

DECISION

Background

- 1 The complainant, Mr PF, first made a complaint to the Tolling Customer Ombudsman (TCO) on 16 November 2014, as follows:¹

“My name is [full name of Mr PF] and I have a dilemma with with City Link. Below I have information which may be vital in making a decision. My Solicitor is in talks with City Link to come to a final resolution. However we have been advised to write to your department. Please review emails below. In due course I will be talking to the media to have this story teliveised on national television concerning the poor service CityLink has to offer and can not believe this behaviour is still occuring in 2014.

Main key points will be discussed on Current Affairs or Today Tonight is,

Why does it take six months to rectify the issue?

You admit your at fault, you waive \$614.00 , but not prepared to waive the whole amount or negotiate further.

Poor customer service and struggles to offer the correct service.

Leaving clients with big debts and expecting them to pay on a payment plan.”

- 2 The TCO responded on 17 November 2014, forwarding the complaint to CityLink for response.
- 3 CityLink responded to the TCO on 20 November 2014, attaching all correspondence between its Resolution Adviser, the complainant and his lawyer, AA. Below is the chronology of correspondence:

10 October 2014 – letter from CityLink to AA

“I write regarding your client, [Mr PF], of [address].

[Mr PF] has contacted CityLink regarding charges on his CityLink Account and has requested I forward the details to you.

I confirm the following:

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

- On the 4th March 2013, vehicle [V***43] (VIC) was linked to [Mr PF's] CityLink Account [****528]. [Mr PF] has confirmed vehicle [V***43] (VIC) belongs to him.
- On the 17th April 2014, vehicle [V***43] (VIC) was also linked to the Account of another customer. It has been found vehicle [V***43] (VIC) was linked in error (typo), as the correct vehicle registration was similar. This was corrected on the 3rd September 2014 after the customer contacted CityLink.
- Vehicle [V***43] (VIC) remains linked to [Mr PF's] Account.
- [Mr PF's] Account was suspended during the following periods:

11-03-2014 - 23-04-2014

04-05-2014 - 06-06-2014

20-06-2014 - 03-07-2014

14-07-2014 - 29-07-2014

09-08-2014 - 08-09-2014

- On the occasions the Account was suspended, trips made with [V***43] (VIC) (between the 17th April 2014 - 3rd September 2014) were charged to the Account of the other customer as they could not be applied to [Mr PF's] suspended Account. Please find record of these trips attached.
- These trips total \$1787.68. Please note, this amount has been reduced by \$614.72. A total amount of \$1172.96 was charged to [Mr PF's] Account on the 9th October 2014.
- If the vehicle was not linked in error to the Account of the other customer, Late Toll Invoices would have been issued for travel while [Mr PF's] Account was suspended. These include additional administration fees.
- I understand [Mr PF] does not wish to make payment towards these trips.
- [Mr PF] has indicated he is happy to pay for travel he has made, however he also advises he is not prepared to pay for this travel due to the mistake of the other customer. As the travel occurred, the vehicle belongs to and is used by [Mr PF], and the vehicle is linked to [Mr PF's] CityLink Account, we can see no reason why payment should not be made. I have spoken to [Mr PF] and offered to negotiate a payment plan.
- We will ensure [Mr PF's] Account will remain active for travel for 14 days to allow a response from you.

We await your reply in regards to this matter.”

3 November 2014 – email from CityLink to Mr PF

“Thank you for your time on the phone.

I understand you are not satisfied with the response we have provided and have requested the contact details of Mr. Michael Arnold, the Tolling Customer Ombudsman. His details are as follows:

Postal Address: PO Box 7095
Hawthorn North Vic 3122

Telephone: 1800 145 009

Fax: (03) 9853 7782

Email: admin@tollingombudsman.com.au

You can obtain further details online at www.tollingombudsman.com.au

Please note, your Account has been reactivated from today until the 17th November 2014 to allow time for your dispute via the Ombudsman to reach us. Your Account was suspended between the 27th October 2014 – today. Travel on CityLink during this period may result in Toll Invoices issued to the registered vehicle owner.”

