

BRIEFING NOTE

TO: Neighbourhoods Scrutiny and Performance Panel

DATE: 30 April 2009

RE: Councillor Call for Action Proposed Protocol

Purpose

For Members to consider the proposed protocol for Councillor Call for Action at Walsall Council.

Background

The Local Government White Paper 'Strong and Prosperous Communities' first introduced the concept of a 'Community Call for Action' for Local Government matters back in 2006. This was alongside a separate and distinctive 'Call for Action' provision on crime and disorder matters contained within the Police and Justice Act 2006 (P&J Act 2006). Crime and disorder Calls for Action would be referred to the designated scrutiny and performance panel for crime and disorder issues which the P&J Act 2006 requires local authorities to have in place by 30 April 2009.

The results of the consultation on Calls for Action by the Department for Local Government and Communities led to the two 'Calls for Action' being amended to have the same processes in the Local Government and Public Involvement in Health Act 2007 (LGPiH Act 2007) and created the 'Councillor Call for Action' (CCfA). The provisions contained within this Act in relation to CCfA are due to be implemented on 1 April 2009.

The Neighbourhoods Scrutiny and Performance Panel formed a Call for Action Working Group to monitor the implementation of the Call for Action Proposals. The Working Group Members will recall that they participated in the Department for Communities and Local Government Consultation (DCLG) on Petitions and Calls for Action back in March 2008. A copy of the submission to DCLG is attached at Appendix 1 for information.

Councillor Call for Action - Legislation

The CCfA provisions in the LGPiH Act 2007 simply allow any Member of the Council to place an item on the agenda of a scrutiny and performance panel on a local government matter. Currently this power only lies with Members of the specific panel whose remit that particular issue fits under. The Act also amends the P&J Act 2006 to allow any Member to place an item on the agenda of the designated crime and disorder scrutiny panel on a crime and disorder matter.

Councillor Call for Action – In Practice

In practice CCfA will be an additional tool for Councillors to assist them in completing their regular ward work.

The guidance produced by the Centre for Public Scrutiny (CfPS) and Improvement and Development Agency (IDeA) suggests that CCfA should be seen as a 'long stop'. By this they mean that a CCfA should only be invoked once all other means of progressing an issue have been exhausted (e.g. elected member has already engaged with whg on a specific housing issue but does not feel it has been resolved). It is important that the focus on CCfA related issues is on resolving the existing issue and producing an outcome for the Councillor concerned. Therefore it is likely that the majority of issues should be solved without the need for a referral to a scrutiny panel.

This way only the issues where a scrutiny panel can add the most value will be considered and valuable committee time will not be taken up considering straight forward issues which could be dealt with by more appropriate means. Two authorities have piloted this type of approach, Kirklees and Birmingham, and this has resulted in a very limited number of CCfA's

Therefore the most important test for a CCfA will be deciding when alternative means of resolving an issue have been completed to allow the CCfA to commence, or if no steps have been taken, being able to direct Councillors to a source where they can begin to address their issues.

The guidance introduces a descriptive term for Councillors as the 'changemaker' for their local area of which CCfA is a tool to be used to assist in the initiation of change if it is required.

CCfA at Walsall

The Government has left it open for local authorities to choose their own procedures for CCfA.

Working Group Members previously expressed concern regarding planning and licensing matters, vexatious issues and issues which had separate appeals processes becoming CCfA's. All of these issues have been forbidden from becoming CCfA's by the aforementioned statutory instrument.

Work by Officers has led to the drafting of some guidelines on CCfA's for inclusion in the Councils Constitution for how CCfA should operate at Walsall, a suggested protocol and form for Members to use to raise a CCfA can be found at Appendix 2 and 3 respectively. This will later be supplemented with some guidance and training in learning on how to implement CCfA for themselves. This guidance could include suggested steps that could be undertaken before a CCfA is considered, although it is important to note that not all issues will necessarily be resolvable through a set process. The key point in the guidance is that CCfA should be considered as a 'long stop' therefore it is important that Members understand this concept and that consideration of an issue at a scrutiny panel really is the last resort.

The proposed protocol and submission form have been developed to ensure that valid and appropriate CCfAs are raised. The protocol defines the issues that can be raised as a CCfA and process that will be followed up until the submitted CCfA is accepted or rejected by the relevant scrutiny and performance panel. After this point any further procedures would be unnecessary as each CCfA will require a different method of investigation by a scrutiny and performance panel.

