

DECISION

Background

- 1 This is a complaint against Queensland Motorways Limited, trading as Go Via. The complainant, Mr B, first made a complaint received by the Tolling Customer Ombudsman (TCO) on 14 October 2013, as follows:¹

“I have an on-going dispute with Qld Motorways, trading as Go Via, regarding the above account.

I have received a number of unpaid toll notices regarding vehicle reg#[5****G], and have endeavoured to acquit these from when I became aware of the matter, with no success.

The circumstances are:-

- I took delivery of a new vehicle in mid June, and was travelling immediately to Melbourne; I notified all relevant parties such as my insurer, [Name] etc and tolling companies, by email from my mobile iCloud account.
- After completing my business in Melbourne, I returned to Brisbane, where I was deployed on exercise with the [Name of Service], of which I'm a [Title]. This deployment was until mid August 2013.
- I had no access to my post box during this time.
- When I took delivery of the accumulated toll notices, called Go Via immediately, to request they be debited to my current account.
- This was refused, and they suggested I make submissions in writing.
- They claimed they had not been notified of the addition of this vehicle's registration.
- The toll tag was affixed to the front of the rear-view mirror, in accordance with their sketchy instructions- it failed to operate, and I did not notice whether it beeped or not, mainly due to other sounds in the car.
- I have made repeated representations to the toll company to rectify this, and have sent a cheque for the total of tolls said to have been accrued to my account. This is despite my account being current, with authority for the tolling company to debit "top-ups" to this account from my own bank.

The company has been most un-cooperative, and often patronising and brusque in dealings over this matter.

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

I have referred the matter through their lengthy and slow complaint process, with no attempt made by the company to resolve the issue short of me paying extra fees for the failure of their equipment. Many responses have been accompanied by threats to levy further charges.

I had a similar incident last year, where a previous tag failed, and despite repeated requests to replace same no effort was made to rectify. I had to go to the ministerial/ councillor (BCC) level to obtain a satisfactory outcome, and I'm fully prepared to do likewise on this occasion- the amount of money involved is relatively inconsequential; however I refuse to be bullied.

Obviously the concept of customer relations is an anathema to this company, who exhibit the worst of both government and private enterprise.

Should the company elect to accept the payment made to settle this matter, I will consider it closed, and will return their faulty equipment and close my account. I have retained the tags as evidence, despite being threatened with fees, as at this stage I regard them as evidence.

The only fault I accept in this matter was to be naive enough to think the toll operator would improve its management practises, and endeavour to provide a customer-friendly environment for the transit of mostly under-utilised toll roads.

Following this episode I will no longer use these roads under any circumstances, and will join the majority in clogging already overloaded thoroughfares.

The only reason I have used these roads is for the minor saving in time, which in my business is chargeable; the time saved is more than erased by the time expended on sorting out what should have been done after a telephone call.

I have copies of all correspondence on this matter, apart from the initial advice of the new vehicle's details- this was made through a web-based mail system, which does not retain sent copies due to bandwidth and storage issues.

I find the accusation made by company representatives that I am untruthful and incapable of learning basic usage of toll roads to be insulting, and defamatory."

- 2 On 16 October 2013 the complaint was acknowledged by the TCO and forwarded to Queensland Motorways Limited (QML) for response.
- 3 The TCO received the following response from QML on 21 October 2013, together with copies of email correspondence between it and Mr B spanning the period 12 September 2013 to 9 October 2013:

"[Mr B] is no longer a customer of Queensland Motorways as I have closed his **go via** account as at 9th of October 2013.

This was following [Mr B's] request that it is to be closed and he will return the tags. I have not received the tags to date.

[Mr B] advises that he requested for Queensland Motorways to add [5****G] to his account, but we have no such record ever received, and [Mr B] has not provided

evidence that it was sent from his "iCloud" account. The vehicle could not be linked to his **go via** account and I understand [Mr B] has received a number of toll notices.

Coincidentally, the same occurrence happened last year where [Mr B] did not have the registration number (different to [5****G]) listed on his account, incurring toll notices. I would have expected that given the circumstances, the goodwill and the assistance from various offices including the Brisbane City Council and Flow provided to [Mr B], he would have ensured that he did not travel without a valid link to his tolling account.

