

DECISION

Background

- 1 This complaint involves vehicles owned by Mr H and Mr D. The complaint arose after Mr H received two notices from Civic Compliance Victoria in respect of travel by his vehicle ***240 on EastLink whilst not being registered for travel in a toll zone. The travel apparently took place on 25 May 2011 and 4 June 2011.
- 2 Mr H alleges that these tolls should have been transferred to his CityLink account on 14 July 2011. He says that arrangements were made to transfer tolls relating to both Mr D's vehicle ***843 and his vehicle ***240 on that date but due to a failure in CityLink's system this was not done. He further says that he did not receive EastLink Toll notices for travel on 25 May 2011 and 4 June 2011.
- 3 Mr H, first made a complaint to the Tolling Customer Ombudsman (TCO) on 15 September 2011, as follows:¹

"This is the email correspondence between myself and Citylink.

I have received two notices from Civic Compliance for failure to be registered in a toll zone in respect of Eastlink.

When we first opened our Citylink account there was a great fuss and a supervisor [Name] had to become involved. She agreed, after discussion, to open the account and contact Eastlink via email on our behalf to transfer any tolls to our newly opened account.

We only agreed to open the account on this proviso and have very clear recollection of this.

The tolls weren't transferred. We are now being told Citylink were never able to transfer tolls from Eastlink- which seems strange.

The supervisor, [Name], who agreed to and was to arrange all this has not fulfilled her undertaking. It is also apparent she has left notes contrary to the

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

agreement made between her and my partner [Mr D] when opening the account.

In their most recent email to me, Citylink has contacted Eastlink on my behalf to obtain toll information and travel dates for the purpose of advising me that I must contact Civic Compliance.

HOW IS IT POSSIBLE FOR THEM TO CONTACT EASTLINK TO OBTAIN ALL MY PERSONAL INFORMATION AND CONFIRM TRAVEL DATES IF THEY APPARENTLY CANNOT CONTACT EASTLINK ON OUR BEHALF??!!

*The email further stated that final notices were sent etc. "toll notice [*****078] (travel date 21/05/11) was issued on the 04/06/11 with a final payment date 06/07/11".*

However, when I have spoken to call centre staff I have advised an initial notice has never been received by me, nor a final notice. I purchased the vehicle in May, 2011, and just prior to contacting Citylink I received the late tolls notices in the name of "[Name]" - who was the owner of the car dealership. The only notice I have received in relation to these two Eastlink tolls, in my name, is the Civic Compliance notices relating to same.

This is completely unreasonable. Citylink is avoiding all liability and accountability because of incompetent staff, poor record keeping and management of my and my partner's personal information. All staff members at Citylink I have spoken to have agreed there have been numerous system issues, yet no one could see anything other than they "could not have done anything wrong".

I want this to be resolved without having to deal with anyone else further - if we write a letter to CCV as they have requested we will only be met with a response that "everything has been done correctly our end therefore nothing changes"

This is the statement I keep hearing from everyone, it seems to be a scripted statement staff make to customers. It is not fair in any way for someone/anyone who has done the right thing to be met with disorganised apathy and grief.

I am advising you to please deal with this. I cannot deal with this further. It is actually driving me insane.

Citylink needs to contact Eastlink / Civic Compliance and arrange for the notices to be withdrawn and the tolls transferred to our Citylink account.

This is what was meant to be done on 14 July 2011. We paid for every other toll, there was even a second vehicle that has travelled on Eastlink that was

*linked to this same account. ---- If the account was opened on 14 July for both vehicles *([***240] and [***243]), and both vehicles had travelled on Eastlink prior to 14 July - why is it only [***240] is receiving notices from Civic Compliance?"*

4 The complaint was acknowledged by the TCO on 16 September 2011 and referred to CityLink for response.

5 There was a further email from Mr H to the TCO dated 17 September 2011:

"I have contacted the Customer Response centre of Citylink. They have responded to me by phone and by email, which I attached to my first email to you.

Please refer to my first email to you as it already contains my complaint that was provided to the Customer Response centre of Citylink. Attached to that email is also the response received from Citylink that is "negative".

I should in no way be obliged to contact Civic Compliance. Apart from the fact that it would be pointless because Civic Compliance will contact Eastlink who will say nothing has been done incorrectly. Citylink will also advise that they have everything correctly when they have not.

*ONE STAFF MEMBER - JUST ONE is responsible for this. Her name is [Name] and she is a Team Leader who spoke with [Mr D] on 14 July 2011 and agreed that she would contact Eastlink to arrange for the tolls for both our vehicles to be transferred to a new account that we only agreed to open and pay for if she would arrange this. She agreed. If there are voice recordings they will prove it. She lied in the notes, tolls were transferred for [Mr D's] vehicle [***843] without any issue but the tolls for vehicle [***240] were not, and no initial invoice was sent to [Mr H] at [Address], they sent that to [Name] of [suburb] - THEY JUST SENT ME THE INFRINGEMENT.*

So no, i'm not contacting them. As far as i'm concerned i'm bloody done with this. Please Michael, deal with this what you can. Come back to me once you've dealt with everyone and looked at the information i've provided you. I give you full authority to act on my behalf in dealing with this matter.

If you can resolve this, brilliant. If not, I will make a mockery of them in court."

6 The TCO emailed Mr H on 19 September 2011 regarding process:

"The TCO, like all ombudsmen, must have a process that is open, transparent and fair to both the relevant tolling business and their customers. Accordingly, it is necessary for me to ensure to my satisfaction that the parties understand the nature of the dispute between them and have had the opportunity to comment on all aspects of it before seeking to resolve it.

This involves a process where I require the relevant tolling business to put in writing to me their response to your complaint and to give you the further opportunity to comment on it. This means there is no misunderstanding.

A Resolution Adviser from the toll road operator would usually make contact to resolve the matter directly with you. However, they may elect to communicate via this office. In that case, on receipt of a response from the relevant customer resolutions group I will again review your complaint.”

7 CityLink responded to the complaint to the TCO on 21 September 2011. This response was communicated to Mr H on 22 September 2011 as follows:

“I quote below information from CityLink that sets out their record of the transactions that took place.

“Thank you for sending the complaint for [Mr H] dated 15/09/2011 for me to address. I sent response to [Mr H] on the 15/09/2011 outlining what had occurred and that he needed to contact Civic Compliance Victoria (CCV). [Mr H] has not accepted the outcome of the investigation and has asked you to intervene. Due to the fact I have already responded in writing to him , I would ask that you contact him and advise him of the outcome. I have outlined in bullet point what has occurred below:

- *[Mr D] opened account [*****186] on the 14/07/2011*
- *All CityLink Late Toll invoices (LTi)s were transferred to the account at the [Mr D's] request on the 14/07/2011*
- *[Mr H] advises his partner [Mr D] requested the Toll invoices from EastLink be transferred over in this conversation. This is something CityLink does not do. Customers are advised they must contact Eastlink with their CityLink account number and request the transfer to be done. The CityLink call centre would not have been able to request this on the customers behalf*
- *Eastlink has confirmed [*****078] (travel date 21/05/11) was issued on the 04/06/11 with a final payment date 06/07/11. Payment terms had expired on account opening 14/07/11 and was unable to have been transferred to [Mr D's] account on the 14/07/2011*
- *[*****591] (travel date 04/06/11) was issued on the 18/06/11 and final payment date was the 20/07/11 and could have been transferred to [Mr D's] account if EastLink had been asked to transfer the invoice.*

I can confirm that there has been contact by the account holder to CityLink however, the contact was outside the EastLink payment terms and all queries relating to the toll notices issued by Eastlink should have been made to Eastlink.

[Mr H] has been advised he must contact CCV and lodge a plea as CityLink is unable to assist him in this matter.”

I understand that you disagree with their interpretation of events but CityLink cannot action a transfer of EastLink toll invoices as they are two separate companies. The transfer must be done through EastLink. I appreciate that there may have been a misunderstanding on your partner's part but I cannot reverse the situation.

