

DECISION

Background

- 1 The complainants, Ms W and Mr B, first made a complaint to the Tolling Customer Ombudsman (TCO) on 18 July 2012, as follows:¹

“Please find below, forwarded emails between myself and [GF] of Citylink.

In December last year [Mr B] and I borrowed a car from [Name] in the view of purchasing it which we did in March of 2012.

We had not yet had an opportunity to register the vehicle in our name with VicRoads however we called Citylink on 23 December 2011 to request that they register the vehicle on our account. We also requested an Etag for the vehicle at this time.

On 25 January 2012, Citylink suspended our account without any notification received by us.

On 12 May 2012, [Mr B] was advised by the previous owner of the vehicle that they had received invoices from Citylink and could we pay them. [Mr B] subsequently called Citylink who advised that the account had been suspended and payment of \$155 was needed so sort out all outstanding matters with the account. [Mr B] paid \$155.

On 28 May 2012, [Mr B] received a letter from Citylink suspending his account without any prior notification. [Mr B] called Citylink and was advised that his account should not have been suspended and someone would call him back. I call back was never received.

On 6 June 2012, [Mr B] called again and was told he would receive a phone call back. A phone call was never received.

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

On 20 June 2012, [Mr B] received a letter from Geoffrey Mendelson Lawyers detailing a debt of \$83.07. He then called Citylink who could not answer any questions put to them regarding the matter.

As a result of the above i was then referred to [GF] of Citylink. [GF] has advised us that Citylink sent notifications of the suspension of our account and that they do not need to provide proof of this.

Could you please confirm that this is correct?

I understand that you are not able to deal with Infringement Notices. However, if our account was not suspended none of the Infringement Notices would have been issued.

I look forward to your response regarding this matter. Thank you so much.”

- 2 The correspondence was acknowledged by the TCO on 19 July 2012 and forwarded to CityLink for response.
- 3 On 20 July 2012 CityLink wrote to Ms W in the following terms:

“Thank you for your recent enquiry, referred to CityLink by the Tolling Customer Ombudsman.

As the Ombudsman’s office advised, your matter has been referred to Customer Resolutions, a specialist group within CityLink responsible for finding solutions to any issues our customers may face.

We appreciate you taking the time to bring the issues raised to our attention. If you have been contacted already, I hope your concerns have been addressed. If you have not been contacted, you should receive a response within the next seven days.

If you continue to travel on CityLink during our investigation, please ensure payments are made towards your account to cover travel and prevent account suspension. If your account is suspended during this period and Late Toll invoices are subsequently issued, please pay these in full by the due date. CityLink can then apply any appropriate adjustments once the Tolling Customer Ombudsman and our investigation is complete to ensure a reasonable outcome is achieved.”

- 4 On 20 August 2012 Ms W wrote to Resolve at CityLink, copied to the TCO, referring to CityLink’s email quoted above:

“I am yet to receive any sort of communication from you regarding the below.

Please respond as requested by the Tolling Ombudsman.”

5 On the same day, Ms W addressed the TCO as follows:

“The emails that i forwarded to you were from the CityLink Customer Resolutions department therefore i do not understand why this matter can not be dealt with.”

6 The TCO responded to Ms W:

“I acknowledge receipt of your email below and email addressed to “Resolve”, copied to the TCO.

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 Resolutions Advisor from the relevant tolling operator 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 CityLink Customer Resolutions team I will again review your complaint.”

7 On 21 August 2012 Ms W wrote to CityLink, addressed to the Manager – Customer Resolutions, copied to the TCO, as follows:

“I received this same email on 20 July 2012 and am yet to hear from you.

Could you please respond as soon as possible.

...

On 21/08/2012, at 11.15 AM, Resolve [email address] wrote:

Dear [Ms W],

Thank you for your recent enquiry, referred to CityLink by the Tolling Customer Ombudsman.

As the Ombudsman’s office advised, your matter has been referred to Customer Resolutions, a specialist group within CityLink responsible for finding solutions to any issues our customers may face.

We appreciate you taking the time to bring the issues raised to our attention. If you have been contacted already, I hope your concerns have been

addressed. If you have not been contacted, you should receive a response within the next seven days.

