

DECISION

Background

- 1 This complaint was lodged by Miss TH, on behalf of Mr JM, with the Tolling Customer Ombudsman (TCO) on 13 February 2016 as follows:¹

“Please give details of your complaint:

I have contacted GoVia on behalf of [Full name of Mr JM] and explained his current financial situation. [Mr JM] had since moved from the address GoVia had on file, GoVia also had all correspondence being sent to an incorrect email ONLY. Until then they sent correspondence to the former mailing address, in which was forwarded onto him much too late.

Extra administration fees equaling \$1,838.45 had since been charged on his account. [Mr JM] is currently unemployed, Unable to claim government help and in debt up into \$30,000.00 [Mr JM] is going through severe financial. GoVia rejected offer.

What happened following your complaint to the tolling business?

After explaining [Mr JM's] circumstances and offering a settlement to close the account (in which his parents have had to put forth) The Resolution Team of GoVia rejected the offer, and also was unwilling to consider the situation he is in. I offered to fill out a Statement Of Financial Position on two separate occasions and asked for GoVia to hold any further action (for 3 days) while [Mr JM's] family gather the funds, and again The Resolution Team rejected this. Nothing has come out of this complaint to GoVia other then more distress to my Client.

What do you want to happen for your complaint to be resolved?

[Mr JM] requires the Administration fee's to be waved and he pay the exact owing toll charges (\$158.04)”

- 2 On 14 February 2016 the TCO acknowledged receipt of the complaint and forwarded same to go via for investigation and response.
- 3 On 16 February 2016 Miss TH emailed the TCO:

“My complaint is, after extensively explaining [Mr JM's] hardship and concerns of his wellbeing from his family, GoVia were unwilling to consider any sort of hardship agreement.

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

GoVia were only willing too accept 3 options, in which [Mr JM] nor his family are able to commit too. GoVia also refused to hold this matter for 3 days as neither myself, or [Mr JM's] family could gain contact with him.

[Mr JM] has at least \$30,000 worth of debt outstanding. As he is unemployed and unable to claim government help, he has no income and is severely struggling.

[Mr JM's] parents have been able to come up with a lump sum to close the account. The amount his parents have agreed to loan [Mr JM] is more then what he actually owes GoVia, minus the admin fees. GoVia again refused to accept this.

GoVia had only sent corospondance through email, as stated by the Resolution team. The email address GoVia has does not match the same address that was issued.

I sincerely hope we can come to an agreement, as I do not want to take this matter even further.”

- 4 The TCO sought further comment from go via. Go via responded to the issues raised by Miss TH:

“[Miss TH] has already completed an email exchange with my colleague [C], which has been attached.

Go via have presented [Miss TH] with three distinct payment options. [Miss TH] has declined these options and offers an amount of \$200 as full and final settlement of the current balance of \$1,997.64.

While **go via** are willing to negotiate payments where we can, we are unable to accept this payment offer.

Toll use incurred by the vehicle [5***Y] since the suspension of the prepaid account on 12 November 2015 exceeds the offered amount.

Your recommendations on how to proceed would be appreciated.”

- 5 The TCO reviewed all correspondence including the history of the complaint and on 17 February 2016 advised Miss TH:

“I enclose the response from go via. There is a substantial amount owing to go via. Is there not a more realistic offer than can be made.”

- 6 On 22 February 2016 Miss TH responded to the TCO as follows:

“Both [Mr JM] and his parents are aware of the substantial amount owing to GoVia. This amount is made up of \$158.04 of actual toll charges, and \$1,838.45 of administration fees.

As stated by GoVia they had only sent corospondance through an incorrect email before then sending documents to a mailing address after administration fees had been added.

I have approached [Mr JM's] parents and \$200.00 is the absolute maximum they can come up with as they are currently trying to service the rest of [Mr JM's] outstanding matters as well as living expenses. As they are currently struggling financially themselves it has become quite difficult to support their son.

As that is the only offer they can contribute, can you please advise our next step?

As it seems both GoVia and TCO are unwilling to accept any sort of sever hardship claim, even after offering a Statement of Financial Hardship on numerous occasions we are still yet to come to an agreement.

This has since more more stress on the client and his parents.

I hope that we can come to a suitable arrangement soon and lay this matter to rest."

7 This correspondence was forwarded to go via for information and response.

8 On 1 March 2016 Miss TH wrote to the TCO:

"I am still yet to hear anything in regards [Mr JM's] GoVia account. It has been some time between correspondence and the account will continue to grow as time goes forward.

I will now, take this as the account has now been settled and closed, with no longer an outstanding balance with no more extra fees accruing.

I thank you for all your help."

9 To which the TCO responded:

"I acknowledge receipt of your email. I have forwarded it to go via for consideration.