The process of deciding whether or not a CCfA is valid is two fold. Firstly, it is proposed that the monitoring officer should decide whether or not a submitted CCfA fits one of the specified

exemption criteria (e.g. if it is a matter linked to a planning or licensing decision). If the submitted CCfA does not fit one of the exemption criteria then the Performance and Scrutiny Team will co-ordinate a response to the CCfA from the body or person that it concerns. This information will be submitted to the next practicable meeting of the relevant scrutiny and performance panel so they can consider whether or not to investigate the matter further. The Member who submitted the CCfA will be invited to attend and speak at the Panel meeting on the reasons for their CCfA and what their expected outcome is. The Panel will consider any additional information at this point and decide whether or not to investigate the CCfA further. If they reject the CCfA then the decision to do this has been made in an open and transparent way. If the CCfA is accepted then it is up to the Panel to decide how to investigate it further within their existing powers.

Other Considerations

S236 Provisions – Ward Members as decision makers

The LGPiH Act 2007 contains provisions to give decision making powers to local ward Members on any function exercisable in their own wards. The guidance links these potential powers to CCfA in the context of handing powers to local Members to resolve local issues. The introduction of these powers is optional.

Petitions

The recently published Local Democracy, Economic Development and Construction Bill contains provisions that alter the way local authorities will be required to deal with petitions. Local authorities will be obliged to provide a formal response to all submitted petitions. The lead petitioner will then have the right to refer the response to scrutiny if they are unhappy with it. This is an area that has links with CCfA, particularly if a local Member is the lead petitioner.

Conclusion

CCfA will be a useful tool to assist Members in completing their ward work. However, it will not provide a fast route to solutions. What it will provide is an end point to long term problems which cannot be solved through other means.

It is anticipated that a limited number of CCfAs will arise each year as the majority of issues Members raise should be resolvable without the need for scrutiny involvement.

Recommendations

That:

- 1. subject to any comments Members may wish to make, the proposed Councillor Call for Action Protocol and Submission Form be submitted to Council;**

and;
- 2. the Neighbourhoods Scrutiny and Performance Panel review the effectiveness of the approved Councillor Call for Action protocol and Submission Form in summer 2010.**

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Community Call for Action Working Group

Following the introduction of the community and councillor call for actions in the Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007 the Neighbourhoods Scrutiny and Performance Panel established a Community Call for Action (CCfA) Working Group to consider the implications of the new legislation for Walsall. As part of their considerations the Working Group discussed questions and formulated answers to a consultation on CCfA being operated by the Department for Communities and Local Government (DCLG). Below is the formal response from the working group to DCLG.

Q1. What if any matters should be excluded from the call for action?

- Quasi-judicial issues such as licensing or planning matters should be excluded unless there were a series of similar problems in specific areas that would benefit from scrutiny's intervention. Involvement in individual issues should be allowed to ensure action is taken but would be the exception rather than the norm.
- Previously considered matters or issues planned for future action or discussion may be excluded.
- Any issue that could be dealt with by an alternative means should be excluded until all such avenues have been exhausted.
- Scrutiny must be the final point of call.

Q2. What guidance should Government provide on the operation of the councillor call for action?

- Practical and procedural advice on how CCfA should be implemented and timescales for processing and responding should be provided.
- Rules and guidance to prevent abuse.
- There should be strict timescales applied to CCfA's in terms of response times to initial enquiries. 14 to 21 days was seen to be a reasonable amount of time.
- Issues should not be able to be left open ended and there should be powers to empower scrutiny to ensure issues are dealt with within specified timescales.
- There should be guidance as to the type of response to send to CCfA instigators and the time in which things should be done by.
- Assurances that CCfA will enforce outside bodies to co-operate under the 'Duty to Co-operate' or 'Have regard to' provisions within the LGPIH Act 2007.

Q3. Taken together, would petitions and call for action empower communities to intervene with their elected representatives? Should other measures be contemplated?

- The CCfA and petition powers were a good way for citizens to work with Members.
- Care must be taken not to have too many procedures and policies for Members to enforce as it could prevent them from carrying out their duties effectively.
- It was anticipated that it would not be expected for every petition to become a CCfA.

Q4. Do you have any other views on the operation of the new duty to respond to petitions and the call for action?

- This is a new more positive way forward that will help, if implemented correctly, to get things done.
- There is not currently a route that allows this much power for any Member to place an item on a scrutiny agenda and this new power can only be a good thing for Members.

Councillor Call for Action – Protocol

1. Any Member of the Council may submit a Councillor Call for Action (CCfA) on a local government or crime and disorder matter.
2. A local government matter means a matter which:
 - a. relates to the discharge of any function of the authority;
 - b. 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;
 - c. is not an excluded matter.
3. A local crime and disorder matter, in relation to a member of a local authority, means 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

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.

