

DECISION

Background

1 The complainant, Mr KO, first made a complaint to the Tolling Customer Ombudsman (TCO) on 22 April 2014, as follows:¹

“I wish to register a strong complaint with respect to the ethics and manner in which Eastlink has addressed an issue involving toll charges.

In summary, the situation is as follows :

- I was given a loan car for 3 days in February 2013 whilst my vehicle was being repaired (BMW 318i registration [F***5])
- I registered the vehicle ([F***5]) on my E-tag to ensure Eastlink tolls were paid
- I returned the car to the garage in question and continued to use my own vehicle (BMW 5301 registration [S***0])
- I continued to use Eastlink with [S***0] but used an E-tag from Citi-link
- In August 2013 I noticed that my credit card had been charged by Eastlink for toll charges, and I questioned the reason(s) why.
- At first I thought I had been double charged and it took some time to understand what the issue was. During this time I was still being charged by Eastlink.
- It has since transpired that I did not remove the loan car from my Eastlink account

I'm not sure exactly how much I have been charged, however I believe it to be in the vicinity of \$160.

I have now been in contact with Eastlink and they acknowledge that I did not drive the car, did not authorise the use of the car with my E-tag account.

Furthermore, I have been in contact with garage that loaned the car to another driver. The garage in question knows who the driver is, however they cannot disclose details to me due to privacy laws.

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

I have asked Eastlink to make contact with the garage in question and pursue the driver of the car in question (as they have the authority to do so), however they have refused this course of action.

As mentioned before, my complaint is one of ethics and the manner in which the investigation was conducted.

1. Whilst it seems the legal position is clear, Eastlink acknowledge that I had nothing to do with the use of their services, and are not prepared to "do the right thing" which in my mind is unethical.
2. Furthermore Eastlink did not make any real effort to find the person responsible for the charges. I have since made the effort to find the responsible party/person and given Eastlink the contact details to pursue and pursue the person who is responsible. This is not a reasonable attempt to understand the issue and address it appropriately.

Some E-mails are attached to this E-mail for reference.

Therefore, I would like you to investigate this matter and let me know what is an appropriate course of action to take.

Furthermore, I would like to hope there would be a fairer and more reasonable behaviour adopted by Eastlink for any future investigation and that any future honest drivers of their service. are treated much more fairly.

I look forward to hearing from you.”

- 2** On 23 April 2014 the TCO acknowledged receipt of the complaint and forwarded same to EastLink for response. The TCO noted:

“I also note that EastLink has responded to your dispute and provided you with a detailed explanation of the background of your complaint, your liability to them for the tolling charges and provided you with a goodwill credit of \$30. This leaves an account balance of \$23.78cr.”

- 3** Mr KO responded to the TCO:

“Thank you for your response, and I look forward to hearing from a customer relations team member.

Please note one point of difference regarding the financial situation. I have been debited almost \$160, and have been credited on the Goodwill basis only \$30. Therefore I am out of pocket by approximately \$130. Furthermore as I only use east link with my Citylink E-tag, I am not able to use any of the goodwill credits given to me. Therefore, overall I am still \$160 out of pocket.

Please note that the person responsible for these charges is not even aware, and has not been made accountable for their dishonest behaviour. This for me is more important than the monetary value

Please pass these comments onto the customer relations team and I look forward to hearing from them.”

- 4 As requested by Mr KO, the above email was forwarded for the attention of EastLink.
- 5 EastLink provided the TCO with commentary on the complaint, which was communicated to Mr KO on 30 April 2014 as follows:

"I have reviewed all previous correspondence in this matter and now provide below EastLink's response to the TCO in regard to your complaint:

"We have confirmed the following points with [Mr KO] regarding his complaint,

- The vehicle was linked to the account 24/02/2013 via the website, which is when [Mr KO] has entered into an agreement to cover Toll charges for the vehicle.
- The alleged double charging was brought to our attention 04/09/2013.
- [Mr KO] confirmed that LPN [F***5] was not his vehicle which we then had removed from the account.
- [Mr KO] thought that [F***5] may have been his sons new vehicle. When it was confirmed that this was a courtesy car that [Mr KO] had forgotten to remove off the account. We contacted [R] from [the vehicle repairer] as a good will to explain the situation and attempt to retrieve some reimbursement for [Mr KO].
- [R] declined on the grounds that the vehicle is a courtesy car and it is the customer's responsibility to cover the Toll charges.
- We placed a good will credit of \$30.00 to help assist [Mr KO] in covering trips that had been charged to his account for LPN [F***5].
- [Mr KO] has stated that [R] is prepared to hand over details of the customers that have used the courtesy car.
Please find the attached correspondence between [Mr KO] and [the vehicle repairer]. It does not state that they are willing to hand over customers details (see response 21/02/14)"

EastLink have offered a further \$20 credit, making a total of \$50 as a goodwill gesture. This, I believe, is reasonable in view of the delay in notifying EastLink of the removal of the courtesy vehicle off your account. Further, I find that EastLink has not done anything incorrectly in the circumstances."

