

BABERGH DISTRICT COUNCIL

FROM: Director of Corporate Services

REPORT NUMBER: **J25**

TO: OVERVIEW AND SCRUTINY
(STEWARDSHIP) COMMITTEE
OVERVIEW AND SCRUTINY
(COMMUNITY SERVICES) COMMITTEE

DATE OF MEETING: 19 May 2009

26 May 2009

COUNCILLOR CALL FOR ACTION

1. **PURPOSE OF REPORT**

1.1 This report is submitted to enable this Council to adopt a process and protocol for dealing with a Councillor Call for Action (CCfA).

2. **RECOMMENDATIONS**

2.1 That the Overview and Scrutiny (Community Services) Committee be appointed the Council's crime and disorder committee for the purposes of the Police and Justice Act 2006 and that the Constitution be updated accordingly (paragraph 5.11).

2.2 That the implementation of the CCfA in the protocol attached as Appendix 1 to the report be adopted and the Constitution be updated accordingly (paragraph 5.11).

The Overview and Scrutiny (Stewardship) Committee is asked to make recommendation to Full Council on the above matter.

The Overview and Scrutiny (Community Services) Committee is asked to note the report as the Committee responsible for implementation of the provisions concerning crime and disorder and awareness of functions under CCfA.

3. **FINANCIAL IMPLICATIONS**

3.1 None identified other than staffing time. This will be monitored.

4. **RISK MANAGEMENT**

4.1 This report is most closely linked with the Council's Significant Business Risk No. 4, Political Leadership and Governance. Key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
Council not carrying out its statutory obligations	Very Low	Marginal	Appointment of Overview and Scrutiny (Community Services) as the crime and disorder committee. Adoption of protocol within Council's Constitution.

5. **KEY INFORMATION**

5.1 For some time Government has been pursuing the aim of giving more power to local people and local Ward Members. This aim has run through both 2006's "Strong and prosperous communities", and 2008's "Communities in control" White Paper.

- 5.2 Ward/District Councillors play a central role in a Local Authority, as a conduit for discussion between the Council and its residents and as a champion for local concerns. To bolster Councillors' ability to carry out this second role, the Government has enacted, in the Local Government and Public Involvement in Health Act 2007, at Section 119, provisions for a CCfA along with provisions contained within Section 19 of the Police and Justice Act 2006 for local crime and disorder matters to be referred for scrutiny. These provisions afford all Members with the opportunity to ask for discussions at Scrutiny Committees on issues where local problems have arisen and where other methods of resolution by the Ward/District Member have been exhausted. It is of particular importance for members to be aware that where they are asked by a person who lives or works in their ward to consider a local crime and disorder matter, then they must under the 2006 Act consider the matter and respond to the person indicating what (if any) action they propose to take.
- 5.3 Section 19 of the 2006 Act came into force on 30 April 2009. It stipulates that all local authorities must establish a crime and disorder committee to:-
- Review or scrutinise decisions made, or other action taken, in connection with crime and disorder functions by responsible authorities in their area ("responsible authorities" being the council for the area, the police authority, the fire and rescue authority and the PCT); and
 - Make reports or recommendations to the Council with respect to the discharge of those functions.
- 5.4 For authorities operating executive arrangements the crime and disorder committee must be an overview and scrutiny committee. Whilst the Council does not operate executive arrangements, the function is one of scrutiny that sits alongside the CCfA. It would therefore appear appropriate for the Overview and Scrutiny (Community Services) Committee to be designated as responsible for crime and disorder matters pursuant to the 2006 Act.
- 5.5 The responsibility of the committee under the 2006 Act is to consider any local crime and disorder matter that is referred to it by a member of the Council. The committee may then, but does not have to, make a report or recommendations to the Council. If it does, a copy of the report must be sent to any responsible authority or co-operating person or body as it considers appropriate. The authority, body or person has a duty to consider the report or recommendations, to respond to the committee indicating what action (if any) it proposes to take and also have regard to the report or recommendations in exercising its functions.
- 5.6 The crime and disorder committee may upon giving reasonable notice require any member or officer of the Council, any officer or employee of a responsible authority or of a co-operating person or body to attend before it to answer questions.
- 5.7 The crime and disorder committee must meet at least once a year to review or scrutinise decisions made, or actions taken, in connection with the discharge of crime and disorder functions by responsible authorities.
- 5.8 Best practice guidance for the Councillor Call for Action, a provision designed to help local Councillors solve problems in their Wards, was produced by the Department of Communities and Local Government and came into force on 1 April 2009.

