

OVERVIEW & SCRUTINY PROCEDURE RULES

Overview and Scrutiny Procedure Rules

1. **What will be the arrangements for overview and scrutiny?**

The Council will have the Overview and Scrutiny Committee, Audit Committee and Task and Finish Groups set out in Article 6 and will appoint to them as it considers appropriate from time to time. These Committee may appoint sub-committees. They may also be appointed for a fixed period, on the expiry of which they shall cease to exist.

Meetings of the Chairman of the Overview and Scrutiny Committee, the Leader of the Council and Group Leaders shall take place and the meeting will be referred to as the Scrutiny Steering Board. This Group will meet to consider aspects of the Overview and Scrutiny work programme and will make recommendations to the Overview and Scrutiny Committee

2. **Who may sit on the Overview and Scrutiny Committee and, Audit Committee?**

Cabinet Members are not entitled to be members of the Overview and Scrutiny Committee or the Audit Committee. All other Councillors are eligible to be members subject to the number of places available and the political balance rules.

3. **Co-optees**

The Overview and Scrutiny Committee and the Audit Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees.

4. **Meetings of the Overview and Scrutiny Committee and the Audit Committee**

There shall be at least 4 ordinary meetings of the Overview and Scrutiny Committee and the Audit Committee in each year. In addition, extraordinary meetings may be called from time to time as and when appropriate. A meeting may be called by the Chairmen of the relevant Committee, by any 5 members of the Committee or by the proper officer if he/she considers it necessary or appropriate.

5. **Quorum**

The quorum for the Overview and Scrutiny Committee and the Audit Committee shall be as set out for committees in the Council Procedure Rules in Part 4 of this Constitution.

6. **Who chairs the Overview and Scrutiny Committee and the Audit Committee meetings?**

The Chairman of the Overview and Scrutiny Committee where there is a Majority Group (as defined in Part 8 of this Constitution) will be a Councillor who is not a member of the

Majority Group, unless there are no such persons serving on the Committee. In such case, the Committee may appoint such persons to Chairman and Vice-Chairman it from amongst the Councillors sitting on it.

7. **Work programme**

The Overview and Scrutiny Committee will be responsible for setting its own work programme and in doing so it shall take into account wishes of their respective members. The Work Programme of the Audit Committee will mostly be to fulfil the terms of reference of the Committee.

8. **Agenda items**

Any member of the Overview and Scrutiny Committee or the Audit Committee shall be entitled to give notice to the Proper Officer that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. On receipt of such a request the proper officer will ensure that it is included on the next available agenda.

Any 3 members of the Council who are not members of the Overview and Scrutiny Committee or the Audit Committee may give written notice to the proper officer that they wish an item to be included on the agenda of the Overview and Scrutiny Committee. If the proper officer receives such a notification, then he/she will include the item on the first available relevant agenda for consideration.

9. **Policy development**

- (a) The role of the Overview and Scrutiny Committee in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Policy Groups or sub-committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- (c) Policy Groups may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may (within resources deemed available by the proper officer) go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may (within resources deemed available by the proper officer) pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

10. **Reports from Task and Finish Groups**

- (a) Once it has formed recommendations on proposals for development, the Task and Finish Group will prepare a formal report and submit it to the proper officer

for consideration by the Cabinet (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).

- (b) If a Task and Finish Group cannot agree on one single final report to the Council or Cabinet as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.
- (c) The Council or Cabinet shall consider the report of the Task and Finish Group within two months of it being submitted to the proper officer.

11. Making sure that reports are considered by the Cabinet

- (a) Where the Overview and Scrutiny Committee prepares a report for consideration by the Cabinet in relation to a matter where the Leader or Council has delegated decision making power to another individual member of the Cabinet, then the Overview and Scrutiny Committee will submit a copy of its report to him/her for consideration. At the time of doing so, the Overview and Scrutiny Committee shall serve a copy on the proper officer. The Member with delegated decision making power must consider the report and respond in writing to the Overview and Scrutiny Committee within six weeks of receiving it. A copy of his/her written response to it shall be sent to the proper officer and the Leader. The Member will also be invited attend a future meeting of the Overview and Scrutiny Committee to present their response.
- (b) All Members of the Council will in any event have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from the Overview and Scrutiny Committee following a consideration of possible policy/service developments, the Overview and Scrutiny Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

12. Rights of Overview and Scrutiny Committee and Audit Committee Members to documents

- (a) In addition to their rights as Councillors, members of the Overview and Scrutiny Committee and Audit Committee have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the Cabinet and the Overview and Scrutiny Committee or Audit Committee as appropriate depending on the particular matter under consideration.

13. Members and officers giving account

- (a) The Overview and Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions.

As well as reviewing documentation, it may require any member of the Cabinet, the head of paid service and/or any senior officer to attend before it to explain in relation to matters within their remit:

- (i) any particular decision or series of decisions;
- (ii) the extent to which the actions taken implement Council policy; and/or
- (iii) their performance.

and it is the duty of those persons to attend if so required.

