

DECISION

Background

- 1 The complainant, Mr S, first made a complaint to the Tolling Customer Ombudsman (TCO) on 22 November 2011, as follows:¹

“I was just wondering if you could look into this refund enquiry/account enquiry that we are not happy with in relation to Citylink charges that were incorrectly charged and taken out of our bank account.

A bit of background with regards to this case:-

We were charged amounts totaling \$ 47.06 for charges to vehicle registration [LPN] on dates 24th, 27th, 28th, 29th and 30th September this year (2011) that we had previously sold to an authorized dealer in March of 2011.

When noticing that we had been incorrectly charged for a vehicle no longer in our possession or ownership we dually contacted Citylink straight away to inform them of the error we were told to fill out all the relevant paperwork and prove that the car was not in our ownership on the dates we were charged and they would refund fully the amount we were charged.

Now after doing everything that they asked correctly (to the letter) Citylink have now informed us that they will only refund \$ 15.74 out of the almost \$50.00 that was incorrectly taken from us!!! I have attached an email from Citylink in response to our “Nomination Statement” along with what I emailed back in frustration this afternoon.

Can you help us out ?? I don't feel it right that we only get less than half of our money back from Citylink for charges that we did not use, when there is an owner of the actual vehicle that used their toll way out there that they should be chasing down for their outstanding account!! I understand that they paid Eastlink already. However, shouldn't they refund us in full and then chase the actual owner of [LPN] down for all out of pocket expenses???

Look forward to your response and thanks for your time.”

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

- 2 The complaint was acknowledged by the TCO and referred to CityLink on 24 November 2012.
- 3 CityLink responded directly to the complainant.
- 4 Following this, the complainant wrote to the TCO in the following terms:

*"I had [Name] (Ph: 8656****) call me from Citylink on Friday and basically she told me in no uncertain terms that I had to name a figure that I felt was fair and reasonable with regards to the \$47.06 that we had been charged for charges we didn't use.*

I said to her that she should let me know first what they were willing to give back. Anyway, this went back and forth as she was not willing to give me a figure and I was not willing to give her one. In the end I gave in and said ok alright \$ 40.00 to which she replied before I had even the chance to finish saying \$ 40.00 "NO, that is ridiculous the most you will get back is 50% and no more." I said back well if you just had of said that from the get go it would have been easier!!

She said "The tolling ombudsman would know that you wouldn't get more than 50% back, so there is no point going back to them".

Where do I go from here? Citylink took \$ 47.06 from my bank account on the 24th of October. We didn't receive the statement until the 27th October. So we didn't even have a chance to realize that the charges were incorrect before the money came out of our account (which I don't think is fair, why send a statement to check then???). I want my money back in full!!!!

I know that Citylink can track down who now owns the car, because if the rego [LPN] was not unfortunately still linked to our access account at the time of the trips they would be able to find who owned the car to bill them at a later date. So why can't they do that now to track down there "outstanding money"?? and give me my money back???

Furthermore, I now look at our bank account today and they have charged us another \$ 2.55???. For what I do not know, as we do not have a car linked to anything with Citylink anymore."

- 5 The TCO responded by email to complainant dated 1 December 2011:

"I acknowledge receipt of your email of 1 December 2011. It would be of assistance if you could advise how and when you advised VicRoads of the transfer of ownership of vehicle registration [LPN]. Support by way of copies of any documents or a copy of a telephone account as evidence of contact would be appreciated."

6 The complainant emailed the TCO on 1 December 2011:

“Yes of course, I have already supplied that information and documentation to Citylink. However, I will have to send it to you tomorrow as I have all copies etc. at home not at work (which is where I am presently).

Thank you for your response. I will forward all documentation tomorrow as soon as I can.”

7 The TCO responded to the complainant on 1 December 2011:

“If you have already supplied them to CityLink there is no need to send me the documentation again.”

8 The complainant emailed the TCO on 1 December 2011:

“Where do we go from here? Can we receive full recompense from City link at all with regards to this matter?”

