

**Case 200903349: The City of Edinburgh Council**

**Summary of Investigation**

**Category**

Local government: Roads; Traffic Regulation

**Overview**

The complainant (Mr C), acting on behalf of a sub-committee of local residents, raised a number of concerns about the consequences for his neighbourhood (the Area) of road traffic regulation changes instituted by the City of Edinburgh Council (the Council), following their decision to develop a light railway (the Tram Link) between North and Central Edinburgh and Edinburgh Airport.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council increased traffic in the Area by the way that they have managed traffic flow, following their decision to develop the Tram Link (*not upheld*);
- (b) residents of the Area were excluded from meaningful participation in the process (*not upheld*);
- (c) the Council have not carried out a proper and comprehensive environmental impact study regarding noise, air pollution, safety and continual vehicle passage through the predominantly residential area as a proposed permanent situation (*not upheld*); and
- (d) the Council repeatedly made misleading statements, both to residents of the Area and to other involved parties; most notably to the parliamentary hearings regarding the effect on the area (*not upheld*).

**Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. The city of Edinburgh previously had an extensive tram system which operated until November 1956. The lines were then removed and, in terms of public transport, the trams were replaced by buses. As car ownership and traffic levels increased significantly in the following four decades, the former Lothian Regional Council gave consideration to the problem of city centre traffic congestion. On 31 August 1995, the Regional Council approved proposals designed to improve road safety, give priority to buses, and improve the pedestrian environment on Edinburgh's main shopping street (Princes Street). Experimental Orders were invoked on 21 June 1996 by The City of Edinburgh Council (the Council), as successor authority, with an 18 month experimental period expiring on 20 December 1997. A traffic survey was conducted in and near the neighbourhood (the Area) where the complainant (Mr C) resides and consultation took place with a working group which included the residents' organisation that Mr C now represents. By February 1997, encouraged at evidence of improvements in city centre trip times, air quality (nitrogen dioxide) levels, accidents and casualties and speed reductions, a joint report by the Chief Constable and the then Director of City Development to the Transportation Committee proposed that permanent Traffic Regulation Orders be promoted to take effect from 21 December 1997. The joint report also proposed measures to avoid 'rat running' through the main distributor road in the Area (the Area Road Corridor).

2. Subsequently, the Council met with residents' organisations and other bodies to develop a strategy to manage traffic in the city centre - the Central Edinburgh Traffic Management strategy (CETM). The Council advertised the necessary Road Traffic Regulation Orders (RTROs) for implementation of this strategy in February 2001. During the statutory consultation period, the Council received 649 objections to the proposals. The Council agreed in December 2001 to hold a public hearing, but when objectors at a meeting to agree procedures raised concerns that they had had insufficient time to prepare, a decision was taken by the Council, on 21 March 2002, to re-advertise the 12 related RTROs. Re-advertisement led to an increase in the number of objections to 742. An independent public hearing chaired by Scottish Executive reporters under the Road Traffic Regulation Act 1984 and Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 convened and heard evidence between 13 January 2003 and 18 February 2003. Their findings were

reported in June 2003. The reporters recognised the paramount importance of preserving the residential and historic amenity of the Area, which forms part of a World Heritage site designated by the United Nations, Education, Scientific and Cultural Organization (UNESCO). The reporters recommended efforts to reduce or to eliminate traffic intrusion.

3. Meanwhile, the Council had in January 2003 agreed in principle that, in order to improve public transport links between North and Central Edinburgh and Edinburgh Airport, two linked tramway lines be introduced. In 2004, a full Scottish Transport Appraisal Guidance Report was lodged with the Scottish Parliament in support of the requisite private parliamentary bills.