- (b) Where any member or officer is required to attend the Overview and Scrutiny Committee under this provision, the Chairman will inform the proper officer. The proper officer shall inform the member or officer in writing giving at least 5 working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Overview and Scrutiny Committee. Where the account to be given to the Overview and Scrutiny Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (c) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the Member or officer arrange an alternative date for attendance to take place within a maximum of 10 working days from the date of the original request.

14. **Attendance by others**

The Overview and Scrutiny Committee and Audit Committee may invite people other than those people referred to in paragraph 13 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend.

15. **Call-in**

- (a) When a key decision is made by the Cabinet, an individual Member of the Cabinet or a committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, or a local committee or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be made available at the main offices (Causeway House) of the Council normally within 3 working days of being made. Copies of all such decisions will be made available to all Members within the same timescale, by the person responsible for publishing the decision.
- (b) In the case of a key decision, that notice will bear the date on which it is published and will specify that the decision will come into force, and may then be

implemented, on the expiry of 6 working days after the publication of the decision, unless the Overview and Scrutiny Committee objects to it and calls it in.

- (c) During that period:-
- (i) any five non-cabinet members of the Council can require the Chairman (or, in his absence, the Vice-Chairman) of the Overview and Scrutiny Committee to request the proper officer to call-in a decision for scrutiny by the Overview and Scrutiny Committee; and
 - (ii) the Chairman shall pass the request to the proper officer who shall forthwith comply, and shall then notify the decision-taker of the call-in.

The proper officer shall call a meeting of the Overview and Scrutiny Committee on such date as he/she may determine, where possible after consultation with the Chairman of the Committee, and in any case within 5 working days of the date on which the proper officer notifies the decision-taker of the call-in”

- (d) If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. If referred to the decision maker they shall then reconsider within a further 20 working days, amending the decision or not, before adopting a final decision.
- (e) If following an objection to the key decision, the Overview and Scrutiny Committee does not meet in the period set out above, or does meet but does not refer the matter back to the key decision making person or body, the key decision shall take effect on the date of the Overview and Scrutiny Committee meeting, or the expiry of that further 5 working day period, whichever is the earlier.
- (f) If the matter was referred to full Council and the Council does not object to a key decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no authority to make decisions in respect of a Cabinet decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case the Council will refer any decision to which it objects back to the decision making person or body, together with the Council’s views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Cabinet as a whole or a committee of it, the next meeting of the Cabinet will consider the request of the Council. Where the decision was made by an individual, the individual will reconsider within 20 working days of the Council request.
- (g) If the Council does not meet, or if it does but does not refer the key decision back to the decision making body or person, the key decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

Call-in and urgency

- (h) The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Chairman of the Council must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the head of paid service or his/her nominee's consent shall be required. The Leader of the Council will inform all available political group leaders of all urgent decisions, where possible before the decision is implemented. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (i) The operation of the provisions relating to call-in and urgency shall be regularly reviewed usually in line with reviews of the decision making arrangements.

16. The party whip

For the purposes of this paragraph 16 reference to 'the party whip' shall mean:-

"Any instruction given by or on behalf of a political group to any Councillor who is a member of that group as to how that Councillor shall speak or vote on any matter before the Council or any committee or sub-committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he/she speak or vote in any particular manner". When considering any matter in respect of which a member of the Overview and Scrutiny Committee or the Audit Committee is subject to a party whip the member must declare the existence of the whip, and the nature of it before the commencement of the deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

17. Procedure at Overview and Scrutiny Committee, Audit Committee and any Task and Finish Group meetings

- (a) The Overview and Scrutiny Committee and the Audit Committee shall consider the following business:
 - (i) minutes of the last meeting, where available;
 - (ii) declarations of interest (including whipping declarations);
 - (iii) consideration of any matter referred to it for a decision in relation to call in of a decision;
 - (iv) responses of the Cabinet to its reports; and
 - (v) the business otherwise set out on the agenda for the meeting.
- (b) Where the Task and Finish Group conducts investigations (e.g. with a view to policy development), it may also ask people to attend to give evidence at meetings which are to be conducted in accordance with the following principles:

- (i) that the investigations be conducted fairly and all members of the Task and Finish Group be given the opportunity to ask questions of attendees, and to contribute and speak;
 - (ii) that those assisting the Task and Finish Group by giving evidence be treated with respect and courtesy; and
 - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Task and Finish Group shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

COUNCILLOR CALL FOR ACTION – GUIDANCE FOR COUNCILLORS

Introduction

The Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007 include new powers to provide Councillors with the opportunity to ask for discussions at the Overview and Scrutiny Committee on issues of local concern where other methods of resolution have been exhausted.

This has become known as the 'Councillor Call for Action' (CCfA). It came into force on 1st April 2009.

The CCfA has been introduced by the Government to strengthen the role of the Ward Councillor as champions for local concerns. It is, however, a process of **last resort** and should only be triggered when all other avenues for resolving the issue have been fully explored.

It should be recognised that a CCfA is not guaranteed to solve a problem. It can however provide a method for discussing a problem and the discussion may in turn suggest a possible solution.

The legislation enables any member of the Council to refer to the Overview and Scrutiny Committee any local government matter or any crime and disorder matter which affects their ward.

