

DECISION

Background

- 1 The complainant, Mr BV, first made a complaint to the Tolling Customer Ombudsman (TCO) on 26 July 2014, as follows:¹

“In approximately November 2011 I obtained a new car and travelled through tolling points which I stupidly thought would go onto my tolling account. However it did not and I received letters in the post totalling over \$1000. I contacted qld motorways via email and organised to pay the debt (this is a issue as my laptop died and can't retrieve the e-mail correspondence or the name of the administration person I dealt with) and was told when you pay the debt we will add your vehicle to your current account. I paid the debt and assumed after this point my account would take care of things. I never received any letters regarding my account of any kind stating my account has no credit etc... But I started receiving more letters with demand notice, I take no notice assuming my account would take care of the fines however when the fines go to sper and start totalling over \$1000 and I can't renew my driving license I contact qld motorways who say we can't help you contact govia. I contact govia and find out that after I paid my previous issue as stated above my account had not been updated and my car wasn't getting charged to my account. At this stage I was very annoyed and am not interested in paying a reduced fee as was offered by the consultant who was becoming increasingly rude. Since this was an error by go via administration I felt I didn't deserve to pay any fees which now total over \$3000. I'm more than happy to pay whatever I use but not when it isnt my fault. And it's not like I'm driving the tolls for free as I use my transponder which only decides to work when it feels like and has credit on it, which also isn't my fault as I believe this is go vias problem with faulty devices as many other drivers also have this issue. As the calls keep escalating out of control I'm at a point where I can't talk to govia anymore without them being rude or myself getting so angry I hang up the phone. Im now at the point where my license is suspended have a \$3000+ fine cannot upgrade my license in anyway and need desperate assistance to resolve this issue otherwise I'm going to be out of a job and unable to support my family.
Your assistance in this matter would be greatly appreciated.”

- 2 The TCO acknowledged receipt of the complaint and forwarded same to Go Via for response on 29 July 2014.

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

3 The following exchange of correspondence took place on that date:

Go Via to Mr BV:

"Thank you for your email, forwarded to **go via** from the office of the Tolling Customer Ombudsman (TCO).

So that I may investigate further, please supply your vehicle registration number, toll invoice reference and **go via** account number."

Mr Vasen to Go Via:

"Thank you for your quick response, my rego is [3***i] and my second vehicle is [6***e]. I'm unable to obtain go via account numbers at present, if you need any further info I'll try and provide asap."

Go Via to Mr BV:

"Thank you for the further information.

Could you please confirm that the toll notices were issued only for [6***e]?"

Mr BV to Go Via:

"Yes I don't believe there is any for [3***i]"

4 On 30 July 2014 Go Via provided the following response to Mr BV, copied to the TCO:

"Thank you for your confirmation.

I have investigated your claims that the vehicle was not added as you requested.

Attached for all our reference is the email conversation between us in 2012. In my emails to you it was advised on two occasions that your **go via** account required a top up because it was operating outside of credit terms.

I also specified in my email on the 27th of September 2012:

*"As at the time of this response your account has an outstanding balance of \$70.93. Please make a top up to your account, adding further credit for future tolls as well."
"As also advised the registration [6***e] cannot be added to the **go via** account until the account has maintained a credit balance."*

We did not receive a top up until approximately three months later, and even then, the payment of \$60.00 was less than the figure quoted in the email. The vehicle had continued to accrue tolls, and the \$60.00 top up was insufficient to cover the outstanding. Thus the account remained in debit.

Here is the chronology of the account from that time:

Date	Description	Charge	Top Up	Running Balance
21/09/2012	Toll charge	\$4.04		\$66.03
21/09/2012	Toll charge	\$2.38		\$68.41
21/09/2012	Toll charge	\$2.52		\$70.93
27/09/2012	Toll charge	\$2.52		\$73.45
30/09/2012	Toll charge	\$2.52		\$75.97
30/09/2012	Toll charge	\$1.53		\$77.50
30/09/2012	Toll charge	\$2.52		\$80.02
22/12/2012	Manual Top Up Fee	\$1.08		\$81.10
22/12/2012	Payment Received - Thank you		-\$60.00	\$21.10
25/01/2013	Payment Received - Thank you		-\$107.57	-\$86.47

On the 25th of January 2013 we received a payment of \$107.57 towards your **go via** account that brought it into credit.

Reasonably the vehicle was not added, because it was not anticipated that it would be four months after our email before the account was managed within terms.

We depended on you to then notify us that you had followed our instructions and to confirm the vehicle addition of [6***e] (QLD).

