

DECISION

Background

- 1 The complainant, Mr JM, first made a complaint to the Tolling Customer Ombudsman (TCO) on 7 August 2013, as follows:¹

"I have been incorrectly charged for Toll usage that has never been incurred by me . The Tolls have been incurred by another vehicle .

[Name] from the tolling company , QLD Motorways has denied any refund and refused information for me to contact her superiors within the company to have this issue resolved .

I have approached (as attached) the NSW Department of Fair Trading , where this department have advised that I should contact your office.

The situation has come about as QLD Motorways state that I had entered the registration number incorrectly as the sign up, which wasn't the case and that I hadn't alerted them earlier as they had sent t he Toll Tag with the registration details .No registration details were sent .

*In response which was denied by [Name] , I had not mistaken our own NSW registration plate number – [B** 64*] for our vehicle, a Subaru Forester .*

*The Toll Tag as sent had it's Toll Tag identification number :- [***425] and account number:- [***001], the incorrect registration number was not apparent or omitted from the Toll Tag .*

Further more, I had sent my concerns as early the beginning of April to the toll company via there own website where my concerns were not actioned, recently I have requested by telephone to terminated the account due to their inconsistencies, as the charges became excessive.

Lastly, the company had failed to informed me that by holding an account with them I could not received a refund of tolls incurred by travelling on the

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

M5 motorway in Sydney despite matching every criteria that would entitle me to the toll refunds .

Amount claimed : \$400, I don't think that I should pay someone else's Toll charges to be fair and I look forward to a prompt resolution and thank you in anticipation .”

- 2** On 8 August 2013 the complaint was acknowledged by the TCO and forwarded to Queensland Motorways Limited (QML) for response.
- 3** That same day Mr JM again emailed the TCO, attaching the correct letter of complaint, three photographs and copy of letter from NSW Government Fair Trading. The correct letter of complaint is quoted in paragraph 1 above. Mr JM said:

“Thank you for your return email.

Firstly I appreciate your assistance in this concerning matter . Yesterdays entire email I've noticed didn't actually get sent, for some unknown reason . I have attached it now .

Included with these attachments are the photos of the tag received . The photos show that there aren't any identifiers of a registration number which refutes [Name's] claim of QLD Motorways that the tag had the registration number of the vehicle was included on it .

In answer to your question I alerted QLD Motorways customer service and the resolution member on 7 July 2013. After this date they had accelerated the deductions to the sum of \$180 from my credit card , knowingly that the travell was not incurred by me or Toll roads that I had not travelled .

QLD Motorways even supplied photo evidence to show that the vehicle which had travelled through these Toll roads was not of our ownership , my wife and I own the vehicle being a Subaru Forester . Their photo graphic evident was of an Audi A4 .

The response received was negative that they (QLD Mootorways) would not refund the charges allocated as they layed blamed onto me for the incorrect registration number allocated to my account .

I has no way of knowing that this was the case except by the charges that had been shown on my account earlier . I had sent communications to them earlier on in the peace but to no avail.

As the amounts weren't much and in my busy lifestyle I relied on this communcation via their websit as entered however didn't recieve any reply .

On communication via the telephone and email they never made an effort to have the matter resolved or gave me the opportunity to communicate with anyone else within the company except with [Name].

In reaction I have instructed my credit card provider to despite the debits from my credit card . QLD Motorways have responded today via text message to pay the account "immediately" to avoid suspension . I had requested to terminated my account after I was instructed that they would not assist so I don't understand or know what is meant by "to avoid suspension". Is this a further threat?

Again, I appreciate your anticipated assistance and truly hope some fairness prevails and the charges claimed are reversed .

I look forward to your favourable response."

- 4 This additional material was acknowledged by the TCO and forwarded to QML at 10:07am on 9 August 2013.
- 5 At 10:24am that day QML responded directly to Mr JM, copied to the TCO, as follows:

"Thank you for your email which has been forwarded to Queensland Motorways Limited by the Tolling Customer Ombudsman (TCO).

