

DECISION

Background

- 1 This is a complaint made by Mrs MG to the Tolling Customer Ombudsman (TCO) on 9 February 2015 in respect to notices from the Government agency SPER seeking payment of \$439.80. After investigation Mrs MG ascertained that the monies claimed related to three unpaid go via tolls and Infringement Notices issued by the Department of Transport and Main Roads (DTMR).
- 2 Mrs MG states that she was told, after discussions with go via, Queensland Motorways Limited and SPER, that if she paid \$156.68 this would leave no debt owing for the three trips. She states that she paid this amount due despite the fact that she was not provided with a statement showing the trips. She has ascertained that the trips were two on 17 April 2014 and one on 18 April 2014.
- 3 Mrs MG states that she in fact had paid for these trips and produced documentary evidence to support her claim. She states that payments were made on 8 May 2014. This, however, was outside of the time prescribed for payment.
- 4 Go via, on 10 February 2015, provided information which showed that Mrs MG had failed to comply with a Toll Road Demand Notice for outstanding monies. It stated: ¹

“It appears that your payments are not being received for all the toll invoices we issued; hence whenever payment has been made, it is insufficient to clear the balance.

I appreciate that you believe your payments were intended for those invoices, however as your payments were not made consistently with the requirements of the invoices, we were unable to reconcile the amounts. We would have appreciated an opportunity to explain this; however we were not contacted at any time until in 2014 after it had escalated.

Our records indicate that a number of the Demand Notices we issued were not 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 transactions since 2013.

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.

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

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

- 5** A list of transactions since 2013 was provided. Mrs MG provided a response on 11 February 2015 which read as follows:

“Firstly, apologies for not contacting you in 2014 in relation to debt that I did not realise was outstanding. Both my husband and I have recently attempted to work this issue out directly with Go Via & QMR & TMR prior to going to the Ombudsman.

Thank you also for the listing of the trips that you have dating from 26/08/13.

From our records we have actually paid for all tolls that have been on any Final Toll Notices that have been issued since 12/12/13. This covering the period from 27/10/13 through to 07/06/14. (I do not hold Final Toll Notice records prior to this)

Lets look at these 22 trips from 27/10/13 through to 07/06/14.

Our records, 6 Final Toll Notices spanning this period, show that all have been paid. All 22 trips (toll amt total of \$85.76) has been paid with \$151.96 in payments made against the Final Toll Notices that we have received.

Also our records show that on one of the final Toll Notices issued on 12/12/13 - 5 trips were not listed. (see attached Sheet 2 of spreadsheet) This Notice issued on 12/12/13 spanned the period of travel between 27/10/13 and 05/12/13. These 5 trips are highlighted on Sheet 1 of the spreadsheet attached.

Just recently, on 22/01/15 we paid the additional \$156.68 as claimed to still be owing via a phone call (we requested a statement showing how this break up was done but was told we could not be supplied one)

Plus on a nicety ground throwing in an extra 3 trips as something must have gone awry as to be sent to SPER

And we didn't want any other threats from SPER re loss of licence

We have now paid a total of \$322.35 for Final Toll Notices totalling \$151.96

I would have to think that payments are not being received for all toll invoices because they were not listed on the Final Toll Notices that I was paying on. This seems to be the issue in my case.

Can you and/or the Tolling Customer Ombudsman please review this matter and somehow waive these Infringement Notices.”

- 6** There is evidence that the \$156.68 was paid in January 2015 for certain monies then owing to go via.

- 7** Go via, following Mrs MG's response, subsequently provided an example of a Final Toll Notice that it sent. This one of 7 June 2014 was of particular relevance as it related to monies outstanding for travel in the period between 17 and 19 April 2014. This was a second and final warning. This Final Toll Notice warned that she had travelled through toll points without appropriate arrangements for payment and that

her account had been suspended. It further warned that unless payment of the amount in full was made, additional charges will accrue and an Infringement Notice may be issued in excess of \$140 for each unpaid toll. The amount was not paid.

- 8** Mrs MG has produced account statements and a BPay statement dated six days after the Final Notice date for payment. This document does not disclose the appropriate references to enable go via to match the payment to the invoice. Go via also has explained:

“The State Penalties Enforcement Register (SPER) are currently enforcing a State issued Penalty Infringement Notice (PIN) for the offence “Fail to comply with Toll Demand Notice”.

The Demand Notice [12***54] for the trip on the 17th of April 2014 10:39 was issued on the 11th of June 2014 and due the 11th of July 2014.

Similarly, the Demand Notice [12***64] for the trip on the 18th of April 2014 18:33 was issued on the same day and also due on the 11th of July 2014.

No payment was received in respect of this Demand Notice, hence the offence did occur.

We were also not contacted at that time so we could explain that your payments were insufficient to resolve all the notices we issued.

The Demand Notices were a clear indicator that your payments could not resolve the balance.

These transactions were removed from our system when the Infringement was issued, and has never been paid, not even with the payments you later made in September 2014 and January 2015.”

Discussion

- 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 DTMR and SPER.

- 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 obligation was on Mrs MG to maintain her go via account in good order. This included payment of toll invoices in a timely manner as well as meeting Late Toll Invoices or Demand Notices in full within the specified time and accordance with their requirements.
- 14 Go via has provided a statement of transactions in relation to Mrs MG's travel on toll roads and the tolls and fees incurred from 2013. These indicate that late toll invoices and Demand Notices were issued but the terms and conditions in respect to payment were not met. The actual tolls may have been paid but the fees incurred were not paid at the time. This left Mrs MG in default of her account arrangements.
- 15 The difficulty that Mrs MG has in this matter is that as she did not pay the tolls in time, she as a consequence incurred additional administration fees. Then she received Late Toll invoices or Demand Notices for outstanding monies. She did not pay the amounts claimed in full or at all. This again led to amounts outstanding which were subsequently referred to DTMR by go via in accordance with its legal obligations.
- 16 Following this, she would have been warned by DTMR of monies outstanding and the consequences of non-payment. It would have been made clear that if she did not meet the DTMR demand the debt would be forwarded to SPER for collection. This occurred in Mrs MG's circumstances.
- 17 I understand her concerns but it is apparent from the documentary material Mrs MG has provided that invoices were paid well outside of the payment terms and that she had been forewarned by go via that in such circumstances she could incur additional charges. The failure to take account of such warnings has led to the additional charges.
- 18 I cannot grant Mrs MG the relief she seeks in respect to her obligations to SPER.

Decision

- 19 I do not uphold Mrs MG's complaint but I reiterate that she is not bound by this decision and retains her legal rights to seek alternative redress.

Michael Arnold
Tolling Customer Ombudsman

Dated: 18 March 2015