4. On 18 September 2003, the Council approved recommendations made by the then Director of City Development relating to the reporters' report on the CETM proposals. A detailed report was submitted as urgent business to the Executive of the Council on 27 January 2004 to inform members of the minor modifications which were required to the 12 CETM road traffic regulation orders advertised in April 2002. City Development had by then undertaken a major topographical survey in the city centre and detailed design work with a view to implementing the CETM scheme in 2005. Specific detailed modifications, listed in Appendix 1 of that report, related to the western part of the Area Road Corridor. One RTRO modification recommended to relieve traffic disturbance in the Area was the opening of Princes Street westbound to general traffic overnight and in the evening. The Director stated that:

'The emerging tram proposals have been taken into account when preparing the design for CETM. These proposals will provide a dedicated public transport corridor along Princes Street which would facilitate the proposed Tram. Through this integrated and co-ordinated approach it is anticipated that any abortive work will be kept to a minimum.'

5. On 22 June 2005, a city centre community council and representatives of residents of the Area gave evidence, as objectors to the two bills, to a committee of the Scottish Parliament. The Edinburgh Tram (Line One) Act 2006 and Edinburgh Tram (Line Two) Act 2006 received Royal Assent in April 2006.

6. The CETM was introduced between May and October 2005 at a cost of £3.2 million. Major elements of the scheme were to separate buses and cars travelling east and west through the city centre, with buses using Princes Street

and cars using a parallel road to the north to make the intervening streets and squares more pedestrian-friendly by reducing traffic, closing several streets to through traffic and restricting others to buses and taxis only.

7. Following a meeting of the Council on 17 November 2005, some of the changes introduced under the CETM were reviewed. The main proposal restricting eastbound traffic on Princes Street during the day to buses, taxis and cycles remained in force but some of the restrictions and road closures in other parts of the World Heritage site were reversed. A left turn at the western end of the Area Road Corridor into a major arterial road from the north west, previously prohibited, was permitted again.

8. In advance of the laying of the light railway lines, utilities and telecommunication conduits required to be relocated elsewhere in the affected roadway routes. That work commenced in 2007. In January 2008, part of the Area Road Corridor, then still cobbled with granite setts, was laid with tar in advance of the closure from March 2008 of a section of strategic roadway bringing major routes from the west and south west into the city centre (the Road). With the closure of the Road, a substantial amount of incoming traffic from the west and south west of the city has used the Area Road Corridor. In September 2008, some six months after its initial closure, when the company (the Company) tasked with delivering the tram link (the Tram Link) provided details of the route and related infrastructure at a public exhibition, it was disclosed that the Road had insufficient capacity to take both general vehicular traffic and the Tram Link. After the delayed completion of diversion of utilities, the Road reopened on 26 July 2010 but only for buses, taxis and cycles.

9. Mr C's complaint focuses on the consequences for the Area of road traffic changes necessitated by the decision to develop the Tram Link between North and Central Edinburgh and Edinburgh Airport.

10. The complaints from Mr C which I have investigated are that:

- (a) the Council increased traffic in the Area by the way that they have managed traffic flow, following their decision to develop the Tram Link;
- (b) residents of the Area were excluded from meaningful participation in the process;
- (c) the Council have not carried out a proper and comprehensive environmental impact study regarding noise, air pollution, safety and

continual vehicle passage through the predominantly residential area as a proposed permanent situation; and

- (d) the Council repeatedly made misleading statements, both to residents of the Area and to other involved parties most notably to the parliamentary hearings regarding the effect on the Area.

### **Investigation**

11. Mr C provided my office with relevant correspondence with the Council on behalf of the sub-committee of residents he represents. My complaints reviewer met with Mr C and officers of the Council, made enquiry of the Council and received and considered a large amount of documentation. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

#### **(a) The Council increased traffic in the Area by the way that they have managed traffic flow, following their decision to develop the Tram Link**

12. Mr C complained that the Council had neither as a temporary nor permanent expedient fully explored other options, such as imposing a Heavy Goods Vehicle (HGV) weight restriction, introducing road constrictions such as pavement blisters and diverting night time traffic via Princes Street (see paragraph 4) to relieve residents of the consequences of increased traffic flow on the Area Road Corridor.

