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# Diplomatic immunity and the London congestion charge

BY BRIAN · 24 OCTOBER, 2005

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The controversial Mayor of London, Ken Livingstone, has scored a popular bull's-eye with his [congestion charge](#) (a form of road toll) for using a car in central London, a scheme which has significantly improved traffic flow, encouraged use of public transport, and raised handy additional income for investment in London transport. But when in July [Transport for London \(TfL\)](#) raised the charge from five to eight pounds a day, the [American embassy](#) joined a few others, including the Germans, in [declaring](#) that they would no longer pay the charge, on the grounds that they considered it a form of tax from which diplomats are exempt under the [Vienna Convention of 1961](#). This has prompted the predictable rash of tabloid, blog, [forum](#) and other media comment on the allegedly anachronistic concept of diplomatic privileges and immunities under which rich and pampered foreign diplomats can drink champagne, avoid car parking charges, and molest children without any comeback on the part of the affronted citizenry, all at the affronted citizenry's expense.



figlover.jpg < *Fi Glover*

As a former diplomat, and supposedly a past slurper on the diplomatic privilege and immunity gravy train, I found myself being questioned on the BBC Radio 4 weekly politics programme '[Broadcasting House](#)' on 23 October 2005 by the sparky [Fi \(pron. Fee\) Glover](#), the programme's presenter,

about these weighty matters. The event, if such a brief radio item can be so described, is commemorated in a signal act of filial piety in [Owen Barder's blog](#), which even includes a link to Owen's recording of the relevant interview, enabling anyone sufficiently interested to listen to my three or four minutes of fame by clicking [here](#). (I am further indebted to Owen for almost all the chapter and verse cited below for the exact status of the congestion charge.)

As I had to share the last five or six minutes of the programme with the weather forecast, there wasn't time to get into the intricacies of the precise status of the congestion charge, still less of the rationale for diplomatic privileges and immunities. So here goes.

The congestion charge: are diplomats immune from paying it? The short answer is No. (It's also the long answer, actually.) It all hinges on whether the congestion charge is a tax – in which case diplomats are immune from any obligation to pay it – or whether it's in the category of "charges levied for specific services rendered", the precise words of Article 34(e) of the Vienna Convention:

“ 34. A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except: ... (e) charges levied for specific services rendered...

So what is this congestion charge? It's levied by [Transport](#)

[for London](#), which has the formal status of a public corporation, as confirmed by the [British Treasury's Classification of Expenditure](#) – Public and Private Sectors:

“ *Public corporations: Post Office; Transport for London; British Nuclear Fuels; National Health Service Trust hospitals; Trading Funds; Royal Mint; Companies House; Land Registry; Manchester Airport; Forest Enterprise; Tote; Patent Office*

Revenues from congestion charges are not part of central or local government revenues: any surplus from the charges is ploughed back into London transport costs, not available for local or national government expenditure. ‘Transport for London’ is in the same category as the post office, as the preceding quotation shows, and even impoverished American diplomats wouldn't claim exemption from the obligation to pay for their postage stamps.

A [paper for the OECD National Accounts Experts Meeting of the OECD Statistics Directorate](#) confirms the formal position:

“ *One example is the London congestion charge ... This could have been seen as a source of tax revenue if the money had gone in to a general fund for spending on the full range of services. However the legislation specifies that the income from the congestion charge can only be spent on*

*a limited range of transport related items in London. Transport in London is organised as a number of real and quasi public corporations owned by local government in London. These provide market services to users of London's transport including underground trains and buses. We see the road charge scheme as an additional market service provided by them. There is cross subsidy between different categories of user but this is common in the provision of services in the private sector. The congestion charge is ... a service charge not a tax because of the ring fenced accounting inherent in the scheme. This is also consistent with the national accounts manuals where the Eurostat Manual on Government Deficit and Debt, which is consistent with ESA95, cites road and bridge tolls as examples which should be treated as payments for the provision of services.*

Thus the UK Office of National Statistics, applying international guidelines agreed by the European Union and the OECD, has concluded that it is a charge and not a tax.

