

DECISION

Background

- 1 The complainant, Mr S, first made a complaint to the Tolling Customer Ombudsman (TCO) on 25 October 2012, as follows:¹

*“I was going through my credit card statement when I noticed a significant number of debits from Roam; \$50 and then 3 days later another \$50 etc. When I looked more thoroughly into it there was over \$600 worth of tolls billed to us over a 3 or 4 month period. I contacted Roam and they helped me set up my online login so I could investigate further. What I discovered was a large number of toll charges to a reg no. [***57Q] and to TAG no. [***026].*

*I contacted them in writing and the correspondence is attached. My queries are these; why is this TAG on our account, when are we supposed to have requested Reg No. [***57Q] be linked to our account and what documentation is there to this affect? In addition I find it remarkable that vehicle [***57Q] is travelling regularly on tollways without a tag, is it possible that there could be a tag attached to this vehicle and we are being charged as well?”*

- 2 The complaint was acknowledged by the TCO on 25 October 2012 and forwarded to Roam for response.
- 3 On two occasions, 6 and 20 November 2012, Mr S emailed an enquiry as to the progress of his complaint.
- 4 On 20 November 2012 Roam responded to the TCO as follows:

“Please find attached responses to questions asked by [Mr S] in his email to you dated 25 October 2012.

In summary, [Mr S] has queried charges to his Roam Account for a vehicle that he obviously does not recognise but which is nominated to his Roam Account. Charges for this vehicle are made to his Roam Account.

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

The vehicle is travelling with a 'stolen' e-TAG which is 'unchargeable'. Because the e-TAG is unchargeable, the plate is located on his Account and the toll charged there.

Because the system can see the e-TAG, although cannot find it registered to an account, it has noted the e-TAG on the Statement as it is associated with the charge. This, of course is confusing to the customer, as it is not his e-TAG. Nonetheless, the vehicle is nominated on his Account and so the tolls incurred by the vehicle have been charged to his Roam Account legitimately."

Attachment:

"[Mr S] has raised questions in his complaint. Please find below responses to those questions.

I was going through my credit card statement when I noticed a significant number of debits from Roam

- *Debits from Roam are for charges for travel made by vehicle [***57Q] which was nominated to [Mr S's] Roam Account until removed on 6 August 2012*

why is this TAG on our account?

- *E-TAG [***026] is not registered to [Mr S's] Roam Account, however it is listed on his Statement as being associated with charges on his Roam Account ('unchargeable' tag detected in the vehicle)*

*when are we supposed to have requested Rego No. [***57Q] be linked to our account and what documentation is there to this affect?*

- *[***57Q] was nominated to the Account on 8 February 2008 during a telephone call by [HW]. Call Reference: [***572]. At the same time, 2 Toll Notices for this vehicle were transferred to the Account.*

*I find it remarkable that vehicle [***57Q] is travelling regularly on tollways without a tag*

- *Vehicle [***57Q] has, intermittently travelled with an e-TAG, which is not charged because it has been flagged as 'stolen' and is not registered to an account but the vehicle in which it is travelling was nominated on [Mr S's] Roam Account.*

is it possible that there could be a tag attached to this vehicle and we are being charged as well?

- *A tag charge can only be charged to one tolling Account. If there is no e-TAG in the vehicle or the e-TAG in the vehicle is 'unchargeable' (as in this case) an image is taken of the vehicle licence plate and the charge is applied to the tolling account to which the vehicle is nominated along with a vehicle matching fee.*

Please note that since the vehicle has been removed from [Mr S's] Roam Account, Toll Notices have been issued to the registered owner of the vehicle. It appears this vehicle is now travelling without the e -TAG. Roam has details of Toll Notices issued for travel on Westlink M7 for the vehicle, but not the identity of the registered owner of the vehicle. This information is held by the RMS.

As Roam has accepted charges for this vehicle, which was nominated on [Mr S's] Roam Account in accordance with the Customer Service Agreement, we are not in a position to refund any of the disputed tolls."

5 This information was communicated to Mr S on 20 November 2012.

6 On 21 November 2012 Mr S responded to the TCO as follows:

"If a vehicle is travelling along a toll road with a tag that is recognised as being stolen, do they not have a responsibility to notify us that one of our "nominated" vehicles has a stolen tag? I can understand now, having read the summary, how these charges came to be, although I still dispute that we nominated this vehicle and quoting a reference number is no proof that we gave permission for this. Whether these charges are legitimate in their eyes due to the way their system works is not really the point. It would appear from their own admission that they knew for several months that a vehicle nominated on our account had a stolen tag and failed to bring this to our attention because, to put it bluntly, they had our money and that was all they cared about. As the ombudsman, do you believe this is a fair and reasonable way for them to behave and is simply quoting a reference number suitable proof that we nominated this vehicle in the first place?"

