

DECISION

Background

- 1 The complainant, Mr TJ, first made a complaint to the Tolling Customer Ombudsman (TCO) on 27 October 2015, as follows:¹

“I have been trying to dispute toll infringements from GoVIA since July of this year. They have sent some infringements to Dept. of Transport (which have been since waived) and others to Probe Debt Collectors (which have now forwarded onto Geoffrey Mendelson Lawyers). I hoping that I would be able to receive some help with the dispute between myself and GoVIA. Below is a list of files that I have attached regarding this dispute.

- **GoVia_Dispute_Notes_20151027.pdf** (All notes and Action/Call log of dispute)
- **Tolling_Ombudsman_Consent_Form.pdf** (The Consent Form to release information)
- **SPER_Notice_of_Intention_to_Suspend_Driver_Licence_20150727** (The first notice I received/And first time I had any inclination of an issue)
- **Application_to_Cancel_Enforcement_Order_20150901.pdf** (Application to Cancel Enforcement Order to stop licence suspension)
- **QLD_Stat_Dec_20150828.pdf** (Stat Dec to dispute fines through Sper and Dept. of Transport)
- **geoffrey_mendelson_lawyers_final_notice_letter_20151001.pdf** (Letter received from Probe Debt Collectors Laywers)
- **email_mr_waived_20151015.pdf** (Email received from Dept. of Transport to waive fines)
- **email_tmr_waived_reply_20151015.pdf** (Reply to previous email)

Below is a summary of the dispute (which can also be found in: **GoVia_Dispute_Notes_20151027.pdf**)

The first notice that I received was issued on the 14/07/2015 (Please see SPER_Notice_of_Intention_to_Suspend_Driver_Licence_20150727.pdf) stating that I needed to pay \$879.60 (with a total of \$1099.50) by 29/07/2015 or my drivers licence will be suspended.

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

After speaking to GoVia, Probe and SPER, I have still not been informed as to the dates of the toll infringements. Below is the declaration that is the Application to Cancel Enforcement Order form:

In December of 2014 I temporarily moved to [Address – T] from [Address – K]. In January I moved to [Address – Do], When I moved to [Do] I voted whilst there. I was under the impression that this also changed your address for the government services, obviously this was not the case. At the end of June I then moved from [Do] to [Address – De]. It was then that I received a letter from SPER stating a Notice of Intention to Suspend Driver Licence.

Due to my moving I have not received any notices regarding this. I have since then called SPER and GoVIA. Neither companies can provide me the dates or times I passed through the tolls. Firstly I am confused as to why the GoVIA tag that is installed (according to GoVIA's instruction) did not work. It beeped on my end each time I went through the toll with the occasional double beep (top up beep). I was never under the impression that the tag didn't work.

GoVIA has both my email and phone number, there was no notification via these methods. I am not the type of person to receive overdue notices and ignore them. Especially since it seems to go up constantly as it is now \$1099.50 for 5 tolls that did not work due to some fault in the GoVIA tolls or GoVIA's tag as well as \$236.09 fines that have gone to Probe Debt Collection Company. I am willing to pay the initial tolls, providing it did not debit any money from my account within that time period. I am still trying to get confirmation on the dates that I passed through the tolls.

As of the 15th of October the fines through the Dept. of Transport have been waived however GoVIA refuses to accept the same result for the Probe Debt.

Thank you for any help you can provide on this matter.”

- 2** On 28 October 2015 the TCO acknowledged receipt of the complaint and forwarded same to Go Via for investigation and response.
- 3** Go Via responded directly to Mr TJ, copied to the TCO, on 29 October 2015 as follows:

“Thank you for your email, forwarded to **go via** from the office of the Tolling Customer Ombudsman (TCO).

I confirm your **go via** account [62***01] has a zero balance and currently list vehicle [7***A] (QLD) on the account.
At no time was vehicle [4***V] (QLD) listed on your **go via** account.

I confirm your **go via** account was suspended on 3 December 2014, the account suspension occurred due to insufficient credit on the account.
Below notifications were issued to you in the lead up of your account suspension;

Date	Description
03.12.2014	ACCOUNT SUSPENDED notification sms alert
17.11.2014	Suspension warning sms alert sent
10.11.2014	Low balance sms alert sent
06.10.2014	ACCOUNT SUSPENDED notification sms alert
30.09.2014	Suspension warning sms alert sent
23.09.2014	Payment failure sms sent

The alert preference via SMS was under your direction when you set up the account online.

