

# Report



## Cabinet Member for Licensing and Regulation

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### Part 1

Date: 4 February 2020

**Subject** **Proposed Adoption of Institute of Licensing Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Industry**

**Purpose** The Cabinet Member for Licensing and Regulation is asked to consider and agree to consult on a revised Newport City Council Hackney Carriage & Private Hire Policy, specifically the policy relating to the relevance of previous convictions and other relevant information.

**Author** Licensing Manager

**Ward** All Wards

**Summary** The Licensing Committee and Licensing Manager regularly consider the fitness and propriety of new applicants or current licence holders to determine if an applicant is 'fit and proper' to hold a hackney carriage or private hire drivers' licence, having regard to the overall aim of protecting the public. When assessing "fitness" consideration is given to an applicant's criminal convictions as well as other matters such as allegations, charges, complaints or conduct.

The authority has in place an adopted policy to provide guidance on the treatment of convictions, cautions and criminal charges in respect of new applicants and existing hackney carriage/private hire drivers and operators. This particular policy has been in place since 2017. The Institute of Licensing (IOL) have issued guidance on this general area and Newport City Council now has the option of adopting their recommended standard. A revised policy has been produced containing the IOL additional measures.

**Proposal** **To approve public consultation on a proposed revised Hackney Carriage & Private Hire Policy regarding fitness and propriety of new applicants or current licence holders in the Hackney Carriage and Private Hire Industry.**

**Action by** Head of Law and Regulation

**Timetable**

**Signed**

## Background

1. Newport City Council administers and issues licences for Hackney Carriage and Private Hire vehicles, drivers and operators as part of its regulatory role.
2. Under Section 51 of the Local Government (Miscellaneous Provisions) Act, 1976 the authority shall, on receipt of an application from any person for the grant to that person of a licence to drive private hire and/or hackney carriage vehicles, grant to that person a driver's licence. Provided that the authority shall not grant a licence unless they are satisfied that the applicant is a 'fit and proper' person to hold a driver's licence.
3. The overriding aim of the Licensing Authority, when carrying out its licensing functions in respect of the Private Hire and Hackney Carriage industry, is the protection of the public.
4. In April 2018, the Institute of Licensing (IOL) published a document titled "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades" ("the guidance").
5. The IOL Guidance was produced in conjunction with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO) following widespread consultation.
6. A copy of the Institute of Licensing (IOL) Guidance is attached at Appendix A of this report.
7. The guidance has been produced because there is currently no recent statutory or ministerial guidance on how Committee's, Sub-Committee's and/or Officers should make a determination on whether an applicant or licensee is a "fit and proper person".
8. The intention is to provide guidance on determining suitability, taking into account the character of the applicant or licensee and that it be used as a basis for the Council's own policies and in particular how regard should be had in the antecedent history of the applicant or licence holder and its relevance to their "fitness and propriety" or "character".
9. The guidance is intended to help local authorities achieve greater consistency so that applicants are less able to "shop" between authorities. Newport City Council wishes to provide an efficient service based on identified customer needs and consideration of the guidance will enhance this goal.
10. At a recent meeting of the Wales Licensing Expert Panel the guidance was considered and endorsed with the recommendation that all Welsh Licensing Authorities consider its approval and implementation. Many authorities in England and Wales have already adopted a new policy based on the guidance, or are currently in the process of doing so. Within Wales 14 of the 22 Welsh Licensing Authorities have introduced the IOL guidance into their official policy.
11. The Welsh Licensing Authorities who have adopted the guidance are as follows: Swansea, Cardiff, the Vale of Glamorgan, Bridgend, Neath Port Talbot, Anglesey, Denbighshire, Powys Rhonda Cynon Taff, Caerphilly, Merthyr Tydfil, Pembrokeshire, Monmouthshire, and Torfaen.
12. Further, the Department of Transport on the 12 February 2019 consulted on a document called "Taxi & Private Hire Vehicle Licensing: Protecting Users". The 'fit and proper' provisions contained within the Department of Transport consultation document are identical to the provisions within the IOL Guidance. It is likely that the Department of Transport will introduce this guidance as best practice to all local authorities in the very near future.
13. Newport City Council already has comprehensive guidance covering the fitness of applicants and current licence holders, however the IOL guidance could be a sensible enhancement to current arrangements.

