

DECISION

Background

- 1 The complainant, Mr F, first made a complaint to the Tolling Customer Ombudsman (TCO) on 30 August 2012, as follows:¹

“Please Help. I [Full name] ([Given name] Proffered) am enduring quite a battle in regards to my city link account. For weeks now, and I some intakes months I have been trying to rectify a problem, yet I continue to hit brick walls. I understand there are always two sides to a story, however it seems as though my side keeps getting swept under the carpet.

*My city link account number is [***414]*

For years now I have been using citylink, I have an account and use it everyday to travel to and from work. I make regular payments, and on the odd occasion I forget to top up. Afterall I am only human. However once I’m prompted I pay, although I try not to make this a habit I always pay. I understand I use the service so I know I have to pay.

Anyhow, I used to receive email and sms prompts whenever I was getting low. The last one I received was on the 26/07/2011. This helped me keep track of my usage and when I needed to top up. I have contacted city link, and on one occasion I was told this was never a service provided even though I still have all the messages. And on another occasion I was told due to a new system upgrade there were issues which for some reason or another I kept getting taken off. I continued to ring and ask to receive these prompts and kept getting told it was because of the system upgrade. I found it even more concerning when staff from citylink where complaining to me about there system.

I believe all messages are recorded, and strongly advise for you to listen to them to better understand my situation.

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

Since I stopped getting these prompts it seems as though the trouble began. As mentioned earlier I agree, I should have been more cautious, however I stopped receiving these prompts without my permission and without notice.

I received a few letters, but I had topped up my account immediately after receiving them on regular occasions and thought nothing of it. I was unaware that if the account went into suspension, the outstanding amount was not covered when topping up your account. I understand now that this was on the letter and as I said I'm not denying this. It has been pointed out to me now, but when I got these letters I would look over them and I new I had to put money and I did. On a few occasions I rang to top up my account, and sometimes I did it via bpay.

I have since found out that topping up my account did not cover the overdue money which I find outrageous, yet that is the system and now that I'm aware I will do all I can so this never happens again. Having said this, I believe I have done everything I could to avoid this. I agree I misunderstood that even though I was topping up my account it wasn't getting rid of any late tolls. But if my e tag doesn't beep anymore after I top it up, I assume all is good. And I keep getting told to listen for the beeps. I get told if there are no beeps, I'm fine.

The plot thickens, on a few occasions I would ring and ask if I could put money into my account and was never told of any late issues. It wasn't until I received a letter from a law firm action on behalf of city link that that I become very concerned and called both the lawyer and city link. The lawyer had told me that there was an error and to ignore the letter as I had paid my account. This didn't sit right with me, so I called citylink and asked to speak to a supervisor. I was told all supervisors were busy and that the person I was speaking with could help. I explained the situation and was told all I needed to do as to put my account into a balance of over \$40 which I did whilst on the phone there and then. I also asked if there were any outstanding issues and I was told that my account was all good and to have a nice day. I did this on many occasions and was told the same thing.

How can this happen. If I am told my account is all good, doesn't this mean I have nothing to worry about. You would think that if you called, the person you spoke to would tell you that you had money owing, especially if you were putting money onto your account.

The problem I have now is that I have received infringements' from civic compliance which are backdated to earlier this year. I have a total of eight. I received two initially and sent a letter to dispute the matter. I continued to receive them and wrote another letter. Two have been exempted, but I still received a warning. I just wanted this matter resolved so I decided to go in to civic compliance in person. I went into civic compliance yesterday the 28/08/12 and was refereed to the police. I spoke with a lady by the name of [A]. [A] made mw feel very awkward and much like a criminal. Basically she told me that I was exempted from two due to a letter I had to written to them

but would most likely have to pay the rest. She said she did not want to here my excuses and told me to take it up with city link. I feel I have nowhere to go, hence why I am writing this to you.

If I have rang on numerous occasions and asked if I have anything outstanding, and am told that all is good, what more can I do.

It wasn't only once, it was on many occasions. And city link can vouch for this. I call them and they agree with me, but say there is nothing more they can do as it is in the hands of civic compliance. One staff member told me to contact you.

