

DECISION

Background

- 1 The complainant, Mr MB, first made a complaint to the Tolling Customer Ombudsman (TCO) on 23 April 2015, as follows:¹

“Please i have been in desperation to resolve an account issue since 11 March 2014. I have since lost my licence, sold the vehicle to finance SPER fees and have no other means to resolve. See correspondence below for reference. I can be contacted on ... anytime.

Please i beg of you some assistance as the situation is desperate and almost impossible to live with.”

- 2 The TCO acknowledged receipt and referred the complaint to Transurban Queensland (Go Via) for response. The TCO advised Mr MB:

“... I must point out that I do not have jurisdiction over the level of fees charged by toll operators as they are fixed in consultation with the State Government. Please note that the TCO does not have jurisdiction over Government agencies that issue Infringement Notices or SPER that collects monies owing under such notices.”

- 3 On 24 April 2015 Transurban Queensland responded directly to Mr MB, copied to the TCO, as follows:

“I confirm receipt of your referral to the Tolling Customer Ombudsman (TCO).

As previously advised to you, your vehicle was travelling on our toll road network and the registration was not listed on your account.

We issued several invoices to recover these unpaid tolls. Whilst I appreciate you did not receive these notices, they were issued to the address you maintained as the registered owner.

As a consequence, you did not pay the tolls whilst the registration was not listed, and when no tag was detected.

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

Our office has explained that we cannot assist you, and all enquiries should be directed the Infringement Notice issuer, being either the State Tolling Offence Unit of the Department of Transport and Main Roads or Brisbane City Council (dependent on travel).

Please refer to the correct agency to discuss your situation.”

4 Mr MB again wrote to the TCO on 23 June 2015:

“Unfortunately I haven't heard from go via or any party from your independent office. Can you please provide me an update on my urgent request from nearly 2 months ago?”

5 On 25 June 2015 the TCO replied to Mr MB, copied to Transurban Queensland:

“As indicated in my initial email, I do not have jurisdiction over matters once referred to DTMR or SPER. I referred your email to Go Via for their attention as to changes in their system. This is a matter that requires detailed consideration as to what would be involved in such a change to the existing system.

The evidence is that Go Via issued toll invoices to you and had they been paid there would not have been a referral to DTMR or SPER. In such circumstances I cannot direct Go Via to withdraw toll invoices referred to these agencies.

I will seek clarification as to your contention that the reader on the north-bound right hand lane is faulty, as this matter does not appear to have been addressed by Go Via.

I wish to clarify the issue you raised in respect to Go Via benefiting from matters referred to DTMR or SPER and confirm that no benefit is received by Go Via by such action.”

6 Transurban Queensland responded to the TCO in regard to the alleged faulty gantry on the Go Between Bridge as follows:

“I have reviewed toll records matching the dates [Mr MB] travelled on the Go Between Bridge.

There is no indication that there is a fault with the gantry as we were able to gain both tag and plate reads on these days from other motorists.

If there was an issue with detecting the tag, it would suggest that it would be limited to [Mr MB's] tag.

The system is unable to discern if the tag cannot be detected because the vehicle is fitted with a faulty tag or if there is no tag in the vehicle.

We specify that a customer is to contact us immediately if a tag does not beep while correctly fitted to a vehicle.

In these cases where we are notified immediately, we take necessary arrangements to ensure that the registration plate is listed on an account, the tag replaced, and normally grant a waiver in any administration fees such as video matching fees.

Unfortunately, [Mr MB] did not contact us when the tag did not beep, or before the Demand Notices were referred to government enforcement agencies. As we were not provided an opportunity to resolve the matter at the time, [Mr MB] will need to address his complaint to the relevant agencies he has paid in seeking a refund.”

7 On 30 June 2015 the TCO sought comment from Mr MB on Transurban Queensland’s response. Mr MB commented as follows:

“Thanks Michael,

Please see response below:

I have reviewed toll records matching the dates [Mr MB] travelled on the Go Between Bridge.

There is no indication that there is a fault with the gantry as we were able to gain both tag and plate reads on these days from other motorists.

May we (you and I) be provided with a copy of these records? As an inference from this evidence has been used to excuse the possible fault I would think its provision necessary?

If there was an issue with detecting the tag, it would suggest that it would be limited to [Mr MB’s] tag. An assumption neither an investigator or myself could afford to make. Please note, I do not own the tag. Go Via states the tag remains the property of Go Via upon distribution.