14. It is therefore proposed that, where the IOL guidance suggests a higher standard than the current Newport City Council provisions, consideration is given to adopting those higher 'IOL' standards. This will ensure that the authority does not lower its protection of the public, compared to current arrangements, and allows the authority to align itself with the current best practice within the licensing profession in Wales and beyond.
15. Appendix B of this report highlights Newport City Council Policy with the addition of the IOL guidelines. Changes to the policy are highlighted in red.
16. It is important to note that if agreed the requirements of the new suitability policy will only apply to existing drivers if any new incidents occur during their licence and **not retrospectively**.

#### Financial Summary

- There are no immediate financial implications arising directly from this report.

	Year 1 (Current) £	Year 2 £	Year 3 £	Ongoing £	Notes including budgets heads affected
Costs (Income)	0	0	0	0	
Net Costs (Savings)	0	0	0	0	
Net Impact on Budget	0	0	0	0	

#### Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Judicial review	H	L	The Licensing Authority will undertake consultation with the taxi trade, offering trade members to meet and discuss the Policies. The policy has been developed in accordance IOL Best Practice Guidance.	Licensing Manager
Reputational risk of failing to adopt best practice and being viewed as an authority where lower standards of fitness and propriety are tolerated.	M	L	Consider and adopt the new policy in line with the report	Regulatory Services Manager (Commercial Standards)

\* Taking account of proposed mitigation measures

#### Links to Council Policies and Priorities

Ensuring that the Council follows best practice will support the following Council Policies & Strategies:

- Newport City Council's Corporate Plan 2017-2022 (Building on Success, Building a Better Newport)

### **Options Available and considered**

1. Approve public consultation in relation to amendments to Newport City Council Hackney Carriage and Private Hire Policy.
2. Refuse public consultation in relation to amendments to Newport City Council Hackney Carriage and Private Hire Policy.

### **Preferred Option and Why**

To approve the amendments to Newport City Council Hackney Carriage and Private Hire Policy(s) to go out to public consultation. As detailed within the report, there will be extensive consultation period carried out in respect of the revised changes to the policy.

The draft policy has been widely consulted on nationally and helps ensure consistency throughout Wales and the UK. It has been produced in conjunction with the standards as prepared by the Institute of Licensing in collaboration with the Local Government Association (LGA), National Association of Licensing and Enforcement Officers (NALEO) and Lawyers in Local Government (LLG).

### **Comments of Chief Financial Officer**

There will be no adverse impact to the budget as a result of adopting the higher Institute of Licensing standards. Neighbouring authorities have all followed the IOL guidance so Newport City Council would be no less competitive whilst still offering appropriate protection to the public and the number of applications is not expected to drop as a result of this policy amendment.

### **Comments of Monitoring Officer**

The proposed action is in accordance with the Council's statutory licensing powers under section 51 of the Local Government (Miscellaneous Provisions) Act 1976, to determine the fitness of applicants and licensees to hold hackney carriage and private hire drivers' licences. In accordance with the Functions and Responsibilities Regulations, the approval and adoption of strategic licencing policies are executive decisions for the Cabinet Member for Licensing and Regulation. The determination of licensing applications, in accordance with these policies, is then a non-executive regulatory function which is carried out under the scheme of delegation by Licensing Officers and Licensing Committee. It is good practice to have clear policies and guidelines for the grant, renewal and revocation of licences, to ensure fairness and consistency of decision-making. The Council has an existing policy and guidance which provides a consistent framework for determining the "fitness" of applicants and licence holders, having regard to criminal convictions, driving offences and other matters of conduct and behaviour. However, the IOL has now produce revised guidance which strengthens some of the previous tests and imposes more stringent standards. This is likely to be adopted nationally as good practice by the Department of Transport. In the meantime, 14 of the 22 licensing authorities in Wales have already adopted the IOC guidance, including some neighbouring authorities. Therefore, it is recommended that the Council should also consider adopting these more stringent guidelines, to improve public protection and ensure a consistency of approach in relation to cross-border licensing. As with all policies, this should not be an absolute fetter on the discretion of the decision-maker, and there should always be a residual discretion to take account of exceptional circumstances. However, the guidelines will provide a consistent and fair basis for licensing decisions. It is proposed that the revised policy should be the subject of public and stakeholder consultation for a period of 6 weeks and any representations received will be reported back to the Cabinet Member before any final decision is taken to adopt the policy. Licensing Committee will also be consulted and their views will be reported back. In relation to the Council's public sector equality duty under the Equality Act 2010, an initial impact assessment has been carried out and this is attached to the Report. The assessment notes that a significant proportion of hackney carriage and private hire licence holders are from a BME background and, therefore, the more stringent licensing conditions may

have a disproportionate impact on these minority groups. However, the overriding objective of the proposal is to improve the quality of drivers and improve public safety and these requirements would apply equally, regardless of racial background.