This frustrated me more, so many calls have been made in the last 5 or so weeks and I'm getting nowhere. I finally managed to speak with a supervisor at city link. Her Name is [Name]. I first made contact with her on Monday 20-08-12 at 2.25pm. [Name] was very helpful at first. She agreed with me and went over my notes and said she apologized for the inconvenience and was going to have the matter investigated and get a letter of plea written for me to give to civic compliance. She even went on to say that the number of staff they turnover may be as a result of this issue, with some of them not knowing how to handle issues. She also made mention of the system being questionable. Again, I ask for you to listen to these conversations. So I then ask, How is this my fault. How can she even say that to a customer. I was shocked. It made me more frustrated.

Long story short, all I got back from city link was a letter saying sorry for the inconvenience and the dates my account went into suspension. I tried on numerous occasions to contact [Name], and was always told she was on the phone and she would call me back. I called for 5 days in a row. The last being yesterday, one of her peers told me she would defiantly get back to me that day. She never did. I have tried, I have tried very hard to resolve this matter. I do not know what more I can do.

How can it possibly get to this when I call and am told my account is up to date.

In conclusion, what I don't understand is if my account is suspended, how does it go back into use without these suspensions being taken care of especially after all the phone calls. And as mentioned earlier, how does my etag have no more beeps. Customer service continue to tell me to go by my beeps. As soon as I top up my account, the beeps are gone. If I didn't make regular payments, I would understand.

More concerning is if the staff don't believe in the system, how can the consumer have faith in the system. I believe the system really needs to be looked at. I believe I have done all I can to have avoided this situation.

Thankyou for your time, I look forward to hear from you. Please fell free to contact me on [number] if you require additional information."

2 The complaint was promptly acknowledged by the TCO and forwarded to CityLink for response.

3 On 5 September 2012 Mr F again emailed the TCO:

“To whom it may concern, Further to my concern I sent to you last week, I have since then received another 3 infringements in relation to this. I am becoming very stressed over this matter and would like to discuss it further if possible. Could I please have someone who is dealing with my account contact me on [number]. I honestly don’t know what more to do. It is not only causing me stress and concern, however it is also getting my wife quite worked up. I apologize, and I do understand that my situation is currently being investigated but I would like to speak to someone in order to find out what I’m to do now.”

4 This email was immediately forwarded to CityLink for investigation.

5 On 11 September 2012 the TCO received a copy of CityLink’s letter to Mr F, together with all attachments to that letter, as follows:

“Infringement Notices for [X5]***

Thank you for your recent enquiry. We appreciate you taking the time to advise us of your concerns.

*Our records confirm the Infringement Notices for [X***5] for travel on CityLink on 20, 21, 22, 28, 29 February 2012, 1, 20, 21 March 2012, 11, 12, 13, 14, 16, 17 and 18 April 2012 were issued because the vehicle Registration was suspended from your CityLink Account [2157***] during the following periods. This means you owed CityLink money and were therefore not registered to travel on CityLink or any other toll road during this period.*

1st Suspension Period:

17 February 2012 to 26 March 2012 An Account Alert letter was issued on 4 February 2012 requesting a payment of \$40. No payment was made. A Suspension Confirmation letter was issued on 12 February 2012 requesting a payment of \$101.84. A payment of \$51.80 was received on 23 March 2012 however this was not enough and the suspension process continued. A further payment of \$100 was received on 23 March 2012 and the vehicle registration was reregistered.

2nd Suspension Period:

10 April 2012 to 2 May 2012 An Account Alert letter was issued on 30 March 2012 requesting a payment of \$40. No payment was received. A Suspension Confirmation letter was issued on 5 April 2012 requesting a payment of

\$80.68. A payment of \$100 was received on 1 May 2012 and the vehicle Registration was reregistered.

The above suspension letters were issued to you at the above address. I have attached copies for your record.

