

DECISION

Background

- 1 The complainant, Mr K, first made a complaint to the Tolling Customer Ombudsman (TCO) on 27 December 2012, as follows:¹

“Despite repeated attempts, Eastlink, Citylink and now Victoria Police have not resolved a complaint I have made and in respect of which I now seek your assistance.

My complaint relates to two allegations of travelling on an EastLink toll road without being registered to do so. Both occasions of travel are admitted and the circumstances relating to each are identical. However, for reasons that have not been explained, one toll has been withdrawn whereas the other has not.

I attach a copy of my letter setting out the circumstances in which the travel occurred. I also attach copies of the latest correspondence from Victoria Police. In summary, the vehicle was registered at the time for travel with CityLink. However, the vehicle number plates had been stolen and new number plates were on the car at the time of travel. Upon receipt of a toll invoice, I contacted CityLink to arrange a credit of the tolls to my account and was assured that all outstanding tolls had been paid.

I have today phoned CityLink, EastLink and Victoria Police and they have each stated that they cannot assist. CityLink say call EastLink. EastLink say call Victoria Police. Victoria Police say the matter may only be dealt with by Court. Curiously, none of these organisations has at any stage suggested this dispute may be referred to your organisation. Victoria Police even suggested the more appropriate forum is Court.

Would you kindly review my letter and the non-responsive letters from Victoria Police and let me know what steps your office can take to attempt to resolve this dispute. Please confirm that no further action will be taken in relation to this matter until the completion of your investigation.

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

Please acknowledge receipt of this email.

- 2 Mr K's letter addressed to Civic Compliance Victoria (CCV) dated 17 September 2012 is set out below:

“Re Obligation Nos [679] & [***324]***

*I write to respectfully request these infringement notices be withdrawn for the reasons I set out below. The notices relate to a Holden Vectra motor vehicle driven by my girl friend [Ms T] registration no [***583] through Eastlink in late June or early July. The notices are respectively dated 26 June 2012 and 3 July 2012.*

Shortly prior to these trips, one number plate was stolen from [Ms T's] car whilst parked in a private secure car park at [address]. I attended the [location] Police station with [Ms T] in or about May 2012 when she reported the theft. Upon advice from the Police, she also reported the theft to VicRoads who subsequently issued new number plates with the current registration number.

*For some years [Ms T's] car has been registered to my account at City Link, account number [***014]. Neither of us travel on the toll roads often, maybe once every two months at the most. I don't have etags in the cars registered to my account mainly for security reasons in that I have a (probably misplaced) fear that the tags might be stolen and someone will incur substantial fees on my account without me being aware until I review the quarterly account statements. Additionally, it only costs 75c or so to travel without the etag and I am content to incur that additional cost.*

When [Ms T] travelled through East Link on the occasions that gave rise to the above obligations notices there were no etags in her car by which her travel could have been credited to my account. Due to the infrequency with which we both use toll roads, it did not occur to me to notify City Link of the change in the registration details for [Ms T's] car.

Subsequently [Ms T] received various tax invoices and other documents relating to travel on both East Link and City Link. She requested I arrange payment of them given that only I could access my account at City Link. I mistakenly thought that I could simply call City Link and pay all outstanding fees, not realising that the East Link fees would not come through to my City Link account. So, I called City Link and paid all outstanding fees they had recorded. Based on the charges I paid (approx \$25) it appeared to me that the 4 trips [Ms T] had taken, two on City Link and two on East Link were all paid for. I also queried the City Link operator about these fees and asked for a break up of the charges. The operator was extremely short with me when I made the request and read through the details of each trip at great speed. Whilst I asked her to repeat the details more slowly, it did not occur to me and

I was certainly not assisted by the operator to recognise that I also needed to call EastLink. At the time of the call I also requested my account be updated to record the new registration details for [Ms T's] car.

Shortly thereafter on 22 July 2012, I left for 2 months overseas holidays. I returned late last week, arriving in Melbourne on Saturday. Upon my return, [Ms T] handed me the above obligation notices. At some stage whilst I was overseas, I recall she advised me that East Link had contacted her in relation to outstanding fees. I told her to ignore the request as I had already arranged payment. I said if there were any further demands, I would respond to them upon my return from holidays.

