

DECISION

Background

- 1 The complainant, Mr MR, first made a complaint to the Tolling Customer Ombudsman (TCO) on 4 April 2014, as follows:¹

“I have paid a number of actual toll amounts within 3 days of the travelling on city link. No where in the terms and conditions does it state i am unable to pay the actual toll amount with a 3 day period. As a result of Citylink refusing to accept this dispute explaining this to them they are still adding additional unjustifiable charges to these initial toll amounts i have already paid. Furthermore, i have evidence to support the fact i attempted to purchase a citylink pass, however, it would not allow me to do it.

What happened following your complaint to the tolling business?

They have failed to answer my questions. Added further costs to tolls i have already paid and now threatening to refer to the matter to the police of which then further costs will be add, however, they can not added further costs when a matter in clearly in dispute. On a number of occasions it has taken them over 3 days to respond of which is unacceptable.”

- 2 The complaint was acknowledged by the TCO on 6 April 2014 and forwarded to CityLink for response.
- 3 On 10 April 2014 CityLink provided the TCO with copies of all correspondence between it and Mr MR. The main documents are quoted below:

CityLink’s initial response to Mr MR’s complaint dated 12 March 2014:

“Thank you for your recent enquiry which has been referred to Customer Resolutions. I apologise for the time you have spent trying to resolve your concerns.

After investigation, our records indicate the following:

- On 25 November 2013 you purchased a CityLink 24 Hour Pass via our website for vehicle [***382] with a nominated travel date of 25 November 2013.

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

- The below Late Toll invoice (LTi) was issued for your vehicle [***832] due to the license plate discrepancy.
- On 2 January 2014 the LTi was cancelled.

Late Toll invoice	Travel Date
[****239]	25 November 2013

- On 20 December 2013 a CityLink Tulla Pass was purchased for vehicle [***832] with a nominated travel date of 20 December 2013.
- On 23 December 2013 a CityLink Tulla Pass was purchased for vehicle [***832] with a nominated travel date of 23 December 2013.
- On 2 January 2014 a CityLink Tulla Pass was purchased for vehicle [***832] with a nominated travel date of 2 January 2014.
- The below LTis were issued as your vehicle travelled beyond the section of road covered by the Tulla Passes purchased.
- On 14 February 2014 the LTis were cancelled as a gesture of good will.

Late Toll Invoice	Travel Date
[****283]	20 December 2013
[****575]	2 January 2014
[****312]	23 December 2013

- A CityLink Pass has not been purchased for 12 December 2013.
- The below LTi has been issued requesting payment for travel made on 12 December 2013.
- On 4 March 2013 a BPAY payment of \$21.00 was received for this invoice.
- As the outstanding balance of this invoice was \$29.73, a further payment of \$8.73 is required.

Late Toll invoice	Travel Date	Amount Due	Due Date
[****188]	12 December 2013	\$8.73	14 March 2014

- You have provided copies of two cheques to CityLink dated 12 December 2013 and 20 January 2014.
- Neither of the amounts on the cheques match the cost for a CityLink 24 Hour Pass or Tulla Pass covering travel.
- The LTi reference number you have provided on the cheque dated 12 December 2013 was not generated until 31 December 2013. Therefore, at the time you wrote this cheque the reference number did not exist.
- The amount shown on the cheque dated 20 January 2014 matches the amount for the toll on LTi [****545]. Again, at the time you wrote this cheque the LTi had not been issued.

CityLink banks every cheque received therefore, as you have advised your cheques have not been banked, this would indicate they were not received by CityLink.

- Payment of the below LTis is required in full as your vehicle [***832] was not covered by a valid CityLink Pass on these dates of travel.