The position is made additionally clear by the fact that the UK tax authority, the Inland Revenue, does not allow expenditure on congestion charges as a tax-deductible business expense,<sup>[1]</sup>

as it would if the charge could be regarded as a tax:

“ *...motorists will not be able to claim the money [paid in congestion charges] back as a tax-deductible expense. The Revenue said that it would treat such charges in the same way as it looks at Underground and rail fares and parking fees, which are not seen as allowable business expenses.*

But that's not all. The congestion charge is self-evidently a form of road toll, as the previous quotation confirms. Not only do diplomats in (probably) all countries, certainly including the USA, pay road tolls without attempting to claim diplomatic immunity from them (partly no doubt because a diplomat trying to refuse to pay a road toll wouldn't get to travel very far): the **US Federal Department of Transport** itself [defines road tolls as user fees](#) (as opposed to taxes):

“ *a toll for the use of highway is considered a user fee since it is related to the specific use of a particular section of highway*

US Embassy, please note.

The Americans' and Germans' assertion that the congestion charge is a tax, and not a charge levied for a specific service rendered (i.e. permission to use certain defined roads at specified times on a specified date), is simply unsustainable. The diplomats should grit their teeth and pay up (as they did,

apparently, until the charge was increased!).

However, that's not quite the end of the story. Failure to pay the basic charge results, after a certain length of time, in an increased [penalty charge](#), eventually mounting to as much as £150:

“ Following a final check at midnight, the computer will keep the registration numbers of vehicles that should have paid but not done so. We will then manually check each recorded image and issue a Penalty Charge Notice of £100 to the registered keeper or hirer of all those vehicles. As with parking penalties, this will be reduced to £50 for prompt payment within 14 days. Failure to pay the penalty charge within 28 days will result in the penalty being increased to £150. Once a penalty has increased to £150, a charge certificate will be sent to the registered keeper or hirer of the vehicle advising them of the increase and that action to recover the outstanding penalty will now be taken. As with parking penalties, failure to pay the outstanding charge can result in further action, including registration of the debt with the County Court and finally bailiffs being appointed to recover the debt.

The diplomat who has failed (or refused) to pay the initial charge

is probably just as much under a legal obligation to pay the consequent penalty charge as he was to pay the basic charge in the first place, the penalty charge having the same legal character as the basic congestion charge. But enforcing it may be another matter:

“ Vehicles with three or more outstanding congestion charging penalty charges may be clamped or removed by staff operating across the whole of Greater London, not just in the congestion charging zone. The current clamp fee is £65 and the removal fee is £150. Storage in the car pound also costs £25 a day. If a vehicle is clamped or removed, then all of the outstanding penalty charges and the appropriate clamp/removal and storage fees must be paid before the release of the vehicle is authorised. If the release fee is not paid, then the vehicle may be disposed at auction or by scrapping. The registered keeper will remain liable for all outstanding charges, including a £60 disposal fee.

Here the question of the inviolability of the diplomat, and his immunity from the jurisdiction of the courts in the country where he is serving, comes into play. Under Articles 29-31 of the Convention, the diplomat cannot be arrested or detained, and his papers and (in almost all circumstances) his property enjoy similar



inviolability. Article 22 also specifies that –

“ *The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.*

The combined effect of these provisions seems to be that Transport for London would have no way of forcing an accredited diplomat to pay either the basic charge or accumulated penalty charges. Clamping or towing away the offending owner's vehicle, scrapping or selling it, attempts to recover the debt through the County Court, or action by bailiffs to extract the money owed, would all contravene Britain's obligations under the Vienna Convention. So is the free-loading diplomat sitting pretty as he ignores his obligation to pay charges which, under the same Convention, he is legally obliged to pay?

