

## DECISION

### Background

- 1 The complainant, Mr DT, first made a complaint to the Tolling Customer Ombudsman (TCO) on 6 January 2015, as follows:<sup>1</sup>

“I am writing to complain about what I believe to be a cavalier and potentially illegal business practices of the above organisation.

I have raised this matter with Go Via ([K] in call centre) on 22/12/14 and they have denied that they are doing anything wrong and have stated that they will continue to operate in this fashion. They have refused to document my complaint and refused to email me any details.

I will detail a specific transaction below however in summation what they are doing is issuing notices for unpaid tolls, which detail a very specific trip with date, time & location, however when they receive the payment for that notice they are then using the funds for other toll trips if there are any outstanding. This then results in clients believing a toll has been paid, but Go Via will then refer the now paid toll to the QLD Tolling Offence Unit for collection (and a fine of \$159) because Go Via allocated the funds for a different (non-specified) trip. The illegality of this practice was pointed out to Go Via on 22/12/14 however they said they are entitled to do it and told me they would continue to do so.

Specific Example:

As you will see from the attachment called “Toll Notice” I was issued a notice for an amount of \$22.06 which included a trip with the following details:

7 Aug 14 @ 16:32:12 at tolling point Murarrie North

This toll notice was paid on 18/9/14 and Go Via have acknowledged receipt of the amount of \$22.06 on 18/9/14 with receipt number [13\*\*\*69]. However, unbeknownst to me, Go Via have allocated those funds to travel I allegedly made that was not detailed on the attached notice and have never advised me of such.

Subsequently, Go Via have then referred this particular trip to the QLD Government Tolling Offence Unit who have issued a default notice for this trip. However what this

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

means is that they have issued me with a default notice for a trip I have already paid several months earlier. If you refer to the attachment called "TOU Infringement Notice" You will see that this relates to the above trip that was already paid by me and has been confirmed as paid by Go Via.

It is my belief that Go Via do not have the legal right to request payment for a specific, documented, and itemised trip, only to then use the funds for a completely different trip. Surely as a consumer I have the right to assume that when I pay the fee for a very specific and itemised trip through a toll point that the funds will actually be used for that toll, and that Go Via do not have a legal right to then have the Tolling Offence Unit issue a demand for a fee that I have evidence of having already paid? Especially without even bothering to advise me that they have used the payment for something else.

I would be pleased if you can address this issue with Go Via as they basically told me that this is what they will continue to do, yet I can't possibly see how they can take money for a specific, documented and itemised trip through a toll point and use it for something else, without advising the client. And then issue the demand for a payment that has already been paid."

- 2 On 7 January 2015 the TCO acknowledged receipt of the complaint and forwarded same to go via for response. Go via responded directly to Mr DT, copied to the TCO, as follows:

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

I acknowledge that you are currently in receipt of a Penalty Infringement Notice from the State Tolling Offence Unit.

The offence committed in this case under State legislation is "*failure to comply with Toll Road Demand Notice*".

To show compliance, all Demand Notices we issued to you should have been paid by the due date.

It appears that since your payments are being received after the due date of the initial and reminder toll invoices; hence they are insufficient to clear the new balances added from Demand Notices.

I appreciate that you believe your payments were intended for those invoices, however as your payments were made after the due date, those invoices are no longer valid and payment should have been made towards the Demand Notices instead. We would have appreciated an opportunity to explain this; however we were not contacted at any time.

Our records indicate that none of the Demand Notices we issued were paid by the due date, hence they have since progressed to Infringements.

To help you understand the time line of events, I have attached the transaction listing showing the list of unpaid notices for 2014.

**Note: that there is a credit balance due to payments by BPay. If this payment was completed by you and wish for a refund, please supply proof of payment and I will happy to return the excess credit.**

I recommend that you enter into arrangement to clear all debts owed to the State Tolling Offence Unit.

Should you have any further questions after reviewing the attached, please do not hesitate to contact **go via.**”

**3** The following exchange of correspondence took place between Mr DT, go via and the TCO:

13 January 2015: Mr DT to go via:

“Thanks for your reply in this matter however I wish to raise several issues in relation to this.

