

DECISION

Background

- 1 The complainant, Mr TC, first made a complaint to the Tolling Customer Ombudsman (TCO) dated 13 August 2013, as follows:¹

“We are **govia account holders** Account Number [***805] [Account Name]

We wish to make the following complaint against go via, whose actions have breached their service agreement and as a direct consequence wrongly led to the imposition of 9 infringement notices by the Brisbane City Council at a cost of (9 x\$154) . We require go via to accept responsibility for their actions and inform Brisbane City Council of their error and failings and undertake to redress with Brisbane city Council through the withdrawal of those infringement notice .

I outline the circumstances and nature of my complaint below

We are occasional visitors to Brisbane from [location] (** km away) for business. We had found that the construction of tollways was most often done in ways to facilitate easy access, but also however requiring particular care to avoid their useage. At an almost unavoidable entrance to CLEM 7 we saw a notice to join govia a universal tag company and did so online . We were however unfamiliar with the relationships governing shared charging and the intricacies of operations and billing procedures such as those between govia and flow and others. These intricacies have masked the govia's behaviour and constrained our understanding of how to rectify their breaches and the financial difficulties they have caused. We were directed to your body as tolling ombudsman with the belief that your body has authority to address concerning matters such as ours.

We established an automatic deduction authority with govia from June 2011

1) From Apr 2012 including May 2012 and June 2012 our account was in credit with govia. See attached accounts Aril2012 to June 2012

2) Despite not requiring or incurring a toll which would place the account in deficit in april or may or june 2012, it transpired that govia in the final weeks of May 2012 apparently attempted to deduct monies for tolls not incurred (apparently

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

\$25.00). Despite being in credit with govia the attempts to add \$25.00 was not successful.

3) go via then removed the automatic deduction authority for our account in May 2012 .

4) We were **unaware** that the automatic deduction authority for our govia account was **removed** or in fact that govia had the right to remove that authority. Upon reading the service agreement we believe they had no authority to remove the deduction authority and certainly dont believe they should have any such authority as the account was in credit.

The direct consequence of the removal of the automatic deduction authority was that subsequent toll amounts were not deducted as we had authorised them to do. Our belief was that we had an automatic deduction authority in place. When we discovered on Dec 7 the removal of the authority we immediately instigated the reinstatement of the authority and paid an outstanding amount of \$37.18 (see attached DEC2012)

Infringement notices from Brisbane City Council for 9 tolls on Clem 7 and the Go between bridge covered by govia for the time between July 2012 and prior to DEC7 have been since imposed .

Go via requested we write to BCC and outline our situation. This we did and received no consideration from Brisbane City Council for withdrawal of any of 9 infringement notices.

It is hard to conceive we are being imposed with penalties for 9 outstanding tolls (9x \$154) with Flow due to govias behaviour .

We require go via to accept responsibility for their actions and inform Brisbane City Council of their error and failings and undertake to redress with Brisbane city Councils the wrongful imposition of those infringement notices given govias actions.”

2 The TCO acknowledged receipt of the complaint and forwarded same to Queensland Motorways Limited (QML) for response on 14 August 2013.

3 On 16 August 2013 QML responded to Mr TC, copied to the TCO, as follows:

“Thank you for your email with attachments, forwarded to Queensland Motorways from the Tolling Customer Ombudsman (TCO).

I also confirm receipt of your email to Queensland Motorways on the 14th of August 2013.

I will now address your listed points individually;

[Mr TC]:

1) From Apr 2012 including May 2012 and June 2012 our account was in credit with govia. See attached accounts Aril2012 to June 2012

Queensland Motorways:

I confirm that the account [***805] in the name of [Account Name] trading as [Name] was in credit until 01/07/2012.

[Mr TC]:

2) Despite not requiring or incurring a toll which would place the account in deficit in april or may or june 2012, it transpired that govia in the final weeks of May 2012 apparently attempted to deduct monies for tolls not incurred(apparently \$25.00). Despite being in credit with govia the attempts to add \$25.00 was not successful.