5 November 2014 – email from AA to CityLink

“I acknowledge receipt of your fax dated 10 October 2014.

Regarding the incorrect linking of [V***43] to another customer for which your company is responsible for, why should my client be liable? Furthermore, given you admit the error, what evidence do you have that the records you now produce accurately reflect my client’s purported travel?

I await your response.”

6 November 2014 – email from CityLink to AA

“Thank you for your email on behalf of your client, [Mr PF].

Please find our response to your questions below:

*Regarding the incorrect linking of [V***43] to another customer for which your company is responsible for, why should my client be liable?*

Furthermore, given you admit the error, what evidence do you have that the records you now produce accurately reflect my client’s purported travel?

- A third party linked vehicle [V***43] due to a typing error to their account.
- This was not a CityLink error
- Vehicle [V***43] is linked to [Mr PF’s] CityLink Account
- [Mr PF] acknowledges this vehicle belongs to and is used by himself
- [Mr PF’s] e-TAG device (e-TAG [***121]) was detected in vehicle [V***43] on each trip.

As previously advised, a goodwill credit of \$614.72 has been provided. Additionally, we believe a reasonable amount of time has been allowed for repayment. I have now provided a further two weeks (the Account will remain active un the 18th November 2014). If you believe our response is not satisfactory you may wish to contact the Tolling Customer Ombudsman, Mr Michael Arnold. His details are below:
...”

14 November 2014 – email from AA to CityLink

“Why has it taken so long for the error to be amended?”

Why should my client now have to pay such a huge debt that has accumulated as a result of someone else’s negligence in circumstances where he is self-employed and barely making ends meet?

The entire debt should be waived. If you refuse to do so, please refer this dispute to the Ombudsman.”

18 November 2014 – email from CityLink to AA

“Thank you for your email. [Name] is on leave and as her manager I will respond.

I believe [Name] has addressed all of your concerns previously, in addition to providing you with the Tolling Customer Ombudsman’s contact details should you wish to lodge a dispute with him.

However, you have now also queried “why has it taken so for the error to be amended?” – this matter was addressed in the first instance of the third party advising CityLink they were being charged for [Mr PF’s] vehicle’s travel.”

4 On 28 November 2014 the TCO wrote to Mr PF, seeking comment on CityLink’s response.

5 Mr PF responded to the TCO on 29 November 2014 as follows:

“Thank you for your email. Michael please advise our office on what the final decision is concerning this matter. I will not be pushed around and Transurban is not above the law. Please note if the decision does not fall my way I will be proceeding to the courts and will be requesting an interview with Current Affairs and Today Tonight concerning this matter.”

6 On 2 December 2014 the TCO responded:

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

The TCO will make a decision in accordance with the usual practice.”

7 On 9 December 2014 the TCO again wrote to Mr PF as follows:

“Further to the previous TCO email, for the purpose of my decision I request your submission as to why you should not be responsible for the costs of the tolls and fees associated with the non-payment of such fees incurred whilst you were driving on the CityLink toll roads.

I request this information because on material before me your liability for such amounts were not as a consequence of the error by CityLink.”

8 Mr PF responded on 10 December 2014:

“Thank you for your email. Our legal team will write to you in due course. In reference to your last sentence (I request this information because on material before me your liability for such amounts were not as a consequence of the error by CityLink).

CityLink has admitted to fault and waived \$614.00 and our legal team has been advised about this.”

9 The TCO replied on 13 December 2014:

“I acknowledge receipt of your email. I appreciate that a waiver has been made of the \$614. From my reading of the material, however, CityLink has not admitted liability for the tolls incurred whilst your vehicle was using the toll roads.

I look forward to clarification from your lawyers.”

10 On 14 December 2014 Mr PF wrote to the TCO:

“Thank you for your email and quick response. I will respond to your email instead of my lawyer.