*I can confirm the following Late Toll invoices and Final Notices were issued for the vehicle [X***5]. These were sent to you at the above address.*

- [8335***]– For travel on 20, 21, 22 February 2012. Late Toll invoice was issued on 21 March 2012 with a due date of 4 April 2012. Final Notice was issued on 7 April 2012 with a due date of 23 April 2012.*
- [9589***]– For travel on 28, 29 February 2012 and 1 March 2012. Late Toll invoice was issued on 29 March 2012 with a due date 12 April 2012. Final Notice was issued on 15 April 2012 with a due date of 1 May 2012.*
- [3369***]– For travel on 21 March 2012. Late Toll invoice was issued on 13 April 2012 with a due date of 27 April 2012. Final Notice was issued on 2 May 2012 with a due date of 18 May 2012*
- [3048***]– For travel on 20, 21 March 2012.*
- [1707***]– For travel on 11, 12, 13 April 2012. Late Toll invoice was issued on 2 May 2012 with a due date of 16 May 2012. Final Notice was issued on 21 May 2012 with a due date of 6 June 2012.*
- [2363***]– For travel on 14, 16 April 2012. Late Toll invoice was issued on 4 May 2012 with a due date of 18 May 2012. Final Notice was issued on 23 May 2012 with a due date of 8 May 2012.*
- [8652***]– For travel on 17, 18 April 2012. Late Toll invoice was issued on 5 May 2012 with a due date of 19 May 2012. Final Notice was issued on 24 May 2012 with a due date of 9 June 2012.*

The above LTI's were sent to [Full name of Mr F] at the above address. I have attached copies for your record. We understand you have advised that once you made payment towards your CityLink Account the payment for the Late Toll invoices and Final Notices would be covered. Unfortunately this is not the case. The wording on each Late Toll invoices provides instructions that this Late Toll invoice must be paid in full or if you believe the vehicle was registered with CityLink or with another tolling account operator or had a CityLink pass for travel on these dates please contact CityLink on 13 26 29 before the due date.

As we didn't receive payment of the Late Toll invoices by the due date of the Final Notices, according to legislation, the Victoria Police may issue an Infringement Notices for each day of travel. CityLink can no longer intervene if an Infringement Notice is issue. Should you wish to dispute the issue of the Infringement Notice you must submit a written application for an Internal Review direct to Civic Compliance Victoria, PO Box 1916, Melbourne, Vic, 3001; alternatively you may also contact them by telephone on (03) 9200 8111 with any queries or additional information."

6 On 13 September 2012 Mr F emailed the TCO:

“To whom it may concern,

I gather you have received feedback from citylink in relation to the issues I was concerned with.

Last night, once again I was infuriated after having read the response from [Name]. I appreciate that [Name] has a job to do, and has outlined the dates in which my account had gone into suspension. However I have not denied this. This still doesn't answer the many questions and arguments I have put forward.

I have clearly stated that I was unaware that the amount due became a separate bill and that the regular payments I was making was not covering these costs. I do understand I didn't read the letter correctly and that this is printed on the letter now, but this was an honest mistake on my behalf. I am now aware of this due to these issues I am currently having to deal with. I honestly thought having an account meant that you put money in and if you are low or have gone over, you simply put more money on, and you would be back in a positive figure – this is the way I had handled my account in the past. The matter became more confusing when my e tag wasn't double beeping and when I wasn't getting the sms or email alerts any more.

As I said, I am now aware of this, but I had gone to other measures to try and avoid this as mentioned in my first letter. The many phone calls I made to staff at city link seem to go un noticed and not documented in any of the responses I have from city link. Not to mention an earlier conversation with the supervisor by the name of [Name], where I was told that I had to take into consideration that there was a high turnover of staff and many new staff whom did not understand the system the way they should. She advised me that she could see where I was coming from and saw I made regular payments. She understood I was unclear on the late toll account and advised me that she would do what she could and her words she said she would “get a letter of plea” to people higher than her. [Name] was fantastic until she too would not return my calls or would promise to get back to me but never did. I found this to be very unfair.

Once again It seems as though only one side of the story is being taken into consideration, and all the other points I have raised are being swept under the carpet. I use city link every day, and know I have to pay, hence the reason I make regular payments. I feel as though I haven't made myself clear enough to city link. There are so many questions still un answered:

*Why was my sms and email alert turned off without my consent?
Why was I never told that I had money owing, even when I asked if I did when I called and spoke with a city link staff member to top up my account?*

Why where my calls never returned, even when I was told that they would be?