As this did not occur, no changes were made to your account.

We sent 152 notices to recover the toll debt accrued by [6***e] (QLD), however the toll notices were not paid, hence the balance stands at **\$2921.27**.

By your admission you disregarded these notices despite the warnings on the notice that you should not ignore them.

Infringements are issued by the State government when these Demand Notices were unpaid.

It is recommended that you enter into arrangement with our collection agency to pay the amount owed to **go via** for the balance of \$2921.27.

Dun & Bradstreet is the agency assigned your case and they can be contacted on 13 23 33 (quote **go via** reference [5***1]).

Resolving this balance will provide you opportunity to contest *future* Infringements.

You will also need to arrange payment with SPER for your fines. I understand that they have the authority to lift the suspension of your licence when you have entered into a valid payment plan.”

5 Mr BV responded promptly:

“Thanks for the reply, this looks as though possibly I Havnt read the full email correctly, however why do you offer me to pay the bill down from \$1000 to \$500 and then you still try and charge me an outstanding balance, when this is offered to be removed if I paid the negotiated amount, which is said to have had a balance of zero after I paid your amount promptly. Then it looks like I have left the issue thinking it had been sorted out and then obviously received two bills to pay and paid them both because your bills are so hard to understand you don't know whether to pay or not because it doesn't actually say your account is overdue then you pay and still

recieve a letter the next week. I feel this is a big misunderstanding and not reading things properly. Just like when you say you still Havnt added the additional car to my account but Havnt informed me to do so we just assumed. I feel I have done the right thing and rectified an issue or at least tried to rectify to bring my account back to zero and your still trying to charge extra charges that I feel have been looked after already. I don't feel like this is fair and ask you to at least reconsider the amount owing. I'm more than happy to pay a negotiated amount as I'm sure you could understand not everyone has money lying around. I already entered into a payment plan so my payments will continue however only the final amount will be changed. Thanks again."

6 On 1 August 2014 Go Via replied to Mr BV as follows:

"Thank you for your response.

I appreciate that there was a misunderstanding; however we were not consulted at any time so we could explain it to you.

When payment was not received for the notices you disposed, we acted in accordance with legislation in issuing these notices to you.

I cannot assist with your debt to SPER or to the Tolling Offence Unit.

If you accept this debt of **\$2921.27** is to be paid, but cannot make payment in full, I am willing to discuss our options with our Debt Recovery specialists.

If we do enter into an arrangement for the debt owed to **go via** it is separate to any arrangements you already have with other entities.

Please let me know if you would like to check on the options available for you."

7 Mr BV responded on 11 August 2014:

"It seems as if you can't comprehend what I am saying and you are being very unreasonable. You cannot say pay x amount and your account will be zero, and then later on say "actually you also owe this extra amount on top" when in fact you say once you pay x amount your balance is zero which occurred. You are trying to double dip and now your trying to take me for a ride and now your saying I owe \$3000 to sper \$3000 to you collection agency. Do you actually know what is going on you wonder why people are getting confused here. And to say you can't do anything with my sper account is not correct because they told me all you have to do is contact them and advise the correct amount.

Please advise what your outcome is with this matter because I'm more than willing to take this matter further."

8 Go Via responded:

"Thank you for your email.

I have explained that any enforcement action for debts you hold with SPER is for fines/ PINs issued by the State government's Tolling Offence Unit.

These fines are issued as we have notified them (as we legally obligated to do so) that the Demand Notices we issued for your vehicle have not been paid by the due date.

Under Queensland legislation this is an offence.

I cannot assist with withdrawing these fines as you also confirm that you did not pay the Demand Notices by the due date as you were under the assumption that it would be paid using your **go via** account, but did not confirm with **go via**.

The remaining debt that has not escalated to PINs we can assist with, and arrange a payment plan through the collection agency.

If you do not wish for us to assist further in this respect, you may request for the TCO to provide conciliation in the matter.”

9 Mr BV wrote to the TCO on 28 August 2014:

“Im having no luck in coming to a suitable solution to my tolling issue I need some assistance to rectify my issues.”

10 Mr BV was notified of the TCO’s absence on leave. Subsequently, on 19 September 2014 the TCO wrote to Mr BV:

“I refer to previous correspondence and note its contents.

It would assist if you could clarify how much you owe SPER and whether it relates to travel not related to the amounts you owe Go Via. You should be able to work this out from the notices you received from each organisation.”

