

**CABINET MEETING – 11<sup>th</sup> MARCH 2009**

**EXECUTIVE SUMMARY SHEET – PART I**

**Title of Report:**

COUNCILLOR CALL FOR ACTION - GUIDANCE

**Author(s):**

The Chief Executive and the City Solicitor

**Purpose of Report:**

To provide Cabinet with information and draft guidance about new powers for councillors designed to help them solve problems in their wards which have now been implemented by the Government. The new powers are known as the 'Councillor Call for Action' (CCfA).

The report also highlights how improvements promoted through the emerging Community Leadership Programme will support the Council in approaching CCfA in the most constructive and effective manner.

**Description of Decision:**

Cabinet is asked to consider the Council's response to the legislative requirement to make provision for a CCfA and:

- (a) Comment on and endorse the amendment to the Constitution as set out in Paragraph 8.2 of this report for submission to Council;
- (b) Comment on and endorse the draft guidance attached as Appendices 1-3
- (c) Refer the draft guidance to all the Review Committees for further comment.
- (d) To agree that Members' workshops be held to provide training to Members and to receive further comments before the draft guidance is finalised for inclusion in the Overview and Scrutiny handbook.

**Is the decision consistent with the Budget/Policy Framework?      \*Yes/No**

**If not, Council approval is required to change the Budget/Policy Framework**

**Suggested reason(s) for Decision:**

1. Councils must make arrangements for the CCfA in order to comply with the requirements of the Local Government and Public Involvement in Health Act 2007, and the Police and Justice Act 2006.
2. It is important that Members understand and contribute to the development work which imposes new responsibilities on them and the Council.
3. It is also important that Members understand how current review and action promoted through the emerging Community Leadership Programme will assist the Council to approach CCfA in the most constructive and effective manner.

**Alternative options to be considered and recommended to be rejected:**

The alternative option would be not to provide arrangements for the CCfA which would be a failure to comply with the legislation. The guidance set out in this report

is devised from best practice guidance which has been tailored specifically for local use.

**Is this a “Key Decision” as defined in the Constitution?**  
No

**Is it included in the Forward Plan?**  
No

**Relevant Review Committee:**

Policy & Coordination

## COUNCILLOR CALL FOR ACTION - GUIDANCE

### REPORT OF THE CHIEF EXECUTIVE AND THE CITY SOLICITOR

#### 1. Purpose of Report

- 1.1 To provide Cabinet with information and draft guidance about new powers for councillors designed to help them solve problems in their wards which have now been implemented by the Government. The new powers are known as the 'Councillor Call for Action', "CCfA" for short.
- 1.2 The report also highlights how improvements promoted through the emerging Community Leadership Programme will support the Council in approaching CCfA in the most constructive and effective manner.

#### 2. Description of Decision (Recommendations)

- 2.1 Cabinet is asked to consider the Council's response to the legislative requirement to make provision for a CCfA and:
  - (a) Comment on and endorse the amendment to the Constitution as set out in Paragraph 8.2 of this report for submission to Council;
  - (b) Comment on the draft guidance attached as Appendices 1-3.
  - (c) Refer the draft guidance to all the Review Committees for further Comment prior to inclusion in the Overview and Scrutiny Handbook.
  - (d) To agree that Members' workshops be held to provide training to Members and to receive further comments before the draft guidance is finalised for inclusion in the Overview and Scrutiny handbook.

#### 3. Introduction / Background

- 3.1 The new powers are contained in the Local Government and Public Involvement in Health Act 2007, and the Police and Justice Act 2006.
- 3.2 The CCfA is derived from s119 of the 2007 Act, and will come into force on 1 April 2009. It inserts a new section 21 A into the Local Government Act 2000. The Council has been awaiting the publication of best practice guidance for the CCfA prior to finalising local arrangements but has already agreed that each Review Committee will deal with those matters within their respective terms of reference. The guidance was published on 17 February 2009 and this report sets out

the proposed arrangements for local use having regard to that guidance.