7 On 23 November 2012 the TCO emailed Mr S seeking further information:

"I acknowledge receipt of your email of 21 November 2012 and note its contents.

It would be of assistance if you could clarify if:

- (a) you were the owner of the vehicle registration number [***57Q] or a vehicle with a similar registration number; and*
- (b) you know of or have any connection with a "[HW]"."*

8 Mr S responded on 26 November 2012 as follows:

"[HW] is my wife (now [HS]) and she is the primary account holder. I was never the owner of the vehicle in question and neither was my wife or any number plate of similar number."

9 The TCO acknowledged receipt on 27 November 2012 and informed Mr S that discussions will continue with Roam. The TCO then emailed Roam in the following terms:

"I sought the following information from [Mr S]:

"It would be of assistance if you could clarify if:

- (c) you were the owner of the vehicle registration number [***57Q] or a vehicle with a similar registration number; and*
- (d) you know of or have any connection with a "[HW]"."*

[Mr S] responded as follows:

"[HW] is my wife (now [HS]) and she is the primary account holder. I was never the owner of the vehicle in question and neither was my wife or any number plate of similar number."

There seems to be an issue about how this vehicle was nominated to his account that needs clarification. I seek your response in this regard."

10 On 28 November 2012 Roam responded:

"Please find the interactions held on the account relating to the vehicle as requested:

Interaction	Date	Reason	Last Name	First Name	Agent
40802572	8/02/2008 17:22	Vehicle added at request of customer - [***57Q]	[W]	[H]	[jk]
Interaction	Date	Reason	Last Name	First Name	Agent
40802590	8/02/2008 17:25	Toll Notices- Charged to Account Existing – [***557], [***540] charged to account in full as car wasn't linked to account when trips were made	[W]	[H]	[jk]

11 This information was provided to Mr S on 6 December 2012, seeking his comments.

12 Mr S commented as follows:

"My comments are that this correspondence is no different from the last half dozen pieces of correspondence. It simply states that they have a line entry that says that [H] requested this change, but how can I know that that is accurate? What's the process? Where's the proof? You know what, lets' forget that part of it for the minute, this has been dragging on now for 4 months! I could've built a house in that amount of time. As the industry watchdog do you think it is acceptable business practice for Roam to identify a stolen tag and simply apply it to someone's account? Or do you think they have a responsibility to investigate the stolen tag or at the very least notify the account holder? Had we been notified about the stolen tag, what vehicle it was in and that it was being applied to our account we could have nipped this in the bud before it got out of hand. At some point a decision needs to be

made because if you're waiting for one of us to back down and give up, I can assure you it won't be me."

13 On 4 January 2013 Mr S emailed the TCO:

"It is another month since my last reply and still no word and no action. When is this going to be done? I was instructed by fair trading to deal through the ombudsman with the issue, but you have sat on your hands for months and waited for someone else to make a decision. For the love of God will you please take some action with this and stop simply sitting on the sidelines."

14 On 7 January 2013 the TCO emailed Mr S as follows:

"I acknowledge receipt of your emails of 7 December 2012 and 4 January 2013 and note their contents.

The issue here in my view is whether a toll was incurred by a vehicle nominated to your account by your wife, [HS] nee [W].

I have raised the issue of the capacity of Roam to identify a stolen tag in your circumstances.

*However, this is a separate issue from the nomination of a vehicle [*** 57Q] in the name of [HW], which you deny occurred despite Roam's records. In making any decision I am charged with the responsibility of examining evidence and doing what is fair in light of that evidence. Logic dictates that, unprompted, a Roam operator would not attach and record your wife's name to vehicle [***57Q] on 8 February 2008.*

I will deal with this matter when I receive a further response from Roam."

15 On the same date the TCO enquired from Roam:

"...if and how Roam would track a stolen e-tag in a vehicle and what steps would be taken to advise a customer."

16 On 8 January 2013 Mr S emailed the TCO:

"You'll have to excuse my previous outburst, I'm afraid frustration got the better of me.

