

## DECISION

### Background

- 1 This was a matter that had been referred to a number of agencies before it was sent to the Tolling Customer Ombudsman (TCO). This matter had previously been addressed by the Office of the Queensland Ombudsman and Transurban Queensland, without resolution.
- 2 The complainant, Mr DK, first made a complaint to the TCO, with correspondence copied to the TCO from the other agencies, on 20 May 2015, as follows:<sup>1</sup>

“After reading all the information sent from the various agencies, I would like to change my brief with you related to this case.  
Hopefully I can make it shorter and with more clarity.

Here are the events surrounding the case:

- 1) 13th June 2014 - we used Brisbane tolls without making payment, and head off overseas
- 2) 17th June - One consolidated bill with both toll payments sent to me
- 3) 1st July - One reminder notice with both toll payments sent to me
- 4) 11th July - we arrive home in Australia. I take no action on my large pile of mail.
- 5) 15th July - Two separate demand notices, one for each toll, are sent to me
- 6) 7th August - I make a genuine attempt to settle my account by paying one Toll Demand Notice. The other notice was (I presume) for the same amount from the same biller, and given the time I had been away I thought it was just a copy or duplicate of the first.
- 7) Not sure of dates - the non payment of the second toll notice is escalated to SPER  
There were further developments after that, but perhaps they can be ignored for now if we don't need to go that far.

The points I am interested in making are

- 1) Upon opening my mail I made a genuine attempt to settle my account.
- 2) The attempt was only half successful, because of the confusion caused by them sending two Toll Demand Notices.
- 3) If their systems were fully consolidated, that confusion would never have arisen.

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

#### Outcomes Desired:

1) If I have made a genuine attempt to settle my account, why would I not be shown leniency? Why am I forced to make extra penalty payments for an honest mistake, especially when that honest mistake is caused by confusion from their inadequate systems? The first outcome I desire is not to have to make the penalty payments outstanding at SPER.

2) Why do Two Demand notices need to be sent, when only one consolidated bill, and only one reminder notice are initially sent?

This is the point of the confusion. They should send just one Toll Demand notice.

If someone received two different notices on the same day, they might work out they are separate bills to be paid. But when you're opening a lot of mail after being away for a long time, it is not easy to spot that two identical looking bills are in fact separate, especially when all logic and real-world experience would suggest they would be the same bill.

If you cannot agree with my side of the story here, I have some more detailed information about the future events for your consideration.”

#### **3** On 30 May 2015 the TCO responded to Mr DK as follows:

“I acknowledge receipt of your email. I understand the circumstances but there appear to be no circumstances in which I can intervene. It was your responsibility to make arrangements to have the tolls paid prior to going overseas.

Without such arrangements in place the normal toll recovery processes was put in place and mail in relation to the toll payment obligations were sent to your home. Despite your arrival back home on 11 July 2014 and the receipt of further notices on 15 July 2014 you do not take steps to resolve the matter until 7 August 2014 by which time matters had been escalated.

I appreciate that one would take time to go through mail after an overseas trip but again it would be reasonable to expect that outstanding accounts would take priority, particularly when highlighted by the arrival of the two Demand Notices of 15 July 2014.

I note your comments about the separate Demand Notices. They are required to be sent by go via to you. It is clear from their contents that they relate to different tolls and earlier intervention by you could have alleviated your situation.

The matter has now become one for resolution with SPER over whom I do not have jurisdiction.”

#### **4** Mr DK replied:

“I think that you might have made a mistake.

You say "you do not take steps to resolve the matter until 7 August 2014 by which time matters had been escalated. " I think this is incorrect. By paying on the 7th August I'm quite sure I had paid both on time and (I thought) in full.

Matters were escalated AFTER this - on the due date of the Toll Demand Notices - because of the one bill I had mistakenly not paid.

I had made an honest attempt to settle my account on the 7th August. It is not fair that I am subject to the additional fees and charges if I have made an honest attempt to settle my account within the time frames given, which I did.

I also disagree with you that it is clear the bills are separate. Can you name one - just one - company that sends out separate bills instead of one bill and an itemised account? If I had read the fine print thoroughly then I might have noticed a difference. But the facts are I had 50-100 bits of mail to get through, and I had two bills from exactly the same company for exactly the same amount. It is a very natural assumption to make that they would be the same bill, and reading the fine print would not be necessary.”

- 5 On 2 June 2015 Mr DK requested a telephone conversation with the TCO, however, the TCO’s attempts at contact were unsuccessful. The TCO advised Mr DK:

“Perhaps you could advise if you have anything further to add to what you have put to me and I will produce a written decision.”

- 6 Subsequently, on 9 June 2015, the TCO had a telephone discussion with Mr DK and the issues were discussed. Mr DK was advised a written decision would be provided.

## Decision

- 7 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.
- 8 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.
- 9 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 the State Penalties Enforcement Registry (SPER). Decisions are binding on toll operators but not customers, who retain all their legal rights.

- 10 I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further conciliation.
- 11 I am satisfied that Mr DK has acted honestly in this matter but he did not pay the tolls to Go Via either prior to, in the course of or within the three-day window required for payment of the tolls. If this had been done, Mr DK would not be in the position he is now.
- 12 Mr DK's liability to pay the two tolls he incurred on 13 June 2014 was not dependent on the receipt of toll invoices from Go Via but Go Via sent Mr DK a consolidated toll invoice for both trips with an administration fee. This account was not paid by him as he had gone overseas until 11 July 2014 without putting in place a method of payment of such accounts whilst he was away.
- 13 Due to the non-payment of the toll invoice, Go Via forwarded a reminder notice on 1 July 2014 which did not attract an administration fee. This was available for payment by Mr DK after his arrival from overseas on 11 July 2014. If payment had been made at this stage, again Mr DK would not have found himself in the position he is in.
- 14 On 15 July 2014 Go Via forwarded Toll Demands in respect to each unpaid toll in accordance with the requirements of Queensland legislation. These Toll Demands were available to Mr DK, after his arrival home. Accordingly, he had the toll invoices and the Toll Demands for attention.
- 15 Despite this, he did not seek to attend to payment of the Toll Demands until 7 August 2014 and then he only paid the one Toll Demand. As a consequence, an Infringement Notice was served by the Department of Transport and Main Roads (DTMR). This notice was not met and the matter was referred by DTMR to SPER for collection.
- 16 Mr DK argues his failure to meet both Toll Demands was a mistake but Toll Demands are clearly documented that payment is required for a specific toll.
- 17 Mr DK had a number of opportunities to attend to payment of the tolls or the tolls with the minimum fees that applied for their collection by Go Via. I cannot grant Mr DK the relief he seeks in this matter. My decision, as indicated earlier, is not binding on him and he is entitled to seek alternative relief.

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

**Dated: 29 June 2015**