CCfAs relate to "local authority functions". This means that CCfAs not only look at issues of concern relating to specific Council services and crime and disorder matters, but also issues relating to other public services and service areas provided by our partner organisations.

The flow chart in Appendix A sets out the procedure for processing a CCfA.

(There are also existing rules within the Council's constitution giving Members rights to place items on the Overview and Scrutiny Committee agenda. The CCfA will not change this).

Matters That are Excluded from Being Referred As A CCfA

These are as follows:-

- (a) any matter relating to a planning or licensing decision;
- (b) any matter where a person has a separate right of appeal or review;
- (c) any matter which could be dealt with by formal complaints processes (unless systematic failure in a particular service area can be demonstrated);
- (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 *(the definition commonly used for determining a vexatious request 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).*

Steps That Should Be Taken Before Making A Councillor Call for Action

Before a Councillor refers a matter to the Overview and Scrutiny Committee as a CCfA he/she should have tried to resolve the issue themselves using the processes and resources available to them at Ward level. Attempts to resolve an issue might include:

- In the case of a local crime and disorder matter, by raising the issue through the Braintree District Crime and Disorder Reduction Partnership;
- Ensuring that all relevant partner organisations have been informed of the issue and given enough time to resolve the issue (e.g. through formal letters written on behalf of constituents, discussion at public meetings, petitions, communication with local MPs or public bodies);
- Ensuring that all relevant internal routes to proving a solution have been followed (eg, through informal discussions with officers and/or other members including relevant Cabinet Members; statements or questions at full Council etc.);
- Making sure that it is not an issue which is being dealt with (or should be dealt with) through the Council's Complaints Procedure or the Local Government Ombudsman's complaints process. A similar check should be made if the CCfA relates to one of our partner organisations and the issue is one that should be dealt with under the respective partners complaints procedure.

Keeping Accurate Records

The Overview and Scrutiny Committee will need evidence of the action that has been taken by the Ward Councillor, when deciding whether to progress a CCfA. Please make sure that you keep an accurate record of everything that you have done to progress the issue, including records of meetings and outcomes, answers to enquiries made, dates and timescales etc.

Referring a 'Councillor Call for Action' to the Overview and Scrutiny Committee

If it appears that all other practicable action to resolve the issue has been taken, but has not been successful the Councillor can refer the matter to the Overview and Scrutiny Committee as a CCfA. The steps in the referral process are as follows:-

1. The member making the CCfA should complete the request form contained in Appendix B and send the completed form to Mr. S. Bore, Scrutiny Manager, People & Democracy;
2. Upon receipt of the completed request form the Scrutiny Manager will advise the Chairman of the Overview and Scrutiny Committee and agree with the Chairman as to which meeting of the Committee the CCfA will be given initial consideration;
3. Having consulted with the Chairman of the Overview and Scrutiny Committee, the Scrutiny Manager will inform the member who has made the CCfA when the matter will be initially considered by the Committee, and invite the member to attend the Committee to present the case for the CCfA.

Consideration of a Community Call for Action by the Overview and Scrutiny Committee

When undertaking its initial consideration of a CCfA the aim of the Overview and Scrutiny Committee should be to decide whether or not to accept the CCfA. In making its decision, the Overview and Scrutiny Committee should take into account:

1. Whether the subject matter falls into any of the excluded categories;
2. The reasons given by the Councillor for making the CCfA, as set out in the request form, and as highlighted by the Councillor in his/her verbal presentation of the case;
3. Whether the issue is a matter of genuine local concern which has or will have a significant impact on the local community;
4. The actions already taken by the Councillor in order to resolve the issues which are subject of the CCfA;
5. Whether the relevant Council departments and partner organisations have been informed of the issues which are the subject of the CCfA and have been given sufficient time to resolve them;
6. Any actions taken by the relevant Council departments and the partner organisations and the outcomes or anticipated outcomes of those actions;
7. Whether and to what extent there is the potential for the Committee to make recommendations which could realistically be implemented and would lead to improvements for people living and working in the Councillor's ward;
8. Whether there are other appropriate means for dealing with the matter that could be usefully signposted to the Councillor making the CCfA;
9. Whether, if the Committee is mindful to accept the CCfA, there are sufficient resources available to take the matter forward.

If the Overview and Scrutiny Committee decides not to accept the CCfA it must inform the Councillor and give its reasons.

If the Overview and Scrutiny Committee decides to accept the CCfA it must inform the councillor. The Committee will then conduct an investigation.

Once the Committee has completed its work on the CCfA it will prepare a report and provide a copy of that report to the Councillor who made the CCfA and to any other relevant bodies which are the subject of recommendations.

Those bodies that are the subject of recommendations will be asked to respond in writing to the Committee within a period of two months from the date of issue of the Committee's report.

The Ward Councillor will be notified of the outcome.

The Overview and Scrutiny Committee will monitor the implementation of the recommendations and provide feedback to the Ward Councillor.

Further advice

For further advice on pursuing a CCfA, please contact Steve Bore, Scrutiny Manager on extension 2003.

APPENDIX 1**FLOWCHART – POSSIBLE STAGES IN THE COUNCILLOR CALL FOR ACTION**