I recommend that you lodge a plea with Civic Compliance Victoria and provide all correspondence, including this email, for their consideration.

8 Mr H emailed the TCO on 22 September 2011 in the following terms:

"I have already been clear to you.

There has been no misunderstanding.

The conversation between [Mr D] and the Team Leader [Name], he recalls VERY well.

[Name] advised she had contacts at Eastlink and that she arrange for the transfer of tolls for both our vehicles.

I find Citylink's advice to you contradictory;

*- Neither [Mr D] nor myself have contacted Eastlink, yet the tolls for [Mr D's] vehicle [***843] were transferred.*

BOTH OUR VEHICLES HAVE TRAVELLED ON EASTLINK

WE HAVE NOT DEALT WITH EASTLINK DIRECTLY AT ANY POINT

*ONLY ONE VEHICLE – [***240] - HAS RECEIVED INFRINGEMENTS*

I DO NOT KNOW WHAT IS WRONG THAT YOU CANNOT REVIEW ALL THE INFORMATION I HAVE PROVIDED TO YOU

I HAVE ADVISED YOU THEY HAVE TRANSFERRED THE TOLLS FOR ONE VEHICLE BUT NOT THE OTHER

- REGARDLESS OF WHETHER OR NOT CITYLINK ADVISE THEY CAN/CAN'T/WILL/WON'T DO THIS - THEY HAVE DONE IT FOR ONE VEHICLE - WHICH IS CONFIRMATION OF OUR ARRANGEMENT ONLY BEING PARTIALLY SATISFIED.

I CAN'T RESOLVE THIS BY CONTACTING CCV OR EVEN EASTLINK BECAUSE THIS IS CITYLINK'S FAULT - TEAM LEADER [NAME]

DO YOUR JOB AND ACTUALLY READ THE INFORMATION I HAVE PROVIDED YOU MICHAEL.

I'VE PROVIDED YOU ALL OF THE INFORMATION YOU REQUIRE AND YOU STILL HAVE THE AUDACITY TO ASSUME THAT EITHER MYSELF OR MY PARTNER HAS MISUNDERSTOOD THE SITUATION.

THIS IS RIDICULOUS.

GO BACK AND DEAL WITH THIS FURTHER BECAUSE SO FAR IT FEELS LIKE YOU HAVE ABSOLUTE APATHY FOR THE POSITION CITYLINK HAS PUT ME AND MY PARTNER IN.”

- 9 CityLink’s response to the issues raised by Mr H was received by the TCO on 4 October 2011, as follows:

“Thank you for forwarding the complaint from [Mr H] dated 23/09/2011, and thank you for responding to [Mr H].

[Mr H] has had his complaint investigated and responded to. The advice stands that he must lodge a plea with CCV as I have checked the account notes and cannot find a CityLink error that contributed to him being issued with the Infringement Notices.

*[Mr H] states the EastLink Toll Notices for his partners vehicle [***843] were transferred to the CityLink account on the 14/07/2011. I contacted EastLink today and they confirmed that no Toll notices have been issued for vehicle [***843]. Further to this, the CityLink account has not had any EastLink Toll invoices transferred to it for either vehicle. We note that, on the 14/07/2011 CityLink transferred Late Toll invoices (LTi)s issued by CityLink to [Mr D’s] account.*

*As [Mr H] has been previously advised, EastLink Toll Notice [****078] (travel date 21/05/11) was issued on the 04/06/11 with a final payment date 06/07/11. Payment terms had expired on account opening 14/07/11 and was unable to have been transferred to [Mr D’s] account on the 14/07/2011. Therefore even if CityLink could have transferred the EastLink notice (which we can’t), the payment terms had expired.*

*EastLink Toll Notice [****591] (travel date 04/06/11) was issued on the 18/06/11 and final payment date was the 20/07/11 and could have been transferred to [Mr D’s] account if EastLink had been asked to transfer the invoice. EastLink have advised they have no record of such a request.*

*I confirm CityLink did not contact EastLink to transfer any Toll Notices to CityLink account [****186] additionally of note this is not a process CityLink follow. If a customer requests to have an EastLink Toll Notice transferred to the CityLink account, we advise customers to contact the toll provider who issued the notice and ask them to request the transfer.”*

- 10 This was communicated to Mr H on 5 October 2011.

- 11 The TCO received a further email from Mr H on 6 October 2011 as follows:

"FACTS:

1. BOTH OUR VEHICLES HAVE TRAVELLED ON EASTLINK ON MULTIPLE OCCASIONS

2. ON 14 JULY 201, [MR D] SPOKE WITH [NAME] AT CITYLINK WHO AGREED TO TRANSFER THE TOLLS REGARDLESS OF WHETHER SHE WAS ABLE OR NOT - YOU CANNOT SIMPLY DISREGARD THIS

I HAVE BEEN CLEAR, MORE THAN ONCE, [NAME'S] NOTATION ON THE ACCOUNT IS CONTRADICTIONARY TO THE ADVICE AND AGREEMENT THAT WAS MADE BETWEEN HER AND [MR D] -

3. PRIOR TO THIS DATE I HAD RECEIVED NO TOLL NOTICES FROM EASTLINK FOR [Mr H]

4. AFTER THIS DATE I RECEIVED TWO NOTICES FROM CIVIC COMPLIANCE -THE INFRINGEMENTS

5. I HAVE STILL NOT RECEIVED ORIGINAL TOLL NOTICES FOR THE INFRINGEMENT NOTICES

6. WE RECEIVE MULTIPLE LATE TOLL NOTICES FOR CITYLINK FOR TOLLS THAT WERE NOT TRANSFERRED ONTO THE ACCOUNT ON 14 JULY

EastLink Toll Notice [*****078] (travel date 21/05/11) was issued on the 04/06/11 with a final payment date 06/07/11
WHERE WAS THIS SENT? I NEVER RECEIVED IT

EastLink Toll Notice [*****591] (travel date 04/06/11) was issued on the 18/06/11 and final payment date was the 20/07/11
SAME WITH THIS ONE - WHERE WAS IT SENT? I NEVER RECEIVED THIS EITHER

I NEVER RECEIVED NOTICES AND I DIDN'T FOLLOW THEM UP BECAUSE [MR D] HAD JUST GOT OFF THE PHONE TO CITYLINK, SPEAKING WITH [NAME], AND TOLD ME THAT [NAME] HAD AGREED TO EMAIL EASTLINK AND TRANSFER ALL OUR TOLLS ACROSS

IT IS OBVIOUS TO ME THAT NEITHER CITYLINK NOR EASTLINK HAVE THE ABILITY TO KEEP ACCURATE RECORDS AND FURTHER, THE INTEGRITY OF ITS STAFF MEMBERS LEAVES A LOT TO ANSWER FOR.

I HAVE ABSOLUTE LOSS OF CONFIDENCE IN THEIR ABILITY TO FUNCTION AS A TRUSTWORTHY ENTITY

THIS ISN'T JUST A MATTER OF ME GETTING SLACK AND NOT PAYING THINGS ON TIME - I'M NOT STUPID - BUT YOU KEEP TREATING ME LIKE I AM - AT NO POINT AM I GOING TO BACK DOWN WHEN I HAVE NOT DONE THE WRONG THING, IN FACT I HAVE ATTEMPTED TO DO EVERYTHING CORRECTLY AND IF IT WERE NOT FOR DISHONEST LOUITS LIKE [NAME] AT CITYLINK WE WOULD NEVER HAVE THIS PROBLEM.

POINT AND FACT - YOU CANNOT GIVE ME INFRINGEMENTS FOR TRAVEL DATES WHEN YOU HAVE NOT SUPPLIED ME WITH THE ORIGINAL NOTICES

I KNEW, WITHOUT RECEIVING THE NOTICES, THAT I HAD TRAVELLED ON EASTLINK - I DO NOT NEED A COMPUTER SCREEN TO TELL ME - BUT OBVIOUSLY YOU ALL DO NOTHING BUT READ AND GO BY WHAT IS ON YOUR COMPUTER SCREEN WHICH IS WHY I FEEL LIKE I'M DEALING WITH A BUNCH OF MORONS.