Once again, the short and long answers are both No. Under Article 41 of the Convention, —

“ *Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State.*

Transport for London, the London Mayor, and in particular the Foreign & Commonwealth Office in London have a genuine cause for complaint against an embassy or high commission

(the title of the equivalent of an embassy of another Commonwealth country) if its diplomatic staff are consistently failing to respect British laws and regulations from whose operation they have no immunity under the Convention, as is undoubtedly the case with regard to non-payment of the congestion charge. The embassy's administration officer, or some other member of its staff, perhaps the deputy Head of Mission, could expect to be summoned by the head of the relevant department in the FCO to receive a friendly but stern rebuke, with a formal request to ensure that his or her embassy's staff are reminded of their obligations and instructed to pay whatever debts they have incurred. If this has no effect, in due course the ambassador or high commissioner himself would no doubt be summoned to the FCO to see a minister or, more likely, the permanent under-secretary of state, to receive a similar message, accompanied by an expression of regret that the earlier interview at lower level has not been acted upon.

Still no remedial action by the offending embassy? The FCO has three more weapons in its armoury, one a pea-shooter, the other two potential Weapons of Mass Destruction. The pea-shooter is a briefing of the UK media about the issue, including the naming and shaming of the offending embassies and high commissions for publication, accompanied by suitably scathing editorial comment,

perhaps with a formal complaint to the embassy's own government via a formal démarche to the country's Foreign Ministry. The WMDs are, first, a formal request to the relevant ambassador to waive the immunity of the offenders in his mission from legal process so that court action may be taken against them to recover the debts due: and, secondly, if even that fails, the FCO may issue a warning to all embassies and high commissions that the FCO will henceforth keep a record of the personal identities of all individual diplomats who persistently fail to pay their congestion charges: and that any diplomat found to have committed this offence, say, three times will be required to leave. *Three hits and you're out.*

Article 9 of the Convention contains the host country's ultimate deterrent to bad behaviour:

“ *The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission.*

It will be surprising if this final sanction fails to work. Most foreign diplomats like being

posted to London and are deeply reluctant to leave. On past occasions when there have been similar arguments over diplomats in London refusing to pay their parking fines, all stages of the escalating counter-measures described above have proved generally ineffective except the last. We may be pretty sure that this will do the trick.

One final postscript. Both the Foreign & Commonwealth Office and most of the heads of mission in London will want to avoid if possible allowing this issue to escalate into a full-blown row that might even sour otherwise good relations between friendly governments. Their instinct will be to search for a mutually face-saving compromise. One such might be a provision that embassies and high commissions should henceforth pay a reasonably modest annual charge, the exact amount varying according to the numbers of their diplomats involved, that would entitle their diplomatic staff to use their cars in the congestion charge zone without individually having to pay. Diplomats do, after all, have to move around in central London in the course of their duties, for example to visit the Foreign & Commonwealth Office and other embassies, and there may be security problems about their use of public transport, problems of a kind that would not apply to most other Londoners. I offer this possible solution, entirely free of charge, to the warring parties, *à toutes fins utiles* (as diplomatic toffs of

the old school used to say). Pax vobiscum.

Well, not quite final. This disquisition has gone on, you may think, quite long enough. For some thoughts about the more general question of diplomatic privileges and immunities, their rationale and justification, if any, Watch This Space.

[1] But now see the Customs & Revenue document cited by Matt in [his comment](#) below.

**Brian**

## 10 RESPONSES

 **Comments** 10

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### Derek

© 28 October, 2005 at 4:59 pm

A BBC report on 20 October said that as many as 55 diplomatic missions in London are protesting – not just the Americans, Germans and a few others. The Americans have protested from the start.

I find it hard to believe that all 55 are just being perverse. There must be some reasoned basis for their opposition to the congestion charge. Do we know what it is?

Let me play Devil's Advocate. It might be argued that Embassies are being obliged to pay for a service which they cannot refuse if they are to fulfil their diplomatic mission, and that they should not be expected to pay for the "full facilities" which the receiving State is

required to provide under Article 25 of the Vienna Convention for the performance of their functions. They should furthermore not be subject to the political whims of Ken Livingstone. Diplomatic missions accept that they pay for services provided, but they have a choice whether to purchase these services or not. In the case of the congestion charge, there is in some cases no choice, and this element of compulsion might be thought to change the technical status of the congestion charge to the point where it could be seen as more of a tax than an admissible service charge. In other words, if it is by common consent not an admissible service charge, the 55 might reasonably argue that the congestion charge has effectively become an imposition i.e. a tax in the broadest sense of the term because of its very unavoidability. So why should they pay?