9 The TCO emailed the complainant on 2 December 2011:

“I will make a decision shortly on what I believe is fair in the circumstances.”

10 The TCO sought further information from CityLink on 8 December 2011.

11 CityLink’s email response to the TCO was dated 21 December 2011:

*“[Mr S] left vehicle [LPN] on his account 6617**** after he sold the vehicle on the 30/03/2011. He advises he did not remember to remove the vehicle. The vehicle was not removed from the account until the 26/10/2011.*

- *[Mr S] was charged \$61.10 from the 24/09/11 to 22/10/11*
- *C/L travel comes to \$14.24*
- *E/L travel comes to \$46.86*
- *A goodwill refund of \$14.24 for CityLink travel was done on the 11/11/11 and a refund of \$1.50 for two no tag in vehicle fees*

This left a balance of \$46.86 of EastLink travel. I spoke to [Mr S] and advised him as a gesture of goodwill I would refund half of the Eastlink travel, this amounted to \$23.23.

[Mr S] was not happy with this compromise and stated he wanted all his money back. I advised [Mr S] it was not a CityLink error that led to the vehicle remaining on his account, and that it was his error in not removing the vehicle.

Of the \$61.10 CityLink has refunded \$37.47 and explained to him a full refund was unable to be processed as he did not advise CityLink that he had sold the vehicle on the 30/03/2011.”

12 This response was forwarded to the complainant on 5 January 2012.

13 I have determined to make a Decision in the circumstances.

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 legislation such as the Melbourne CityLink Act 1995 can be accessed through Government websites.

16 The TCO is not a judicial body and does not have punitive powers. When making a decision it 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.

17 There is no issue that Mr S sold vehicle [LPN] on 30 March 2011 but did not remove the vehicle from his tolling account No. 6617****. He subsequently removed his vehicle from this account on 26 October 2011.

18 During this period the vehicle had been used on the CityLink and EastLink toll roads. Mr S was charged a total of \$61.10 for the vehicle's travel between 24 September and 22 October 2011. CityLink travel totalled \$14.24, EastLink travel totalled \$46.86.

19 CityLink, as a measure of goodwill, refunded the \$14.24 for its toll road travel and refunded \$1.50 for two "no tag in vehicle" fees. This left a balance of \$46.86 of EastLink travel. As a further gesture of goodwill, CityLink advised that it would refund Mr S \$23.23, being one half of the EastLink travel.

20 Mr S had the responsibility for tolls incurred for vehicles registered to his account, together with the obligation to notify CityLink once the vehicle was sold. CityLink Customer Service Agreement quotes:

***“7. Charging Tolls to your Account
Travel on CityLink***

You will be charged tolls for using CityLink which are set in line with the Act. You will be charged tolls for using other Eligible Toll Roads

which are set by the relevant Eligible Toll Road operator. We will debit a toll to your Account when one or more of your Nominated Vehicles, your e-TAG or the Number Plate of your Nominated Vehicle is detected in a Toll Zone or on an Eligible Toll Road, subject to Clause 17.”

and:

“4. When you should contact us

...

You should also contact us as soon as possible when:

(a) ...

(b) ...

(c) you want to remove your Nominated Vehicle from your Account (eg. you sell that vehicle), or you change the Registration Number of a Nominated Vehicle which is linked to your Account, or you want to link another vehicle to your Account;

(d) ...”

- 21** Mr S did not notify CityLink that he had sold the vehicle and he wanted it removed from his account.
- 22** I am satisfied that CityLink has acted appropriately in this matter. CityLink has explained the reasons for the charges that were levied. Further, CityLink has, as a gesture of goodwill, refunded the charges payable to it and advised it would refund half the charges due to EastLink in order to resolve the complaint. This reduces the debt due to CityLink from \$61.10 to \$23.63.
- 23** I am satisfied this offer is reasonable in the circumstances, as the charges were not incurred due to any fault of CityLink.

Michael Arnold
Tolling Customer Ombudsman

Dated: 7 February 2012