Why, when I call do staff say there is nothing outstanding, or that they cannot see if there is anything outstanding?

Why do certain staff at city link agree the system has loop holes?

Why did the staff at city link point me in the direction of the customer tolling ombudsman?

Why didn't my etag double beep anymore?

As I have said in the past, I give permission for you to listen to my calls - I believe they should have been recorded. In my opinion I feel the system city link has in place has failed for all concerned.

Apart from a few, I have found the service provided from city link is very unreliable. I appreciate [Name] is one of the few people whom have assisted me. He acted immediately after having received my phone call on Monday 10th of September. However, I was told on the 30/08/12 that I would be contacted within 7 days. It did not surprise me that this never happened. I am disappointed that I had to follow this up, and was told from [Name] that no body had looked at my complaint and it was still in the cue. Once again, I thank [Name] for acting so quickly. Having said this, I still believe many of my questions have been left un answered.

I consider myself to be an honest person. I just want to pay what I have to pay, I never wanted nothing for free, but made an honest mistake. I am not trying to be difficult, I just want to be fair. I still made regular payments and believe I was mislead. It seems as though all the blame is directed at me. I now have a total of 16 or so 'infringements' from civic compliance all at \$122 each. I honestly think this is very unfair considering all the measures I went to in order to avoid this.

This has honestly affected my health and my family life. It has put an enormous amount of unnecessary stress on me, and I really want the matter sorted sooner than later.

Once again, I thank you for your time and hope to resolve the matter asap."

7 The TCO acknowledged receipt on 18 September 2012 and forwarded same to CityLink for comment on the issues raised.

8 Mr F responded to the TCO on 19 September 2012 as follows:

"Thankyou,

however could I still please have someone from the T.O.C call me. My number is [number].

I spoke with city link yesterday and miraculously they said that there are no notes on my account to support what I have said. I spoke with [Name]. I asked why he hadn't returned my call, and he said, in his words "I forgot". This is what I have to deal with. I cannot believe that these guys can get away with being so unprofessional."

9 To which the TCO responded:

"I recommend that you enter into negotiations with Civic Compliance regarding payment of accounts to avoid any additional costs pending further responses from CityLink."

10 On 26 September 2012, CityLink responded to the TCO. This response was forwarded to Mr F:

"I have tried to answer all [Mr F's] concerns in red.

We would once again like to confirm CityLink is unable to assist [Mr F] with the receipt of the Infringement Notices.

...

To whom it may concern,

I gather you have received feedback from citylink in relation to the issues I was concerned with.

Last night, once again I was infuriated after having read the response from [Name]. I appreciate that [Name] has a job to do, and has outlined the dates in which my account had gone into suspension. However I have not denied this. This still doesn't answer the many questions and arguments I have put forward. **Apologise that my letter dated 11 September 2012 infuriated [Mr F]. However I only included the facts as we have on [Mr F's] CityLink Account.**

I have clearly stated that I was unaware that the amount due became a separate bill and that the regular payments I was making was not covering these costs. I do understand I didn't read the letter correctly and that this is printed on the letter now, but this was an honest mistake on my behalf. I am now aware of this due to these issues I am currently having to deal with. I honestly thought having an account meant that you put money in and if you are low or have gone over, you simply put more money on, and you would be back in a positive figure – this is the way I had handled my account in the past. The matter became more confusing when my e tag wasn't double beeping and when I wasn't getting the sms or email alerts any more. **We would like to point out that each of our Late Toll invoices (I have attached one for your record) advises in bold "Failure to pay this invoice by the due date may result in the Victoria Police issuing a fine of over \$100."** Below this there are clear instructions which direct the customer how to make payment for this Late Toll invoice. If [Mr F] believes that he honestly thought if he paid his CityLink Account then the Late Toll invoices would be taken care off, then he should make this as a plea to Civic Compliance Victoria. As previously mentioned CityLink is unable to assist him with the receipt of the Infringement Notices.

