

ABERDEEN CITY COUNCIL

COMMITTEE	Communities, Housing, and Public Protection Committee
DATE	5 th September 2023
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	The Aberdeen City Retailers' Charter for the Responsible Sale of Tobacco and Vaping Products
REPORT NUMBER	RES/23/258
DIRECTOR	Steven Whyte
CHIEF OFFICER	Mark Reilly
REPORT AUTHOR	Graeme Paton
TERMS OF REFERENCE	2.5

1. PURPOSE OF REPORT

- 1.1 Intelligence and complaints received by Aberdeen City Council Trading Standards Service (TS) leads officers to believe that there is a growing issue in the city, particularly on Union Street, of “proxy purchasing” of tobacco and Nicotine Vaping Products (NVP), particularly Single-Use NVP (“vapes”). This is the practice where adults buy these age-restricted products on behalf of young people who are too young to buy them for themselves. Proxy Purchasing is a criminal offence enforced by TS, but it is very difficult to detect and prove. This Retailers' Charter is an attempt to work with retailers to solve this problem using the Five Principles set out in Appendix 1 whilst maintaining focus on existing legal responsibilities in respect of age restricted products.

2. RECOMMENDATIONS

That the Committee:

- 2.1 Notes the contents of the report and the Five Principles set out in the Retailers' Charter detailed in Appendix 1;
- 2.2 Approve the adoption of the Retailers' Charter and instruct officers of the Trading Standards Service to implement the Charter in Aberdeen City, with initial focus on Union Steet retailers;
- 2.3 Instructs the Chief Officer Operations and Protective Services to report back to the Committee in 12 months on the effectiveness of the Charter.

3. CURRENT SITUATION

- 3.1 There is public concern around the ongoing issue of young people getting access to tobacco and NVP and becoming addicted to nicotine. Those

concerns have increased recently as the market for NVP has grown considerably over the past 18/24 months with the introduction of colourful, multi-flavoured vapes, with increasing concerns as to their impact on the long-term health of young people and that these innovations have made the devices child appealingⁱ.

- 3.2 In addition to complaints from the public, tobacco and vape retailers in the city have approached TS to report instances of their refusal to sell these products to young people who are then loitering outside the shop and asking passing adults to buy them on their behalf, a practice called “proxy purchasing”. Retailers have been made aware by TS of the legal age restrictions on tobacco and vapes and are keen to comply. However, this relatively new phenomenon makes it difficult for them to tell who the legitimate customers are from those proxy purchasing.
- 3.3 The Tobacco and Primary Medical Services (Scotland) Act 2010, as amended,ⁱⁱ introduced controls limiting the age of customers to whom businesses could sell tobacco and NVP to those aged 18 years or over. This Act also introduced a criminal offence for proxy purchasing whereby the adult buying the tobacco or NVP product on behalf of a person under the age of 18 could face criminal liability.
- 3.4 The enforcement duty for the 2010 Act was placed on Scottish local authorities. In Aberdeen City, this duty is discharged by the Trading Standards Service (TS). These new duties came with additional resources and Performance Indicators (PIs) set by the SG (Scottish Government), which are also reported to the CHPP Committee every quarter.
- 3.5 To deliver on this duty and meeting the PIs, officers visit 20% of all retailers selling cigarettes and/or vaping products each year and provide them with Business Advice on their legal responsibilities. Officers also covertly check compliance by carrying out test purchases at 10% of these retailers using 16-year-old volunteers. It is undoubtedly due to the success of this targeted advice and enforcement work that has seen a steady decline in the number of test purchase failures where the retailer sold tobacco or a vape to a 16-year-old volunteer. However, since the introduction of disposable vapes onto the market in 2021 and the drop in enforcement work during the Covid pandemic, the failure rates have increased to 1 in 5 test purchase attempts.
- 3.6 These findings have led to an increase in the number and intensity of Business Advice visits carried out by TS staff to retailers, with particular attention paid to areas of the city where test purchasing, complaints, and intelligence indicate there is an issue. This engagement has informed the development of this Charter.
- 3.7 Enforcement of proxy purchasing offences presents a specific difficulty for officers because necessary elements of the offence are very difficult to evidence. Ordinarily, this involves a young person approaching an adult and asking them to buy tobacco or a vape on their behalf. For example, in one recent report, the young person gave an adult £10 cash and the adult entered the shop and bought the vape. The adult left the shop handing over the

product to the young person but kept the change for themselves. Officers are required to prove each element of this transaction to prove the adult involved has committed an offence. Without extensive covert surveillance this would be virtually impossible. Indeed, there has only been one enforcement action for a proxy purchase in the whole of Scotland in the last 13 years.

3.8 This new Charter has been conceived by officers from TS with the intention of providing retailers with the tools they need to deal with proxy purchasing as well as young people attempting to buy these products themselves. Where a retailer agrees to participate, they agree to abide by the Five Principles of the Charter set out in Appendix 1.

3.9 The first of these five principles is that participating retailers voluntarily agree to accept payment for tobacco and vapes by electronic means only. In each reported case, the young person has given an adult cash to buy the tobacco or vape for them. The presumption is that if a retailer will not accept a cash transaction for tobacco or a vape, the transaction will not take place because a young person will not be willing to hand over a bank card to an adult they do not know because they will have no control over how much that adult will spend in the shop.

3.10 The issue of proxy purchasing is an ongoing issue for every TS authority across Scotland, if not the UK as a whole. If it is a success in Aberdeen City the hope is that it can be rolled out across the country. This is why the Society of Chief Trading Standards Officers in Scotland (SCOTSS) has agreed to provide funding for project materials in the hope it has the anticipated positive outcomes preventing proxy purchasing.