BY YOUR NEXT REPLY TO ME I WANT TO HEAR THAT THIS HAS ALL BEEN SORTED AND THAT EASTLINK WILL BE POSTING OUT NOTICES TO ME FOR THE ORIGINAL TOLLS SO I CAN ACTUALLY PAY.

IF YOU CAN'T MANAGE TO ORGANISE THIS SIMPLE REQUEST I WILL BE CONTACTING THE STATE OMBUDSMAN AND SEEKING FULL INVESTIGATION OF YOUR, EASTLINK AND CITYLINK'S ABILITY TO DO THEIR JOB PROPERLY, LET ALONE WITH ANY INTEGRITY."

- 12 On 12 October 2011 the TCO sought a response from CityLink and EastLink on the issues raised by Mr H.
- 13 On the same day, CityLink responded to the issues raised by Mr H as follows:

"Thank you for forwarding the ongoing complaint from [Mr H]. I will respond individually to all of [Mr H's] questions as he has listed them.

1. "BOTH OUR VEHICLES HAVE TRAVELLED ON EASTLINK ON MULTIPLE OCCASIONS "
 - a. CityLink acknowledges travel was detected on the toll roads.
2. "ON 14 JULY 201, [MR D] SPOKE WITH [NAME] AT CITYLINK WHO AGREED TO TRANSFER THE TOLLS REGARDLESS OF WHETHER SHE WAS ABLE OR NOT - YOU CANNOT SIMPLY DISREGARD THIS "
 - a. This has been responded to in the email dated 21 September 2011 and also on the 4 October 2011. We have advised [Mr H] this is not a process CityLink follows. The customers are advised they must contact EastLink to deal with any Toll Notices they issue.

3. "I HAVE BEEN CLEAR, MORE THAN ONCE, [NAME'S] NOTATION ON THE ACCOUNT IS CONTRADICTORY TO THE ADVICE AND AGREEMENT THAT WAS MADE BETWEEN HER AND [MR D]. "
 - a. As stated in our emails dated 21 September 2011 and also on the 4 October 2011, our records do not support [Mr H's] claim.
 4. "PRIOR TO THIS DATE I HAD RECEIVED NO TOLL NOTICES FROM EASTLINK FOR [Mr H]"
 - a. [Mr H] claims in his earlier emails to have asked for the EastLink toll notices to be transferred to the account. He now states he had not received any Toll Notices when calling CityLink.
 5. "AFTER THIS DATE I RECEIVED TWO NOTICES FROM CIVIC COMPLIANCE -THE INFRINGEMENTS"
 - a. As stated in our emails dated 21 September 2011 and also on the 4 October 2011, CityLink acknowledges [Mr H] has received Infringement Notices from Civic Compliance Victoria (CCV).
 6. "I HAVE STILL NOT RECEIVED ORIGINAL TOLL NOTICES FOR THE INFRINGEMENT NOTICES"
 - a. CityLink are unable verify this statement.
 7. "WE RECEIVE MULTIPLE LATE TOLL NOTICES FOR CITYLINK FOR TOLLS THAT WERE NOT TRANSFERRED ONTO THE ACCOUNT ON 14 JULY"
 - a. All Late Toll invoices (LTis) that were current were transferred on the 14/07/2011. We cannot adjust LTis that have not yet been issued. LTis that were issued after the 14/07/11 were also transferred to the account when we were contacted.
- "EastLink Toll Notice [*****078] (travel date 21/05/11) was issued on the 04/06/11 with a final payment date 06/07/11. WHERE WAS THIS SENT? I NEVER RECEIVED IT "
CityLink are unable verify this statement
 - "EastLink Toll Notice [*****591] (travel date 04/06/11) was issued on the 18/06/11 and final payment date was the 20/07/11. SAME WITH THIS ONE - WHERE WAS IT SENT? I NEVER RECEIVED THIS EITHER"
CityLink are unable verify this statement
 - "I NEVER RECEIVED NOTICES AND I DIDN'T FOLLOW THEM UP BECAUSE [MR D] HAD JUST GOT OFF THE PHONE TO CITYLINK, SPEAKING WITH [NAME], AND TOLD ME THAT [NAME] HAD AGREED TO EMAIL EASTLINK AND TRANSFER ALL OUR TOLLS ACROSS "
CityLink does not contact EastLink to transfer Toll Notices.

As advised in my previous correspondence, CityLink is unable to assist [Mr H] further. [Mr H] is again advised to lodge a dispute with CCV regarding his infringement Notice.

- 14 EastLink acknowledged receipt of the complaint on 14 October 2011 and responded to the complainant in detail on 17 October 2011:

“As stated in our previous correspondence, the Tolling Customer Ombudsman has forwarded your complaint to EastLink for comment.

*We have completed a full investigation into the non-receipt of EastLink Toll Invoices for Licence Plate Number [***240]. As your name does not appear on these invoices, we are unable to disclose the details of the registered owner, as provided to us by VicRoads. If you know the identity of the registered owner, we suggest that you get them to contact us and express authority for us to disclose further information to you. This may also be the reason that you did not receive the original invoices.*

If payment is not received within three days of any unregistered travel, the Licence Plate Number is forwarded to VicRoads to obtain the registered owner’s details. Once EastLink is in possession of the registered owner’s details a Toll Invoice is issued. If the registered owner was not the driver at the time of travel they may elect to nominate a different driver and transfer the invoice into the driver’s name. If neither a nomination statement or payment is received, an Overdue Notice is issued to the registered owner’s details. Again, the registered owner may elect to either nominate a different driver or pay for the Overdue Notice. However, if neither is received by the due date on the Overdue Notice travel may be referred to Civic Compliance Victoria.

As the Toll Invoices have been referred to Civic Compliance Victoria, if you wish to dispute the issue of an infringement notice, you must submit a written application for internal review to:

***Civic Compliance Victoria
GPO Box 1916
Melbourne Vic 3001***

Any written correspondence to Civic Compliance Victoria must include the Obligation and Infringement Notice Numbers for any Infringement you would like to dispute.

We now consider the matter closed unless authority for us to disclose further information to you is received from the registered owner.”

- 15 Following receipt of the EastLink email, Mr H responded to EastLink that same day and forwarded same to the TCO:

"I do not consider the matter closed.

You're going to have to "re-investigate"

*I have, in my possession, notification from VicRoads confirming the date of my acquisition of the vehicle [***240] as being 13/05/2011.*

If you provide a fax number to me I will provide you copy of same.

Considering I have written evidence to support that I was the owner of the vehicle prior both 21 May as well as 4 June, and still have not received an initial notice in my name you will have to contact Civic Compliance to withdraw both notices so that you may issue me toll notices with the correct information.

I find it confusing that VicRoads have provided me, to my address, written evidence that the vehicle is registered in my name yet you would find contrary information upon contacting them.

I trust you will sort this all out and let me know when you have. This has been a down-right pain and the blame lies entirely with you and Citylink.

BTW - How would an infringement notice be issued to me, in my name, when you only have the previous owner's details? Unless of course the owner nominated myself as a driver, in which case I would have an authority to discuss - which obviously there is not because you are advising the details are in another name, which makes me think you must have got my details when you've checked a second time or something, but then why not have the correct details on file now - further if you have the details of the previous owner still then why did he not receive an infringement, why did I? AM I MISSING SOMETHING OR IS EVERYONE THERE AN IDIOT?"

16 The TCO responded to Mr H on 19 October 2011 in the following terms:

"I acknowledge receipt of your email of 17 October that seems to raise further issues in relation to your account.

*I would suggest that you send me a copy of the RTA document to Fax **** so that I may consider it and its relevant to the conduct of CityLink.*

I appoint that I do not have jurisdiction over either RTA or Civic Compliance as they are government authorities. I cannot, as a consequence, direct Civic Compliance to withdraw notices."