11 On 19 September 2014 Mr BV replied:

“Im not 100% on what you mean but I have approx. \$3000 sper fines all from govioa”

12 On 15 November 2014 the TCO emailed Mr BV as follows:

“I cannot relieve you of your responsibility to pay SPER fines under my jurisdiction. Please advise the state of any negotiation that you have had with SPER in respect to their fines.”

13 On 16 November 2014 Mr BV responded:

“1: im not a miss I'm a mr
2: my problem isn't with sper as I only had to go through sper so I could still drive
3: you are not doing your job properly and are flogging me off by taking go via side of the story and not listening to me
4: you can cancel anything I have outstanding with sper by telling go via to remove my outstanding fine and refund my money, sper has told me this
5: my main issue is with go via due to them saying and agreeing I had to pay x amount to remove all outstanding issues then turn around and try to say I still owe y amount even after I paid the amount they said along with the fact they never sent me notifications my account needs topping up all they sent is infringement notices plus

there equipment is faulty and does not go off accurately when driving through tolls. You think your doing the right thing however due to the poor admin procedures and terrible notifications they send you can't be sure when to pay or not to pay because they send something saying pay x amount one day then the next couple days you receive something saying pay amount when you think hang on I just paid that so you leave the second one and everything snow balls.”

14 On 2 December 2014 Mr BV wrote:

“Honestly when are going to listen to my concerns this getting ridiculous”

15 On 6 December 2014 the TCO wrote:

“Go via have offered to negotiate a payment plan in relation to their current outstanding accounts. They cannot negotiate for SPER which is a separate Government organisation.”

16 To which Mr BV replied:

“How can they do that in already in a payment plan I'm not paying them anything do you actually know what's going on here it seems as though you don't care about the little guy! You actually have to listen to me and not just listen to what go via has to say”

17 On 8 December 2014 the TCO wrote:

“I acknowledge receipt of your email. I believe that go via and the TCO are endeavouring to assist you with the payment of your outstanding tolls and fees but a proposal is required from you to facilitate this approach.”

18 Mr BV replied on 10 December 2014:

“I don't understand a proposal? Does that mean I offer a payment deal or plan of some sort?”

19 On 17 December 2014 Mr BV wrote:

“Honestly this is getting beyond a joke you write offering some deal then you never hear about it again I've already paid like 1000 I really think that is fair enough please sort this issue out ASAP”

20 On 20 December 2014 the TCO wrote:

“Could you please advise me what payment plans that you believe that I am on? I can then confirm with bodies.”

21 Mr BV replied:

“That doesn't make sense but Ive been paying sper \$80 fortnight since approx July”

22 On 8 January 2015 the TCO enquired:

“Can you clarify to whom you are making the payments.”

23 Mr BV responded:

“I already told you I’m paying sper \$80 fortnight”

24 On 19 January 2015 the TCO wrote to Mr BV in the following terms:

“I have reviewed your complaint and Go Via’s response.

It is apparent from the negotiations that there is not going to be an outcome with which you will be satisfied. Accordingly, I will make a written Decision.”

25 Mr BV responded:

“Why aren't they coming to the party for \$50 worth of fines they want \$3000 I've already paid them over \$1000. In actual fact I paid some of there bills off onto my actual account which has only now gone to zero after numerous tolling trips. They still haven't put my car onto my account because I've just relieved two letters saying there charging me \$25 per trip. They haven't sent a letter saying my account is overdue or anything all there about is money because there not making enough from people actually using the roads and tunnels! Surely they have some sort of wiggle room especially since my bill was paid in full nothing outstanding then they kept trying to say you owe more and more I just think it's unfair and not right! Maybe I'm to blame a little but they definitely are not Angels here either with poor billing processes they say they send letters but letters mean nothing if you can't understand what they mean! A simple your account is overdue letter would suffice I'm sure. Thanks in advance”

26 On 12 February 2015 Mr BV wrote:

“I’m still waiting for a response on this issue why won’t go via compromise or come to any sort of deal it seems thousands of people are in the same or similar boat to me this is getting ridiculous I’ve been willing to compromise or strike a deal but these guys don’t listen to anyone and don’t care they just laugh in your face. I really need this sorted ASAP.”

27 On 13 February 2015 the following exchange of correspondence took place:

TCO to Mr BV:

“Did you have discussions with the debt collectors as discussed in our telephone conversations yesterday.”

Mr BV to TCO:

“We havnt had any phone conversations”

TCO to Mr BV:

"I apologise. I had a number of conversations and I believed I had one with you about negotiating a settlement. I cannot compel go via to accept offers that are not acceptable. This matter can only be resolved by you making a reasonable proposal to go via for the amounts owing to them."