13. The Council informed me that the works to implement the Tram Link involved two distinct stages. The first phase involved work to divert utility pipes and ducts from under the line of the track; and the second phase the construction of the necessary infrastructure including the track, the overhead lines and the associated road works. Due to the complexity of relocating the public utilities and the limited road space available, officers of the Council considered that the only practicable option was to carry out this work by closing the Road and diverting traffic through suitable adjacent streets. The Council designed a temporary traffic management arrangement and used powers available under the Roads (Scotland) Act 1984 to close the Road from 1 March 2008 by means of a Temporary Road Traffic Regulation Order (TRTRO), the stated aim of which was to provide the travelling public with access to the city centre with the minimum delay and disruption.

14. The Council emphasised that the city centre is a UNESCO World Heritage Site with a limited road network. The temporary traffic layout introduced to cater for the closure of the Road from 1 March 2008 was designed to be in place for a limited period of time, to enable first phase works to be carried out. It had achieved its first aim in maintaining access to the city centre while permitting utility pipes and ducts to be diverted. The Council considered that there had been no scope available to them to alter the temporary traffic arrangements and lessen the flows through the Area Road Corridor.

15. The Council maintained that the diversion layout was determined by adopting the most suitable arrangement within the available road network. Road junctions were traffic modelled and the temporary signing, pedestrian crossings and parking restrictions were established to ensure that the temporary layout operated in a safe and effective manner. The proposed layout was then reviewed and approved by the Traffic Management Review Panel, which was set up by the Council to assist with approving the temporary traffic management changes for the Tram Link and comprised representation from Lothian and Borders Police (on behalf of all emergency services), Lothian Buses (on behalf of all bus companies), the Council (as roads authority), the Company and the relevant contractors carrying out the work.

16. The Council stated that it was originally envisaged that the phase two Tram Link infrastructure work would follow on shortly after the utility works and had been considered prudent to minimise the reinstatement of a junction of the Road at that time. However, that junction could not accommodate general traffic on the Road and, consequently, the diversion arrangements had to remain in place.

17. In the event, the start to the second phase Tram Link infrastructure works has been delayed indefinitely because of a contractual dispute between the Company and their contractor. Consequently, the Council decided to review the traffic management layout and to give consideration to fully reinstating the junction of the Road which would allow the pre-Tram Link traffic arrangements to be reinstated. A report was submitted to a meeting on 21 September 2010 of the Council's Transport Infrastructure and Environment Committee (the Committee) but was deferred until their next meeting on 23 November 2010. The Committee decided then that, subject to its cost being feasible, general traffic would be allowed back on to the Road from early 2011 until tram line

construction resumed, however access would be limited to westbound traffic turning left into the Road from an arterial route from the south.

*(a) Conclusion*

18. The decision to promote the relevant legislation, and thereafter construct a light railway Tram Link between North and Central Edinburgh to Edinburgh Airport, was a discretionary decision of the Council, which is not a matter for my office to review or challenge. Over five years since the enactment of the two bills and more than three and a half years after the first road closures, the second Tram line has been postponed, some but not all of the utility diversion works have been undertaken, and a limited amount of track has been laid but not in the Road. The contractual dispute with the main contractor has not been resolved and is currently the subject of mediation. Escalation of costs and management of the project was the subject of a report by the Auditor General, published in early February 2011.

19. The complaint made to me by Mr C centres on the environmental consequences for the residents he represents in terms of traffic noise, and fumes, air quality and pedestrian safety. Their properties are not on the route of the Tram Link but are affected by the traffic management changes needed to first build, and then run, the Tram Link. The increased traffic flows through the Area Road Corridor since first closure of the Road on 1 March 2008 are unprecedented. Mr C and his fellow residents are clearly concerned at the deterioration in their immediate environment and, as they are entitled to do, they have sought to explore means at their disposal of mitigating the consequences, including a complaint to my office and a referral to the Aarhus Convention Compliance Committee (Annex 2).

