

## DECISION

### Background

- 1 The complainant, Mr HD, first made a complaint to the Tolling Customer Ombudsman (TCO) on 26 August 2014, as follows:<sup>1</sup>

**“Please give details of your complaint**

Citylink never provided a statement for January 2014 therefore not allowing me to manage my credit level. Citylink T’s & C’s state that user is responsible for managing and checking statements for correctness. I do this to ensure I am not overcharged prior to topping up credit as Citylink have previously charged for trips not made by a registered vehicle, due I was unable to review. Despite numerous requests Citylink would not advise me of a complaints procedure nor did they ever provide details of the tolling ombudsman, this has resulted in infringement notices being issues.

**What happened following your complaint to the tolling business?**

Tolling business would not provide complaints procedure nor would they provide tolling ombudsman details. They still have not provided a statement for January (they have issued January statements in the past). The tolling business has not provided any resolution nor attempted to find a resolution other than to demand payment. It is my opinion that they did not issue statements to catch out customers and charge additional admin fees against those customers who had no credit. I feel it was a deliberate act to generate revenue in the tolling business. Funds had been deposited.

**What do you want to happen for your complaint to be resolved?**

I would like the trips to be invoiced correctly and subsequent LTis revoked, and notification to Victoria Police that the original Late toll invoices had been issued incorrectly by Citylink.”

- 2 The TCO acknowledged receipt on 2 September 2014 and advised:

“Following changes to the law with the amendment to the *Infringements Act 2006*, I advise that I do not have the power to deal with individual infringement notices once they are issued by Civic Compliance Victoria. However, I have forwarded a copy of your complaint to the Transurban customer resolutions team for response.”

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

**3** Mr HD responded:

“Thank you for your response, I believe Citylink denied me an opportunity to raise this issue prior to infringements being issued, they would not provide me with the tolling ombudsman details or the process to deal with the issues at hand.

I will advise of any resolution Citylink shoes to take.”

**4** On 3 September 2014 the TCO received the following response from CityLink, which was forwarded to the complainant:

“Thank you for forwarding [Mr HD] complaint to CityLink to investigate. I have been dealing with [Mr HD] regarding his suspended account and Late Toll invoices (LTis). [Mr HD] has not accepted my response to his concerns and it would be more appropriate if you responded directly to [Mr HD].

I have investigated [Mr HD's] concerns and provided the details below. In addition I have attached the letters issued to [Mr HD]. I have also included the December statement and the February statement. [Mr HD] mentioned he did not receive the January statement. This was not generated and was sent as a bi monthly statement. CityLink issued all alerts and suspension letters to [Mr HD]. They were included in the attached email dated 20<sup>th</sup> June 2014 sent to [Mr HD]. [Mr HD] received this letter as he responded to me on the 20<sup>th</sup> June 2014.

**ACCOUNT STATUS**

I confirm account [\*\*\*627] was suspended on the following dates

- 16/02/14 to 26/03/104
- 04/05/14 to 03/06/14
- 27/08/14 to current

The e-TAG device attached to the account was signalled to emit 4 beeps indicating a suspended account. Additionally, the attached notifications were sent via email to [email address].

**ALERT AND SUSPENSION LETTERS**

CityLink issued emails out on the following dates.

- 16/02/14 Alert was issued
- 11/02/14 Suspension letter was issued
- 12/04/14 Alert was issued
- 29/04/14 Suspension letter was issued
- 10/08/14 Alert was issued
- 22/08/14 Suspension letter was issued

**PAYMENT HISTORY**

Account balance on the 16/02/14 was \$22.61 debit.

Account balance on the 25/02/14 was \$22.61 debit. A payment of \$30.00 brought the account into \$7.39 credit. This amount was insufficient to reactivate the account.

Account balance on the 26/03/14 was \$7.39 credit and after the \$45.00 payment the balance was \$52.39 credit. (Account was activated)

Account balance on the 04/05/14 was \$11.99 debit and after payment of \$50.00 the account balance was \$38.01 credit.

Account balance on the 27/08/14 was \$2.95 debit. No payment received and account remains in a suspended status.

### **LATE TOLL INVOICES (LTis)**

CityLink have proactively contacted [Mr HD] on the following dates to advise him of the outstanding Late Toll invoices (LTis). CityLink extended payment terms to allow further time for payment and advised [Mr HD] of this. CityLink did not receive any payment for the LTis. The LTis details were then forwarded to Civic Compliance Victoria.

