

## DECISION

### Background

- 1 The complainant, Miss KP, made a complaint to the Tolling Customer Ombudsman (TCO) on 9 December 2015, as follows:<sup>1</sup>

“Back in approximately April 2015 my account was in error however I cannot access my email easily and had not received the emails regarding this. Once a notice in the mail was received in my daughter name ‘[Ms TD]’ as she is the registered owner I made a call to rectify my account.

I spoke to a lady and we worked through the account and I advised there was an error with my credit card details that they had and we updated this and the agreed to waiver many fees and I made two separate payments to clear my WHOLE account as requested.

I was assured the entire account was finalised as I did not want fines or infringements coming in my 17 year old daughters name.

I made this call to FULLY CLEAR this account, make full payment and correct the credit card details so a direct debit could be set up. At no time was I advised that any further notices were outstanding or had not been included in this.

My daughter received two payment demands from Go Via which were dated just prior to my call so I rightfully assumed these were included in my call and the toll dates were well prior to my phone call date. These notices were the same as the ones I called up about to clear so I assume that this is all on one single account (as I had paid off the others I called about).

I then received further demands in my daughters name so I made many calls to attempt to resolve this. The initial discussion was made with a Go Via lady who advised me that there was ONLY one account for this car yet tried to say that the fines sent to my daughter were separate from the account. This contradicts the initial call I made as I called because she had got one of them in the mail and I discussed it at the time and cleared the account from these notices. She actually looked up all the fines whilst we were on the phone and admitted it was an error or oversight by their staff I had previously spoken to yet they refused to act on that error and reduce the fines back to my initial call and payment. I was willing to pay these fines at the due rate as I believed they were in error (which they admitted) due to not including these in initial call to clear my account in full.

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<sup>1</sup> All parties’ submissions used in this Decision are quoted verbatim

I work Monday to Friday – 8am to 5-6pm daily. I made many many calls to Go Via and many times I had to hang up due to their wait times and busy times being too long for me to endure during business hours and my busy office management position. A call was made to a call centre and as you will see in the attached correspondence, they failed to have these details on file as I was transferred to another switch board or something? One call in particular I made after my daughter received her very first BCC fine was to a lady on a switch board who I had a discussion with and requested to speak to someone higher rather than waste her time as I had already spoken to many people at the call centre level who could not help. She advised that no-one was available in that department at that time and I explained I needed it to be urgently escalated and put on HOLD until I was able to speak to someone as my daughter was getting fines. Her words to me were – This account will be on hold and I will escalate this to an URGENT call back. This call back was never received. This BCC fine should be the one and only that should have ever been received as the account was still under dispute. All fines seem to have been forwarded onto BCC even during my recent discussions nothing seems to have been put on hold at all.

When I spoke to the Go Via staff AGAIN I was asked for the exact dates and phone lines I had called from as they had no record of this call on my account. I am not sure about every other person but I do not take down and record every single phone call I make and what date or time I make it. I gave them an approximate date range and gave them three work lines I could have called from plus my mobile number as I had no exact memory of the call I had made two weeks prior and I had memory of calling on my land line at work.

You will note in their attached correspondence that the conveniently mention some things and not others. They mention that I had an event on, which has been discussed with them many times that it was actually my uncles funeral. If you get access I request you listen to that call. I made it extremely clear that I could not speak, that I was travelling to a funeral and would have to correspond with them at a later date or earlier the next week. I was not in a state of mind the clearly recall myself saying I would call her as I am pretty sure I requested we speak at another time however they have advised me I said I would call them. This lady's discretion should have shown her by listening to me that I was not able to comprehend anything she was saying on this day due to my state of mind.

There would also be record of a discussion I had with someone who advised me that on EVERY record they had of my calls they had that I WOULD CALL THEM BACK. I pointed out that this was clearly incorrect as the record of the second call outlined why the lady had to get back to me and work out a resolution to offer. They again were rude and my frustration just continued to escalate.

No matter how many people I spoke to over the months none of them could understand that the reason I was disputing the fines was due to the initial call which was made to clear the account in full and IN THEIR ERROR I was not advised of all that was outstanding.

I made payment of the initial toll amount on ALL of the toll demands that my daughter received to show some kind of commitment to continuing the resolution process and awaiting a response. These payments were never brought up with me until I spoke to some guy (who again was rude) and I advised I actually had made payments on them he said the amount was irrelevant and from what I could

understand as he did not care to give details, they had been basically put together and taken off some of the earliest fines which had been cleared. I doubt very much that those amounts ever added up to the exact total of any individual fines however apparently this is how that was treated. No statement was sent, no email advising of an error of payment or a balance that was outstanding. Very strange that no-one got in touch with me to clarify or question why these were part payments but instead just made up what they would apply all the separate payments to and even then not even let me know until I brought it up after being accused (YET again) of making no payment.