You cannot make an assumption that the balance has been paid and settled whilst the monies and obligations to pay are still outstanding."

10 On 2 February 2016 Miss TH replied:

"Since this matter has yet to settle, [Mr JM's] account continues to accrue fee's.

Given [Mr JM's] situation in which I have explained numerous times, I struggle to find how this is ethical?

As I had not received any response from you, or GoVia I had considered the account closed.

Can you please advise a set time this account will be settled and put to rest?

As you can understand the emotional stress and pressure [Mr JM] is currently under right now, and not being able to have this account settled does in fact make matters worse for both [Mr JM] and his family."

11 On 3 March 2016 the following exchange of correspondence took place:

TCO to Miss TH:

"I understand the pressure on [Mr JM], his parents and yourself in respect to this matter.

However the primary obligation was on [Mr JM] was to pay his tolls. If this had been done there would not have been issue about the current debt.

It does not assist my process for you to make statements about what you consider unethical in these circumstances or self-serving statements about the accrual of further debts.

I will seek further response from go via."

Miss TH to the TCO:

"I understand [Mr JM] is responsible for the Toll Charges and I am not disputing that. I am disputing the added \$1,800 added admin fees in which accrued on the account because of the lack of correspondence, as it was only sent to [Mr JM] through an incorrect email address, as stated by GoVia's resolution team.

And I am also disputing the fact GoVia have been unwilling to consider [Mr JM's] severe hardship claim.

I thank you for your assistance."

Go via to the TCO, which was subsequently forwarded to Miss TH for information and response:

"**Go via** records indicate that since [Mr JM's] account entered into suspension on 12 November 2015, the vehicle in question has incurred **\$248.16** in toll charges.

While I understand that [Mr JM] has been facing financial hardship, based on the toll usage alone, I am unable to accept the offered amount of **\$200**.

Further, **go via** have issued 78 pieces of physical correspondence to [Mr JM], each of these incurring an administration fee to cover the cost of accessing information from Department of Transport and Main Roads and issuing the letter itself.

[Mr JM] has continued to use our toll roads despite knowing that his account had been out of order.

Based on the circumstances, **go via** considers a waiver of 50% of the Demand Notice fees applied to the current balance outstanding to **go via** of **\$2,027.11** would be reasonable.

The offered waiver would be contingent on funds being received for the remaining balance of **\$1138.92** through a direct payment.

Alternatively, **go via** would be willing to consider a payment plan on the full balance.”

Miss TH to the TCO:

“Thankyou for your response.

I will advise with [Mr JM’s] family and respond accordingly.”

Miss TH to the TCO:

“I have consulted with [Mr JM’s] parents and they are unable to pay the discounted amount at \$1,138.00

They have agreed to take the second option of a payment arrangement. Please be advised that the added extra fees and charges on the account will need to be frozen once the payment arrangement is entered as the arrangement will be unconscionable.

The most [Mr JM] is able to pay at this time, is \$5.00 per week and the arrangement can commence Friday 11th March 2016.

Please confirm that no more fees and charges will continue to accrue on the account once the payment arrangement is entered.

I will then forward through the direct debit details to commence payments.”

12 On 5 March 2016 the TCO emailed Miss TH, copied to go via, as follows:

“I will refer [Mr JM’s] parents offer to go via for consideration.

However I point out that I have an obligation to do what is fair in the circumstances to both parties to a complaint. This must take into account toll road users have an obligation to pay tolls for the use of toll roads.

I note that [Mr JM] incurred tolls totalling over \$248.00 without making arrangements to pay for the tolls. This necessitated go via incurring administration fees pursuing these toll for no fault of its own. Go via is entitled to charge administration fees under its legislative arrangements with the State Government and the level of such fees are fixed in consultation with the Government.

In these circumstances I believe that the reduced figure for payment offered in respect of tolls and administration provided a substantial saving for [Mr JM] and is fair.

It is a matter for go via, but I cannot recommend to them to accept a repayment plan of \$5.00 a week as reasonable. It would take over which would take almost 8 years and would most likely not meet the administrative costs of processing the repayments.”

13 On 6 March 2016 Miss TH responded:

“How can either parties pay more when there is no income?

I have explained both [Mr JM's] and his parents hardship circumstances in many previous emails.”

14 On 9 March 2016 go via responded to the TCO's email of 5 March 2016:

“Go via are unable to accept the payment arrangement offered below.

In order to be considered viable, a payment plan would require payments that would address the outstanding balance within approximately three months.

A number of tolls incurred by [Mr JM] during his periods of suspension are currently eligible for escalation to the Penalty Infringement Notice stage of enforcement.

While it would seem in both parties interests to prevent this from occurring, I can see no other outcome unless a significant increase in offer of payment can be received.”

