

To Traffic Enforcement Centre
Copy to Traffic Penalty Tribunal
From Scrap Mersey Tolls

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

Background

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. Also below is a summary of the last emails sent on various threads.

6. This document will be copied to the Traffic Penalty Tribunal as what may be happening is in our view directly or indirectly a 'procedural impropriety'.

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

APPENDIX - THE EMAIL THREADS

A. Complaint: ccbc07170/461/1819.

Thread starts 26 Nov 2018. Last email at 11.30 on 25th Feb from us. Auto acknowledgement from TEC but no other response.

This thread started on 26th November 2018. In summary we were asking you - a) who is sending the TE forms out, and b) for details of the approval (if any) by the TEC of the TE forms that were being sent out for the Mersey Gateway. we did not get the information.

Our first request was part of the first email to you 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?"

There was no reply so we sent you another email on the 5th December. You 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. So we replied the same day asking you for an answer to the three questions.

The next day, 6th December you replied-

"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."

On the same day we emailed you 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?"

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

The same day there was an email from you 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 we emailed you again on 17th December.

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

You replied the same day (31st December)- "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 you.) There was also a form of answers to three items from the 26th November.

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We replied the same day, highlighting 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?"

There was no reply from you and on 8th January 2019 we emailed you 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."

On 10th January there was another email from the you. 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 seemed 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 were still not giving us proper answers.

On 11th January we emailed you again setting out the position at some length. We reminded you 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?"

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 you were still not saying whether you 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 your 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 you had not answered it.

There was no reply so we emailed you again on 6th February and again on 25th February. There were no replies other than auto acknowledgements and so on the 5th March we complained to the Information Commissioner.

B. Form of Warrants, Applicant name, possibility of fraud

(Email subject XM[REDACTED] and XM[REDACTED]. Thread starts 6 December 2018. Last email at 11.46 on 19th March from [REDACTED] at TEC.)

There were a series of emails starting with one from us on 6th December. They related to one of the earliest cases of debt enforcement officers visiting one of our members. We asked various questions about the Warrants of Control that the enforcement officers were showing, the wording on the Recovery Orders, and the use of Notices of Enforcement which seemed to lend the system open to fraud. The questions though they were initially based on what happened in one particular case, were made on behalf of all our members or anyone who is being chased by debt enforcement officers who claim to be acting on the authority of the TEC.

Our last message to you was on 7th March and marked 'For Urgent attention'. You replied on the 19th refusing to answer any of our questions as we were "not the named respondent in these matters". We are asking on behalf of everyone and expect an answer

C TE7 and TE9 Forms

(Email subject TE7 and TE9 Forms. Only email at 11.57 on 25th Feb from us. Auto acknowledgement from TEC but no other response.)

On 25th Feb I said in email to you that-

"My understanding is that -

- a) If the TE9 is submitted late together with a properly completed TE9 then in the first instance it is up to the applicant at 9 Howard Court, Manor Park, Runcorn whether the TE7 and thus the TE9 should be accepted. If the applicant does not accept the TE7, then we understand that the applicant's decision is reviewed by a TEC officer.
- b) If the TE9 is submitted on time then it is automatic that the TEC will write to the applicant ordering that the "order for recovery of unpaid penalty charge be revoked". The applicant can reissue the penalty charge notice but they have no say on whether the TE3 recovery order is cancelled.

Will you please tell us whether our understanding is correct. If there is any document that sets this process out then can we also have a copy of that.

D. Revoked Recovery Orders

(Email subject XM0836 111A. Thread starts 6th March. Last email at 14.21 on 26th March from [REDACTED] at TEC)

Reissued PCNs

Where a PCN is reissued we asked "how is the 'respondent' supposed to know that this is a new TE3 which requires a fresh response? "

Your answer on 15th March said that it could be identified by a suffix of '1' as against '0' for the original PCN.

We replied the same day pointing out that both the original TE3 and the assumed reissue had the same suffix - 'A'.

You replied on the 26th suggesting that we redirect this question to the "local/issuing authority".

Re-registering revoked PCNs without reissuing the PCN and giving the Respondent an opportunity to either pay or make a representation

The TEC has been issuing Recovery Orders for revoked PCNs without the respondent having had any opportunity to either pay or make a representation. This is contrary to what we thought should be happening and on 6th March we asked "Can you tell us as a matter of urgency what the proper process should be if the applicant decides to pursue enforcement of the PCN? ".

There was a reply from you on 7th March but it did not answer the question. We pointed this out to you the same day and asked you to review what was in effect a refusal to answer the question.

Your reply on the 15th March said "a new order for recovery should have been sent to the respondent by the local authority, if the respondent has not received this, they should contact the local authority concerned."

Your reply was rather odd as, obviously a new order had been received, the point was that the PCN had not been reissued and this was contrary to what we thought should be happening.

We replied the same day, 15th, saying "..If this is the 'proper process' then that is fundamentally different from what we understood, so we would require something to confirm what you have told us. 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? We need an URGENT answer to this question as what you have told us is contrary to the advice that we have been giving our 5,000 members and which we also publish on a website.

In both your answers you refer to the "local authority". Will someone tell us why you are referring to the applicant as the local authority when the TEC knows full well that the applicant is not a local authority?"

Your reply on the 26th says "The revoking order means that the penalty is cancelled with the court but this is still active with the local/issuing authority, after the penalty has been revoked the local/issuing authority and yourself are given an opportunity to come to a suitable settlement regarding the penalty if this is not achieved then the local/issuing authority can then reregister the penalty charge with TEC.

The Traffic Enforcement Centre (TEC) is a registration point for Local/Charging Authorities to register unpaid penalty charges with the County Court prior to enforcement."

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