20. The detailed evidence supplied to me in relation to the Council's traffic modelling does not suggest to me that the Council have gone out of their way to increase traffic flow in the Area Road Corridor but rather that they considered it to be the best option to meet the various constraints of keeping general traffic moving through the city centre with less perceived adverse consequences for sensitive parts of the UNESCO World Heritage Site. Prohibition of non public transport traffic from the Road, intended as a temporary expedient to facilitate first utility conduit diversions and thereafter the installation of Tram Link infrastructure, will now become a permanent established ban.

21. It is open to the group which Mr C represents to suggest changes in the permanent road layout to be created when the Tram Link is implemented which will ameliorate the level of road traffic and its concomitant effects on the environment. From information that has been supplied to me, and which I return to at paragraphs 40 to 44, I believe that the Council have been open to considering residents' suggestions, and have been able to explain their reasons for not being able to implement those suggestions. I do not uphold Mr C's complaint.

**(b) Residents of the Area were excluded from meaningful participation in the process**

22. Mr C did not consider from the outset that there had been meaningful consultation and participation with residents on the Tram Link proposals. He contrasted this with the more extensive consultation on previous initiatives including the CETM strategy (see paragraphs 1 and 2).

23. The Company and the Council undertook informal public consultation in September 2008 on the RTROs necessitated by the Tram Link works. This included a public exhibition of the draft RTRO drawings at a church close to the Area and consultation with emergency services and bus operators.

24. The Council informed me that they considered that, as roads authority, they had complied with all statutory requirements when implementing the Edinburgh Tram project which had presented them with a number of major and often unique challenges, not least for the promotion of the necessary RTROs. They stated that, in 2007, the Scottish Government recognised there were practical difficulties with the then current regulations (The Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999), when it came to applying them to a project which had already been subject to full parliamentary scrutiny and which had been approved under an Act of Parliament. The issue identified related to the holding of mandatory hearings and the implications for timescales. Following consultation, the Scottish Government amended the 1999 regulations and replaced the requirement for a mandatory public hearing of objections with the option for a roads authority to hold a discretionary hearing. The Local Authorities' Traffic Order (Procedure) (Scotland) Amendment Regulations 2008 came into force on 8 February 2008.

25. On 22 September 2009, a report Edinburgh Tram-Traffic Regulation Order was submitted to the Committee. That report highlighted the balance which



needed to be achieved between allowing the Tram Link to operate in line with its business case, managing the road network, and ensuring that stakeholders had a reasonable opportunity to influence decisions. The Committee agreed a strategy which looked both to achieve that balance and to adhere to the newly amended regulations in promoting initially a core RTRO (TRO1).

26. In responding to my complaints reviewer's enquiry, the Council's Director of City Development refuted any suggestion that due consideration had not been given to wider-area issues and that consultation had not been meaningful. He stated that consultation cannot lead to all wishes being met. The reality was that any solution which required to address the many and often competing demands of the retail, residential, business and tourist sectors, while ensuring that reasonable access for all road users was maintained, would almost certainly involve a compromise.

*(b) Conclusion*

27. The evidence before me suggests that the degree of general public input into the process in the case of the Tram Link clearly was not as extensive as had been the case in earlier initiatives such as the CETM proposals. The Scottish Parliament in enacting the two bills in April 2006, after parliamentary scrutiny, effectively concluded that the proposals were not at odds with national planning strategy. Residents from the Area made representation on the bills, and were heard as to their concerns. They put forward their argument that implementation of the Tram Link would have a permanent consequence, in that the Area Road Corridor would be utilised as a more or less permanent diversion. They say that they were rebutted by the Council's representative. In the event, the detailed proposals exhibited in September 2008 confirmed their statements of three years earlier to the Scottish Parliament Committee which scrutinised the Tram Link bills.

