

17 May 2019,

Dear [REDACTED],

Questions from Scrap Mersey Tolls about use of Traffic Enforcement Centre for enforcement of Mersey Gateway Crossing penalties

Thank you for the 'email' of the 15th. Though we are relieved to at last get some sort of reply from the TEC, what you say is in no way sufficient to either answer our questions or allay our concerns. We have already raised our concerns with the Justice Secretary, the chair of the Justice committee and the Traffic Penalty Tribunal.

We are aware of what is happening as our members share their experiences on Facebook and send messages and emails to us. There is a massive enforcement operation being carried out with the aid of the TEC. It is bad enough that people are being worried and bullied, and faced with demands for very large sums of money for what we believe are penalties that are not enforceable. But it is scandalous if the rules for the use of the TEC are being broken and this is being hidden.

Not only do the TEC seem to be carrying on regardless, the TEC are now at the request of Merseyflow refusing out of time applications even though what we believe to be valid reasons have been given on the TE7 forms. **So unless we receive proper answers in the near future we will be sharing our concerns more widely.**

The rest of this document details why we still have concerns.

A. Use of Email

I sent you a message on the 14th via Resolver-

"I have received two messages from you, though at first I was not aware that the message with the password was also on Resolver as I was looking in my emails rather than in the Resolver case file. You have sent me a reply to what you say is our "recent complaint received on 7 May 2019".

Your email says "if you have any questions please email [REDACTED]". It does not make it clear where any emails or messages for [REDACTED] are to go to. Do they go via Resolver or do I use replies@optic.justice.gov.uk, or do I use some other email address?"

You have not replied and on Wednesday sent me another pair of messages via Resolver. Sending a message which refers me to a second message sent in the same way, then I have to click on a link and enter a password to see your 'email', which is only available for 7 days, is a very roundabout way of doing things and I am now emailing you direct.

B. Date of complaint

Your email of the 15th starts "Thank you for your recent complaint received on 7 May 2019".

That is not a good start as it seems that the TEC is distorting what has happened even before we get to the main part of our complaint.

The TEC will be aware that some of these issues were first raised by us last year, and following replies which did not answer our questions we summarised them in a document that we sent to the TEC on 31st March. There was another non answer on the 16th April and I then complained through Resolver on 20th April. This is in no way a recent complaint to the TEC.

### C. FoI request

It was not part of our complaint, but your reply covers the FoI request for figures that we made on 9th May. You say that this "will be responded to within the statutory time limit of 20 working days, by 7 June 2019. Requests are of course supposed to be dealt with on a timely basis and I am concerned with what has recently happened with a request made by [REDACTED] on 16th April, your reference 190416024. After waiting a month, he received a reply saying "I am unable to answer it without further clarification." It is totally unreasonable to wait a month and only then ask for clarification. I am also concerned as the clarification seems to involve the issue that is our main complaint - who are the TEC dealing with as the 'authority'.

### D. Our Fundamental concerns

Our complaint sought answers to various questions and the answers that you have given seem to be trying to avoid the heart of the matter. The guide which we have seen, and which you do not mention in your reply, seems to say that the TEC facilities for issuing Recovery Orders are only available to local authorities. In practice those facilities have been used by Emovis who for the Mersey Gateway tolls and penalties operate under the name Merseyflow. This use of your facilities by Merseyflow / Emovis seems to have been deliberately obscured on the TE3 Recovery Orders (which Merseyflow have been issuing in the name of the TEC) by showing the 'applicant' name as "Mersey Gateway Crossing".

We believe that the Recovery Orders though not really issued by the TEC should be issued in a form agreed by it, as should the TE9 witness statements that are supposed to go out with the Recovery Orders. Though it seems that either the TEC did not check what Merseyflow was going to be sending out as TE3s and TE9s, or that the checking was careless, as in the early stages, the TEC was rejecting some of the completed TE9s as being on the wrong form. Apart from any other errors, there is a mistake with the boxes, a mistake which has apparently not been rectified. As we have pointed out bizarrely both the Warrant of Control and Notice of Enforcement actually reveal that it is 'Merseyflow' doing all this. The latter document is apparently outside the control of the TEC but I assume that the Warrant of Control is supposed to be as approved by the TEC.

