

DECISION

Background

- 1 The complainant, Ms IK, first made a complaint to the Tolling Customer Ombudsman (TCO) on 11 December 2013, as follows:¹

Please give details of complaint

“In October the Sheriff has encumbered my vehicle due to 18 toll fees and fines totalling nearly \$5,000 which I knew nothing about. I first discovered it when I tried to register my vehicle in October. It seems to be a clerical error because I have an E-Toll account (NSW) which is in perfect order since 2007 (see their letter of confirmation attached). Neither Citi-link nor E-Toll are willing to speak with the Sheriff’s office directly to remove the encumbrance and allow me to register the car so that I can use it again. The Sheriff’s office say it will take 4-6 weeks to be heard at Magistrates court.

What happened following your complaint to the tolling business?

In the meantime, I’m without a car! Please note that on 3rd of May when I called E-toll (because my beeper wasn’t beeping) they advised me to call Citilink directly, which I did on 3/5/13 and spoke with [N] and she advised me that there are 3 fines for my vehicle and when I gave her my E-Toll a/c she apologized and cancelled the fines immediately & transferred the fees to my E-Toll a/c. I advised [N] of my residential address at the time [address 1] and my mobile phone. From that point on, I have never heard anything about any further fines.

What do you want to happen for your complaint to be resolved?

I need my vehicle released from the Sheriff’s office urgently, penalties etc deleted, any vic roads charges for roadworthy etc to re-register the car (which otherwise would not be necessary) and to be awarded compensation for not having a vehicle for almost two months (plus, who knows how long it will take from now until I can get my car back). Naturally, I am furious about this situation. E-Toll should be working on all toll roads in Australia and given that my a/c is in perfect order there is no reason why this matter has gone this far. Please help me?”

¹ All parties’ submissions used in this Decision are quoted verbatim

2 On 12 December 2013 the TCO acknowledged receipt of the complaint, forwarded same to CityLink for response, and advised Ms IK:

“I must advise that I cannot interfere with the Civic Compliance Victoria processes or with matters once they have been dealt with by the judicial system.”

3 Ms IK emailed the TCO as follows:

“THANK YOU FOR YOUR RESPONSE. SINCE YOUR RETURN EMAIL, I HAVE NOT RECEIVED AN EMAIL FROM CITILINK. IN FACT, CITI LINK DID NOT EVEN RESPOND TO ANY OF MY LETTERS. **I AM NOW WITHOUT A CAR SINCE OCTOBER.** THIS IS GETTING BEYOND THE JOKE! I AM SUFFERING FINANCIAL LOSS BECAUSE I DO NOT HAVE A CAR AND WITH MY LINE OF BUSINESS I MUST HAVE A CAR TO GO TO VARIOUS JOB LOCATIONS EACH DAY. I AM THEREFORE NOT WORKING AND I INTEND TO SUE CITILINK FOR THIER LACK OF ACTION ON THIS MATTER. E-TOLL HAVE APOLOGISED AND SAID THAT IT'S WITH CITILINK'S HANDS ONLY. THE SHERIFF'S OFFICE SAYS THE SAME; ITS WITH CITILINK BUT THEY CITILINK ARE NOT DOING **ANYTHING!**

PLEASE ASSIST WITH THIS MATTER URGENTLY. “

4 On 19 December 2013 CityLink responded to the TCO as below. This response was forwarded to Ms IK on 23 December 2013:

“I refer to previous correspondence on this matter. CityLink has now advised me as follows:

“After investigation, our records indicate the following:

- The below Late Toll invoices (LTis) have been issued for [Ms IK's] vehicle [Y****8] (VIC).
- The LTis were issued to [Address 2] as per the details obtained from VicRoads for the registered owner of the vehicle.

