

To Traffic Penalty Tribunal

**Appeal to Traffic Penalty Tribunal on grounds of Procedural impropriety**  
**Doc 3 - The April 2018 Charging Order**

This is one of a series of documents prepared by Scrap Mersey Tolls (SMT). They are intended for use by anyone who has made a representation to Merseyflow, and then received a Notice of Rejection who now wishes to appeal to the Traffic Penalty Tribunal on the grounds of 'procedural impropriety'. Note that these documents include clickable web links.

1. This document is on the point of whether the 2018 Order was properly made. There is doubt as to what it was Halton Borough Council (HBC) councillors agreed as the new Charging Order at their evening meeting on 18th April, 2018, and whether whatever they agreed was valid as HBC did not comply with the regulations for documents being made available to the public and did not properly comply with the requirement for a consultation on changes to an Order. If the 2018 Order is not valid then any PCNs which refer to it are also not valid. The details are set out below.
2. In March 2017 using powers in the Transport Act 2000 as amended by the Local Transport Act 2008, HBC made -[The Mersey Gateway Bridge and the A533 \(Silver Jubilee Bridge\) Roads User Charging Scheme Order 2017](#) This was the Order that applied to the Mersey Gateway tolls prior to the attempt by HBC to replace it. The 2017 Order was potentially a perpetual one in that it allowed for changes in the level of tolls without the need for a new order.
3. Adjudicators were interested in certain aspects of the 2017 Order and in relation to an early appeal asked some questions of HBC. The Council did not answer the questions, but cancelled the PCN. Then on 12th January this year the Tribunal repeated these questions in Directions to the Council concerning the case of Miss C. Solicitors for the Council responded on 26th January. There may have been further correspondence before the Adjudicator, Mr Barfoot, made his [decision on 16th February](#). In part he allowed the appeal on the grounds that "There has been a procedural impropriety on the part of the Charging Authority. "
4. The public were not made aware of any of this, but HBC must have been aware of possible problems with the 2017 Order before 12th January and by 16th February they were aware that the issue was such that the tolls were not enforceable.
5. With the public still in the dark, HBC on the 7th March had a Council meeting that considered a [report on the Gateway](#). The report recommended that a new Order be prepared and that the public should be consulted. The report did not reveal the real reason for a new Order. Along with the report the councillors were given [a copy of the proposed new Order](#) and [a map showing where toll warning signs were located](#). The recommendations were agreed and the next day, 8th March, HBC [announced a consultation](#). A consultation on any changes to an Order for Road User Charges is a requirement of the Local Transport Act 2008.
6. There was still no mention of the Tribunal decision in [the consultation document](#), instead the public were told that proposed changes "could see even more users receive unlimited travel across the Mersey Gateway Bridge." The proposed changes were trivial and it is clear that HBC were using a smokescreen to avoid revealing to the public the real purpose of the Order. That can be judged by some of the press reports- [Liverpool Echo 3 March 2018](#), [Runcorn & Widnes World 6 March](#), [Liverpool Echo 8 March](#).

7. For example in the 3 March story, the Liverpool Echo says the Council said that it "is required to review and resubmit its Road User Charging Scheme Order (RUSCO) every year and has decided to 'tweak' some of the conditions so more motorists will be exempt. There is of course no such annual requirement and the real purpose of the Order was not that more people would go scot free.

8. Scrap Mersey Tolls was not aware of the case of Miss C but on 8th February had asked the Tribunal for figures of the number of appeals and what the outcome was. On 8th March SMT got a reply, giving figures up to the end of January. SMT were puzzled to see that though there had been three thousand appeals, the number dismissed was zero. SMT issued a press release which included "...We can only assume that the Tribunal feels that the system is so bad that there are doubts that the penalty is lawful and that Merseyflow can not be relied upon to say whether a driver has used the Crossing and whether they have paid or not..."

9. On 8th April there was an [announcement made by the Tribunal](#) (note that the web page has been changed since 8th April). The Tribunal revealed that an Adjudicator, Mr Barfoot, had decided that there were problems with the 2017 Order and had allowed appeals on that ground. The Tribunal said that HBC had applied for the decision "to be reviewed, whilst also embarking on a consultation to make a fresh order.." The Tribunal did not say that the consultation had closed on 29th March and that HBC had claimed that the review of the Order was for other purposes.

10. As part of the consultation process, on 8th March the Council had asked various organisations for comments. The National Alliance Against Tolls received a request but did not comment as they were not aware of the 16th February decision of Mr Barfoot and the highlighted proposed changes to the Order were insignificant. Instead it was suggested to members of Scrap Mersey Tolls that they respond individually to the consultation by adding a comment that they wanted the tolls to be removed.