The TEC must know full well that Emovis / Merseyflow is not a local authority, yet not only have you allowed them to use your facilities, it seems that the TEC has covered up what has happened and is still covering it up. Various messages to us from the TEC have referred to the 'local authority' without naming it. We have asked you what is the name of the local authority and for the contact details that you have been using. Your reply to that is to refuse to give us the contact details.

Your reply as a whole only reinforces our belief that what has been happening is more than incompetence at the TEC, it is a cover up of the misuse of your facilities.

### E. Our questions and your reply matched to the questions

The format of your reply does not match the seven numbered questions that we put to you on 31st March (which had been asked at various earlier times but we had not got proper replies). This tends to mask the extent to which you have not really replied to our questions, so below I have repeated the questions and tried to match what you have said to the questions asked.

1.1. Our question - *Which regulations say what organisations can use the TEC procedures for recovery of penalty charges, including penalties in respect of 'road user charges'? Can we have a copy of these regulations.*

Your reply - There is no explicit answer. You give us links to three Acts and two sets of rules. But it is not apparent which of these, if any, answers this question.

You also say that "Any applicant wishing to register a penalty charge through the TEC must adhere to the guidelines set out in the TEC applicant user guide." You do not give us a copy of the current user guide and even if you had I am not sure that this 'guide' would be classed as 'regulations'

Near the start of your reply there is a long paragraph about the setting up of the TEC and what happened later. It refers to traffic contraventions and to bus lanes. It is unclear what the purpose of this history is as it makes no mention of penalty charges related to unpaid road user charges.

Are you going to give us a proper answer to this fundamental question? Can we have a copy of the regulations?

Towards the end of your reply you also give us a link to "the regulation that the Mersey crossing comes under". The link is to The Mersey Gateway Bridge and the A533 (Silver Jubilee Bridge) Roads User Charging Scheme Order 2017. That Order in dubious circumstances was revoked by an Order made on 19 April 2018. Are the TEC saying that the 2017 Order still applies?

1.2. Our question - *We believe that though the 'respondent' gets the impression that TE forms are sent out by you, the TE forms in respect of the Mersey Gateway are actually sent out by another firm (possibly Capita) on the instructions of Emovis Ltd (who use the name 'Merseyflow'). We believe that the enforcement Order and the regulations do not permit the use of the TEC (or any County Court) by other than a local authority. So under what legal authority and when did the TEC approve this arrangement? And which body did the TEC make this arrangement with?*

Your reply - There is no explicit answer to any of what we asked for - the legal authority, when and which body.

Are you going to give us a proper answer to this question?

2. 1. Our question - *We believe that the TE forms used by Emovis Ltd do not comply with the regulations. So how and when did the TEC approve the use of these particular TE forms for use for the Mersey Gateway crossing? And who did the TEC agree the forms with?*

Your reply - Again there is no explicit answer. Though you do say two apparently contradictory things. You say "The TE forms are initially sent out by the Local Authority who has registered the penalty charge, alongside the order for recovery, which The TEC are not in control of." You also say "The forms are legal documents which were approved as part of the regulations for the Department of Transport. They are governed by Civil Procedure Rules (CPR) and are unable to be amended."

Are the TEC not answering our questions at 2.1 because the TEC never approved or agreed the forms? If so then that seems to go against what we understand the rules to be. So have the TEC failed to comply with the rules? On what basis can the TEC believe that it is appropriate that an official TEC form that says "Dart Charge" is used for a different crossing?

2.2. Our question - *It seems that the TEC may have drawn some of the errors to the attention of whoever is sending out the TE forms. Did the TEC do so? If so then what errors were pointed out and when and to whom were the errors pointed out?*

Your reply - Again there is no explicit answer. Why is the TEC not willing to answer? Is it because the forms would then be invalid, and you are covering this up?