When a **go via** account is outside the credit terms, invoices are issued to the account holder/registered owner should the vehicles continue to travel without a valid means to pay for the toll.

This invoice attracts a \$8.07 administration fee.

Should these invoices be left unpaid by the due date, further Demand Notices are issued for each outstanding toll, attracting a further \$23.07 Demand Notice fee.

I appreciate that you moved houses however by law you must ensure you details are up-to-date with Department of Transport and Main Roads.

Further, just like updating your insurance, you should update your vehicle details with **go via**.

I note you had the tag in the vehicle, if at any time the tag was undetected invoices were issued to the address listed with Department of Transport and Main Roads.

Our notations suggest you were in discussions with our Queensland Customer Service Team in July and educated on the escalation process, yet no payment was made.

The billing and invoicing of tolls as it is an automated process, and has to be paid by the due date to prevent further escalation.

We remain compliant to State legislation (***Transport Infrastructure Act 1994 Qld***) when issuing these notices, and the same legislation advises that it is an offence to not pay a Toll Road Demand Notice by the due date.

This offence attracts a separate fine, also known as a Penalty Infringement Notice (PIN) in excess of \$164.00.

These PINs are issued by the State Tolling Offence Unit and/or Brisbane City Council, depending on which toll point was used.

At the time of my response vehicle [4***V] (QLD) has **\$236.09** payable to **go via**.

I appreciate this may not be the response you were hoping to receive, however I hope I was able to clarify the matter.

To make payment and ensure all details are current, please contact 13 33 31."

4 The following exchange of correspondence took place:

Mr TJ to Go Via:

"I appreciate your response.

As I have stated numerous times to GoVIA consultants, I was unaware that the Rego details needed to be updated on the account. I was under the assumption that all I needed to use whilst going through the tolls was the GoVIA tag. A consultant (from the back office) in July admitted to me (over the phone) that the GoVIA tag mostly **does not** work, when I asked why bother using the tag I did not receive a response.

The GoVIA tag did not go undetected as it continued to beep (on my end) either once (toll charge) or twice (top up account), furthermore as the account was set up to automatically debit my account when it reaches a certain amount (by memory it was \$10) how could my account possibly reach a \$0 balance. No GoVIA consultant has yet been able to answer this question.

No payment was made back in July (when I first discovered that there was a debt), as no one could actually provide any information about the fines/infringements or to explain why a GoVIA product (GoVIA tag) did not work. Furthermore the infringements (at \$1099.50) that were sent to Dept. of Main Roads and Transport were waived under these same circumstances, so I am confused as to how the same problem that occurred at the same time under the same circumstances **can be waived** and not these infringements of \$236.09.

As I have stated before on multiple occasions, I am willing to pay the tolls (as I did use the roads to travel) however not willing to pay the ridiculous fines that occurred because a **GoVIA product did not perform as expected** (a product that a GoVIA consultant admitted that **MOSTLY does not work**)."

Go Via to Mr TJ:

"Thank you for your response.

As a prepaid account holder you agree to multiple terms and conditions such as ensuring all details are up-to-date and all vehicle licence plates are listed on your **go via** account at all times.

All vehicles must be linked on your account to avoid toll invoices being issued.

Whilst you were driving the vehicle, the tag system is designed to send 4 tag beeps when the account is in debit.

I have included the system alerts to your tag as an example;

Transaction ID	LPN	Plate Issuer	Date	Time	Tolling Point	Lane	Tag ID	Tag Status
1214121313044654	[4***V]	QLD	13/12/2014	13:04:46	GWY	02	[14***65]	Delinquent
1514121313155663	[4***V]	QLD	13/12/2014	13:15:56	KUR	02	[14***65]	Delinquent
1414121907224639	[4***V]	QLD	19/12/2014	07:22:46	KUR	01	[14***65]	Delinquent

