

Our ref: 718,377  
Your ref: FER0578889

Ms Cressida Woodall  
Via Email

Chris Barnes  
Freedom of Information Officer  
4 SOUTH  
Lateral  
8 City Walk  
Leeds LS11 9AT

Direct Line: 0113 283 6804  
16 June 2015

Dear Ms Woodall

I write in reference to the complaint of Mr Silverman, dated 16<sup>th</sup> April 2015.

### **History of the complaint.**

Mr Silverman and Highways England are currently at an impasse.

Mr Silverman runs a website called Clean Highways which aims to hold Highways England to account in its duty to keep the network as free of litter as is practicable under the Environmental Protection Act (1989).

Highways England maintains that it is fulfilling its duty under EPA, Mr Silverman believes that we are not.

Mr Silverman took the Highways Agency to court in July 2012 over this very point. The judge in the case found in favour of the Secretary of State and ordered Mr Silverman to pay costs.

Since this time neither side has conceded their position, hence stalemate.

In refusing Mr Silverman's requests Highways England is relying on the following sections of the exception:

### **Regulation 12(4)(b) - Manifestly unreasonable**

- That Mr Silverman can be fairly characterised as obsessive.
- That the weight of his correspondence has, and will continue to, cause a significant burden.
- That his campaign lacks serious purpose or value.

It is for these reasons that I believe, as stated in my review letter that the pattern of correspondence will not cease, Mr Silverman is unlikely to accept our arguments or explanations and his correspondence will be likely to raise repeat issues.

Mr Silverman has also confirmed to us that he will not change the tact of his campaign, nor will he cease his correspondence thereby reinforcing my decision to take the future burden of correspondence on the Company into account in relying on the exception in regulation 12(4)(b). In the rest of this report I will go on to show my reasoning that Mr Silverman can be fairly characterised as obsessive.

### **Regulation 12(1)(b) – public interest test**

The following factors were taken into account when deciding the public interest. Each factor will be expanded upon in the following report.

Factors for disclosure:

- Highways England recognises the significant public interest in litter on the network.
- Highways England also needs to justify its actions towards this public interest and in the appropriate use of public funds in working towards the public task.

Factors against disclosure:

- Highways England has publically demonstrated its plans to tackle litter
- It is not in the public interest to divert staff resources to comment on the perceived failures of the Highways Agency. Instead resource should be directed to our increased remit and in making sure new litter initiatives are successful.
- Mr Silverman holds a contrary point of view and is, therefore, unlikely to ever accept our arguments.
- Due to the above, Mr Silverman is likely to raise repeat issues and to re-open old topics.
- The clean highways campaign is no longer valid due to the obligation of Highways England to report to the ORR and Transport Focus. Corresponding separately with Mr Silverman will become an unnecessary burden.
- Mr Silverman will receive the information requested/achieve stated aims through participation with Transport Focus however he has declined this invitation.
- Mr Silverman has confirmed that his campaign will not cease and therefore will not stop his pattern of correspondence.

I would reiterate that we did not seek to dismiss our relationship with Mr Silverman but attempt to facilitate a better way of engaging and working together. All issues above were discussed in our meeting with Mr Silverman however I will expand on them in the below report.

### **Relationship with Mr Silverman.**

Highways England has never stated that litter is not of a serious concern to Highways England, indeed our commitment to the issue were documented in the initiatives in our letter.

We do, however, have serious concerns over the conduct, and purpose, of Mr Silverman's campaign. In 2012 the Highways Agency also refused a number of pieces of correspondence citing the same exception. In that refusal notice my colleagues pointed to having received 36 pieces of correspondence from Mr Silverman since 2010, the information requests prior to this case are listed in annex A. We argued that there was no indication that his requests would cease.

Since this time Mr Silverman has submitted a further 30 pieces of correspondence regarding litter. These can be seen in annex B.

The practice of making access to information requests is quite distant, almost adversarial, especially given the time taken to respond to requests. We feel that there has been no engagement from Mr Silverman with Highways England and, due partly to the impasse mentioned above, his campaign has not yielded any positive results.