Firstly, this information is completely different to the information and explanation provided to me by your customer contact representative, and the supervisor who called me back many hours later. If you go back and re-listen to the tapes you have of those conversations then you will see that the explanation given is completely different to your explanation. That is, that you just apply a payment generally to whatever balance is outstanding in spite of the fact that you detail a specific toll date and time. So can you please explain to me which is the correct answer?

Secondly, irrespective of the above I would still argue that you are legally not entitled to do as you are doing. Whilst it seems like a convenient/logical way for you to do your accounting, i believe the simple fact is that you are not able to do it. If, as you now claim, that the payments were received after the due date, then I would think that what you need to pursue a client for is your newly created fees that are accrued as a result of them not having paid the toll by the due date, and not the actual specified toll trip. The toll for that specific trip has been paid and therefore you no longer have the right to pursue for payment of that amount. Your newly created default fee “MAY” be a different matter, However that is not what you are doing. By acting in the manner that you are acting, you are pursuing legal recourse for a toll trip fee that is already paid. I think it is fairly obvious that you should not be referring to the government for collection, a toll fee for a specific trip that has already been paid. As previously stated, you may well be able to pursue the customer for your newly created fee for late payment, but you would not have the right to collect a toll trip fee that has been paid.

Perhaps you need to look at changing your system and how it works, so that it portrays your methodology appropriately? Because at the moment it is misleading and deceptive at worst, or simply incorrect and ill-worded at best.

Having taken the time to read and understand the point that I am trying to make i trust that you will understand where I am coming from and take the opportunity to improve your system and therefore service provided to your customers.

I will await your response.”

14 January 2015 – go via to Mr DT:

“Thank you for your response.

Generally, we expect that when an invoice is issued and has a specified due date, that the invoice is paid by that time.

Reasonably also, in the event that an invoice has been paid late, the registered owner should also contact us to advise of the delayed payment, so we may confirm that all is well.

When there is no communication from the registered owner, and payments are received for invoices weeks and months after the due date, the system is designed to allocate to the oldest debt (which is expected from any accounting system).

If a **Demand Notice** is paid using the details we provide, the system will correctly allocate the payment to that trip and fee only.

Our records indicate that none of the Demand Notices were paid using the unique reference.

You may be interested to know that our Unpaid toll invoice now contains a unique reference number, and when paid accordingly will not allocate to other transactions.

I appreciate your feedback, and trust that this will no longer be an issue in the future.

Again, I do have a credit balance from anonymous BPay payments, and can be refunded once the source is identified.

Please let me know.”

18 January 2015 – Mr DT to go via:

“Thanks again for your reply however i feel that we are getting nowhere because all that is happening is that you are restating your policy. I don't have a problem understanding your policy, I just don't believe you are legally entitled to do what you are doing. Hence, after getting the same run around on the phone, I wanted the input of the Ombudsman.

So in short, I don't appear to have received an answer from you in relation to the question I asked in the first point of my previous email.

Secondly, in relation to you additional explanation of your accounting methods, I agree that good accounting practice is to allocate the received funds to the oldest outstanding debt. But i'm not concerned with your internal accounting practices. What you do internally is entirely up to you, however there is a difference between internal accounting and legal rights. And whilst you can allocate the funds internally any way you see fit, you do not have a right to refer for debt collection a toll that has already been paid. If you needed to refer a payment for collection, then you needed to refer a payment, with its unique trip details, that I HAD NOT ALREADY PAID. To try to give you an example, imagine you purchased 4 items on 4 separate days and each time you were issued an invoice.

