

Cheltenham Borough Council
Cabinet – 10th October 2017
Abandoned Trolleys

Accountable member	Andrew McKinley, Cabinet Member
Accountable officer	Mark Nelson, Enforcement Manager
Ward(s) affected	All Wards
Key/Significant Decision	Yes
Executive summary	<p>Following a supported motion at Full Council the Council resolved to engage with retailers to discuss informal or contractual solutions to the significant nuisance abandoned trolleys are causing in some parts of town.</p> <p>The motion requested Cabinet to commence the process necessary to adopt the discretionary powers available to it pursuant to section 99 of the Environmental Protection Act 1990 (as amended) if those discussions with retailers did not result in a satisfactory outcome to tackle the problem.</p> <p>Given the formal requirements to adopt the discretionary powers and the associated timescales, it is proposed that the process to adopt these powers is progressed in parallel to discussions and negotiations with retailers in town. It is hoped that negotiations will achieve a cost effective solution to the problem, which if adhered to, would negate the need for the Council to use formal powers.</p> <p>If agreement cannot be reached on a cost effective basis for the Council then, subject to consultation, the Council could seek to use its statutory powers under section 99 of the Environmental Protection Act 1990.</p>
Recommendations	<ol style="list-style-type: none"> 1. That a formal period of consultation be initiated, as required by Section 99 of the Environmental Protection Act 1990, regarding the possibility of applying Schedule 4 to control abandoned shopping trolleys in the Cheltenham area. 2. As part of this formal consultation, to request feedback from consultees as to possible alternative solutions to the use of formal legal powers that would be cost neutral to the Council. 3. That a further report be prepared detailing the outcome of the consultation and setting out proposals as appropriate. These would include any proposed charging regime and associated financial implications.

Financial implications	<p>If statutory powers are used under Section 99 Environmental Protection Act 1990, the costs of removal, storage and disposal can be claimed back from trolley owners. Charges made in this respect must be reviewed each year.</p> <p>Any negotiated non statutory agreement with retailers for the return of their trolleys should ensure that all Council costs are recovered from the retailers. If this cannot be achieved by agreement then, subject to the outcome of consultations, the Council could seek to use its statutory powers to reclaim costs.</p> <p>Contact officer: Myn Cotterill, myn.cotterill@cheltenham.gov.uk, 01242 774958</p>
Legal implications	<p>Section 99 of the Environmental Protection Act 1990 (EPA 1990) allows a council to apply Schedule 4 (powers to deal with abandoned shopping trolleys) in its area if it:</p> <ul style="list-style-type: none"> • Consults with those likely to be affected by Schedule 4. • Passes a resolution that Schedule 4 is to apply in its area. • Publicises that resolution and its effect in at least one local newspaper. <p>In relation to the consultation, this should be undertaken with persons and representatives of persons who appear to the council to be affected by the proposed decision to adopt schedule 4 of the EPA 1990. It is likely that the Council will have to send correspondence to all local supermarkets and their head offices, to any other outlets that may use trolleys and possibly to representative bodies (such as the British Retail Consortium, Association of Town Centre Management and the Association of Convenience Stores).</p> <p>Although the statute does not provide an exact time period for consultation, it appears that the usual practice of other local authorities has been to provide for a 90-day consultation. If after consideration of the consultation a resolution is adopted that Schedule 4 will apply in the area, the council must advertise that fact in a local newspaper; it can then implement the powers in Schedule 4 three months from the date of the resolution.</p> <p>If a Schedule 4 scheme is agreed to by shopping trolley owners and then adopted by the Council, the Council cannot demand a charge in respect of any trolley which has been dealt with in accordance with the scheme. However if that scheme is not being appropriately complied with, the Council will be in a position to charge for any shopping trolley which is not in compliance with the agreed scheme.</p> <p>Contact officer: John Teasdale, john.teasdale@tewkesbury.gov.uk, 01684 272699</p>
HR implications (including learning and organisational development)	<p>None</p> <p>Contact officer: , @cheltenham.gov.uk, 01242</p>
Key risks	See Appendix 1

Corporate and community plan Implications	The recommended outcomes of this report positively contribute to protecting, maintaining and enhancing Cheltenham's environmental quality.
Environmental and climate change implications	Report recommendations, if approved, will reduce the environmental blight caused by abandoned trollies.
Property/Asset Implications	None Contact officer: David Roberts@cheltenham.gov.uk

1. Background

1.1 At the meeting of Full Council the following motion was supported:

This Council notes that abandoned supermarket trolleys can cause a significant nuisance in some parts of the town. It is possible to take discretionary powers pursuant to section 99 of Environmental Protection Act 1990 (as amended) that allow local authorities to remove abandoned trolleys and charge the owners of those trolleys. If these powers are adopted, they require that any charges payable to the Council by trolley owners to fully cover the costs.

This Council would much prefer that trolley owners work proactively within local communities and take responsibility for addressing the abandonment of their trollies as part of their corporate social responsibility activity, without the need these powers to be formally adopted by the Council.

Consequently, this Council resolves to engage with retailers to discuss potential informal or contractual solutions with trolley owners in the town, but if this does not result in a satisfactory outcome, it request Cabinet to commence the processes necessary to adopt the discretionary powers available to it pursuant to section 99 of the Environmental Protection Act 1990 (as amended), so that the problem of abandoned trollies can be tackled.

