

DECISION

Background

- 1 The complainant, Mr EL, first made a complaint to the Tolling Customer Ombudsman (TCO) on 10 January 2014. Also provided was Mr EL's initial email complaint to Queensland Motorways Limited (QML) dated 12 December 2013 together with QML's response of 16 December 2013:¹

"I am writing to you today in regards to some unpaid Demand Notice for Non Payment of Toll notices I have received in the mail since June 2013 till November 2013 this year. I am a first time GoVia tag customer for a Toyota Starlet rego [0****C]. I live in [location] QLD & started a new job this year located at [location] QLD, so it meant I had to travel through the Loganlea West, Paradise Rd Exit West, Paradise Rd Exit East, Loganlea East tolls less than six days a week to get from home to work & back home again for about the last six to seven months. I have been trying to manage my GoVia account personally by topping my account up every time it was low at my local Caltex service station, but was unaware of still having to pay an Administration charge fee if the account was not topped up before a certain time frame. I was receiving the demand notices but was under the assumption when I was getting them, that they were simply reminding me to top my account up, & that the Administration charge fee would go away after topping my account up. This has only come now to my attention as of today Thursday 12/12/2013 that this was not the case. I just sold my Toyota Starlet recently hence the reason why I only called Govia today to cancel my GoVia tag & was informed of overdue Demand Notice for Non Payment of Toll of the amount of \$3,180.89c. Apparently \$270 is unpaid Tolls, but my GoVia tag is in credit which only confuses me even more, I am more than happy to resolve this & would like to ask you to reconsider the amount of \$3,180.89 as I was unaware of this. I am going to inform the QLD Toll Ombudsman of this matter & will be making a complaint. Please do not hesitate to be in touch with myself [EL] on [number] to resolve this matter."

QML response to Mr EL of 16 December 2013:

"Thank you for your email.

For your reference, please note that Queensland State law states that a driver is liable for the toll when crossing the toll point. We allow a grace period of 3 days to remedy the toll payment to escape penalty.

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

As a frequent traveller on toll roads you would have seen the signs that advise "3 days to pay".

This applies also to you, a pre-paid **go via** account holder when there are insufficient funds in your account. Your account history shows that you are frequently in debit. We have since implemented a more efficient suspension system, as the behaviour of "travel first pay later" needs to change. You do hold a **pre-paid** account and it needs to be maintained as such.

When failing to do so, the registered owner of the vehicle is then eligible to receive an unpaid toll notice to their registered address.

We do not have access to these details held with the Department of Transport and Main Roads, and the fees in doing so are passed on to the registered owner for failing to make payment as required.

As a result of sporadic top ups, you did not pay for your travel within 3 days and did not appropriately respond to the toll notices you received.

Please understand that we are not obliged under any circumstances to provide any reduction or waiver.

Queensland Motorways will have been deemed to have:

- Provided ample opportunity and notification for tolls to have been paid, including notifications that your account was suspended
- Searched and attempted to apply the tolls to a valid account/pass to avoid toll notices
- Could not apply the tolls as the account was suspended
- Legitimately issued all toll notices in accordance with Queensland State law
- Correctly issued all toll notices to the address the registered owner has supplied under the Registration Act

While you may feel that the additional fees should not be applicable to you, it is important that you understand that you will be in breach of Queensland State law by not making payment for the demand notice in full by the due date.

Your correspondence does not support grounds for a waiver, and since we are not obliged to offer a waiver in these circumstances, our response is appropriate.

The current balance outstanding for toll notices issued for [0****C] at the time of my response is \$3180.89.

It is recommended that you make payment for this amount.

You are cautioned that failing to make payment, you will be subject to further infringements of \$154.00 for *each* unpaid Demand Notice issued by the State. These Infringements are further enforceable by the State as it is a traffic offence (toll evasion) and may impact on your driver's licence.

I acknowledge further that you wish for the matter to be mediated by the Tolling Customer Ombudsman (TCO). It may interest you to note that the TCO has previously mediated on similar "account suspension" related complaints and found

that Queensland Motorways/go via have acted fairly in accordance with the law. These decisions are published on his website www.tollingombudsman.com.au.

You are welcome to, after this correspondence to seek advice from the TCO, and I will be happy to confirm my response that you are liable for all amounts.”

2 Mr EL’s complaint was acknowledged by the TCO on 13 January 2014 and forwarded to QML for response.

3 On 15 January 2014 the TCO received copy of QML’s response to Mr EL as follows:

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

Queensland Motorways have thoroughly investigated your complaint and [Name] has provided our response on the 16th December 2013, which you attached and supplied with your complaint to the Tolling Customer Ombudsman (TCO) on the 10th January 2014.

As you are not satisfied with this outcome, I now request the Tolling Customer Ombudsman (TCO) to make a recommendation with a view to closing this complaint.