Late Toll invoice	Travel Date/s	Amount Due	Due Date
[****545] (4)	20 & 22 January 2014	\$36.65	14 March 2014
[****365] (2)	7 February 2014	\$18.61	14 March 2014
[****553] (5)	10 February 2014	\$18.61	14 March 2014
[****175] (9)	15 February 2014	\$18.61	14 March 2014

Payment can be made by one of the following methods:

- BPay – Biller Code: 443655 Reference Number: Late Toll Invoice number inclusive (*)
- Credit card on 13 26 29 or at www.citylink.com.au (MasterCard or Visa)
- Cheque / Money Order – sent to Post Office Box 14758, Melbourne Vic 8001
- In person at our Customer Centre - 67 Lorimer Street, Southbank, Victoria 3006

Should you require any further assistance regarding this matter please contact me on 03 8656 8770 or via return email.”

Mr MR to CityLink dated 14 March 2014:

“Please note yet again the following:

1. I have made payment by way of cheque for the use of citylink on 12 December 2013 within a 3 day period. I have paid the actual toll amount and therefore a late toll invoice was not required to be generated as this was paid.
2. I have made payment by way of cheque for the use of citylink on 20 January 2014 within a 3 day period. I have paid the actual toll amount and therefore a late toll invoice was not required to be generated as this was paid.
3. Per the attached an amount of \$21.00 was paid within 3 days of travel for the dates of 7, 10 and 15 February and therefore no requirement for a late toll invoice to be generated and as such you now need to show these amounts as paid in full. You were notified of this on 5 March 2014 of which I have had no response to.
4. I have today paid another \$14.00 to cover the use of city link on Wednesday 12 March and 14 March 2014. As such no requirement for a late toll invoice to be generated.

Furthermore, I have attempted on all occasions above to purchase a pass, however, I get the attached message which is unacceptable and could well be deemed as an attempt by citylink to extract more money from me should I need it necessary to refer this matter now to consumer affairs.

Please ensure your payment system is updated correctly to reflect the above payments I have requested above.”

CityLink to Mr MR dated 21 March 2014:

“Thank you for your reply.

I have addressed your points in an alternative colour as follows:

1. I have made payment by way of cheque for the use of CityLink on 12 December 2013 within a 3 day period. I have paid the actual toll amount and therefore a late toll invoice was not required to be generated as this was paid.

As previously advised, your cheque was not cashed by CityLink which means it was not received. Regardless, the amount on the cheque was not sufficient to pay for a 24 Hour Pass.

CityLink is unable to accept the figure you refer to on copies of cheques provided as payment for travel as the payment amounts are the equivalent to toll costs associated with an actual account holder only.

Motorists who choose to travel casually on CityLink without purchasing a CityLink 24 Hour Pass within 3 days of travel will be issued with an LTI requesting payment. To further explain an LTI will include the toll cost relevant to where the vehicle has travelled together with an administration fee which covers costs associated with generating an invoice.

As you did not purchase a CityLink Pass for travel on 12 December 2013 Late Toll invoice (LTI) number [****188] was issued to you requesting payment.

2. I have made payment by way of cheque for the use of CityLink on 20 January 2014 within a 3 day period. I have paid the actual toll amount and therefore a late toll invoice was not required to be generated as this was paid.

As previously advised, your cheque was not cashed by CityLink which means it was not received. Regardless, the amount on the cheque was not sufficient to pay for a 24 Hour Pass.

CityLink is unable to accept the figure you refer to on copies of cheques provided as payment for travel as the payment amounts are the equivalent to toll costs associated with an actual account holder only.

Motorists who choose to travel casually on CityLink without purchasing a CityLink 24 Hour Pass within 3 days of travel will be issued with an LTI requesting payment. To further explain an LTI will include the toll cost relevant to where the vehicle has travelled together with an administration fee which covers costs associated with generating an invoice.

As you did not purchase a CityLink Pass for travel on 20 January 2014 Late Toll invoice (LTI) number [****545] was issued to you requesting payment.

3. Per the attached an amount of \$21.00 was paid within 3 days of travel for the dates of 7, 10 and 15 February and therefore no requirement for a late toll invoice to be generated and as such you now need to show these amounts

as paid in full. You were notified of this on 5 March 2014 of which I have had no response to.

Your payment of \$21.00 was deducted from LTi number [****188] as part payment from the total balance owing of \$29.73.