15 On 10 March 2016 the TCO forwarded go via's response to Miss TH for comment, to which she responded as follows:

“I refer back to my email dated 6/3/2016

Neither [Mr JM] or his parents are in any position to pay anymore towards the account as an ongoing arrangement.

Can you advise why on February 2nd 2016 a representative from GoVia gave the Total balance of [Mr JM's] account as \$1,996.49 with the total Toll Charges as \$158.04 and now GoVia has stated there is a total balance of \$2,027.11 with the total Toll charges as \$248.16 when [Mr JM] has not used since gone through any tolls.

How are extra charges being added to [Mr JM's] account when the matter has been in discussion for a number of weeks.

As explained to GoVia, [Mr JM] has since lost rights to his vehicle as he was unable to make the repayments. This means that he has no source of transport at this time and unable to use GoVia Tolls.

As also stated in many instances, [Mr JM] has substantial debts outstanding in which he is currently unable to service.

[Mr JM] is currently going through severe hardship and neither GoVia nor the Tolling Ombudsman office has even considered his claim. GoVia and yourself have accepted nothing, and are demanding substantial payments in which can not be made.

[Mr JM] has never desputed the Toll charges, [Mr JM] is disputing the extravagant administration charges that were added onto his account.

GoVia even stated, correspondence was only sent via a postal address in which [Mr JM] no longer resides at. In this instance when [Mr JM] was forwarded the mail in early January 2016 is when he has since tried to rectify the situation.

GoVia referencing further enforcement while I have consistently corresponded with TCO is not only unfair but coercive.

As stated, [Mr JM's] parents are willing to pay the total toll charges (\$158.04) outstanding plus \$42.00 to cover a percentage of the administration charges to lay this matter to rest."

16 On 11 March 2016 the TCO advised Miss TH:

"I refer to the previous correspondence in this matter. I believe as the matter is not going to resolve that I prepare a written decision."

17 To which Miss TH replied:

"We have been corresponding for a resolution on this matter but it appears the offers of payments will be declined.

[Mr JM] has not refused payment and has given his best offer forward.

I will await your written decision."

Discussion

- 18** 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. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.
- 19** 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.
- 20** 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, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal rights.

- 21** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 22** In this complaint, there is no argument that Mr JM travelled on the go via toll road and did not pay his tolls. Mr JM says that he changed addresses and he received go via's notices late. However, there is no argument raised that (a) he did not receive toll invoices which advised him of the outstanding tolls and administration fees, or that (b) he received toll demands that included additional fees and warnings that the recovery of outstanding monies would be escalated.
- 23** Go via has the right to charge administration fees for the collection of tolls under State legislation and the level of those fees are fixed in consultation with the State Government. There is no evidence that go via did not charge the correct fees or that it did not follow its normal procedure of notifying Mr JM of the outstanding tolls and the applicable fees.
- 24** I am satisfied that go via has acted appropriately in following the normal processes. The issue in this matter centres on Mr JM's inability to pay the outstanding tolls and fees which total \$2,027.11, of which \$248 is made up of tolls. Go via has indicated that it would accept an immediate payment of 50% of the outstanding monies in full settlement of the debt.
- 25** Mr JM, through a representative, has offered to pay \$158 for tolls plus \$42, with the assistance of his family, towards the administration fees in full settlement of the amount by weekly payments over a period that would approximate eight years. These offers were not acceptable to go via.
- 26** In commercial terms, I believe such offers were not reasonable. I understand the difficulty of Mr JM's position, but his position is not unique. There are a number of toll road users who do not pay their tolls, or meet toll invoices or subsequent toll demands, despite the requirement to do so. The tolls then get escalated for collection to Government or private agencies, which involves greater cost to the toll road user. These toll road users then make application for relief on the grounds of their financial circumstances.
- 27** In making a decision on any such matter, I must be fair to both toll road users and toll operators. In doing so, I must recognize the impact of any decision that I would make on other toll road users seeking similar relief. If I was to grant Mr JM the relief he seeks, there would be an expectation that other toll road users seeking the same relief would be granted it.
- 28** Moreover, such a decision has the potential to impact on the viability of the system and is not fair to the vast majority of toll road users who pay their tolls in accordance with the requirements for the use of toll roads. The toll operators incur costs involved in the collection of outstanding fees that are reflected in the administration fees charged. The waiving of such fees adds to the toll operators' cost of operations that must eventually affect charges imposed on all toll road users.

29 I am accordingly satisfied that go via's offer to reduce the monies owing by Mr JM for tolls and charges by 50% was fair and reasonable in the circumstances.

Determination

30 I do not grant Mr JM the relief he seeks. I reaffirm that my decision is not binding on Mr JM and that he can seek relief in any other forum that is available.

Michael Arnold
Tolling Customer Ombudsman

Dated: 13 April 2016