I disagree that the initial offer of something along the lines of \$180 was even close to reasonable as I had made the call and discussed all the account issues and made full payment with the fees waived previously. Even then I had paid around \$140. They were trying to say there was over \$400 worth of tolls outstanding? Even that does not add up to what is currently outstanding.

Bottom line is that the call was made to clear the whole account and they should have record of that call. Even though they missed this part the next call should have been able to correct the error and get me to make reasonable payment with fees waived as per my previous call because they ADMITTED their own staff were actually in fact in error. Secondly I made a call immediately after my daughter received the first BCC fine to discuss and further investigate what had been going on and to THEIR ERROR YET AGAIN they have no record of this call apart from a possible switch board receipt. This was the call where I was told everything was put on hold and I would receive an urgent call back and my account would be escalated.

Please see copies of the attached correspondence – You will appreciate that my frustration has reached boiling point as they just cannot seem to understand that their own error has led to these fines escalating. I am also extremely surprised that these fines have continued to escalate even while we were supposed to be in negotiations. I do not accept the fact that these people believe I would deliberately not pay my account until my 17 year old daughter (who is on her P plates) would receive a ridiculous amount of BCC fines. As mentioned, payments were made on these statements and I can definitely prove that.

I feel like there must have been phone conversations that I had with them where they were not looking up all the information on my account at all because as you will see below, not much really makes sense. If I was calling about the account and my daughters (as the registered owner of the vehicle) invoices then why was nothing extra mentioned about the fines you will see below that I made payment on?

The following statements are incorrect in their email response dated 7/12/15:

- They state they have only retrieved three calls which is how they have made judgement?? At least 5 to six calls were made about this account
- They state that at the time of this call ONLY TWO toll notices issued at the time of this call?? This does not even make sense.... See below for how many were actually received and how many I made payment on.... Clearly they do not have MUCH correct in the way of correct information. And if this is the case then why did my payments not pay off these two fines?
- They state a payment of \$96.22 was made and NO PAYMENT WAS MADE TOWARDS THE REGISTERED OWNERS ACCOUNT AT THE TIME OF THIS

CALL – this is because I was not even advised it existed. How would I have know this? We have one vehicle and one account with them??

- They do not state the date of the call I made which was put through to the call centre? This was an additional call to which I have probably mentioned above as per some discussions. I am not sure why they say they cannot recall this information? How can they make a full judgement on this issue or on what any of their staff advised me if they can't even get all the evidence correct?
- They say that their records show no payment was received as of 17/11/15 – which is not true. The following payments were made towards these invoices on 16/10/15:
  - REF# [\*\*\*521] \$4.32 – TRIP ON 14/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*522] \$4.32 – TRIP ON 14/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*523] \$2.54 – TRIP ON 10/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*524] \$2.54 – TRIP ON 10/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*525] \$2.54 – TRIP ON 13/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*526] \$4.85 – TRIP ON 10/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*527] \$4.85 – TRIP ON 13/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*528] \$4.85 – TRIP ON 15/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*529] \$4.85 – TRIP ON 8/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*530] \$4.85 – TRIP ON 10/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*531] \$4.85 – TRIP ON 13/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*532] \$3.00 – TRIP ON 10/7/15 – prior to my 13/8/15 call
  - REF# [\*\*\*533] \$3.00 – TRIP ON 10/7/15 – prior to my 13/8/15 call

NOTE: ALL THESE INVOICES WERE DATED 1/9/15 – Should these trips have not been part of my payment made on the initial call to clear my account... This makes no sense at all seeing as she states that there were only two toll notices sent on 13/8/15?
- They state that Go Via have made no error? Clearly there has been many many errors made. I am actually quite confused as to how my account has been utilised at all.
- She states that they did try to assist me prior to the BCC infringements being issued. This is true however nothing was follow up or responded to on their behalf in relation to my call straight after the initial BCC infringement was received. Whilst discussions were continuing, more BCC infringements have been received?”

2 On 9 December 2015 the TCO acknowledged receipt and forwarded the complaint correspondence to go via for investigation and response. On 10 December 2015 go via responded to the TCO as follows:

“I have been in correspondence with [Ms KP] regarding the vehicle [4\*\*\*U] (QLD).

Below is what I have established regarding [Ms KP's] complaint:

- **Go via** account opened online on 16 February 2015, and backdated to 13 February 2015 for vehicle [4\*\*\*U] (QLD).
- Payment method – Automatic Top Up set up using VISA ending in 250 – which on the phone call made on 13 August 2015, customer advised this is incorrect.
- Payments were being deducted up until 5 June 2015. Between 13 and 15 June 2015, payments were dishonoured by the financial institution.
- Account suspended 20 June 2015.