- 6 The following exchange of correspondence ensued:

Mr KO to the TCO:

"Thank you for your assistance in trying to resolve this matter, however I'm sorry to say I do not feel the proposal is fair nor answer is my main concerns.

Please be advised that [R] at [the vehicle repairer] is prepared to handover customer details if asked by the approved authorities, and does not compromise privacy law

Once these details have been handed over east link would be able to contact the person who is responsible for these toll charges

I need to understand why east link would not be prepared to take this course of action. As mentioned in previous correspondence it is very important to me that the person who was responsible for these charges are held accountable

Regards the financial settlement, whilst I appreciate the additional offer of another \$20, in summary we have the following :

- I would still be out of pocket \$ 110
- I am offered a credit of \$50 which I cannot use

Therefore I am still out of pocket \$160 for apparently forgetting to remove the hire car from my account. Actually I believe I did remove the vehicle from my account, along with a number of other vehicles around the same time. However I cannot prove that was the case.

I question if the punishment matches the crime and am Sorry to say that this proposal does not seem fair to me at all. At the very least any financial settlement should be credited back to my credit card in cash.

Everybody I have spoken to about this topic agrees with me.”

TCO to Mr KO:

“I acknowledge receipt of your email. Under my charter in resolving disputes between toll road operators and their customers I am required to be fair to both parties to a complaint in respect of their conduct and EastLink was not responsible for the tolls incurred by you in this matter.

I do not have jurisdiction over [the vehicle repairer’s] actions and cannot provide legal advice to them in respect to their the privacy issues. This is a matter in which they must seek independent legal advice and then a decision can be made by them as to whether the information will be supplied

Leaving aside this issue which must be resolved by [the vehicle repairer] before EastLink can act, in the event of EastLink pursuing persons said to be responsible for the tolls I ask for your submissions on your views as to whom should meet any additional costs incurred in respect of the successful or unsuccessful recovery from a third party.”

7 On 1 May 2014 Mr KO replied to the TCO:

“Thank you for your speedy response.

Regards your final point as who should cover any additional costs, my view is that this should be covered by the person who was responsible for the tolls in the first place.

I would appreciate if you could help me understand why Eastlink is not prepared to pursue the person responsible by seeking driver details from [the vehicle repairer]. I understand they have authority to request this information please let me know if this is not the case.

Furthermore, would you or East link please help me understand what it would have been the course of action had they not been "lucky" that the vehicle had not been removed from my account.

I still feel that Eastlink should have a policy in place which prevents honest people from being penalised for such situations. For me this is more important than the monetary issue.

Please note that I am a fair person, and do not believe that east link should bear full financial responsibility for this matter either.

If there is no reasonable course of action east link can take to recover all fees from the person who is responsible in the first place, my proposal would be for Eastlink to refund \$100 in cash to my credit card.

Thanks again for your help and I await to hear from you.”

8 EastLink email to TCO:

“We believe our good will credit of \$50.00 is more than fair.

While we appreciate [Mr KO] stating that we are able to contact [R] to obtain the details of other customers that have used the courtesy car, we did in fact contact [R] on his behalf of [Mr KO] and have no legal rights to obtain the personal details of [the vehicle repairer’s] customers.

This was a courtesy call we made on behalf of [Mr KO] and this is not the responsibility of EastLink.

We reiterate that it is the customer’s responsibility to keep their account information up to date at all times.

[Mr KO] has stated that he believes he did remove the vehicle, though we can confirm that after Licence Plate Number (LPN) [F***5] was linked 24/02/13. There were no adjustments to vehicle details until we removed LPN [F***5] on 19/09/2013.

This information is supplied when accessing the account online and also supplied on the account statements that are issued via email.

We confirm the \$30.00 good will credit was placed on the account in December 2013.

If [Mr KO] is requesting the further \$20.00 good will credit be placed on his credit card, we will require him to supply the card details.

This can either be done by updating the credit card details by accessing the account online, or please call us on 13LINK (13 54 65).”

9 On 5 May 2014 the TCO responded to Mr KO as follows:

“I refer to your email of 1 May and note your comment in respect to responsibility for the tolls.

I advise that EastLink, as a private company, does not have the authority to compel [the vehicle repairer], another private company, to provide information to it that might breach its privacy requirements.