I just need to clarify something for my own peace of mind; with regard to your below correspondence, is the Ombudsman's role to adjudicate on what is fair and equitable practice of the tolling companies? Or is it simply evidence based? Surely Roam attaching a stolen tag to ANYONE'S account without notifying them could not be considered fair and equitable behaviour for any business. Their capacity for identifying the tag as stolen is not in question because it is by their own admission that they identified it as stolen. Had we

*been notified by them that we were in possession of a stolen tag in vehicle [***57Q] then this would have been nipped in the bud BEFORE any substantial costs were incurred by any party. As the Ombudsman is it within your jurisdiction to suggest that their handling of this process has unfairly cost us money?*

I agree that it is illogical for a Roam operator to randomly attach a vehicle to my wife's account, however I have no idea what their process is, what checks and balances are in place or how possible, or impossible for that matter, a keying error could be."

- 17** On 14 January 2013 the TCO received an interim explanation from Roam, with further information to follow:

"A Toll Notice is usually sent to the owner of a vehicle carrying a stolen e-TAG as the e-TAG would not be on an Account and would have been flagged stolen. In this case, because the vehicle was nominated on an Account, the toll has been charged there, with a note of the e-TAG appearing on the Statement."

- 18** On 17 January 2013 Roam provided a full explanation of the process as follows:

"When an e-TAG is reported stolen, it is removed from the customer's Account and moved to an internal Roam Account. If that e-TAG is detected travelling in a vehicle, the e-TAG is not chargeable and the system will take the vehicle licence plate number. Usually, the vehicle is not on a tolling account and a Toll Notice is issued to the registered owner of the vehicle.

In this case, the e-TAG was detected, noted but could not be charged. However, when the system looked at the vehicle licence plate number it saw that the vehicle was on a valid Account and charged the toll there. Because there was an e-TAG in the vehicle, it has noted the details of the e-TAG, on the customer's statement.

This is a rare occurrence because usually if the e-TAG is unchargeable it is because the Account to which it is registered is suspended and the same would apply to the vehicle resulting in a Toll Notice."

- 19** This information was conveyed to Mr S on 22 January 2013. The TCO further said:

"I will now prepare a Decision on this issue."

Decision

- 20** 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.

- 21** 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.
- 22** 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 based on the evidence, 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.
- 23** There are two issues in this complaint. One relates to the presence of the stolen e-TAG in the vehicle and the other to the charging of tolls based on the recognition of the vehicle registration [***57Q] numberplate. Mr S's liability to pay the tolls rests on the second issue rather than the first.
- 24** I note that Roam has submitted that the presence of a stolen e-TAG in another account holder vehicle is a rare occurrence and it is the first one that I have encountered. I note that Roam has a process of dealing with stolen e-TAGS with their being moved to an internal Roam Account.
- 25** The stolen e-TAG number is included in the customer's account, which does provide the opportunity for a customer to challenge it. However, Roam acknowledges that it could be confusing and consideration should be given to better identifying it as a stolen e-TAG.
- 26** The second issue that needs attention is the incurring of tolls in the name of Mr S in respect to the use of vehicle registration [***57Q] on Roam's roll roads. I specifically raised the question that goes to the hub of the issue in my email to Mr S on 7 January 2013, when I said:

*"However, this is a separate issue from the nomination of a vehicle [***57Q] in the name of [HW], which you deny occurred despite Roam's records. In making any decision I am charged with the responsibility of examining evidence and doing what is fair in light of that evidence. Logic dictates that, unprompted, a Roam operator would not attach and record your wife's name to vehicle [***57Q] on 8 February 2008.*

I will deal with this matter when I receive a further response from Roam."

- 27** Although Mr S sought to attach the problems with the tolls to the fact that there was a stolen e-TAG in his vehicle, he was not correct in this regard. The tolls were being imposed on the recognition of the [***57Q] numberplate.

28 Mr S addressed the issue when he said:

“I agree that it is illogical for a Roam operator to randomly attach a vehicle to my wife’s account, however I have no idea what their process is, what checks and balances are in place or how possible, or impossible for that matter, a keying error could be.”

29 Roam has reproduced records of its interactions with Mr S’s wife, [HW], on 8 February 2008 in which the vehicle registration [***57Q] was added to Mr S’s account with an explanation being provided about Toll Notices being charged to the account.

30 This information was recorded despite the fact Mr S says that neither his wife nor he owned a vehicle registration number [***57Q] or a vehicle with a similar registration number.

31 I cannot explain, from the evidence, how this recording was made of Mr S’s interaction with Roam. There would appear to be no logical basis for such a random event.

32 I would recommend, however, in all the circumstances, that this matter be resolved by a refund by Roam to Mr S of 50% of its toll fees and charges incurred.

Michael Arnold
Tolling Customer Ombudsman

Dated: 5 March 2013