11. One of the other organisations asked for comments was the Tribunal. There is [a response from the Tribunal on their site](#). The response is dated 10th April, though the web page has been changed since that date. The response was later than the closing date, though that would not mean that it should have been ignored. More relevant is whether it was appropriate for the Tribunal to make comments on the detailed 'articles' in the new Order when adjudicators might later be assessing whether the new Order complied with the law.

12. Local authorities have long been obliged to act in an open, transparent and accountable way. Part of this process is that authorities are required to give the public access to meetings and to agendas and reports before any decision related to the report is made. The current rules on meetings are in [The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#).

13. HBC arranged for consideration of the Charging Order to go to an "Extra Ordinary" meeting of the full Council on 18th April. There was one other unrelated item on the agenda. In accordance with the requirement to have items available to the public five clear days before a meeting, HBC seem to have published the meeting agenda and reports on their website during the afternoon of 10th April. [This is the main report as published then](#). There were other documents published at the same time - [Appendix A](#) which was a copy of the consultation document, [Appendix B](#) which was a list of the organisations contacted, [Appendix C](#) which was a summary of the responses to the seven questions that were asked in the consultation, [Appendix 1](#) which was a copy of the proposed new Order, and [Appendix 2](#) which was a report on the consultation.

14. Though HBC had not revealed the real reason for the new Order, the reason was apparent after the Tribunal announcement on the 8th April, so Scrap Mersey Tolls [contacted all the HBC councillors before the 18th April meeting](#) asking them to vote against the new Order. They also lobbied before the meeting and attempted to go into the meeting. Only five members of the public were allowed into the meeting and the five who were allowed in included people who were not part of SMT.

15. Restricting admission to a meeting is against the 2012 regulations. In the event there was no debate and the Council meeting was over in a few minutes. There were no documents available at the meeting for the public and it was not clear what had been agreed but it was assumed that the councillors must have agreed to what had been made public on 10th April. There was no mention by the Mayor who was chairing the meeting that there was a later version of the Order nor was there any mention of the item being dealt with as a matter of urgency.

16. SMT discovered early the next day, 19th April, that changes had been made to the HBC web site for the previous night's meeting. There were four documents that seem to have been added to the website on the morning of 17th April. The first was [a Supplemental Report](#) which says that HBC received the consultation response from the Tribunal on the 10th April and decided to make some changes to the proposed new order. The report lists two appendices. [Appendix 1 Supplementary](#) goes into detail about the comments received from the Tribunal and indicates what HBC's intended response is. For some of the comments there was to be no change to the proposed Order, but for seven comments the report says that changes have been made. [Appendix 2 Supplementary](#) was the proposed Order incorporating those changes that HBC decided to make following the Tribunal comments. [The fourth document](#) is a recommendation to replace the one in the original report. The third part of the recommendation says "make the updated RUCSO in the form (or substantially the same form) as that in Appendix 2 (attached) to the Supplemental Report to Council and delegate to the Operational Director (Legal & Democratic Services) the authority to make any non-material or consequential amendments as are necessary to enable the revised 2018 RUCSO to be made."

17. On 20th April SMT emailed all the councillors with our comments on what had happened on the 18th's meeting, and on 23rd SMT emailed [a letter to HBC officers](#). In part it was asking HBC about the late change to the Order. That in effect was a request that came under Freedom of Information rules.

18. On 21st May there appeared on the HBC website [a third version of the new Order](#), though SMT were not aware of this till much later. The document is headed "TABLED AT COUNCIL 18 APRIL 2018", though it is not clear what in this case is meant by "tabled".

19. HBC were sent reminders about the request on 22 May and 29 May. On 24 June SMT made a complaint to the Information Commissioner's Office about the lack of a response to this and other information requests. On 3rd July there was a response from HBC to some of these requests. Their covering email said "In respect of the issues you raised in respect of the Council meeting on the 18th April and the new charging orders I attach a copy of a briefing note that sets out the Council's position.". [This is the document that was attached](#).

20. SMT replied to HBC on the 4th July. The reply included-

"NEW CHARGING ORDER (request of 23 April 2018) We asked for a copy of any document given to councillors for the meeting on 18 April which related to item 4a other than what was available on your website. Your reply seems to consist of a document dated 3rd May. If this was

produced for our benefit, it raises the question of why you waited two months to give it us. But in any case this document from its date can not be one that was available to councillors at the time of the 18 April meeting.