The payment of \$21.00 has not covered your travel made on 7, 10 and 15 February 2014 as you have advised. As such, LTis [****365], [****553] and [****175] were issued.

Your email dated 5 March 2014 has been received. I apologise you have not yet had a response to this email.

4. I have today paid another \$14.00 to cover the use of city link on Wednesday 12 March and 14 March 2014. As such no requirement for a late toll invoice to be generated.

Your payment of \$14.00 has been received for LTi number [****575]. As this LTi was cancelled on 14 February 2014 the money became an overpayment.

The \$14.00 has now been applied to LTi [****188] (listed above) to cover the outstanding amount of \$8.73 and the remaining \$5.27 has been transferred to LTi number [****545].

5. Furthermore, I have attempted on all occasions above to purchase a pass, however, I get the attached message which is unacceptable and could well be deemed as an attempt by CityLink to extract more money from me should I need it necessary to refer this matter now to consumer affairs.

A CityLink Pass is intended for infrequent users of CityLink. As such there is a limit of 12 CityLink Passes per vehicle in any 12-month period. This is also confirmed in the CityLink Pass terms and conditions which are readily available. Any Passes purchased over the 12 Pass limit will not be valid. Each 24-Hour Pass, Weekend Pass or Tulla Pass you purchase is counted as one CityLink Pass, regardless of Pass type.

CityLink confirm you are receiving a message, a copy of which you have provided due to your vehicle [***832] reaching the 12 Pass Limit. Based on your usage of CityLink, I recommend you open an Everyday Pre-Paid Account to cover your travel. You will then be able to pay for each trip made at the individual price.

The below LTis are currently outstanding for you vehicle. The payment terms of these invoices have expired and if payment is not received immediately the matters will be referred to the Victoria Police who may issue an Infringement Notice per date of travel.

Late Toll invoice	Travel Date	Amount Due	Due Date
[****545] (4)	20 & 22 January 2014	\$31.38	14 March 2014
[****365] (2)	7 February 2014	\$18.61	14 March 2014
[****553] (5)	10 February 2014	\$18.61	14 March 2014
[****175] (9)	15 February 2014	\$18.61	14 March 2014
[****118] (6)	26, 27 & 28 February 2014	\$32.25	2 April 2014
[****917] (0)	1 March 2014	\$18.61	2 April 2014
[****025] (3)	5 March 2014	\$18.62	4 April 2014

Payment can be made by one of the following methods:

- BPay – Biller Code: 443655 Reference Number: Late Toll Invoice number inclusive (*)
- Credit card on 13 26 29 or at www.citylink.com.au (MasterCard or Visa)
- Cheque / Money Order – sent to Post Office Box 14758, Melbourne Vic 8001
- In person at our Customer Centre - 67 Lorimer Street, Southbank, Victoria 3006”

Mr MR to CityLink dated 27 March 2014:

“Your response does not address the issues I have raised and being the fact I was unable to purchase a 24 hour pass, what am I meant to do?? As citylink have failed in their duty of care to ensure your terms and conditions are clear, being the fact I have paid the relevant toll within a 3 day time limit (note: nowhere in your terms and conditions does it state I am unable to do this). I propose to pay the original toll amounts less the additional costs that have been put forward.

Furthermore, you will note that when an account is being disputed you are unable to put extra costs/charges towards it.

Please confirm that the resolution to this issue I have put forth is acceptable in order for me to pay this new amount.”

4 On 14 April 2014 the TCO made the following enquiry of Mr MR:

“I refer to previous correspondence in this matter.

To assist in the investigation of your complaint, please confirm if you received a full explanation from CityLink as to the background and circumstances of your complaint.”

5 To which Mr MR responded:

“No I haven't. They did not answer my questions of where in their terms and conditions it states I can not pay the actual toll amount in 3 days if travel.

Furthermore, I was unable to purchase a pass as the citylink website would not allow it.

Additionally, whilst this has been in dispute directly with citylink and now with yourselves, citylink are still adding further charges to the original amounts I have already paid of which they are unable to do when in dispute.”