2.3. Our question - *One of the errors that we pointed out to TEC is the web address - [www.hmcourts-service.gov.uk/cms/tec.htm](http://www.hmcourts-service.gov.uk/cms/tec.htm) - given on the TE3 for downloading a copy of the TE9 form. The web link did not work and still does not work. Another error on the TE3 lists the applicant as "Mersey Gateway Crossing". That is a bridge and not a legal entity and can not be an applicant. This error has not been corrected. An error on the TE9 was that it did not correctly list the grounds that could apply as the ground "The penalty charge has been paid in full" was incorrectly shown as a sub option to "I appealed to an adjudicator...". Someone at the TEC spotted this error after the forms came into use. You then told respondents that they had to use the TE9 forms that are meant for the Dart Charge and have "Dart Charge" written on them and which is the only (non parking) TE9 that people can [download from your site](#). However, Merseyflow when they send out TE3s are still issuing the incorrect and misleading TE9s forms. So why are the TEC allowing the use of a form that you told us in November was wrong?*

Your answer does not say why you are allowing the use of an incorrect form.

It makes no mention of the error in the web address, and unbelievably the TEC seems to have not corrected this error. It would have been a few minutes work to make the link work, but you have done nothing.

Your answer says nothing about one of the options on the TE9 being incorrectly shown as a sub option.

As with 2.1 above there is an implication that the TEC is saying that the forms are nothing to do with them, despite what I think is a requirement for the TEC to approve the forms before they come into use. It is incredible that anyone could be allowed to send forms out which carry the imprint of the court, yet the court has not seen the layout. Are you going to give us a proper answer?

(The point about the applicant name on the Recovery Order overlaps what we asked at 4.2 and I have covered that there.)

3.1. Our question - *The Warrant of Control that is being shown by debt enforcement officers is not on paper, it is on a hand held device. Is it allowed that the warrant is not on paper? If so, then which regulation authorises this?*

Your reply - "The warrant must be enforced as a county court warrant can be in electronic format in line with CPR."

(In your reply you use both the terms 'warrant of control' and 'warrant of execution', we have assumed that both terms are referring to the same thing.)

You do not say which 'CPR' you are referring to. I assumed that you must mean Part 75 - Traffic Enforcement, but I can not find anything in that which explicitly allows this. Can you tell me which regulation you are referring to.

3.2. Our question - *The form of the electronic Warrant of Control does not explicitly say that it has been issued by the court, it is very brief and could easily be made up by anyone. Is this the Warrant of Control as authorised to be used by the TEC? If it is then can we have the information which shows where this particular format was authorised?*

Your reply - You do not seem to have answered this, unless it is covered by "The warrant must be enforced as a county court warrant can be in electronic format in line with CPR." If it is covered by that, then as already stated we need to know which regulation. If in fact this regulation, wherever it is, does not cover what is shown on the electronic version, then we ask again how was this very brief format authorised?

(Note that this part of your reply goes on to say "The warrant must be forwarded to a certificated bailiff for execution". I assume that this is a slip, because it is enforcement agents that are used by Merseyflow not 'certificated bailiffs'.)

4.1. Our question - *Both the Warrant of Control and the Notice of Enforcement give the applicant name as "Merseyflow", this is a different applicant name from that used on the TE3 Recovery Order - "Mersey Gateway Crossing". So where in the Regulations is it allowed that the applicant name can vary between the Order and the subsequent Warrant of Control and the Notice of Enforcement?*

Your reply - You have not explicitly answered this. It may be that your reply relating to our question at 2.3 is supposed to cover this, but it does not. Are we going to get a reply?

4.2. Our question - *In any case we believe that neither "Mersey Gateway Crossing" nor "Merseyflow" can be a valid applicant. So where is the legal authority for the use of either of these names on the Recovery Order, Warrant of Control and Notice of Enforcement?*

Your reply - "The applicant name on the warrant of control and the order for recover is a known query which is being investigate by the chief adjudicator. They have requested that they have clear directions from the policy team."

This is meaningless. You say that this "is being investigate by the chief adjudicator". I assume you mean that it is being investigated by the Traffic Penalty Tribunal. They have been aware of this issue for a long time, as we and at least one appellant have drawn it to their attention. It is in our view relevant to the issue of whether there has been 'procedural impropriety' but our questions were addressed to the TEC not the TPT.

You say that the chief adjudicator "have requested that they have clear directions from the policy team". I assume that this 'policy team' is part of the TEC. The Tribunal should not be taking 'directions' from the TEC, particularly when it seems that the TEC is covering up what seems to be use of the TEC which is outside the rules.

You have not answered our question of what is the legal authority for this. Will you answer?