CityLink have definately admitted liability and apologised and waived \$614.00 for this mess. Also Michael you have acknowledged this has occurred. I suppose the question is, Why would a company waive \$ 614.00 and who is taking responsibility for this mess.

Why has it taken six months to rectify this issue and for CityLink to notify me? What would happen if it was a 12 month period?

Micheal, I am a licensed chauffeur driver with identifying plates [V***43]. CityLink was not billing me over the six month period and all my clients who have accounts with Ontime Corporate Cars & Chauffeur Hire for there travel were not getting billed for tolls and I am not prepared to chase these clients and start demanding money for tolls as this will upset a lot of people and potentially could lose clients over this matter.

I also will not pay for this out of my own pocket as business is tough at the moment and will not be prepared to go on payment plans.

I refer to the comments listed below. A goodwill credit of \$ 614.72 has been provided. This is not good enough as my clients have not been billed due to a third party linked vehicle [V***43] due to a typing error to their account. I can not start ringing my clients and start demanding money for tolls.

As previously advised, a goodwill credit of \$614.72 has been provided. Additionally, we believe a reasonable amount of time has been allowed for repayment. I have now provided a further two weeks (the Account will remain active un the 18th November 2014). If you believe our response is not satisfactory you may wish to contact the Tolling Customer Ombudsman, Mr Michael Arnold. His details are below:

I refer to the comments below by [Name's] supervisor.

However, you have now also queried “why has it taken so for the error to be amended?” – this matter was addressed in the first instance of the third party advising CityLink they were being charged for [Mr PF’s] vehicle’s travel.

Why waive \$ 614.00 Mr Supervisor. Some one has to take responsibility for this mess and \$ 614.00 is not enough.

Micheal, my lawyer has requested for the whole debt to be waived and please refer to the comments below.

Why should my client now have to pay such a huge debt that has accumulated as a result of someone else’s negligence in circumstances where he is self-employed and barely making ends meet.

The entire debt should be waived.

I hope this mess is sorted and we can move on with life without getting lawyers and media involved. I look forward to your response.”

11 The TCO forwarded this correspondence to CityLink with the following request:

“I need confirmation that the remaining tolls and fees relate to [Mr PF’s] trips on the toll road when his account was suspended and that he was not disadvantaged by the CityLink process in respect to same.”

12 CityLink responded to the TCO on 15 December 2014:

“Our records indicate the travel in question relates to both [Mr PF’s] vehicle and e-TAG. Additionally, [Mr PF] has indicated the travel is his as he states ‘I can not start ringing my clients and start demanding money for tolls.’

I do not believe [Mr PF] has been disadvantaged as:

- The travel occurred
- [Mr PF] was not charged Toll invoice administration fees as he should have been due to his account suspension
- The travel has been discounted by a considerable amount of \$614.72. This credit is not an acknowledgement of a CityLink error or an admission of liability. This amount could not be charged to [Mr PF’s] account as the alternate customer was not seeking full reimbursement of what had been charged to her account. This aside, had we not been required to discount the amount, I believe a goodwill credit of \$100 would have been appropriate along with a payment plan to assist [Mr PF]
- [Mr PF] has stated “I cannot start ringing my clients and start demanding money for tolls”. As a professional driver with a business that utilises toll roads and charges clients a fee, [Mr PF] should be aware when he is travelling on a toll road and charge his clients accordingly. If [Mr PF] was aware he was not being charged, he should have contacted CityLink.

Of note, whilst I previously reinstated [Mr PF’s] account, it is now suspended with an outstanding balance of \$912.59. Any travel on CityLink during Account suspension may result in Toll Invoices. I advise there are currently a number of Toll Invoices

outstanding for his vehicles. Failure to pay by the due date may result in Victoria Police issuing an infringement notice for each date of travel.”

- 13 CityLink’s correspondence was forwarded to Mr PF for his information. On 21 December 2014 Mr PF responded as follows:

“Thank you for your email.

