceptable while still meeting the Councillor's requirements.

Discriminatory

A modern interpretation of the word 'discrimination' is provided at Section 45 of the Equality Act 2006, in relation to religion and belief, as follows:

A person (A) discriminates against another (B) if on the grounds of the religion or belief of (B) or of any other person except (A), treats (B) less favourably than he treats others. This definition can easily be amended to deal with other forms of discrimination, such as discrimination for reasons of sex and/or race. So a discriminatory CCfA might be one which implies or states that a group of people or an area receives better, or worse, services on account of that group's predominant religion, race, sex or other characteristic, as covered by discrimination legislation.

Not reasonable

It is suggested that, in the interests of transparency, authorities do not interpret 'not reasonable' as being the same as the legal word 'unreasonable'. It is best to consider it as a qualifier to the word 'vexatious', as a vexatious request is likely not to be reasonable and a request that is not reasonable is likely to be vexatious.

3. Structure of the CCfA hearing

The Chairman of the Overview & Scrutiny Panel will determine the most appropriate arrangements for considering the CCfA matter.

Flow Chart of CCfA Mechanism

