

## **Guide to when you get a Penalty Charge Notice (PCN) from Merseyflow acting for Halton Borough Council**

### **1. BACKGROUND**

#### **1.1. There are five main reasons why you may get a PCN from Merseyflow-**

- a) You may have paid but Merseyflow do not have you recorded as paying.
- b) You are exempt or covered by the Local User Discount Scheme and Merseyflow have made a mistake.
- c) You have accidentally not paid because you forgot to pay on time or had no opportunity to pay or Merseyflow's systems were not working when you tried to pay.
- d) You were not aware of the need to pay a toll or the method(s) and timescale(s) for payment, due to inadequate and/or confusing signage,
- e) You have deliberately not paid.

#### **1.2. Whatever the circumstances, you should not meekly accept the penalty.**

We suggest that you should fight it, whatever your grounds and whether you have any evidence or not. **Whatever other grounds you give you should also say "According to the Traffic Penalty Tribunal, there has been a procedural impropriety on the part of the Charging Authority. There is no toll payable".** Technically the situation may have changed if the PCN refers to a crossing after 19th April 2018 (when the Council say that they made a new Charging Order). But in our view, even after the new Order, the PCN may still be illegal.

#### **1.3. We realise that all this is a pain and that you might decide not to bother. That is what Halton Council and Merseyflow rely on- that you will pay them £20 to get it out of the way until the next time that you are stung.**

### **2. BEFORE YOU GET A PENALTY NOTICE**

2.1. If you pay for your crossings, record when you use the crossing. Take screen shots of payments and confirmations, keep email receipt messages, physical receipts and anything that proves you have paid for your crossing (and write on them which crossings they are paying for).

2.2. If the Merseyflow online payment system is down, then take a screen shot to prove that you attempted to pay and could not within the time. Also if you use Payzone, check that they input your details correctly.

2.3. When using a Merseyflow prepay account, request or download a statement of your account, review the transactions and reconcile the payments to the transaction history and your account balances. Use this for your evidence as appropriate.

### 3. THE PENALTY CHARGE NOTICE (PCN)

3.1. Merseyflow have up to 6 years to issue you with a PCN, following your alleged non-payment of the toll on time. The process is described on the Merseyflow website- <https://www.merseyflow.co.uk/faqs/penalties>

3.2. Merseyflow must follow a set process which requires them to inform you and send documents at each stage of the process. If they do not comply it means that later stages of the PCN process will fail and may have to be repeated.

3.3. If you ignore or do not reply to the notifications, Merseyflow, even when it is their error, will be able to move the PCN to the next stage, increasing the penalty until it completes their process and then enters the registration and ultimately the recovery authorisation phase.

### 4. REPRESENTATIONS

4.1. You have 28 days after service of the PCN to respond and put forward a representation to Merseyflow. If you do not, it is deemed to have been accepted. Do not wait till near the end of the 28 days. As soon as possible after receiving the PCN, gather any evidence to support your representations and then write to Merseyflow clearly stating the reasons you disagree and provide copies of any evidence. The representation letter should be sent by registered post, retaining the confirmation of posting/receipt. You can also make representations online using the link- <https://www.merseyflow.co.uk/make-a-representation>

4.2. **Whatever other grounds you may have for challenging the PCN, make sure to include "G - Procedural impropriety".** You can add to this- "According to the Traffic Penalty Tribunal, there has been a procedural impropriety on the part of the Charging Authority. There is no toll payable".

4.3. Do not rely on Merseyflow taking and recording accurate details of direct telephone calls, or discussion at the Merseyflow offices. Their advice is variable and it requires a lot of effort to get them to look into matters by phone. They record calls so this evidence is available to them. You can submit a Subject Access Request to them to obtain this or further information.

4.4. Within 56 days Merseyflow must issue you a letter stating whether they accept your representation, or not, by sending you a Notice of Rejection (NoR). They do not always say why the representation was or was not accepted. If the representation is rejected then the NoR must explain how you can appeal further, and should contain a PIN, web link and telephone number. If a PCN is cancelled then no toll charges are payable. Merseyflow may make you an offer not to enforce the PCN if you pay the toll. We suggest that you tell them that you will not be paying the toll, but if you do so, then tell them the payment is 'under protest'.