Late Toll invoice	Travel Date/s	Invoice Issue Date	Final Notice Due Date	Status
[**541]	11 May 2012	1 June 2012	6 July 2012	Referred to Victoria Police
[**219]	15 July 2012	3 August 2012	7 September 2012	Referred to Victoria Police
[**102]	8 August 2012	28 August 2012	2 October 2012	Referred to Victoria Police
[**519]	15 August 2012	1 September 2012	6 October 2012	Referred to Victoria Police
[**595]	30 August 2012	19 September 2012	24 October 2012	Referred to Victoria Police
[**293]	2,3 & 4 September 2012	22 September 2012	27 October 2012	Referred to Victoria Police
[**194]	19 September 2012	10 October 2012	14 November	Referred to Victoria

			2012	Police
[***158]	11 & 12 November 2012	28 November 2012	2 January 2013	Referred to Victoria Police
[***900]	25 December 2012	11 January 2013	15 February 2013	Referred to Victoria Police
[***946]	26 & 27 February 2013	16 March 2013	20 April 2013	Referred to Victoria Police
[***090]	8 March 2013	26 March 2013	30 April 2013	Referred to Victoria Police
[***816]	13 March 2013	3 April 2013	8 May 2013	Referred to Victoria Police
[***245]	18 April 2013	8 May 2013	12 June 2013	Referred to Victoria Police
[***935]	23 & 24 April 2013	15 May 2013	19 June 2013	Referred to Victoria Police

I acknowledge [Ms IK's] RTA/RMS Account has been active since 2007, however, as RMS/RTA customers are not required to have their vehicles linked to their tolling accounts, if the e-TAG device is not present in the vehicle or is not detected during travel, an LTi is issued to the registered owner of the vehicle.

No payment of the LTis were received, therefore as required by legislation the matters were referred to the Victoria Police who subsequently issued Infringement Notices.

- *On 3 May 2013 contact was made to CityLink. A request was received to transfer two LTis to [Ms IK's] RTA/RMS account. Unfortunately, this transfer was not successful and as a result the LTis remained outstanding. A letter was issued to [Address 2] to advise.*
- *On 5 December 2013 [Ms IK] contacted CityLink regarding LTis and Infringement Notices.*
- *On 10 December 2013 I called [Ms IK] in relation to her enquiry. She advised she did not receive any of the LTis or Final Notices. [Ms IK] also advised her address has been updated with VicRoads. When I advised [Ms IK] she needed to speak with Civic Compliance Victoria as CityLink could no longer assist she terminated the call.*
- *On 12 December 2013 [Ms IK's] Ombudsman's enquiry was received.*

*Vic Roads have been contacted by CityLink today. They have advised the address listed for [Ms IK's] and vehicle [Y****8] is [Address 2].*

We have also spoken with Civic Compliance Victoria today and they have advised, as this matter has now progressed to the Sheriff's department, [Ms IK] will need to contact the Sheriff's office on (03) 9200 8222 to discuss how she can dispute the current Infringement Notices and the status of her vehicle."

I reiterate that I cannot deal with matters once they have been escalated to Civic Compliance Victoria and/or the judicial system and suggest you continue to liaise with the Sheriff's office."

5 Ms IK responded to the TCO that same day:

"Thank you so much for your reply.

I understand that since the matter was referred to the sheriff you no longer able to assist however the matter was referred erroneously. Whilst city link finally admitted that they received my phone call (a fact that initially was denied by the young girl with whom I spoke with a couple of weeks ago) I am glad that these records were now recalled. However, a pertinent fact that they failed to disclose to you is that I have given them my new address and that they in fact issued a refund cheque on that same day.

I suspect that they have either mixed up my records with that of the other vehicle that is connected to my Etoll account: [name]. The cheque is a proof that what they are saying is incorrect and I urge you to get the voice recording from my call to citi link on the 3 may to verify what I am saying.

This matter is just criminal for me not to have my car since October Because of their mistake. All that has to happen is for them to check that my vehicle has an Etoll active account!

Please, it is now the holiday season and u do not have my car because their mistake. Not only that I can't work but I can't even enjoy the holidays!

I plead with you to please help!"

6 On 24 December 2013 the TCO acknowledged receipt and forwarded Ms IK's email to CityLink for comment on the issues raised.

7 CityLink responded to the TCO on 2 January 2014:

"Thank you for forwarding [Ms IK's] response to CityLink.

