

DECISION

Background

- 1 The complainant, Ms GB, made a complaint to the Tolling Customer Ombudsman (TCO) on 6 May 2015 as follows:¹

“To whom it may concern

I am requiring urgent assistance in relations to appart outstanding tolls from 2013.

As far as I am aware all tolls were paid in full as you can see below. If this is not the case I am requesting tolls to be reversed back to Flow Toll so I can pay the tolls in full minus any added fees.

I was not made aware that my several transfer attempts between Go Via and Flow Toll were not successful in 2013. I called in 2014 after receiving an infringement notice and paid the outstanding amount in full. I was advised that no other tolls were outstanding. I have now in 2015 received another infringement notice from the government in relation to these tolls.

I simply can not understand what is happening and neither the government or the tolling company is being of any assistance. I refuse to pay any money to SPER as I have done everything in my power to rectify and pay these tolls dating back to the dates of travel.

Please find below correspondence outlining more information in regards to this matter. I look forward to your urgent response.”

- 2 Ms GB followed up her complaint on 18 May 2015. On 26 May 2015 the TCO acknowledged receipt of the complaint and referred same to Transurban Queensland (Go Via) for response.
- 3 On 27 May 2015 Transurban Queensland responded directly to Ms GB, copied to the TCO, as follows:

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

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

I have reviewed your case and can confirm there is zero balance owing to **go via**.

When a foreign tolling account (Flow Tolling) is outside the credit terms, tolls on the **go via** network are rejected and toll invoices are issued, to the registered owner instead, in accordance to State Tolling Policy.

Our records confirm that several notices were issued to the registered operator of the vehicle [8***U] (QLD) in respect of these unpaid tolls. When the invoices were not paid by the due date, it escalated to Demand Notices, each attracting a further \$22.74 for each unpaid trip.

It is an offence under State legislation (*Transport Infrastructure Act 1994 Qld*) to fail to comply with the stipulations of a Toll Road Demand Notice (i.e. Payment in full by the due date).

This offence attracts a separate fine, also known as a Penalty Infringement Notice (PIN) in excess of \$154.00.

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

Our notations also suggest that we have previously discussed the outstanding notices before they were referred to these government agencies, however at the time you were not agreeable to resolving the matter through payment in full. At this stage, our assistance to you is now limited.

I understand that since payment in full has not been forthcoming, you are now in receipt of these PINs, and they are being enforced by the State Penalty Enforcement Register (SPER).

Go via cannot influence or assist in matters relating to State agencies, and recommend that you make payment to the relevant issuer to prevent further enforcement.

I confirm that these transactions are no longer payable to **go via** and you will need to refer to SPER.

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

Should you have any further questions please do not hesitate to contact **go via**."

4 That same day Ms GB replied to Transurban Queensland:

"I can completely acknowledge what you are saying. However, as per my below email you will see that the first I heard of the issue that the tolls remained unpaid was when I called 27/7/2014 to pay them in full after receiving notices. Some how a few of these tolls were sent to the government I am assuming? I am questioning why I was not told this when I called to settle my account with you on the 27/7/2014 when I realised this was an issue with miscommunication. I am not paying \$154 x however outstanding tolls there are when I called to sort this mess out a year ago and someone failed to tell me that this was not in fact all of them. What I am asking for is to get the tolls reversed from the government back to you so they can be paid. How do I do this?"

5 On 28 May 2015 the following correspondence was exchanged:

Transurban Queensland to Ms GB:

“Thank you for your response.

Our notations suggest that the last phone call prior to 2015 was on 26 July 2013. We had discussions with yourself disputing the fees however, you were not agreeable to resolving the matter through payment. You were then advised of the escalations process if your tolls remain unpaid.

Payment was not forthcoming within 2013 and unfortunately, PINs were issued.

Regrettably I am unable to assist you, **go via** cannot influence or assist in matters relating to State agencies, and recommend that you make payment to the relevant issuer to prevent further enforcement.