We have provided goodwill and have received payment for this vehicle to offset our toll notices only, and is no longer associated with [Mr B] in that respect. I am however due to apply tag non-return fees should the tags not be returned."

- 4 On 22 October Mr B emailed the TCO, which was forwarded for QML's attention on 23 October 2013:

"I have all of the relevant emails in a folder should you wish to review them. Qld Motorways has advised that the payment I made has acquitted outstanding tolls, however I haven't yet checked with other toll operators involved in this matter to confirm they have been paid out of the funds supplied, in accordance with my instructions to Qld motorways. I will do so upon my return to Brisbane, on Friday. In the meantime, as a matter of good faith I've returned the non-functional tags to the operator, despite the lack of good faith on their part, and the fact that they represent evidence of the failure of their systems."

- 5 QML responded to the TCO on 29 October 2013 as follows:

"It is stated for the record that [Mr B's] cheque was made out to QML with the reference number for the QML issued toll notices.

We cannot process a payment for other operators' toll notices as they were not billed to QML but to [Mr B] directly. We have processed the cheque as per the drawee details.

[Mr B's] account is still open pending the return of one more tag, as we have only received 3 out of 4."

- 6 On 30 October 2013 Mr B was advised of this information by email. Mr B responded that same day in the following terms:

"All tags have been returned, the amount remitted to QML was to cover all outstanding tolls, as totalled by myself. If QML has not paid the other operators, they have taken these funds under false pretences, and will be reported as such to law enforcement.

My instructions on disbursement of these funds could not have been more clear, however given their obstruction and incompetence I'm not surprised they've failed yet again to finalise this time-consuming and insignificant matter.

This company is the worst of any kind I've ever had the misfortune to deal with. I intend passing all of this on to my contacts in the media, and will consider inviting

other disgruntled customers of this hopeless organisation to join in a class action for breach of contract and imposition.

I will also pass all of this on to the relevant Minister(s) should this company not immediately settle all outstanding tolls on my account, and refund whatever funds are in my pre-paid account.

Little wonder tolling companies are in dire straits financially, if this incompetent monopoly didn't have the captive market of the Gateway Bridges it would quite rightly go into receivership.

They are a combination of the worst of both government and business, a rapacious greed, coupled with bureaucratic indifference and ineptitude."

- 7 The TCO forwarded Mr B's email to QML and on 1 November 2013 QML emailed Mr B, copied to the TCO, as follows:

"Your tags have all been received with thanks.

I have initiated the final refund of the credit of \$13.94 to VISA ending with [***].

Please refer to your bank should you wish to dispute the instructions provided for the cheque."

- 8 Mr B responded to QML:

"It's nothing to do with my bank, my instructions were explicit. If your company has failed to comply with them, either by choice or ineptitude, it is the responsibility of Go Via/QML to rectify.

Please advise if you intend to do so, and I will consider this matter closed, and in need of no further action."

- 9 On 5 November 2013 QML responded to Mr B, copied to the TCO:

"Please see a copy of the check payable to QLD Motorways (attached to reference [***001]):

[COPY REMOVED FOR PRIVACY PURPOSES]

It does not contain information of any other drawer other than QLD Motorways otherwise it would have been returned to you.

Again, we were not billed for tolls from other toll operators as you have confirmed their toll notices were sent to you directly.

The payment offset toll notices issued by Queensland Motorways only. Please refer to your bank for more information.”

10 To which Mr B responded:

“There was a letter enclosed giving specific instructions for the disbursement of these funds, I have a copy on file. Funds beyond actual tolls due to your firm were to be passed on to acquit other linked tolling companies, as previously advised in a detailed list.

This is not acceptable.”

11 On 8 November 2013 QML responded to Mr B, copied to the TCO, as follows:

“Queensland Motorways cannot forward funds to other toll operators when we have not been billed for these trips.

They have been issued to you directly and therefore it is an arrangement that you will need to discuss with each individual operator.

If the cheque was not correctly processed as you advised, you may refer to your bank.