### **Comments of Head of People and Business Change**

There are no HR issues arising directly from this report. The proposal is in line with the sustainable development in the Well-being of Future Generations Act. Consulting on potential changes to the Hackney Carriage & Private Hire Policy will involve stakeholders in the decision making process. The proposed changes in policy will support the prevention of crime by ensuring the licensing process has a number of checks and safeguards in place before a licence is granted.

### **Local issues**

All wards will be affected

### **Equalities Impact Assessment and the Equalities Act 2010**

An Equality Impact Assessments screening on the licensing of those in the taxi and private hire industry was completed. The assessment highlighted that there is no adverse or negative impact of opportunity for any equality target group for any reasons. The Equality Impact Assessment can be found in Appendix C.

### **Children and Families (Wales) Measure**

None

### **Wellbeing of Future Generations (Wales) Act 2015**

The Authority has a duty to improve the social, economic, environmental and cultural wellbeing of Wales. The areas covered in this report contribute to the following Well-being Goals

- A prosperous Wales
- A resilient Wales
- A more equal Wales

They are consistent with the five ways of working as defined within the sustainable development principle in the Act and support the objectives of other stakeholders. There is an emphasis on prevention as the licensing process ensures that a number of checks and safeguards are in place before a licence is granted. The prime focus for the Council is to ensure public safety and to provide an efficient and effective licensing service.

### **Crime and Disorder Act 1998**

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area, this policy proposing to improve safeguarding and public protection within the “taxi” industry.

### **Consultation**

The public consultation will run for a 6 week period all members of the “taxi” licensing industry will be informed via e-mail of the consultation. The proposed policy will also be presented to the Licensing Committee to seek their comments.

### **Background Papers**

Set out a list of any relevant background papers and whether they are available to the public.

- [Department for Transport - Taxi and Private Hire Vehicle Licensing: Protecting Users Statutory Guidance for Licensing Authorities \(February 2019 - consultation version\).](#)
- [Newport City Council Hackney Carriage & Private Hire Policies](#)

## **Appendix A**

**A copy of the Institute of Licensing (IOL) Guidance is attached at Appendix A**

## **Appendix B**

**Newport City Council Policy(s) when supplementing the IOL Guidelines**

## Appendix C

### THE EQUALITY IMPACT ASSESSMENT

# Fairness and Equalities Impact Assessment (FEIA)

The purpose of this assessment is to provide balanced information to support decision making and to promote better ways of working in line with equalities (Equalities Act 2010), Welsh language promotion (The Welsh Language (Wales) Measure 2011), sustainable development (Wellbeing of Future Generations (Wales) Act 2015), and the four parameters of debate about fairness identified by the Newport Fairness Commission (NFC Full Report to Council 2013).

**Completed by:** Alastair Dearing **Role:** Licensing Manager

**Head of Service:** Gareth Price **Date:** 09/12/2019

**I confirm that the above Head of Service has agreed the content of this assessment**

**Yes / No**

**When you complete this FEIA, it is your responsibility to submit it to**  
impact.assessments@newport.gov.uk

#### **1. Name and description of the policy / proposal being assessed. Outline the policy's purpose.**

The Institute of Licensing (IOL) in partnership with the Local Government Association, Lawyers in Local Government and the National Association of Licensing Enforcement Officers (NALEO) have produced guidance on determining the suitability of applicants and licensees in the hackney and private hire trades. The policy was also endorsed by the Wales Licensing Expert Panel and recommended for adoption by all Welsh authorities. NCC intends to adopt the policy in place of its existing fitness policy and provide a consistent approach to the determination of applications for hackney carriage and private hire trades.

#### **2. Outline how you have/will consult with stakeholders who will be affected by the policy/proposal. Please refer specifically to FEIA guidance in relation to relevant Welsh language duties.**

The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services. Members of the "Taxi" trade are affected by the policy as it will be used to determine their suitability to obtain and retain a licence. Members of the travelling public will be affected; other road users and other NCC service areas such as Social Services and Integrated Transport Unit who contract with proprietors and Operators for the provision of licensed vehicles for School transport and other contracts. It is a requirement of their contract that the driver is licensed.

Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.

**3. What information/evidence do you have on stakeholders? e.g. views, needs, service usage etc. Please include all the evidence you consider relevant.**

The policy aims to protect the public -a member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? The proposal will not impact on access to services but aims to ensure the correct checks and balances are made to protect anyone travelling in a licensed vehicle in the county borough. Individuals with convictions etc may be prevented from obtaining a licence or existing licensees be subject to suspension or revocation. Each case is considered on its merits and the policy is guidance on what is generally acceptable or not when considering suitability so that it is clear to everyone involved in the process.

Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account. (Leeds City Council v Hussain [2002] EWHC 1145 (Admin), [2003] RTR 199 and Cherwell District Council v Anwar[2011] EWHC 2943 (Admin)

If agreed the requirements of the new suitability policy will only apply to existing drivers if any new incidents occur during their licence and not retrospectively.

**4. Equalities and Welsh language impact**

Protected characteristic	Impact:			Provide further details about the nature of the impact in the section below. Does it:  1. Promote equal opportunity 2. Promote community cohesion 3. Help eliminate unlawful discrimination/ harassment/ victimisation?
	Positive	Negative	Neither	
<b>Age</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc.
<b>Disability</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc  The Guidance criteria refers to an individuals' attitude, character and whether they are 'fit and proper' to hold a Taxi Driver licence. The criteria does not refer to Disability specifically, but if an individual has difficulties with substance misuse this would be a breach of the guidance and likely result in the withdrawal of their licence.

Protected characteristic	Impact:			Provide further details about the nature of the impact in the section below. Does it:  1. Promote equal opportunity 2. Promote community cohesion 3. Help eliminate unlawful discrimination/ harassment/ victimisation?
	Positive	Negative	Neither	
Gender reassignment/transgender	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is no evidence available to the Council to suggest a negative impact due to gender reassignment .
Marriage or civil partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is no evidence available to the Council to suggest a negative impact due to marriage or civil partnership.
Pregnancy or maternity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is no evidence available to the Council to suggest a negative impact due to pregnancy or maternity.
Race	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>It is widely accepted that BME people are over-represented in the Criminal Justice System and receive harsher sentencing than their White counter-parts.</p> <p>The Ministry of Justice produced a report in 2017, titled “<b>Statistics on Race and the Criminal Justice System 2016</b> – A Ministry Of Justice publication under section 95 of the Criminal Justice Act 1991”</p> <p>The following has been taken from the above report:</p> <p><b>Arrests –</b></p> <p>In 2016/17, compared with the White ethnic group, arrests proportionate to population size were more likely to be carried out on the Black (8 times as likely), Mixed (between 2 and 3 times as likely), Asian (just over 2 times as likely) and Chinese or Other (1 ½ times as likely) ethnic groups.</p> <p><b>Prosecution –</b></p> <p>Relative to the population, the rates of prosecution for indictable offences for Black and Mixed ethnic groups were 4 and 2 times higher than for the White ethnic group. For every 1,000 population members, 16 Black and 9 Mixed defendants were prosecuted compared to 4 White defendants.</p> <p><b>Ethnic Make-up of Practitioners –</b></p> <p>Non-White ethnic groups were under –represented relative to the population among the Police, National Offender</p>

Protected characteristic	Impact:			Provide further details about the nature of the impact in the section below. Does it:  1. Promote equal opportunity 2. Promote community cohesion 3. Help eliminate unlawful discrimination/ harassment/ victimisation?
	Positive	Negative	Neither	
				<p>Management Service, Judiciary and Magistracy, with proportions increasing slowly or remaining the same over the last 5 years.</p> <p>Non-White ethnic groups were over-represented relative to the population among the Ministry of Justice and Crown Prosecution Service, with proportions increasing over the last 5 years.</p> <p>As a large number of Newport Taxi Drivers come from a BME or non-White background, the Guidance has the potential to have a differential impact on Race.</p>
<b>Religion or Belief or non-belief</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is no evidence available to the Council to suggest a negative impact due to religion or belief
<b>Sex</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc</p> <p>The criteria set out in the Guidance will be applicable to both male and female applicants and Licensees. However, there are currently more male drivers / licensees than female so any impact would affect men more than women.</p>
<b>Sexual Orientation</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There is no evidence available to the Council to suggest a negative impact due to sexual orientation.
<b>Welsh Language</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>There is no evidence available to the Council to suggest a negative impact due to Welsh Language.</p> <p>Once approved, the Guidance will be produced in the Welsh Language to comply with the requirements of the Welsh Language Act 1993.</p> <p>As we treat the Welsh Language on an equal footing with English, any request to conduct proceedings with the Taxi Licensing committee through the medium of Welsh should be met.</p>