5.1. Our question - *The Notices of Enforcement do not quote PCN numbers (which on the Gateway begin 'XM') and instead quote a reference such as "8327733" which the 'respondent' can not recognise. This means that the system is wide open to fraud and abuse, so which regulation allows that money is demanded with dire threats but without quoting a meaningful reference?*

Your reply - You have not explicitly answered this. Are we going to get a reply?

5.2. Our question - *The people who claim to be enforcement agents have in some cases been using "Notices of Enforcement" or "Removal Notices" to demand money in respect of PCNs which have been cancelled. As the demand is either to pay by cash or bank transfer to a bank sort code that is given to them by the 'enforcement agent' how does the person know that a fraud is not being committed?*

Your reply - You have not explicitly answered this. Are we going to get a reply?

Some of the forms that our members are seeing are suspicious. For example recently one of our members was given a 'Final Notice' that said that the 'client was "HMCTS Cheshire" with a meaningless reference number and was verbally told that it was for "Gateway penalties".

6.1. Our question - *There has been confusion about reissued PCNs, as Merseyflow seem to be using the suffix 'A' on both of them. When we queried this, you said on 15th March that the original PCN has the suffix '0' and the reissued one the suffix '1'. What you told us may be what is supposed to happen but it is not. What is the TEC doing about Merseyflow not doing what is required? How does the TEC deal with this problem, if it is asked to 'authorise' the issue of a Recovery Order with the same number?*

(I have taken 6.1 and 6.2 together.)

6.2. Our question - *Also as the TEC is in control of the issue of these court orders, can you explain how we were given an incorrect answer on the 15th and then on the 26th you said that you did not know and referred us to "the local/issuing authority"?*

Your reply - "When a PCN is initially registered it has a 2-letter prefix, dependant on the local authority which is then followed a unique seven digit number which is calculated using the standard algorithm, this is then followed by the number 0. If it is issued a 2nd time, it is followed by a 1 and so on. There is no way that this could be erroneous as the system would not validate an incorrect PCN, and would automatically reject it. As advised previously it is automated and there is no human intervention."

This is what you have told us before, but it misses the point. The original PCNs do NOT have a zero at the end any more than other digits from 1 to 9 (or 'A' which I assume is part of a modulus check digit system).

7. Our question - *In various emails, e.g. on 26th March, you refer to the local authority without naming it. What is the name of the local authority? And if it is them you are having dealings with then what are the contact details that you have been using?*

Your reply - "The local authority is Halton Borough Council. The contact details that we have are for our personal contacts which are unavailable to the public. However, the below link will take you to their website where contact details are available:

<https://www3.halton.gov.uk/Pages/traffic/traffic-and-travel.aspx>

This will then re-direct you to the official Mersey flow website, which covers Halton's Mersey Gateway Bridge and the Silver Jubilee Bridge."

You say that the local authority is Halton Borough Council but to refuse to give us contact details. Instead you give us a link to a page on "Bridge, Travel and Roads", and say "This will then re-direct you to the official Mersey flow website, which covers Halton's Mersey Gateway Bridge and the Silver Jubilee Bridge."

The only relevant section on the "Bridge, Travel and Roads" page is "Toll/ Charge information" and clicking on that does indeed take you to the Merseyflow website. Are we really expected not to know that Merseyflow is neither a local authority nor is it part of Halton Borough Council?

I referred earlier to the reply sent yesterday (16th) to an FOI request from [REDACTED]. That reply includes "Halton Borough Council are the local authority who issue penalty charges through the Traffic Enforcement Centre, for the Mersey Crossing Bridge between Runcorn and Widnes. Mersey

Gateway Crossing, Merseyflow and Emovis are not enforcement authorities; they are companies who handle different areas of the crossing for Halton Borough Council."

The first sentence of that is not correct, as the TEC well knows Halton Council are not issuing the penalty charges. But the second sentence is correct in that it distinguishes Merseyflow from Halton Council, so how can you in your reply to me give Merseyflow as the contact for the Council?

From-  
John McGoldrick  
Scrap Mersey Tolls  
<https://www.facebook.com/groups/scrapmerseytolls/>

To-

[REDACTED]  
[REDACTED]

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Northampton, NN1 2LH

via email to [REDACTED]  
also posted on Resolver