28. The Council are entitled to exercise their discretion, under the Local Authorities' Traffic Order (Procedure) (Scotland) Amendment Regulations 2008 to decide not to hold a public inquiry into matters where there has already been parliamentary scrutiny. The residents of the Area indeed have not had the same formal independent hearing of their objection to having the Area Road Corridor becoming a more significant strategic part of the non public transport distribution network as they had in respect of their objections to the CETM process. The residents, however, submitted objections to TRO1 necessary to implement the Tram Link proposal and these were considered. I understand

also that a number of local workshops with interest groups commenced on 27 January 2011.

29. The Council have, in my view, had clear regard to the statutory and regulatory requirements in terms of road traffic regulation. Since residents engaged in the parliamentary process, have made submissions with regard to the core TRO (albeit without the prospect of a hearing to consider unresolved issues) and will have the opportunity on consequential TROs to make representations, in all the circumstances, I do not uphold the complaint.

**(c) The Council did not carry out a proper and comprehensive environmental impact study regarding noise, air pollution, safety and continual vehicle passage through the predominantly residential area as a proposed permanent situation**

30. Mr C referred to the more extensive prior survey work that had been undertaken in relation to the CETM, where there had been detailed traffic counts and air quality monitoring. That had not occurred in relation to the TRTRO which allowed for the closure of the Road from 1 March 2008 and consequent displacement since then of traffic into the Area Road Corridor.

31. The Council informed my complaints reviewer that a TRTRO was promoted to allow the commencement of the initial phase works involving the relocation of utility services, but since this was a temporary order it was not appropriate to undertake an environmental impact or noise study in relation to the Area Road Corridor. From 1 March 2008, the Council had monitored (by inspection only) the traffic arrangements to ensure that traffic was flowing effectively in the Area Road Corridor as a result of diversions following the closure of the Road and that delays were minimised. They had ensured that the road network was operating safely with particular regard to pedestrian arrangements. In the absence of a statutory requirement, no measurement of the noise levels or traffic flows had taken place. As a result of representations from residents, however, the Council had begun to record air quality levels from July 2009.

32. The Council also informed me that they have a statutory duty to monitor all road related injury accidents and that duty is carried out with the assistance of Lothian and Borders Police. As is the case with all public roads, accidents are monitored and Accident, Investigation and Prevention plans implemented, where appropriate. In the monitoring period from 1 March 2008 to 31 May 2010

only two minor pedestrian injury incidents had occurred at the western end of the Area Road Corridor. Both incidents had been adjacent to formal pedestrian crossings. The Council maintained that accident frequency and type did not presently warrant remedial action or intervention but informed me that they would continue to monitor the situation.

33. In light of the contractual dispute between the Company and the main contractor, a considerable delay has occurred between completion of the utility diversion works on the Road, which took from 1 March 2008 until 26 July 2010, and the commencement of the works to install the Tram Link infrastructure. In light of the significant delay, councillors representing the ward in which the Area is situated had requested at the 27 July 2010 meeting of the Committee that a report be commissioned to examine the feasibility of re-opening the Road to general traffic temporarily, until such time as a date for the commencement of the phase two works was known. That report would have been considered at the 21 September 2010 meeting of the Committee, but an issue arose around councillors publicly declaring their position in advance of the meeting. The report was then deferred to the Committee's 23 November 2010 meeting, with the councillors for the ward not being able to speak or to vote. The Committee agreed a report on the TRO1. With regard to the report on re-opening the Road temporarily, the Committee decided then that subject to its cost being feasible, general traffic would be allowed back on to the Road from early 2011 until tram line construction resumes. Subsequently, it has been agreed that it was only feasible on cost grounds to provide access of general traffic to the westbound carriage of the Road from an arterial route from the south.

*(c) Conclusion*

34. In 2003, prior to the promotion of the parliamentary bills, an environmental statement and a scoping report for an Environmental Impact Assessment was undertaken in relation to the Tram Link proposals by consultants. I have not been directed to any statutory requirement to produce a similar scoping report in respect of a TRTRO.