### **CONTACT DATES**

- 02/05/14 asking for payment of LTI [\*\*\*337]
- 07/05/14 asking for payment of LTI [\*\*\*523]
- 07/05/14 [Mr HD] returned the call and was advised the following LTis were outstanding. The attached email was also issued to [Mr HD] advising new payment date
  - [\*\*\*107]--37.71
  - [\*\*\*686]--31.41
  - [\*\*\*337]--36.67
  - [\*\*\*523]--36.92
- 09/05/14 asking for payment of LTI [\*\*\*107]
- 20/06/14 contact by [Mr HD] regarding account. Sent the attached email relating to CCID [\*\*\*892]
- 24/06/14 sent attached email response to [Mr HD] who responded to the above email
- 24/06/14 CCID [\*\*\*554] attached response to cust

### **SUMMARY**

[Mr HD] has been advised there were outstanding LTIs. He was advised that payment was due and as a goodwill gesture CityLink extended the payment terms to assist [Mr HD] in having time to make the payments. CityLink did not receive the payments requested. Of note the LTis are in another parties name and further details cannot be given due to the privacy laws.”

- 5 On 5 September 2014 Mr HD emailed the TCO, copied to CityLink, in the following terms:

“Feb statement does not state account was suspended, I would assume that the statement would advise this.

Account went into debit as no statement issued in January, how can I expect to manage the account without a statement.

No Jan statement meant I could not reconcile trips or know what the balance was (I note in the results of the parent company that Citylink toll revenue for the period Jan to March was up despite closures, reduced commuter traffic- I suspect a lot of LTIs make up for this and not sending Jan statements was a decision made to increase revenue by catching out users unaware of their balance).

On the call I made to Citylink regarding LTIs I specifically challenged the costs and asked for a statement from January highlighting trips- instead I was just provided new terms for payment- my complaint was not addressed, I also raised an issue from a complaint made in March 2010 regarding a trip which still has not been resolved regarding a billing of a car that has not been owned by me for 10years Citylink cannot confirm this charge was removed despite being informed the car had been sold 10 years ago.

Previously Citylink have debited the account in relation to LTIs (waving the LTI free and charging the toll fee) once funds deposited, setting a precedent for me to expect that funds would be debited from the account to pay for previous trips.”

- 6 On 17 September 2014 CityLink responded to the TCO as below, addressing the issues raised by the complainant. This was forwarded to Mr HD on 18 September 2014.

“Thank you for forwarding [Mr HD] response to me. I have responded accordingly. Please forward my response to him. Again thank you for responding to him on CityLink’s behalf.

1. Feb statement does not state account was suspended, I would assume that the statement would advise this.

*A statement is just that. It does not reflect what the actual status is. CityLink issued account alerts and suspension letters to advise you of the status of the account.*

2. Account went into debit as no statement issued in January, how can I expect to manage the account without a statement.

*Alerts and suspension letters were issued giving up to date information.*

3. No Jan statement meant I could not reconcile trips or know what the balance was.

*All account information is available via the website for account reconciliation. If there was a payment due and you had been advised this by mail, this is where you locate this information.*

4. (I note in the results of the parent company that Citylink toll revenue for the period Jan to March was up despite closures, reduced commuter traffic- I suspect a lot of LTIs make up for this and not sending Jan statements was a decision made to increase revenue by catching out users unaware of their balance).

*CityLink do not hide information regarding accounts as it is CityLink’s intention is that all account holders keep their accounts active so Toll notices are not issued out. Costs of issuing Toll notices are barely covered by the administration fees.*

5. On the call I made to Citylink regarding LTIs I specifically challenged the costs and asked for a statement from January highlighting trips- instead I was just provided new terms for payment- my complaint was not addressed,

*As previous Toll notice administration fees had been waived, CityLink upheld these charges as there is a cost in issuing out Toll notices. CityLink pay VicRoads for the registered owner's details for each Toll notice issued. There is also the cost of printing and sending the invoices out. When the fee is waived as a good will gesture CityLink absorb these costs. As these fees had previously been waived, CityLink advised the Toll notices needed to be paid in full.*

6. I also raised an issue from a complaint made in March 2010 regarding a trip which still has not been resolved regarding a billing of a car that has not been owned by me for 10 years Citylink cannot confirm this charge was removed despite being informed the car had been sold 10 years ago.

*You have mentioned a vehicle that you sold. I have looked at all the statements for 2011 and found the only charges to the account were via the e-Tag device or for vehicle [Y\*\*\*45] VIC. This vehicle is still linked to your account.*

7. Previously Citylink have debited the account in relation to LTIs (waving the LTI free and charging the toll fee) once funds deposited, setting a precedent for me to expect that funds would be debited from the account to pay for previous trips.