Invoice 1 - \$50  
Invoice 2 - \$50  
Invoice 3 - \$50  
Invoice 4 - \$50

You owe a total of \$200 and over the next few days you pay Invoice 2, 3 & 4 but do not pay Invoice 1. Internally, your supplier may allocate the funds to cover the oldest invoices (Inv 1,2 & 3) and therefore you owe \$50 which actually corresponds to the remaining Invoice 4. However in any dealings with you they need to refer to the actual unpaid invoice (Invoice 1) because according to you you have paid invoice 4 and therefore it is not correct for them to send you a reminder for something you have paid. Further, if they then decide to take legal action against you for the outstanding \$50 they will need to do that for the unpaid invoice which is Invoice 1. They can not take legal action against you for collection of an invoice that you have already paid. And this is the problem that you as an organisation have. Quite simply, you have taken legal action against me for an item that I had already paid. As i have previously stated, if you needed to take action to recover the fees you had added then that is fine, but you would need to take action for the fees, not for an invoice that is already paid.

You have also stated that I should pay to the Tolling Offence Unit any outstanding fines however I have previously advised that I have indeed already paid that. And herein lies the problem. I have paid for a toll trip twice. And I believe that You as an organisation should provide to me a refund of the \$159 that I paid because of your illegal actions, as well as providing written confirmation that you have changed your practices and will no longer behave in such a manner.

Please do not reply and again simply state how you do business.”

19 January 2015 – go via to Mr DT:

“Thank you for your response.

I confirm that **go via** has acted in accordance with State tolling policies and legislation when these invoices were issued.

I am interested to understand though, why were the toll invoices paid after the due date, and why were the Demand Notices ignored?”

25 January 2015 – TCO to Mr DT:

“I have read your responses to go via but require your clarification. Are you contending that you paid the tolls and /or tolls as they fell due in accordance with the terms of arrangement with go via or the toll notices or invoices sent to you?”

To which Mr DT responded to the TCO:

“Thanks for your involvement in this increasingly frustrating issue.

I am not contending that I have paid an invoice as it fell due because I guess if I had done that then this situation may not have arisen. Though with the business practices of Go Via that isn't actually a certainty.

What I am contending is that they are operating outside the law in the way they run their business. That is, if they have sent me an invoice for a very specific toll trip (complete with a time, location and date) then when I pay that invoice then they have an obligation to apply those funds to the satisfaction of that particular trip. In the instance that has prompted this I admittedly did pay for that trip after the due by date and I believe that this had therefore generated an "admin" fee and I have no problem with them pursuing me for that outstanding "Admin" fee (and that is not my problem here).. However, I believe that I have a right to be able to presume that the actual trip has been paid for? And not that I have to cross my fingers and pray that they have allocated the funds to the trip that they stated they were going to?? Because in that situation how would consumers ever be comfortable that they had truly satisfied an invoice. Hopefully that makes sense?

But what has actually happened is that they took the funds that I had paid for a particular documented trip (lets say Trip A) and they have internally applied them to a different trip that hadn't been paid for (call it Trip B) and did not advise me of having done this. As a result, I believe I have paid for a trip (Trip A) and yet they allocated the funds for something else (Trip B) but then referred Trip A (which according to my records was paid) to the Tolling Offence Unit and generated a fee of \$159 which I was required to pay.

So I guess what I believe is that if i have paid for a specific itemised trip then I have a right to believe that is paid and that they don't have a right to use those specific funds for whatever they see fit? Or at the very least then surely there is an obligation on them to advise me that this is what they have done? Because all that leads to is them taking legal action for an item that the client has proof of having been paid.

I trust this has clarified the issue and appreciate your assistance. If you require any further clarification that please do not hesitate to ask. All Go Via are doing is repeating their assertion that they are allowed to do what they are doing but they continue to ignore my questions and continue to provide no proof whatsoever except to state that they are acting in accordance with their policies. I don't really care what their internal policy is, my contention is that their policy is not morally or legally correct."

25 January 2015 – Mr DT to go via:

"Firstly, I note that yet again, you do not answer my questions. But if you are that certain that you are operating within the law then I would be interested to see if you can furnish me with the actual legislation that says you have a right to 1) take funds paid for a specific invoice and apply it to something else, and 2) pursue someone for a toll that has already been paid and that you did not notify them that the funds had been diverted elsewhere.

And it is fairly simple to answer your question.