Mr BV to TCO:

"The problem is your on there side you havnt helped me out at all you are just believing whatever they tell you and my side of the story doesn't count to anything! I've paid more than \$1000 for a handful of toll offences I wouldn't have paid anything however they cancelled my license and I couldn't drive unless I started paying something! I was told pay this fine and that would be it but no go via decided to keep charging more money and still havnt sorted my account 3 years later. They have never sent a bill saying my account is overdue or I require to pay money onto my account all they did was send breach notices or outstanding fine notices that are so confusing no one knows what's going on because they never send you an account notice! You ring and talk to someone and all they do is say we have no record of your call or we sent you 100 letters whether you receive them or not! I thought you were suppose to help the little guy but it seems your just listening to govia and leaving me hung out to dry"

28 On 26 February 2015 Mr BV emailed the TCO as follows:

"Thanks for being proactive and actioning my concerns it would have been nice for a reply to my concerns!"

29 On 3 March 2015 the following emails were exchanged between Mr BV, the TCO and go via:

Mr BV to the TCO:

"This is the third time replying and still no response! I am willing to keep my repayments going until I have paid \$2000 which is more than half I have paid more than \$1000 already so at the point of reaching \$2000 I would cease payments! I believe this is a fair offer and considering go via won't negotiate at all and you (the ombudsman) won't listen to my concerns and only take go-vias side of the story. I could stop paying all together it's either go via accepts this offer or they pretty much recieve nothing more from me!"

TCO to Mr BV:

"I acknowledge receipt of your email and note its contents. I have forwarded it to go via for response."

Go via to Mr BV:

"We have not received any monies from you regarding this debt.

Please advise the agency you are paying."

Mr BV to go via:

"I've been paying sper"

Go via to Mr BV:

"Thank you for your confirmation.

As advised previously, we are separate agency from SPER.

I am not aware if SPER offers any settlements, however you should discuss this matter with them directly.

Go via and the TCO do not have jurisdiction on the matters of SPER which is a State government agency.

I do not recommend that you take matters into your hands and stop paying SPER, as it will likely result in the cancellation of your driver licence or other recovery.

The amount owed to **go via** as at today the 3rd of March 2015;

Your **go via** account (Ref: [5***3])

\$19.61 (pending suspension due to debit balance);

Toll invoices [6***e]

Ref: [5***9] **\$2921.27**

Ref: [6***2] **\$170.22**

You have not made any offers in respect of the above amount totalling \$3111.09 currently owed to **go via** hence the TCO is moving to provide a written Decision.

Have you reconsidered a proposal on the amount you owe **go via**?"

Mr BV to go via:

"Why are you spinning me rubbish the only reason I'm paying sper is because you guys have never ever sent me a bill you only send fines which isn't acceptable! However away from that sper tell me they can't do anything and to talk to go via because you sent the matter to them In The first place who am I suppose to believe"

Mr BV to TCO:

"I'm not sure you actually know what I owe because those amounts are amounts owed to sper after there fees not go vias! But you said you have nothing to do with sper? How can I make an offer if you have no idea what's going on? This is getting silly now I have to confirm how much I've paid sper on go vias behalf but it's in the vicinity of \$1200 I'm willing to continue paying up until \$2000 which I feel is fair especially considering most of the costs occurred after the point when I told you to add my vehicle onto my account and you didn't but just came up with some lame excuse and 100% blamed me where some of the blame is on go via!"

30 On 4 March 2015 the following correspondence ensued:

Go via to Mr BV:

"I confirm receipt of your email below and attached.

To be clear, you are paying SPER for fines issued by the State government.

These fines were issued to you because you failed to appropriately pay the Toll Demand Notices we issued.

We issued you these Demand Notices because you did not pay the original unpaid toll invoices we previously sent.

You were aware you were receiving toll invoices because I have advised that the vehicle was not listed on an account, and even it was, the account was suspended and had no monies to cover the tolls you were using.

Not all the Demand Notices we referred to the State government for enforcement eventuated to a fine, otherwise your debt with SPER would be considerably higher.

These notices which have not been issued a fine remain payable to **go via** which to date you have not resolved.

I am offering you an opportunity to propose a settlement for the amounts owed to **go via** only, which currently totals \$3111.09 and is due to escalate as the vehicle continues to travel without a valid means to pay.

Alternatively we can proceed with the TCO's independent Decision, based on the information you and I have both supplied to his office.

