

DECISION

Background

- 1 This is a complaint lodged by Mrs EW in respect to unpaid toll invoices and fees owing to go via in relation to a motor vehicle E***2 (QLD).
- 2 As a consequence of the non-payment of the toll invoices and fees within the required time and non-payment of Demand Notices, go via forwarded them to the Department of Transport and Main Roads (DTMR). They then became subject to a collection process by the Government agency SPER.
- 3 Mrs EW contends that she did not initially receive the toll invoices from go via. Further, she was subject to poor customer service from staff of go via and DTMR. After discussions between Mrs EW and go via, and Mrs EW and DTMR, the matter was referred to the Tolling Customer Ombudsman (TCO).
- 4 There is some history to this complaint. According to go via's records, a tag linked to account 6***1 in the name of EM (Mrs EW's maiden name) was opened online on 12 December 2012 in respect of vehicle 5***O (QLD). A tag with ID 12***52 was issued. Mrs EW was living at [address A] at the time.
- 5 It appears from the submissions that the account was linked to Mrs EW's husband's credit card and he had completed the application for the account on her behalf. Irrespective of this, Mrs EW, as a go via customer opening an account, is bound by its Terms and Conditions and has an obligation to understand them.
- 6 It appears that in early 2014 Mrs EW purchased a vehicle E***2 (QLD) and she said that she placed the existing tag issued in respect of vehicle 5***O (QLD) in it. It would appear that she did not notify go via of the purchase of the new vehicle because she believed it was not necessary to do so. Go via has drawn her attention to the Terms and Conditions of her account that provides that customers must notify go via of a new vehicle so it can be added to or substituted on her account.

- 7 Subsequently, go via issued eight toll invoices for unpaid tolls in respect of E***2 (QLD) addressed to Mrs EW (in her maiden name) at [address A]. The invoices were issued to the address as this was the address she had nominated to DTMR as the registered owner of the vehicle. She said that she did not receive the invoices but go via has produced copies of the invoices to me and these were provided to Mrs EW for her information.
- 8 About this period Mrs EW changed to a [address B] address, to which go via issued a further 19 invoices. This meant there was a total of 27 invoices issued to the respective addresses nominated by Mrs EW between 6 May 2014 and 6 August 2014, and subsequently.
- 9 According to go via, the tag issued to vehicle 5***O (QLD) in 2012 has only been detected in that vehicle and not ever in E***2 (QLD). Go via did detect a tag ID 09***30 in vehicle E***2 (QLD) but this was not attached to a valid account as the account had been closed. Mrs EW was advised of this by go via when she called go via on 27 August 2014 and the tag was removed from the vehicle.
- 10 Subsequent recordings of travel by vehicle E***2 (QLD) on go via toll roads were then detected until the vehicle was added to Mrs EW's account on 27 November 2014.
- 11 According to go via's records, Mrs EW was advised (in or about August 2014) that the balance on the account was \$133.86. It was noted that she was not in a position to pay and that she would make contact at another date. Mrs EW then continued to use the toll roads without a valid means to pay. Again, according to go via's records, there was a call about three months later and Mrs EW refused an offer to resolve the matter by paying a lesser amount. Mrs EW has indicated that she was only offered a small discount.
- 12 Go via, because it has not received payment of the toll invoices and Demand Notices, referred the matters to DTMR, as it was required by legislation. DTMR then issued Penalty Infringement Notices in respect of each unpaid notice. There were discussion between Mrs EW and DTMR. These Infringement Notices, however, were not met and the outstanding debt was then referred to SPER for collection.
- 13 Mrs EW says that she did not receive any of the 27 go via invoices. Go via delivers notices through Australia Post in the ordinary course of business. Australia Post may not deliver all mail but maintains it has a good record of mail delivery.
- 14 According to go via, the amount due to it as at 15 February 2015 was \$344.92. This did not include any monies owed to DTMR, SPER or AirportlinkM7. I understand that Mrs EW has entered into a payment arrangement with SPER.