I confirm that these transactions are no longer payable to **go via** and you will need to refer to SPER.”

Ms GB to Transurban Queensland:

“I do not recall this conversation in 2013. Once again you are not acknowledging the conversation in 2014 which was to resolve this. As you can understand with 2 tolling companies it was very hard to find out exactly what has happened. Also in relations to these letters sent I would like to note that just because they were sent does not mean they were received. Please send a detailed receipt of all tolls paid to your company during the conversation held on the 27/7/2014 for \$74.76. This has been requested previously and I am yet to receive it. You were more than happy to take payment then for 'all outstanding' tolls in 2014 yet the company was unable to correctly advise that I was not in fact paying all tolls.

I will now once again lodge this with the ombudsperson.”

Transurban Queensland to Ms GB:

“Thank you for your response.

Apologies for not making myself clear, we did not receive any contact and/or payments in relation to vehicle licence plate [8***U] (QLD) in July 2014.

If a Customer Service Officer opens an account, it leaves footprints in the system showing that the account has been open.

No records indicate that anyone accessed the account in July 2014.

I appreciate your frustration with dealing with multiple tolling operators however, if you made payment in July 2014 this would have been in relations to a foreign toll operator and not **go via**.

You may need to check your bank statement to check which tolling operator took your payment.”

6 On 29 May 2015 the following emails were exchanged:

Ms GB to Transurban Queensland:

“Yes I understand that. It was paid to Flow Toll which I am told is now one company? Can you please direct me to the correct place so this matter can be dealt with and a detailed receipt can be issued.”

Transurban Queensland to Ms GB:

“Thank you for your email.

Unfortunately, we do not have a department to direct you to as Flow has cease to exist.

The payment you made in July 2014 would not reflect the unpaid tolls on the **go via** network.

Again, as payment was not forthcoming by the due date, further enforcement has been applied.

I am unable to assist you, **go via** cannot influence or assist in matters relating to State agencies, and recommend that you make payment to the relevant issuer to prevent further enforcement.

I confirm that these transactions are no longer payable to **go via** and you will need to refer to SPER.”

Ms GB to Transurban Queensland:

“I don't believe that is an acceptable answer sorry. It seems contradictory that you can not provide a receipt. It also seems contradictory that Flow Toll were happy to take payment for tolls from the same period yet now the government is saying there are still unpaid tolls and no one is able to provide proof of what exactly I paid you and no one can answer why I was not informed as to the fact that I was not paying all tolls.

You can direct me to SPER as many times as you like however I will not be paying them. It is unacceptable that I should be penalised for ineffective communication from your company. The issue started with your company and ownership needs to be take at some point by you. I did the right thing by calling and attempting to fix them last year when I realised that money has not transferred from one company to another. I did in fact pay Flow Toll as mentioned above and 2 years later I am still hearing about tolls relating to under \$20 when the government it trying to charge me in excess of \$900.

Ombudsman could you please take over this matter as I am going around in circles and no progress is being made.”

7 As a consequence of Transurban Queensland advising the TCO that it had addressed all aspects of Ms GB's complaint, on 3 June 2015 the TCO advised Ms GB:

"I enclose the latest correspondence from go via. I shall now review."

8 On 6 July 2015 the TCO provided Ms GB with a summary of her complaint, also copied to Transurban Queensland:

"I refer to the correspondence between yourself, Go Via, the Tolling Offence Unit (DTMR) and the TCO.

Your complaint relates to Infringement Notices issued to you for failing to comply with Toll Demand Notices sent to you in respect of travel in January and February 2013. The trips were incurred whilst you had a Flow Tolling account, which was not attached to a Go Via tolling account. Go Via did not take over Flow Tolling until October 2014.

According to the information Go Via has provided, your Flow Tolling account was outside of its credit terms at the time of travel. In such circumstances, when a tolling account is foreign to Go Via (like Flow Tolling was), tolls on the Go Via network cannot be accepted and toll invoices are issued to the registered owner of the vehicle for payment. In this instance, toll invoices were issued to the registered owner of vehicle [8***U] (QLD), which I understand to be yourself, in respect of the unpaid tolls. When the toll invoices were not paid by the due date, they escalated to Toll Demand Notices, which attracted a further \$22.74 fee for each unpaid trip.