In order to progress our relationship the Company invited Mr Silverman to a meeting at our Guildford office. The meeting was designed to explain the work of Highways England relating to the litter initiatives detailed in our initial letter and state our position on some contentious issues. I appreciate that Mr Silverman feels he has not been given closure on several of his suggestions. By stating our position on these issues in the meeting we hoped we would remove the necessity for Mr Silverman to raise repeat issues.

We also hoped that we would break the pattern of correspondence and see if there was a way to engage more closely and see if there was a way we could achieve our respective aims without resorting to making FOI/EIR requests. We feel that this meeting accomplished more in a couple of hours than has resulted in two years of back and forth correspondence.

### **Lack of engagement from Mr Silverman.**

As mentioned in both our response and review letter Highways England takes a different approach to the litter problem than Mr Silverman. It is the stated position of the Company to try to tackle litter at source by influencing user behaviour – if no litter is dropped, no litter will have to be picked up. Mr Silverman is of the opinion that the Company should tackle the problem by continuously picking up litter. Again, the aim of the meeting was try to progress beyond this stalemate.

During the course of the meeting it became clear that Mr Silverman had no intention of working closely with the Company. As an example, we discussed an issue of concern to both parties; the impact of material falling from waste transport lorries and HGVs.

Mr Silverman is of the view that Highways England should seek powers to prosecute offending vehicles whereas it is the stated position of the Company that we are a road operator and not a civil enforcement body (an issue I shall return to later in this report).

During the meeting we proposed to Mr Silverman that it would serve the public interest, and aid the cause of Highways England, if he could galvanise the support of his many correspondents to write to their MPs with their concern over this practice and ask for the government to pressure haulage firms to change their practices or to increase the powers that law enforcement bodies such as the police and local councils had to levy enforcement action.

Instead, Mr Silverman indicated it would be his preference to get the Company to change their stance on issuing fines. This statement again raised concerns that Mr Silverman would not accept our arguments and would attempt to reopen the issue in correspondence at a later date.

### **The transition to Highways England and the role of ORR and Transport Focus.**

As mentioned in both of our letters Mr Silverman, in his correspondence, has been very critical of the Highways Agency and a perceived lack of activity regarding litter. The Highways Agency no longer exists as we have transitioned to Highways England.

For background, Highways England has been awarded a fivefold increase in capital budget allowing the new company to undertake work and initiatives not possible for the Highways Agency. Our response, from Mr Castleman, provided a fulsome list of initiatives Highways England are taking forward to help to combat litter.

The Company has also produced a [litter strategy](#) which further outlines our commitments. The Company believes the public interest is better served in making sure these initiatives come to fruition rather than comment on perceived historical failings which Mr Silverman is focussing on.

One of Mr Silverman's historic complaints had been that the Highways Agency had no regulator or independent scrutiny and that 'Clean Highways' was fulfilling this role. Highways England is now under the supervision of the Office of Road and Rail Regulation and has a new watchdog in the form of Transport Focus (a group made up of various stakeholders including the Campaign to Protect Rural England, Campaign for Better Transport and the Local Government Association).

The [ORR confirm](#) that they will look to Highways England to respond to the concerns of Road Users: *"We will consider those aspects of Highways England's performance that are of greatest importance to users and those that are affected by the SRN when prioritising our monitoring and enforcement activities."*

Highways England will be reporting, to both bodies, on its performance on a whole host of matters, including environmental concerns and, as specified by the ORR, more information relating to these matters will be proactively published online in the coming years.

In his letter to the Commissioner Mr Silverman stated he had been invited to join with the Transport Focus. However, in the meeting Mr Silverman stated that he had not agreed to join as he could not be sure that litter would be on their agenda. Instead he asked for a separate regular series of meetings with Highways England.

Again, I refute this point as the ORR is clear in their [consultation document](#) that the views of road users will be sought at meetings and panel discussions and these concerns will be presented to Highways England colleagues in attendance and reported on.

It is therefore a concern that Mr Silverman would not look to join Transport Focus as the stakeholder panel is made up of road users and their specific concerns. Therefore if litter was not on the agenda for Transport Focus Mr Silverman could make sure that it was. We feel that participation in these meetings would be an entirely worthwhile and appropriate way for Mr Silverman to carry on his campaign as it is his stated aim to “make constructive criticisms and set out proposals to improve the outcome for road users”. There is a higher probability of achieving a faster positive outcome by making these suggestions personally to Highways England staff in attendance.