If you had terminated the relationship with EastLink immediately upon cessation of the use of the vehicle you would not have been responsible for additional tolls. If this termination had occurred EastLink would have known that the vehicle was travelling on its toll road without a proper arrangements in place.

[The vehicle repairer] would have been put on notice and it could then have drawn attention to its customers who subsequently used the vehicle it was necessary for it to put in place toll road usage arrangements. EastLink then would have recovered the tolls from the toll road users under such arrangements. I do call into question your honesty but in this instance EastLink was deprived of this opportunity by your failure to terminate the arrangement for 7 months.

In situations where Toll operators have not been responsible for the incurring of additional tolls by a customer but I believe that some relief should be granted to the customer I recommend some compensation which I believe is fair in the circumstances. I believe that Eastlink's offer of \$50 credit is fair.”

10 Mr KO promptly responded:

“Thank you for your response to my email dated 1st May.

When I entered into the agreement with east link I did so in good faith and on the understanding that I would be charged for expenses for which I incurred. I now feel that I have been misled by Eastlink when I entered into a contract in the first place.

I do not feel \$50 is fair, and would like to understand what was the intention from east link when I first entered into this contract.

Therefore I would appreciate if you would Please help me understand the following :

1. Why is Eastlink not prepared to contact [the vehicle repairer] and gain the details of the third party who was responsible for these charges in the first place
2. Where does it state that I would be responsible for another Party's costs, on the occasion Eastlink is aware that I did not authorise a third party action.”

11 On 7 May 2014 the TCO notified both parties as follows:

“I acknowledge receipt of your email. I believe it is appropriate to provide a formal written decision in respect to all the issues have raised in this matter.”

Decision

- 12 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.
- 13 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.
- 14 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.
- 15 The evidence indicates that Mr KO linked vehicle F***5 to a toll account on 24 February 2013. The vehicle was not owned by him but was a courtesy vehicle provided by [the vehicle repairer] for his use for three days. He returned the vehicle after the three days but did not cancel the linkage of vehicle F***5 to the toll account. He then used his own vehicle which had a CityLink e-TAG for travel on toll roads.
- 16 Mr KO has acknowledged that he had noticed additional charges to his account over a period of time but says that he believed that it related to over-charging for travel on the toll roads. Mr KO eventually notified EastLink on 4 September 2013 that it had been charging his account for travel on toll roads by vehicle F***5 and the vehicle's linkage with his account was then removed. His account had been charged \$160 in the interim.
- 17 Mr KO argues that he has been unfairly treated by EastLink charging him for the tolls accrued on his account by other users of its toll road between 24 February 2013 and 4 September 2013. The evidence indicates that EastLink did not knowingly or without authority impose such charges in that period. It had acted on the information recorded in its system following Mr KO's linkage of the vehicle.
- 18 Mr KO had the contractual obligation, in managing his account, to remove the vehicle from the account so that EastLink could amend the records in its system. Had he done so, his account would not have been charged with the tolls incurred by vehicle F***5. Further, if he had contacted EastLink earlier in relation to what he believed was over-charging, the amount charged to his account would have been less.

- 19 Mr KO has contacted [the vehicle repairer] in an endeavour to obtain details of the names and addresses of persons who might have used vehicle F***5 in the period to 4 September 2013. He has not been successful in this regard and [the vehicle repairer] has raised issues of privacy.
- 20 Mr KO believes that EastLink should obtain the information from [the vehicle repairer] but EastLink cannot compel [the vehicle repairer] to provide the information and, in any event, the issues of privacy would have to be resolved before any information can be released.
- 21 Leaving this aside, even if the information was obtained, there is issue about the administrative and potential legal fees that may be involved in the late seeking payment of the tolls from third parties who might not readily take responsibility. Mr KO has indicated that he should not be responsible for fees and it is likely that the third parties would also contest responsibility.
- 22 EastLink has recognised that Mr KO disadvantaged himself by his failure to remove vehicle F***5 from the linkage to his account and has offered him an ex gratia payment of \$50 in credits to his toll account. Mr KO says that he does not benefit from this as he has a CityLink account. He has indicated any monies should be paid to his credit card as an alternative.
- 23 I believe that EastLink has acted fairly in relation to Mr KO's complaint by seeking to partially remedy his oversight in relation to the management of his account by the offer of an ex gratia payment of \$50.
- 24 I would recommend that EastLink, however, cancel the credit of \$30 to Mr KO's account and pay \$50 into his credit card by way of an ex gratia payment.

Michael Arnold
Tolling Customer Ombudsman

Dated: 20 May 2014