17 The complainant emailed the TCO on 19 October 2011 as follows:

“Michael, you are horribly ambiguous ..are you talking about EastLink’s response to me? Because they didn’t respond yet they just called me to give me a fax no. to send through the VicRoads slip – which they shouldn’t even require based on their own admissions.”

18 On 21 October 2011 the TCO received a copy of EastLink’s email to Mr H:

*“Thank you for providing a copy of the ‘Vehicle Registration Transfer Confirmation’ for Licence Plate Number (LPN) [***240]. It is evident from your correspondence that you acquired the vehicle on 13/05/11. However, when requesting the registered owner details from VicRoads for each date of travel, we still appear to have been provided the details of the previous owner. A delay with the submission of ‘Transfer of Ownership’ or ‘Stamp Duty’ forms to VicRoads by the previous owner may have caused this to occur. As we do not have access to VicRoads’ records, we rely upon the information that they provide to us. As such we find no fault on EastLink’s behalf regarding to who and where the Toll Invoices were originally issued.*

We confirm that in previous correspondence you stated that you received copies of the original invoices, as they were forwarded to you from the previous owner. Although you were forwarded copies of the invoices, EastLink did not receive Nomination Statements from the previous owner. As such we were not informed of the transfer of ownership until 12/10/11 when the ombudsman first sought our response to your complaint.

Toll Invoices issued to the previous owner, which were forwarded to you, remained unpaid and were therefore referred to Civic Compliance Victoria (CCV) for enforcement. Each date of travel listed on unpaid Toll Invoices is issued as a separate Infringement Notice. The Infringement Notices are issued to the same party as the Toll Invoices. They can then choose to make payment, dispute or nominate another driver for the time of offence. Once you have been nominated for an Infringement, it is transferred into your name and reissued. This does not mean that you have authorisation to discuss any previously issued notices with CCV or EastLink as those reference numbers remain in the previous name.

*In summary, we confirm that the vehicle was not covered for travel on the dates of offence and no payment was received for the original Toll Invoices or Overdue Notices. This means that the Infringements were issued correctly. Once travel is referred to CCV, EastLink no longer have any jurisdiction over withdrawal of an Infringement Notice. However, in this instance we have submitted a copy of the ‘Vehicle Registration Transfer Confirmation’ provided for LPN [***240] to CCV with your dispute investigation details for review. As such CCV will notify you of the outcome of your CCV Internal Review in writing once they have made their final decision.*

We suggest you contact CCV for any further information regarding the outcome of your CCV Internal Review as the matter is completely out of our

jurisdiction and we have submitted all additional information to them for review. As we have answered all of your concerns, we now consider the matter closed."

19 Mr H responded to EastLink as follows:

"you have completely ignored the fact that i have inferred that you never had my details up to the point it has been transferred to ccv.

if no nomination form was received then as far as your records should be concerned the previous owner, [Name], would receive a notice from civic compliance.

it is not considered appropriate to assume that i would just receive the notices forwarded from les and that would then oblige me to pay for them.

technically, according to your process, because the vehicle was registered to les by the advice you received from vicroads, and he nominated no-one else as the driver, then as far as you're concerned it was him driving and he should receive the infringement from ccv.

what has happened obviously is that you have sent the rego across to ccv with the date and time of travel and they have checked vicroads and got the correct information, unlike yourselves, and they have then issued the notices to myself.

that would mean that the onus for this lies between you and vicroads and your ability to communicate between eachother - you even advised this - still nothing to do with me - so no, the infringements were NOT issued correctly.

your attitude is disgusting, you seem SO DESPERATE TO AVOID ANY ACCOUNTABILITY

and who do you think you are to stand so high on your perch and say "we consider this matter closed" at the end of every email? you don't seem too bright so maybe ask me if i consider everything finalised before you're so obviously abrupt.

TELL ME, WHAT HAPPENS NEXT? DOES CIVIC COMPLIANCE CONTACT YOU AND ASK IF YOU HAVE ISSUED TOLL NOTICES IN MY NAME?

HAVE YOU GOT ANY TOLL NOTICES IN MY NAME? -- YOU STILL HAVEN'T TOLD ME THIS PART

WAS I EVER NOMINATED? - IF SO I WANT THE DETAILS FOR AND WHEN?

MATTER NOT CLOSED

I AWAIT REPLY

MAYBE ASK IF I CONSIDER IT CLOSED HUH?? :)"

20 On 27 October 2011 EastLink responded to Mr H as below:

"We acknowledge receipt of your email dated 21st October, 2011. We appreciate that you are dissatisfied with our most recent response, however all of your concerns have been previous addressed.

As previously stated, EastLink did not receive a Nomination Statement from the previous owner for EastLink Toll Invoices. As such, there are no EastLink Toll Invoices outstanding in your name.

As previously stated, these invoices remained unpaid and travel was referred to CCV for enforcement and Infringement Notices were issued to the person named on EastLink Toll Invoice. The recipient then chose to submit a CCV Nomination Statement to CCV nominating you as the driver at the time of offence, removing the Infringement Notices from their name and into yours.

We once more advise that the matter is completely out of our jurisdiction and that all additional evidence has been submitted for CCV to review. We suggest that any further discussion regarding the outcome of your CCV Internal Review, which you submitted, be directed to CCV. However, as previously stated, CCV will notify you of their final decision in writing as soon as possible.

While you may not feel like the complaint is closed, the final decision rests with CCV and we do not believe there is anything further that we can do to assist you."

21 EastLink notified the TCO on 28 October 2011 that it now considers the matter closed.

22 On 3 February 2012 the TCO was copied into correspondence between CityLink and Mr H. This was in response to Mr H's correspondence to CityLink of 24 January 2012:

"Both our vehicles have frequently travelled on Eastlink and Citylink.

We make frequent payments to our account.

For a great deal of last year you had system issues and you upgraded your systems around November/December last year.

You advised us to ignore if our account had apparently "suspended" due to your system issues and you also agreed that with the payments we were

making there should have been enough money in our account to cover all tolls.

Previous to this we were frequently receiving late toll notices whilst our account was not in "suspended" status.

Conclusively it has not been possible to guage the status of our account by your advice, or by the number of beeps when travelling.

We had arrangement to pay no administration fees on any tolls including those coming from Eastlink.

It is apparent we have been charged a number of administration fees for tolls including travelled on Eastlink.

We do not agree to pay these amounts.

The current account balance less any unauthorised charges should put the account into credit.

We request a full reconciliation of our account since it has been opened with a running balance showing all payments and charges.

You are directed to transfer all tolls related to the above vehicle registrations onto the account.

You are to deduct any administration charge that would not be charged on an account that is "active" and "beeps only once" when travelling.

*We have noted charges for "No Tag In Vehicle Fee" relating to registration [***843]. These will also need to be deducted from the account as the vehicle has always had an e-tag present. It may be prudent of you to provide a new tag.*

*We would like an explanation for the charge on 21 October 2011 – [*****518] - Conversion - Misc Adjustment for \$0.75.*

*It would be appropriate for you to provide another e-tag, for vehicle [***240], to avoid us receiving the currently forced administration charge; "No Tag In Vehicle Fee".*

All future late toll notices are not to be sent to us. We consider this form of contact as harassing and unreasonable considering we have an account. Tolls that do not automatically attach to our account are to be transferred to our account less any administration charges regardless of the balance of the account. The details of travel are to be detailed on the statement.

We expect to hear back from you promptly."

23 CityLink's email to Mr H of 3 February 2012 read:

"Thank you for your recent email to CityLink regarding your account. I apologise for any inconvenience this matter has caused you.

It is important to note that your account has been suspended from the 21/01/2012 and all travel done from then has not been covered by your account. To activate your account you will need to make a payment of \$33.46. This will give you a credit of \$40.00 and reactivate the account.