As previously advised on many occasions, CityLink can no longer intervene and we recommend that [Ms IK] contacts the Sheriff's Office to discuss with them what her options are for further disputing this matter. The Sheriff may provide an opportunity for [Ms IK] to submit supporting evidence, such as a proof of an active E-Toll Account."

8 On 3 January 2014 the email below was received from Ms IK:

"It has been 10 days since your email advising that my email was sent to Citilink for their comments however, I have not heard anything as yet. Please Mr Arnold, I can not be without a car any longer. My husband had an accident and I needed to rush him to hospital last week and I did not have a way to get him there. I have had to rely on friends to drive me back and forth from the hospital in the past few days. PLEASE MR ARNOLD, I PLEAD WITH YOU TO ASSIST WITH THIS MATTER AND GET CITILINK TO RELEASE MY CAR AS A MATTER OF URGENCY."

9 The TCO's office replied to Ms IK as follows:

"I acknowledge receipt of your email and advise that Mr Arnold is currently on leave and will address your email on his return to work week commencing 6 January 2014."

10 To which Ms IK responded with the two emails quoted below:

2.59pm:

"I am begging your assistance; it is insanity that I can't have my car because of citilinks glitch since October. I have been travelling and paying tolls for some trips and others which for some reason citilinks didn't recognise the fact that I have an Etag (from new). My latest travels were in 1 October, 11 October and 18 October and were all paid for. My Etag has been active order since 2007. What can I do to get this matter fixed and have my car back it's been 3 months now!

If this is not sorted out I admit that I will have to forward all this information to a current affair.

PLEASE, assist me? It should be a very simple matter to sort out in a couple of phone calls first to Etag and confirm I've got an account and the. To citilinks and get them to admit their error and then the sheriffs office to instruct him to release my car immediately. PLEASE!!!!!!!

My number is [number] if you can please call me.

3.08pm:

"As a proof, please find enclosed my Etoll account showing travel in citilinks during October for which I've paid via my Etoll account. I have had my Etoll account in perfect order since 2007. There is no reason why my car has been impounded for unpaid toll travel. If citilinks would have checked, before contacting the sheriff they would have found that I have a Etag account.

PLEASE ASSIST ME AS A MATTER OF URGENCY."

11 On 7 January 2014 the TCO provided a response to Ms IK:

"I refer to my email of 24 December 2013 and now provide CityLink's response:

"As previously advised on many occasions, CityLink can no longer intervene and we recommend that [Ms IK] contacts the Sheriff's Office to discuss with them what her options are for further disputing this matter. The Sheriff may provide an opportunity for [Ms IK] to submit supporting evidence, such as a proof of an active E-Toll Account."

Further, I refer you to the TCO's email of 23 December 2013 which sets out CityLink's position on the individual points you raise.

Please advise if you have made contact with the Sheriff's Office and provided the explanation that you have given to me with supporting material."

12 Ms IK replied:

“Yes I have written to the Sheriffs office and I have been advised that I have to have the matter heard at the magistrates court which will take another couple of months. All this time I am without a car.

I reiterate, that this should have never become a fine in the first place. citilink should have properly checked my rego number. Had they done that they'd find that I have an Etoll in good order. The fact that they have charged me for some trips but not others goes to prove that its a glitch by citilink.

Furthermore, when I spoke with citilink in May they have not made any mention of fines dating to 2012. They have issued a cheque and posted it to my address so they have my address as well.

Please please please help me to resolve this matter.

I will be happy to meet with you or speak over the phone at your convenience. [number].”

13 On 9 January 2014 the TCO wrote to Ms IK:

“I note in the details of Toll Invoices provided by CityLink that there were 12 incurred until 3 April 2013 prior to your notifying CityLink of your change of address. According to CityLink, these were sent to your recorded address in [Address 2]. It would appear that these invoices were correctly referred to Victoria Police.

Would you please comment on this aspect of your claim and supply me with the date VicRoads was advised of your change of address.”

14 Ms IK replied:

“The point is that these travels should have been gone to my Etoll account. The facility to pay was there and available. The fact remains that some trips get paid from my Etoll and those were not. Therefore, it should never have gone to the stage of fines had citilink checked my rego number for an Etoll account which has been in perfect order since 2007.”