Please note that the TCO’s decision is binding on Queensland Motorways Limited if the decision is not made in our favour. The decision of the TCO does not bind you as our customer to accept this decision and you may still pursue other avenues of complaint resolution should you feel it necessary to do so.”

4 Mr EL emailed the TCO on 16 January 2014 as follows:

“Im just a little confused on why you are saying that you have forwarded a copy of my complaint to the customer relations team at GoVia for a response, when I have already gone through the appropriate a,b steps you mentioned in your email & I already got a negative response from them, hence the reason why I have now brought this to your attention. I just want to mention briefly that I was always topping my account up when my tag would beep twice, so wether or not there was a mechanical fault with my tag maybe from loss of battery or heat damage from being in the sun for long periods of time, that could of been a factor for a late beep delay, hence the reason why it seemed like I was not topping my account up in time, I also would like to mention that I have recently spoken to my local Caltex service station attendant, asking them of the time frame there machine would take to process my payment to top my GoVia account up & they said it would take up to 24hrs to 48hrs for it to show on my account. So in keeping these 2 factors in mind, I thought I was following the correct procedure but obviously not. My main issue is that I still paid my GoVia account regardless of what GoVia is saying. My account is in credit but GoVia is saying they want me to repay all of my tolls dated back from June 2013 till now, plus an additional administration fee on top of every single notice all over again, which I find very unfair as I have already paid them once before by topping up my account up, even if it was late in there mind & on there account records. They are obviously trying to rip me off, plain & simple. So what do you recommend my next step is from here???”

5 By email of 20 January, the TCO process was set out:

“The TCO, like all ombudsmen, must have a process that is open, transparent and fair to both the relevant tolling business and their customers. Accordingly, it is necessary for me to ensure to my satisfaction that the parties understand the nature of the dispute between them and have had the opportunity to comment on all aspects of it before seeking to resolve it.

This involves a process where I require the relevant tolling business to put in writing to me their response to your complaint and to give you the further opportunity to comment on it. This means there is no misunderstanding.

A Resolution Adviser from the relevant customer resolutions group would usually make contact to resolve the matter directly with you. However, they may elect to communicate via this office. In that case, on receipt of a response from the Go Via Customer Relations team I will again review your complaint.”

6 That same day QML responded to the TCO:

“I ask that you make an independent decision, in relation to this complaint.

Queensland Motorways responded to [Mr EL’s] email complaint that was sent to Customer Relations on the 12th December 2013, and responded appropriately with the attached response on the 16th December 2013.

- [Mr EL] has not complied with Govia Terms and Conditions with maintaining his Pre-paid Govia account [***299] with sufficient credit to cover use of tolls. [Mr EL’s] Govia account has repeatedly been suspended due to negative credit.
- By admission of [Mr EL’s] email sent to Customer Relations on the 12th December 2013 (copy attached) , has confirmed that he had received our administration notices, but assumed was a reminder to top up his Govia account [***299]. [Mr EL] had not made any contact to enquire why administration notices were being received, until he contacted our contact centre on the 12th December 2013.

I can confirm that there has been no change to the response we sent to [Mr EL] on the 16th December 2013, and that the full balance outstanding on the NAT account [***232] vehicle registration [0****C] remains as of this response \$3180.89.

Queensland Motorways resolution recommendation, as per advise to [Mr EL] on the 16th December 2013, is by payment of the balance that is outstanding.”

7 On 21 January 2014 this correspondence was forwarded to Mr EL, seeking his advice as to whether he wished the TCO to make a formal Determination in this matter.

8 On 23 January 2014 Mr EL responded:

“Ok, I have read the emails you have sent me & feel like know one is obviously listening or taking my side of the matter into consideration. Like I said in my previous emails, I have already paid my GoVia account, which is in credit. I do not understand why GoVia is stating that they suspended my account when they never made me

aware of that ever happening I can not believe GoVia is being very selfish in this matter. Obviously trying to make me & everybody else in the same position as myself to pay them more money for no reason.”

9 Mr EL further emailed the TCO on 24 January 2014 as follows:

“I also have statements that clearly show that I was making payments & that I was in credit. I will be seeking legal advice from here.”

10 The TCO responded on 29 January 2014:

“I acknowledge receipt of your email and note its contents.

I await further correspondence.”

11 On 3 February 2014 Mr EL emailed the TCO:

“Thank you for your correspondence to date and yes, I wish to have the Ombudsman make a determination of the matter. Apart from the making of the determination, I would appreciate it if your office could get Queensland Motorways to provide me with a breakdown of exactly what it is that they allege I owe them and how the amount is broken down into tolls and charges as I have not been able to get a straight answer from anybody at Queensland Motorways, in fact, I have had conflicting information.