The system is unable to discern if the tag cannot be detected because the vehicle is fitted with a faulty tag or if there is no tag in the vehicle. We specify that a customer is to contact us immediately if a tag does not beep while correctly fitted to a vehicle. I can confirm that the tag was fitted correctly and functioning on all other toll points throughout Brisbane. This irrefutable fact could have been confirmed for Go Via Staff should they have accepted the importance of my query upon my initial customer contact, over one year ago. May I ask that it now be confirmed through provision of the aforementioned records. I can also confirm I had attempted to contact Go Via on multiple occasions during my lunch break at work, unfortunately these call attempts never made it past the holding que and my non-beeping tag's status remained a mystery. I assumed (based on duty of care standards) that if my tag was truly faulty this would be detected by Go Via, the stated owner of this tag.

In these cases where we are notified immediately, we take necessary arrangements to ensure that the registration plate is listed on an account, the tag replaced, and normally grant a waiver in any administration fees such as video matching fees. Mail contact, as you may appreciate has no guarantee of immediacy nor state of receipt. In only this situation (where an entity stands to accumulate additional revenue due to ignorance or non-receipt) can I imagine mail as a first and ONLY method of contact still exists in Australia. The vehicle tag, number plate and various other identifiers would afford other methods of contact for myself or the previous vehicle owner, whom forwarded me the initial Go Via toll unpaid advice. Paid in full, fee included, only one week after. I can't understand, through research on any

available public media how Go Via may assume trade ignorant to any duty of care, that is, the provision of notice only via mail when various other (free) contact methods exist. This is not a matter confined to my complaint and therefore i won't persue it here-after, however I would advise that you pass on my advice to conduct a full review into basic customer duty of care.

Unfortunately, [Mr MB] did not contact us when the tag did not beep, or before the Demand Notices were referred to government enforcement agencies. Unfortunately this statement is not true and can be proven so. Please ask for my full contact history, notes and entries so that i may compare them to mine. You will find upon their supply that recorded contact had been made with Go Via before the Demand Notices were referred to government enforcement agencies

As we were not provided an opportunity to resolve the matter at the time, [Mr MB] will need to address his complaint to the relevant agencies he has paid in seeking a refund." Also untrue which the provision of the aforementioned full customer file will confirm.

Thanks for your attendance to this urgent matter Michael"

8 On 7 June 2015 the TCO notified Mr MB:

"I refer to the correspondence in this matter. It is apparent that this matter is not going to be resolved. Accordingly I will provide a written decision."

Decision

- 9 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.
- 10 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.
- 11 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 rights.

- 12 I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 13 The material provided by the parties indicates that Mr MB travelled on Go Via toll roads whilst his account was not in good order. As a consequence tolls were unpaid. Go Via sent out toll invoices that remained unpaid and then sent toll demands for outstanding monies that again were not paid. Go Via subsequently, in accordance with law, forwarded the outstanding debts to the Department of Transport and Main Roads (DTMR) for collection.
- 14 I am satisfied that if Mr MB had maintained his account in good order and checked his records he would not have been in the position that he currently finds himself. Toll operator customers understand when they are travelling on toll roads they will incur tolls. They have the obligation to maintain their accounts in good order by ensuring there are sufficient monies to cover the tolls as they accrue. The failure to do so may lead to the suspension of the account and the incurring of additional fees.
- 15 I am satisfied that Mr MB incurred the tolls and did not pay them. Go Via then forwarded toll invoices and toll demands but these were not paid by Mr MB.
- 16 Mr MB also raised the functionality of a tolling gantry through which he travels, asserting that it was not working. Go Via noted no other similar complaint had been made by other customers travelling under the gantry and any issue would have only related to his specific tag.
- 17 Go Via had no record of Mr MB complaining about the operation of the tag despite Mr MB asserting that he had contacted it on a number of occasions. Go Via has a process by which any faulty tag can be replaced by another at the request of the customer. Mr MB could have used this process but did not do so.
- 18 I cannot grant Mr MB the relief that he seeks in this dispute. I point out again that Mr MB is not bound by this decision and retains all his legal rights to pursue his complaint through other means.

Michael Arnold
Tolling Customer Ombudsman

Dated: 28 August 2015