Derek Tonkin

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**Brian**

 [© 28 October, 2005 at 8:25 pm](#)

Derek,

Good try! I suppose the arguments you describe may well be the basis of the refuseniks' argument. But personally I find it unconvincing. First, it's plainly not the case that this is an unavoidable service which all diplomatic officers are compelled to pay. They could use taxis or minicabs (probably more secure than their own private cars) or buses or tubes (not really insecure in practice, or anyway no more so than for

the rest of us). The necessity to pay the congestion charge is much less compelling than the necessity to consume gas, electricity and water, for all of which I assume these diplomats pay without complaint. Secondly, the possibility that the charges may be increased at the “political whims of Ken Livingstone” (and it’s not clear to me that decisions by Transport for London on the price charged for any particular service can properly be so described) applies equally to the possibility of price increases for any other service that we are all compelled to buy. The only marginal difference is that there’s a limited degree of competition as between the available providers of gas, electricity and water, whereas TfL is of necessity a monopoly supplier of London roads, but that seems to have no obvious bearing on the status of the charges as charges for a service, not taxes. Any supplier of utilities such as gas and electricity chosen by a diplomat is liable to raise its prices from time to time, as with any other service or commodity. Moreover I see no relevant distinction between the congestion charge and any other road toll so far as diplomatic immunity is concerned.

And thirdly, I can’t imagine even a smart American lawyer being able to claim with a straight face that the British government’s obligation under the Vienna Convention to provide “full facilities” to diplomatic missions includes an obligation to provide for nothing access to roads which at certain times of

certain days virtually  
everyone else has to pay for.

Still, as you say, they must  
be relying on some  
argument or other!

I seem to remember from  
my own days in the trade  
that nothing produced more  
heat and less light at  
gatherings of members of  
the diplomatic corps in  
foreign capitals than an  
issue involving diplomatic  
immunities. I well remember  
meetings at which such  
controversies crowded out  
any time for discussion of  
vital political and economic  
questions of the day. I'd be  
surprised if this wasn't the  
principal talking-point in the  
diplomatic salons of London  
and the meetings of regional  
groups of ambassadors,  
assuming of course that  
anyone can manage to get to  
them without paying the  
congestion charge....

Brian

---

### Derek

© 29 October, 2005 at 5:20 pm

Brian

I am now even less  
convinced. Gas, electricity,  
and water like bottled gas  
and central heating fuel are  
all supplies, not services.  
What "service" do you get  
when you pay the  
congestion charge? None at  
all! It is primarily a device to  
mitigate congestion by  
persuading people to use  
other forms of transport by  
taxing them from coming  
into the city centre. Fair  
enough, but it clearly is a tax  
and not at all like a road toll  
which is designed to raise  
revenue for road  
maintenance and  
development and to repay  
investment costs.



The Electronic Road Pricing (ERP) system in Singapore used to be a toll into the Central Business District, which all diplomats used to pay, and when it converted to an electronic system diplomatic missions no doubt carried on paying it because they had always done so. Not so in London – it is something quite new. It is also inappropriate because the revenue goes into meeting London transport maintenance and development costs which normally come from local and central taxation, and diplomats ought not to see their money being channelled into funding which is used for purposes which are not “admissible” services under the Vienna Convention.

I accept that congestion is a problem, but you cannot charge diplomats for a “service” which has no shape, form or content.