Babergh District Council

Councillor Call for Action Protocol

1. Introduction

- 1.1 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.
- 1.2 The 2007 Act enables any member of the Council to refer to the Overview and Scrutiny Committee any local government matter which affects their Ward and is relevant to the functions of the Committee.
- 1.3 In addition, Section 119 of the Police and Justice Act 2006 came into force on 30 April 2009 and enables any member of the Council to refer to the crime and disorder committee any local crime and disorder matter which affects their Ward. The Overview and Scrutiny (Community Services) Committee will discharge the function of the crime and disorder committee.
- 1.4 The power to refer a matter is available only where the matter is of direct concern to the ward or division which the councillor represents. The matter may affect all or part of the ward member’s area or any person who lives or works in that area. A councillor can refer a matter even if no citizen has asked him/her to consider it, and there is no requirement for councillors in multi-member wards to agree – any of them can refer a matter.

2. Limitations

- 2.1 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.

3. Issues excluded from referral as a CCfA

- 3.1 The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 excludes the following matters from referral as a CCfA:
 - 3.1.1 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:

Council Tax/Housing Benefit appeals
Issues currently under dispute in a court of law.
 - 3.1.2 Any matter relating to a planning or listed building application or enforcement decision.
 - 3.1.3 Any matter relating to a licensing application, review or enforcement decision.

- 3.1.4 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 and Scrutiny Committee or any of its sub-committees.
- 3.2 A matter will not be excluded under 3.1.1 to 3.1.3 where the allegation consists of the function not being discharged at all or that the function has failed or is failing on a systematic basis.
- 3.3 A referral, provided it is covered by the legislation and is not an excluded matter (see above), will ensure that the matter is included on the agenda of the Overview and Scrutiny Committee. It is then up to the members of the Committee to decide whether or not to take the matter further.
- 3.4 A referral made to the Overview and Scrutiny Committee is seen as being the end of the CCfA process (the last resort) and not the first step.

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

- 4.1 Prior to a councillor referring a matter as a CCfA to the Overview and Scrutiny Committee, 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 it, for example through formal letter written on behalf of constituents, discussion at public meetings, petitions, communication with local 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, motions on the agenda at full Council etc.
 - Ensure that this is not an issue that is currently being or should be pursued via the Council's complaints procedure.
 - Ascertain whether or not any other form of local scrutiny is investigating the issue, eg Suffolk County Council.

5. How to make a Councillor Call for Action referral

- 5.1 If the issue/problem is still not resolved the councillor can refer it to the Overview and Scrutiny Committee as a "Councillor Call for Action". To do this the councillor should complete and submit to the Director of Corporate Services a CCfA Request Form outlining what the issue is and what steps have been taken towards a resolution. The request form, a specimen is attached as Appendix 1, is available on the Council's website, or from the Director of Corporate Services. The request form for a CCfA includes:
- The name of the councillor and ward they represent
 - Title of the CCfA and date of submission
 - Why you think the issue should be looked at by the Overview and Scrutiny Committee
 - A brief synopsis of what the main areas of concern are
 - What evidence you have in support of your CCfA
 - Which areas or community groups are affected by the CCfA

- What you have done to try and resolve the issue prior to requesting a CCfA
 - Whether the CCfA is currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints process
 - Whether there are any deadlines associated with the CCfA of which the Overview and Scrutiny Committee needs to be aware.
- 5.2 The Director of Corporate Services will receive the referral form, log it to track its progress, and, after consultation with the Solicitor to the Council, assess the issue to ensure that it is covered by the legislation referred to above and is not a matter excluded from referral to the Overview and Scrutiny Committee. A decision that a matter is excluded pursuant to paragraph 3.1.4 above will only be taken by the Director of Corporate Services in consultation with the Chairman of the relevant Overview and Scrutiny Committee.
- 5.3 The Director of Corporate Services will inform the Chairman of the relevant Overview and Scrutiny Committee that the item will be included on the next Committee agenda. The Councillor will be informed whether or not their referral has been successful.
- 5.4 A successful referral will ensure that the CCfA will be placed on the next agenda of the Overview and Scrutiny Committee. It is then up to the members of the Committee to decide whether or not to take the matter further.