I believe that given the fact that there was a misunderstanding as to what would happen with my top ups, and my lack of understanding of the fact that each unpaid toll incurred an administrative charge, I would consider it reasonable for Queensland Motorways to waive each and every administrative charge that has been placed on each unpaid toll. It is my understanding that where such charges are of a punitive nature, such as in my circumstances, then these charges ought to be waived as there is no justification for them as Queensland Motorways can surely not justify them as legitimate costs and they are only a penalty and I have been told that Queensland Motorways has no authority to impose a penalty.

Thank you for your attention to this matter.

I look forward to your response.”

12 The TCO responded on 5 February 2014 as follows:

“I acknowledge receipt of your email of 3 February 2014. As it appears that this matter will not be resolved by conciliation, I will now proceed with making a written Decision.

In the meantime I will request Go Via to provide a breakdown of the tolls and fees outstanding. On receipt of this information I will commence writing the formal Decision.”

13 On 7 February 2014 QML responded to Mr EL, together with attachments, copied to the TCO:

“As requested, please find attached system records showing evidence of;

- Chronology of tolls without a valid account or pass, and a running balance of fees as a result
- All unpaid tolls as a result of No Arrangement Travel (NAT) i.e Account Suspension
- Dates of all notices issued to the registered owner of [0****C]
- No payments ever recorded for the 138 Notices issued to the registered owner of [0****C] since the 19th of June 2013
- Failed responsibility of the driver of [0****C] to maintain credit appropriately on **go via** account [***299] to cover all toll travel, hence the application of tolls to NAT reference [***232]
- The duration of suspensions
- The final balance payable as a result of No Arrangement Travel

Attached also is a copy of one of the 138 notices issued for [0****C] for travel on the Queensland Motorways toll network, as an example of where the notices were issued to. I confirm this same address at [location] is also on the **go via** account.

While you may have topped up your account eventually, our tolling processes require you to make payment for your tolls within 3 days. The driver would have passed the “3 days to pay” sign on numerous occasions over the course of months. I therefore do not accept that you were not aware of your obligations.

As you have not provided valid reasons for the waiver of fees, other than a “misunderstanding” on your part which you failed to clarify with Queensland Motorways, my decision stands and the amount of \$3180.89 is payable.

I will now await the TCO’s decision and will oblige the outcome.”

- 14** On 10 February 2014 Mr EL provided the TCO with the following information, which was acknowledged on 11 February 2014:

“I have GoVia statements that clearly show I was making payments from 01.Jun 2013 to 01.Jan 2014

What I payed from 01.Jun 2013 to 01.Jan 2014:

Date: 16 May 13 - \$50.00 cr

Date: 24 May 13 - \$50.00 cr

Date: 01 Jun 13 - \$50.00 cr

Date: 07 Jun 13 - \$50.00 cr

Date: 27 Jun 13 - \$50.00 cr

Date: 12 Jul 13 - \$50.00 cr

Date: 29 Jul 13 - \$50.00 cr

Date: 09 Aug 13 - \$50.00 cr

Date: 22 Aug 13 - \$100.00 cr

Date: 13 Sep 13 - \$100.00 cr
Date: 18 Sep 13 - \$50.00 cr

Date: 02 Oct 13 - \$50.00 cr
Date: 09 Oct 13 - \$50.00 cr
Date: 21 Oct 13 - \$25.00 cr
Date: 27 Oct 13 - \$50.00 cr

Date 11 Nov 13 - \$50.00 cr
Date 30 Nov 13 - \$25.00 cr

Date 05 Dec 13 - \$25.00 cr

My account has been in credit of \$46.16 since Dec 13 to today

I would like to mention again that I was not aware of the 3 day rule & I have also looked out for the apparent signage that tells drivers to pay within 3 days & I did not see no signage stating GoVia's claims along the Logan M1.

Thank you for your attention to this 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.
- 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 other outside bodies.
- 18 The factual background to this dispute is adequately set out in this document and I do not intend to recite it as both Mr EL and QML understand the issues in dispute.
- 19 Mr EL said he did not realise that he would be charged administration fees if his account fell outside its payment terms. He acknowledges that he received notices from Go Via but believed that they were just reminders.

- 20** Whilst appreciating Mr EL'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. Despite this, his account was repeatedly suspended due to negative credit.
- 21** Go Via acted in accordance with its procedures and rights under its agreement with Mr EL in the administration of his account when seeking to recover its tolls. Mr EL has raised the issue of the quantum of the fees charged. It has been explained that the administration fees charged are fixed in consultation with the State Government. I cannot review such fees.
- 22** I recommend that Mr EL makes arrangements to pay the outstanding monies.

Michael Arnold
Tolling Customer Ombudsman

Dated: 6 March 2014