*On the 8th of January 2013, a **go via** account [***001] was created in your name [MR JM] online. The account was created by you or a third party who has access to all of your personal details. The user supplied the personal details including vehicle registration [B**46*] (NSW). The vehicle registration has not been entered by our staff at any time.*

*When a vehicle registration is added to a **go via** account, Queensland Motorways is instructed to apply all tolls for the vehicle to the account for payment. A tag was also ordered online by the user who has created the account.*

*A delivery note was included with the posted tag, showing the tag with ID [***425] assigned to [B**46*]. We did not receive correspondence from you advising us that the registration number was incorrect and our system has performed as expected in charging tolls for this vehicle to your **go via** account.*

*We would be in breach of several consumer regulations if we had not charged the tolls for [B**46*] to your account while it was valid. If it was not your intention to accept tolls incurred by [B**46*], then the registration should not have been entered as such.*

*Your **go via** account was accessed online on the 11th of February 2013, but no attempts were made to correct the registration plates to [B**64*] (NSW). The same occurrence was recorded on the 11th of May 2013.*

*Our customer service representative removed the vehicle registration [B**46*] at your instruction on the 11th of July 2013. You have previously indicated in your correspondence that you had earlier sent an email to us regarding your go via account. We do not have records of this email, and welcome you to include this in your return correspondence for our consideration. To date, this email has not been received from you.*

*I acknowledge that you are currently requesting a refund for toll charges incurred by [B**46*] (NSW), advising that vehicle registration records with the Transport Authority will confirm that you are not associated with this vehicle. I acknowledge that [B**46*] is not your registration and that you have not used the tolls which have been charged to your go via account for this vehicle. When you provide a registration number to be listed on your account, it supersedes registration records, and you accept responsibility for all tolls incurred by that vehicle. Queensland Motorways Limited do not have access to vehicle ownership details and we rely on the information provided to us to enable us to correctly charge tolls to our customer's accounts.*

I recognise that an error was made with the vehicle registration details and it is a regrettable situation. We have previously contacted the Sydney toll operator on your behalf to request a refund of the tolls as a gesture of good will, and they have responded that there is no valid grounds to refund the payments. We are not in a position to provide a different response having already paid these charges to the Sydney toll operator."

6 The TCO subsequently received an email from Mr JM at 12:52pm as follows:

"Thank you for your email .

I have received an email from QLD Motorways' customer relations, [Name] following your correspondence .

Unfortunately, he states that they will not effect any refund whatsoever. As I understand blame has been aimed at me as the of registration plate number was made by me which I strongly disagree and must protest at the inference.

He further states that even though I hadn't travel through the Tolls roads the company cannot retrieve these Toll charges. This is obsurd and no one in their right frame of mind would agree to this when the Toll cpmpany has the power to direct charges to whom ever they think is convenienc to do so .

Again, I had questioned these unwarranted toll charges from the deductions occurred which I felt unusual. QLD Motorways failed to act appropriately . I cannot show proof of this concern however I'm willing to sign a legal statutory declaration to emphasis that this action by me had taken place.

Also please take note :-

1) that the company had accelerated their debit charges after I had questioned this toll charge occurrence at the beginning of July after it was apparent that the Toll charges weren't incurred by my vehicle .

2) that the company have not address refunds of Toll monies that I'm entitled as any NSW resident would be after travelling on the Toll roads that the NSW state government have allocated as refundable .

I would like to know whether my claims are coherant or is it fair that I pay toll charges that have been incurred by some one else! and look forward to your most convenient reply .

Thanking you for your assistance.”

7 On 12 August 2013 QML emailed Mr JM, copied to the TCO, as follows:

“Thank you for your email which has been forward to Queensland Motorways Limited by the Tolling Customer Ombudsman (TCO).

My email of 9 August 2013 was sent before I had read this email forwarded to us by the TCO. I am replying to this email to ensure that I have addressed all of your concerns.

You were by [Name] in an earlier email:

“When the tag was issued, a delivery note was included, showing the tag with ID [***425] assigned to [B**46*]. We did not receive correspondence from the account holder advising the registration number was incorrect, and the system performed as expected.”

A separate letter is sent along with the tag to advise the vehicle registration the tag is assigned to. Sending photographs of the **go via** tag does not refute this fact.

