

DECISION

Background

- 1 The complainant, Dr OJ, first made a complaint to the Tolling Customer Ombudsman (TCO) on 14 August 2014, as follows:¹

“I am writing to lodge a complaint about Go Via and their business dealings as far as my online Go Via account [***271].

I am dissatisfied with the outcome of the interactions I have had with their customer service desk. After I called from overseas and requested the suspension of my online account due to unusual activities in that account, lodged a complaint, and mailed them two letters explaining the issues and requested their help me to resolve the unfair charges to that account (more than \$400), instead of receiving a response, they sent me a letter from Geoffrey Mendelson Lawyers, the representative of a collection company to pay the remaining balance of \$20.59 on the online account which I have already paid (attached please find a copy of the letter).

I feel that their behaviour is unethical and unfair. According to their policy, if the license plate is entered wrongly, it is the customer’s responsibility to bare any unfair use on the account. While, there was a human error made in entering the license plate number on one of the vehicles listed online, the license plate number was entered in April 2013. For almost a year, there was no abuse or unfair charging. However, the unfair charges started to occur after the e-tag was disclosed to a toll officer –based on their request-, back in late March/April 2014 on the phone. Such action suggests that it is NOT the customer’s responsibility.

We need to investigate please the matter and rectify any abuse. I hope as well to get reimbursed the unfair charges. Good business requires ethical and responsible principles. Go Via, as I experienced, does not possess any. I would like to close that account as soon as the issues are resolved and do not wish to do any business with that company.

Attached are the correspondence that I had with them after the initial few phone calls, including a recent phone call from NSW tolling authority to Go Via on my behalf. I am happy to provide any additional information needed.”

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

2 The TCO acknowledged receipt of the complaint by letter dated 22 August 2014 and the dispute was referred to Go Via for investigation. On 15 September 2014 Go Via responded directly to Dr OJ, copied to the TCO, as follows:

"I refer to your letter to the office of the Tolling Customer Ombudsman (TCO) dated the 14th of August 2014.

I send my apologies for the delayed response.

I conducted a thorough investigation following the details of your letter and confirm the following;

Our records indicate that vehicle registration [B***RR] (NSW) was added to **go via** account [***271] (DR OJ) online on the 9th of April 2013 at govia.com.au.

The account holder on this date, instructed **go via** to charge all tolls for the vehicle [B***RR] (NSW) should it be detected on toll roads.

Between November 2013 and July 2014, **go via** was notified by toll road operators in New South Wales that the vehicle had been detected on their toll roads, and the charges accepted to your **go via** account in accordance with your instructions.

On the 16th of July 2014, we received a call from you, advising that you were overseas and the vehicle [B***RR] listed on your account was parked in your garage, and believed that we had charged your account incorrectly.

Based on your information, the representative [Name] sought to dispute the charges with the toll road operators in NSW as we were led to believe that their images appeared to be incorrectly processed.

The images were later verified to be [B***RR] (NSW) and the charges matched the vehicle details on your account.

On the 24th of July 2014, in your follow up phone call to us, we were advised that by you that your vehicle's registration number is actually [B***HH] (NSW) and not [B***RR] (NSW).

In our assessment, we found that the vehicle was added by the account holder online and we have followed those instructions correctly. We cannot verify registered owner records against a **go via** account's details, and depend on our account holders to supply this information.

We are not able to request that the NSW toll road operators withdraw their tolls based on a customer error. We understand that they would not be eligible to re-send a toll notice to the registered owner of the vehicle once the toll has been paid on an account.

To provide you a refund as you have requested, it would then require **go via** to bear the cost twice, for tolls already paid to the NSW toll operators and again to refund you the same amount. In consideration of the above, we are not in a position to bear these charges.

I send my regrets on the circumstances, and the out of pocket costs as a result of a minor clerical error.

I appreciate that the outcome that we have provided thus far is not one that you were hoping for; however I hope I was able to clearly explain our reasons for doing so.

Should you have any further matters to discuss, please do not hesitate to contact myself by return post, or email on customerrelations@qldmotorways.com.au."