- Customer called 13 August 2015. Payment was processed towards the account including a top up.
- Travel between June and August – notices had been re-issued to the registered owner of the vehicle – no payments were made towards these.
- Outbound call to customer advising we would waive eight Demand Notice fees on request of payment in full of the outstanding balance under the registered owner account. Payment was to be made 14 September 2015 (approx. \$180).
- Outbound call to customer 14 September 2015 – customer was unable to discuss details at that time as she had personal commitments that day. Our notations suggest customer was to call us back the following week (21 – 27 September 2015).
- Payment was not received and notices escalated to PIN.
- Next call noted on the registered owner account was 17 November 2015.

Customer has since cleared all outstanding with **go via**.

We have referred 10 Demand Notices that were not paid to PIN, these had due dates between 19 September – 1 October 2015.

I have listened to some of the calls that we had available. The customer has insisted on not paying fees, which we have removed some of the administration fees for her account only not the registered owner account as this was not discussed.

I note that the registered owner differs from [Ms KP] as the vehicle is her daughters, we would not have linked the two unless advised. Also due to privacy, we would have needed her daughters permission to disclose information.

I do not believe **go via** has made an error in the referral of these PINs. We did try to help the customer prior to the due dates of the Demand Notices. I have also attached the email trail regarding this complaint.”

**3** On 12 December 2015 the TCO forwarded go via’s response together with attachment to Miss KP for comment.

**4** On 14 December 2015 Miss KP replied to the TCO in the following terms:

“Well that is basically the exact same email that I sent to you.

There was definitely a discussion regarding my daughters fines as all of the phone calls after the August payment phone call were ALL ABOUT THESE ISSUES! I had nothing outstanding with them but these. At the time of the event my daughter was 17 years old and therefore they did not need her permission to speak to me. I was only told once that they would not discuss these issues with me and I also was advised by them that the accounts were linked due to them being able to look up all the information and advise me on the phone (which you would be able to hear).

The phone calls were ALL about these fines and also as you can see by the email correspondence I sent you, they advised that ONLY TWO HAD BEEN ISSUED TO [Ms TD] (my daughter) at the time of my call to them in August. So how come I now have four or five fines from BCC in my daughters name.

I seem to have to be continually repeating myself here and that is that they ADMITTED on the phone that they had not fully looked into my account (which would include the fines sent to [Ms TD]) at the time that I called. If they had, do they

honestly think I would ignore and leave fines to be then progressed to a \$164 fine in my 17 year old daughters name which could affect her driving record?

You will also be able to hear in the phone conversations that they were asked if there was every MORE than one account in my name and they said NO. The account is actually just one account and [Ms TD's] fines fell under this (again as proven by them being able to look up these fines with all the phone conversations that I had with them).

I 100% made a call to their switch board the FIRST DAY after the first BCC fine was received and as mentioned a lady with an American Accent advised me that my account was definitely going to be put on hold until I received a call back. Let me know if you need me to find out the date and number this call was made from because it was definitely made with the intention to stop any further BCC fines being issued and things to be resolved and discussed.

As you can also see below, yet again they fail to mention any payments were made... If they are speaking about [Ms TD's] fines as the alleged owner of the vehicle then again they are AGAIN LYING as I listed all the payments that were made on these fines to you in my original complaint. I have attached my bank statement for you as proof that these were actually made!

[C] is actually the person that you will note emailed me that whole email (WHICH HOLDS MANY INCORRECT STATEMENTS AS I OUTLINED IN MY ORIGINAL COMPLAINT) and also which outlines that a call was made to a call centre that could not be recalled.

Please advise me what you need from me now as I am yet again reading the same things being written by uniformed Go Via staff and they don't seem to care about listening to where the issue stemmed from and what it actually is.

All of the calls related to [Ms TD's] fines, not once was I told or even given an option to join these accounts? Why would I not have done this seeing as all the queries were in relation to my account and her fines?"

5 On 15 December 2015 the TCO sought further comment from go via on the issues raised in Miss KP's email correspondence, including the availability of telephone call recordings. Three recordings were provided by go via exclusively for the TCO's consideration as these are retained by go via specifically for internal training purposes.

6 On 16 December 2015 Miss KP enquired of the TCO:

"Can you please advise me of what your roll is as I feel like I am just having my complaint forwarded onto Go Via, they are responding and you are sending that to me?

Is your roll to determine an outcome or will you basically just agree with their outcome?

I am just a bit confused as I feel like I am dealing with the same people as I have been all along?