Derek

Brian replies: I’m puzzled by your need to put the question: “What “service” do you get when you pay the congestion charge?” The service that you get is self-evident: it is access to the use of certain roads at certain times, precisely like a road toll — and since your use of those roads at those times entails a real and calculable economic and social cost, there’s no reason why diplomats, like anyone else, shouldn’t pay for it. The fact that some of the proceeds of the charge, after they have been used to defray the cost of administering the scheme and maintaining the relevant roads (precisely as in the

case of ordinary road tolls), are applied to cross-subsidise other Transport for London activities is neither here nor there. The money is ring-fenced for transport purposes, charged by and accruing to a public corporation akin to the post office, and bears no resemblance at all to a tax. The quotations in my original post seem to me to demonstrate that conclusively.

But I can't help admiring your ingenious counter-blasts: the Devil has a better Advocate than he deserves!

---

### Derek

© 30 October, 2005 at 12:02 pm

Brian

I'm still not convinced. The main objective of the charge is surely to discourage people using their cars to drive into the Congestion Zone and to take other forms of transport. It is not primarily designed (or even needed) to raise revenue for road maintenance in the Zone. The charge is first and foremost meant as a disincentive, an imposition, a deterrent – that is, a tax. You are being charged for access which you previously enjoyed free of charge. Ken Livingstone has taken away this right of free access and now insists on charging you for it. He and his friends may have created a service on a pay-as-you-use basis, but the "primary purpose" remains deterrence. For this reason, the charge is more a tax than a service charge. Diplomatic missions in London have a case. They should enjoy a 66% rebate.

Derek

Brian replies: I can't imagine any definition of a 'tax', nor any criterion for distinguishing between a 'tax' and a 'charge', that hinges on the purpose for which the tax or charge is levied, or on what happened before the tax or charge was introduced. A road toll may well be imposed with the primary purpose of deterring very large numbers of vehicles from using a particular road, as is clearly the case with the newish M6 toll road that enables drivers to by-pass the equivalent stretch of the old M6 which is constantly choked with traffic. No-one, so far as I know, has suggested that this principal purpose makes it a tax from which diplomats should be immune. The congestion charge is exactly what its name suggests: a charge, not a tax. The several respects in which it doesn't match the criteria for a tax are set out in the quotations in my original post. They don't seem to me to leave much, if any, room for argument.

Your turn!

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### Derek

© 31 October, 2005 at 1:56 pm

Brian

I agree with you that it would be quite unreasonable for diplomats to argue that they should be immune from the M6 "new" road toll charge, if they choose to use that route. But there is an alternative, albeit slower route for them, so it is a question of choice. In the case of diplomats driving into their Embassies in the Congestion Zone, there is no alternative route. In effect, a new restriction on access

has been imposed which requires the payment of a charge. That restriction would seem to be a breach of Article 25 ["full facilities"] of the Vienna Convention. Host countries should not impose new penalties for access.

See :

[http://www.channel4.com/news/media/2005/10/week\\_3/18\\_memo.doc](http://www.channel4.com/news/media/2005/10/week_3/18_memo.doc)  
for the US Embassy's internal administrative notice.

What this notice doesn't tell us is what the US legal arguments are, which makes it very difficult to get to grips with the subject. My instinct, though, still tells me that there is something wrong with your seemingly impeccable arguments, and I think I am coming round to the view that the congestion charge is partly a service charge and partly a tax. This could provide grounds for a compromise.

An alternative is that our Embassy in Washington could be charged pro rata for traffic circulation improvements in the vicinity of the British Embassy in Washington, since our diplomats would be getting a smoother ride, but at no expense – because the US authorities choose to take the funding out of local taxation. Our diplomats should clearly pay for this improved "service" on the usual basis of reciprocity.

The Devil, by the way, has capped my fees so I shall now retire gracefully from the scene.

Derek

Brian replies: Thanks for this graceful (and, as usual, ingenious) envoi. It's been an

enjoyable and challenging  
dialogue!

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### Derek

🕒 29 November, 2005 at 6:39 am

Brian

Two extracts from "The  
Times" today:

Alistair Darling, Transport  
Secretary, on plans to  
extend the congestion  
charge to other cities: "It is  
impossible to predict what  
the tax regime is going to be  
in 2015."