35. Mr C is correct in his observation that since 1 March 2008 air pollution, noise and traffic flow have increased with the displacement of traffic to the Area Road Corridor. He is clearly entitled to be concerned that the deterioration of the environment of residents will be permanently impaired unless there is a reduction in the current volume and nature of traffic using the Area Road Corridor, twenty four hours per day and seven days a week.

36. The Council, however, carried out the necessary prior traffic modelling studies to establish that the Area Road Corridor could cope safely with the increased traffic flow as a temporary expedient following the closure of the Road. Had there been significant back up of congested traffic on the one hand or significant levels of injury to pedestrians on the other, the Council would have required as a matter of urgency to review and modify, or even discontinue, current arrangements. The need to review has not arisen. The present consideration of TRO1 and related future RTROs will afford the opportunity of formal objection but without the prospect of a public inquiry being convened. I do not uphold the complaint that a proper environment impact survey of the closure of the Road was not undertaken.

**(d) The Council repeatedly made misleading statements, both to residents of the Area and to other involved parties, most notably to the parliamentary hearings regarding the effect on the Area**

37. In submitting his complaint to my office, Mr C referred to evidence given by a Council witness at the Parliamentary committee on 22 June 2005, when he rebutted statements made by objectors that the Road did not have sufficient capacity to accommodate the Tram Link, existing buses and general traffic. Subsequently, the Council conceded that the Road did lack capacity and that, when the Tram Link is inaugurated, general traffic will not be allowed to return to the Road. Mr C also considered that residents had been misled in correspondence with the Council regarding the Council's intentions with regard to air quality monitoring; traffic counts; the feasibility of buses using a particular junction; the imposition of HGV weight restrictions to remove heavier and noisy vehicles from the Area Road Corridor; the feasibility of introducing pavement blisters to constrict traffic; and also with regard to having a formal opportunity to raise objections to TRO1. These issues were raised in the formal complaint first submitted by Mr C to the Council on 28 January 2010.

38. Mr C stated that the Council's representative at the Parliamentary committee on 22 June 2005 rebutted local objectors' statements by asserting that the Tram Link proposals would not impact on traffic travelling along the Area Road Corridor. Mr C considered that the Council's representative knew that to be incorrect and misled Parliament, and could well have altered the parliamentary vote to proceed with the two bills subsequently enacted in April 2006.

39. In responding on 15 February 2010 to Mr C's complaint, the Council's Director of City Development stated that at the time of the Parliamentary committee meeting there was no reason for the Tram Link to have any effect on traffic travelling along the Area Road Corridor and that it was not until the detailed design work was undertaken that it was realised that there was insufficient width in the Road to accommodate both public transport and general traffic.

40. My complaints reviewer sought to ascertain at what specific point in the design process the discovery had emerged of the lack of capacity in the Road. The Council stated that comprehensive traffic modelling was undertaken to assess the impact of the introduction of the Tram Link on the city's road network. This was an iterative process, in which each junction along the Tram Link route underwent a succession of reviews as the modelling work progressed. The first run of the model was based on preliminary, do-minimum, junction modifications. That was assessed, the network and junction performances were reviewed, designs were modified as necessary and the model was run again. The exercise was repeated until an acceptable level of performance was attained on the road network. The need to restrict general traffic access on the Road was identified in 2008 as a result of this work and the design showing the restriction was first presented to the public at the September 2008 exhibition (see paragraph 23). In questioning a senior Council officer about this, he responded to my complaints reviewer that in 2005 it would have been unreasonable to have carried out the detailed and extremely expensive design work in advance of obtaining Parliamentary approval through the enactment of the bills.

