

By: Paul Wickenden, Overview, Scrutiny and Localism Manager
To: Scrutiny Board - 24 February 2010
Subject: **POLICY OVERVIEW COMMITTEES – BEST PRACTISE**

Summary: This report provides the opportunity for Members to share and agree some best practise for POSC's

(1) As Overview and Scrutiny Committees have developed over the past 9 years there are a number of areas of good practise which it is important are captured and shared amongst all Overview and Scrutiny Committees. There is an opportunity at the Scrutiny Board for best practise to be shared, discussed and if the Board wishes, agree as guidance for all Overview and Scrutiny Committees to follow.

Agenda setting

(2) It is important that, in accordance with the process set out in the Constitution, the agendas for POSC's should be agreed cross party by the Chairman and spokesmen on the POSC's. Whilst Cabinet Members (and Deputies) attend agenda meetings they do so to give them the opportunity to invite the POSC to consider items where they may make a contribution to the work of the County Council.

(3) The Local Government and Public Involvement in Health Act 2007 gives any Member of the County Council the ability to refer a matter to an Overview and Scrutiny Committee that is relevant to the functions of that Committee. This is the Councillor Call for Action, the County Council adopted a protocol for the this, based on the sector led guidance, at its meeting on 10 December 2009 (which is set out in Annex D to the Constitution). **(APPENDIX A)**

(4) The 2007 Act also allows any Member of an Overview and Scrutiny Committee the right to placed an item on the agenda for that Committee, and is discussed at the meeting, if it relates to the functions of that Committee. Currently the constitution states that Committee agendas must include:-

“(c) any item which a Member of the Committee wishes included on the agenda, provided it is relevant to the terms of reference of the Committee and notice has been given to the Clerk at least nine days before the meeting.”

This provision predate the 2007 Act. The reference to nine days is to allow the item to appear on the published agenda for the meeting

Seating arrangements at meetings

(5) Overview and Scrutiny is a process separate from the Executive. In order to ensure that this is reflected at the meeting, the seating arrangements for Overview and Scrutiny Committees, and particularly where the Cabinet Member(s) sits in relation to the Chairman is important. It should be clear that the Cabinet Member is attending the meeting to answer questions from the Committee and to receive their input to developing policy, etc. Cabinet Members cannot be Members of the Committee and should therefore not be in any way appear to be directing or guiding the Chairman or influencing Members of the Committee.

Portfolio Holders and Managing Directors Update

(6) The majority of POSC's have a Portfolio Holder(s) and Managing Director(s) update at each meeting, which is welcomed and can be very helpful in keeping the POSC up to date with emerging issues. Some POSC's have a verbal update, others have a bullet point note setting out the general areas that will be covered.

(7) Members may wish to consider whether it would be more effective if these updates were written and circulated prior to the meeting, with the opportunity to up date at the meeting. This would give Member notice of what is going to be reported and enable them to prepare questions.

Process for Officer Decisions.

(8) Since 10 December 2009 POCS have had the authority to review and scrutinise officer decisions. It is acknowledged that there is not the same structure around officer decisions as there is around Cabinet Member decisions and therefore it is difficult for Members to know when an officer decision is taken, and often they will not be aware of this until it after the decision has been taken.

(9) Officers in Democratic Services are aware of need to ensure that POSC are able to carry out their role in relation to this aspect of Scrutiny and are looking at how to give Members a greater awareness of Officer decisions. Any suggestions from Members would be welcomed and there will be a further report on this to a future meeting of the Scrutiny.

Guidelines for Cabinet Members and Officers at Corporate POSC

(10) In the spirit of sharing good practise, attached (**Appendix B**) is a guidance note that sets out what Corporate POSC expect of Cabinet Members and Officers attending their meeting. This was produced with the intention of ensuring that the meeting is effective and that the majority of the time is used for Members of the Committee to ask questions of Cabinet Members and officers.

(11) I am sure that other POSC will have similar examples of good practise that work well for their Committee and which they would like to share with other POSC's, the Scrutiny Board provides a good opportunity to do this. Members may wish to consider whether they would like this to be a standard item on all Scrutiny Board agendas.

Recommendation that the Committee considers whether they wish to agree any best practise for POSC's and whether they wish to have sharing of good practise as a standing item on future agendas.