- 15** Mrs EW has asked me to record that go via has only offered her a \$23 administration fee off her total bill. She also notes that:
- go via has refused to supply her with a breakdown of fees
 - go via has no telephone records of her contact with them
 - that the TCO has no jurisdiction to alter fees or deal with anything related to fees and charges
 - the TCO can only act on how toll operators conduct themselves despite telling Channel Nine that any complaints can be forwarded to the Ombudsman and that the Ombudsman to date has found no adverse findings towards go via, when 24236 customer say otherwise.
- 16** Mrs EW would also like to know, if it is the TCO's job to oversee how the employees conduct themselves, why her complaints of rude management and staff have never even been mentioned by the TCO. Also, if go via does not record its conversations with their customers, how can the TCO see how they treat their customers?
- 17** Once again, she asserts, it is only go via's word against the customer's word. Mrs EW also noted that she asked the TCO specifically for a name of someone in management to whom she could personally deliver a petition as the public want a response from go via but the TCO declined to do so, stating the petition was online if the TCO wanted to access it.

Discussion

- 18** 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.
- 19** 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.
- 20** 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.
- 21** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.

- 22** Mrs EW has an obligation to abide by the Terms and Conditions of her account with go via. Problems arose in this regard when she failed to notify go via of the purchase of vehicle E***2 (QLD) so that it could be added to her account. Mrs EW said she was not aware she had to do this but it is a part of the Terms and Conditions of her account which she should have read to understand her obligations. Moreover, it would be reasonable to expect that any customer, like Mrs EW, would be aware it was necessary for the vehicle to be added to her account so that she could be charged for its travel on toll roads.
- 23** Mrs EW compounded her difficulties by believing that she placed the tag from vehicle 5***O (QLD) in her new vehicle, which may have provided go via the opportunity of detecting Mrs EW's error. In fact it can be inferred from the evidence that at some point she placed a third party's tag in the vehicle which was not attached to a valid account.
- 24** In these circumstances go via was in order in sending toll invoices to Mrs EW for the toll fees and administrative costs, to her address she had nominated as the registered owner of the vehicle. Mrs EW states that she did not, either initially or at all, receive the notices sent by go via. The notices are sent by go via through Australia Post, who claim to have an on time mail success delivery rate of 96%. It would be unreasonable to assume that not any of the invoices were delivered to Mrs EW's nominated addresses.
- 25** I note, in any event, that Mrs EW had the opportunity to pay go via's fees in August 2014 at a discounted figure, even if it was only \$23 as she indicated. If this had taken place, she would most likely not be in the current situation in relation to SPER.
- 26** I note that Mrs EW has raised some specific issues for comment.
- 27** Firstly, I have explained to her that the TCO does not have jurisdiction over the fees charged by toll operators. Complaints in relation to fees can be lodged with the TCO and referred to the toll operators for their attention. The level of fees is a matter, however, that is determined between the State Government and toll operators. There are other avenues that Mrs EW can pursue in this regard, of which I have advised her. I do not recall the television interview Mrs EW refers to but I would not have advised that I had power to affect the level of fees.
- 28** Secondly, Mrs EW asked to deliver a petition, which was directed to go via, to the TCO. It was not appropriate for the TCO to take delivery of such petition which was directed to go via. In any event, the TCO was aware of the petition and its nature as it had access to it online. The delivery of the petition was a matter to be determined between go via and Mrs EW.

- 29** Thirdly, Mrs EW had raised the issue of rudeness of staff of both go via and DTMR. I cannot, of course, comment on the staff of DTMR, but there is an expectation toll operators' staffs are professional at all times. This has been the subject of TCO six-monthly Reviews. However, difficulties arise between staff and customers when customers, who are insistent in their argument, perceive that their point of view is not being heard. Non-acceptance by a staff member of a customer's point of view can be interpreted as rudeness. However, it is important that staff should take care not to be rude to customers.
- 30** Fourthly, the dispute in this matter did not turn on telephone conversations between Mrs EW and go via staff. It turned on the facts that related to the non-payment of the toll invoices and meeting of the Demand Notices, which I have discussed above and, on my assessment, speak for themselves.
- 31** Having made these finding, I recommend that go via adopt a full telephone recording process rather than the random one for training purposes, as it would be an invaluable tool in resolving many complaints.

Decision

- 32** I do not uphold Mrs EW's complaint but reiterate that my decision is not binding on her and she is not deprived of any legal rights to seek redress.

Michael Arnold
Tolling Customer Ombudsman

Dated: 11 March 2015