If I can summarise then, I overlooked the need to inform City Link of the replacement licence plates for [Ms T's] car following the theft of one of her licence plates. Upon learning that fees had been incurred which were not being charged to my account, I contacted City Link to arrange payment of all fees. I thought all outstanding fees had been paid. Immediately upon my return to Melbourne I commenced investigating this matter culminating in sending this letter to you today, the first business day after my return.

For the above reasons, I request the obligation notices be withdrawn and my City Link account be charged with the original travel fees incurred by [Ms T].

I have requested [Ms T] sign at the foot of this letter to confirm that she consents to me contacting you in relation to this matter which of course concerns matters private to both her and I.

If you require confirmation of any of the above matters, such as the Police report of the licence plate theft, my communications with City Link or my overseas travel, I can provide those upon request."

3 The TCO's office acknowledged receipt the same day:

"I acknowledge receipt of your email of 27 December 2012. A formal response will be provided when the TCO office returns to full operations.

However I point out that when matters have been referred to Victoria Police and it becomes the subject of Infringement Notice proceedings I do not have jurisdiction over some matters.

I can assist consumers in some instances by providing a letter of support that could be presented to a Magistrates Court if I believe it is appropriate.

I cannot restrain Victoria police or the Courts from action but will forward details of your complaint to CityLink and EastLink for further response."

4 On 9 January 2013 the TCO again responded to Mr K and the complaint was logged.

5 Mr K is a CityLink accountholder. The travel undertaken the subject of this complaint was on the EastLink toll road. Thus issues of interoperability arose between CityLink and EastLink. Accordingly, EastLink was involved in the complaint resolution process.

6 On 15 January 2013 EastLink sought further information from Ms T ([Name of Mr K]), copied to the TCO:

“As you may be aware, [Mr K] has raised a complaint with the Tolling Customer Ombudsman which has been referred to EastLink for further investigation. As we have not previously dealt with this matter, we would like to take this opportunity to address the concerns raised.

We have given the complaint Reference Number CRT [No] and require your authorisation to disclose any information regarding your Toll Invoices to [Mr K].

To confirm your authorisation in this instance, we require your reply to this email confirming the Licence Plate Number on your vehicle, your full name and postal address. Once we have this information, we will be able to respond to [Mr K] freely regarding the issue of Toll Invoices which have progressed to Civic Compliance Victoria.”

7 The requested information was provided by Ms T.

8 EastLink responded to Mr K, copied to the TCO, as follows:

“We have completed a full investigation into your complaint regarding receipt of two Infringement Notices from Civic Compliance Victoria for travel on EastLink and wish to advise you of the outcome.

*CityLink have advised that Licence Plate Number [***583] was not registered to CityLink Account [***014] until the 8th of July, 2012. This means that at the time of travel on Original Toll Invoices [***949] (date of travel - 9/06/12) and [***970] (date of travel – 10/06/12) this Licence Plate Number was not registered to travel on EastLink and these invoices were issued correctly.*

*Original Toll Invoice [***949] was issued to [Mr T] at [address] on 26/06/12 with a due date of 10/07/12. As we did not receive payment or nomination for the invoiced travel, an Overdue Notice was issued on 17/07/12 with a due date of 28/07/12.*

*Then Original Toll Invoice [***970] was issued to [Mr T] at [address] on 3/07/12 with a due date of 17/07/12. Once again we did not receive any payment or nomination information by the due date, so an Overdue Notice was issued on 21/07/12 with a due date of 04/08/12.*

On 25/07/12, [Mr T] contacted EastLink and advised that she was going to ignore these Overdue Notices as she believed they had been transferred to a CityLink Account. The EastLink Customer Service Operator advised [Ms T] that if these Overdue Notices were ignored they may progress to Civic Compliance Victoria and Infringement Notices may be issued.