*CityLink did not transfer the Toll notices to your account as you disputed paying the administration fees. CityLink sent you mail advising you they were unpaid and needed to be paid.*

As previously advised CityLink are unable to assist [Mr HD] in having the Infringement notices withdrawn and he will need to lodge a dispute with Civic Compliance Victoria (CCV)."

**7** To which Mr HD replied:

"Point 1 they are lying, other statements have stated account as suspended.

Other LTIs they have waved are from 2012

Citylink are clearly deceitful

I will write to the press."

**8** CityLink responded to the TCO on 19 September 2014:

"Thank you for forwarding [Mr HD's] response. I direct you to my response dated 3<sup>rd</sup> September 2014. I attached the February statement showing the account status. Further to [Mr HD's] complaint, CityLink issued up to date alerts and suspension letters advising the account details and what payments were needed."

9 On 21 September 2014 the TCO emailed the complainant as follows:

"I enclose CityLink's response to your last correspondence. I need more clarification of your complaint. It would appear from the information that you supplied that you travelled on the toll road but the fees were then not met in accordance with your account arrangements. You then deposited money to meet the tolls but not the administrative costs involved for infringement notices for late payment.

Could you please provide additional details."

10 On 13 October 2014 Mr HD wrote to the TCO:

"Correct, I did travel on the toll road- this point has never been denied by me.

- Fees were not charged for those trips.
- Funds transferred into the account on 24th Feb (credited 25<sup>th</sup> Feb which is the day statement was issued).
- No statement was provided for January therefore I could not reconcile my trips against the statement- I still maintain that I should have received a January statement, If in January I knew my balance I could have topped up.
- I don't understand how I can still have trips charged to the account up to 16 Feb, the statement shows a \$14 credit yet \$36.92 was "debited" then after Feb 16 for trips taken 18<sup>th</sup> Feb, 22<sup>nd</sup> Feb & 23<sup>rd</sup> Feb there is no charge (very inconsistent billing- how can I manage this when Citylink just randomly bill trips and not others regardless of credit or no credit- hence why I need to review statements as Citylink have billed me wrongly before which they have still chosen to ignore despite requests- from memory the rego was [F\*\*\*26] Mitsubishi Verada) .
- I received March statement which clearly shows account was **not suspended** – trips on the 5<sup>th</sup> 6<sup>th</sup> & 2<sup>nd</sup> March should have been billed accordingly. If the statement states account was not suspended a reasonable person would assume account is active- again funds had been credited previously.
- When funds credited on 25<sup>th</sup> Feb, this transfer took place prior to Feb statement being issued as bank transfer takes 1-2 days to be credited. Again if I had been able to review a January statement I would have had an opportunity to manage this.
- Again how can I justify sending money to Citylink blindly when they bill accounts inconsistently without providing an opportunity to review the travel activity on the official statement- a customer should only have to review their monthly statement.

I do not wish to get out of paying the tolls, What I expect is retrospective action to charge for the 5 tolls against the account thus removing LTIs and any subsequent Infringement notices.

It appears that Citylink deliberately create inconsistent billing to catch customers out who do not use on a regular basis, At no point did I ever sign anything or agree that the account must maintain a balance or require a balance of \$40. What does citylink do with these funds? Sit in an account bearing interest? Where is the PDS stating this? I note that Citylinks parent earns interest income- this has never been disclosed to customers and probably in breach of the Corporations Act."

11 This correspondence was acknowledged by the TCO and forwarded to CityLink for further comment.

12 On 21 October 2014 CityLink addressed the issues raised by the complainant:

“Thank you for forwarding [Mr HD’s] response. I direct you to my response dated 3<sup>rd</sup> September 2014. Again thank you for responding to [Mr HD’s] on behalf of CityLink. I have answered individually each of [Mr HD’s] questions and hope this resolves his issues with CityLink.

1. *Fees were not charged for those trips.*

As previously advised the account was suspended and Late Toll invoices were issued for travel. Please refer to my correspondence of 3<sup>rd</sup> September 2014 for further information regarding that matter.

2. *Funds transferred into the account on 24th Feb (credited 25th Feb which is the day statement was issued).*

On the 25<sup>th</sup> February 2014 you made a \$30.00 payment. This payment was insufficient to reactivate your account and your account balance after the payment was \$7.39 credit. Please refer to my correspondence of 3<sup>rd</sup> September 2014 for further information regarding that matter.

3. *No statement was provided for January therefore I could not reconcile my trips against the statement- I still maintain that I should have received a January statement, If in January I knew my balance I could have topped up.*

No statement was issued in January as no travel occurred and there was no account activity in that period. CityLink does not issue statements in this instance. ‘*If in January I knew my balance I could have topped up.*’ As no travel occurred in the statement period, no top up was required.