- 3.3 The national guidance also includes information on the optional power to delegate council functions under s236 of the 2007 Act to individual councillors to make decisions at ward level. Regulations will be issued in respect of publicity for recording such decisions. It is proposed to defer consideration of this aspect until after the Regulations are issued and the changes to Area Committee arrangements are made.
- 3.4 This report needs to be considered in the context of other initiatives and existing mechanisms such as:
- The emerging Community Leadership Programme which contains proposals to enhance and enrich the Council's Scrutiny and Area Committee functions and to intensify their focus upon the improvement of service quality.
  - The Council's Complaints procedure
  - The Annual Work Programme for Review Committees
  - Petitions - The Local Democracy, Economic Development and Construction Bill (known as the Local Democracy Bill) currently going through Parliament contains a new duty for Councils to respond to petitions give citizens greater power to hold local authorities to account and influence local services.
- 3.5 The provision entitles all Councillors to refer a "local government matter" to an Overview and Scrutiny Committee once they have exhausted all other means of resolving the issue. This is defined as a matter "which relates to the discharge of any function of the Authority, 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".

The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 "the Order" excludes certain issues from the definition of "local government matters" for the purposes of Section 21A, which relate to individuals, or concerning planning and licensing matters and issues which are vexatious, discriminatory or not reasonable to be included in the agenda or discussed at a scrutiny committee (e.g. if the issues would be detrimental to community cohesion). It also excludes issues relating to individuals or entities where there is already a right to a review or appeal (other than a complaint to the Ombudsman) Section 21A(ii) also provides that an excluded matter is a local crime and disorder matter (within the meaning of Section 19 of the Police and Criminal Justice Act 2006).

- 3.6 The Government's shares the Council's view, which underpins the Community Leadership Programme, that the work of resolving community concerns in an important part of a local Councillor's role. The CCfA is regarded by Government as a useful additional tool for

Councillors in attempting to perform this role effectively. It recognises that certain matters are best dealt with through existing mechanisms (e.g. planning and licensing applications) or other statutory appeals processes.

- 3.7 The Government considered that the remit of the Local Government Ombudsman is so wide that to exclude all such matters would make virtually every matter an excluded matter.

#### **4. Current position**

- 4.1 The Council is currently conducting a comprehensive review of the way it accepts, responds to and learns from its experience in dealing with 'front line' issues through the emergency Community Leadership Programme. The review, which has placed a premium upon the full and ongoing engagement of Members, has

- Re-emphasised the importance of the 'front line' Community Leadership Councillor
- Identified the key support required by Members to perform this role effectively
- Identified issues which Members encounter most frequently as local Councillors
- Proposed significant changes to the role and operation of Area Committees in order to equip them to support local Councillors to address front line issues in as rapid, effective and transparent way as possible

The net result of these and other proposals contained within the Programme will be to maximise the Council's ability to address issues as quickly and effectively as possible at Ward and Area Committee level. This should, therefore, reduce the number of incidences where it is necessary to use CCfA and to escalate the issue to Scrutiny.

- 4.2 All scrutiny committees work to an annual work programme. Within the refreshed arrangements for scrutiny general policy issues will continue to be dealt with in the usual way by programming items into the Review Committee work programmes. CCfA matters will be integrated into the work programmes in the most expedient way.

- 4.3 The Guidance states that the successful operation of CCfA will rely on several broad principles being recognised, 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.

## 5. What is different about CCfA?

The Guidance makes the following points:

- 5.1 CCfA goes beyond the existing power scrutiny members have to raise issues. This new power gives all councillors the ability to call for debate and discussion at a committee on a topic of neighbourhood concern. The powers are limited to issues affecting single council wards.
- 5.2 Under the 2007 Act scrutiny committees have the power to request information from certain partner organisations and to invite representatives from partner organisations to attend where relevant. CCfA is therefore an opportunity to bring about solutions for local problems using the influence that scrutiny can provide in bringing together a range of partners and produce innovative thinking around an issue.
- 5.3 CCfA should not however be regarded in isolation, as part of the scrutiny function alone. Being able to use it effectively requires using a range of other functions, including support for councillors' ward work, the work of Area Committees, the complaints process, call-in and petitions.
- 5.4 If a CCfA is accepted, a discussion would take place at the committee meeting on how to achieve the outcomes that the member championing the CCfA is seeking. The committee would, in appropriate cases, explore potential solutions, and may make recommendations that certain actions be taken.
- 5.5 These powers are for any member of the Council to pursue. However, there are exceptions where CCfA is not appropriate. For example, if a request is vexatious, or if it is an individual complaint.
- 5.6 Statutory Regulations state 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"*.