There is an obligation to meet these Toll Demand Notices. Failure to comply with these notices are an offence under State legislation (Transport Infrastructure Act 1994 Queensland). The offence attracts a separate fine, a Penalty Infringement Notice, which in this case was in excess of \$140. These Penalty Infringement Notices are issued by the Tolling Offence Unit or the Brisbane City Council, depending on which toll point was used. Failure to pay these Penalty Infringement Notices will lead to their collection by SPER.

DTMR has provided you with an explanation of its processes during the course of this complaint.

Go Via's records indicate that there were discussions about outstanding tolls and fees in 2013 but no payment in full was made by you in 2013. The records show that an amount of \$74.46 was received on 27 July 2013 by Flow Tolling but this did not cover the Penalty Infringement Notices that already had been issued by DTMR. This was explained to you in correspondence from DTMR.

Go Via subsequently sent further Toll Demand Notices that were not met by you. As a consequence these were escalated through the Go Via process and then referred to DTMR.

Although you state that you made contact with Go Via in July 2014, it has no record of this contact. In any event, this contact would have been after the time had expired for meeting Toll Demand Notices.

There is also no record of any payment to Go Via – you may have contacted Flow Tolling at this point. On the material before me I cannot see that Go Via acted wrongly in respect of your incurring the liability you currently have to SPER.”

9 On 10 July 2015 Ms GB responded to the TCO’s summary as follows:

“To whom it may concern

I have read your response and have clearly outlined my own

Situation

- * I requested Flow Toll to transfer funds from my Flow Toll account to Go Via several times within the period the toll payments were first due
- * Not once was I notified funds from Flow Toll to Go Via had not been transferred
- * I received demand notice alerting me
- * I contacted Go Via and paid all outstanding tolls on the 27/07/2013
- * I specifically asked if I had paid all outstanding tolls.
- * The answer was yes. If there were any problems I was to be notified within 48 hours.
- * I was not notified at all
- * I was not notified at the point of call or within 24 hours that some tolls had already been sent to the government for collection
- * I was alerted to this in 2014 via penalty infringement notices from the government
- * I thought these were the tolls I had paid on the 27/07/2013 to Go Via directly and assumed there had been a miscommunication between Go Via and the government
- * I emailed the government in 2014 to explain this
- * I received an email from the government confirming they had received my email and that I would receive a response within 14 business days
- * I did not receive a response from the government so I assumed that they had contacted Go Via directly and sorted out the miscommunication
- * I did not receive any further correspondence until April 2015 where I received another notice from the government and an SMS from SPER threatening to suspend my QLD drivers licence.
- * I do not hold a QLD drivers licence.
- * I emailed the government to follow up my 2014 email as they obviously had not sorted things out with Go Via as I had assumed
- * The government said they did not receive my email in 2014
- * I have proof of the response acknowledging they received my email in 2014 via the automatic email I received
- * This lengthy email exchange between the government, Go Via, Flow Toll, independent ombudsman and yourself has now spanned for a period of 3 months

Points to note

- * I have made every attempt to pay my toll fees from the date of travel
- * I believed these were paid in 2013 as per above points
- * I am being penalised 2-3 years worth of fees due to lack of communication from Flow Toll, Go Via and the government

Resolution

- * I will not be penalised when I have made every attempt to pay these outstanding tolls
- * I am more than willing to pay the tolls alone as I have been since the day I used the toll roads
- * I for the 3-4th time request a detailed receipt of tolls/trips paid on the 27/7/2013
- * I request now a receipt of all outstanding tolls amounts so I can settle all tolls **minus** all added fees
- * I am more than willing to settle the outstanding balance immediately.”

