

Introduction of CCTV in Private Hire and Hackney Carriage Vehicles

Licensing Committee

Date: 30 October 2019

Author: Head of Planning, Regulatory Services and Heritage

Wards: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 To consider the introduction of mandatory installation of CCTV in Private Hire and Hackney Carriage vehicles licensed by Swindon Borough Council, taking into account representations made during consultation and other material considerations.

2. Recommendations

The Committee is recommended to:

- 2.1 Note the representations made during the public consultation process, and
- 2.2 Note that the Licensing Manager will continue with the potential introduction of mandatory installation of CCTV in all licensed vehicles but will await the publication of formal government Department for Transport (“DfT”) guidance following their recent Task & Finish Group consultation document before formulating Swindon Borough Council’s policy, which will be brought before the Licensing Committee and will need to include consulting the Surveillance Camera Commissioner and the Information Commissioner’s Office (“ICO”) regarding Swindon Borough Council’s consultation, evidence and Data Protection Impact Assessment (“DPIA”).

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- 2.3 Encourage licensed drivers to enter into a voluntary agreement to install CCTV subject to appropriate conditions including,
 - 2.3.1 Registration with ICO, as a data controller
 - 2.3.2 Adherence to the Surveillance Camera Commissioners Code of Practice – documented processes and procedures in place, including their information security and data encryption arrangements
 - 2.3.3 Data Protection Impact Assessment
- 2.4 Grant delegated authority to the Licensing Manager to agree the wording of such conditions in respect of voluntary installation of CCTV.

3. Detail

Background

- 3.1 The Local Government (Miscellaneous Provisions) Act, 1976, augments the Town Police Clauses Act, 1847, requiring that a licence must be obtained in order to drive a Hackney Carriage or Private Hire vehicle. In determining whether a licence can be granted, the Council must be satisfied that the applicant is a 'fit and proper' and 'safe and suitable', (which is considered equivalent interpretation by the court), person to hold a licence.
- 3.2 The Town Police Clauses Act 1847 established a regime for the licensing of taxis with the objective of protecting the public. This principle has been upheld through the licensing regime ever since. For taxis, a member of the public stepping into a licensed motor vehicle driven by a stranger

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must be able to place trust in that individual to be competent and safe. Taxi drivers often convey elderly, young and vulnerable individuals for a host of reasons. The Licensing Authority has a responsibility in law to ensure that their safeguarding role is carried out adequately and effectively.

- 3.3 The installation of CCTV in licensed vehicles is not a new initiative, and nor is it now uncommon. Some Councils have found it to be a deterrent to would be trouble makers and a source of evidence in cases of disputes between drivers and passengers. If installed correctly, it can assist Police and the Licensing Authority with investigations providing clear and unambiguous evidence.
- 3.4 Swindon Borough Council currently licence 1034 private hire vehicles and 128 hackney carriages. The Licensing Authority receives complaints and allegations regarding behaviour of both drivers and passengers. Investigations become both difficult and time consuming without clear evidence. There have been occasions when a driver's licence has been suspended or revoked due to allegations of unacceptable behaviour.
- 3.5 At its last meeting on 5th September 2019, the Licensing Committee resolved to licence the front seats of Hackney Carriages, meaning that there is a partition in place splitting the seating, and allowing up to two individuals to be seated alongside the driver, separated from the other passengers in a confined environment. This practice is likely to increase the risk of potential conflict between driver and passenger, and adds to the justification for the mandatory introduction of CCTV in cabs.

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Consultation

- 3.6 On 14 June 2018, the Licensing Committee agreed to a period of public consultation on the potential introduction of CCTV in Private Hire and Hackney Carriage vehicles. Following clarification around data ownership and responsibilities a lengthy consultation exercise opened in July 2019, closing last month. The outcome of this exercise is reported at Appendix 1, which summarises each representation received and provides a response to them. The personal details have been redacted but most responses have been received from members of the public and also includes the Chief Constable of Police Wiltshire Police, 2 Superintendents, pubwatch and Locality Lead for SBC all supporting this proposal.
- 3.7 The responses can be usefully grouped into those from the trade and those from users\statutory bodies. All of the responses from the trade oppose the introduction of CCTV in vehicles, whilst all of those from users and statutory bodies support it. Statutory bodies include the Wiltshire Police, whose Chief Constable has personally responded. The concerns of the Trade relate to the necessity for the introduction and the costs associated with doing so.
- 3.8 The overarching principle behind the licensing of Private Hire and Hackney Carriage vehicles is one of public safety. It is clear from the responses that the public would feel safer with CCTV installed in cabs, indeed this may well increase patronage. The 8 members of the xxx licence holders in the trade who responded (which includes the Hackney Association representing all their members), oppose the mandatory installation of CCTV. though it is worth noting that
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some proprietors currently have CCTV in cabs voluntarily, and four individual drivers have been required to install CCTV in their cabs as a condition of their licence following allegations into their propriety.

- 3.9 Putting the safety of both the public and the drivers themselves first, and taking representations received into account, it is considered that the Council's responsibility to protect the public can best be engaged by the mandatory introduction of CCTV in cabs. The public and the Wiltshire Police are in favour of this measure. A mandatory requirement for CCTV in cabs has already been introduced by a number of authorities and works well. Public safety is improved and confidence in using a taxis has increased.
- 3.10 The type of CCTV system to be introduced would necessarily be required to be endorsed by the Council, and any equipment would require approval both prior to purchase and on installation. Any CCTV system must by law comply with data protection requirements and the Information Commissioner's Office 'CCTV Code of Practice'. If approved, information on compliant systems would be distributed to the trade in advance of the implementation date. The systems would be expected to represent the least cost option that will enable footage to be used in Court, and provide compatibility with the Council's requirements as data holder. It is estimated that the cost of a CCTV system would be between £400 and £600.
- 3.11 The introduction of CCTV in cabs would uphold public safety, provide additional confidence to users of the Council's Taxi fleet, supports the Council's role as a

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safeguarding authority, simplifies investigations and reduces crime and the potential for crime.