Should a reversal then occur, the toll notices will be outstanding once again, and I will also be required the reverse the demand notices I have withdrawn in goodwill.

If the Demand Notices remain further unpaid you will then be in breach of the Transport Infrastructure Act, and may be subject to further Infringements from the State. You were in receipt of an equivalent Infringement from the Brisbane City Council last year; I trust that you are already aware of the implications.”

12 Mr B emailed QML:

“I am aware, which is why I will refer the matter to them. Your company settled all the notices on the previous occasion, despite identical circumstances. Inconsistency seems the hallmark of your business practices. You clearly failed to comply with my directions in this instance. My only regret in this entire tawdry and time-consuming matter is ever opening an account with your "organisation".

13 And QML emailed Mr B, copied to the TCO:

"[Name of employee] has forwarded your email to me as her manager.

I understand that you are in receipt of a number of invoices, from various toll road operators, in relation to unpaid tolls.

Queensland Motorways have provided you with extensive correspondence to outline the reasons why you have incurred these tolls being:-

- That your tag was not correctly fitted to your vehicle windscreen
- That your licence plate number (LPN) was not listed on your account

You submitted a cheque for \$255.17, payable to Queensland Motorways. This payment was processed and applied to the outstanding balance owing to Queensland Motorways.

Queensland Motorways have no visibility of any balance you may have outstanding with another toll road operator, nor are we able to allocate part or all of your payment to another operator. If you wish to make payment to another toll road operator then you should contact that operator directly.

As a gesture of goodwill [Name] has waived any balance owing following receipt of your payment of \$255.17, so there is currently no outstanding balance owing to Queensland Motorways for your vehicle [5****G].

I regret that Queensland Motorways is unable to assist you in relation to any outstanding amounts owed to another toll road operator and I recommend that you contact those operators directly."

14 On 11 November 2013 Mr B emailed QML as below. QML forwarded same to the TCO, noting that it did not intend to respond:

"In relation to your reply, there is no act of goodwill involved in partially waiving charges which should never have been levied.

The account was held with you, not other toll operators, and part of my contract with you is that your company pays other tolling companies for my usage of those roads. You were paid to fulfil this requirement, and have failed to do so. Your firm was notified all notice numbers, amounts and toll operators involved.

You have also repeated the falsehood that you were not informed on the new vehicle registration- I have witnesses to this, and given the incompetence shown throughout this episode am not surprised that the notification was not duly acted upon.

The only goodwill shown in this matter has been on my part, and has been treated with contempt.

Yours is the worst organisation I've ever had the misfortune to have dealings with, and I'm sure I'm not alone."

15 On 13 November 2013 the TCO received the following email from Mr B:

“Is your office actually taking any action over this matter, or should I take it that the Ombudsmans Office is not going to be involved in this? Please advise if this is the case, and I'll refer it to the relevant minister, state member, BCC councillor and federal member. The media and my solicitor will become involved as well.

I am receiving demands from various tolling operators, despite supposedly having the matter under investigation. The demands are for increasing amounts. It seems to me that governance issues apply across the board in this area of infrastructure provision.”

16 The TCO responded on 25 November 2013:

“The TCO is an independent body with the responsibility of determining disputes between toll operators and their customers.

The decision of the TCO is not binding on a customer and they are entitled to seek other avenues of relief. You are entitled to approach the responsible Minister at any stage and the referral to the TCO is not affected.

It would be of assistance, however, if you advise if you require a decision of the Ombudsman.”

17 On 27 November 2013 Mr B replied:

“A decision wouldn't hurt I suppose, however it's possibly a bit pointless if it's non-binding. If adverse to the operator, is it binding on them.”

18 The TCO confirmed that its decisions are binding on the toll road operator.

Decision

19 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.

20 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.