As we still didn't receive payments for the invoices above by their respective due dates, two trips progressed to Civic Compliance Victoria. As [Mr K] was advised on 17/09/12, once travel has been referred to an Enforcement Agency, the matter is out of our jurisdiction. To dispute an infringement notices, you must submit a written application including the Obligation and Infringement Notice Numbers for internal review to:

Civic Compliance Victoria
GPO Box 1916
Melbourne Vic 3001

As Civic Compliance Victoria are the only party whom hold any jurisdiction in this matter, should you require any assistance with your Infringement Notices you must contact Civic Compliance Victoria directly on 03 9200 8111. If you are not satisfied with the response you receive from Civic Compliance Victoria, you must then follow their dispute process and possibly have the matter heard in court."

9 EastLink then notified the TCO in the following terms:

"We now consider this complaint closed as we no longer have any jurisdiction over the matter. We have referred [Mr K] and [Ms T] to CCV directly to further their dispute."

10 CityLink provided a response to the TCO on the issues raised in the complaint. This was communicated to Mr K on 18 January 2013 as follows:

"The TCO has received the following response from CityLink:

*"I have investigated [Mr K's] complaint in relation to [Ms T] receiving two Infringement Notices for vehicle [***583], when she travelled on EastLink. My investigation shows the following:*

VEHICLE [*583]**

- Vehicle [***583] was detected travelling on Eastlink on 09/06/12 at 12:10 pm and also on 10/06/12 at 13:06 pm
- Vehicle [***583] was linked to CityLink Account [***401] on 18/07/12 **after** the travel on EastLink
- Vehicle [***583] was removed from the Account on 14/09/12
- There is no tag detected travel on either dates of travel

- The CityLink Account was fully active and would have accepted the charges had the vehicle been linked to the account at the time of travel.

EASTLINK TOLL NOTICES

[Mr K] indicated he did not advise CityLink of the registration change after the original plates were stolen. He also states when he called CityLink, he asked for all travel to be transferred to his account including EastLink travel. I cannot find any notes on the CityLink account outlining this request. Additionally this is not something CityLink is able to do. A request to transfer EastLink Toll Notices to a CityLink account must be made by contacting EastLink.

CITYLINK LATE TOLL INVOICES

The list below shows payment dates for CityLink Late Toll notices (LTis) that were paid. I can confirm there are no outstanding LTis at CityLink for this vehicle.

LATE TOLL INVOICE NUMBER	DATE OF PAYMENT
[**767]	23/10/2012
[**298]	11/10/2012
[**234]	06/06/2012
[**815]	13/06/2012
[**546]	02/11/2012

INFRINGEMENT NOTICES

Infringement Notices were issued to the registered owner of the vehicle when no payment was received for the CityLink LTis or EastLink Toll Notices. As Infringement Notices are issued by Civic Compliance Victoria (CCV), CCV is the body who decides whether it is appropriate to withdraw Infringement Notices or not. Toll Operators such as CityLink and EastLink do not have visibility of CCV's decisions, therefore I am unable to comment on this.

SUMMARY

The vehicle was not linked to the account at the time of travel. As a result, we have been advised EastLink issued a Toll Notice and subsequent Reminder Notice. As neither of these invoices were paid, the details were passed on to the Victoria Police, as required by legislation. I have also been advised EastLink contacted [Ms T] prior to sending the information to the Victoria Police. [Mr K] says he thought the matter was resolved and did not contact EastLink to check the status of the Toll Notices."

I would ask that you provide a response.

Also on file is copy of EastLink's email response to you dated 15 January 2013."

11 On 23 January 2013 CityLink emailed the TCO:

"CityLink have recently received an email from [Mr K] requesting a copy of the call recording made in July 2012 relating his request to transfer Toll invoices from EastLink to his account. As I had been dealing with the investigation previously, it has been forwarded to me for response. I believe that it would be more appropriate if you respond to him, as this request is related to the case I recently forwarded to you. Thank you in advance for your assistance.

Could you please advise [Mr K] there are no recordings of the call he made to CityLink. Additionally CityLink may record a call for training purposes only and these calls are kept a limited time only. Unfortunately CityLink are unable to fulfil his request."

12 The TCO communicated this information to Mr K in the following terms:

"I refer to previous correspondence in this matter.

CityLink has informed me that you recently requested a copy of the call recording made in July 2012 relating to your request to transfer toll invoices from EastLink to your CityLink account.