Queensland Motorways:

On the 7th of June 2011 a phone call was received from a caller identifying himself as [Full name of Mr TC]. The caller successfully passed all identification checks. The caller advised that he had received a toll notice from Flow, though he was a **go via** account holder. The representative explained that the credit card listed on the account had expired, causing the automatic top up facility to fail. The automatic top up had been removed since the 5th of September 2010 following the dishonours. New credit card details were provided in this phone call, and the caller authorised Queensland Motorways to debit the credit card when the credit balance falls below \$10.00.

The Automatic top up successfully occurred later on the 7th of June 2011. The top up did not occur again until the 29th of October 2011 as required, as the account fell into a credit balance of \$6.53. The account holder did not dispute the top up system then.

In May 2012, the automatic facility performed as expected and attempted to top up the account after the credit balance fell below \$10.00.

Doc Date	Time	Description	Amount
29.05.2012	00:00:00	Dishonoured Payment	25.00
28.05.2012	00:00:00	Dishonoured Payment	25.00
27.05.2012	00:00:00	Dishonoured Payment	25.00
26.05.2012	00:00:00	Dishonoured Payment	25.00
25.05.2012	00:00:00	Dishonoured Payment	25.00
24.05.2012	00:00:00	Dishonoured Payment	25.00
23.05.2012	00:00:00	Dishonoured Payment	25.00
22.05.2012	00:00:00	Dishonoured Payment	25.00
21.05.2012	00:00:00	Dishonoured Payment	25.00

[Mr TC]:

3) go via then removed the automatic deduction authority for our account in May 2012 .

Queensland Motorways:

9 attempts were made, and on the 30th of May 2012 the automatic top up was removed to protect the account holder and Queensland Motorways from possible dishonour fees. A payment failure letter is issued to the address provided to us by the account holder. This address is [address].

[Mr TC]:

4) We were **unaware** that the automatic deduction authority for our govia account was **removed** or in fact that govia had the right to remove that authority.

Upon reading the service agreement we believe they had no authority to remove the deduction authority and certainly don't believe they should have any such authority as the account was in credit.

Queensland Motorways:

The Service Agreement you included in your attachments did not appear to have the information you advised.

I have attached our Service Agreement for your perusal.

Please note **Clause 6.7.3:**

"If you have authorised us to collect payments by direct debit from a bank account or credit card, we will attempt to top up your pre-paid Account by direct debit when your Account balance falls to the nominated level. If a direct debit is unsuccessful, an additional fee may apply and you must then use one of the payment options listed in clause 6.6.3 until you provide us with a new direct debit authority."

Clause 6.6.3 includes payment options as below:

- (a) Cash or debit/credit card payments at a Customer Service Centre or, if you have a pre-paid Account, at a Retailer;
- (b) Credit card payments via our Website or by telephoning our Customer Contact Centre; and
- (c) Payments via BPay

The account remained in debit until the 7th of December 2012, despite the 4 beeps of the tags, and monthly statements issued for the periods July, August, September, October and November 2012 (attached).

There is no breach in the service agreement, other than the account holder's failure to maintain credit on their **go via** account.

When you fail to do so, you do not permit us to apply tolls incurred on other toll roads to your account as there is insufficient credit.

Queensland Motorways do not have discretion on the Infringements issued by Brisbane City Council, which resulted from your non-payment of toll notices from Flow Tolling and not from your service agreement with us.

We are unable to assist with your enquiry with the Council and recommend that you continue to discuss your enquiry with them directly."

- 4** On 26 September 2013 Mr TC enquired as to the progress of his complaint. The TCO responded on 30 September 2013 as follows:

"I acknowledge receipt of your email seeking an update on the progress of your complaint.

I note that on 16 August 2013, Go Via has provided you with a detailed response to your complaint together with relevant attachments. This email is attached for ease of reference.

Your comments are sought on its contents."

- 5** On 31 January 2014 Mr TC responded to the TCO:

"I note the following critical points about the Go Via response

The Terms and conditions provided in Go Vias response are not those available on their website for review under "Terms and Conditions" the details contained therein are materially different in many aspects.