Firstly, I work away and am rarely home to check paper mail. Secondly, It is fairly easy to ignore an invoice for something that you know you have already paid. Which of course points out yet another problem with your business policies. However given that you believe you have acted in accordance with policies then I will simply need to test that with QCAT unless you can provide me with proof. Tolling legislation, or consumer legislation will do, i don't mind."

27 January 2015 – go via to Mr DT:

“Thank you for your further email.

I have explained that the **go via** billing system operates in a chronological method. It is designed in a way that recognises a motorist should successfully and responsibly account for all of their trips without the need for a toll invoice. Whilst I appreciate that you work away and do not always attend to paper mail, you should be making arrangements for these tolls before an invoice is issued.

In the event that the driver has used tolls but has missed a toll invoice or due date, they should contact **go via** to confirm payment. When this does not occur, we are not advised how we should manually allocate the payment, hence the system defaults it to pay the oldest transaction first, as you would expect from any accounting system. You have previously agreed that this is good accounting practice.

If we are referring to the specifics of the legislation, it states that it is an offence to fail to comply with the stipulations of a Toll Road Operator’s Demand Notice. You can refer to s92 – s104 of the ***Transport Infrastructure Act (1994) Qld.***

This means that you as the registered owner is required to resolve the Demand Notice by way of payment before the due date. Alternatively you can notify the Toll Road Operator reasons why it should not be enforced against you (e.g. Statutory Declaration nomination). In this case, we would have been happy to assist you in avoiding further escalation if contacted before the due date of the Demand Notice.

As this did not occur, we have not been provided opportunity to assist before the Infringement was issued by the Tolling Offence Unit. Once the Demand Notice has been issued an Infringement, the decision to withdraw or enforce the Infringement remains with the issuer.”

TCO to Mr DT:

“I note that go via has provided further information to you in respect of your complaint. Is there anything further you wish to submit?”

7 February 2015 – Mr DT to TCO:

“Yes there is further that I wish to contribute.

All Go-Via has done is yet again stipulate what their policy is. It is not a case of me not understanding their policy. It is a case that I don’t believe they have the right to act in the manner that they do and this is where I am seeking your input as all they do is just continue to stipulate the same thing. I’m not an idiot like they make out and I do understand what they are saying. It’s simply that I don’t believe they have a right to do it. Allow me to cut and paste below from their latest reply to illustrate my point.

“In the event that the driver has used tolls but has missed a toll invoice or due date, they should contact **go via** to confirm payment.

When this does not occur, we are not advised how we should manually allocate the payment, hence the system defaults it to pay the oldest transaction first, as you would expect from any accounting system.”

Whilst it may be expedient for them to have their accounting system “default” to pay the oldest transaction first, this does not take into consideration that they have specifically issued a numbered invoice for a specific trip with an individual time, date & location. The customer (me) has paid for this particular trip and surely I have a right to the assumption that I have paid for that trip. And surely as the lowest minimum standard even if Go Via did allocate funds to a different trip to the one they had invoiced you for then there would be some onus on them to advise this? Otherwise however is the customer expected to keep track of which trip they have paid for if Go Via simply can allocate funds to whichever trip their system defaults to?

“You have previously agreed that this is good accounting practice”

I did advise this as good accounting practice, however I also said that what is considered good INTERNAL accounting practice doesn't make it legal, ethical or moral.

“If we are referring to the specifics of the legislation, it states that it is an offence to fail to comply with the stipulations of a Toll Road Operator's Demand Notice. You can refer to s92 – s104 of the ***Transport Infrastructure Act (1994) Qld.***”

The legislation may state that it is an offence to fail to comply with the stipulations of the Toll Road Operator's Demand Notice. But what I am saying is that because I had paid for that specific trip they do not have a right to issue a demand notice for that trip. They need to issue a demand notice FOR THE TRIP THAT I HAD FAILED TO PAY FOR AND NOT ONE THAT I HAD ALREADY PAID BUT THEY HAD USED THE FUNDS FOR SOMETHING ELSE AND SIMPLY NOT BOTHERED TO ADVISE ME OF SUCH..