6 On 15 April 2014 the following exchange of emails took place:

TCO to Mr MR:

“I have read the responses of CityLink which provide a detailed history of transactions indicating that the relevant travel was not paid for in accordance with the usage of the toll road and the reasons for your liability for additional fees in respect of same.

CityLink, like all toll road operators, are entitled to charge administrative fees involved in the collection of tolls not paid within the proper time frames. You would have understood this from your previous transactions with CityLink. Failure to pay the outstanding fees, properly charged, can result in additional fees.

On the information before me I cannot understand how you could not access the CityLink website but that does [not] remove the responsibility for paying the tolls within the fixed times.”

Mr MR to the TCO:

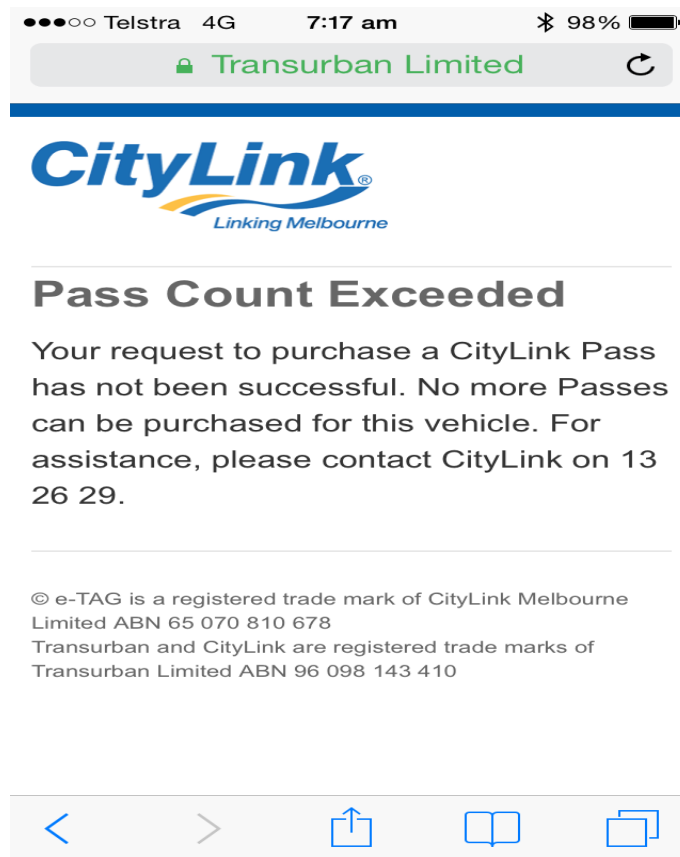
“Again michael as I have requested on several occasions from citylink, please show me where in the terms and conditions it states I am unable to pay the actual toll amount within 3 days?? So far no one has been able to show me this but just say I can't. It's easy for you and citylink to claim this but I want proof. If this condition existed why didn't citylink show this to me ??

I have no issue in admin charges being allocated for non payment, however, payment has been made and this has been in dispute.

Clearly your response is flawed and you have failed in your duty of care to resolve this matter correctly and simply given me a short sharp answer just to try and get rid of me . Unfortunately I do not go that easily. It is not about the monetary side of things. At no point has citylink educated me in any capacity.

I have no issue in taking this to court in order to resolve. I have attempted to resolve this through proper channels but unfortunately you and citylink have failed to provide an answer to my question and now I have to waste the courts time.

Below is the response I get when I try and buy a pass. I want to buy a pass but it won't let me. So what do I do?? Pay the actual toll amount...



TCO to Mr MR:

"[Mr MR], I acknowledge receipt of your email and note its contents. I believe that my previous email addressed your issues.

I note the response for your application for a pass states that you have exceeded your quota of passes available to you. There are a number of options open to you but as it appears that you use the toll road regularly it might be of benefit to open an account for management of your travel arrangements."

Mr MR to TCO:

"Again I reiterate my question. Show me where it is stated?
You have not answers my question.

This will now go to court and I can demonstrate to the magistrate that you like citylink have not provided me with satisfactory response as to where it states in the terms and conditions I can't simply pay for the tolls used.