15 On 10 January 2014 Ms IK wrote to the TCO:

“In addition to my response yesterday its important to note that when I called citilink in May of this year I have not been told of any outstanding matters. This is why I have been asking for the phone call recording to be obtained. Had citilink told me in May that there were outstanding issues I would have dealt with the matter back then and my car would not have been impounded.

All our communications taking further days and weeks. Can I please ask to meet with you so this matter be sorted hopefully today. I am very frustrated at the length of time that this matter is taking, all the whilst I'm without a car which is essential to my work.”

16 On 14 January the TCO replied to Ms IK:

"I acknowledge receipt of your emails of 9 and 10 January 2014.

According to the information on file, you were in possession of information in respect of outstanding tolls and fees prior to your contact with CityLink. The fees and charges should have been paid at this point.

In these circumstances you should seek to have this matter placed before the Magistrates Court expeditiously as I have indicated I cannot overturn a matter once it is in the hands of the Sheriff."

17 Ms IK responded as follows:

"There seems to be a persistent misunderstanding!!

Not only that I was not in "possession of information" as you or citilink allege but also in my conversation with citilink in May of this year the lady did not mention ANYTHING to me about previous fines otherwise I would have fixed it up as I fixed up the others and she posted a cheque refund to that effect!

I am very disappointed with the fact that it takes days for each response and in the meantime I am without my vehicle!

I tend to think that this case is just too hard for you so you have not read and attended to full investigation which means listening to my call to citilink in May. This in turn delays the rectification of this matter and I am holding you personally responsible for this delay.

I want to take this matter to your superior. Kindly advise contact details including phone number as of like to meet in person.

This matter will no go away. I suspect that it would be ideal for "Today Tonight".

18 On 15 January 2014 Ms IK emailed the TCO:

"1. Kindly provide file copy for this case as a matter of urgency. Including details all phone communications and copies of any written communications in relation to this case.

2. In addition, I once again request a voice recording of my phone call with citilink on 3 May 2013.

3. Lastly, I require photos of my vehicle for each offence to prove that the E-toll machine was permanently glued to my windscreen and that all that citilink had to do is cross check my number plate to see that it is and has got a valid registration with E-toll since 2007.

I look forward to your urgent reply."

19 The TCO emailed Ms IK on 21 January 2014 and confirmed her email had been forwarded to CityLink for their attention.

20 On 23 January 2014 CityLink responded to the TCO, together with attachments, in the following terms:

“Thank you for forwarding [Ms IK’s] email to CityLink.

I have responded to the three dot points as per the email.

1. **“Kindly provide file copy for this case as a matter of urgency. Including details all phone communications and copies of any written communications in relation to this case.”**

Please find attached, all correspondence between CityLink, your office and [Ms IK].

Note: An initial complaint was raised with CityLink on 5 December 2013 via our Call Centre. On 10 December 2013 I called [Ms IK] and advised the following:

- CityLink received returned mail (LTis) for [Ms IK] on 19 June 2013.
- [Ms IK] would need to provide any supporting documentation she has eg, change of address with VicRoads, phone records etc to CCV or the Sherriff.

At this time, I was unable to locate the contact made on 3 May 2013, however this was later discovered upon further investigation once an Ombudsman complaint was raised. [Ms IK] requested to speak to a manager. As a manager was unable to take her call at the time a call back was offered. [Ms IK] terminated the call when this was offered.

2. **“In addition, I once again request a voice recording if my phone call with citilink on 3 May 2013.”**

I acknowledge [Ms IK’s] request for a call recording of her discussion with a CityLink representative on 3 May 2013. While calls may be recorded for quality and training purposes, they are not retained. As such, we are not able to provide this recording.

3. **“Lastly, I require photos of my vehicle for each offence to prove that the Etoil machine was permanently glued to my windscreen and that all that citilink had to do is cross check my number plate to see that it is and has got a valid registration with Etoil since 2007. “**

Where an e-Tag is not detected under a toll point, an image is taken of the registration plate area at the front and rear of the vehicle. As such the image would not prove whether an e-Tag was in the car at the time of travel.”