7 The TCO responded:

“I must allow the parties to explore all the issues themselves to see if a resolution of a complaint can be achieved. I will make a decision once I’m satisfied that there is no resolution By the parties.”

8 To which Miss KP replied:

“Thank you for your response Michael.

I will wait to hear further.

Please note I will be on holiday and not able to access my emails very easily from the 26th to the 10th January.

Please advise me if this will be an issue or if I will need to give you a different contact option.”

9 On 23 December 2015 the TCO advised Miss KP:

“Your absence on holiday with limited email access is noted. This will not pose a problem.”

10 On 9 January 2016 the TCO advised Miss KP as follows:

“My initial role as the TCO is to (a) ensure that the parties have adequate understanding of the their respective positions and (b) I have sufficient understanding of the facts and arguments on the basis of which I can make a decision if the parties do not resolve the matter.

It is apparent that this matter cannot be resolved between the toll operator and yourself so I will now prepare a written decision.”

11 Miss KP acknowledged the TCO’s notification on 12 January 2016.

## **Discussion**

12 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.

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 other outside bodies, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal and any other rights if they are not satisfied with a TCO decision.
- 15** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 16** A go via account was opened online on 16 February 2015, backdated to 13 February 2015. Payment for tolls was made by automatic top-up using a Visa credit card. Payments were deducted using the credit card until 5 June 2015. Between 13 and 15 June 2015 payments were dishonoured and the account was suspended on 20 June 2015.
- 17** There is evidence that there was travel on the toll roads subsequent to this date whilst the account was suspended but the Toll Invoices and fees were not paid within the required time. Apparently Miss KP received a Toll Demand. Miss KP said that she contacted go via on 13 August 2015 and made a payment for what she believed was all the monies outstanding in her daughter's name.
- 18** It would appear that the monies were paid to Miss KP's account but not off the monies owing by her daughter for Toll Demands. Following this, go via contacted Miss KP and advised that it would waive eight Toll Demand notices if the daughter paid off the monies owing by her. Miss KP did not accept this proposal.
- 19** This dispute arises from the fact that Toll Invoices were not paid by Miss KP's daughter within the required time for payment. As a consequence, go via issued Toll Demands that were not met by Miss KP or her daughter.
- 20** Miss KP paid the Toll Invoices but not the Toll Demands with the additional fees. Go via's records indicate that Miss KP called on 13 August 2015 and a payment was processed to her account, including a top-up. Its records show that between June and August 2015 Toll Demands were issued in respect to travel by her daughter, which were not paid.
- 21** Miss KP says that she paid invoices on 16 October 2015 for travel between 8 and 14 July 2015. She says that all the invoices were dated 1 September 2015. I note that such payments were well outside of the time required for payment and, as a consequence, put herself at risk of penalties and escalation of Toll Demand to collection by the DTMR

- 22** This is a matter in which there is also a conflict in respect to the contents of a telephone conversation between Miss KP and go via operators. There are conflicting accounts in respect to these calls.
- 23** I have had the opportunity to listen to three telephone conversations between Miss KP and go via which have led me to the conclusion that Miss KP was paying money into her account and not to meet the Toll Invoices or Toll Demands outstanding in respect of her daughter's travel whilst the account was suspended.
- 24** There was also a discussion about the correctness of the details of the credit card that was registered with Miss KP's go via account. Miss KP said it was the incorrect card details. I, however, note that the card had made deductions for toll payments up until June 2015. It appeared not to be operative between 13 and 15 June 2015 for a reason that has not been explained by Miss KP.
- 25** I am satisfied that go via has provided a full and persuasive explanation of its position in this matter. Further, go via sought to compromise the claim against Miss KP in a manner which was fair in the circumstances. Go via sought to make arrangements with Miss KP in September 2015 for payment of outstanding monies on the basis of the waiver of eight Toll Demands.
- 26** Miss KP did not settle the matter with go via and, as a consequence, they were referred to Penalty Infringement Notices. An outcome of which she was aware at the time she chose not to settle the outstanding claims.
- 27** I am satisfied that go via's offer was fair and this matter should have been resolved with Miss KP at this point. Irrespective of Miss KP's interpretations of the conversations with go via officers, outstanding Toll Demands had been issued which had not been paid.
- 28** I am certain that Miss KP did not want to incur ongoing penalties for her daughter, but settlement in September 2015 would have meant that the Toll Demands would not have been escalated to Penalty Infringement Notice status, with its attendant costs.

### **Determination**

- 29** Miss KP's complaint is not upheld.
- 30** I reaffirm that my decision is not binding on Miss KP and that she can seek relief in any other forum or by any other manner she chooses.

**Michael Arnold**  
**Tolling Customer Ombudsman**

**Dated: 22 March 2016**