2014121917352307	[4***V]	QLD	19/12/2014	17:35:23	HWD	03	[14***65]	Delinquent
1414122307355756	[4***V]	QLD	23/12/2014	07:35:57	KUR	01	[14***65]	Delinquent
1414122717203796	[4***V]	QLD	27/12/2014	17:20:37	KUR	01	[14***65]	Delinquent
1114122717324431	[4***V]	QLD	27/12/2014	17:32:44	GWY	01	[14***65]	Delinquent
1214122814402282	[4***V]	QLD	28/12/2014	14:40:22	GWY	02	[14***65]	Delinquent
1514122814515295	[4***V]	QLD	28/12/2014	14:51:52	KUR	02	[14***65]	Delinquent
1415010222110004	[4***V]	QLD	02/01/2015	22:11:00	KUR	01	[14***65]	Delinquent
1115010222224224	[4***V]	QLD	02/01/2015	22:22:42	GWY	01	[14***65]	Delinquent
1215010223161142	[4***V]	QLD	02/01/2015	23:16:11	GWY	02	[14***65]	Delinquent
1515010223275944	[4***V]	QLD	02/01/2015	23:27:59	KUR	02	[14***65]	Delinquent

The “delinquent” status could not result in a single beep on your tag as the system is not designed to do so. Rather, you would have heard 4 beeps on the above trips. To confirm, the tag was working.

Based on the above no fees will be waived and request payment of **\$236.09**

To make payment, please contact 13 33 31.”

Mr TJ to Go Via:

“To make payment, please contact 13 33 31”, I will **not** be making a payment... Again you have **not** answered why the GoVIA tag **did not** top my account as it should have done, if it worked as it should my account would not have a balance of \$0.00.

"The “delinquent” status could not result in a single beep on your tag as the system is not designed to do so. Rather, you would have heard 4 beeps on the above trips.” - I have never heard mine or any other GoVIA tag perform 4 beeps. I am not saying that you are lying, I am merely stating that on my end it beeped as "I" expected.

I do however thank you, as this is the **first time** someone has given me times and dates when I passed the tolls. All the other GoVIA consultants said they **could not** access that information anymore as it had been passed on to Dept. of Main Roads & Transport or Probe.

Furthermore the infringements (at \$1099.50) that were sent to Dept. of Main Roads and Transport were waived under these same circumstances, so I am confused as to how the same problem that occurred at the same time under the same circumstances **can be waived** and not these infringements of \$236.09. - Another statement that was ignored.”

5 On 30 October 2015 Go Via responded to Mr TJ:

“In September 2014 your Visa ending in 373 failed on 6 occasions and the automatic top up was cancelled.

We notified you during this and no rectification was made.

This is why no auto top up occurred.

Please advise if you require this automatic top up to be reinstated and if you require any vehicles to be updated.

Any Penalty Infringement Notice (PIN) waived by Department of Transport and Main Roads and/or Brisbane City Council is the decision under the notice issuer. We did not issued those notices.

When PINs are waived you are obligated to pay the toll directly with the toll provider.”

6 Subsequently, the TCO wrote to Mr TJ as follows:

“I enclose copy of correspondence from go via.

Go via is a private toll operator and not part of the Tolling Offence Unit which is a State Government agency. Any waiver of this agencies notices or fees does not remove you from the responsibility of paying the outstanding tolls and fees.”

7 On 8 November 2015 Mr TJ responded to the TCO:

“As I have stated multiple times to GoVIA and many other departments/agencies I am perfectly happy to pay for the tolls **only** as I did indeed use the roads where toll points were in place. I am not happy to pay for the fines included as I was unaware that those fines existed. Again [D] (GoVIA) still has not answered **WHY** the GoVIA tag did not top up my account (he stated they failed however not why they failed), the VISA card in question always has a minimum amount of funds in it (which exceeds the top up amount).

Furthermore, All GoVIA is trying to do is make easy revenue from me...

This invoice attracts a \$8.07 administration fee.

Should these invoices be left unpaid by the due date, further Demand Notices are issued for each outstanding toll, attracting a further \$23.07 Demand Notice fee. – [D] (GoVIA)

There would be no cost for GoVIA to issue these notices (except postage cost) as they can be automated by a simple computer program and can even be folded for you with the right printer. If I had of received any Demand notices I would of sorted it out on the spot and not 7 months later. Please also note, I still **haven't** seen any Demand notices of any sort from GoVIA itself.

Also regarding the following statement from [D]:

I appreciate that you moved houses however by law you must ensure you details are up-to-date with Department of Transport and Main Roads.