It is, however, not suggested that the mandatory installation of CCTV in taxis is introduced immediately. The imposition for the mandatory installation of CCTV in licensed vehicles would result in Swindon Borough Council becoming the Data Controller under the Data Protection Act. The Department for Transport (“DfT”) are currently working on guidance following the outcome of a ‘Task & Finish Group’ consultation on the use of CCTV in licensed vehicles. Guidance to come out from the DfT is likely to provide for national minimum standards to be applied including the type of CCTV suitable for use and the appropriate steps that Councils must take in order to comply with its obligations as Data Controller.

It is important that we do not introduce a regime which may need to be amended as a result of this guidance. Accordingly, it is recommended that this guidance is taken into account in formulating a policy for Swindon Borough Council’s, which will be brought before the Licensing Committee for consideration in due course. This policy will need to include consulting the Surveillance Camera Commissioner and the Information Commissioner’s Office (“ICO”) regarding Swindon Borough Council’s consultation, evidence and Data Protection Impact Assessment (“DPIA”).e.

4. Alternative Options

- 4.1 The Licensing Committee could decide not to agree to the process of the mandatory introduction of CCTV in taxis to

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continue. However, the use of CCTV in taxis is becoming standard practice in many authorities be that either mandatory or voluntary, and improves public safety and confidence in our fleet. This is particularly important in view of the recent decision to licence the enclosed front seats of Hackney Carriages for public use.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no direct financial implications to the Council arising from the report. There will inevitably be a direct financial implication for taxi licence holders arising from the recommendations as they would be mandated to purchase and install a CCTV system into their vehicle. It is considered that the considerable public benefit arising from the introduction of CCTV in cabs would outweigh any one off purchase and installation cost. A number of licensed vehicles already have CCTV installed on a voluntary basis.

Legal and Human Rights Implications

- 5.2 Legal and Human Rights considerations have been taken fully into account in compiling this report. A declaration has been made by the Secretary of State that the Licensing legislation is compliant with the Human Rights Act.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 All other implications are covered in the body of the report.

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Diversity Impact Assessment

- 5.4 A DIA has been completed and updated in light of the consultation responses, and is available on request. The DIA supports the public safety benefits associated with the installation of CCTV in taxis, providing additional protection for vulnerable people who use these vehicles.

6. Consultees

- 6.1 The Chief Legal Officer (Monitoring Officer) has been consulted in respect of this report.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix 1 – Consultation comments and responses
- 8.2 Appendix 2 - Response from Hackney Carriage owner/driver 29.6.18
- 8.3 Appendix 3 - Response from Swindon Taxi Association 18.7.18
- 8.4 Appendix 4 - Response from Hackney Carriage driver handed in by Chair of Association 18.7.18
- 8.5 Appendix 5 - Response from Taxi Licensing Forum 10.10.18
- 8.6 Appendix 6 - Response from Royds Withy King solicitors OBO four business owners active in the Swindon taxi trade 2.9.19

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- 8.7 Statistics of numbers of complaints received regarding both inappropriate passenger and driver behaviour

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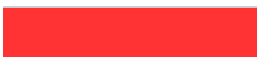
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Appendix One - Consultation comments and responses

1. Privacy Notice - Please read through the Privacy notice below.

https://www.swindon.gov.uk/directory_record/23355/licence_consultation_privacy_notice

			Response Percent	Response Total
1	I acknowledge the Privacy Notice		100.00%	18

2. Swindon Borough Council are considering making it a mandatory requirement for all Private Hire and Hackney Carriage Vehicles to have a suitable CCTV system installed as part of a Local Policy. The Council will only allow systems that comply with the information commissioners office(ICO) CCTV code of practice. Do you agree it should be a mandatory requirement for all licensed vehicles to have CCTV?



			Response Percent	Response Total
1	Yes		77.78%	14
2	No		11.11%	2
3	Not sure		11.11%	2

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3. If you answered yes or not sure to Question 2, do you consider the Policy should be the same for both Hackney Carriage and Private Hire?

			Response Percent	Response Total
1	Require CCTV in Private Hire Vehicles Only		0.00%	0
2	Require CCTV in Hackney Carriage Vehicles Only		5.56%	1
3	Require CCTV in both Hackney and Private Hire		94.44%	17

4. Whether a mandatory or discretionary Policy is agreed, the Council would have a list of approved cameras and fitters. To keep the system manageable, it is proposed that 4 systems would approved at any one time. Do you agree with this number?






			Response Percent	Response Total
1	Yes		55.56%	10
2	No, lesser amount is acceptable		27.78%	5
3	No, should be higher number		16.67%	3

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5. It is proposed that the local authority is the Data controller for all that is recorded. Do you think the data controller should be:

			Response Percent	Response Total
1	Local Authority		72.22%	13
2	Police Authority		27.78%	5
3	Third party independent company		11.11%	2
4	Not sure		11.11%	2
5	Other (please specify):		11.11%	2

Other (please specify): (2)




- 1 the licensing authority should be the data controller for licensing matters, but since external cameras may provide evidence in the event of collisions, and possible insurance discounts to offset the cost, but the external view are not subject to the data protection act, then a third party could act as data controller for those cameras to reduce demands on officer time, subject of course to a service level agreement being in place.
- 2 Whoever is te data controller for the CCTV on buses / trains as it is the same concept

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6. it is intended that the cameras will only record images except in the event that there is a specific threat to an individual's personal safety, for this a panic button could be utilised to record audio for a limited time only. Do you agree with this and if so, do you believe a panic button should be available to:

			Response Percent	Response Total
1	No, no audio should be recorded at any time		22.22%	4
2	Yes, panic button available to driver		0.00%	0
3	Yes, panic button available to passenger		0.00%	0
4	Yes, panic button available to driver and passenger		66.67%	12
5	Not sure		11.11%	2

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Appendix 2 - Response from Hackney Carriage owner/driver 29.6.18

29 June 2018-06-29

Response to Swindon Borough Council proposal for mandatory installation of approved CCTV in taxis

Dear Cllr Tomlinson

Having only being informed by Kathryn Ashton on Tuesday 12 June that there was soon to be to a proposal for CCTV use in taxis and private hire vehicles, I am shocked to find that this was already discussed by the Council some 2 days later, with the outcome of this meeting not yet known.