*I note you have two vehicles linked to the account with one e-Tag device. CityLink are able to confirm vehicle [***843] has been detected travelling without the tag, and that vehicle [***240] is travelling with tag [*****429]. You have asked for the No Tag in Vehicle fees (NTIVF) to be refunded to your account. As a gesture of goodwill I have refunded the \$28.72 for NTIVF charged. The charges are valid as CityLink have not detected the e-Tag in vehicle [***843].*

*You mention you have received Late Toll invoices (LTIs). I confirm LTI [*****064] was issued for travel undertaken whilst your account was suspended from the 17/11/11 to 26/12/11. I can also confirm LTIs issued for vehicle [***843] at CityLink were for travel undertaken prior to the account being opened on the 14/07/11. It is important to be aware when an account is unable to accept a toll charge, an LTI will be issued. The LTI process is independent from your account.*

I have generated a statement from the 14/07/11 to 03/02/12 for you to see charges and payments. You will be able to view the statement online from the 04/02/12.

As previously advised your account is suspended and as such I am currently unable to issue a new tag out to you. Your account will remain suspended until the requested payment is made.

You have noted you do not want to receive LTIs. Unfortunately neither CityLink or EastLink are able to do this. LTIs are issued to the registered owners to pay for travel not covered by a valid account. If those LTIs are not paid, the travel details are forwarded to the Victoria Police for them to issue an infringement notice.

Part of operating a CityLink account is the agreement you have with CityLink to keep the account in credit. Once the account is in debit, the account will be suspended and LTIs issued. CityLink in the future will not waive administration fees for a suspended account. As a gesture of goodwill I will waive administration fees if you activate the account in a timely manner and advise me of LTIs received. I will not be able to do anything about any EastLink toll notice fees."

24 And Mr H responded that same day as follows:

“You have stated that you have reversed the \$28.72 for NTIVF charged after advising the payment of \$33.46 is required. Are we to now assume that you only require the payment of \$4.74 to bring the account out of suspension? This payment can be arranged, however we are finding your advice that the account must be topped to atleast \$40 to activate contradictory to advice received from the tolling ombudsman stating that it is not a legal requirement to have a credit balance in the account as that is effectively requiring payment for services not rendered at the point of payment, which would also be in contravention of the Trade Practices Act. If you can advise us otherwise we would appreciate it.

We have requested a full reconcilliation of our account. Not a statement, A statement will not suffice and you have previously been able to provide a reconcilliation for a previously held Citylink account.

We have never been obliged to pay administration charges for Citylink or Eastlink and this has always been the arrangement. We have attempted to have Eastlink tolls transferred to our account but they are being sent back even though there is a balance in our account because it is your policy that a minimum balance of \$40 is required you are declining a legitimate transfer authorisation without contacting us to advise your decision.

I have forwarded this email to the tolling ombudsman as, yet again, it seems okay for your staff to say one thing on the phone and then another in writing:

At no point were we referring to our initial late tolls that were obviously before the account was opened. We have referred to the period approximately October- December last year when you had constant system issues. Your representatives advised they could not tell us our account balance and that everyone's account was showing suspended, and further your representatives advised that as we were making regular payments we were to call if we received any late tolls and they would be attached to our account without the administration charges.

It is not ok for your call center staff to make these assurances to us creating the air that we have handled the situation with you and yet we receive further late toll notices, notes don't get left on our account, promises don't get kept and over and over our time is wasted.

The account, by your advise is in credit balance of \$35.26, which means it should be "active". You are to change the account status to active so that we can now contact Eastlink AGAIN so that they can transfer the tolls that they have been trying to send to you now for so long they have sent us a final demand notice.

Once the tolls are received from Eastlink, you are to waive the administration charges as your representative previously agreed to do. Once all adjustments and charges are made to the account you are to copy all of the information into a spreadsheet so you can show us a running balance of our account including all charges to and against it so that we can clearly see what we have paid for and been charged for.

We will then be doing our very best to avoid your roads like a bad smell because you are honestly the most frustrating, dishonest, and horrible bunch to deal with i'm not surprised your calls centre staff are leaving in droves and you are having to pay a pretty penny to keep the ones you have there. (Just what I heard, anyway just rattling now..)

Please just get this fixed up. We have done nothing wrong other than follow your representatives advice to us. We won't do it again."

25 On 9 February 2012 CityLink addressed the TCO, copied to Mr H, as follows:

"We have recently received the email attached from [Mr H]. His account remains suspended with \$35.26 required for reactivation.

I have included a previous email response to [Mr H] dated 3 February 2012. CityLink will respond to [Mr H's] receipt email dated 3 February 2012 shortly.

This response will be sent directly to the Ombudsman's office, who will then communicate with [Mr H]. All future correspondence should also be directed to the Ombudsman."

26 On 10 February 2012 Mr H wrote to CityLink in the following terms:

"We have received the below email from you and it has caused some confusion. Is Mr. Arnold someone you have been contacted by from the Tolling Ombudsman?

Further, I note that your email states that our account is suspended requiring \$35.26 for payment. You should note that your previous advice to us allowed us to assume that it was only \$4.74 required to bring the account out of suspension as it is \$35.26 in credit. It may be prudent to advise us the ACTUAL status and balance of our account.

We have attached below our correspondence to date. There are numerous requests for information that have been unacknowledged. It would be appropriate of you to respond to all three of our emails to you (that's three (3) emails including this one) in depth and addressing ALL of it rather than just touching on what suits you. Your apparently professional inability should cause no further detriment to us. We request that you provide us the information we have legitimately requested and that we also receive a

response from your superior indicating that he is aware of your disregard for formal requests.

*We authorise and direct you to contact Eastlink on our behalf for the purpose of retrieving tolls related to vehicles [***240] and [***843]. These are to be attached to our account as a toll charge only and without administration charges.*

We look forward to hearing from you.”

27 On 13 February 2012 CityLink notified Mr H:

“We have referred all correspondence to Mr Arnold the Tolling Customer Ombudsman, who will be replying to you on CityLink’s behalf. Please direct all your questions to the Tolling Customer Ombudsman’s office and he will forward your questions to CityLink.”

28 The TCO’s office notified Mr H of the status of his complaint on 13 February 2012:

“The TCO, Mr Arnold, has received a series of emails between CityLink and yourself.

The TCO has asked, to assist in the resolution of this matter, that you now summarize the issues outstanding.”

29 Mr H responded on 14 February 2012 as below, drawing attention to his email to CityLink of 24 January 2012 and CityLink’s response of 3 February 2012 (both quoted above):

“We feel that it would be appropriate that Mr. Arnold review the correspondence in its entirety to understand the context of our communication with Citylink and the level of response received from them, including their failure to acknowledge parts of our initial email. We feel that we have been very clear in our requests and expectations and should not be forced to endure Citylink or any part thereof’s shortcomings. Citylink acknowledged at the time that they were having a number of issues and that we the customers would not be penalised as a result. It seems that this statement was far from true. Please see below:”

30 The TCO’s office responded on 15 February 2012:

“The TCO reads and considers the whole file before making a decision.

He believes it would be of assistance to encapsulate your outstanding issues so they can be specifically addressed.”

31 Mr H reiterated the main issues:

“YOU SHOULD BE IN POSSESSION OF THE RESPONSE RECEIVED FROM CITYLINK. AS YOU WILL NOTE, THE AMOUNTS IN THIS EMAIL DIFFER TO THE AMOUNTS IN THE PREVIOUS EMAIL THAT WE RECEIVED FROM CITYLINK. WE HAVE RECEIVED NO RESPONSE TO THE REQUESTS FOR INFORMATION IN OUR SECOND EMAIL AND THE RESPONSE TO OUR FIRST EMAIL WAS INADEQUATE.

WE REQUIRE FROM CITYLINK AN APPROPRIATE RESPONSE TO OUR INITIAL EMAIL TAKING INTO CONTEXT THE PREVIOUS ARRANGEMENT MADE WITH CITYLINK'S CUSTOMER SERVICE STAFF.