I am unaware as to where the terms and conditions provided in their response are from or where they are available for customers to view which from a consumers perspective is fundamental. The terms and conditions on the website are materially different to those provided by Go Via.

The terms and conditions on the website make no reference or flag alerts as to agreements with Flow or Brisbane City Council or to the imposition and levying of massive penalties for small debts or the assigning of debt penalties - how is this legal?.

We since discover Penalties that are levied by Brisbane city Council where unpaid tolls of under \$37.19 become \$1540. These secretive consequences are extortionate and not outlined or detailed by Go Via.

Given the magnitude of these Penalties including loss of Drivers Licences SPER penalties -Go Via has engaged in material non-disclosure of penalties to avoid loss of trade and their practices could be considered entrapment of consumers.

My experience outlined reveals Go Via operates enormous discretionary flexibility in their account practices flouting practices above and beyond the expectations of fair consumer practices and with apparent impunity.

Go Vias account practices revealed in my complaint are highly dubious which is why I have been placed my current predicament.

As further evidence of their flouting of fair and appropriate behaviour Go Via in August 2013 without authority deducted twice the authorised amount from our bank account \$50 instead of \$25 .How can they do whatever they desire with impunity.(See Attachemnt)

(Go Via raised an issue regarding 2011 claiming It was a matter not disputed .Go Vias has deliberately confusing practices or is incompetent .

Most critically the automatic deduction was removed in May 2012 when our account was still in credit. Had the authority not been removed nine future defaults would not have occurred.

Go Via claims they are entitled to discretionary termination of our deduction authority completely indifferent the enormous consequences to us of penalties that accrued. These penealties are nowhere obviously publicised on their website which under consumer law it should be anticipated must flagg the disportionate magnitude of their punitive business practices. We now see Go Via has nontransparent commercial relationships with Flow and Brisbane City council which have punitive impacts on ourselves.

Go Via does not disclose the magnitude of penalties consequent to its conduct of accounts or its ageement with other toll operators. The evidence here strongly suggests Go Via does not disclose these to protect its own interests at the expense

of users. This material nondisclosure is not appropriate behaviour particular for any user but even less so infrequent rural remote users unaware of the entrapment practices of this toll business..

Driving on City roads constructed to guide users into infrastructure use is sanctioned entrapment with little opportunity of avoidance.

In this case it was also not made clear that the automatic deduction authority was removed. Go Via made reference in their response to our complaint that they made numerous attempts to deduct- There attempts were not transparent to ourselves and are only now revealed to yourself and myself following complaint.

There is no remorse in the manner of their conduct ,which strongly suggests their willingness to embrace the punitive consequences of their extortionate practices.As a driver it has been inconceivable that Consumers arent protected from their behaviour and treatment of us.

How Go Via can impact individuals lives in the pursuit of business. That small debts of \$37.19 could inflate to fines of \$1540 is not believable.

Finally I request also information not available to me ,regarding the fine levied by BCC. .

I believe it is within your power to establish whether Go Via receives contractual consideration for assigning nonpayment of tolls(in this case precipitated by Go Via) to the BCC-- namely is the assignment of debts to BCC enshrined in commercial relationships that are not transparent (secret) to consumers.By any normal business standard regarding debtors, Go Via practices are deliberately secretive, confusing , nontransparent and not inaccord with fair trade.”

6 On 5 February 2014 the TCO acknowledged receipt and sought response from QML on the issues raised.

7 QML responded to Mr TC, copied to the TCO, on 6 February 2014 as follows:

“I confirm receipt of your email received 5th February 2014 from the TCO in response to my email to you on the 16th of August 2013 (*attached*).

Based on your email it is evident that you are still confused about the tolling processes in Queensland.

It is necessary to include some basic information to help you understand the tolling process;

Re Tolling and Infringements

All toll roads in Australia have;

1. A toll road operator who has rights to toll that particular toll point
2. A government body who has entered into agreement with said toll road operator, allowing them rights to toll a road

For example, Brisbane City Council had an agreement with River City Motorway, where River City Motorway (also known as “FLOW Tolling”) could toll the Clem7 tunnel and Go Between Bridge.