- 21** 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 about matters before a court or any statutory body.
- 22** This complaint relates to the operation of a QML Go Via account in respect of vehicle registration number [5****G]. Mr B states that he acquired this vehicle in June 2013 and that he notified tolling companies, including Go Via, by email from his mobile telephone icloud account. Go Via states that it did not receive the email and to-date a copy of the email has not been provided.
- 23** Mr B was away from his home State until August 2013 and upon return found a number of toll accounts and other notices in his post office box. He contacted Go Via and offered to pay the tolls. This offer was not accepted. I believe there were additional administrative charges that had been incurred due to non-payment of the tolls.
- 24** QML advised Mr B that it did not have any record of the vehicle registration number [5****G] on his account or any record of a request to have the vehicle added to his account. Normally if a toll operator's customer account is not in order or the vehicle is not registered to an account, any tag in the vehicle emits a number of audible "beeps" to act as a warning to the customer.
- 25** Mr B states that his tag was affixed to the rear view mirror of his vehicle in accordance with Go Via's instructions but it failed to operate and he did not notice whether it failed to beep or not due to other sounds in his car. I must comment in passing that the fixing of the tag to a rear vision mirror is most unusual and not in accordance with instructions to affix such tag to a vehicle's windscreen.
- 26** Mr B states that he has made numerous attempts to rectify the situation with representations to Go Via but has been unsuccessful. He has complained about Go Via's service and attitude in this process.
- 27** There is a further issue in this dispute which relates to Mr B's payment of a cheque to QML of \$255.17 said to cover outstanding toll fees owing to Go Via and other toll operators. QML banked this cheque and credited it to his account. Mr B has challenged QML's authority to do this.
- 28** QML has produced a copy of the cheque evidencing it was directed to it as payee only. QML has also advised that as it was not billed for tolls from other toll operators it could not pay them.

- 29** Mr B says that the cheque was accompanied by a letter linked with details of other tolls operators and a direction for QML to pay these tolls. I have not been provided with a copy of this letter.
- 30** QML, in any event, responded to Mr B, indicating steps could be taken to reverse payment of the cheque. In these circumstances the monies due to QML would remain and Mr B would have to make arrangements to pay the other toll operators.
- 31** QML has maintained that it has provided explanations, both verbal and in writing, as to why Mr B was liable for toll fees and administrative costs incurred. It has stated, in simple terms, that tolls were initially incurred because Mr B's tag was not correctly fitted to his windscreen and that his licence plate number was not listed on his account. QML has indicated, as a gesture of goodwill, that it had waived any outstanding balance on the Go Via account as a consequence of the payment of the \$255.17.
- 32** QML has also drawn attention to the fact that Mr B, in 2012, had a similar problem. He did not have another vehicle with a different registration number listed on his account and, as a consequence, incurred toll notices. It submits in these circumstances, given the assistance and goodwill he received from the Brisbane City Council, Flow Toll and other offices, he would have ensured he did not travel without a valid link to his account.
- 33** I have considered all the evidence provided to me, together with the submissions made by Mr B and QML. Based on this material, Mr B has not established that he added vehicle registration number [5****G] to his Go Via account in June 2013. As a consequence, this vehicle was not covered under the terms of the agreement with Go Via for the use of the toll road.
- 34** Mr B had previously used a vehicle on toll roads with a Go Via tag. He should have known that it had to be affixed to the vehicle's windscreen and that additional "beeps" would emit from the tag when passing a tolling point if his account was not in order. Mr B, on his own evidence, admits that he fixed the tag to the rear vision mirror and did not hear any beeps.
- 35** It was in these circumstances that he incurred toll fees which Go Via or any other toll operator would not be able to apply to his account.
- 36** On the evidence before me, I am satisfied that QML, through Go Via, acted in accordance with the terms of its contract with Mr B. In respect to the provision of the cheque for \$255.17 by Mr B to QML, it is my understanding that it did not pay all of the fees and administrative costs to other toll operators. QML had not been charged tolls and fees by any operator and could not have disbursed the monies to discharge the obligations to the toll operators, even if so directed by Mr B.

37 I am satisfied that QML has acted reasonably in the handling of this matter. Moreover, I also believe QML has acted fairly in offering to waive any additional fees owing to it and offering to facilitate the repayment of the \$255.17 on the terms it did.

Decision

38 Mr B's complaint is not upheld.

Michael Arnold
Tolling Customer Ombudsman

Dated: 6 January 2014