WE HAVE ALWAYS HAD THE ARRANGEMENT THAT, WHENEVER A LATE TOLL INVOICE BE RAISED THE TOLL AMOUNTS BE TRANSFERRED THE THE ACCOUNT LESS THE ADMINISTRATION CHARGE. THIS ARRANGEMENT WAS ALSO THE CASE WHEN WE HAVE USED CITYLINK/EASTLINK FOR A NUMBER OF YEARS PRIOR TO THIS ACCOUNT.

WE HAVE REQUESTED A FULL RECONCILIATION OF OUR ACCOUNT - STATEMENTS WILL NOT SUFFICE AS THEY DO NOT CONTAIN ALL THE APPROPRIATE INFORMATION INCLUDING RUNNING ACCOUNT BALANCE.

WE HAVE BEEN ATTEMPTING TO TRANSFER TOLLS FROM EASTLINK TO OUR ACCOUNT AND, EVEN THOUGH BY ANNETE'S LAST ADVICE TO US WE WERE ABLE TO INFER OUR ACCOUNT WAS IN CREDIT BY \$35.26, THE ACCOUNT IS STILL CONSIDERED INACTIVE AND THE TRANSFER IS DECLINED. THE ACCOUNT IS TO BE CHANGED TO ACTIVE STATUS IMMEDIATELY SO THAT THE TRANSFER CAN BE FACILITATED.

WE HAVE AUTHORISED AND DIRECTED CITYLINK TO ARRANGE THE TRANSFER. THEY ARE TO ADVISE US THE STATUS OF THIS REQUEST.”

- 32 This was forwarded to CityLink for further comment. CityLink responded in detail on 27 February 2012:

“Thank you for forwarding [Mr H's] reply to CityLink for investigation and response. [Mr H] has asked for answers to specific questions and I have supplied the response to each individual question raised. [Mr H's] current comments appear in bold underlined, CityLink's previous response is in normal text and my current comments are in italics.

YOU SHOULD BE IN POSSESSION OF THE RESPONSE RECEIVED FROM CITYLINK. AS YOU WILL NOTE, THE AMOUNTS IN THIS EMAIL DIFFER TO THE AMOUNTS IN THE PREVIOUS EMAIL THAT WE RECEIVED FROM CITYLINK. WE HAVE RECEIVED NO RESPONSE TO

THE REQUESTS FOR INFORMATION IN OUR SECOND EMAIL AND THE RESPONSE TO OUR FIRST EMAIL WAS INADEQUATE.

As per my email dated 3 February 2012, "It is important to note that your account has been suspended from the 21/01/2012 and all travel done from then has not been covered by your account. To activate your account you will need to make a payment of \$33.46. This will give you a credit of \$40.00 and reactivate the account".

This has not changed. The account is currently \$6.54 in credit however the agreement [Mr D] has with CityLink is that an account will remain at all times in credit. If the account is suspended, an agreed replenishment amount needs to be paid. In this case the account needs to be \$40.00 in credit to reactivate.

WE REQUIRE FROM CITYLINK AN APPROPRIATE RESPONSE TO OUR INITIAL EMAIL TAKING INTO CONTEXT THE PREVIOUS ARRANGEMENT MADE WITH CITYLINK'S CUSTOMER SERVICE STAFF.

On 3 February 2012, Mr H was advised, "It is important to be aware when an account is unable to accept a toll charge, a Late Toll invoice (LTi) will be issued. The LTi process is independent from your account."

[Mr H] does not have an agreement with CityLink regarding LTis not being issued. If an account is suspended, then LTis will be issued and [Mr H] will need to contact CityLink to have the LTi transferred to his account. Future LTis issued outside this suspension period will not have the administration fees waived.

WE HAVE ALWAYS HAD THE ARRANGEMENT THAT, WHENEVER A LATE TOLL INVOICE BE RAISED THE TOLL AMOUNTS BE TRANSFERRED THE THE ACCOUNT LESS THE ADMINISTRATION CHARGE. THIS ARRANGEMENT WAS ALSO THE CASE WHEN WE HAVE USED CITYLINK/EASTLINK FOR A NUMBER OF YEARS PRIOR TO THIS ACCOUNT.

As per my email dated 3 February 2012, "Part of operating a CityLink account is the agreement you have with CityLink to keep the account in credit. Once the account is in debit, the account will be suspended and LTis issued. CityLink in the future will not waive administration fees for a suspended account. As a gesture of goodwill I will waive administration fees if you activate the account in a timely manner and advise me of LTis received. I will not be able to do anything about any EastLink toll notice fees."

There is no agreement with any customer to waive administration fees ongoing due to account suspension. As a goodwill gesture [Mr H] was advised that I would waive any administration fees for CityLink LTis generated in this suspension period from the 21 January 2012 to activation

date if the account was activated in a timely manner. I note [Mr H] has still not made a payment towards his account. If [Mr H] would like to accept my offer to waive CityLink LTi administration fees, he needs to make a payment of at least \$33.46 by Wednesday 7 March 2012.

We will not waive any EastLink Toll notice fees and we will not waive the LTi fees ongoing.

WE HAVE REQUESTED A FULL RECONCILIATION OF OUR ACCOUNT - STATEMENTS WILL NOT SUFFICE AS THEY DO NOT CONTAIN ALL THE APPROPRIATE INFORMATION INCLUDING RUNNING ACCOUNT BALANCE.

As per my email dated 3 February 2012, "I have generated a statement from the 14/07/11 to 03/02/12 for you to see charges and payments. You will be able to view the statement online from the 04/02/12".

The account statement dated 23 February 2012 shows all charges, adjustments and payments associated with the account in the statement period. If you require a running account balance, you can work this out based on your opening balance, charges and adjustments, and closing balance.

WE HAVE BEEN ATTEMPTING TO TRANSFER TOLLS FROM EASTLINK TO OUR ACCOUNT AND, EVEN THOUGH BY ANNETE'S LAST ADVICE TO US WE WERE ABLE TO INFER OUR ACCOUNT WAS IN CREDIT BY \$35.26, THE ACCOUNT IS STILL CONSIDERED INACTIVE AND THE TRANSFER IS DECLINED. THE ACCOUNT IS TO BE CHANGED TO ACTIVE STATUS IMMEDIATELY SO THAT THE TRANSFER CAN BE FACILITATED.

As previously advised, until the payment of \$33.46 is made to reactivate [Mr H's] CityLink account, we will not accept the transfer of Toll Notices by EastLink.

WE HAVE AUTHORISED AND DIRECTED CITYLINK TO ARRANGE THE TRANSFER. THEY ARE TO ADVISE US THE STATUS OF THIS REQUEST.

CityLink does not request the transfer of Toll notices to CityLink account. It is [Mr H's] responsibility to contact Eastlink to request the transfer of notices once he has reactivated his CityLink account by making a payment. It would appear [Mr H] is also aware of this due to the previous issue raised and dealt with by the Tolling Customer Ombudsman."

33 This was forwarded to Mr H for his information. Mr H responded by email as follows:

"WE REQUIRE FROM CITYLINK AN APPROPRIATE RESPONSE TO OUR INITIAL EMAIL TAKING INTO CONTEXT THE PREVIOUS ARRANGEMENT MADE WITH CITYLINK'S CUSTOMER SERVICE STAFF.

WE REFER TO THE ARRANGEMENT MADE WITH CALL CENTRE STAFF THAT WAS EVIDENTLY NOT RECORDED.

OUR ENTIRE COMPLAINT HAS REVOLVED AROUND THE FACT THAT CITYLINK CALL CENTRE STAFF COULD NOT ADVISE US OUR ACCOUNT BALANCE DURING THE PERIOD IT FELL INTO SUSPENSION LAST YEAR SO WE COULD NEVER KNOW WE HAD EVEN ACTUALLY GONE INTO SUSPENSION BECAUSE - WE WERE MAKING REGULAR PAYMENTS AND YOUR CALL CENTRE STAFF SAID BY THE LOOK OF THE PAYMENTS YOU ARE MAKING YOU SHOULD BE FINE.