The Guidance states as follows in regard to these terms:

"Vexatious" and "persistent" – it is probably best to refer to the guidance to the Freedom of Information Act which 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 easier 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. A request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

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.

“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).*

“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 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.

- 5.7 Members will be provided with routes to seek advice on what can and cannot be pursued as a CCfA. This will include signposting to alternative resolutions. This is important as a CCfA must be used only as a **last resort**, when all other attempts at resolution have failed. It is not designed to provide an immediate solution, but high-profile

community discussion of an issue involving all stakeholders. It offers the chance to bring a pressing issue to a wider audience and to discuss such issues in a neutral forum.

- 5.8 There are a wide range of alternative avenues councillors can pursue to influence and resolve problems, formal and informal, such as: discussions with officers, questions at Committee, formal letters on behalf of constituents, petitions, motions to council, and letters to local MPs.
- 5.9 Discussion of CCfA issues at committee will not necessarily resolve the issue immediately. However, the CCfA process is intended to act as a spur for members and officers to work together to jointly develop policies to overcome the problem.

## **6. Examples of a CCfA**

- 6.1 Under Section 21A of the 2007 Act, 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, the guidance states that to give full effect to CCfA the interpretation of 'local government matter' needs to be broader.
- 6.2 This broader interpretation 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).
- 6.3 Examples of when councillors might use CCfA include:
- Long running issues of Anti-social behaviour linked to substance misuse in a local park area
  - Sustained poor performance at a local school
  - Continuing trends in poor performance around, for example, refuse collection or recycling (the guidance confirms that this would only be appropriate if it related to a specific locality)
- 6.4 A typical scenario for dealing with CCfA might be as follows:

### **EXAMPLE SUSTAINED POOR PERFORMANCE AT A LOCAL SCHOOL**

- Step 1 The Councillor identifies a performance issue from Ofsted inspection reports. (The issue could also be raised by parents who approach their ward councillor).
- Step 2 The Councillor discusses issue with other councillors in the ward (to check they haven't already agreed to pursue the issue).
- Step 3 The Councillor asks the Scrutiny Team or other Council officers for advice. The Scrutiny Team will check that all other mechanisms to resolve the issues have been pursued and have failed, giving signposting advice where appropriate.



- Step 4 The Councillor, following advice, takes action to resolve the issue by holding a public meeting at the school.
- Step 5 If parents remain dissatisfied and no improvement is identified, and no other mechanism is available, the Councillor may agree to champion the issue as a CCfA.
- Step 6 The CCfA is referred to the Children's Services Review Committee for decision in accordance with a checklist.
- Step 7 The Children's Services Review Committee makes arrangements for a CCfA meeting. Ward councillors will be invited onto the committee (or sub-committee) for the purpose of the CCfA meeting.
- Step 8 The CCfA meeting is held in the community. Recommendations are made and referred to the appropriate agencies or Cabinet.

## **7. Community Safety CCfA**

- 7.1 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 general CCfA.
- 7.2 Although the Police and Justice Act required these issues to be considered by the 'crime and disorder committee' in practice this does not require the setting up of a separate committee and does not require separate arrangements. In Sunderland the relevant committee is currently the Regeneration and Community Review Committee.

## **8. Procedures and Guidance**

- 8.1 Any scrutiny member already has the right to raise an issue for inclusion on the agenda of a Review Committee. Part 4 Section 5 Overview and Scrutiny Procedure Rules 9 (a) and (b) of the Constitution provides this right to scrutiny members and Protocol 1 of the Overview and Scrutiny Handbook gives practical advice on use.
- 8.2 In order to implement the new right for any member to raise issues of concern in their ward under the CCfA it is proposed to amend Part 4 Section 5 Overview and Scrutiny Procedure Rules 9 to add a new clause 9 (d) as follows:

*9 (d) Any member of the Council shall be entitled to give notice to the proper officer that he/she wishes an item relating to a Councillor Call for Action to be included on the agenda for discussions at the next available meeting of the Committee or Sub Committee. On receipt of such a request the proper officer will ensure that it is included on the next available agenda of the relevant Review Committee.*

- 8.3 Practical arrangements have also been devised in the form of draft guidance to help councillors to pursue issues as CCfA, or through alternative resolutions, quickly and effectively. The draft guidance is attached as Appendices 1-3. It is intended that this guidance, when finalised, will be included in the Overview and Scrutiny Handbook as a new Protocol. These procedures will need to be reviewed and revised in the light of experience and to refine the interactions between CCfAs and petitions when the Local Democracy Bill is enacted.