As I have advised in my last email, we are aware that the vehicle does not belong to you. The vehicle registration has not been entered by our staff at any time. When you provide a registration number to be listed on your account, it supersedes registration records, and you accept responsibility for all tolls incurred by that vehicle. Queensland Motorways Limited do not have access to vehicle ownership details and we rely on the information provided to us to enable us to correctly charge tolls to our customer's accounts.

You have advised that you had no way of knowing of this error, however you have twice accessed your account online where [B**46*] was under your account listing. You are provided with monthly tax invoice statements which are available free of charge via our website. These statements detail each toll

which has been charged to your account by this vehicle, along with the date, time and location of each trip.

The correct internal escalation procedure was followed when you were referred to my colleague [Name], our compliance and resolution officer. I have independently reviewed your case in [Name's] absence and I have come to the same conclusion as she has.

If you continue to use the toll roads after your go via account falls into arrears, your account will be suspended. This is the same warning which is sent to all of our customers when their balance approaches \$0. We have taken feedback from our customers who have advised they would appreciate a warning to be sent of such a suspension so that they are aware of potential fees and charges. Your account currently has a negative balance of \$10.51."

- 8 On 19 August 2013 the TCO acknowledged receipt of Mr JM's email of 9 August 2013 and added:

"I note you have received a subsequent email from Go Via dated 12 August 2013 (attached). Please advise if your issues have been addressed."

- 9 The TCO also wrote to QML on 19 August 2013 in the following terms:

*"I refer to previous correspondence and note that a principal matter of concern for [Mr JM] is Go Via's inability to recover the tolls from the registered owner of [B**46*].*

This is an issue which arises in a number of complaints and, as a consequence, I believe that it would be of assistance if it can be explained more explicitly why this is not possible. This would be of assistance to customers; rather than the mere assertion that the tolls cannot be recovered because of a contractual relationship or it is impossible to re-bill another vehicle because of the practices of a Government agency.

The difficulty, it appears, arises from a customer's understanding that if a vehicle uses the toll road without a valid pass its identity can be established and recovery of the tolls and administration fees sought. Such a process cannot be followed if a contractual relationship is entered into on the basis of a mistake.

I believe a clearer basis for Go Via's position would assist in the resolution of a number of complaints with which Go Via would have to deal."

10 On 20 August 2013 QML provided a detailed explanation:

*“When [Mr JM] added vehicle [B**46*] to his go via account, which he did online on 8 January 2013, he authorised Queensland Motorways to apply any tolls incurred by this vehicle, to his go via account. Queensland Motorways had no way of knowing that [Mr JM’s] vehicle was in fact [B**64*].*

*Queensland Motorways accepted tolls incurred interstate and have paid the tollroad operators for those tolls in good faith. We have no way of recovering our costs. Further, we have no way of identifying if the actual owner of [B**46*] had payment arrangements in place with another toll provider, nor any means of pursuing tolls incurred on another toll road.*

Where tolls are incurred on our network, and remain unpaid, we have an agreement with the Department of Transport and Main Roads (DTMR) for details of the registered owner to be provided so that we may issue notices for the recovery of our tolls, however there are constraints in relation to what information is provided to us and in what timeframes.

Tolls were charged to [Mr JM’s] account between January 2013 and July 2013. Queensland Motorways provided [Mr JM] with access to his Tax Invoice Statements during this period, which had they been read would have alerted [Mr JM] to the situation.

Whilst I understand that this is an unfortunate mistake on behalf of [Mr JM] we have accepted the tolls, and charged them to his go via account on the understanding that he had asked us to do so, by adding the vehicle to his account.

I further understand that [Mr JM] has incurred financial loss as a result of his mistake however unfortunately I have no course of action available to me to recovery those losses on his behalf.”

11 On 27 August 2013 this information was forwarded to Mr JM.

12 On 28 August 2013 Mr JM responded:

“I would like you to note that I did not make a mistake in entering the licence plate of our vehicle into their on line system .

Secondly, after noticing soon after that there were abnormal deductions from my account I advised QLD Motorways via their own website that there were Toll amounts unjustly debited from my account, QLD Roadways did nothing about the incorrect impost .

Thirdly, QLD Motorways did not inform me that they would not pass on Toll refunds in which I’m entitled .