3.11 Iain Fraser, Police Sergeant, Safer City Unit, Police Scotland, provided the following response to the consultation:

'North East Division recognises that there is a documented increase in concerns regarding the sale of Vapes to underage youths in the area and would welcome any positive action in relation to this matter. Whilst we understand that enforcement does not fall within Police Scotland remit, the proposal set out in this Charter is supported as a positive response to the concerns raised.'

3.12 Chris Littlejohn Consultant in Public Health, NHS Grampian also replied to the consultation.

'Thanks again for the opportunity to see and comment on this proposal. My public health colleagues and myself are very supportive of the proposal. It appears well thought through given the challenges of enforcement that the document outlines.'

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications for the Trading Standards Service.

4.2 The project has secured funding from SCOTSS to cover the cost of resources required by retailers to take part in the Charter.

5. LEGAL IMPLICATIONS

5.1 In devising and promoting this Charter, Aberdeen City Council could face challenge from consumers who wish to be able to pay for such goods in cash. However businesses are entitled to set their own terms of business and what they will and will not accept in terms of payment. ⁱⁱⁱ It should be noted also that business participation would be entirely voluntary and that the 'no cash payments' approach under the Charter would apply to all customers and would be limited to tobacco and vaping products only.

6. ENVIRONMENTAL IMPLICATIONS

6.1 If there is a reduction in the purchase and use of vapes, this will reduce demand and, therefore, the number consumed and requiring disposal.

6.2 Also, the issues associated with vapes containing lithium-ion batteries and their unstable, flammable, nature when those batteries are damaged are well known, so a reduction in consumption would be welcome.

7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
Strategic Risk	No significant risks identified			Yes
Compliance	Risk of challenge from consumers who wish to be able to pay for such goods in cash.	Charter takes a proportionate approach.	M	Yes
Operational	No significant risks identified	Officers can deliver this Charter as part of the ongoing		Yes

		Scottish Government programme		
Financial	No significant risks identified	External funding for materials has been obtained.		Yes
Reputational	The statutory duty to enforce the proxy purchase prohibitions in sections 6 and 6A of the 2010 Act lies with ACC. Failure to meet this duty or consider alternative strategies for doing so is a reputational risk.	Primary enforcement methods are time and resource intensive with no guarantee of success. They may also require the participation of Police Scotland. This Charter demonstrates we are looking at alternative methods to deliver a solution. If this Charter produces the outcomes intended, it will prevent proxy purchasing taking place. Further, there is a positive reputational outcome for ACC being seen as the source of an effective strategy, which could be implemented by other Scottish local authorities.	L	Yes
Environment / Climate	No significant risks identified			Yes

8. OUTCOMES

Participation in the Charter should lead to the following positive outcomes;

- Increase engagement with retailers highlighting the issues around proxy purchasing, and age restricted products in general, leading to increased compliance with the 2010 Act;
- A reduction in complaints about Proxy Purchases;
- Decrease the number of test purchase failures of tobacco and vapes;

	Impact of Report
<u>Aberdeen City Local Outcome Improvement Plan 2016-26</u>	
Prosperous Economy Stretch Outcomes	<p>The overarching purpose here is to encourage businesses to open and establish themselves in the city: <i>'Aberdeen Prospers is committed to improvement activity around providing the correct support for those wishing to start or expand their own business.'</i></p> <p>Retail businesses are predominantly small and medium sized enterprises (SMEs) who require practical advice on how to comply with their legal obligations and avoid breaching the criminal law. This proposed Charter seeks to provide detailed compliance advice in respect of tobacco and vaping products and increase business confidence in this area of law. It also seeks to improve links between ACC and the business community, so ACC is seen as an adviser and a partner rather than an enforcer.</p>
Prosperous People (Adults) Stretch Outcomes	<p>The intention of this proposal is to impact upon stretch outcome 11. <i>Healthy life expectancy (time lived in good health) is five years longer by 2026, encourage the adoption of healthier lifestyles, and Reduce tobacco smoking by 5% overall by 2023.</i> This proposal is directed at limiting the availability of tobacco and vaping products to those too young to buy and consume them. The obvious extension from that is the prevention of nicotine addiction moving into adulthood.</p>
Prosperous People (Children and Young People)	<p><i>'Our stretch outcomes reflect the importance of supporting equity of access to education, supporting families to provide the best care they can for their children and the need to invest in the health, including mental health, of our children and young people. Critically we want our children to be safe and protected from harm.'</i></p> <p>As well as assisting businesses, this proposal protects our young people by stopping them from accessing tobacco and vaping products. Preventing them from the harm of addiction to tobacco and nicotine and the potential detrimental long-term impacts that can have on their health.</p>
Regional and City Strategies	<p>The proposals in this report have no impact on Regional or City Strategies.</p>

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	Stage 1 IIA completed. Full impact assessment not required
Data Protection Impact Assessment	Not required
Other	N/A

10. BACKGROUND PAPERS

- 10.1 [Open Letter to the First Minister calling for immediate measures to protect Scotland's children from harms caused by use of e-cigarettes](#), June 2023.
- 10.2 UK Government Response to a Petition entitled 'Make it unlawful for shops to refuse cash payments' <https://petition.parliament.uk/petitions/605030> 25 April 2022

11. APPENDICES

Appendix 1: The Five Principles of the Retailers' Charter

12. REPORT AUTHOR CONTACT DETAILS

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ⁱ <https://www.ashscotland.org.uk/news-and-events/news/2023/06/scottish-paediatricians-join-call-for-a-ban-on-disposable-vapes/>

ⁱⁱ <https://www.legislation.gov.uk/asp/2010/3/contents>

ⁱⁱⁱ <https://petition.parliament.uk/petitions/605030>