If you continue to travel on CityLink during our investigation, please ensure payments are made towards your account to cover travel and prevent account suspension. If your account is suspended during this period and Late Toll invoices are subsequently issued, please pay these in full by the due date. CityLink can then apply any appropriate adjustments once the Tolling Customer Ombudsman and our investigation is complete to ensure a reasonable outcome is achieved.

Thank you again for your time and should you have any other concerns, please contact us on (03) 8656 8770.”

- 8 On 29 August 2012 CityLink responded to the TCO, providing the attachments as referred to in the email, as follows:

“Please find attached correspondences I have had with [Ms W].

- *We first received a dispute from [Mr B] on 28 May 2012 when he received Infringement Notices for his vehicle [***234] for travel on CityLink.*
- *I received a call from [Mr B] on 2 July 2012 when he advised me that he was too busy and could not attend to this. He nominated [Ms W] as a Secondary contact and advised that she would be calling me.*
- *Later that day (02/07/2012) I received a call from [Ms W]. She provided me with her contact details.*
- *3 July 2012 I sent a letter addressed to [Mr B] (please see first attachment).*
- *3 July 2012 I received an email from [Ms W] (please see second attachment).*
- *6 July 2012 I sent a reply (please see third, fourth and fifth attachments).*
- *6 July 2012 I received another email from [Ms W]. She wanted proof that the suspension letters (which I had attached in my previous email) were sent (please see attached sixth attachment).*
- *12 July 2012 I sent a reply (please see seventh attachment).*

Further investigation with our Mailing house confirm the all the mail was sent out correctly and within the dates.

Once again we would like to confirm CityLink is unable to assist with the receipt of Infringement Notices. In my email to [Ms W] dated 6 July 2012 I had attached copies of all suspension letters sent to [Mr B]. If as she has advised they did not receive these letters then they will need to provide this information to Civic Compliance Victoria.”

- 9 On 25 September 2012 Ms W wrote to the TCO requesting CityLink’s response to the TCO of 29 August 2012 be forwarded to her. The request was met on 26 September 2012.

10 On 26 September 2012 Ms W wrote to the TCO as follows:

“As per my very first email, does Citylink need to provide proof that the letters were actually sent?”

I'm really disappointed that it has taken this long to get this sort of response from both Citylink and your office. I understand that you are probably very busy with complaints but in my first email I asked one question to which i have still not received an answer.

From working as a law clerk I know that we had to log every piece of mail that came in and went out so that if there was any dispute regarding whether someone received a letter we would have proof. Does Citylink need to provide this proof? This is the basis of my complaint. We did not receive a suspension notice therefore i feel that the infringements should never have been issued.

Could you please respond as soon as possible. Thank you.”

11 On 27 September 2012 the TCO responded to Ms W:

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

I shall prepare a written Determination in this matter.”

12 The TCO sought information from CityLink’s mailing house as to the process followed in the mailing out of CityLink notices. The following response was received:

“The mailhouse for CityLink provides printing services for both consumer and commercial customers currently consisting of; Late Toll Invoices, Late Toll Reminder Letters, Tulla Pass Letters, Nominations, Automatic Payment Failure, Commercial Overdue, Low Balance Alert, Overdue Payments, Suspension Confirmation, Invoices, Statements and other Letters.

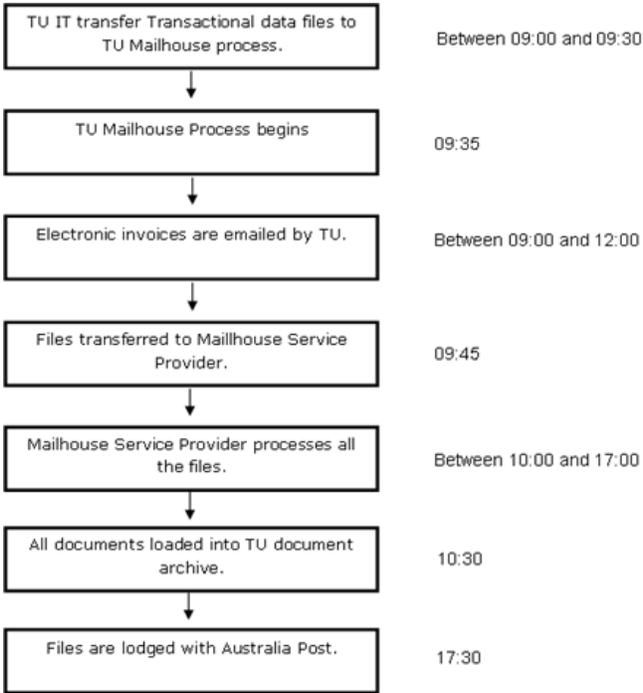
Mailhouse operates from Monday to Friday.