Please arrange for this matter to be referred to the police so I can get this into court."

7 On 24 April 2014 the TCO emailed Mr MR:

“Further to our email correspondence I draw your attention to section 70 of the Melbourne CityLink Act which provides the power to CityLink to fix and charge tolling charges and administration fees.

I note you make reference to the need for the police to have this matter before the Courts. Civic compliance will pursue the debt and as it is a civil dispute with CityLink you can raise your issue in the Magistrates Court in contesting the fee.”

8 Mr MR responded as follows:

“That's not my question.

I will break it down as simple as I can for you as follows:

1. I have already paid \$7 for each of the alleged outstanding tolls. This was undertaken within 3 days of travel. Evidence of this was supplied to Citylink.
2. The toll amount on each occasion was less than \$7 3. Nowhere in the terms and conditions of use of citylink does it state I cannot pay the actual toll amount as outlined in point 1 above, nor in the Melbourne City Link Act.
4. Hence, my question: Show me where it states I cannot pay not only the actual toll amount or more for each time of use? This question has been asked of you and citylink on numerous occasion with no coherent response made available to me from anyone.
5. Furthermore, I was not allowed and restricted from buying a casual pass (this evidence has been provide to you already), therefore what am I meant to do? Clearly the intent has been there from my perspective to pay the tolls. I am not trying to get out of paying or otherwise why would I already go ahead any pay above and beyond the actual toll amount??
6. Yes I would agree that per section 70 of the Melbourne Citylink Act provides citylink with the power to fix and charge tolling charges and admin fees. This is not in dispute. What is in dispute is the fact I have already paid above and beyond the actual toll amount and therefore how can I be charged an administration fee of any kind??

In relation to your last statement, unfortunately, I have no alternative but to take this to court and allow Citylink to waste the courts time. My understanding is that the Tolling Customer Ombudsman is meant to be impartial from Citylink. Clearly based upon the correspondence from you to date, this is not the case. In no way have you investigate or even looked at this issue correctly or otherwise I would not be sending this email now.”

9 On 25 April 2014 the TCO notified both parties as follows:

“I acknowledge of your most recent email and note its contents. In view of the interchange of correspondence, I believe the most appropriate way to deal with this matter is by way of written decision.

I will prepare same as soon as possible.”

Decision

- 10 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.
- 11 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.
- 12 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 external bodies.
- 13 This is a matter in which CityLink has provided comprehensive explanations to Mr MR about the history of his travel and transactions involving the use of its toll roads. It is apparent from these explanations that Mr MR has used the toll road on a number of occasions and has had the benefit of ex gratia consideration in the past. He has utilised the maximum of 12 casual CityLink Passes to which he is entitled and previously obtained relief from Late Toll invoices in the context of his travel.
- 14 I am satisfied that Mr MR understands CityLink's policy in relation to casual CityLink Passes and that CityLink is entitled, at law and as a condition of the use of its toll roads, to charge fees. These include administration fees for Late Toll invoices issued when payments are not made for travel on a toll road within three days from the date of travel. CityLink's website explains that a payment must be made within the three days and that if it is not, a notice will be issued and this will involve an administration fee.
- 15 Mr MR asserts that he made payment for tolls within the three days of travel but this is not supported by the evidence he has provided to CityLink and upon which he relies in this complaint. CityLink has set out in detail responses to his claims that certain payments were made by cheque within the allowable three day period.
- 16 CityLink does not have any record of receiving certain cheques from Mr MR and they were not banked by it. In any event, it is apparent from the material produced that any cheques that were provided did not make payment within the allowable time. Any cheques subsequently received were applied to outstanding amounts owing by Mr MR. This is also detailed in correspondence to Mr MR.

17 I am satisfied from the evidence before me that CityLink has acted in accordance with the terms and conditions of the use of the toll roads by Mr MR and has promptly and fairly explained this to him.

18 Accordingly, Mr MR's complaint is not upheld.

Michael Arnold
Tolling Customer Ombudsman

Dated: 5 May 2014