This gave the taxi trade, in my opinion, insufficient time to view the proposal and attend this meeting or prepare any response. I am very disappointed that there was no prior engagement or consultation on what is such a critical decision. At the very least there should have been a notification to everyone affected by this decision

Having read this proposal online, I am concerned how any decision may have been made without any information on which companies or products would be approved for use, the cost of installing such a system, how and when the cameras would be used, how the images would be stored and managed, how the images could be accessed and who would be able to access this data. All this is vital to determine whether this is affordable, feasible and manageable.

Attempts by councils to impose similar rulings regarding CCTV in both Southampton and Oxford were abandoned amid opposition from drivers and concerns from the Information Commissioner's Office (ICO) about data protection. The ICO ordered Southampton City Council to halt the use of cameras in July last year, saying it breached the Data Protection Act. Oxford City Council had also been issued with a preliminary enforcement notice by the ICO relating to its plans to make audio-visual recording compulsory in the city. The Information Commissioner's Office thought the audio-visual recording was excessive and not justified and constituted an invasion of drivers privacy when imposed against their will.

Similar plans to make all Bournemouth taxis carry CCTV cameras were shelved because of fears the move would invade people's privacy. In both Adur and London, concerns about risks of intrusion into privacy have led to voluntary introduction schemes for their drivers. In other areas concerns were raised about the fact that some drivers on minimum wage could not afford the cost to install CCTV and that some systems used were found to be draining the batteries as the CCTV is still running after the engine has stopped.

In Swindon, most Hackney Carriage taxis are privately owned and are often used for personal travel. Indiscriminate CCTV operation, in this case, would effectively record our daily routine and save images of our families and children. This constitutes an invasion of personal privacy that is unacceptable and illegal.

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In addition, many taxis are used for contract work for transporting schoolchildren and vulnerable passengers where filming may be considered inappropriate. There is no evidence that advice has been sought from the Education departments and Social Services here in Swindon or its neighbouring boroughs where our taxis are often used. Again, this is critical as many taxi drivers depend on these contracts as a source of income while the authorities rely on our transport.

Any compulsory operation must be limited to pick-ups from a taxi rank where the meter is running. At any other time, the operator must reserve the right to be able to switch the cameras off if he or she wishes. Additionally, there could be no compulsory audio recording without the consent of the driver. Unless any approved system can offer this facility, there would be an excessive and illegal intrusion in both personal and possibly passengers' privacy in that it will be filming:

- Drivers personal matters
- Private conversations of both drivers and passengers
- Images of young children passengers
- Passengers making payments by credit and debit card.

As such, I believe it would be impossible to insist on such a system without the ability to switch the device off where either its use is inappropriate or when requested to do so by a passenger. In addition, any audio recording should only be activated by drivers where they feel threatened and its use is justified. Therefore, any such device would need to be brought in on a voluntary basis with these functions. Consideration would need be given to the cost of installing and maintaining such a system with financial assistance given.

Further consideration would need to be made to the fact that any accidental breach of Data Protection laws and ICO conditions could lead to prosecution of individual drivers. Therefore, the Council would need to ensure that all drivers are fully trained in the operation of its approved systems and take responsibility for the ICO registration if this proposal is implemented in any way.

While this is my personal view, I believe that most owners and drivers take a similar stance against any compulsory policy of this nature. The Taxi Association has met with their members and I have no doubt that their views will be made clear to you shortly.

I wish for this letter to be placed on record and be included in the review of any decision made regarding this proposal.

Yours faithfully


Lic - Hackney Carriage owner/driver


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Appendix 3 - Response from Swindon Taxi Association
18.7.18

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Following the proposal for mandatory CCTV to be fitted in all taxis, our Members met to discuss their views at an Emergency Meeting, held in July 2018. There was considerable concern at the implications of being made to fit such systems to their own vehicles and the effect it may have on both their private lives and their business.

Due to the high purchase and running costs, most drivers also use their taxis when going about their private and domestic business. As most CCTV systems operate when the vehicle is running, the recording would be indiscriminate with the onus on the driver to prove they were not using the vehicle for the purpose of work if images were requested. This is something that may be difficult to prove prior to viewing and is perceived as an unacceptable invasion of privacy.

The local authority contracts undertaken by many drivers involve transport of vulnerable passengers both in Swindon and its neighbouring boroughs. These include disabled passengers, young children and those considered to be "at risk". The proposal does not consider this work in any way or address the implications of continuous operation of CCTV in areas that do not authorise its use where the driver may be required to switch off any recording device. It would be unacceptable for drivers to lose this valuable work due to the inflexibility of such a policy.

The inside of a taxi is often considered by passengers as a personal space, different to that say of a shop or public area. Often passengers will work on a laptop or conduct business while making their journey. Others may bring small children with them. Due to the restricted space inside a taxi, the cameras will be recording extremely close-up to the subject. Some may find this intimidating, particularly the ability to record sensitive information at such close range, such as phone numbers, information on laptops and tablets as well as card payments made in the taxi.

The trade felt that in each of these scenarios, there is a risk that an individual's right to privacy may be compromised and that the proposal had not demonstrated sufficient overwhelming risk or justification in Swindon that would override these concerns in its indiscriminate use and capture of images.