CC& B collects the information and then it goes to DOC 1 between 8:30 to 10AM.

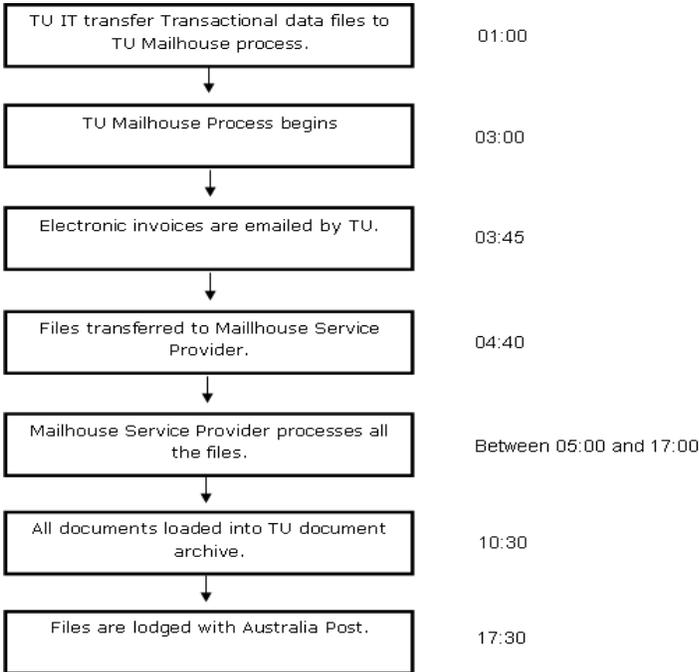
On a Tuesday DOC 1 picks up for the following day, so we are 1 day behind or there is a 1 day gap.

The next morning DOC 1 picks up at about 4:30 and sends the file off to ABNote and prints off that day then sends it to the customer the following day.

*The high level operational process associated with the Mailhouse Services
10:00 run:*



*The high level operational process associated with the Mailhouse Services
05:00 run:*



This is ideally what happens Monday to Friday. There are and have been instances were a customer can receive an Automatic Payment Failure and a Suspension Letter on the same day.”

- 13 The TCO has previously obtained information from Australia Post about the delivery of mail in the event of an incorrect address and received the following response:

"I refer to your recent letter concerning policies for delivering insufficiently addressed articles.

At the outset, please note that Australia Post makes every effort to ensure all articles are delivered correctly as per our customers' expectations. It is however, the responsibility of the sender to ensure that a letter is addressed accurately to enable Australia Post to deliver to the intended recipient.

Australia Post has an obligation to deliver mail as addressed – regardless of the name on the article, except where it is sent via the Person-to-Person service. Nevertheless, where an article's address is not clear, delivery staff will attempt to determine the correct particulars for the article by seeking advice from other staff or consulting the White Pages or Electoral Roll. Such items should be endorsed "Try" and opened in the presence of Australia Post staff if possible. While it is not possible to be certain what occurred with your article – as it was sent via a non-trackable service – it is our belief that this would have occurred. Where it is not possible to identify the intended party, the item is Returned to Sender."

Decision

- 14 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.
- 15 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 legislation such as the Melbourne CityLink Act 1995 / Transport Infrastructure Act (1994) can be accessed through Government websites.
- 16 The TCO is not a judicial body and does not have punitive powers. When making a decision it 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 CityLink and cannot determine matters in relation to allegations against Civic Compliance Victoria or other outside bodies.
- 17 After receiving all the CityLink Mailhouse material provided to me, together with the response from Australia Post, I am satisfied that CityLink has adopted proper procedures for the mailing of notices to its customers.

- 18 I cannot, in these circumstances, be satisfied that CityLink did not send all relevant notices to Mr B.

A handwritten signature in black ink, appearing to read 'Michael Arnold', written in a cursive style.

Michael Arnold
Tolling Customer Ombudsman

Dated: 14 March 2013