In this regard, CityLink further informs me that at present:

"...there are no recordings of the call he made to CityLink. Additionally CityLink may record a call for training purposes only and these calls are kept a limited time only. Unfortunately CityLink are unable to fulfil his request."

I understand that CityLink is planning a future enhancement of their recording facilities.

On receipt of a response to my email of 18 January 2013, I will again review your complaint."

13 On 7 April 2013 Mr K responded to the TCO:

"I have lost track of where this matter is at so let me summarise my understanding of the current status.

In January I wrote to Civic Compliance and requested this matter be dealt with by the Courts.

At about the same time, you or someone from your office suggested that whilst you could not interfere with the Court process, you could assess the situation and provide a letter to be handed up at Court which might be of assistance.

EastLink have emailed stating that they accept no fault. I agree, except to the extent that CityLink are their agents, and it is the conduct of CityLink that I am critical of.

CityLink have emailed to say that they have no recording of a conversation with them in July last year.

My allegations remain unanswered and if CityLink have no recording of the phone call, then they also have little basis to challenge my recollection of the discussion as follows:

When I spoke with the CityLink operator, I said I wanted to pay outstanding tolls. My recollection is that I said both EastLink and CityLink tolls, but I wanted to listen to the recording of the conversation to ensure my recollection was accurate. When the girl told me the total charges, I asked her to tell me the break down so that I could confirm that the charge was consistent with my understanding. The girl then responded at such speed and with such a tone in her voice reading out what I recall were entry and exit points from toll ways and times and dates which meant little to me and bore little resemblance to the ultimate destinations to which my girl friend had travelled. I asked her politely to slow down and repeat her answers and ultimately she did so, but by that stage any chance of a helpful informative discussion had been lost. She read out the tolls, the amounts charged sounded normal and I requested payment be made.

What I would expect is that CityLink operators would act in accordance with the Customer Charter which says,

- | | |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Good customer service | <i>You can expect friendly and efficient service from CityLink. If there is a problem we will fix it, most of the time during the first contact. We will recognise any mistakes we make and ensure that any incorrect charges are rectified.</i> |
| Easy access | <i>We will make it easy to buy a pass, make payments and ask questions at any time. There is a choice of places and ways to pay or talk to us throughout Victoria.</i> |
| To listen and improve | <i>Whether you buy a pass or have an account, if your vehicle is registered with CityLink you can expect accurate tolling.</i> |

Clear, concise communication and information

As a customer, you can expect clear and friendly communication that helps you understand your account, toll pricing and how to get the most out of using CityLink. For first time travellers, we will make sure information about CityLink is available throughout the tourism industry and that the Link is clearly signposted.

Swift problem resolution and independent review

With our own Customer Resolutions Group and the Tolling Customer Ombudsman for independent review, you can expect any problems to be treated swiftly and fairly.

The operator should have helped me by explaining to me that the travel took place on EastLink toll roads and that, if it was the case, she could not process my request. She acted in breach of the Charter in failing to do so resulting in the tolls remaining unpaid and penalties escalating.

I am happy to pay the original tolls as I always have been but not the penalties.

I note that one of the tolls has been withdrawn but not the other and no explanation has been offered as to why.

This matter has dragged on for nearly 12 months during which time I have paid to CityLink what I guess must be \$1000s in tolls. It has hardly been treated swiftly, clearly, fairly or in a friendly manner.

Unless the remaining charge is withdrawn immediately and I receive written confirmation to that effect, I will refer the Court to this email and other emails and seek an order that my costs be paid at my professional charge out rate which, in my practice, is \$330 per hour."

14 On 17 April 2013 the TCO acknowledged receipt of the above response and sought comment from CityLink on the issue raised.

15 On 29 April 2013 CityLink responded to the TCO as follows:

"Thank you for forwarding [Mr K's] concerns below. I've attached my previous response in which I've answered [Mr K's] questions. There doesn't appear to be any new issues raised in the email below, apart from the reference to our Customer Charter.