## **9. Reasons for the Decision**

- 9.1 Councils must provide arrangements for a CCfA in order to comply with the requirements arising from the Local Government and Public Involvement in Health Act 2007, and the Police and Justice Act 2006.
- 9.2 It is important that Members understand and contribute to this development work which imposes new responsibilities on them and the Council.
- 9.3 It is important that Members understand how current review and action promoted through the emerging Community Leadership Programme will assist the Council to approach CCfA in the most constructive and effective.

## **10. Alternative Options**

- 10.1 The alternative option would be not to provide arrangements for the CCfA which would be a failure to comply with the legislation. The guidance set out in this report is devised from best practice guidance which has been tailored specifically for local use.

## **11. Relevant Considerations / Consultations**

- 11.1 The CCfA Best Practice Guidance, compiled by the CfPS and I&DeA has been used to frame the draft guidance. Consultation with all elected members will occur.

## **12. Glossary**

CCfA - Councillor Call for Action  
Local Government and Public Involvement in Health Act 2007 – 2007 Act  
The Local Democracy, Economic Development and Construction Bill - the Local Democracy Bill  
CfPS – Centre for Public Scrutiny  
I&DeA – Improvement and Development Agency

## **13. List of Appendices**

Appendix 1 Draft Guidance  
Appendix 2 Flowchart for CCfA

## Appendix 3 Checklist for determining a CCfA

### **14. Background Papers**

Councillor Call for Action: Best Practice Guidance.

Councillor Call for Action: A New Voice for Members (Summary)

Councillor Call for Action - background evidence document.

Sunderland Overview and Scrutiny Handbook

Sunderland City Council Constitution

I&DeA Scrutiny Healthcheck 2008

Policy & Coordination Scrutiny Review 2009

Community Leadership Programme reports and presentations

## **Draft Guidance**

### 1. **What is a Councillor Call for Action?**

Councillor Call for Action (CCfA) is a process for a councillor to act on behalf of residents to resolve a local issue of concern, acting **as a last resort** for people who cannot get issues resolved through any other means. Ward councillors should be looking to identify CCfAs in their community, but CCfAs can also be raised by local people directly with their ward councillors or with the Scrutiny Team. It will still be up to councillors to recognise whether an issue is a CCfA and whether it is appropriate to champion that issue.

The decision to raise and champion a CCfA lies with you as the councillor. The CCfA, alongside proposals which will require a much wider range of agencies to formally cooperate with scrutiny in the future, is intended to provide greater emphasis to the work undertaken by you in your community as community advocates and champions, and to further increase the accountability of public service providers to local communities.

CCfA is a legal requirement from 1 April 2009 and councillors are under a **duty** to consider requests from members of the public on certain issues.

### 2. **What's new about the CCfA?**

What distinguishes the CCfA from items and topics already raised by councillors for consideration by scrutiny is:

- **Any** member can raise a CCfA issue for scrutiny to consider
- The focus of the CCfA is on **neighbourhood** or **locality** issues and specifically the **quality** of public service provision at a locality level.
- The CCfA represents a genuine local **community** concern (based on local councillors' judgements) and
- It is a **persistent** problem which the local councillor has been **unable to resolve** through local action and discussion with relevant services and agencies.

Scrutiny reviews resulting from CCfA will be undertaken by scrutiny committees which will include councillors from the affected locality. There is an expectation that any scrutiny reviews resulting from CCfA on the **ward-based scrutiny issues** will be 'short and sharp', focused reviews - it is important that the public see this as a responsive and un-bureaucratic process which delivers tangible outcomes.

### 3. **What is expected of you?**

Essentially Councillor Call for Action (CCfA) is a recognition of the work you undertake as a ward councillor in taking up local issues on behalf of your community. You are expected to identify issues of local concern and act with and on behalf of your community to resolve those issues. It is up to you using this guidance to decide:

- Which issues you take forward as CCfAs and champion;
- When an issue should be referred to Scrutiny; and
- When to reject an issue.

