

5 March 2019

To Information Commissioner's Office  
From Scrap Mersey Tolls

SMT doc CF - Complaint by Scrap Mersey Tolls about Traffic Enforcement Centre

**Background**

1. The 'Mersey Gateway' is a tolled crossing of the Mersey that opened in October 2017. As part of the scheme the Council will also be tolling the previously free nearby Silver Jubilee Bridge. Halton Borough Council are responsible for the scheme, but the tolls and penalties are enforced by 'Merseyflow'. The main group opposing the tolls is 'Scrap Mersey Tolls' (SMT). The group has 5,000 members on Facebook.
2. Some of our members have been affected by the enforcement process. Since the bridge opened over one million 'Penalty Charge Notices' have been issued. If they are neither paid nor successfully challenged, then Merseyflow apply to the Traffic Enforcement Centre (TEC) for a Recovery Order. The TEC is part of the Bulk Processing Centre based at Northampton County Court. The main function of the court is to give sanction to local authority use of debt enforcement officers (bailiffs) to recover money by threatening people with increasing penalties and costs and by seizing goods.
3. To understand what follows it will help the ICO to be aware that-
  - a) there are three TE forms- TE3 the Recovery Order, TE7 an Out of Time application and TE9 a Witness Statement,
  - b) only a local authority can use these forms and procedures whereas SMT believe that the TEC has knowingly allowed a non local authority (Merseyflow) to use them, and
  - c) that to use these procedures the forms have to be approved by the TEC before they are used whereas SMT believe that the TEC allowed Merseyflow to use forms that had not been approved.
4. Early in 2018 the Traffic Penalty Tribunal judged that tolls were not enforceable. The Council asked for a 'review'. The review decision which was announced last May confirmed that the tolls were not enforceable, at least for the period up to April 2018. There are further test cases awaiting a decision which will indicate whether the enforcement is legal after April 2018. Possibly because of these decisions, Merseyflow were slow in moving to the latter stages of enforcement action where the TEC issues the TE3 'Recovery Order' and 'Warrant of Control'. This seems not to have happened till about a year after the tolling started.
5. As well as giving general advice, Scrap Mersey Tolls have been contacting Merseyflow and the TEC on behalf of some of the people affected by enforcement action.
6. One of the earliest cases involved a registered owner, Emma, who at the end of October 2018 received TE3 forms. These appear to be issued by the TEC but are actually issued by local authorities who have been authorised to do this by the TEC. (Note that Merseyflow are not a local authority.) If the driver wants to challenge the process, then they have to complete and submit a TE9 Witness Statement and send it to the TEC. If they do this late then they also have to submit a TE7 Out Of Time Application.
7. We advised Emma to complete and send off the forms. She did so, but some of the forms were returned by the TEC who said that the wrong forms had been used. This seemed odd because at the time it was not clear that the original TE forms did not really come from the TEC. We queried this with the TEC in an email of 26th November. (All the emails are in one thread- doc CG.)

8. We eventually formed the impression that the rules for the issue of Recovery Orders were not being complied with and at various points asked the TEC for information which they failed to give.

9. Though we were asking for information, until recently we were not aware that the TEC came under the FOIA and we were going to complain through either Resolver or the Parliamentary Ombudsman. It was only recently we came across FoI requests and replies in respect of TEC on 'What Do They Know'. So we are now making the complaint to you.

## **Details**

10. Our first request was part of the first email to TEC on 26 November. The email included-

"So we want the following information, and would appreciate an early response -

1. Why you are sending out TE3 'Mersey Gateway Crossing' forms and then when you get them back you are returning them and saying that people have sent you the wrong forms?

2. The answer to the above may be that you did not send out the TE3 Mersey Gateway Crossing forms. If so, then who has sent these forms out? And did you authorise the sending out of these forms?

3. Why are you telling people who have been issued with a PCN and Recovery Order for the Mersey Gateway Crossing to complete a form which is for the Dart Charge?"

11. There was no reply so we sent another email on the 5th December. They replied the same day saying "...The Dart Charge TE9 is the correct form, Mersey Flow won't accept any other TE9...."

This did not answer 1 and 2, and only partly answered 3.