6. Decision of the Committee whether to take the matter further

- 6.1 In deciding whether or not to take the matter further the relevant Overview and Scrutiny Committee will consider:
- Anything that the councillor has done in relation to this matter; and
 - Representations made by the councillor as to why the Committee should take the matter up. (Councillors have the option of either presenting their CCfA form without supporting papers, or of preparing a report setting out their views).
- 6.2 The criteria the Committee will use to decide whether or not to take the matter further include:
- Is the Committee satisfied that all reasonable attempts have been made to resolve the issue by the ward councillor? And do the responses received by the referring councillor demonstrate that the matter is not being progressed?
 - Has the Committee 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 work plan? 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 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. Suffolk 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?
- 6.3 In considering the CCfA, the Overview and Scrutiny Committee may invite the Chief Executive, Deputy Chief Executive or relevant Director, Head of Service or external organisation to discuss the issue with the Committee and answer any questions.
- 6.4 If the Committee decides not to accept the CCfA referral it must inform the Councillor and provide reasons.
- 6.5 If the Committee decides to accept the CCfA referral, it must decide how it intends to take the matter forward and include the CCfA in its work plan. This could include:

Before holding a formal hearing:

- Asking the service area(s)/partner organisation(s) to respond to the CCfA
- Setting up a research group to undertake a more in-depth review.

At formal hearings

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

7. Potential outcomes

- 7.1 Following a formal hearing, there are a number of potential outcomes from the Committee meeting:
- The Committee could determine not to make a report or recommendations (perhaps because it is not considered the right time to consider a particular issue), with the ward Councillor notified in writing;
 - The Committee could determine that it is a complex issue that requires further investigation and commission a scrutiny review of the issue;
 - The Committee could write a report and make recommendations on the CCfA to the Strategy Committee and/or relevant partners.
 - The Committee could make a report or recommendations to Full Council where the CCfA is a local crime and disorder matter.

- 7.2 Once the Committee 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 report will also be made available on the Council's website, unless the matter was an exempt item, in which case the report cannot be made public.

8. Timescales

- 8.1 Once the CCfA has been assessed as not being a matter which is excluded from referral to Overview and Scrutiny Committee, the item will be included on the next Committee agenda.
- 8.2 If the Committee 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.
- 8.3 Should a CCfA hearing result in recommendations to Strategy Committee or Full Council being made, an item will be placed on the agenda for the next Strategy Committee or Council, respectively.
- 8.4 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.

Appendix 1 – Councillor Call for Action Request Form

This form should be used by any Councillor who would like the Overview and Scrutiny Committee to consider a Councillor Call for Action in their ward.

Councillor

The ward you represent:

Title of your Councillor Call for Action:

Date of Submission:

Have you approached the Overview and Scrutiny Committee on the same issue in the past six months?

Yes

No

Why you think the issue should be looked at by the Overview and Scrutiny Committee:

Please give a brief synopsis of the main areas of concern:

What evidence do you have in support of your CCfA:

Which areas or community groups are affected by the CCfA:

How have you tried to resolve the issue:

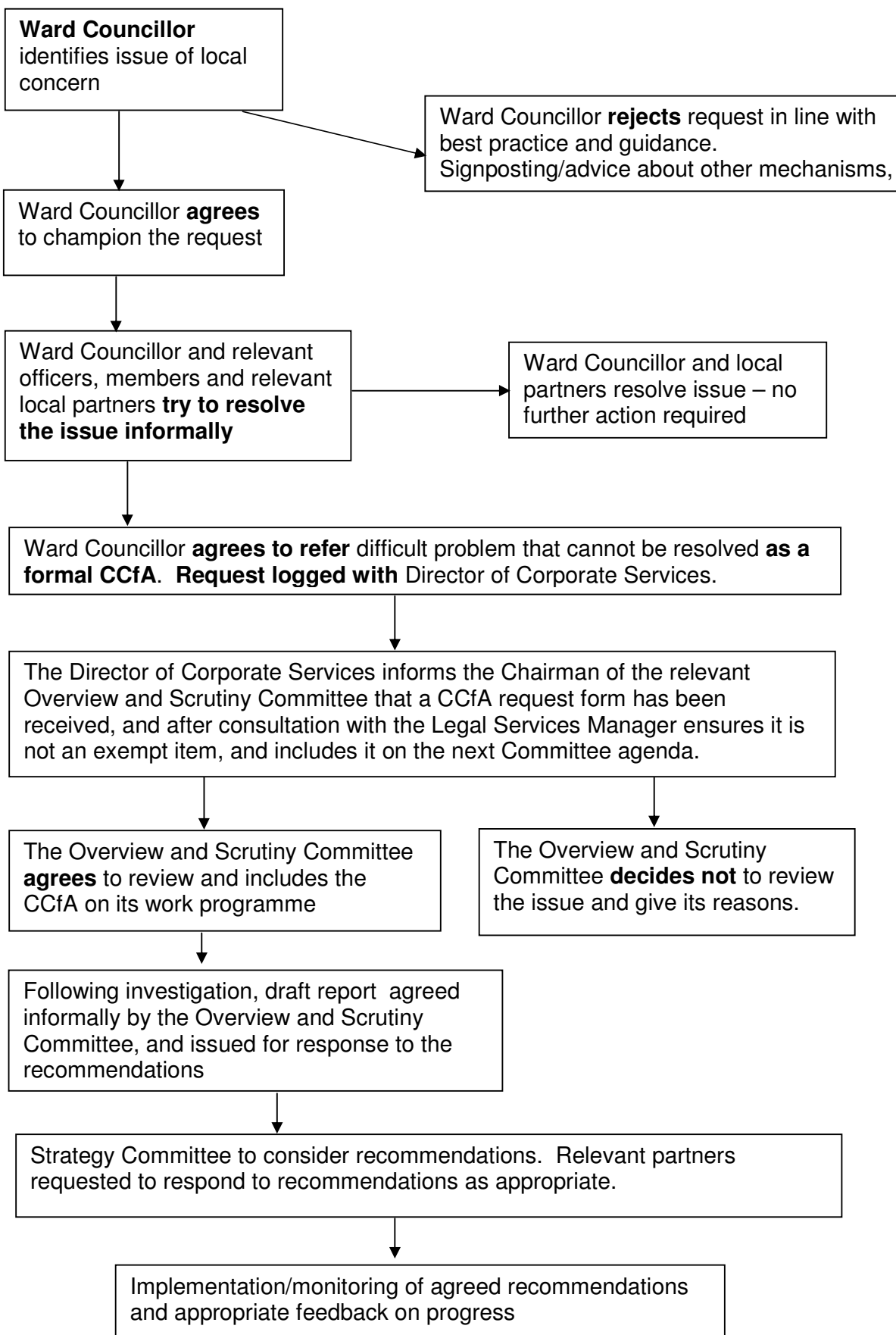
Is the CCfA currently the subject of legal action by any party (to your knowledge) or being examined by a formal complaints process?