The cost implications have not been addressed either in the proposal. There is no indication which systems are likely to be approved, how much will CCTV installation will cost and how is to be funded? A mandatory system would effectively be "forced" on drivers and it would be unreasonable to expect drivers to fully fund this without first exploring how these costs could be mitigated through incentive schemes and public funding such as Community Safety Partnerships like in other areas.

The proposal does not indicate how the data and retrieval would be stored and managed, who is responsible for this and how the Council would manage the Data Protection and ICO registration aspects, giving adequate advice and training to all drivers and staff.

It would be necessary for all these issues to be considered along with an implementation plan proposed before a proper decision could be reached. The proposal does not contain such a plan, rather expecting Councillors to agree to an idea in principle, with no real idea of how feasible or manageable this would be in practice. This would effectively give delegated responsibility to the Licensing manager to have carte blanche to bring in whatever policy they deem suitable with no further consultation with the taxi trade.

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As with all other scheme introductions, there would undoubtedly be teething problems. However, in this case, it would be the drivers footing the bill for any losses incurred for any modifications as they will be financially responsible for the maintenance of any CCTV systems fitted to their taxis.

While there are clear benefits in having CCTV systems, there are also significant negative aspects to its implementation. To put it simply, as things stand, the concerns outweigh any benefits, particularly at a time when the trade is struggling financially. The proposal has not assessed the impact this may have on both the taxi trade and its customers, nor has there been enough consultation with the trade to find an acceptable way forward.

Our position, as the Swindon Taxi Association, is that we oppose any mandatory imposing of CCTV use on its members due to the overwhelming cost issues and operational concerns around both driver privacy and that of vulnerable passengers in their care. Therefore, we recommend that any use of cameras in taxis should be a matter of personal choice for the vehicle owners, with any voluntary implementation by the Council paying close attention to the concerns raised here.

Amy Lucas



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Appendix 4 - Response from Hackney Carriage driver handed in by Chair of Association 18.7.18



Following on from the 2 emails I forwarded to you on articles from the ICO I have some thoughts of my own which you may find useful to raise at upcoming meetings regarding the councils proposals on imposing cameras in Taxis.

Firstly, have the council considered that an independent survey should be done as it is not only the driver that is recorded but the passenger also, surely the public should be asked? A survey should be carried out of perhaps a thousand people, and not just residents of Swindon. People from all over the world come through the doors of Swindon Station, so a survey of just Swindon inhabitants would not suffice in my opinion.

Secondly, have the council put in place a dedicated team and 'qualified' in the storage of said data gathered from the proposed units.

Also, the cost and company or body that will carry out the installations of the cameras. What proportion of the fee to either the driver or owner will go toward the installation and will the council provide us with the details to prove that the company appointed have the necessary qualifications in this area?

And lastly..the knock on effect, 2 things spring to mind. As a driver that rents his cab be it private hire or a hackney carriage there will surely be a knock on effect on out lay. The owner of said taxi will want to recoup the monies he has spent on installation and other cost toward the cameras thus the renter costs will go up in weekly hire rent. And tampering....have the council considered that placing such expensive equipment in a taxi it is prone to be vandalised by the general public, I refer to those party goers or drinkers late of an evening that would take offense at being recorded, an intoxicated reveller wouldn't care less or think twice to damaging one of these expensive units, so who is then going to foot the bill to replace said unit. Which brings me onto my final point. The council in my opinion are now making our cabs and cars more vulnerable to having them broken into and theft. As we know leaving a sat nav unit or cash laying around on view in a taxi is prone to getting broken into, I refer to the crimes. [redacted] had to endure over the years of having his vehicles broken into. Thieves target taxis and by placing expensive cameras on show in taxis makes them more vulnerable..fact. again, who foots the bill for replacing the unit? and I'm also pretty sure an insurance company would dispute any pay out to let's say a vandalised window as the units were left on show.

I don't doubt you have already thought of all these points John, but if you haven't then hope they are useful.

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Appendix 5 - Response from Taxi Licensing Forum 10.10.18

Swindon Taxi Association CCTV Proposal Review Review and Summary

In his speech to the National Taxi Association AGM in 2015, the Surveillance Camera Commissioner said "If surveillance camera systems are to be mandated as part of the conditions of the licence, then it will require a strong justification and must be kept under regular review

He also went on to say "The issue here is who is the data controller? The data controller must protect the recording and ensure that it is only accessed if there is a need, e.g. complaint, and only accessed by an authorised person. No matter how funny the footage might be, having it on YouTube is unacceptable. If it is a local authority scheme, it is their responsibility. If you are fitting it, you are the data controller. Why is this important? Because any breaches of your role as data controller could lead to you being fined by the Information Commissioner".

Stephen McCaffrey, Head of Kings View Chambers & Taxi Defence Barristers Barristers, states that when a taxi or private hire driver is off duty, the continued use of CCTV recording is likely to be unlawful, unfair and excessive, in light of data protection and human rights legislation.

"The ICO's view is that in most instances, continuous recording CCTV systems in taxis and private hire vehicles are unlawful".

"Licensed holders need to take steps to protect themselves from complaints of excessive use of CCTV systems in their licensed vehicles. The use of CCTV in taxis must be limited to instances where it is necessary and proportionate. As such, CCTV should only be recording when you are working and switched off then you are off duty".

"Additionally, cases where CCTV systems in taxis are a mandatory requirement, the ICO's view is that the relevant data controller is the council not the individual vehicle licence holder. In other words, in most circumstances where a council instructs CCTV systems to be installed, the instructing council will be responsible for controlling and processing the data even though it is being recorded in a taxi or private hire vehicle".

Our position, as the Swindon Taxi Association, is that we oppose any mandatory imposing of CCTV use on its members due to the overwhelming cost issues and operational concerns around both driver privacy and that of vulnerable passengers in their care.

To put it simply, as things currently stand, the concerns outweigh any benefits, particularly at a time when the trade is struggling financially. We also feel that there is not enough justification for the invasion of privacy such a system would cause if forced on drivers.