As previously advised CityLink sent a low balance alert and a suspension letter advising payment was needed once travel did occur along with a failed payment attempt. The correspondence sent clearly stated payment was required and the account was suspended.

4. *I don’t understand how I can still have trips charged to the account up to 16 Feb, the statement shows a \$14 credit yet \$36.92 was “debited” then after Feb 16 for trips taken 18th Feb, 22nd Feb & 23rd Feb there is no charge (very inconsistent billing- how can I manage this when Citylink just randomly bill trips and not others regardless of credit or no credit- hence why I need to review statements as Citylink have billed me wrongly before which they have still chosen to ignore despite requests- from memory the rego was [F\*\*\*26] Mitsubishi Verada) .*

A suspension notification was issued on 11 February 2014 advising the account was suspended. A period of grace allowed charges until the 16 February 2014 to be applied to the account. Travel after this date was not charged to the account due to the suspension. The \$36.92 was for travel from the start of the statement period (25 December 2013) until the suspension on 16 February 2014.

5. *I received March statement which clearly shows account was not suspended – trips on the 5th 6th & 2nd March should have been billed accordingly. If the statement states account was not suspended a reasonable person would assume account is active- again funds had been credited previously.*

The March statement was issued at the time the account was being reinstated and was no longer suspended. The account was suspended on the dates [Mr HD] has listed which resulted in Late Toll invoices (LTIs) being issued.

6. *When funds credited on 25th Feb, this transfer took place prior to Feb statement being issued as bank transfer takes 1-2 days to be credited. Again if I had been able to review a January statement I would have had an opportunity to manage this.*

Please refer to my correspondence of 3<sup>rd</sup> September 2014 for further information regarding that matter. Additionally, see my explanation above regarding the January statement. In the instance a statement was issued on the 25 Jan (the usual statement date) it would not have indicated further payment was required. The account alert letters indicated when payment was required.

7. *Again how can I justify sending money to Citylink blindly when they bill accounts inconsistently without providing an opportunity to review the travel activity on the official statement- a customer should only have to review their monthly statement.*

Statements are a summary of account activity and not a request for payment.

8. *I do not wish to get out of paying the tolls, What I expect is retrospective action to charge for the 5 tolls against the account thus removing LTIs and any subsequent Infringement notices.*

As discussed Infringement Notices are issued by Civic Compliance Victoria and you must deal directly with them.

9. *It appears that Citylink deliberately create inconsistent billing to catch customers out who do not use on a regular basis, At no point did I ever sign anything or agree that the account must maintain a balance or require a balance of \$40. What does citylink do with these funds? Sit in an account bearing interest? Where is the PDS stating this? I note that CityLink's parent earns interest income- this has never been disclosed to customers and probably in breach of the Corporations Act."*

13 This was forwarded to the complainant on 22 October 2014.

14 On 6 November 2014 the complainant requested that the TCO make a written decision in the matter.

## Decision

- 15 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. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.
- 16 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.
- 17 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 Civic Compliance Victoria (CCV) or other outside bodies.
- 18 This dispute remains unresolved by way of negotiation between Mr HD and CityLink. Accordingly, it is appropriate for me to make a Decision on the material before me.
- 19 Mr HD has an account with CityLink which is required to be in credit and topped up to maintain credit. I am satisfied that Mr HD travelled on the CityLink toll roads and incurred tolls for which he has been charged. I am also satisfied that Mr HD did travel on the toll roads whilst his account with CityLink was suspended and that he has made a complaint in this regard.
- 20 I note that CityLink has responded to his complaint. In doing so, it provided details of his Account Status, Alert and Suspension Letters sent, Payment History, Late Toll Invoices and Contact Dates.
- 21 Mr HD replied to CityLink's response and this was forwarded to CityLink for its attention. CityLink responded specifically to the issues raised by Mr HD.
- 22 Mr HD contends that CityLink issues toll statements to catch out customers and charge additional administration fees against those customers who had no credit. I point out that account holders, like Mr HD, are required to maintain their account in credit to \$40 to enable their tolls to be debited to the account and that Mr HD is aware of this requirement.
- 23 I am satisfied that Mr HD did not maintain his CityLink account in credit as required.
- 24 I am again satisfied that CityLink sent Mr HD alerts and suspension warnings to enable his account to be brought into credit. He failed, however, to do so.

- 25** He was also sent Late Toll Invoices warning him of penalties that would apply on referral to CCV upon failure to meet the Late Toll Invoices.
- 26** In these circumstances I am satisfied that Mr HD is not entitled to any relief from CityLink.

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

**Dated: 11 February 2015**