You will need to continue your present arrangements with SPER separately, as the TCO does not have jurisdiction on the matters of the State government.

Please advise."

Mr BV to go via:

"So your trying to tell me I have \$3100 of unpaid tolls! Really what is the go via fine \$20 plus toll \$5 and that is over exaggerating, it works out to be over 120 toll trips which just isn't possible because I hardly used the toll maybe 30-40 times. The main issue is you gave me a price before to pay and that cleared everything I paid it whether on time or not doesn't matter not everyone has hundreds of dollars at there disposal 24/7, then you were suppose to add my vehicle into the account and decided not to because you didn't feel like it! I have never received and overdue account only fines which are not acceptable no letters to say are you paying do you still want the vehicle added I only assume this is done because I told you to do it nothing to say we haven't put your car on the account! And now your trying to grab \$3100 out of me plus I have to pay SPER \$3100! That just isn't right SPER has told me all you have to do is tell them we have an arrangement and that's it but no you just want more money that you don't deserve and quite frankly I'm not willing to give you! I'm waiting for the ombudsman's outcome I've been nothing but willing to offer a deal but go via doesn't care at all and won't change there mind on anything there 100% right which isn't the case there is blame on both sides I'm definitely willing to accept that but you won't!"

Go via to Mr BV:

“In this case, I will no longer respond to your further correspondence, and await the TCO's Decision.

The Decision will be binding on us, and we will act in accordance with the TCO's recommendation.”

Mr BV to go via:

“Just shows the type of person you are and the company you work for GREEDY & ARROGANT!”

- 31 Go via advised the TCO that no further correspondence will be entered into with Mr BV.
- 32 Go via further advised the TCO that the current outstanding balances as of 7 April 2015 are as follows:

“Account Ref: [5***3]: **\$19.61** outstanding
Toll Ref: [5***9]: **\$2,921.27** outstanding
Toll Ref: [6***2]: **\$184.55** outstanding
Total: **\$3,125.43**”

Discussion

- 33 The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO, 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.
- 34 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.
- 35 The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against other outside bodies, such as Government agencies. This includes bodies which issue Infringement Notices, like the Department of Transport and Main Roads (DTMR) or collect outstanding monies, such as SPER. Toll operators have obligations to forward unpaid tolls to DTMR when Final Demand Notices for tolls are not met.
- 36 The TCO also has no power or jurisdiction over the level of tolls or administration fees, which are fixed in consultation between the toll operators and the State Government.

- 37** 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. TCO Decisions are binding on toll operators but are not binding on customers, who retain their legal rights to seek redress.
- 38** Mr BV travelled on toll roads and incurred tolls and fees in respect to such travel. He did not pay certain of these amounts following the receipt of toll invoices and Demand Notices and, as a consequence, the toll operator go via referred their collection to DTMR. The collection of these amounts was then placed in the hands of SPER. Other tolls are still owing to go via.
- 39** This matter has been in dispute for some time before its referral to the TCO. The TCO has facilitated discussion between the parties and it is apparent that the matter cannot be resolved by way of conciliation.
- 40** Mr BV had an obligation to keep his tolling account in good order and to meet the terms of any invoice or Demand Notice if he was in default. The evidence in this complaint indicates that he did not do so on many occasions, despite notices received from go via. Mr BV has conceded he received such notices, without admitting he received all.
- 41** The effect of this was that he has incurred tolls and administration fees and monies being sought by SPER. This situation is unfortunate for Mr BV and there is no doubt that he has paid significant amounts to SPER in respect of unpaid tolls and fees.
- 42** I cannot overturn go via's entitlement to recover tolls and administration fees lawfully levied or charged under the terms of its account with a customer or its tolling operations. There is no evidence to support a finding that go via has acted improperly or outside of the terms of its account with Mr BV. I note that once the collection of go via's tolls and fees is shifted to SPER, go via no longer is entitled to recover those particular fees owing to it.
- 43** Go via has further offered opportunities to Mr BV to negotiate a repayment plan in respect to the outstanding monies due to go via. He has not taken the opportunity to do so. Mr BV also has not put to the TCO a proposal to forward to go via in an endeavour to resolve the matter.
- 44** In these circumstances I would recommend that Mr BV enters into meaningful negotiations with go via to resolve his obligations, as I cannot take the matter further.

Decision

45 I cannot uphold Mr BV's complaint but reiterate that my decision is not binding on him.

Michael Arnold
Tolling Customer Ombudsman

Dated: 13 April 2015