- The toll notices were issued by Flow to the registered owner, when a vehicle has travelled without a valid account/pass.
- When the toll notices are left unpaid, this constitutes toll evasion.
- River City Motorway as part of their agreement with Brisbane City Council, notifies their tolling offence department that the Demand Notices have been left unpaid.
- Brisbane City Council then can issue a Penalty Infringement Notice to the registered owner for failing to comply with the Demand Notice issued by the toll road operator.

You will not locate this information in our **go via** Customer Service Agreement (CSA) for the simple reasons of;

1. This has no relevance at all to the terms and conditions of holding a **go via** account
2. Is part of State legislation (Transport Infrastructure Act 1994 Qld) and therefore is not dictated by **go via**
3. **Go via** supplies tolling products so that motorist can pay for their tolls and are not involved with Infringements issued by government authorities

It is not reasonable that we should include legislation in a commercial agreement between consumers who choose to establish a tolling product with us.

I recommend that you refer to the Transport Infrastructure Act and make your own conclusions of “*how is this legal*”.

You have received Infringements from Brisbane City Council, because they were referred as non-payment by **Flow Tolling/River City Motorway**. I have already advised you this in my previous emails.

The reasons why you have received toll notices from Flow, leading to Infringements from Brisbane City Council is because you did not maintain sufficient credit on your account. This was also explained to you previously.

When you do not afford us the opportunity to accept tolls from Flow due to a nil or debit balance, they cannot bill us.

Hence they have billed you directly in the form of notices.

I make a calculated guess that these notices were unpaid leading to the Infringements from Brisbane City Council.

What our CSA (*attached*) does outline is;

7 Travelling on compatible roads

7.1 Conditions that apply to compatible roads

We have an Agreement with certain operators of compatible roads to charge your account with the relevant tolls, fees and charges that apply for use of those compatible roads when a tag or a linked vehicle is detected on those compatible roads. Visit govia.com.au or contact us for a list of compatible roads.

7.2 How we process the tolls, fees and charges

When a tag or a linked vehicle is detected on a compatible road, the operator may notify us of the tolls, fees and charges that apply to that trip. Additional fees and charges may apply if you do not have a tag or it is incorrectly installed or faulty.

If your account has a positive balance we pay the operator on your behalf and charge the relevant tolls, fees and charges to your account as soon as we have received all the relevant information related to your trip.

However, if your account has a negative balance, or if the operator is unable to identify your linked vehicle or if your account is suspended then:

- ▶ we may reject the tolls, fees and charges notified by the compatible road operator, and
- ▶ as a result, the compatible road operator may send the registered owner of the detected vehicle an invoice or request for payment (which may include additional fees or charges).

If you have a query about tolls, fees or charges applied to your account as a result of use of a compatible road, you should contact the operator of that compatible road.

Re Two Top Ups in August 2013

I will explain that on the 12th of August 2013 we received a phone call from a caller identifying himself as “[Given name of Mr TC]”. The caller successfully passed all identification checks.

The caller requested for clarification on **go via** removing his automatic top up due to dishonours.

The representative explained that the account when it has reached the maximum attempts for top up, the top up is disabled.

It was further advised that the balance was \$31.94. The caller then provided credit card details to process an additional payment of \$25.00 to add more credit to the account. This is evident in the system records:

PostngDate	Text	Cur		Debit	CreditMemo	Curr. bal.
10.08.2013	Document via Posting	AUD		3.75		6.94-
11.08.2013	Payment Run	AUD			25.00-	31.94-
12.08.2013	Credit Card Lot	AUD			25.00-	56.94-

The "**Payment Run**" is the automatic top up processed on the 11th of August 2013. The "**Credit Card Lot**" is a manual payment taken by the representative on the 12th of August 2013, whereby the caller provided a credit card number, expiry date and confirmed their intention to process a payment of \$25.00.

Neither Queensland Motorways/**go via** nor the TCO has access or jurisdiction over Brisbane City Council.

