

From Scrap Mersey Tolls

Questions about use of TEC for enforcement of Mersey Gateway Crossing penalties

Background

Note This is a copy of a document that was sent to TEC on 31st March. That version included an appendix which summarised emails to and from the TEC.

1. From our understanding of the various regulations and from what our members have told us, it seems to us that the proper procedures have not been followed by Merseyflow and the TEC. In particular we believe that contrary to the law the TEC has allowed facilities meant solely for the use of local authorities to be used by Emovis Ltd using the name 'Merseyflow'. We also believe that there have been irregularities in the wording of the documents being used and in the way those documents were or were not approved by the TEC.
2. The 'Mersey Gateway' is a tolled crossing of the Mersey that opened in October 2017. The main group opposing the tolls is 'Scrap Mersey Tolls' (SMT) which has over 5,000 members on Facebook. Since the bridge opened an average of 75,000 'Penalty Charge Notices' have been issued by Merseyflow each month. Many of these PCNs have reached a stage where Merseyflow have applied to the Traffic Enforcement Centre for an 'Order for recovery of unpaid penalty charge'. Our members have been affected by this and various queries have been raised with the TEC.
3. SMT is aware of some of the regulations that relate (indirectly in the case of the 1993 Order as amended) to enforcement of penalty charges for alleged non payment of road users charges. The main ones we are aware of are-

The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 - <http://www.legislation.gov.uk/ukxi/2013/1783/contents/made>

The Enforcement of Road Traffic Debts Order 1993 - <http://www.legislation.gov.uk/ukxi/1993/2073/made>

The Enforcement of Road Traffic Debts (Amendment) Order 2001 - <http://www.legislation.gov.uk/ukxi/2001/1386/contents/made>

The TEC's Guide for Local authorities. The latest version that is available on the web is version 5, dated 14.3.2014. It makes no reference to 'road user charges'-
<https://www.whatdotheyknow.com/request/242634/response/600862/attach/html/3/1.TEC%20user%20guide%20v5.doc.html>

Part 75 - Traffic Enforcement Procedure Rules (as at January 2017) - <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part75#IDA2N0HC>

4. We have asked various questions about the TEC involvement with the Mersey Gateway Crossing and have not received proper answers. It seems that the TEC may be covering up the use of TEC by Emovis Ltd and other possible irregularities. There is a great deal of suffering being caused by the recovery action and it is deplorable that the TEC has not given proper answers to questions. We complained on the 5th March to the Information Commissioner about some of this, but realise that there can be a considerable delay before the ICO even starts to look at a complaint.

5. Listed below are the questions that we are hereby asking again, though we have rephrased them as they are not in their original context. If the TEC does not give proper and satisfactory answers then we will have to assume that our impressions are correct and we will call for an investigation into the behaviour of the TEC.

The Questions

1.1. 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.

1.2. 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?

2. 1. 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?

2.2. 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?

2.3. One of the errors that we pointed out to TEC is the web address - 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?

3.1. 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?

3.2. 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?

- 4.1. 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?
- 4.2. 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?
- 5.1. 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?
- 5.2. 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?
- 6.1. 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?
- 6.2. 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"?
- 6.3. Following the revocation of Recovery Orders, Merseyflow has been reissuing recovery Orders without reissuing the PCNs. This is against what we thought should happen and we asked where the legal authority was for this. There have been several replies, the latest on the 26th. Your replies indicate that this practice is alright with you. This seems to us to be odd as without a reissued PCN, the respondent does not know if the applicant is going to continue with the penalty action. Also as the most common reason for revoking a Recovery Order is that the respondent had not received the PCN, then the respondent still has no PCN and can again submit a TE9 and the whole process would then go on ad infinitum or until the respondent has a breakdown. It should be obvious that it would be completely pointless if the only thing that happened when an Order for Recovery was successfully challenged was that you then went straight on to issue a new Recovery Order. In any case you have not given us the requested legal authority for reissuing a Recovery Order without reissuing the PCN. So we ask again- In what document or regulations does it say that when a TE9 is accepted the applicant can issue a new TE3 recovery order without reissuing the PCN?
7. 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?

End of questions