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Annex D: Councillor Call for Action Protocol

5D.1 Key Points

- (a) The “Councillor Call for Action” (CCfA) was introduced under Section 119 of the Local Government and Public Involvement in Health Act 2007 and came into force on 1 April 2009. CCfA applies to all councils in England and Wales.
- (b) The CCfA enables any Member of the Council to refer to a Policy Overview and Scrutiny Committee any matter which:
 - (i) relates to the discharge of a function of the authority
 - (ii) is relevant to the functions of the committee and
 - (iii) affects all or part of their division or any person who lives or works there
- (c) A Member can refer a matter even if no constituent has asked them to consider it, and there is no requirement for Members in multi-member divisions to agree – any of them can refer a matter.
- (d) It will be up to individual Local Members to determine which issues to take forward as CCfAs.
- (e) If a Member decides not to refer a matter, no further action is taken under a CCfA.
- (f) The committee does not have to take up a Member’s request but, if it does not do so, it has to explain its reasons why.
- (g) There will be no right of appeal for the member of the public via the council’s committees.
- (h) The operation of CCfA should be used only in exceptional circumstances where all other possible avenues for resolution of the issue have been followed by the referring Member, and yet a problem still exists.

5D.2 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:

- (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 a Policy

Overview and Scrutiny Committee or at a meeting of a sub-committee of that Committee

In addition to the above exclusions, if the matter relates to a crime and disorder issue it should first be referred to the Crime and Disorder Committee.

5D.3 Steps to be taken prior to making a CCfA

Prior to referring a matter as a CCfA, Members should have tried to resolve the issue using all mechanisms and resources available to them. A flowchart has been designed at **Appendix A** to assist Members in deciding whether an issue is ready for referral to a Policy Overview and Scrutiny Committee as a CCfA.

5D.4 How to make a CCfA

If the issue has not been resolved despite alternative mechanisms being explored, a Member can refer it to the relevant Policy Overview and Scrutiny Committee as a CCfA. To do this the Member should complete and submit a CCfA request form (**Appendix B**). The Clerk will check this to ensure that the issue is not an excluded matter (see paragraph 5D.2 above) and will then inform the Chairman of the relevant Committee that the item will be included on their next available agenda. The Member will be informed whether or not their request has been successful. It will then be up to the Committee Members to decide whether or not to take the matter further.

In deciding whether or not to take the request further the Committee should consider:

- (a) What actions have been taken by the Member in relation to resolving the issue
- (b) Any representations made by the Member as to why the committee should take the matter up
- (c) Whether all reasonable attempts have been made by the elected Member to resolve the issue
- (d) Whether a similar issue has been considered recently and, if so, whether the circumstances have changed
- (e) Whether this is an issue which is currently being looked at by another form of scrutiny, e.g. a District Committee
- (f) Whether the matter referred has the potential to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring Member's division

If the Committee decides not to accept the CCfA referral, it must inform the Member and provide reasons.

5D.5 Options available to the Committee if it accepts the CCfA referral

If the Committee accepts the CCfA referral, it should then decide how to take the matter forward. The following should be considered by the Committee:

- (a) Potential solutions to the issue and how these could be achieved
- (b) Whether an Informal Member Group should be set up to undertake a more in depth review

- (c) Whether further evidence should be requested or relevant witnesses and representatives from partner organisations be invited to the Committee meeting
- (d) Who will decide that the issue is resolved