Please note that I will not be replying to any further correspondence from Go Via as I am simply sick and tired of having them re-state their policy when I have on several occasions pointed out to them that I understand what they are doing but I don't agree with it. In all honesty I find it simply unbelievable that an organisation feels that they can issue an invoice for a specified once off service, receive the money for it, allocate those funds to a completely separate service, not bother to advise the customer they have done this, and then refer the paid amount for collection when the client has records to state they have paid it. I strongly re-state that they must refer the actual trip that I had erroneously not paid for to the Tolling Offence Unit for collection. NOT a trip that according to my records I had already paid. The situation is simply ludicrous that they can use funds for a different purpose, not advise the client, and then refer that toll trip for collection. It simply beggars belief.

Thank you again for your assistance and hopefully this time we may be able to put an end to their fraudulent operations and force them to operate in a morally and legally correct manner and no like the cavalier bunch of cowboys that they currently are.”

Mr DT to go via:

“I do believe that I suggested to you to not treat me like an idiot and reply with a re-statement of your policy. However clearly you believe I am an idiot and don’t understand your policy and felt the need to explain it again.

Accordingly, I won’t bother with any further contact with you and will simply deal with the Ombudsman. I have tried to explain that its not your policy that I don’t understand, it is simply that I don’t believe you have the right to operate the way you do. What you do from an internal accounting perspective is entirely up to you. But internal accounting procedures are significantly different to how you externally account to your clients. Clearly as an organisation you fail to grasp this.”

**4** On 9 February 2015 the TCO notified Mr DT as follows:

“I acknowledge receipt of your email. In view of go via and your respective positions I will make a written decision on the issues you have raised.

## **Decision**

- 5** The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO and agree to be bound by its jurisdiction, 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.
- 6** 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.
- 7** 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.
- 8** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 9** Mr DT, as a toll road user, has an obligation when travelling on go via toll roads, to comply with its terms of payment requirements. Failure to comply will result in the issue of toll invoices with additional administrative fees then payable by the road user and the requirement of payment within a specified period. Failure to pay this invoice in total within that period shall be followed by the issue of a Demand Notice

requiring payment of tolls and additional fees. The Demand Notice has its own unique format and requirements. It supplants any previous invoice. It needs to be met in full by the road user.

- 10 Pursuant to the *Transport Infrastructure Act (1994)* Qld, it is an offence to fail to comply with a toll road operator's toll Demand Notice. Mr DT has received a Demand Notice and then paid amounts owing on previous toll invoices but not complied with the requirements of the Demand Notice. Go via, due to the non-compliance with the Demand Notice, referred it to the Department of Transport and Main Roads (DTMR) to be dealt with as Infringements. This led to DTMR issuing Infringement Notices with the additional fees. Such amounts can be recovered by the Government agency SPER if necessary.
- 11 In Mr DT's or any other customer's situation, if the Demand Notice had been complied with and paid in full, go via's system would allocate the funds to cover the specific trip that related to the Demand Notice. If it is not paid in full, the amount paid will, by way of default under go via's system, pay the toll user's oldest owing transaction first, which is in keeping with go via's legal obligations, good accounting practice and would not be regarded as an unusual practice. Mr DT acknowledges that this may be good internal accounting practice but contends it is not legal or ethical.
- 12 Leaving aside that the referral to DTMR would not have arisen if Mr DT had complied with the payment requirements of the initial toll invoices or the Demand Notice, Mr DT has not demonstrated that such a practice is not legal or ethical. He submits that there is an alternative method that he believes should be adopted but that does not mean that go via's approach is not correct either at law or as an accountancy practice. The older debts were owed by Mr DT to go via and required payment.
- 13 The application of the monies paid against older accounts relieved Mr DT of his obligation in that regard and the imposition of further administrative fees or infringements from DTMR. Mr DT, in his submissions, has not suggested that he was not liable to pay the outstanding invoices.
- 14 I am satisfied that go via acted in accordance with its normal operations, within good accounting practice and in accordance with law in this matter.
- 15 I do not uphold Mr DT's complaint.

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

**Dated: 6 March 2015**