It is a matter of judgement which requests you agree to champion and as a local councillor you are accountable to your local community for these judgements. Championing a request will mean taking the issue up on behalf of the resident(s) concerned and trying to resolve the problem by liaising with council officers, and/or outside agencies.

Councillors deal with issues of concern on behalf of their constituents as an everyday part of their constituency case work. The CCfA is not intended to add additional bureaucracy to these ward councillor requests, which will continue to be dealt with in the same way as they are now. If you are uncertain about whether a request might be appropriate, the Scrutiny Team can provide advice and assistance to you and to the member of the public making the request.

### 4. **Checklist for Councillors using a CCfA**

#### A. **Initial consideration and actions**

1. Discuss with other ward councillors (check their actions and intentions and whether they can help).
2. Take steps to resolve the issue through existing mechanisms such as contacting Council Officers (including the Scrutiny Team), or liaising with other organisations, or securing consideration of the matter by the Area Committee, or checking whether it can be fed into an existing or review already being undertaken.
3. If the issue is resolved, inform the resident of the outcome and the steps taken, including any difficulties or learning points.
4. If the issues remain unresolved, consult the Scrutiny Team and if appropriate formally request that the item be considered by the relevant Review Committee.

[A flow chart of the CCfA process is provided as Appendix 2 and takes you through each step of the process].

**Reject** if it is any of the following:

1. An individual complaint

2. An issue relating to an “excluded” matter such as planning or licensing matter or another issue where individuals or entities have a right of appeal (other than a complaint to the Ombudsman)
3. Vexatious, discriminatory or not reasonable.
4. It is being used as a “second bite of the cherry” e.g. where a previous call-in has failed, or a petition has already been considered.

**Accept** if it is:

1. An issue of genuine local concern; and
2. All other avenues for resolution have been followed, and
3. You believe that this is now the most appropriate way to deal with it.

**How does CCfA fit with the Scrutiny Work Programme?**

Currently scrutiny members can put an item on the relevant Review Committee agenda using the arrangements set out in Protocol 1. These arrangements remain unchanged. The public have the opportunity to suggest topics and reviews through contacting the Scrutiny team or by contacting their local councillor.

The aim of Scrutiny is to be as strategic as possible, championing issues on behalf of the community so it is possible that a CCfA topic may already be included in a Review Committee work programme.