Therefore, we recommend that any use of cameras in taxis should be a matter of personal choice for the vehicle owners, with any voluntary implementation by the Council paying close attention to the concerns raised here.

Andy Lucas
Secretary
Swindon Taxi Association
10 October 2018

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Swindon Taxi Association CCTV Proposal Review

Prepared for submission at the Taxi Licensing Forum 10 October 2018

Following the proposal for mandatory CCTV to be fitted in all taxis, our Members voiced the following concerns at the Emergency Meeting, held in July 2018.

- Background -** What justification is there for this to be forcibly imposed?
How will concerns of privacy invasion of both customer and drivers be addressed?
What systems are to be approved?
How much will CCTV installation cost and how is to be funded?
- Operation -** How will it work?
How will the data be stored and how long for?
How will the data be retrieved and who will have access to it?
Who will be responsible for the data and the data Protection?
Will full training be given to each driver in respect of data management and compliance?
- Privacy -** Will the system be operational all the time or can it be switched off when the vehicle is not being used for work?
Would its use constitute an unjustified invasion of drivers' privacy if its recording personal movements?
Will the system be able to record card payment transactions?
Will it be able to be turned off if the customer requests?
Has it been approved for used with NHS, Social services, Education and children's services in both Swindon and neighbouring local authorities where taxi contracts exist?
Could it result in loss of work and income through these agreements not existing?
- Costs -** Is the Council going to contribute to the cost of installing such a device?
Would having a device increase insurance premiums of have to be insured separately?
Would the visual appearance of such a device make vehicles a target for theft and vandalism?
How much damage would be caused to the vehicle from installation and removal and what would be the loss in future resale value?
- Vehicles -** Would the fitting of CCTV mean that that vehicles would need to be constantly running to avoid battery drain, wasting fuel and adding to local pollution?

All these concerns would need to be addressed as part of any consultation process on the proposal.

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Appendix 6 - Response from Royds Withy King solicitors on behalf of four business owners active in the Swindon taxi trade 2.9.19

• Introduction

This document has been prepared in response to Swindon Borough Council's (the '**Council**') consultation on its proposals to introduce CCTV monitoring to all Private Hire and Hackney Carriage Vehicles, for consideration by the Council's Licensing Authority and Licensing Committee.

This document has been produced by Royds Withy King on behalf of the following respondents who are prominent business owners active in the Swindon taxi trade:

- (i) (redacted)
- (ii) (redacted)
- (iii) (redacted)
- (iv) (redacted)

This document considers the questions asked by the Council in its consultation, and highlights the concerns that the respondents ('**our**' or '**we**' in this document) have with the proposed scheme.

• Executive Summary

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It is our belief that the Council's proposed mandatory requirements are an unnecessary and disproportionate approach, and that they will have a detrimental impact on the Swindon taxi trade. We are not opposed to CCTV in principle, but we do not believe that any such scheme should be mandatory. If it were to be mandatory, do not believe that individual drivers or taxi firms should be expected to carry the cost of implanting it.

The proposals appear to have significantly underestimated the financial and regulatory burden on the Council itself. It is unclear how the proposed scheme will provide sufficient value-for-money to ratepayers at a time when local authority budgets are under increasing pressure.

The financial costs of implementing this scheme will be significant for taxi firms, and any perceived financial benefits are unlikely to outweigh those cost. Given the increasing economic uncertainty around the impacts of Brexit, and what effect that will have on consumer and business confidence and spending, this additional overhead could not come at a worse time for taxi firms.

Central government has been consulting on its own policy in this area, so given the significant costs involved we believe it is better to wait for a national policy to evolve, to avoid wasted or duplicated costs should a national scheme be mandated that differs in approach or requirements to that proposed for the Council.

Finally we have concerns around the nature of the consultation itself, in particular the scant information available to respondents to enable a full analysis of the

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impacts to be understood, meaning that respondents have not had a fair opportunity to understand and comment upon the proposals nor their full impact.

As a result of these concerns, we believe that the Council should review whether a mandatory scheme is required at all, and whether it is affordable in the current climate. If it does wish to proceed with such a scheme, we would encourage the consultation process to be re-opened and for there to be closer collaboration with the local taxi industry to develop a policy that works for drivers, business owners and ratepayers.

<ul style="list-style-type: none">• Substantive Responses to Consultation Questions
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Consultation Question 1: Swindon Borough Council are considering making it a mandatory requirement for all Private Hire and Hackney Carriage Vehicles to have a suitable CCTV system installed as part of a Local Policy.

The Council will only allow systems that comply with the information commissioners office (ICO) CCTV code of practice.

Do you agree it should be a mandatory requirement for all licensed vehicles to have CCTV?

No, we believe that this should be a voluntary scheme only. It is neither necessary nor proportionate to require CCTV to be installed in all Private Hire and Hackney Carriage Vehicles ('**taxis**').

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Consultation Question 2: If you answered yes or not sure to Question 2, do you consider the Policy should be the same for both Hackney Carriage and Private Hire? *

- Require CCTV in Private Hire Vehicles Only
- Require CCTV in Hackney Carriage Vehicles Only
- Require CCTV in both Hackney and Private Hire

If the mandatory installation of CCTV in all taxis does go ahead, then it should be in both Hackney Carriages and private hire vehicles to ensure an equal playing field for all drivers and businesses.

Consultation Question 3: Whether a mandatory or discretionary Policy is agreed, the Council would have a list of approved cameras and fitters. To keep the system manageable, it is proposed that 4 systems would be approved at any one time. Do you agree with this number?

- Yes
- No, lesser amount is acceptable
- No, should be higher number

It is unclear what 'systems' the Council is referring to.

Accordingly it is not clear in what way this affects individual taxi drivers, and it is not possible to give a firm view on this. There are different considerations if we are looking at simply the camera equipment (where a number of providers may be desirable) or the IT system underpinning the recording and

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storage of recordings (which is a decision more for the Council).