- 3 There was an extensive exchange of correspondence between Dr OJ, Go Via and the TCO.
- 4 On 12 December 2014 the TCO provided a synopsis of the dispute to Dr OJ for further comment.
- 5 On 3 January 2015 Dr OJ responded as follows:

"Thank you for the message on December 12, 2014 and hope you had a good start in 2015.

Please find below my comments in black under each section.

...

This is a complaint relating to tolls charged to a vehicle [B***RR] (NSW) not owned by you between November 2013 and July 2014. You have sought a refund of the tolls and related fees on the basis that you were not the owner of the vehicle and they were incorrectly charged to your account.

Indeed it is a complaint with two parts, one part was related to the tolls charged on [B***RR](NSW) and one part was related to Go Via's customer relations before the case was brought to your office.

According to Go Via's records, motor vehicle [B***RR] (NSW) was added by you online to a Go Via account [***271] in the name of [Dr OJ] on 9 April 2013. This provided the authority to Go Via to charge your account all tolls for vehicle [B***RR] (NSW) when it was detected on toll roads.

It is correct that upon our move back to NSW from QLD, I may have changed the vehicle registration number from [0***N] to [B***RR] (NSW) by mistake. Based on my understanding at that time, Go Via had the authority to charge my account all tolls BASED ON AN ACQUIRED TAG placed in the vehicle. I rarely monitored the online account based on the premise that we will only be charged if the tag in the car peeps while we cross a toll.

Between November 2013 and July 2014 Go Via was notified by toll operators in New South Wales that vehicle [B***RR] (NSW) had been detected on their toll roads and charges made by these operators were paid through your Go Via account. According to Go Via's records, there were three such charges between 20 and 23 November 2013 and then a significantly higher number of charges between then and 14 July 2014.

Thank you for such a clarification. I was not aware that we were charged in November 2013. Could we please check with Go Via on when the video matching was activated on the account?

During November 20-23, I was between Washington DC and California, USA, my husband and daughter were in Canberra and the vehicle was just parked in our backyard. Actually on November 20, my husband picked it up from the shop repairing a block in fuel filter. So, this is also a wrong charge to the account.

Based on some unusual charges to your Go Via account you noticed for April 2014, you rang Go Via on 16 July 2014 advising that you were overseas for the period of the charges and that the vehicle [B***RR] (NSW) was parked in your garage. You believed Go Via had charged your account incorrectly at the time.

I believed that there was a mistake somewhere. I did not accuse Go Via that they charged us wrongly, when I called they were friendly and cooperated with me. I thought that they will help me resolve the issue when we return to Australia.

You have stated that you noticed unusual activities in the account following online and telephone discussions with New South Wales toll operators between 29 March and April 2014. There were also discussions with AirportlinkM7 and you logged into your Go Via online account and requested a new tag for the vehicle

In March 2014, my daughter and husband used our new car to go to Sydney and they took the TAG that is linked with [B***RR] in the online account. However, the TAG did NOT work and when we got the bills from the toll company, I called them on March 29/April 1, 2014 and told them that we have a Go Via account and we had the tag in the car but it did not work. The operator asked me to give him the tag number and I gave him the tag number that is associated with [B***RR]. At that time, there was no unusual activity in my account yet.

later, I logged into my Go Via account to order a new tag for the new vehicle since I thought the tag will only work with the vehicle associated with it. So, I ordered a new tag for our new car from Go Via then and of course did not see the wrong license plate number.

You have contended that you did not notice that the nominated registration of the vehicle was [B***RR] (NSW), not [B***HH] (NSW), during these contacts. You suggest that the series of discussions with the toll operators in April 2014 somehow triggered the wrongful charges to the account.

When I came back from USA and still I have not heard from Go Via, by July 24, I checked the details in my online account and since I paid recently our motor insurance bill (attached) then I noticed that I entered the license plate wrongly in the online account. Actually the correct license plate is [B***HH]. Please see the picture attached from the [Name of insurer] bill

[Copy of insurance bill removed for privacy reasons]

This is a big landcruiser and we rarely used to go to Sydney.

In this regard, you have questioned why, if there was a problem with the incorrect number plate from early 2013, were there no incorrect charges until 2014. You assert that means that

the charges should not therefore be the customer's responsibility and should be absorbed by Go Via. In this regard, I point out that there were tolls imposed in November 2013.