Please inform me whether the Tolling Ombudsman can assist with this concern.”

13 On 2 September 2013 the TCO wrote to Mr JM as follows:

“I would like to make the following points, by way of clarification in response to your email:

- The problem arose from an incorrect online recording of your vehicle registration number when it was first registered with go via in January 2013.*
- The e-tag does not have a record of the vehicle registration number. That number is recorded on the delivery docket that accompanies the e-tag when it is forwarded to a customer. There was no issue raised about the incorrect registration number at the time of delivery of the e-tag.*
- The error in relation to the registration number was not corrected until July 2013 despite the fact that the account had been accessed twice before.*
- Currently there is no evidence that you contacted go via about the problem with the registration earlier.*
- The Sydney toll operator has indicated to Go via that there are no valid grounds for the refund of the toll payments.”*

14 Mr JM responded to the TCO on 6 September 2013 as follows:

“Firstly , Thank you for your email,

I have taken you comments in consideration and have put some thought into this situation. I consider my self to be a fair minded tax abiding family man, father of 3 children , husband and a citizen as you know of our fair minded nation. This fair minded value, distinguishes us as Australian as unique within the world.

As I’ve have labored about this I cannot see why there is an insistence that I should be paying the Toll usage of another Toll road user. It’s beyond my logic and even to those I speak with, irrespective of whether plate numbers were correctly or in correctly entered that I should be forced to pay these charges. The proof provided by Qld Motorways Pty Ltd supports this fact. I don't think that this is fair. Any other law abiding Australian would carry the same sediments.

In addition, I made an attempt as stated in previous communications that there was something wrong with my account, as over charging had occurred.

I did soon after I noticed this early as a client to inform Qld Motorways Pty Ltd, my wife is witness as we had discussed this anomaly and incorrect charges were debited from my account .

No action was taken by the company to neither suspend the charges nor contact me until I had physically telephoned the company, and I must say waited on their phone queuing system to argue against these unwarranted charges. I'm a busy person . If the matter was acted upon previously this subject would not be a subject. It was until the charges did escalate against my account that I considered that my efforts weren't acted upon originally and then decided to make the telephone approach instead.

Our travel had only been on the M5 Motorway where till this day our commute has been most infrequent as private users. Before the escalation of toll costs I did not care to look at my on line account as the travel was infrequent and we are private users, I entered my online the account when these anomalies commenced.

Further in regard to a refund of Toll charges, I understand that as a private road user and resident in NSW and an owner of a NSW registered vehicle that I should be entitled to a refund of Toll monies (except for gst)incurred travel on this M5 motorway, under t he NSW government cash back scheme.

Qld Motorways Pty Ltd did not disclose that by joining their toll tag company that I was not entitled to receive this refund as I've learnt that they are not registered to facilitate and provide details that can be submitted to be entitle to receive a toll refund under the NSW government toll refund cash back scheme.

Given that it is my right to receive refunds for travel as private user, then I don't see why I should be disadvantaged. In essence I consider that Qld Motorways Pty Ltd had failed to advise me that by being a client I would not receive a refund. Also they did not act to communicate with me when the unwarranted Toll charges first apparent early after joining them as a toll user / client.

Surely , the Tolls can be retrieved by the photographic evidence provided and the correct diligence given as a fair minded Australian .”

- 15** On 12 September 2013 Mr JM emailed the TCO as follows: (The document referred to is on file)

“I would like to understand your office and yourself whether the matter with the above mentioned Tolling company (Qld Motorways Pty Ltd) has been determined? I have received a directive from their debt collectors as forwarded below .

Your reply is at your earliest convenience would be appreciated .”

16 The TCO responded promptly as below:

“I have considered your previous correspondence in the light of all the material before me and the previous points I have made to you in earlier correspondence.

The resolution of this matter does not involve your fair minded behaviour or your character in any way. It centres solely on the incorrect online recording of your vehicle when you established your account with go via and the subsequent failure to correct the error when you accessed your account between January 2013 and July 2013. Go via has explained this to you and highlighted the fact that it cannot recover the costs from the driver of the vehicle because of constraints that exist with their relationship with the Department of Transport and Main Roads.