*Further, just like updating your insurance, you should update your vehicle details with **go via**. – [D] (GoVIA)*

The fine of **\$236.09** in question is not with the Dept. of Transport and Main Roads (**They waived the remainder of the fines**) the fine is with GoVIA where it is not required by law to update my personal details with. I assumed that the GoVIA tag in

my car was indeed working as it should and I felt no need to update my address with GoVIA as there are no tolls anywhere near where I moved to.

Again I will pay the initial toll prices as I used GoVIA services, I will **not** pay however the infringements that came on top as I did **not** receive any notice of the **fin**es and still **haven't!**"

8 On 9 November 2015 the TCO advised Mr TJ and Go Via in the following terms:

"There has been extensive correspondence since this matter was referred to me. As the complaint has not been resolved I shall prepare a written decision for the parties."

Decision

- 9 The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO, 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. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.
- 10 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.
- 11 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 other outside bodies, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal rights.
- 12 I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation. I will accordingly make a decision on the dispute based solely on the information before me.
- 13 Mr TJ had an account with Go Via that he was required to top up in order to keep in the credit arrangements with Go Via for travel on toll roads. Mr TJ's account fell into debit because his credit card did not respond to requests for payment in September 2014 and his account was suspended. Go Via has provided details of Mr TJ's travel on the toll roads which were not paid.

- 14** Mr TJ says that his credit card was always in credit and Go Via has not explained why the credit card did not meet the payment requests. There is an explanation for this. Go Via does not have the right to obtain such information from the credit card provider, both for contractual and privacy reasons. This is an issue that Mr TJ could pursue with the credit card provider, not Go Via.
- 15** I note in respect to the suspension of the account, that six SMS messages were sent by Go Via to Mr TJ between 23 September 2014 and early December 2014 alerting him of suspensions, low balances and then suspension of his account in December 2014.
- 16** Mr TJ did not bring his account into credit as he was required to do. His account was accordingly suspended for not being in credit but he continued travelling on toll roads. Go Via has provided details of the travel. Go Via then issued toll invoices and toll demands seeking payment of the tolls and administration fees. These were not paid and were escalated to the Department of Transport and Main Roads (DTMR) and SPER.
- 17** Mr TJ has stated that he did not receive Go Via toll invoices or SPER notices until 14 July 2014. Mr TJ has explained that he shifted accommodation on two occasions but did not notify the State Motor Registration agency or Go Via of these shifts of accommodation despite his obligation to do so, both at law or under the account terms of travel with Go Via.
- 18** Toll operators are dependent on customers advising them or the motor vehicle registration branch of their current addresses for the delivery of tolls. Toll operators cannot be responsible for the non-delivery of tolls to customers who do not supply up-dated information of their addresses.
- 19** Mr TJ also alleges that his tag was not working as it issued beeps indicating his account was in credit. This has been denied by Go Via and Mr TJ has provided no evidence to support his position. Moreover, Mr TJ's view would not be consistent with the SMSs he had been sent in late 2014 advising that his account was suspended. These would have put him on notice that he was being charged. He could have checked the operation of the tag with Go Via.
- 20** Further, if Mr TJ believed that the tolls were being paid, this would have been reflected in his Go Via account statements or in his credit card records that were available to him. Mr TJ has said that his credit card was always in credit, which indicates that he must monitor it and would know whether or not toll fees were being debited to the credit card in late 2014 and 2015.
- 21** Mr TJ has complained about the level of administration fees charged for the collection of the tolls. As I have advised, I have no jurisdiction over this issue as the fees are fixed in consultation with the State Government. I note, however, that the administration fees charged are meant to recover the actual costs and not impose any penalty on a customer.

- 22** According to the evidence before me, Mr TJ:
- did not have his account in credit in accordance with the terms of his account with Go Via in December 2014;
 - was warned of account suspension by Go Via by SMS six times between 23 September and 3 December 2014;
 - did not respond to the SMSs by bringing his account into credit;
 - travelled on the Go Via toll roads whilst his account was suspended;
 - changed his addresses on two occasions without notifying the DTMR or Go Via of his change of addresses, which affected the delivery of toll notices and toll demands;
 - has provided no evidence that his tag was not working;
 - would have evidence in his Go Via account or credit card details available to check the tolls that he was paying on toll roads.
- 23** I have no jurisdiction over the level of fees charged by toll operators.
- 24** In these circumstances I cannot relieve him of the responsibility to pay the outstanding fees of \$236.09 to Go Via.

Michael Arnold
Tolling Customer Ombudsman

Dated: 4 December 2015