41. With regard to air quality monitoring (see paragraph 36), Mr C believed that the Council had used the improvement of air quality in Princes Street as a major plank in their CETM proposals but had not responded to Area residents' requests from 2008 that they monitor the concomitant deterioration of air quality in the Area Road Corridor. Consequently, the residents had carried out their own traffic counts and had acquired the necessary equipment to carry out air quality monitoring, only to learn from the Director of City Development in his letter of 15 February 2010 that the Council had from July 2009 for a period of a year installed passive diffusion tubes to monitor nitrogen dioxide at two specific locations in the Area Road Corridor. Mr C informed me that the relevant readings from the Council showed the western part of the Area Road Corridor to have the second highest level of nitrogen dioxide pollution in the city, which

contradicted information contained in the Director's letter of 15 February 2010 (that while a full year's data was required to ascertain compliance with UK standards, the evidence of the first seven months suggested that both locations they had monitored would meet the required standard). At interview, the senior officer stated that a sub-committee of the Committee was presently considering the commissioning of independent environmental advice on air quality.

42. Mr C stated that a request for traffic flow counts (see paragraph 36) to provide baseline data had received a similar non response from the Council. The Council had stated first that this was unnecessary, as the temporary measures utilising the Area Road Corridor was the most viable alternative. The residents then had a professional count carried out at their expense, only to learn that the Company had in fact carried out two traffic surveys, one in advance of the closure of the Road, the second when Princes Street was closed. The Council, in their response of 8 April 2010 to Mr C, offered to share the information obtained.

43. Mr C had also raised, on behalf of residents, the possibility of an alternative to relieve traffic flow pressure in the Area Corridor which required the use of a junction from another street onto Princes Street (see paragraph 36). A Council officer had informed Mr C in a letter of 10 July 2009, however, that the junction could not be used because the tram lines skewed towards that junction. Mr C stated that that was not the case. In the event, the arrangements which were current at the time of Mr C's correspondence with officers between 28 January and 28 April 2010 were altered from 26 July 2010.

44. Mr C stated that he had, on behalf of residents, suggested a 7.5 tonne weight limit on HGVs using the Area Road Corridor as a means of reducing exhaust fumes, noise and vibration. He stated that, while he was informed that this could only be done in cases of structural weakness (such as bridges), such a proposal was included in the proposed TRO put to the Committee on 22 September 2009 for a street in the west city centre. In the Council's final letter to Mr C of 28 April 2010, before he submitted his complaint, they informed him that Lothian and Borders Police had raised resource implications about the introduction of HGV restrictions and that inclusion of the specific proposal for that street in TRO1 was at that time being reviewed.

45. Mr C had also expressed the grievance that after officers of the Council had said that the police would be unable to enforce an HGV ban, he had raised

the possibility of a self-enforcing solution by a pavement 'blister' to constrict entry into the western section of the Area Corridor (see paragraph 36). Such a measure had been proposed by the Council themselves as part of their 2003 CETM proposals (see paragraph 3). Mr C was aggrieved that the Council were now dismissive of the use of such constrictions without a detailed traffic analysis. Mr C viewed the Council's objections to be insubstantial.

46. Mr C stated that in a letter from the Council of 22 July 2008, residents had been informed that the Traffic Regulation Order (TRO1) for the changes required by the Tram Link would be advertised in 2009, that associated restrictions would be evident at that time and that they would be able to take whatever action they considered appropriate, in line with the statutory process. Mr C was aggrieved that the TRO1 document dated 22 September 2009 recommended that legislation relating to matters already authorised by Act of Parliament be used to avoid taking action on public objections or holding a public hearing.

47. The Director of City Development informed Mr C in his letter of 15 February 2010 that the TRO1 would focus on the core order required for the operation of the Tram Link, that the public would be given the opportunity to comment or object, but that TRO1 would be taken forward without holding a hearing. The Committee had agreed on 22 September 2009 that a second TRO would be promoted, if required, to address any issues arising from the consultation process for TRO1.

48. Mr C maintained that, notwithstanding this assurance and without recourse to a public hearing, it would be pointless for residents to repeat as formal objections, the same representations which for two years had been rejected by the same Council officials who were authors of the TRO1 and who would consider the formal objection. They considered that the denial of a public hearing would be unfair and in contravention of the Aarhus Convention.