5D.6 Potential outcomes from the committee meeting hearing the CCfA

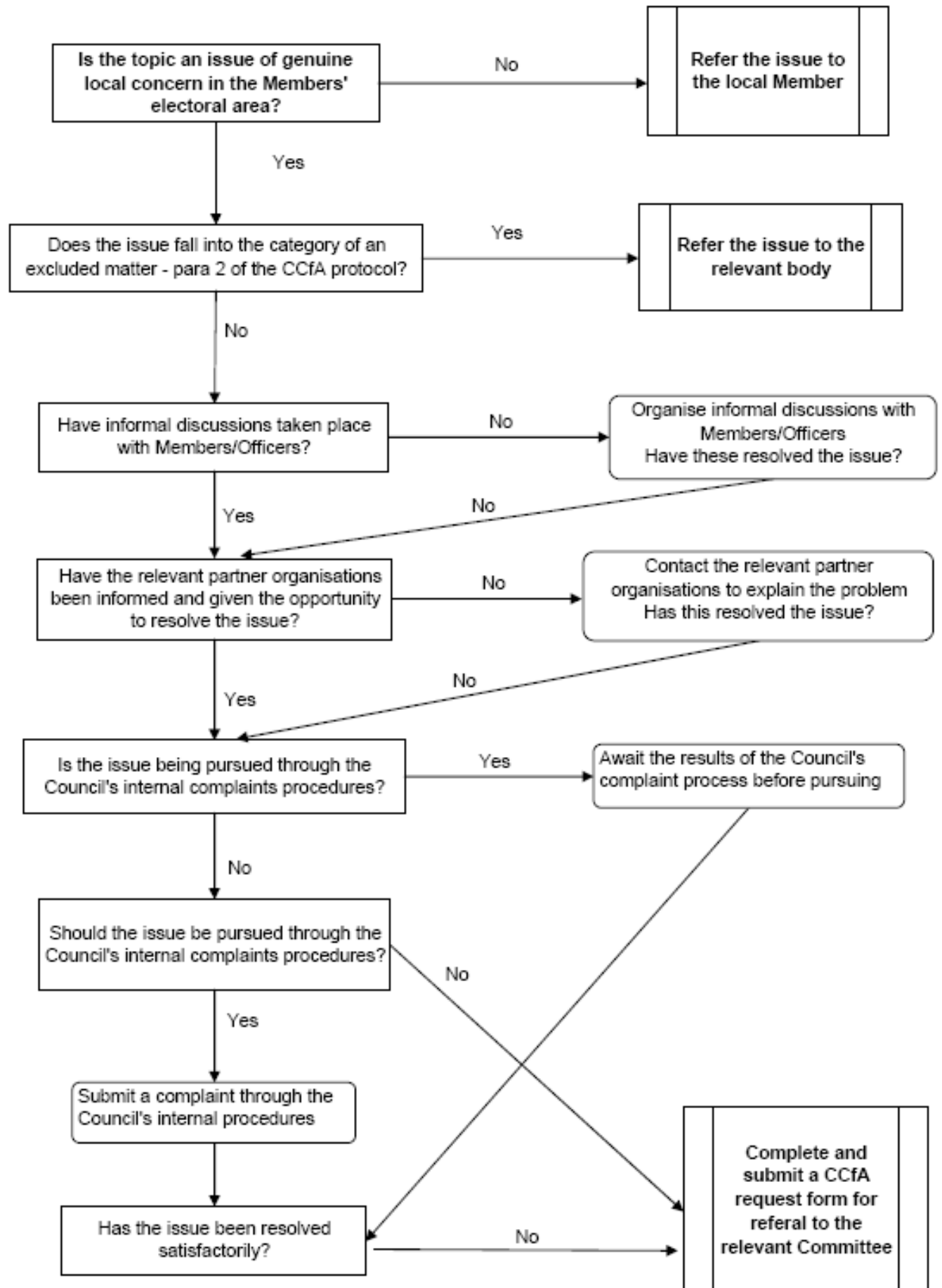
Following the Committee meeting there are a number of potential outcomes:

- (a) The Committee could determine not to make a report, with the Local Member notified in writing
- (b) The Committee could determine that it is a complex issue requiring further investigation and commission a review of the issue via the Scrutiny Board
- (c) The Committee could write a report and make recommendations on the CCfA to the Cabinet, full Council, or relevant Committee

Once the Committee has completed its work on the CCfA request, the Member who made the request will receive a copy of any report or recommendations made.

CCfA

Appendix A



Call for Action Request Form

This form should be used by any Member of Kent County Council who would like the relevant overview or scrutiny committee to consider a Councillor Call for Action in their area.

Your contact details:
Name (print):
Signature:
Date:

The title of your Councillor Call for Action:

Have you exhausted the steps set out in Annex A to the CCfA protocol? Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you approached the relevant Overview and Scrutiny Committee on the same issue in the past six months? Yes <input type="checkbox"/> No <input type="checkbox"/>

Please outline your main areas of concern:
What evidence do you have in support of your CCfA:
Which areas or groups are affected by the CCfA?
How have you tried to resolve the issue?
Is the CCfA currently the subject of legal action by any party (to your knowledge) or is it being examined by a formal complaints procedure?
Are there any deadlines associated with the CCfA of which the scrutiny committee needs to be aware?

Please complete and return this form to:

Overview, Scrutiny and Localism Manager
Sessions House
County Hall
Maidstone
ME14 1XQ

Or by email to overviewandscrutiny@kent.gov.uk

Corporate POSC – Ground rules

- 1) Reports should be as brief as possible and attachments kept to a minimum where documents are available online a web link to them should be given.
- 2) Reports should have a clear recommendation of what outcome is required from the POSC's consideration of the item (there should not be any reports for noting as these can be circulated outside of the meeting).
- 3) Reports requiring comments from Members should make clear how these comments will be used to add value and if they are to be fed into a further report, for example to Cabinet the work of the POSC should be acknowledged.
- 4) At the meeting officers and the Cabinet Member(s) will be given a maximum of 5 minutes each to highlight the key points in the report and to give any additional information that was not available when the report was produced. It will be assumed that Members, who will have had the report well in advance of the meeting, will have read it and come prepared to ask question and/or make comments as appropriate.
- 5) There will not be any PowerPoint presentations (unless the Chairman has agreed in advance that the information cannot be presented to Members in any other way and in which case copies of the presentation must be available at the meeting)

The aim of these ground rules is to ensure that the meeting is effective and that the majority of the time is used for Members of the Committee to ask questions of Cabinet Members and officers.