From a driver perspective, our primary concern would be to ensure that there are sufficient options in terms of camera equipment providers and approved fitters to ensure drivers have the ability and capacity to comply with any requirement to fit CCTV prior to the implementation date of the policy. If taxi drivers are to contribute to the costs (which we do not agree with), we would also want to ensure that there are sufficient options to ensure that prices are competitive.

From a ratepayer perspective, we would be concerned if 'systems' referred to the back end IT system (rather than the camera hardware) and if multiple systems were used concurrently. This would be costly to procure, may cause interoperability issues, and may deliver inconsistent outcomes if some drivers are using one system and others are using another.

Consultation Question 4: It is proposed that the local authority is the Data controller for all that is recorded. Do you think the data controller should be: *

- Local Authority
- Police Authority
- Third party independent company
- Not sure
- Other (please specify):

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This is a false option. Who is (or isn't) the data controller is not a choice that the Council is able to make.

If the Council is determining when the data will be collected, how it will be collected, and who will have access to the data, it will be the data controller. It cannot elect not to be.

[Guidance](#) from the Information Commissioner's Office is very clear that where a council instructs systems to be installed, the council is responsible for the data. ICO has been very explicit that "*Councils need to make sure they understand this part of the law*".

HM Government has also re-affirmed that authorities attaching CCTV conditions to the issue of licenses will assume the role of a 'systems operator' for the purposes of compliance with the Home Secretary's Surveillance Camera Code of Practice. This means that it must have regard to that Code, and further emphasises that the Council would be a data controller for the purposes of the data protection legislation.

Consultation Question 5: It is intended that the cameras will only record images except in the event that there is a specific threat to an individual's personal safety, for this a panic button could be utilised to record audio for a limited time only.

Do you agree with this and if so, do you believe a panic button should be available to:

- No, no audio should be recorded at any time

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- Yes, panic button available to driver
- Yes, panic button available to passenger
- Yes, panic button available to driver and passenger
- Not sure

We can only echo the Surveillance Camera Commissioner's view on this issue - audio recording of passengers' private conversations "*is extremely intrusive and requires strong justification*". As we do not feel that there is strong enough justification to warrant visual recording, we do not feel that audio recording is justified either.

The Council may already be aware that a Southampton Council policy to require audio-recording was ruled to be disproportionate by the Information Rights Tribunal. Whilst the Tribunal acknowledged that in some circumstances audio recording could be justified through 'panic buttons', it did query the deterrence effect of such a mechanism or its likely effectiveness given it is likely to miss crucial parts of conversations and rely on an intoxicated or otherwise vulnerable passenger activating it.

We are also concerned that the installation of a panic-button activated system will be even more expensive than the Council's current indicative costs and that its installation will be more intrusive, require additional damage to the taxi itself, and have additional points of failure increasing the likelihood of increased maintenance costs.

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<ul style="list-style-type: none">• Additional Responses to Consultation

Is a mandatory policy legally permissible?

Both the law and the ICO is clear that organisations have to think through the privacy implications carefully before implementing any type of CCTV or surveillance system. Processing of any data must only occur when it is both *necessary* for its purpose and *proportionate*.

Is it necessary?

The consultation states the justification for the policy as being that “*The installation of CCTV in licensed vehicles can be both a deterrent and a source of evidence in cases of disputes between drivers and passengers*”. The Consultation uses emotive topics such as risk to the young, elderly or vulnerable passengers, and child sex exploitation, as further justifications for a mandatory scheme.

At this point it is worth noting the views of the Information Rights Tribunal in the *Southampton Council* case. The Tribunal stated that, whilst a council must generally have due regard to the need to do all it can to prevent crime and disorder in their areas, its powers to impose taxi licence conditions for the purposes of promoting public safety are strictly limited to promoting public safety in connection with the use of taxis in particular. Accordingly the justification for imposing a CCTV system must be based on real risks to drivers and passengers, and issues of wider social utility (such as supporting police investigations or safeguarding issues) are not a valid justification for ‘necessity’.

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It is not clear what data exists that leads the Council to consider that there are particularly high risks associated with taxi use in the Swindon area, such that a mandatory CCTV scheme is *necessary*. The necessity needs to be based on data, not perception, and be driven by the needs of the local area, not national statistics.

By implication for a mandatory scheme to be truly seen as necessary, there ought to be some confidence that it will actually work to achieve its aim. We have serious doubts, for example, that a mandatory CCTV scheme would deter drivers who intentionally set out to cause harm. Any system that can be turned off or on by a driver is open to abuse, and any system that is reliant on data being stored in the vehicle itself is open to being tampered with (or accidentally or maliciously). Nor would we expect intoxicated and aggressive passengers, acting on the spur of the moment, to pay much heed to whether they were being recorded. Clearly any individual masquerading as a taxi is not going to use such a system. In our view a mandatory CCTV system is unlikely to be an effective deterrent to the types of crimes that cause serious harm, and in some ways could give passengers (and drivers) an illusion of security that does not exist.

Is it proportionate?

The Council will need to take into account the effect that each aspect of the CCTV system may have on individuals, and whether their use is a proportionate response to the problem identified.

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The Consultation is unclear on the intention of the Council in terms of when the CCTV system will be in operation. The Consultation simply states that it will “*need to be recording at all times when the vehicle is being used as a licensed vehicle*”. This is vague as to whether this means continuous recording whilst the vehicle is being used (ie engine turned on), or whether the driver will have some form of override to signify when they are simply waiting for a fare or using the vehicle for personal use.

The ICO’s position is that continuous recording is disproportionate – the system will need to be able to distinguish when the vehicle is in use as a licensed vehicle, and when it is being used as a private vehicle (or the driver is ‘off duty’). However to the extent that there is a manual override, as noted above this negates some of the perceived deterrence benefits of CCTV.