We also pointed out that as Highways England is to have regular meetings with the Transport Focus stakeholder panel we could ensure the continuing close relationship with Mr Silverman and the sharing of information that this necessitates without having to rely on Access to Information requests. Once again there appeared a lack of enthusiasm from Mr Silverman regarding this suggestion.

I believe that Mr Silverman was unwilling to join with a panel of stakeholders as he enjoys a certain amount of notoriety through his ‘Clean Highways’ campaign and seems unwilling to give up his position as the face of his campaign. This pattern is a repeat of an email to the Minister, Robert Goodwill, of July 2014 in which he asks for a personal response to his correspondence:

*Please refer to my e-mail to you of [2<sup>nd</sup> June](#) and [an e-mail from Mrs Davies](#) of the Highways Agency of 24th June in response. In the past you have kindly replied in person. This new approach is of concern to me. Let me explain why.*

*It means I have no confirmation that you have read my e-mail and thus been made aware of the further evidence I have presented of DfT’s failure to comply with both [EPA S89\(1\)](#) (duty to keep the motorways clear of litter) and the Environmental Information Regulations.*

*If it was diverted without your having the opportunity to read it I do not know if this was as a result of a standing instruction from you or at the initiative of a civil servant.*

During the course of our meeting Mr Silverman also confirmed that he would not change the tact of the Clean Highways campaign, nor would he (separately) cease his letter writing campaign. As he will be corresponding on matters duplicated by Transport Focus I believe that separately responding to his requests places an additional burden on the resources of Highways England.

### **Misrepresentations in Mr Silverman's letter to the Commissioner.**

I would also like to take this opportunity to address some concerning misrepresentations in Mr Silverman's letter to the Commissioner and refute some of the arguments he has made.

1. Lack of validity in Mr Silverman's argument. Mr Silverman claims that he makes appropriate use of FOI requests in order to make constructive criticisms and suggestions.

In our response letter we argued that many of his recommendations closely mirrored work already underway. Our meeting was designed to detail these initiatives and explain our commitment to the public interest as well as to secure his help in making sure our aspirations come to fruition.

The meeting was also designed to state our position on several others of his suggestions which we feel to be impractical in terms of cost and resource. By clearly stating our position on, for example, the use of traffic management in order to litter pick verges, we had hoped that Mr Silverman would desist from further raising these suggestions and sending his fact finding requests for information.

As I have already mentioned, Mr Silverman necessarily takes a contrary point of view to that of Highways England. There is therefore a concern that Mr Silverman will continue to re-raise these suggestions.

As argued above, Highways England is now subject to the watchdog Mr Silverman has always wanted. We also believe that the existence of a recurring stakeholder forum removes the necessity for Mr Silverman's separate campaign.

It would be much more practical for him to make these suggestions via the stakeholder panel of Transport Focus where he could engage in a dialogue with Highways England staff rather than his current letter writing campaign. The fact that Mr Silverman appears unwilling to do this gives less weight to his argument.

I would also refute the claim that Clean Highways is the only organisation engaged in this form of campaign. Highways England has a very close relationship with the

[Campaign for Better Transport](#) and Keep Britain Tidy who campaign on environmental matters, amongst other issues. The Chief Executive of Highways England, Graham Dalton met with the head of the campaign on the 14<sup>th</sup> May 2015.

Mr Silverman has never attempted to join with either organisation in their work with the Highways Agency or Highways England. For information, both the Campaign for Better Transport and Keep Britain Tidy have committed to attending the meetings of Transport Focus.

2. Provision of advice and guidance. Once again our refusal was not based on these specific items of correspondence therefore we did not provide guidance on how to make these requests more manageable. Our decision was made when considering the context and history of the correspondence.

As explained above, it was hoped that our meeting would allow us to progress our relationship and explain the stance of the Company regarding some specific issues which Mr Silverman repeatedly raises and to reduce the continued levels of correspondence. In this regard I do believe we have provided advice and guidance to Mr Silverman.

3. There was no balanced public interest test. I would reiterate that our argument stated that the weight of the correspondence with Highways England was manifestly unreasonable. Mr Silverman is focussing his argument on these specific items of correspondence. Once again, the Company has never claimed that there is no public interest in matters relating to litter.