As I said, I am now aware of this, but I had gone to other measures to try and avoid this as mentioned in my first letter. The many phone calls I made to staff at city link seem to go un noticed and not documented in any of the responses I have from city link. Not to mention an earlier conversation with the supervisor by the name of [Name], where I was told that I had to take into consideration that there was I high turnover of staff and many new staff whom did not understand the system the way they should. She advised me that she could see where I was coming from and saw I made regular payments. She understood I was unclear on the late toll account and advised me that she would do what she could and her words she said she would "get a letter of plea" to people higher than her. [Name] was fantastic until she too would not return my calls or would promise to get back to me but never did. I found this to be very unfair. We sincerely apologise for the customer service [Mr F] experienced and what he was told about the CityLink systems. We would like to assure him that all staff regardless of the turnover are well trained on all systems prior to being placed on the phone to assist our customers. However as this (customer service experience and what he was told) did not result in the issue of the Infringement Notices being issued we would once again like to add that CityLink is unable to assist further.

Once again It seems as though only one side of the story is being taken into consideration, and all the other points I have raised are being swept under the carpet. I use city link every day, and know I have to pay, hence the reason I make regular payments. I feel as though I haven't made myself clear enough to city link. There are so many questions still un answered:

Why was my sms and email alert turned off without my consent? The SMS system was only a trial system at no time did CityLink advise customers that this was an ongoing service. I would like to explain the CityLink suspension process. When the balance of the Account falls below \$25 the e-TAG device should beep three times (one beep followed by two beeps). This indicates the balance is low and needs to be topped up. When the balance falls below \$15 an Account Alert letter is issued. If a payment is not made and the balance falls below \$0 then the e-TAG device beeps four times and an Suspension Confirmation letter is issued. The four beeps indicates that payment must be made before the next travel on CityLink or any other Toll Road. On both the Suspension periods (as mentioned in my letter dated 11 September 2012) the Account Alert letters and Suspension Confirmation letters were issued. Why was I never told that I had money owing, even when I asked if I did when I called and spoke with a city link staff member to top up my account? Please see the reasons above (the wordings on the Late Toll invoice).

Why where my calls never returned, even when I was told that they would be? I apologise for this. However we do not have any records to confirm this.

Why, when I call do staff say there is nothing outstanding, or that they cannot see if there is anything outstanding? Our record confirm all payments made to reregister the vehicles Registrations to the Account (\$51.80 on 23/03/2012, \$100 on 23/03/2012 and \$100 on 01/05/2012) were made by BPay. Therefore [Mr F] would not have contacted CityLink on those days.

Why do certain staff at city link agree the system has loop holes? Again we apologise [Mr F] was told this however this is not true and we do not have any record of [Mr F] being told this.

Why did the staff at city link point me in the direction of the customer tolling ombudsman? If a customer is not happy with the outcome they have been provided from the Customer Service Office assisting them then their concerns should be forwarded to our department (Customer Resolutions) and then to the Ombudsman's Office. Apologise if [Mr F] was directed to the Ombudsman in the first instance.

Why didn't my etag double beep anymore? The current balance of [Mr F's] CityLink Account is \$84.48 in credit and the e-TAG device should be beeping once (every time it passes under a gantry) which indicates that the trips is being charged and everything is okay.

As I have said in the past, I give permission for you to listen to my calls - I believe they should have been recorded. In my opinion I feel the system city link has in place has failed for all concerned. CityLink does not record each and every call. At the beginning of the call

we do advise "this call may be recorded for training purposes". We regret that [Mr F] believes that the CityLink system has failed. However this is not the case.

Apart from a few, I have found the service provided from city link is very unreliable. I appreciate [Name] is one of the few people whom have assisted me. He acted immediately after having received my phone call on Monday 10th of September. However, I was told on the 30/08/12 that I would be contacted within 7 days. It did not surprise me that this never happened. I am disappointed that I had to follow this up, and was told from [Name] that no body had looked at my complaint and it was still in the cue. Once again, I thank [Name] for acting so quickly. Having said this, I still believe many of my questions have been left un answered. Again I apologise for the delays [Mr F] may have experienced.