12. On the same day I emailed the TEC asking for an answer to the three questions.

13. The next day, 6th December there was a reply from the TEC-

"All original correspondence is sent out by the Local Authority so it would have been them that sent you the TE3.

The reason we accept the Dart Charge TE9 is because it has more options on the grounds to appeal. Please see attached, I have added a Dart Charge TE9 and a Parking TE9. Mersey Flow will only accept a TE9 that is set up like the Dart Charge TE9."

14. On the same day I emailed them back, the email included-

"... why does the TEC expect people to complete a form which is clearly intended for the Dartford Crossing and which has no mention on it of either the Mersey Gateway Crossing or 'road user charges' in general?

"....if it is not the TEC who are sending the forms out then can you say who exactly is sending the TE3s, TE7s and TE9s out?"

"....how and when did the TEC authorise the wording on the TE3, TE7 and TE9 forms that have been being sent out by somebody in respect of the Mersey Gateway?"

"....what steps have the TEC taken to draw this mistake to the attention of whoever is sending out these forms, who did the TEC tell and when did the TEC do so?"

15. On the 13th December I emailed them again asking for an urgent answer as some of our members were getting visits from bailiffs.

16. The same day there was an email from the TEC but it was only to acknowledge receipt of a TE7 form from the driver that was the subject of our original email. I replied the same day "... I am concerned that the TEC seems to be ignoring the three items of information that we asked for on the 26th November. Are we going to get an answer or is there someone that I can complain to if the request is apparently ignored." There was no reply and I emailed them again on 17th December.

17. On the 21st December there was an email from the TEC which gave us general information instead of the specific information requested. I replied the same day pointing this out and asked who we could complain to. There was no answer and we emailed them again on the 31st December.

18. There was a reply the same day (31st December) from the TEC. They said "If you wish to submit a formal complaint you may do so to this email address." (The address was the one that we were already using for emails to the TEC.)

19. There were also a form of answers to three items from the 26th November. I replied the same day. We highlighted two items-

"So who is sending the forms out? Or does the TEC not know?" and

"So had the TEC approved the forms that were being sent out for the Mersey Gateway crossing?"

20. There was no reply and on 8th January 2019 we emailed them again. We said we were "hereby making a formal complaint".

We also raised a new matter as we had discovered that a web address printed on the forms did not work. We asked "...Will the TEC please confirm that the web address on the TE3 form is invalid. If it is invalid then we would also like to know who approved the use of the TE3 forms for the Mersey Gateway."

21. On 10th January there was another email from the TEC. It was odd in that it said that it was in response to an email that we had sent on the 21st December, but it seems to be a reply to our email of 26th November and took no account of the later emails. The attached document gave some different answers to the information that we had asked for on 26th November but they still seemed to be avoiding giving us proper answers.

22. On 11th January I emailed a reply to the TEC. I set out the position at some length. But in brief I first reminded them of the main information that we were seeking-

"So who is sending the forms out? Or does the TEC not know?" and

"So had the TEC approved the forms that were being sent out for the Mersey Gateway crossing?"

23. On request 1 we said "... Can we have a correct answer, or if you still believe your answer to be correct then can you tell us what correspondence you have had with Halton Borough Council that leads you to believe that the local authority is sending the TE forms out."

On 2 we pointed out that they were still not saying whether they had approved the forms or not and said "Can we have an answer, or if the TEC still refuses to say what has happened then is there a higher level that we can complain to?"

On 3 we were not happy with their answer, but were not following it up.

There was also, at 4, the new information request from 9th January about the invalid web address on the forms. We pointed out that they had not answered it.

24. There was no reply so we emailed them again on 6th February and again on 25th February. There has been nothing from them since their email on 10th January.

### **Summary**

We have asked for information on-

a) who is sending the TE forms out, we have not got the information.

b) the approval (if any) by the TEC of the TE forms that were being sent out for the Mersey Gateway, we have not got the information.

### **Documents being sent to ICO -**

SMT doc CE- Your complaint form.

SMT doc CF- Details of our complaint, i.e. this doc.

SMT doc CG- The email thread.

SMT doc CH- Letter from TEC on 10th January 2019 (not that the TEC auto dated it)

End of this doc