On the information provided by you Go via was entitled to levy the tolls and charge you the subsequent administration fees as they had no reason to believe that they should not be charged to your account. I cannot direct them to refund the tolls and costs in the situation where they cannot recover them from any other driver. I would recommend that you pay the amount due to Go via.

I understand that believe this to be an anomalous situation so I accordingly will raise the issue in my six-monthly review that is published on my website for future discussion.”

17 To which Mr JM responded:

“What about the time when I questioned these charges to Qld Motorways and was ignored ? Does action have no bearing in your decision ? Additionally the refund that I’m entitled ?”

18 On 15 September 2013 the TCO responded as follows:

“These issues do not affect your liability to pay in my assessment. However, in view of your request I will provide a formal written decision on all issues. You are not bound by any decision I make but I recommend that you pay outstanding monies to avoid further costs.”

Decision

- 19** 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.
- 20** 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.
- 21** 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.
- 22** I am satisfied that Mr JM established a Go Via account ***001 online on 8 January 2013. The account would have had to be created by Mr JM or by a third party who had access to all of his personal details. When a motor vehicle is added to a Go Via account, QML applies all tolls for the vehicle to the account. To do otherwise would put it in breach of the terms and agreement with an account holder, like Mr JM.
- 23** Mr JM, whilst not conceding that he made a mistake in establishing his account, points out that his motor vehicle registration number is B**64* (NSW). He argues that he has been wrongly charged for tolls incurred by vehicle B**46* and that he should not be liable to pay them or any administrative fees in respect to non or late payment.
- 24** I am satisfied that motor vehicle registration B**46* (NSW) was provided to Go Via's staff as the registration details for the vehicle Mr JM was to use on the toll roads by way of error. Even if I was mistaken in this regard, I find that Mr JM had opportunities to correct the error, no matter how created, by:
- (a) checking the delivery document that accompanied the Go Via tag when it was first posted to him;
 - (b) examining his online account which contains the registration details of the motor vehicle, and
 - (c) immediately establishing contact with QML to alter the registration details.
- 25** Mr JM said that after he noticed that there were abnormal deductions from his account, he advised QML on its website that the tolls were being wrongly debited from his account but it did not do anything. QML has no record of this. In the absence of further documented information I cannot take this issue further.

- 26** QML has explained to Mr JM that it had no way of knowing that vehicle registration B**46* was not Mr JM's vehicle or that his vehicle was B**64*. It had accepted tolls that B**46* had incurred interstate in New South Wales and paid the toll operators for those tolls in good faith. QML says that it had no way of recovering its costs. Further, under existing privacy arrangements it had no way of identifying if the actual owner of B**46* had payment arrangements with another toll provider nor any means of pursuing tolls incurred on another toll road.
- 27** Mr JM further says that QML did not inform him that it would not pass on toll refunds to which he was entitled under a NSW State Government toll refund cash back scheme. QML responded that the NSW toll operator had indicated that there are no valid grounds for the refund of the toll payments.
- 28** I do not believe that QML, if unasked, had an obligation when Mr JM established his online account to advise him what his entitlements to an interstate government cash back toll refund policy would be. If this was a matter of concern for Mr JM he should have raised it at the time. Further, I am satisfied it is not relevant to the issue of his liability for the tolls the subject of this dispute.
- 29** I appreciate that Mr JM is frustrated and does not understand why he should be liable to pay the tolls and fees relating to the use of a toll road by another vehicle but this falls within the contractual arrangements of having a Go Via account. I emphasise: any finding I make is not intended to reflect upon Mr JM's integrity but is based on his contractual relationship with QML.
- 30** There may be a need to look at alternatives in a matter like this. However, there would be additional administration and possible legal costs involved in the subsequent pursuing of a third party owner of the vehicle once tolls had been levied and paid. The owner would be likely to challenge liability to meet such tolls and fees. Such costs would likely be for greater than the original tolls and administration fees charged to an accountholder, like Mr JM.
- 31** I find, in all the circumstances, that Mr JM is liable under the terms of his agreement with QML to pay the tolls and administrative fees owing to Go Via.

Decision

- 32** The complaint is not upheld.

Michael Arnold
Tolling Customer Ombudsman

Dated: 29 October 2013