- 10** On 11 July 2015 the TCO informed Ms GB that a formal decision will be provided as quickly as possible.

Decision

- 11** 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.
- 12** 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.
- 13** 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.
- 14** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 15** This complaint relates to Infringement Notices issued to Ms GB for failing to comply with Toll Demand Notices sent to her in respect of travel in January and February 2013. Ms GB did not have a tolling account with Go Via when the tolls in dispute were incurred. As a consequence Go Via was not responsible for the management of Ms GB’s account in relation to the tolls. Ms GB’s account was with Flow Tolling and it was her responsibility to maintain it in good order. Go Via would not have had access to Flow Tolling payments records.

- 16** Although Go Via was to subsequently take over Flow Tolling in late 2014, it did not have any corporate relationship with Flow Tolling at the time. However, under operational arrangements between toll operators, it could debit tolls incurred on its toll roads against Ms GB's Flow Tolling account provided the account was in good order. According to the information Go Via has provided, Ms GB's Flow Tolling account was outside of its credit terms at the time of travel on its toll roads.
- 17** In such circumstances, when a tolling account is foreign to Go Via (like Flow Tolling was), tolls on the Go Via network cannot be accepted and toll invoices are issued to the registered owner of the vehicle for payment, in this case Ms GB. If the toll invoices are not met, then Toll Demands with additional fees are sent to the registered owner.
- 18** If the registered owner does not make payment within the required time specified, collection of the tolls is referred to the Department of Transport and Main Roads (DTMR). DTMR then issues Infringement Notices in respect to the unpaid tolls, which involve penalties for the non-payment of the Toll Demands.
- 19** Go Via's records indicate that there were discussions about outstanding tolls and fees in 2013 but no payment in full was made by Ms GB in 2013. The records show that an amount of \$74.46 was received on 27 July 2013 by Flow Tolling but this was outside the terms of payment of tolls and Toll Demands that were issued in respect to unpaid tolls. The payment also did not cover the Penalty Infringement Notices that already had been issued by DTMR. This was explained to Ms GB in correspondence from DTMR.
- 20** Ms GB says that she was alerted to this in 2014 via Penalty Infringement Notices received from the government. Ms GB says she thought these were the tolls she had paid on 27 July 2013 to Go Via directly and assumed there had been a miscommunication between Go Via and the government.
- 21** She says that she emailed the government in 2014 to explain this and received an email from the government confirming they had received her email and that she would receive a response within 14 business days.
- 22** She says that as she had not received a response from the government she assumed that they had contacted Go Via directly and sorted out the miscommunication.
- 23** Ms GB maintains that she did not receive any further correspondence until April 2015, when she received another notice from the government and an SMS from SPER threatening to suspend her Queensland driver's licence.
- 24** I do not have jurisdiction over DTMR or SPER therefore I can make no judgement in respect to Ms GB's allegations of their conduct in 2014 and 2015. However, I find that there is no evidence that Go Via acted improperly in this matter. I am satisfied, whilst an account holder with Flow Tolling, Ms GB did not maintain her account in good order.

- 25 Accordingly, after Ms GB travelled on Go Via's roads in January /February 2013 and incurred tolls, Go Via was not able to obtain payment for the tolls through the Flow Tolling account. This necessitated Go Via issuing toll invoices to Ms GB as the registered owner of her vehicle.
- 26 I am satisfied that these invoices were not immediately paid and then Toll Demands were issued, as any payments made either to Go Via or to Flow Tolling were well outside of the time allowed to pay the tolls. Further, as Go Via contends, even though it has no record of Ms GB making contact on 27 July 2013, it would be well outside of the time required for making the payment required by a Toll Demand.
- 27 I find that Go Via then referred the collection of the tolls to DTMR under the ***Transport Infrastructure Act 1994 Qld*** and the subsequent process involving DTMR and SPER was not within its control.
- 28 I accordingly do not uphold Ms GB's complaint against Go Via.

Michael Arnold
Tolling Customer Ombudsman

Dated: 23 July 2015