Returning to the point that there ought to be an evidence-led justification for any scheme, the data should also demonstrate that the scheme is a proportionate measure. I.e, that the Scheme does not penalise all drivers based on isolated incidents, or that there is a legitimate business case for it. For example we would expect the Council to be able to demonstrate:

How many serious offences against drivers (or passengers) have been recorded in the past 12 months as a proportion of total drivers and passenger journeys, and that this is a sufficiently high rate to require a mandatory CCTV scheme (one off incidents draw headlines, but to our knowledge such incidents are rare).

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The volume of minor offences (such as making off without payment), and whether the financial impact of these justifies a mandatory imposition of an expensive CCTV scheme (a voluntary scheme would enable drivers to install this themselves if they saw a business need).

Fundamentally the imposition of a mandatory CCTV scheme needs to be justified by the existence of a real (and not simply perceived) problem that makes CCTV system a necessary, justified and effective solution. This needs to be an evidence-based decision, and the Council must be sure that the intrusive nature of a CCTV System will be outweighed by more than negligible gains.

The Council should consider (and the consultation ought to encourage proposals for) other, potentially less intrusive solutions that could achieve the same aim. For instance the Licensing Authority has previously stated that it has deployed CCTV on an ad hoc basis to address concerns with regards to specific drivers, and it is not clear why that more targeted approach cannot be continued.

What is the real cost?

Even if we assume that a CCTV system is both necessary and proportionate, we are concerned that the costs to both drivers and the Council are being underestimated.

Cost To Drivers

We have seen suggestions from the Licensing Authority that the cost to individual drivers will be around £600.

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Experience elsewhere suggests that this figure is too low. For example in Warrington, the purchase costs of the equipment alone was estimated to be £519 exc VAT¹, and this excludes installation, maintenance, impact on insurance premiums from installing non-manufacturer standard equipment, or the impact on running costs such as poorer fuel economy, and future upgrade costs if Council policies or system requirements change. Any system with a panic button or audio recording is likely to be even more expensive to install and run. We are also concerned that the Council may increase general licensing costs in an effort to recoup the costs if implementing the scheme.

Costs to the Council

We have seen suggestions from the Licensing Authority that the scheme would have a limited or no cost to the Council. This feels somewhat optimistic. Potential costs to the Council include:

Cost of undertaking the data processing impact assessments. GDPR requires that a DPIA must be carried out prior to the roll-out of any intrusive surveillance system - CCTV in taxis is likely to be one of these systems. This must be done as a first step as it influences all procurement and system infrastructure decisions – ‘privacy by design’ rules need to be adhered to.

Costs of procurement exercises. The Council will need to identify, and contract with, panels of suppliers of equipment and installation services (and re-tender these on a regular

¹ <http://www.warrington.gov.uk/download/downloads/id/17821/faqs.pdf>

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basis), and it will need to create minimum standards for the Council and undertake due diligence of potential suppliers.

Costs of complying with its obligations as a data controller – there are numerous direct and indirect compliance costs which are set out in more detail further below.

Third party costs. If the system requires third party hosting of recordings, there will be a cost to procuring such storage.

Costs of promoting the scheme to drivers and passengers.

Costs of monitoring and enforcing the scheme.

It is also likely that if future system upgrades are required, for example in the event of the implementation of a national scheme, the Council would be expected to cover the cost of replacing equipment that has been bought by drivers in good faith.

Clearly the notion that this would be a zero or even low cost scheme for the Council is unlikely to be the case in reality, either in its implementation year or on an ongoing basis. Experience from other councils is instructive – for example the initial costs to the council for the Warrington scheme have been estimated to be at least £320,000².

Implication of council's role as the data controller

As noted above we believe that the Council will be the data controller, which carries a compliance cost in terms of

² <https://www.warringtonguardian.co.uk/news/17427347.new-taxi-cctv-system-could-cost-320k-to-install/>

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human and financial resources. It also carries an assumption of significant risk. As a data controller, the Council would be fully liable for GDPR compliance across the full system – including for acts or omissions of drivers and any third party system providers.

The following are just some of the responsibilities (and areas of cost) that the Council will need to factor in if it wishes to implement a mandatory scheme:

- (v) Costs of taking appropriate mitigating actions to minimise the risk of the loss or misuse of personal data captured by CCTV
- (vi) Costs of producing privacy policies and data processing notices (including stickers for taxis)
- (vii) Cost of ensuring that appropriate legal protections are in place between the Council and its processors (including any individual data sharing agreements that are required with drivers or taxi firms)
- (viii) Resource costs for council employees to manage the scheme (including legal and administrative costs relating to data subject access requests and complaints)
- (ix) Costs of dealing with data subject access requests
- (x) Costs of ongoing monitoring and audits of the system providers
- (xi) Incremental insurance costs for the Council (eg cyber security insurance)

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(xii) Costs of dealing with data breaches (including risk of penalties)

As the data controller, the Council will need to ensure that the systems chosen to implement the system have been designed with privacy in mind and that it has sufficient control and comfort over the security of the system and component devices. This points to a centrally managed system, with the associated costs to the Council. Decisions will also need to be made, for example, over whether data storage is secure enough if recordings are stored on devices in the vehicles themselves (which seems to be the Council's intended approach) given the relative ease of access to both drivers and malicious third parties.

However secure and robust the systems may be, it will be impossible to rule out accidental or wilful data breaches given the number of parties involved in the process from drivers upwards. As the recent *British Airways* and *Marriot International* decisions amply demonstrate, the ICO is preparing to issue significant multi-million pound penalties for data breaches. These cases, and enforcement action by other European regulators, make clear that ultimate responsibility for third party IT systems and legacy IT systems (given it has been indicated that the Council may 'grandfather' any CCTV systems that taxi drivers may have voluntarily installed) sits with the data controller – the Council.

Conversely, should the Council elect to make the scheme voluntary then compliance risk (and cost) shifts to individual drivers or taxi firms.