THIS HAS BECOME A JOKE. I KNOW CITYLINK ARE TIGHT-ASSED BUT IF THEY CANNOT ACTUALLY TELL US OUR ACCOUNT IS SUSPENDED BECAUSE THE ETAG HAS BEEN BEEPING SAYING IT IS SUSPENDED FOR THE LAST FEW WEEKS BECAUSE YOU HAVE SYSTEM ISSUES - THEN HOW IS IT OK TO TURN AROUND A SAY.. OH WAIT, YOU WERE SUSPENDED FOR A BIT IN THE MIDDLE THERE SO WE'RE GONNA SCREW YOU FOR THAT.

IT'S NOT GOOD ENOUGH

REFER TO EVERY PREVIOUS EMAIL. I HAVE ASKED FOR A RECONCILIATION - WHICH I'M PRETTY SURE I'M LEGALLY ENTITLED TO AS AFTER ALL YOU (CITYLINK) ARE IN POSITION OF ALL OF THE INFORMATION I AM REQUESTING.

I DON'T KNOW WHY ANNETTE IS SO DIFFICULT AND UNACCOMODATING - YOU HAVE PROVIDED ME A RECONCILIATION BEFORE ON MY PREVIOUS ACCOUNT - I DID HAVE TO WAIT 3 MONTHS AND SOME VERY CURIOUS LAST MINUTE CREDITS WERE APPLIED TO THE ACCOUNT OBVIOUSLY FOR CHARGES THAT SHOULD NOT HAVE BEEN THERE.

*AND ANNETTE.. I WOULDN'T BE SO CONFUSED BY WHAT OUR ACTUAL ACCOUNT BALANCE WAS IF YOU HAD THE ABILITY TO ANSWER A QUESTION DIRECTLY... I INFERRED THAT AFTER YOUR VARIOUS CREDITS WERE APPLIED AFTER YOUR FIRST RESPONSE TO ME THAT OUR BALANCE WAS HIGHER THAN YOU PREVIOUSLY ADVISED (\$6.54) BECAUSE YOU HAD JUST APPLIED CREDITS OF \$28.72.... I ASKED YOU: **"You have stated that you have reversed the \$28.72 for NTIVF charged after advising the payment of \$33.46 is required. Are we to now assume that you only require the payment of \$4.74 to bring the account out of suspension? "***

AT WHICH POINT THE FOLLOWING RESPONSE I RECEIVED WAS ADVICE THAT "Dear [Mr H] We have referred all correspondence to Mr Arnold the Tolling Customer Ombudsman, who will be replying to you on CityLink's behalf. Please direct all your questions to the Tolling Customer Ombudsman's office and he will forward your questions to CityLink. Regards Annette New"

I FIND YOUR ABILITY TO FUNCTION IN THIS ROLE A JOKE ANNETTE... I HAVE ASKED YOU DIRECT QUESTIONS WHICH YOU HAVE AVOIDED. YOUR RESPONSES ARE NOT CONCISE AND LEAVE MUCH TO BE ANSWERED. MR ARNOLD I WOULD LIKE TO KNOW AT WHAT POINT DO YOU ACTUALLY READ WHAT IS PRESENTED TO YOU BECAUSE I FEEL THAT IF YOU HAD HALF A BRAIN, WHICH EVIDENTLY NEITHER YOU NOR ANNETTE POSSESS, THEN IT WOULD BE BLOODY OBVIOUS THAT MY CONTENTION IS THAT I/WE HAVE BEEN LIED TO AGAIN BY CITYLINK - I SAY AGAIN BECAUSE THIS IS NOT THE FIRST TIME

THE CALL CENTRE STAFF BACK AT THE END OF LAST YEAR BOTH BEFORE, DURING AND AFTER THE ACCOUNT FELL INTO SUSPENSION ADVISED US THAT THEY COULD NOT TELL US THE STATUS OF OUR ACCOUNT AND THAT IF WE WERE MAKING REGULAR PAYMENTS - WHICH WE WERE - THAT ALL WOULD BE FINE.

WE HAVEN'T PAID ANYTHING OFF THE ACCOUNT ANNETTE YOU NASTY PIECE OF WORK BECAUSE YOU CAN'T STRING A CLEAR RESPONSE TOGETHER.

I'M SICK AND TIRED OF HEARING FROM ANNETTE.

I ASKED TO HEAR FROM HER SUPERVISOR, WHICH NEVER HAPPENED.

I WANT TO HEAR FROM THEM NOW.

I WANT THEM TO READ EVERY LAST EMAIL.

I WANT YOU ALL TO FEEL AS MENTALLY DRAINED AS YOU ARE MAKING ME BECAUSE THIS IS REDICULOUS AND I WON'T BE BULLIED AND HAVE MY REQUESTS IGNORED.

OMBUDSMAN YOU ARE EVIDENTLY A JOKE YOURSELF BECAUSE YOU DID THIS LAST TIME TO: SAT BACK, SKIMMED OVER EMAILS WITHOUT ACTUALLY READING AND TAKING IN CONTEXT.

AS FAR AS I AM CONCERNED THIS IS RATHER BLACK AND WHITE - CITYLINK MADE A REPRESENTATION TO US AT THE TIME OUR ACCOUNT FELL INTO SUSPENSION THAT, AS THERE WERE SYSTEM

ISSUES AND WE COULD NOT BE ADVISED CORRECTLY OUR ACCOUNT STATUS OR BALANCE THAT WE WOULD NOT BE PENALISED FOR THIS.

CITYLINK CANNOT AVOID THAT BASED ON THE REPRESENTATIONS MADE TO US WE CARRIED ON AS WE WERE, MAKING PAYMENTS AND USING THE ACCOUNT BECAUSE WE HAD BEEN ASSURED THAT ANY LATE TOLL INVOICES WOULD BE TRANSFERRED TO OUR ACCOUNT AND ADMINISTRATION CHARGES WAIVED.”

- 34 On 8 March 2012 the TCO wrote to Mr H informing him that as the matter will not be resolved by conciliation, it will now proceed to a written Decision.
- 35 On 22 March 2012 Mr H notified the TCO of the receipt of further late toll invoices. The TCO responded to Mr H on 23 March 2012 and said, amongst other things:

“Further, I advise that the TCO is completing his Decision but in the interim you should take steps to mitigate any loss in the form of additional fees. Pending a TCO Decision it is recommended that the toll road operator customers regularise their accounts to prevent any further loss accumulating in the form of additional fees. Any such payment made to regularise an account will be refunded in a TCO Decision favourable to the customer.”

Decision

- 36 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.
- 37 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.
- 38 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.
- 39 This complaint involves a number of issues in relation to service, the transfer of ownership of LPN ***240 into Mr H’s name, the non-receipt of infringement notices and a disputed conversation between Mr H’s partner, Mr D, and CityLink. There has been extensive correspondence, with neither party completely resiling from their various positions.