- 1.2** Although the numbers of abandoned shopping trolleys in Cheltenham are probably quite small, the nuisance that these cause can be significant. Abandoned shopping trolleys can be left on the pavement causing an obstruction to pedestrians, abandoned in car parks or on the highway causing a danger to vehicles, left on open land where they can attract litter or dumped in watercourses where they may disrupt the flow of water which could lead to flooding.
- 1.3** There are a range of supermarkets in Cheltenham. Many of these stores take a proactive approach to abandoned shopping trolleys for example using deterrent paving and coin deposit locks.
- 1.4** Although the majority of local supermarkets take effective action to prevent the abandonment of shopping trolleys, there is still the opportunity for irresponsible or careless people to remove and abandon shopping trolleys.

2. Powers

- 2.1** Legal powers are available under Schedule 4 of the Environmental Protection Act 1990. These enable a local authority to seize, store and dispose of abandoned shopping and luggage trolleys found in its area. The provisions allow for the costs of removing, storing and disposing of abandoned trolleys to be recovered from their owners. Amendments made by the Clean Neighbourhoods and Environment Act 2005 have improved the ability for local authorities to reclaim these charges by making any sum payable as a charge, recoverable as a debt.
- 2.2** The Local Authority powers apply to any shopping or luggage trolley that is found by an authorised officer on 'any land in the open air' (including watercourses), and that appears to them to be abandoned.
- 2.3** Certain types of land are excluded from the provisions of the schedule, namely:
 - i) Land on which the owner of the trolley has a legal interest.
 - ii) Land used for off street parking where facilities are provided for leaving shopping trolleys that have been used by customers.
 - iii) Other land designated by the Local Authority for the purpose of providing trolley parking facilities.
 - iv) In relation to luggage trolleys only, land used for transport undertaking for which luggage

trolleys may be provided, e.g. railways.

If the abandoned trolley is found on land owned by a third party, consent must be sought from that third party. Alternatively, the Local Authority may serve a notice giving fourteen days, following which, if no objection is received, the trolley can be removed.

- 2.4** After the Local Authority has seized and removed any abandoned trolley it must keep the trolley for six weeks before it may sell or otherwise dispose of the trolley.
- 2.5** Fourteen days after seizure the Local Authority must serve a notice on the owner of the trolley (after making reasonable enquiries to ascertain who they are) giving details of where it is being kept and that the Authority may dispose of it if it is not claimed. The Local Authority may charge to return the trolley and if the owner does not pay the charges the Local Authority may retain the trolley and subsequently dispose of it.
- 2.6** The Local Authority may set charges that are sufficient to cover the cost of removing, storing and disposing of shopping or luggage trolleys, including administrative costs, staff time, collection and delivery and physical storage space. Such costs must be regularly reviewed.
- 2.7** The Local Authority may agree a trolley collection scheme with persons who own shopping or luggage trolleys in its area and where such agreements are made the Local Authority may not charge costs for any trolleys within the scheme that they recover.

3. Adoption of Schedule 4

- 3.1** Section 99 of the Environment Protection Act 1990 sets out the procedure for adopting Schedule 4.
- 3.2** In summary the Local Authority must consult with:
 - (1) Retailers known to be providing a trolley service in that area and/or representative bodies such as the British Retail Consortium, the Association of Town Centre Management and the Association of Convenience Stores.
 - (2) Rail, tram, road transport or airport operators known to be providing a trolley service in that area.
 - (3) Other businesses and landowners that may be affected by trolley abandonment, local residents and community groups (this may be done by providing details of the proposal in local newspapers, local authority newsletters, etc. and inviting comments)
 - (4) The Local Chamber of Trade and Commerce
 - (5) The Environment Agency
 - (6) The Police
 - (7) Town and Parish Councils
- 3.3** Following on from the consultation there is a requirement to make a resolution. This has to state the date on which the Schedule 4 controls will come into force, being not less than three months from the date on which the resolution is passed. This resolution may be taken by the Cabinet.
- 3.4** There is a requirement to publish notice of the resolution in at least one local newspaper, indicating the general effect of the adoption of the Schedule.
- 3.5** From time to time the Council must consult on the operation of Schedule 4 in its area with those affected by it. Local Authorities are advised to review the operation of the Schedule at least every five years, and monitor the number of trolleys recovered under the schedule. As part of the review they should consider whether adequate steps are being taken to reduce the number of abandoned trolleys. Earlier review may be necessary if there is significant change in circumstances.

4. Reasons for recommendations

- 4.1** To provide effective agreement / procedures to tackle the problem of abandoned trolleys in Cheltenham.

5. Alternative options considered

- 5.1** The consultation detailed in the report will also request consultees to suggest alternative solutions to the use of formal legal powers that would be cost neutral to the Council.

6. Consultation and feedback

- 6.1** Proposed consultation detailed in report.

7. Performance management –monitoring and review

- 7.1** Report on the outcome of consultations, and make associated recommendations.

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Appendices	1. Risk Assessment
Background information	

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If suitable and cost neutral agreements cannot be reached with retailers concerning the return of abandoned trolleys then any agreements made may result in increased Council expenditure.	Mark Nelson		1	4	4		The Council may make use of statutory powers under Section 99 Environmental Protection Act 1990, subject to all necessary statutory procedures as outlined in the report. Any subsequent charges would be made on a cost recovery basis.			
Explanatory notes Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical) Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability) Control - Either: Reduce / Accept / Transfer to 3rd party / Close											