I consider myself to be an honest person. I just want to pay what I have to pay, I never wanted nothing for free, but made an honest mistake. I am not trying to be difficult, I just want to be fair. I still made regular payments and believe I was mislead. It seems as though all the blame is directed at me. I now have a total of 16 or so infringements' from civic compliance all at \$122 each. I honestly think this is very unfair considering all the measures I went to in order to avoid this. Once again we would like to advise CityLink is unable to assist with the receipt of Infringement Notices.

This has honestly affected my health and my family life. It has put an enormous amount of unnecessary stress on me, and I really want the matter sorted sooner than later.

Once again, I thank you for your time and hope to resolve the matter asap.

11 Mr F emailed the TCO that same day as follows:

"So in other words I'm a liar, and everything I said is incorrect – Its strange that [Name] makes mention that there is no record of people not getting back to me when he himself is an offender. [Name] in his own words said "I forgot" when asked why he hadn't called me back. Do you honestly believe the countless hours I have spent writing emails making phone calls I do out of fun!. All these things are confidently swept under the carpet. It's lucky I have kept a detailed recorded of when and the times I have spoken with the people, of which [Name] obviously thinks are made up people. I'm lucky I work in and office environment and the majority of the time people (work colleagues) hear my conversations and are more than willing to provide information if need be. I have tried to resolve this matter, but it seems as though my opinions and thoughts are meaningless.

Thank you."

12 The TCO emailed Mr F on 27 September 2012:

"I note your previous emails.

The complaint has not been resolved to your satisfaction. Accordingly I shall prepare a written Determination."

13 To which Mr F responded:

“Thank you, I appreciate your response and the time you have spent on this matter.

Again I stress that I understand I had made an error on my behalf, of which I thought was an honest mistake. Had I not made regular payments I would understand, but this is not the case. Nevertheless I have learnt from my mistakes and will do everything in my power to avoid this from ever happening again. To avoid this in future I will endeavour to set up a direct debit so I will never have to endure this pain. I’m just disappointed that it has gone this far and I am made to look like a liar. I just wish that we as consumers could tape our recordings, however I understand this is not legal. I have currently asked the IT department at the company I work for to go over all our phone records to show just how many times I have contacted city link in the past 6 months. This isn’t an easy process, but I have been give their support as they have seen what I have had to deal with. The most disappointing thing is that city link believe they have done nothing wrong, and suddenly cannot recall any of my phone conversations. It is lucky that the people I work with have heard most of these conversations and are more than willing to provide evidence if required to. Please Feel free to contact me on my mobile on [number].

Once again I thank you for your time and effort and can only hope you can see my side of the story.

Thank you.”

14 On 3 October 2012 Mr F emailed the TCO as follows:

“Good Morning,

Further to your reply I have since done dome more digging and contacted the Law Firm who issued me with a letter stating that I owe money. This Law Firm is [Name] and their contact details are as follows:[number].

As I have mentioned previously, this was the first time alarm bells began ringing for me, and this was when I called them (Name of lawyers) and they told me that it was an error, to disguard the letter and that my matter had been settled. This was also the same time where I thought it would be best to contact city link and get them to confirm this. And they did. I was told to top up my account to above \$40 and that everything was up to date. I presume this phone call was made on the 4th of May (I cannot remember exactly). Today, I spoke with a representative from the law firm and she informed me the file was lodged on the 2nd of May and retracted on the 4th of May 2012 as per city links request. I have since found out that city link has been having trouble with their system as stated when you call civic compliance that there has been some issues with their system. I believe that this is partly why this issue has arisen. I give you ermission to acess any further information on my behalf concerning the new infomation which has come to hand. Please notify me of you feedback,

Thank you."

- 15** I believed that it was appropriate to make a decision on the complaint at this juncture as I am satisfied that further enquiries will not advance Mr F's position in respect to his complaint.