As mentioned above, we did not seek to dismiss our relationship with Mr Silverman but attempt to facilitate a better way of engaging and working together. By meeting face to face with Mr Silverman we aimed to progress our relationship and prevent further weight of correspondence.

I contest that in publically demonstrating our commitments to tackling litter we are serving the public interest more than providing the specific information requested.

For the reasons I have previously explained these initiatives are unlikely to satisfy Mr Silverman as he is unlikely to abandon his contrary view that the Company is meeting its obligations under EPA.

It was hoped that our meeting would detail these initiatives and explain our commitment to the public interest. This approach was in line with ICO advice and guidance in allowing the requester an opportunity to change the pattern of their behaviour.

4. Furthermore, in his letter Mr Silverman claims the following:

*Colin Matthews became Chairman of the Highways Agency on 1<sup>st</sup> September 2014. I submitted a [briefing note](#) to him on 3<sup>rd</sup> October in which I argued that the Agency's Asset Support Contract was defective. The [contract was suspended](#) two months later.*

The [procurement](#) for the contracts was suspended as you can tell from the following [FOI response](#). The contracts themselves have not been suspended. Mr Silverman also freely admits [on his website](#) that the suspension was not connected to his activities.

It is possible that Mr Silverman misunderstood this point. I further explained the above during the course of our meeting.

The following paragraph also references the decision for Highways England to take a more direct supervision of our maintenance contract in the East Midlands region. Again Mr Silverman seems to take credit for this decision:

*In a [report to the Highways Agency CEO of 11<sup>th</sup> February 2015](#), copied to Mr Matthews, I recommended that when the old area maintenance contracts expired the Agency should take motorway maintenance in-house. They have now decided to do this albeit only on an experimental basis in their Area 7 (East Midlands).*

This activity is a planned pilot scheme which has been implemented due to the increase in capital budget referred to above. The timing of Mr Silverman's letter is purely coincidental. This idea was first discussed at the Highways Agency Executive Committee in November 2014 which drew on work prepared by colleagues during the preceding several months.

5. Disputing the fact that Mr Silverman's requests raise repeat issues. Mr Silverman references one thread of conversation "Litter blown from commercial vehicles". He states that *"it is very difficult to get a straight answer to a straight question from Highways England, or indeed from the Department of Transport" and "I have still no idea what Highways England intend to do about this very real and serious problem"*.

Mr Silverman wrote to Mr Castleman on the 23<sup>rd</sup> September 2014 concerning this matter. Mr Silverman states that it was raised again in February as he felt no positive action was being taken.

The Highways Agency did respond to the letter of the 23<sup>rd</sup> September (please see Annex c) in which my colleague stated the following:

*If I may explain the Highways Agency are responsible for operating and maintaining the strategic road network on behalf of the Secretary of State for Transport. Highways Agency Traffic Officers have no enforcement powers unless to stop vehicles on the basis of a safety intervention. For example, if large chunks of debris were falling from a*

*vehicle, with the potential to pose a hazard, then Officers are able to stop the vehicle to advise the driver of the hazard.*

*It is an offence to litter under S87 of the Environmental Protection Act however duties carried out by the Highways Agency on behalf of the Secretary of State do not include duties of a 'Litter Authority'. Instead the Agency relies on the Police who have enforcement capabilities.*

I would contest that the above constitutes a very clear statement of the stance of the Highways Agency as a road operator who does not hold enforcement or prosecution powers. Raising the issue again four months later was therefore seen as a duplicate and also invalidates the suggestion that Mr Silverman was forced to raise the issue several times.

For further information Mr Silverman was provided with another letter in August 2011, from Mr Castleman (attached at Annex d) which also clearly states the Highways Agency did not hold enforcement powers, nor was it seeking any such powers. The letter of October 2014 stated the same position therefore it would be reasonable to expect that the situation had not altered by February 2015.

Once again, this point was raised in our meeting where we clearly stated for the record that Highways England was a road operator and did not seek to prosecute road users.

If you require any further information please don't hesitate to get in touch.

Yours sincerely

Chris Barnes  
Freedom of Information Officer  
Email: [christopher.barnes@highways.gsi.gov.uk](mailto:christopher.barnes@highways.gsi.gov.uk)