Micheal, I have been disadvantaged because my clients get invoiced monthly for there travel. How do you expect me to follow up the cost of tolls when I wasn't receiving CityLink statements. Statements were submitted to my lawyers office once CityLink realised there was an issue 6 months later.

Another issue I raise which CityLink has failed to offer the right service. Why wasn't I charged the Toll admin fee. CityLink have failed to follow terms and conditions and failed to offer professional customer service.

This \$ 614.72 credit was an admission of liability. No company would never ever credit \$ 614.72 if there is no bad reason behind it or bad customer service has been offered. Also to offer a payment deal to sweeten the deal, which means there has been a major stuff up some where along the line.

A credit of \$ 100 was appropriate, why did this not happen. Any monies been credited, I believe a discrepancy has occurred a long the way and the whole debt should be waived.

(As a professional driver with a business that utilises toll roads and charges clients a fee, [Mr PF] should be aware when he is travelling on a toll road and charge his clients accordingly. If [Mr PF] was aware he was not being charged, he should have contacted CityLink

[Name] has gone too far with the comments above. I charge my clients the same amounts that CityLink charge me. How do you expect me to charge clients if haven't been billed. [Name] talks about professionalism. Well, [Name] calling me six months later and demanding money because of your employers mistake, I don't think that is professionalism. Also I am a busy man with limousines nationally, do you think I have time to contact a shit company like CityLink who has failed to offer a service. Debt should be waived completeley for failing to provide a service like you waived the \$ 614.72 or is it \$100.00.

Finally \$912.59 is a different matter and my records indicate I do not owe this much. Once again CityLink has failed to get it right and provide a professional service. Also my account is in shambles due to the above matter so clear the debt and I will be happy to bring my account up to date. Further more I have finished my story with Current Affairs and waiting for it to go on AIR. I just have to sign one more document so clear the debt and the story will not go on AIR.

I look forward to your response.”

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 the applicable legislation can be accessed through Government websites.
- 16 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 Civic Compliance Victoria (CCV) or other outside bodies.
- 17 I am satisfied that the parties to this complaint understand the issues in dispute and have had the opportunity to resolve the matter. As they have not done so, it is appropriate that I make a decision.
- 18 There is no issue that Mr PF's vehicle [V***43] (Vic) was linked to his account on 4 March 2013 and was then subsequently linked to another CityLink account on 17 April 2014 due to the other customer's typographical error. This was corrected on 3 September 2014 after the customer contacted CityLink.
- 19 Mr PF used CityLink roads after [V***43] (Vic) was linked to his account. Mr PF's account was suspended on five occasions between 11 March 2014 and 8 September 2014. Charges for travel in this period were not made to his account because it was suspended. They were incorrectly charged to another customer's account. I am satisfied that this was not CityLink's fault as it arose from the other customer's error.
- 20 I am also satisfied that if Mr PF's vehicle was not linked to the other customer's account, Late Toll Notices would have been issued to him for travel while his account was suspended. Mr PF's e-TAG was detected in his vehicle [V***43] on each trip. The total account for the trips were \$1,787.68 and these were charged to his account on 9 October 2014 after his account was reinstated. CityLink has agreed to waive \$614.72 of the fees due to inconvenience that arose from the situation.
- 21 Mr PF, as a professional chauffeur, had the obligation to maintain his CityLink account in good order as well as monitor his travel records to ensure that they matched his account. He did not do this as he allowed his account to fall into suspension on five occasions between 11 March 2014 and 8 September 2014. He

continued to travel on the CityLink toll roads in these periods, incurring toll charges and administration costs.

22 I am satisfied that CityLink has acted reasonably in waiving fees of \$614.72 as they were incurred by Mr PF and the administration error linking Mr PF's vehicle to another customer's account was no fault of CityLink's.

23 However, in the circumstances I determine that CityLink should waive another \$135.28 in fees, making a total waiver of \$750, due to the inconvenience suffered by Mr PF.

Michael Arnold
Tolling Customer Ombudsman

Dated: 15 January 2015