- 40** Mr H, with Mr D, has continued to raise issues during the course of the preparation of this Decision that I have endeavoured to deal with in the context of making a timely decision.
- 41** The first issue is in relation to the transfer of EastLink toll invoices to Mr H's CityLink account opened on 14 July 2011. The point must be made that CityLink and EastLink are separate companies with their own particular systems. They had interoperability arrangements that enabled the transfer of invoices from one to another but a process had to be followed as part of these arrangements.
- 42** Mr H contends that a CityLink supervisor, "[Name]", advised Mr D that Toll invoices from EastLink could be transferred to his CityLink account. This is not reflected in the notes of the operator taken at the time but Mr H advises that she lied in completing the notes.
- 43** CityLink maintains that this advice could not have been given by any of its operators. The process for the transfer of invoices required that a CityLink customer contact EastLink with their account number and request that the transfer be made. This process is logical as EastLink could not be satisfied that CityLink had any authority to unilaterally transfer toll invoices incurred by their customer to CityLink without authority from the customer.
- 44** Moreover, EastLink has confirmed that a particular toll invoice *****078 (travel date 21 May 2011) was issued on 4 June 2011 in respect of Mr H's vehicle ***240 with a final payment date of 6 July 2011. Payment terms had expired on [Mr D's] account opening with CityLink on 14 July 2011 and EastLink could not have transferred the invoices to CityLink in these circumstances.
- 45** In view of CityLink's policy in respect of the transfer of EastLink toll invoice, I am satisfied that there must have been a misunderstanding in [Mr D's] conversation with the operator identified as "[Name]" on 14 July 2011 as her contemporaneous notes do not reflect his version of events. Mr H indicates that "[Name]" must have falsified the notes but it must be questioned why [Name] would have done that to her notes rather than advising Mr D of CityLink's requirements for the transfer of invoices from EastLink.
- 46** I am satisfied on the evidence before me that there was no undertaking by CityLink on 14 July 2011 to transfer EastLink toll invoices relating to Mr H's travel on EastLink to a CityLink account

- 47 The second issue relates to Mr H's non-receipt of EastLink toll invoices in relation to travel on EastLink on 25 May 2011 and 4 June 2011. Mr H has provided registration details of his vehicle ***240 showing that he acquired the vehicle on 13 May 2011. However, when EastLink sought details from VicRoads of the registered owner of the vehicle on 25 May 2011 and 4 June 2011 it was provided with details of the previous owner. EastLink is dependent on VicRoads, or the appropriate State motor vehicle registration authority, for vehicle ownership information in the absence of the new owner of the vehicle becoming a customer of EastLink upon acquisition of the vehicle.
- 48 Mr H did not notify EastLink of his acquisition of vehicle ***240 and it did not become aware of Mr H's ownership of the vehicle until the TCO notified it of the complaint by Mr H in relation to the Infringement Notices on 12 October 2011.
- 49 During the period between 25 May 2011 and 12 October 2011 EastLink had acted in accordance with its normal toll recovery process and by 12 October 2011 the outstanding toll invoices had been referred to Civic Compliance Victoria.
- 50 By the time that the invoices had been referred to Civic Compliance Victoria, the details of the ownership of vehicle ***240 with VicRoads had been updated and showed that Mr H was now the registered owner. The information that was previously not available to EastLink was then available to Civic Compliance Victoria. This led to it contacting Mr H directly.
- 51 EastLink, since then, provided assistance to Mr H in relation to the issue with Civic Compliance Victoria. I note from EastLink's email, received by the TCO on 20 October 2011, it said:

*"In summary, we confirm that the vehicle was not covered for travel on the dates of offence and no payment was received for the original Toll Invoices or Overdue Notices. This means that the Infringements were issued correctly. Once travel is referred to CCV, EastLink no longer have any jurisdiction over withdrawal of an Infringement Notice. However, in this instance we have submitted a copy of the 'Vehicle Registration Transfer Confirmation' provided for LPN [***240] to CCV with your dispute investigation details for review. As such CCV will notify you of the outcome of your CCV Internal Review in writing once they have made their final decision.*

We suggest you contact CCV for any further information regarding the outcome of your CCV Internal Review as the matter is completely out of our jurisdiction and we have submitted all additional information to them for review. As we have answered all of your concerns, we now consider the matter closed."

- 52** There was further correspondence between Mr H and EastLink in which EastLink confirmed that the previous owner of the vehicle had not provided a Nomination Statement to notify that Mr H was the owner at the time of travel on 25 May 2011 and 4 June 2011. It advised Mr H that Civic Compliance Victoria would advise Mr H of the outcome of any review in writing. I have not been advised of the outcome of the review by Mr H.
- 53** I am not satisfied that EastLink has acted in any way improperly in this matter. Mr H did not notify EastLink of his acquisition of the vehicle ***240 prior to his using it on its roadway after 13 May 2011; EastLink did the appropriate VicRoads search to ascertain the name of the owner of the vehicle at the relevant times of travel and was provided with the details of the previous owner; EastLink did not receive a Nomination Statement from the previous owner notifying it that Mr H was the owner at the time of the travel; and upon receipt of the information that Mr H was the owner of the vehicle, EastLink took steps to assist Mr H in the Civic Compliance Victoria process.
- 54** The third issue relates to a complaint made to CityLink on 24 January 2012 in relation to the suspension of accounts and late toll invoices. Mr H and Mr D allege that they had an agreement to pay no administration fees for tolls including for those incurred when travelling on CityLink.
- 55** Particular complaints were made in respect of “No Tag in Vehicle” fees incurred in respect of both vehicles ***843 and ***240. CityLink responded by pointing out to Mr H that his account had been suspended from 21 January 2012 and all travel from that date had not been covered. It further pointed out that to activate his account a payment of \$33.46 for that travel was required, to give a credit of \$40.
- 56** In relation to the “No Tag in Vehicle” fees, CityLink, as a gesture of goodwill, waived these fees in respect of both vehicles ***843 and ***240. In relation to other issues raised, CityLink said:

“I have generated a statement from the 14/07/11 to 03/02/12 for you to see charges and payments. You will be able to view the statement online from the 04/02/12.

As previously advised your account is suspended and as such I am currently unable to issue a new tag out to you. Your account will remain suspended until the requested payment is made.

You have noted you do not want to receive LTIs. Unfortunately neither CityLink or EastLink are able to do this. LTIs are issued to the registered owners to pay for travel not covered by a valid account. If those LTIs are not paid, the travel details are forwarded to the Victoria Police for them to issue an infringement notice.

Part of operating a CityLink account is the agreement you have with CityLink to keep the account in credit. Once the account is in debit, the account will be

suspended and LTIs issued. CityLink in the future will not waive administration fees for a suspended account. As a gesture of goodwill I will waive administration fees if you activate the account in a timely manner and advise me of LTIs received. I will not be able to do anything about any EastLink toll notice fees.”

57 I am satisfied that CityLink has no ongoing agreement to waive administration fees as this is not an arrangement it has with its customers.

58 CityLink has, however, provided assistance to Mr H and has given a credit of \$28.72 against an outstanding account. This left Mr H with the obligation to pay \$33.26 to reactivate his account by having a balance of \$40 in his account.

59 Despite attempts by CityLink to clarify this point, Mr H appears not to understand that he needs to have the \$40 minimum balance in his account in order to remove his account from a suspended state. This was made particularly clear in CityLink’s email of 27 February 2012, in which it was said:

“As per my email dated 3 February 2012, “It is important to note that your account has been suspended from the 21/01/2012 and all travel done from then has not been covered by your account. To activate your account you will need to make a payment of \$33.46. This will give you a credit of \$40.00 and reactivate the account”.

This has not changed. The account is currently \$6.54 in credit however the agreement [Mr D] has with CityLink is that an account will remain at all times in credit. If the account is suspended, an agreed replenishment amount needs to be paid. In this case the account needs to be \$40.00 in credit to reactivate”

60 It was incumbent upon Mr H to restore his account to a \$40 credit in order to remove his account from suspension as part of his contractual obligation with CityLink. I note in later submissions that Mr H and Mr D ask:

“You are to confirm the legality of requiring a minimum balance of \$40 in an account to enable it to receive toll charges. The effect of this “process” is to make any payment that would keep the balance of the account under this amount not considered legal tender.”

61 The notion of legal tender is not relevant to the issue of the contractual obligations for payment that Mr H and Mr D have with respect to CityLink.

62 I am satisfied that Mr H should have restored his account to a \$40 credit immediately upon being advised by CityLink to do so. I find that Mr H is responsible for the currently outstanding tolls and administration fees.

63 Mr H has made a wide-ranging and general complaint about the services provided by the toll operators throughout this process. I find that there is no evidence to support this as both CityLink and EastLink have acted in accordance with their processes at all times. Moreover, EastLink has provided assistance to Mr H in respect to his problem with Civic Compliance Victoria whilst CityLink has provided credits to Mr D and Mr H as goodwill gestures.

Michael Arnold
Tolling Customer Ombudsman

Dated: 1 May 2012