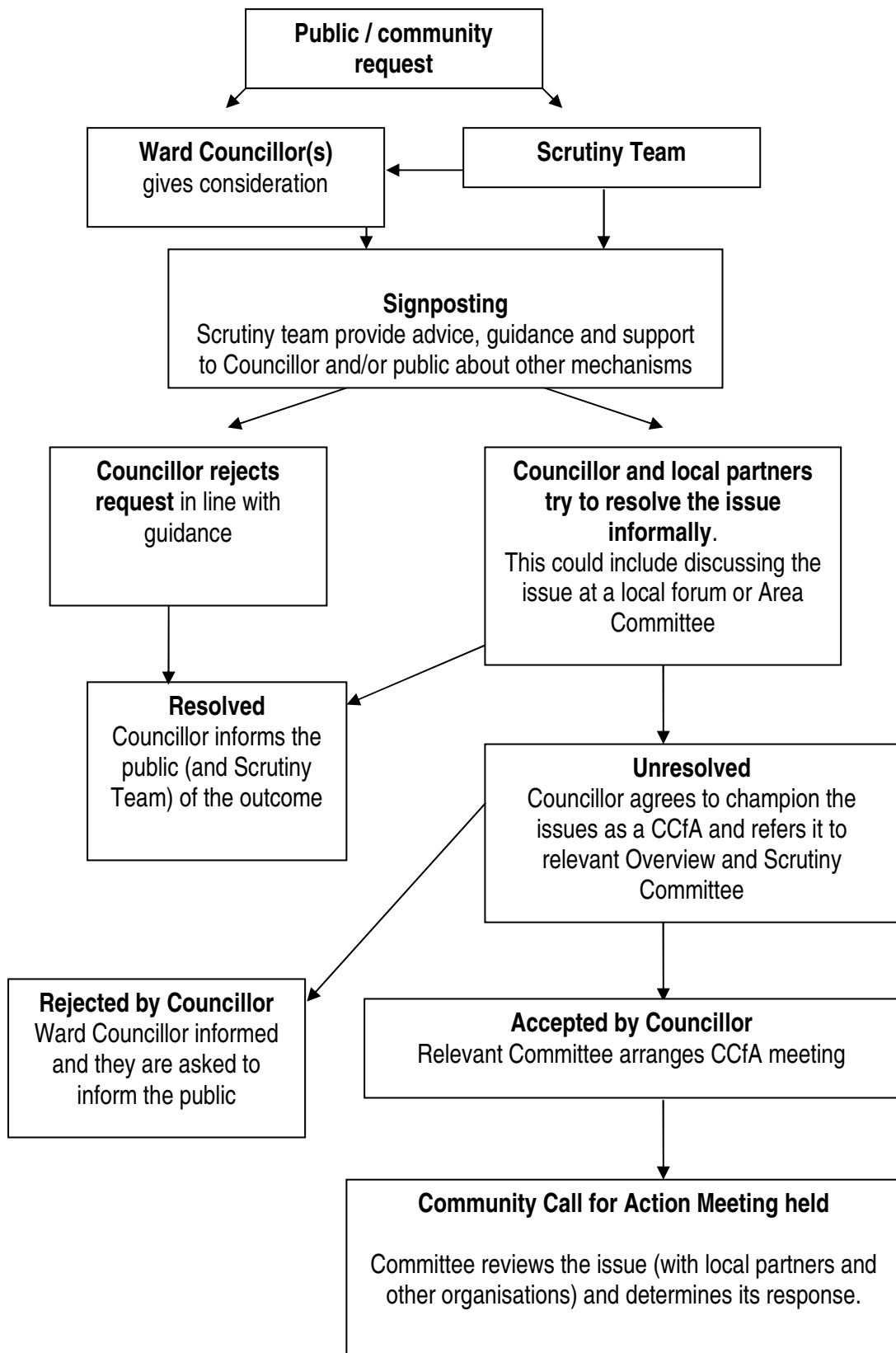
It is valuable for CCfA issues to feed into the broad scrutiny work programme, and vice versa. The purpose of CCfA is to give members more of a voice, and scrutiny itself is a member-led process. CCfA can sit comfortably alongside existing methods for placing items on the scrutiny work programme. CCfA should make the work programme more relevant and timely.

Each Review Committee has the power to deal with CCfAs within its terms of reference. The Review Committee will be asked to identify if a CCfA is appropriate for scrutiny ensuring that the issues scrutinised and reviewed are of genuine community concern.

The checklist for the Review Committee is attached at Appendix 3

The Review Committee receiving a CCfA will convene a meeting in the community affected, where possible, and aim to meet with all partners involved, gather evidence and identify appropriate recommendations. Relevant Ward councillors will be invited to take part in the meeting.

**Councillor Call for Action Flow Chart**



### **Consideration of a CCfA**

The Committee should seek the attendance of relevant persons or bodies. The Chairman will provide a short introduction and the Council bringing the CCfA will be invited to outline their objectives and questions from other members. The discussion will be structured to focus on the issue raised.

### **Review Committee Checklist for determining a CCfA**

The Committee should review the actions taken to date to resolve the issue and all of the criteria set out in Appendix 1. It may determine that no action should be taken, for example because:

- The applicant is a vexatious complainant and the issue is being or has been dealt with under the Council's Complaints procedure<sup>1</sup>.
- The issue is currently going through the complaints procedure, and it is appropriate for this to be concluded.
- Ward Councillors have not explored the issue fully and exhausted all avenues.

Alternatively, it may conclude that the public interest is best served by making a recommendation on request to another agency or body or referred to Cabinet for consideration. The Committee should endeavour where possible to identify an appropriate "resolution" of the issue.

### **Definition of a Complaint**

For the purpose of the Council's procedure the Council accepts the Local Government Ombudsman's definition.

*"An expression of dissatisfaction by one or more members of the public about the Council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the Council itself or a person or body acting on behalf of the Council."*

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<sup>1</sup> Include link to council's complaints procedure