4. Specifically excluded from becoming a CCfA are:
 - a. any matter relating to a planning decision;
 - b. any matter relating to a licensing decision;
 - c. 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;
 - d. 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.
5. A matter does not fall within a description in paragraph 4 (a-d), if it consists of an allegation that a function for which the authority is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis, notwithstanding the fact that the allegation specifies or refers to a planning decision, a licensing decision or a matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to review or right of appeal conferred by or under any enactment.
6. CCfA should only be used in exceptional circumstances. These are where Councillors have been unable to resolve issues and problems on behalf of their residents. CCfA will be a means of 'last resort' in a broad sense, with issues being raised at Scrutiny and Performance Panels after other avenues have been exhausted.

7. All CCfA's need to be submitted, in writing, to the Chief Executive, on the supplied form, providing full details of the issue concerned, including an explanation of what the issue is, why it is being raised as a CCfA, the steps that have been taken to resolve the issue and the expected outcome to be achieved from the CCfA.
8. The Chief Executive will log the CCfA and then raise it with the nominated scrutiny officer as soon as reasonably practicable.
9. The nominated scrutiny officer will:
 - a. Acknowledge receipt of the CCfA with the Member who submitted it;
 - b. Ask the Monitoring Officer to make a decision on whether or not the submitted CCfA fits any of the aforementioned exemption criteria;
10. If the submitted CCfA falls into one of the aforementioned exemption criteria then it will fail at this point and the Monitoring Officer will inform the Member of this outcome.
11. If the CCfA is valid then the nominated scrutiny officer will co-ordinate a response from the relevant persons in preparation for consideration at the next practicable meeting of the relevant scrutiny and performance panel.
12. The nominated scrutiny officer will draft a report to the relevant scrutiny and performance panel. A copy of this report will be sent to the Member who submitted the CCfA.
13. The CCfA will be considered at the next meeting of the scrutiny and performance panel.
14. The who submitted the CCfA will be invited to attend and speak at the scrutiny and performance panel considering the submitted CCfA.
15. Unless specifically excluded, with regard to local government matters, a scrutiny and performance panel has the power to:
 - a. review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive;
 - b. make reports or recommendations to the authority or executive with respect to the discharge of any functions which are the responsibility of the executive;
 - c. to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive;
 - d. to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive;
 - e. to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area.
16. Unless specifically excluded, with regard to crime and disorder matters, a scrutiny and performance panel has the power to:

- a. review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities* of their crime and disorder functions;
- b. to make reports or recommendations to the local authority with respect to the discharge of those functions.

17. If the scrutiny and performance panel decides not to exercise any of their powers in relation to the submitted CCfA it must notify the Member who submitted the CCfA of its decision and the reasons for it.

Notes:

A licensing decision means:

Any decision in relation to:


- An application for any authorisation within the meaning of the section 2 of the Licensing Act 2003 (b), or
- A request for a review of any such decision, or
- Any enforcement decision made under that Act or subordinate legislation made under that Act.

Planning decision means:

- Any decision on an application under the Planning Acts or subordinate legislation made under those Acts for any agreement, approval, consent or permission, or
- And enforcement decision relating to any development within the meaning of those Acts(a); and
- 'right of recourse to a review' does not include any right to make a complaint to the Commission for Local Administration pursuant to the Local Government Act 1974(b).

* Responsible authorities means the bodies or persons who are responsible authorities within the meaning given by section 5 of the Crime and Disorder Act 1998. Namely:

- i. The council for the area;
- ii. Every chief officer of police any part of whose police area lies within the area;

 Walsall Council	Councillor Call for Action Submission Form	Date
<p>I Councillor</p> <p>Would like to submit a Councillor Call for Action in relation to the following:</p> <p>ISSUE (what is it you are trying to achieve/deliver)</p> <p>.....</p> <p>For the following reasons</p> <p>.....</p> <p>.....</p> <p>ACTION UNDERTAKEN (what steps/actions have you taken so far to resolve this - set out in as much detail what you have done, who you have written to/spoken with and when)</p> <p>In my role as Councillor I have completed the following actions to try and resolve the issue:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>RESULT (what would you like to see as the outcome of your Councillor Call for Action?)</p> <p>.....</p> <p>.....</p> <p>Signed</p> <p>Date</p> <p>Note 1: Part 4.5. paragraph 18, of the Walsall Council Constitution, sets out the scrutiny and performance process for submitting a Councillor Call for Action.</p> <p>Note 2: The protocol for submission of a Councillor Call for Action is set out in Part 5.12 of the Walsall Council Constitution</p> <p>Note 3: This form should be completed and returned to the Chief Executives Office</p>		

Signed: _____ Date received: _____

Chief Executive