4.5. If you receive an acceptance of your representation, and the PCN is cancelled, but you then receive further PCNs for the same reason, then include details of the cancelled PCN in your representation of the subsequent PCNs.

## 5. TRAFFIC PENALTY TRIBUNAL APPEALS

5.1. If Merseyflow issue a 'Notice of Rejection' (NoR) and you believe that you have grounds for the PCN to be cancelled, then you have 28 days in which you can appeal to the independent Traffic Penalty Tribunal.

Again do NOT wait, appeal straight away.

5.2. The Tribunal advice is at <https://www.trafficpenaltytribunal.gov.uk/appeals-process-merseyflow/> . This includes details of how to register your appeal, the process it follows, and the criteria they consider for decision making.

5.3. In your appeal to the Tribunal, state the reasons why you believe the decision Merseyflow made was wrong. State the reasons for your representation to Merseyflow and include copies of any evidence. If the PCN was erroneously issued possibly through poor administration, record keeping and/or unfair practices then also ensure that you include this. Again if the PCN was as a result of an error of Merseyflow then include in your appeal a claim for costs to compensate you for your time and expense dealing with the issue and the nuisance and stress caused.

5.4. You can elect to have a telephone adjudication, for which arrangements will be made, but most appeal decisions are made without. The Tribunal will consider your evidence against seven key decision criteria and may decide that the PCN should be cancelled. The seven criteria are-

- a) You were not the registered keeper when the alleged contravention occurred.
- b) The vehicle was taken without the owner's consent - (*This covers stolen vehicles and use without the owner's consent, but does not generally apply to vehicles in the care of garages or borrowed by a family member/friend. A crime number will support this*).
- c) The PCN was issued to a vehicle hire firm and the vehicle was on hire under a hire agreement, and the hirer had signed a statement of liability for any PCNs issued during the hire period.
- d) The road user charge was paid on time and as required.
- e) The penalty exceeded the amount that applied in the circumstances.
- f) There has been a procedural impropriety by the charging authority - (that is the charging authority have not complied with the relevant regulations).
- g) No user charge or penalty is payable.

5.5. The last criterion (g) seems to cover almost anything, including the fact that you may not have used the crossing at the alleged time or the illegality of any toll or any penalty for not paying the toll.

5.6. The Tribunal can also take into account other "compelling reasons" you offer. The Tribunal cannot cancel a PCN for compelling reasons but they may recommend to Merseyflow to cancel the PCN. Merseyflow can decide to not follow the Tribunal recommendation and provide a reason for this.

5.7. If your appeal is upheld by the Tribunal, Merseyflow will be directed to cancel the PCN. Note that Merseyflow can disagree and 'appeal' (request a review) against a Tribunal adjudication made against them.

**5.8. If you do not pay after you receive a NOR and either do not appeal or lose the appeal to the Tribunal, then there will be steps taken to enforce the penalty.** Note that at the moment no one has lost an appeal to the Tribunal, as, following one of the first appeals, an adjudicator decided that the penalties were not legal as Halton Borough Council had not complied with the law when it introduced the tolls.

## **6. THE END GAME**

6.1. If there is no appeal lodged by you with the Tribunal, or should the Tribunal decide to uphold the PCN, and the PCN remains unpaid, then this will result in a Charge Certificate being issued by Merseyflow to you, this increases the penalty charge to £60.

6.2. If a Charge Certificate is issued, you have 14 days to pay, after which, if no payment is made, Merseyflow will apply to the Traffic Enforcement Centre to register the charge and seek approval for a Warrant of Execution/Control to enforce it. You can, at this point, decide to pay the charge, or if you believe you have good grounds to pursue the matter further, not pay and enter into the TEC process.

6.3. If you have received an Order for Recovery or notice from the Civil Enforcement Agents (bailiffs) for an unpaid penalty charge notice you are too late to appeal to the Tribunal. Your recourse at this point is through the Traffic Enforcement Court (TEC) provided you meet the "out of time" filing criteria.

6.4. It is unlikely that you will reach this stage, but [the Traffic Enforcement Court process is described in this doc](#) .