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Should drivers carry the cost of implementation?

We believe that it is unfair to expect drivers to pay for the costs of implementing a scheme that is being driven by the Council and not by industry or customer demand, particularly if the scheme is also being driven by a desire to achieve cost savings for the Council. A voluntary scheme would let those drivers or taxi firms who have a business need to install a CCTV system do so, and market forces will demonstrate whether the public prefers to use drivers with a CCTV system or whether they prefer the privacy afforded by drivers without such monitoring.

Any argument that these are being installed on private vehicles, so shouldn't be funded from the public purse, ignores the fact that:

the Council is partly justifying the scheme on cost savings that the Council might generate (but which haven't been paid for by the Council);

another justification is a desire to meet the Council's own public safety obligations;

installation of the system will damage and potentially devalue property of private individuals; and

the system will ultimately be controlled by the Council, and can only be used at the Council's discretion, so it is not at all certain that the drivers or taxi firms will be able to use the system in a way that generates a return on investment.

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Is this the right time?

Even if the Council can satisfy itself that a mandatory scheme is necessary and proportionate, or that it is affordable, or that the additional legal liability is justified, it should also consider whether this is the right time to implement such a policy.

Economic uncertainty

With the recent change in political leadership in Westminster, it is looking increasingly uncertain that we will avoid a No Deal 'Brexit' on 31 October 2019, and consequently we are entering a period of extreme economic uncertainty. This is already having negative impact on market confidence and economic forecasts. Any additional costs placed on taxi drivers at this time is likely to seriously undermine the economics of the industry, and whether it even remains a viable business model for some drivers. Not only does this endanger livelihoods, but it may result in less choice and capacity for the travelling public.

Even aside from Brexit fallout, local authority budgets are likely to remain constrained for the foreseeable future so we query whether the expense of implementing (and then maintaining) a new scheme is something that should be a priority for the Council at this time. It is disappointing that the consultation hasn't asked ratepayers whether a scheme should be implanted at all, particularly if it means reduced spending on essential local services or higher council tax rates.

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Central Government Policy

Even aside from the economic environment, it may be prudent to pause development of a Council-led scheme whilst we wait for central government to consider whether it is going to implement a national framework policy (with national framework standards that local schemes would then have to comply with). The Department for Transport is still considering responses from its consultation earlier this year on draft statutory guidance, and in its response to the Task and Finish Group On Taxi And Private Hire Vehicle Licensing report (February 2019), it left open the suggestion of a mandatory national scheme.

It would seem counter-productive for the Council to implement a costly scheme now that could be rendered obsolete by new national requirements, particularly as the Council would likely need to meet the costs of upgrading authority and driver equipment installed in good faith to meet the Council's proposed scheme.

We suggest that, if the Council does wish to pursue a mandatory CCTV scheme, it waits for the outcome of the Government's consultation and emergence of any national standards. At that point it would seem sensible to undertake a comprehensive consultation with the local taxi industry to agree how such a scheme can be best implemented, in a way that suits all parties.

Nature of Consultation

In terms of the current consultation process, we are concerned that the Council has taken a high level approach and that there is so little information available in regards to

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what any CCTV system would actually involve. For a decision of such importance, we would have expected a fairer, more informative and more collaborative consultation process.

The case of *R (Moseley) v Haringey London Borough Council* (2014) outlines various fairness requirements which need to have been followed by the Council:

- (xiii) *“fairness will require that interested persons be consulted not only upon the preferred option, but also upon arguable yet discarded alternative options.”*
The Council has a duty to consider the needs of all of those who will be affected, and it cannot just assume that there will only be one outcome from the consultation.
- (xiv) If someone is likely to be worse off as a result of the potential change, they should be identified and consulted. This needs to be an informed and genuine consultation, which the Council’s current consultation falls some way short of for the reasons outlined below.

Examples of issues that potentially make the consultation unfair are:

- (xv) We do not feel that this consultation process has given respondents sufficient information about the actual solution proposed, nor does it set out what other options have been (or could be) considered. In our view it has not been particularly well publicised nor has the Council taken any real steps to engage with the industry at large.

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- (xvi) The nature of the consultation gives a perception that the Council has made a decision on what policy to implement and is simply seeking supporting comments to justify that decision – ie it is not a genuine consultation aimed at canvassing a broader range of opinions that will then be given appropriate consideration. For example the consultation form contains leading questions that only let respondents answer from a range of pre-determined answers, and there is no general question on whether the policy should be implemented at all (the closest we come is whether or not the scheme should be mandatory, which infers that a scheme of some description will still be implemented even if its not mandatory).
- (xvii) a number of questions suggest that the Council has not fully considered the ramifications of the policy it is proposing, nor the legal obligations and financial liabilities it will place upon the Council should it be adopted. For example the questions asking respondents who they think should be the data controller, or how many systems should be made available, suggest that the Council hasn't appreciated its duties or responsibilities under the GDPR or understood the guidance from the ICO and Surveillance Camera Commissioner. It would be unfair to give weight to responses based on incorrect assumptions.
- (xviii) The consultation questions assume a level of legal and technical knowledge that most respondents will not possess. It is also unclear how, if views of the

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wider public are genuinely being sought, lay persons are meant to understand what being a data controller means, or even the distinction between Hackney Carriages and Private Hire vehicles, without the Council explaining what these terms mean.

(xix) It is not possible to give an informed response to many of the questions as the consultation lacks detail around the proposals (for example what system the Council is proposing to use, how data will be stored, in what circumstances information will be disclosed and so on). Some additional information can be gleaned by working through the minutes of meetings of the Licensing Committee over the past few years, or quotes in newspaper archives, but the general public is unlikely to be so diligent.

We would invite the Council to undertake a fuller and more comprehensive consultation before making any decision on whether to impose a mandatory CCTV policy and what such policy should encompass.

Royds Withy King

2 September 2019