I think we need to understand the processes that were in place in November 2013 between NSW toll operators and QLD versus the ones in April 2014. It could be that the protocols have changed and there were different processes implemented in 2014 to facilitate cross charges among states.

Based on the information you provided, Go Via's representatives sought to dispute the charges with the New South Wales toll operators on the grounds that their images of the vehicle [B***RR] (NSW) had been incorrectly processed. Following this contact by Go Via, the images were subsequently verified to be a vehicle with registration number [B***RR] (NSW) and accordingly the vehicle could be linked to the Go Via account for the payment of fees.

Following this, it transpired in a telephone call on 24 July 2014, that you advised Go Via that your vehicle in fact had registration number [B***HH] (NSW) and not [B***RR] (NSW). Go Via checked your account details for any error on its part. From its assessment of its records, it found that the vehicle had been added by you online as the accountholder and that Go Via had followed your instructions correctly.

Upon calling Go Via and telling them that I made the mistake entering the vehicle license plate number, instead of helping me to resolve the issue, as you would expect from a decent business company, they claimed that since it is the customer error, then the customer would need to take such a responsibility. I called then NSW operators and they said that there are processes to deal with such mistakes. Go Via did not act in good faith and did NOT inform me of any process available to me. Instead they sent the last \$20 due on the account to a collection agency.

Is this a decent interaction with a customer who gave them a blank access to a credit card for more than 3 years?

I am satisfied that this finding was correct as Go Via depends on its accountholders to supply motor vehicle registration numbers correctly and cannot verify State records of registered owners of vehicles.

I am also satisfied that Go Via attempted to solve the issue after I filed a complaint with your office. However, I am not satisfied with the way they handled the issue early on. Also, I did not see any of their submission to NSW operator authority or any of that discussion. I rely on the information that your office provided.

In response to your request for a refund of the tolls, Go Via advised you that it was not able to request the New South Wales toll operators to withdraw their tolls based on customer error. It further said that it understood the New South Wales operators would not be able to rescind a toll notice to the registered owner of [B***RR] (NSW) once the tolls were paid on an account.

Had Go Via acted on July 16-20 with the issue, it would have been at least partially resolved. BUT they did not and also what bothers me is that they did not care to check whether there is an abuse or not on the account. As long as it is not their fault, they do not care about their customers....

Go via subsequently consulted with the New South Wales toll operators and found that they were unable to secure payment from the registered owner of [B***RR] (NSW) to provide a refund to you. It advised that:

“A bulk of these transactions also fall outside the permitted time frame that a toll can be re-billed to a registered owner, as they have already been billed to you based on your instructions.”

Go Via contended that to provide you with a refund of tolls would require Go Via to bear the cost twice as they had already paid the New South Wales toll operators.

The relationship between Go Via and yourself, as contained in Go Via’s Terms and Conditions, provided for both tag use and video matching of number plates. You have contended that despite such an agreement it should not be a customer’s responsibility to cover the outstanding fees, irrespective of any fault due to human error on a customer’s part.

Again my understanding from using the system since 2011 is that toll charges are based on a physical tag linked to a Vehicle. The video matching is implicit in the terms and conditions. Go Via needs to be very transparent and explain on their website clearly the video matching business and NOT be implicit...Again, I am curious to understand how the rules have changed in 2014 between states to allow cross charging.

As currently advised, I am satisfied that Go Via has acted both properly and fairly in this instance. It has not only acted within its Terms and Conditions but has taken steps to resolve issues with the New South Wales tolling operators to enable a refund of the tolls for you.

I have discussed issues of similar circumstances as yours in one of my six-monthly Reviews on my website. There is no easy resolution.

There would be privacy issues together with potential additional administrative and legal costs in pursuing the owner/driver of [B***RR] at the stage that you ultimately notified Go Via of the error. This would raise the issue of who is liable for such costs for your initial error. They would no doubt be contested by the owner/driver of [B***RR], who had no notice of the tolls or additional administrative fees.

Well, any decent person who knows that they used the road and did not pay the tolls would be willing to pay it unless it is an abuser. I thought Go Via, at least should have tried.

I am open to hear further submissions on this issue.