21 That same day CityLink's response was forwarded to Ms IK. The TCO reiterated that this matter will be most effectively dealt with by the Magistrates Court.

22 Ms IK subsequently responded:

"Thank you mr Arnold, I note that citilink refrain from providing details of the phone call in May 2013 which is when I advised them of my address and therefore received a cheque reimbursement a few days later in May. I have been advising this information time and time again and I fail to understand why can't you organise a phone call between the three of us as a matter of urgency to sort out this matter. Its unfair to ask me to wait another two months for the magistrates hearing."

23 On 29 January 2014 the TCO emailed Ms IK:

"I acknowledge receipt of your email and note its contents.

Even if I believed such a telephone link would resolve the matter, in the circumstances it is now for the Magistrates Court to set aside the infringements."

24 Ms IK emailed the TCO on 30 January 2014 as follows:

"Kindly explain your last email, there may be words missing so I can not understand what you are trying to say.

I can not understand why you have not contacted me by phone to speed up this process and get the matter sorted quickly. I do not understand why your office does not accept incoming calls either. Whilst I have to wait each time for your reply emails, I still do not have my car and unable to work! Why have you no regard to the urgency of this matter?"

25 On 4 February 2014 the TCO responded:

"I acknowledge receipt of your email of 30 January.

I must confirm that this is a matter that must be resolved by the Magistrates Court. I do not have the power to conduct a three-way telephone link-up with the Court to resolve the matter."

26 Ms IK replied:

"Your website states that you can facilitate mediation between the parties. This has no occurred and in the past two months of communicating with you (and I am sure that you are frustrated about this as much as I am) no results have been achieved. I strongly believe that a meeting with Citilink superiors could have resolved the questions and I would have had my car back.

Again I am without a vehicle to be able to work."

27 On 5 February 2014 Ms IK emailed the TCO as follows:

“A perfect example to prove this is all a mistake is that one of the fines is for travel on 4 October 2013. However, I have a statement from Etag showing that travel on 1 October (3 days earlier) and on the 11th of October 2013 9 days later were charged to my Etag. In Addition, to support this, I have a letter from Etag which I have sent you a copy previously, and in that letter the Etag officer confirms that my Etag account has been in perfect order since 2007.

CAN YOU PLEASE ASSIST? GOING TO COURT WILL ONLY COST MORE TOME
SND MONEY ALL OF WHICH ARE A SERIOUS MISTAKE THST DHOULD HSVE
NEVER HAPPENED. IM PLEADING ROGH YOU! PLEASE INVESTIGATE THIS IN
A CAREFUL WAY.”

28 On 12 February 2014 the TCO wrote to Ms IK:

“I refer to my previous correspondence and advise again that the majority of your Late Toll Invoices pre-dated October 2013.

I will prepare a formal Decision on your complaint.”

Decision

- 29** The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer.
- 30** This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the Customer Service Agreement, on a toll road operator’s website or in other material that is available to customers, whilst the applicable legislation can be accessed through Government websites.
- 31** The TCO is not a judicial body and does not have punitive powers. The TCO, when making a decision, does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against Civic Compliance Victoria (CCV) or other outside bodies.
- 32** The circumstances of this complaint are set out in the body of this Decision. It is not necessary to recite them again in any detail as I am satisfied the parties understand the issues.

- 33** There is a particular issue here in relation to outstanding fees. Despite Ms IK's allegation of problems with her e-TAG, she had been advised in writing of outstanding tolls and fees. Ms IK contends that she was not advised of these fees when she telephoned the toll operator but she must have been on notice of their existence. These fees, together with other issues, have been referred to Civic Compliance Victoria.
- 34** Ms IK has been advised that the TCO cannot intervene with the operations of Civic Compliance Victoria or the Sheriff's Office once toll road charges and related fees have been referred to them. The TCO has advised Ms IK to make application to the Magistrates Court. All correspondence from CityLink and the TCO can be used to assist Ms IK in these proceedings.

Michael Arnold
Tolling Customer Ombudsman

Dated: March 2014