Editorial: ".....most  
Londoners see the  
congestion charge as a form  
of taxation to allow the  
mayor to raise money. So,  
unfortunately, does the  
mayor."

Still not a tax?

Derek

---

### Brian

🕒 29 November, 2005 at 3:37 pm

Derek,

Just because A Darling and  
'most Londoners' (who has  
counted them?) think it's a  
tax don't make it so. But if  
the revenue from new  
congestion charge systems  
in other cities are grabbed  
by the central government  
and go into the Consolidated  
Fund (unlike the revenue  
from the London congestion  
charge, which is ring-fenced  
for London transport),  
and/or if it differs from the  
London system in other  
material respects, it might  
turn out to be a tax, in which  
case in principle accredited  
diplomats ought to be  
exempt from the obligation  
to pay it. Impossible to  
predict at this stage. But  
prima facie it should be  
more like a road toll than a  
tax — as in London.

Keep them eagle eyes  
skinned, though!

Brian

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## Warren

🕒 1 April, 2006 at 4:56 am

Perhaps the solution would be for many of the embassies to cut their staff, and the resulting drop in expenditures, would be a nice little drain on metro London. The governments in the corresponding countries could then also require that said foreign embassies also cut their staff appropriately. A private company can move their operations out of downtown London, to the suburbs, or a foreign country like Scotland, but government emissaries have no choice but to be close to the seat of government, which happens to be in the city center. If it walks like a tax, and smells like a tax, then it is a tax. Time again for Americans and others to quit drinking British tea.

**Brian replies:** *It neither walks nor smells like a tax. It doesn't even quack like a tax. It isn't a tax. It's a toll. The quotations and authorities in my original post (above) are in my view conclusive. Comments that I have received from my American friends are hostile to the US embassy's antisocial attitude and embarrassed by it, as is the [correspondent from Maine in today's Guardian](#) (1 April 2006 — no, surely not an April Fool).*

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## Matt W

🕒 7 November, 2007 at 2:55 pm

I'm not getting into the Angels on a Pinhead bits, but two points:

1 – The CC IS tax deductible, according to the Inland Revenue, just the same as any other business expense.

[http://www.hmrc.gov.uk/cars/concharging\\_tax.pdf](http://www.hmrc.gov.uk/cars/concharging_tax.pdf)

The guidance was issued in 2003, two years before the post.

2 – Surely TFL is part of local government. It is part of the London Mayor's operation, directed by the Bionic Smurf himself – and used as a tool of policy to manage London.

PS: Let me withdraw the 2003 date I quoted – I am not absolutely sure about that, but I believe it to be the case based on the pdf I link to.

btw thanks for the article – even though I find anything about Livingstone annoying.

**Brian writes:** *Thanks. The Revenue & Customs document that you quote does indeed say that the congestion charge can in certain circumstances be treated as a tax-allowable business travel expense, not as a tax [they are not "mileage allowance payments", which are in relation to expenses incurred on all journeys (e.g. fuel). They are **additional costs incurred on a particular journey** but unrelated to mileage – **another example is parking costs**'], which is what the GLA and Our Ken (and I!) have been arguing: i.e. that it's a charge for a service, not a tax applied to everyone in a recognisable category of taxpayers. If you don't drive into central London, you don't pay it. The argument that TFL is "part of local government" doesn't seem to me to prove anything: no-one would say that a tube or bus fare in London is a tax just because*

*the tubes and buses are operated by TFL. The congestion charge is very similar to a parking fee or charge, as the Revenue & Customs document points out.*

*Incidentally I have encountered some difficulty in opening the PDF file that you cite.*

---

**Matt W**

🕒 7 November, 2007 at 9:01 pm

Brian .

Thanks for the quick reply.

The "Local Government" point was a quick comment on your point:

"Revenues from congestion charges are not part of central or local government revenues: any surplus from the charges is ploughed back into London transport costs, not available for local or national government expenditure. "

For the record, I think the embassies should pay up.

But it is fun seeing Ken embarrassed.

Matt

Matt W

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