In further considering this matter, could you please advise whether you paid tolls in respect of vehicle [B***HH] (NSW) in the period in question for the use of toll roads.

I do not recall using the [B***HH] (NSW) in the period in question to travel to Sydney. We used the Tag though between March 8-10, 2014 in our new vehicle.”

6 Dr OJ’s response was forwarded to Go Via for comment. Go Via responded on 13 January 2015 as follows:

“In response to [Dr OJ’s] additional comments as well as supporting documentation, we have previously recognised that it is unlikely that [Dr OJ] is the registered owner of [B***RR](NSW).

Though it may be worthy to note, with no access to verify vehicle registration ownership, **go via** would not have been able to prevent trips for vehicles listed on their account.

Further, a **go via** account holder can assume responsibility for any vehicle they wish, and one not necessarily registered to them.

Whilst I appreciate that [Dr OJ] believed that we would only charge the vehicle where a tag was installed, we clearly explain in the terms and conditions that we would charge any tolls for a vehicle validly linked to their account.

In this case, the vehicle [B***RR] was validly linked to [Dr OJ's] account and all toll road operators followed this instruction.

This instruction was unchanged from the time the vehicle was added until the time the vehicle was removed.

Naturally, we cannot estimate when the vehicle will use tolls more frequently than at other times thus cannot explain trip trends for November and April.

[Dr OJ] agrees that a clerical error was made, when the vehicle registration number was input online as [B***RR] (NSW) instead of [B***HH] (NSW).

In [Dr OJ's] further submission, I recognise that there is dissatisfaction with our decision to not refund the tolls incurred by [B***RR] (NSW).

I reject however that we provided this decision because we do not care about our customers; rather we seek a fair outcome that **go via** ourselves do not bear these costs simply by following explicit instructions from an account holder, albeit incorrect.

I regret the outcome, truly, however as there is no manner for **go via** to contact the driver who incurred these tolls in NSW we can no longer recoup these charges to refund [Dr OJ].”

- 7 The TCO forwarded same to Dr OJ on 14 January 2015, notifying that as the matter appears not to be resolved by conciliation, a TCO Decision will be made.

Decision

- 8 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.
- 9 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.
- 10 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.

- 11 This is a complaint relating to tolls charged to a vehicle [B***RR] (NSW) not owned by Dr OJ between November 2013 and July 2014. Dr OJ has sought a refund of the tolls and related fees on the basis that she was not the owner of the vehicle in this period and they were incorrectly charged to her account.
- 12 According to Go Via's records, motor vehicle [B***RR] (NSW) was added by the customer online to a Go Via account [***271] in the name of Dr OJ on 9 April 2013. This provided the authority to Go Via to charge her account all tolls for vehicle [B***RR] (NSW) when it was detected on toll roads.
- 13 Between November 2013 and July 2014 Go Via was notified by toll operators in New South Wales (NSW) that vehicle [B***RR] (NSW) had been detected on their toll roads and charges made by these operators were paid through the customer's Go Via account. According to Go Via's records, there were three such charges between 20 and 23 November 2013 and then a significantly higher number of charges between then and 14 July 2014.
- 14 Based on some unusual charges to her Go Via account Dr OJ noticed for April 2014, she rang Go Via on 16 July 2014 advising that she was overseas for the period of the charges and that the vehicle [B***RR] (NSW) was parked in her garage. Dr OJ believed Go Via had charged her account incorrectly at the time.
- 15 Dr OJ has stated that she noticed unusual activities in the account following online and telephone discussions with NSW toll operators between 29 March and April 2014. There were also discussions with [another toll road operator] and Dr OJ logged into her Go Via online account and requested a new tag for the vehicle.
- 16 Dr OJ has contended that she did not notice that the nominated registration of the vehicle was [B***RR] (NSW), not [B***HH] (NSW), during these contacts. She suggests that the series of discussions with the toll operators in April 2014 somehow triggered the wrongful charges to the account.
- 17 In this regard, Dr OJ has questioned why, if there was a problem with the incorrect number plate from early 2013, were there no incorrect charges until 2014. She asserts this means that the charges should not therefore be her responsibility and should be absorbed by Go Via. In this regard, I point out that there were tolls imposed in November 2013, well prior to April 2014.
- 18 Based on the information Dr OJ provided, Go Via's representatives sought to dispute the charges with the NSW toll operators on the grounds that their images of the vehicle [B***RR] (NSW) had been incorrectly processed. Following this contact by Go Via, the images were subsequently verified to be a vehicle with registration number [B***RR] (NSW) and accordingly the vehicle could be linked to Dr OJ's Go Via account for the payment of fees.
- 19 Following this, in a telephone call on 24 July 2014, Dr OJ advised Go Via that her vehicle in fact had registration number [B***HH] (NSW), not [B***RR] (NSW). Go Via