I acknowledge [Mr K] believes we did not live up to our Customer Charter promises. I apologise our service did not meet his expectations. Clearly, we aim to provide effective, efficient and friendly service, as well as making sure we act professionally in answering questions and resolving issues. It's unfortunate we don't have a call recording available for the discussion [Mr K] has referred to, as this would allow me to give a more accurate response as to how we met or did not meet the Customer Charter promises.

I reiterate the Toll Notices being disputed are all for EastLink travel. This is not information CityLink's Call Centre Agents would have access to at the time [Mr K] called us, as it was not travel on our road."

16 The response referred to the first paragraph of the above quote is set out in paragraph 10 in this Decision.

17 CityLink's response of 29 April 2013 was forwarded to Mr K on 2 May 2013. The TCO concluded:

"I will continually raise the issue of customer service with the toll road operators and shall refer to it in my next six-monthly Review, which can be found on my website."

18 Mr K responded to the TCO, copied to CityLink:

"In its response, CityLink says,

I reiterate the Toll Notices being disputed are all for EastLink travel. This is not information CityLink's Call Centre Agents would have access to at the time [Mr K] called us, as it was not travel on our road.

But that is precisely what CityLink holds itself out as doing. It acts as the agent of EastLink to collect EastLink tolls which they do have access to by debiting my CityLink account with those EastLink tolls.

EastLink is bound by CityLink's mishandling of this matter and, if I am right, its continuing mishandling of the matter by its email below.

Moreover, a significant period of time has now passed making it almost impossible to recall with precision what occurred.

Please give both these companies a direction to drop this claim."

19 On 6 May 2013 the TCO emailed Mr K as follows:

"I acknowledge receipt of your email of 2 May 2013.

The response to which you refer is in relation to your allegation of poor service.

The crux of the dispute and CityLink's response in relation to the non-payment of tolls is contained in the TCO's email of 18 January 2013, copy of which is attached."

20 On 6 May 2013 CityLink responded to the TCO as follows:

“Thank you for forwarding [Mr K’s] response to me. [Mr K] has raised no new queries and has been responded to in regards to the EastLink travel. I can add no further comments in regards to this query. It is important to note that EastLink contacted [Mr K’s] girlfriend for payment and they elected to not pay the Toll notice. It is also important to note, they did not contact CityLink or EastLink to see if everything was correct after receiving the call from EastLink as you would have expected.

If you can think of anything more I can provide to [Mr K] please let me know, as I believe this matter has been answered and unless he supplies new evidence in his claim CityLink have no further response.”

21 Mr K responded to the TCO:

“I understand what is the crux of the dispute. Please advise if your organisation can assist to resolve the dispute.”

22 On 7 May 2013 the TCO notified Mr K and CityLink as follows:

“As it appears that this matter will not be resolved by conciliation, I believe it is appropriate to provide a written decision in this matter.”

Decision

23 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.

24 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.

25 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 CCV or other outside bodies.

26 This is a dispute that has arisen following the failure of Mr K or his friend, Ms T, to pay certain toll fees in relation to the use of EastLink toll road.

27 Mr K had a CityLink account. He stated that he acted on the misapprehension that he had paid all outstanding toll fees when he paid monies owing to CityLink. This was not the case. It is apparent that opportunities had been provided to Ms T to resolve the issues with EastLink but this was not done prior to the referral of its outstanding tolls to CCV.

28 As a consequence of the failure of Mr K or Ms T to pay the toll fees, they were referred to CCV for collection. This was explained in communication to Mr K on 18 January 2013:

SUMMARY

The vehicle was not linked to the account at the time of travel. As a result, we have been advised EastLink issued a Toll Notice and subsequent Reminder Notice. As neither of these invoices were paid, the details were passed on to the Victoria Police, as required by legislation. I have also been advised EastLink contacted [Ms T] prior to sending the information to the Victoria Police. [Mr K] says he thought the matter was resolved and did not contact EastLink to check the status of the Toll Notices."

29 I cannot be satisfied that either EastLink or CityLink was responsible for Mr K's situation in this matter. Accordingly, it is appropriate that Mr K seek to resolve issues with CCV or the Magistrates' Court.

Determination

30 The complaint is not upheld.

Michael Arnold
Tolling Customer Ombudsman

Dated: 17 June 2013