We cannot request that they provide details of the fine, as we did not issue the toll notice, nor notify them that it has been unpaid leading to Infringements.

The TCO has jurisdiction only toll road operators part of the TCO scheme, and as Flow was not part of this scheme, this information is not available to us.

We cannot intervene nor interfere in the decisions of the government body issuing fines.

I have now exhausted my advice to you and recommend as a finality that you should discuss your enquiry with the notice issuers, being Brisbane City Council."

8 To which Mr TC responded:

"Thankyou for your timely reply . Unfortunately while you may well believe you have exhausted your explanations I have been left with the legacy of GO VIAs highly damaging and confusing modus operandi.

1) BCC insist that the problem lies with GO VIA as do I .

2) I did not travel for 3 months evading tolls I had funds in the account .It was your removal of the automatic deduction authority when my account was in **surplus** which lead to cascading infringements of \$1540 on tolls of \$37.19.

3)GO VIA was cognisant of the possible consequences of their actions..

4) Your explanation that "*It is not reasonable that we should include legislation in a commercial agreement between consumers who choose to establish a tolling product with us*" is your interpretation not consistent with consumer protection law requiring consumers to be informed

5) It is timely this week that the High Court gave a determination on Banks charging late fees and that fees should be comensurate with costs of inconvenience. \$1540 in fines on tolls of \$37.19 default and precipitated by GO VIA doesnt sound commensurate

6) While you may impune in sarcastic tones "calculated guesses" GO VIAS behaviour will fortunately be for others to decide given GO VIAS obstinacy."

9 QML subsequently wrote to the TCO on 7 February 2014, as follows:

"I request that you provide conciliation in the matter of [Mr TC's] enquiry.

I have provided extensive information over the course of months on;

- [Mr TC's] financial institution dishonouring our attempts to top up his account for reasons unknown to us
- The account holder then failed to respond appropriately to the debit balance and payment failure notifications
- Their vehicles continued to travel on compatible toll roads without coverage of their **go via** account due to the debit balance
- Evidence that advice was provided to the account holder to resolve the matter of foreign toll demand notices directly with Flow Tolling *before* it escalated to Infringements
- That QML do not have jurisdiction nor further comments in respect of Brisbane City Council issued fines
- General tolling processes outside of our control as franchisees

We are not the appropriate party to respond to [Mr TC's] challenge to take fee levels to the courts, and he should be re-directed to the relevant Government departments that legislate tolling policies in Queensland.

I look forward to your comments."

10 On 12 February 2014 the TCO forwarded the contents of QML's email to Mr TC with the advice that as this matter will not be resolved by conciliation, a formal written Decision will be made.

Decision

11 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.

12 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.

13 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.

14 The factual background to this dispute is adequately set out in this document and I do not intend to recite it as both Mr TC and QML understand the issues in dispute. I believe that the situation is summarised by Go Via as follows:

- “[Mr TC’s] financial institution dishonouring our attempts to top up his account for reasons unknown to us
- The account holder then failed to respond appropriately to the debit balance and payment failure notifications
- Their vehicles continued to travel on compatible toll roads without coverage of their **go via** account due to the debit balance
- Evidence that advice was provided to the account holder to resolve the matter of foreign toll demand notices directly with Flow Tolling *before* it escalated to Infringements
- That QML do not have jurisdiction nor further comments in respect of Brisbane City Council issued fines
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We are not the appropriate party to respond to [Mr TC’s] challenge to take fee levels to the courts, and he should be re-directed to the relevant Government departments that legislate tolling policies in Queensland.”

15 Whilst appreciating Mr TC’s position, he had the obligation of keeping his Go Via account in good order during the time he was using the toll roads. He was aware of those obligations, being a customer of Go Via since June 2011.

16 Go Via acted in accordance with its procedures and rights under its agreement with Mr TC in the administration of his account when seeking to recover its tolls. Mr TC has raised the issue of the quantum of the fees charged. The administration fees charged are fixed in consultation with the State Government. I cannot review such fees.

Michael Arnold
Tolling Customer Ombudsman

Dated: 6 March 2014