**5 How has your proposal embedded and prioritised the sustainable development principle in its development?**

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? Describe how.
 <p>Long Term</p> <p>Balancing short term need with long term needs</p>	<p>Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc.</p>
 <p>Collaboration</p> <p>Working together to deliver objectives</p>	<p>A key element of this policy contained within the strategy is the commitment to work in partnership with the public, trade, and other Local Authorities in order to increase Safeguards in the “Taxi” Industry.</p>
 <p>Involvement</p> <p>Involving those with an interest and seeking their views</p>	<p>All 1252 Licenced drivers, Licenced Operators and proprietors will be emailed regarding the consultation.</p> <p>The Consultation will also be presented to the Licensing Committee to seek out there views. Meeting will take place if requested by the trade organisation with the Licensing Manager.</p>
 <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p>	<p>The Revised policy(s) cannot address the root causes of why some individuals commit crime, though further protects the travel public from further crime being committed specifically Safeguarding crime.</p>

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? Describe how.
 <p>Considering impact on all wellbeing goals together and on other bodies</p>	<p>The Proposed revised Policy has been designed to have a positive impact on the Following Well Being Goals.</p> <ul style="list-style-type: none"> <li>• <i>A prosperous Wales: The Proposed policy will further improve safeguarding.</i></li> <li>• <i>A Wales of more cohesive communities: The Draft policy would help to protect local community's that use the services of taxis and make it a more viable and safe.</i></li> <li>• <i>A Wales of vibrant culture and thriving Welsh Language</i></li> </ul>

**6 Will the proposal/policy have a disproportionate impact on a specific geographical area of Newport?**

The Proposal is designed to impact all wards of Newport and due to the transient business of the "Taxi" industry will impact on Other Neighbouring Local Authorities.

**7 How does the proposal/policy relate to the parameters of debate about Fairness identified by the Newport Fairness Commission**

## 8. Equality Impacts and Actions

Please complete the below action plan which sets out steps that will/will not be taken in order to mitigate any negative impacts that your assessment has identified.

Impact identified	Who does it affect?	What will you do to mitigate the impact? If you plan to take no action, please justify your rationale	Who is responsible?
1 Race	BME	<p>Panel Members should attend mandatory Equality Training so decisions made are fair and can be seen to be fair. Equality Training will help Panel Members understand cultural differences and the discrimination faced by people with one or more Protected Characteristics. The guidance states “the entire character of the individual will be considered” and “the individual’s attitude and temperament” so cultural awareness will be vital to the process of determining an individual’s suitability.</p> <p>It is equally important that the new guidance is disseminated amongst all existing and new Drivers and Licensees, so they are aware of the consequences possible criminal offences will have their ability to work as a Taxi Driver or Licensee.</p>	Licensing Manager & Democratic Services.

## 9. Monitoring, evaluating and reviewing

How and when will the impact of the proposal/ policy be monitored and reported on?

Numbers of drivers and Operators licensed by the Authority will be monitored and compared with trend information on numbers generally. Also numbers of refusals of new licensees will be monitored along with complaints and formal actions against existing licensees.

## 10. Involvement

How will people be advised of the changes and of the FEIA?

The Institute of Licensing working party carried out a national consultation exercise on the draft Guidance and consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

A 6 week Public Consultation will take place with 1236 current licensees drivers being informed of the consultation by e-mail. A Trade meeting will take place if requested by the Licence trade itself. If the policy is to be approved once again the trade will be informed of this and the Policy will be placed on the Council website.

## 11. Summary of Impact (for inclusion in any report)

### Equality Act 2010 Welsh

The proposed changes to the policy will have positive impact on some protected characteristics but not to the extent that the proposals could be judged to be unreasonable.

### Welsh Language

There is no Welsh language impact

### Wellbeing of Future Generations (Wales) Act 2015

**The Proposed Draft policy will support a number of the wellbeing goals as set out in the Act.**

### Parameters of Fairness