Are there any deadlines associated with the CCfA of which the Overview and Scrutiny Committee needs to be aware:

Please complete and return the form to:

Director of Corporate Services
Council Offices
Corks Lane
Hadleigh
IPSWICH
IP7 6SJ

Appendix 2 – Summary of CCfA Mechanism



Appendix 3 – Explanatory Notes

1. Definition of a local government matter and a local crime and disorder matter

Local government matter

For the purpose of the 2007 Act a “local government matter”, in relation to a member of a local authority is one which:

- Relates to any 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 (ie it must be specific to a particular locality); and
- Is not an excluded matter.

However, the guidance produced by the Centre for Public Scrutiny and Improvement and Development Agency advises that, to give full effect to CCfA, the interpretation of “local government matter” needs to be broader. This 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).

Local crime and disorder matter

A “local crime and disorder matter”, in relation to a member of a local authority, has been defined in the 2006 Act to mean a matter concerning:

- (a) crime and disorder (including in particular forms of crime and disorder that involve anti-social 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 and scrutiny committee is to be excluded”.

Vexatious/Persistent

Deciding whether a request is vexatious is a balancing exercise, taking into account all the 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.

CCfAs need to be looked at on their merits, rather than on the basis of who is bringing them, or whether somebody 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, 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 should receive better, or worse, services on account of that group's predominant religion, race, gender 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

A CCfA hearing will be based on the Overview and Scrutiny Committee's protocol for dealing with call-in hearings.

The following protocol is intended to formalise the conduct of CCfA hearings and the preparation work carried out in the run-up to such a hearing. It should be noted, however, that the protocol may be varied by the Chairman of the Overview and Scrutiny Committee to meet the requirements of any particular circumstances.

Prior to the hearing

1. The CCfA Request Form and any additional papers provided by the referring councillor will be published with the agenda for the meeting.
2. The referring councillor and relevant officers and partners will be invited to the meeting.
3. Any other relevant external witnesses will be invited to the meeting.
4. Seven days' notice of a request to attend the meeting will be given to all participants. If a question plan is to be produced, seven days' notice of the questions planned will also be given to participants.

5. Prior to the meeting any member who may have a conflict of interest will be given relevant advice by the Monitoring Officer.

The hearing

1. The CCfA hearing will normally be the first item of business on the agenda, in order that participants and other witnesses are not kept waiting.
2. Participants and witnesses will be placed around the table with the Committee if space permits, but if there is a large number of witnesses or other attendees at the meeting, they may be required to wait in a separate seating area or the public gallery.
3. the referring councillor will be invited to make a presentation outlining his or her main reasons for referring the matter as a CCfA. A question and answer session will follow.
4. Any other parties relevant to the hearing, for example Member Champions, officers or partners, will be invited to make presentations outlining their response to the CCfA. Question and answer sessions will follow.
5. Any other relevant external witnesses will be invited to make a presentation to the Committee without interruption, following which there will be a question and answer session.
6. Witnesses will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.
7. The referring councillor will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.