Discussion

- 16** 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.
- 17** 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 legislation such as the Melbourne CityLink Act 1995 can be accessed through Government websites.
- 18** The TCO is not a judicial body and does not have punitive powers. When making a decision it 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. I only have jurisdiction over the conduct of CityLink and cannot determine matters in relation to allegations against Civic Compliance Victoria (CCV) or other outside bodies.
- 19** The primary issue in this matter is Mr F's liability to pay the tolls during the periods that his account with CityLink was suspended from 17 February 2012 to 26 March 2012 and from 10 April 2012 to 2 May 2012. The failure to pay tolls led to the issue by CityLink of Late Toll Notices and Final Notices which were not paid by Mr F in accordance with their terms for payment. This failure led to the CityLink outstanding accounts being referred to CCV.
- 20** There is no evidence to suggest that Mr F did not receive the Late Toll Invoices and/or Final Notices; rather, Mr F has made a number of complaints in relation to the service provided by CityLink which centre mainly on events that followed the receipt of notices and his understanding of the payment requirements when he received the Late Toll Invoices or Final Notices. He has, however, raised questions about CityLink cancelling its email/SMS notification of account suspension facility and the impact of the upgrade of CityLink's billing system on his liability to pay.
- 21** CityLink has replied in detail to specific issues raised including, in particular, the cancelling of its trial SMS facility. Although Mr F contended that this was a useful aid in knowing when his account was low, the last one that he received was on 26 September 2011. He has indicated that he contacted CityLink about the non-receipt of the notices and was advised it was due to CityLink's system upgrade. I am

satisfied in these circumstances that he would not have been relying on such warning system of low balances in February and April 2012.

- 22 It is my view that the primary issue of liability is summed up in Mr F's submission, in which he said:

"... I received a few letters, but I had topped up my account immediately after receiving them on regular occasions and thought nothing of it. I was unaware that if the account went into suspension, the outstanding amount was not covered when topping up your account. I understand now that this was on the letter and as I said I'm not denying this. It has been pointed out to me now, but when I got these letters I would look over them and I new I had to put money and I did. On a few occasions I rang to top up my account, and sometimes I did it via bpay.

I have since found out that topping up my account did not cover the overdue money which I find outrageous, yet that is the system and now that I'm aware I will do all I can so this never happens again. Having said this, I believe I have done everything I could to avoid this. I agree I misunderstood that even though I was topping up my account it wasn't getting rid of any late tolls. But if my e tag doesn't beep anymore after I top it up, I assume all is good. And I keep getting told to listen for the beeps. I get told if there are no beeps, I'm fine."

- 23 CityLink has explained that the payments that he made did not cover the outstanding monies in relation to Late Toll Invoices which included the words in bold **"Failure to pay this invoice by the due date may result in the Victoria Police issuing a fine of over \$100"** and included clear instructions on how to pay the invoice. There was a direction to contact CityLink about any problems.

- 24 The payment of monies by Mr F, which he describes as "topping up", removed his account from its suspension status and he was allowed future travel on his account. It did not cover the invoices that required payment. He should have understood from the notices that he had that the payments he made may not have covered all the amounts outstanding (including administrative fees) or prevented the referral of the notices to Victoria Police, with the consequent incurring of fines for failure to pay on the due date.

- 25 I accept that Mr F contacted CityLink on a number of occasions seeking relief from any penalty payments but there is no evidence that he would receive such relief or any advice that his outstanding accounts had not been forwarded to Victoria Police as foreshadowed in the Late Toll Invoices.

- 26 The obligation was on Mr F to keep his account in good order and maintain the necessary positive balance to prevent it from being suspended. The CityLink e-TAG device beep system provided early warnings and these were followed by Account Alerts and Suspension Confirmation notices. The making of sporadic payments in

response is not in accordance with the terms and conditions of the usage of the toll roads.

- 27** Despite this, I believe that consideration should be given by CCV to providing relief in respect of the CCV fines. I note that Mr F has indicated that he was endeavouring to set up a direct debit system which should better suit his future needs.
- 28** Further, there is an argument that the CityLink Suspension Confirmation Notice is not completely clear in advising Mr F that his “top up” payments would not cover all outstanding liabilities despite the warnings on Late Toll Notices. Nor is there any evidence that CityLink telephone operators explain this to customers. Complete clarity in this regard may have alleviated Mr F’s situation.

Decision

- 29** Mr F’s complaint is not upheld but I recommend that consideration be given by CCV to assist Mr F in any way that it can in respect to the CCV fines. Mr F can provide this Decision to CCV to further assist him in this regard.

Michael Arnold
Tolling Customer Ombudsman

Dated: 18 October 2012