One document that might have been available to councillors but not available on the website would be an order paper or agenda summary that some Councils distribute to members at or just before a meeting and have some copies available for the public. Particularly in the circumstances of this meeting, such a document may have been needed to reduce confusion over what members were voting for. Another document would now apparently be another version of the Order. There were already two versions on the website and the note dated 3rd May indicates that there was a third which "was tabled at the Council meeting that evening". This begs the question of how members knew that this was the document that they were voting on. In any case you have given us nothing other than the 3rd May note and so we ask that the Council review the refusal to supply us with what we requested. We also asked for a copy of what the Council says their new Order is. You have ignored that part of the request. "

21. HBC replied on the 6th. Their reply included-

"A copy of the new RUCSO order is attached to the minutes of the Council meeting from 18th April. See link <http://councillors.halton.gov.uk/documents/g7147/Public%20minutes%2018th-Apr-2018%2018.30%20Council.pdf?T=11> As the procedural note explains the agenda for the 18 April meeting was published on Tuesday 10 April, in compliance with the 5 clear working days specified in s100B(3) of the Local Government Act 1972. The agenda contained a report on the new draft RUCSO and appended the New draft RUCSO and a report on the consultation process. This is available on the Council's website.

After the agenda had been published the Council received the Traffic Penalty Tribunal comments on the draft RUCSO. It was therefore considered necessary to amend the draft RUCSO to take account of those comments, and DLA Piper produced a revised draft. This was ready along with the covering report on 17 April, and a supplementary agenda containing them was published on that day, the earliest that it could possibly be done. This is also available on the Council's website.

A further revision was made to the draft RUCSO on 18 April, and a final version was tabled at the Council meeting that evening and this is the version that was approved and is appended to the minutes see link above. All the information that was put before members is on the website."

22. On 12 July, SMT emailed to HBC a letter dated 11th. The letter included-

"The first page of the version of the Order that is on the link that you now give us is headed "DRAFT". It is difficult to see how such a document can be said to be the new Order. The contents may be the same but legal orders are not issued stamped 'DRAFT'. In this particular case it is even odder as within a week you had three draft orders, and it is not apparent how the councillors knew what they were voting on. You say that the document was 'tabled', and we can only assume that at the meeting the councillors were given a paper copy of the version that they were voting on. Where is that paper copy? I remind you that the request was for a copy of any document given to the councillors for the meeting. In normal circumstances that might be represented by a document on your website, but these circumstances were most unusual. In this case we also have the fact that the web page that you refer us to was modified on the 21 May though the meeting was on 18 April, so there is even more uncertainty that what is on the web link is what was 'tabled'."

23. There was no reply from HBC and on 2 August SMT emailed another letter to HBC about various requests for information. The letter included-

"E. New Charging Order

On 23 April we sent you a letter, part of it would not be covered by FoI but two items were. We asked for "any document for the meeting (of 18 April) other than what is on the website agenda page for this meeting". And we asked "to see as soon as possible a copy of what the Council says their new Order is".

We have already complained to ICO about the delays on this.

Apparently in answer to the first item you sent us on 3 July "a copy of a briefing note that sets out the Council's position". We pointed out on 4 July that the document you had sent us post dated the 18 April meeting and could not have been distributed at or before the meeting. We asked that "the Council review the refusal to supply us with what we requested". We have heard nothing since.

Apparently in answer to the second item you sent us on 19 July what you said was "the final new charging Order". It was signed and dated 19 April. The time between our request and you sending us the document was nearly three months and we hope that the ICO will follow up on our complaint about the delay."

24. As at 30th October, 2018, there is still no response from the HBC to the various requests for the document which was 'tabled' at their meeting. SMT are therefore unsure whether the new 2018 Order is actually what was 'tabled'.

25. In their message to SMT on 6th July, 2018, HBC made reference to section 100 of the Local Government Act 1972 and suggested that there were exemptions that applied this case. These exemptions do not apply-

#### Section (3)

- i) The meeting on 19th April had not been convened at shorter notice than five days.
- ii) Given that, it seems that the exemption at section (3) does not apply.
- iii) If (3) did apply then it raises the question of when the item, and in particular the third version of the new Order was given to the councillors. From that point it should have been available to the public, but it was not. If the HBC position means that it was not available to councillors at the time of the meeting, then it raises the question of whether an Order can be valid if the councillors who approved it had not seen it.

#### Section (4)

- i) This refers to consideration of a matter rather than to documents being open to inspection, and therefore seems not to be relevant.
- ii) If it is relevant then subsection (a) does not apply as the meeting had not been convened at shorter notice than five days.
- iii) As to subsection (b), given that the Council had given trivial reasons for having a new Order there were no "special circumstances" and no need for "urgency" and the chair of the meeting did not say anything about either of these at the meeting. All that [the Minutes of the Meeting, published on the website on the 21st May](#), (item COU79) say is "The Mayor deemed that this information was sufficiently important to be considered as a matter of urgency." The Minutes do not as required specify what any "special circumstances" were.

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