*(d) Conclusion*

49. I consider the allegation that the Parliamentary Committee was misled on 22 June 2005 to be more significant than the other instances cited by Mr C at paragraph 36. The Parliamentary Committee, however, heard conflicting evidence with regard to the possible repercussions the Tram Link would have for the Area Road Corridor. I cannot speculate, however, on whether had they known in 2006 what became manifest in September 2008, they would not have

enacted the bills. In the two years that followed, the detailed design modelling took place and confirmed the statement that resident representatives had made in June 2005, that the Tram Link and general traffic could not both be accommodated in the Road. By that time, seeking the revocation or nullification of the acts would not have been a likely successful course of action.

50. While, given the previous background of the CETM, Mr C and his fellow residents anticipated that they would have the opportunity of a public inquiry to put their formal case for the inappropriate use of the Area Road Corridor as a permanent solution for the diversion of displaced general traffic from the Road, that opportunity has been denied them by the Council. The residents consider that the Council in so doing are breaching the Aarhus Convention.

51. Mr C complains the Council made misleading statements. These related to air quality monitoring, traffic counts, the feasibility of buses using a particular junction, the imposition of HGV weight restrictions to remove heavier and noisy vehicles from the Area Road Corridor and the feasibility of introducing pavement blisters to constrict traffic. It appears to me that these in the main boil down to disagreements in the correspondence as to feasibility of the introduction of such measures rather than to evidence that the Council knowingly misled Mr C and other residents and interested parties. Mr C and his fellow residents had the opportunity to submit objections to TRO1 and these were considered by the Council on 23 November 2010. The Council commenced a programme of local workshops on 27 January 2011 to explore points of objection to TRO1. It remains open to Mr C and his sub-committee through that dialogue to suggest other measures to mitigate or alleviate the deleterious consequences of the Area Road Corridor remaining a significant road traffic distributor and that case can be also be raised at the stage of any subsequent RTRO. The alleged breach of residents' right to a hearing in terms of the Aarhus Convention is for that body's secretariat to consider. I do not uphold this complaint.



**Explanation of abbreviations used**

The Council	The City of Edinburgh Council
The Area	The neighbourhood in a World Heritage Site in which Mr C and the residents live
Mr C	The complainant, representative of a sub-committee of local residents
The Area Road Corridor	The main road through the Area
CETM strategy	Central Edinburgh Traffic Management Strategy
RTRO	Road Traffic Regulation Order
UNESCO	United Nations, Education ,Scientific and Cultural Organisation
The Road	A major traffic artery bringing trunk roads into the city centre from the west and south west
The Company	The limited company formed with the task of delivering the Tram Link
The Tram Link	A light railway proposed in private acts of the Scottish Parliament to connect north and central Edinburgh with Edinburgh Airport in the west
HGV	Heavy Goods Vehicle

TRTRO	Temporary Traffic Road Traffic Regulation Order
The Committee	The Traffic Infrastructure and Environment Committee
TRO1	The 'core' Road Traffic regulation Order for the Tram Link infrastructure approved by the Committee on 23 November 2010

### The Aarhus Convention

The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention, was signed on June 25, 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001. As of July 2009, it had been signed by 40 (primarily European and Central Asian) countries and the European Union and ratified by 41 countries. It had also been ratified by the Europe Community, which has begun applying Aarhus-type principles in its legislation.

The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and trans-boundary environment. It focuses on interactions between the public and public authorities.

The Aarhus Convention compliance review mechanism cannot be accessed through the Scottish Public Services Ombudsman but can be triggered in four ways:

- (a) a party makes a submission concerning its own compliance,
- (b) a party makes a submission concerning another party's compliance,
- (c) the Convention Secretariat makes a referral to the Committee, or
- (d) a member of the public makes a communication concerning the compliance of a party.

The compliance mechanism is unique in international environmental law, as it allows members of the public to communicate concerns about a party's compliance directly to a committee of international legal experts empowered to examine the merits of the case (the Aarhus Convention Compliance Committee). The Compliance Committee cannot issue binding decisions, but may make recommendations to a full meeting of parties.