checked the customer's account details for any error on its part. From its assessment of its records, it found that the vehicle registration number had been added incorrectly by Dr OJ online as the account holder and that Go Via had followed her instructions.

- 20** I am satisfied that this conclusion was correct as Go Via depends on its account holders to supply motor vehicle registration numbers correctly and cannot verify State records of registered owners of vehicles.
- 21** In response to Dr OJ's request for a refund of the tolls, Go Via advised her that it was not able to request the NSW toll operators to withdraw their tolls based on customer error. Go Via further said that it understood the NSW operators would not be able to rescind a toll notice to the registered owner of [B***RR] (NSW) once the tolls were paid on an account.
- 22** Go Via subsequently consulted with the NSW toll operators and found that they were unable to secure payment from the registered owner of [B***RR] (NSW) to provide a refund to Dr OJ. It advised that:
- "A bulk of these transactions also fall outside the permitted time frame that a toll can be re-billed to a registered owner, as they have already been billed to you based on your instructions."
- 23** Go Via contended that to provide Dr OJ with a refund of tolls would require Go Via to bear the cost twice as they had already paid the NSW toll operators.
- 24** I am satisfied that the relationship between Go Via and the customer, as contained in Go Via's Terms and Conditions, provided for both tag use and video matching of number plates. Dr OJ has contended that despite such an agreement it should not be a customer's responsibility to cover the outstanding fees, irrespective of any fault due to human error on a customer's part.
- 25** This dispute has been subject to considerable input by Dr OJ and Go Via. I have considered all submissions, including Dr OJ's response to my synopsis of the dispute.
- 26** I am satisfied that Go Via has acted both properly and fairly in this instance. It has not only acted within its Terms and Conditions but has taken steps to resolve issues with the NSW tolling operators to enable a refund of the tolls to the customer.
- 27** I have spoken personally to the Go Via representatives and am satisfied with their assurances that they sought to resolve the matter with the NSW toll operators but were unable to obtain a refund of the tolls that Go Via had paid to such operators.
- 28** Dr OJ has suggested that Go Via have, in some manner, breached ethical and responsible principles but I am satisfied that there was no basis for such a contention in the circumstances of this dispute.

- 29** Go Via paid the tolls to the NSW toll operators in good faith based on the information available about the vehicle registration details provided to it by Dr OJ. It then unsuccessfully sought a refund of such tolls on behalf of Dr OJ. There was little more that it could do in the circumstances other than be out of pocket in respect of monies paid to the NSW toll operators through no fault of its administrative operations.
- 30** I have discussed issues of similar circumstances arising from customer error as in this dispute in one of the six-monthly Reviews on the TCO website. There is no easy resolution in respect to obtaining payment of tolls from a third party.
- 31** There would be privacy issues together with potential additional administrative and legal costs in pursuing the owner/driver of [B***RR] (NSW) at the stage that Dr OJ ultimately notified Go Via of the error. This would raise the issue of who is liable for such costs arising from the customer's initial error. They would no doubt be contested by the owner/driver of [B***RR] (NSW), who would have had no notice of the tolls or additional administrative fees.
- 32** I find that Go Via is not liable to refund the tolls and fees to Dr OJ.
- 33** I note that Dr OJ has said that the NSW toll operators indicated that they would be privy to a process whereby Go Via could obtain a refund of the tolls. However, no evidence has been provided in this regard. If Dr OJ can obtain such an undertaking from such operators, further consideration can be given to this matter by me.

Michael Arnold
Tolling Customer Ombudsman

Dated: 28 January 2015