

DECISION

Background

- 1 This complaint is made by the complainant, Mr F, in respect of fees and charges incurred as a consequence of travel on EastLink toll road between May 2009 and 24 October 2009. The fees and charges were either incurred or notified to Mr F whilst he was overseas.
- 2 EastLink toll road is operated by ConnectEast Pty Ltd (ConnectEast) under a concession from the State of Victoria. Breeze is the name of its tolling account products manager, including tag accounts and non-tag accounts.
- 3 Mr F is a 69 year old retiree, who is an insulin dependent diabetic with kidney problems and fluctuating blood pressure. Mr F had been a Breeze account holder since 10 August 2008 with an automated toll payment account using his credit card for payment.
- 4 Users of the EastLink toll road with Breeze pre-paid accounts have an obligation, amongst other things, to keep a positive balance in their account and to make or authorise the payments required in accordance with a Customer Service Agreement with Breeze. Customers can nominate a secondary contact when opening an account with Breeze to make payments on their behalf. Mr F did not nominate a secondary contact when opening his account.
- 5 Breeze has an obligation to maintain the privacy of its customers' personal information. The Privacy Policy is set out on the Breeze website. The complaint arises from an application of this Policy.

Reasons for Decision

- 6 This complaint followed Mr F's initial complaint to EastLink, set out in particular in a letter to Breeze of 24 December 2009: (quoted verbatim)

"I note that on 2nd Sep 2009 you sent a "Suspension Warning" with an outstanding balance as at 2 September 2009 of \$0.46, and on 14th Sep 2009 a "Account Suspended" notice with an outstanding balance as at 14 September 2009 of \$0.46. (attached marked) "D" & "E".

*A few weeks after my return when I had settled down I contacted Breeze and rectify the problem by providing the new expiry date, over the same phone call I was told of the only outstanding Invoice, Number ***431 for Vehicle Reg. ***, I paid this invoice on the spot over the phone, Receipt Number ***767.*

On or about 17th Dec 2009, I received a partly felled Pre-Paid Account Application Form, (Attached marked) "F" and a Toll Invoice of \$100.36 for travelling on EastLink. Prior to this I had received from Breeze an undated letter with enclosed a "Payment Card" (Attached marked) "G".

I mediately contacted Breeze by phone and disputed of been charged as a non Breeze Member Tag holder, for a Toll invoice Fee and a Vic roads lookup fee, I also disputed a CityLink Late Toll Invoice and Final Notice of \$28.41, being for Total tolls charged \$5.58 and Toll administration fee \$22.83.

*I was told by the operator of the Breeze charges their was nothing she could help me with and of the CityLink charges, I should contact CityLink. During this phone call I paid the outstanding Invoice No. ***200, Receipt No. ***630.*

I also immediately made contact with CityLink, the operator advised me that the extra charges is a Breeze charge and that CityLink can not help me."

- 7 In relation to the circumstances of this complaint before me, Mr F was overseas in 2009. He had left a friend, Ms L, to take care of his day-to-day correspondence and to pay any incoming bills. He had provided Ms L with all his relevant bank details and she was authorised to use them in his absence.
- 8 Ms L has provided a statement confirming the arrangement she had with Mr F. She said that he provided her with all relevant details such as credit card account number, expiry date and other information necessary to facilitate her task. Ms L informed Mr F that she had received a letter of 4 June 2009 from Breeze addressed to him, advising him that his credit card linked to his account had expired. A copy of the letter has been provided by Mr F. She confirmed that she also received a letter from Breeze to Mr F dated 2 September 2009.

- 9 Ms L said she rang Breeze to inform them that Mr F was overseas; pay his account and notify them of the new expiry date of the card. She says that she informed the Breeze operator that Mr F was overseas until October 2009 and she was paying all his accounts whilst he was away.
- 10 The operator told her that she was not nominated on his account and Ms L responded that it must be “[Name] or her Sister [Name]” on the account. The operator then asked Ms L whether she had the four digit pin number. When Ms L responded that she did not have the four digit pin number the operator told her that she could not deal with her because of the provisions of the Privacy Policy. There was a further discussion but as Ms L was not recorded on Mr F’s account nothing was done.
- 11 A few weeks later, when talking to Mr F by telephone, Ms L obtained his four digit pin number. She again telephoned Breeze but was told that as she was not nominated as a contact on his account and because of the Privacy Policy they could not discuss his account any further.
- 12 On or about 14 September 2009, Breeze sent Mr F a notice advising that his account was \$0.46dr and that his account was suspended. A copy of this notice has been provided by Mr F.
- 13 Mr F, on his return from overseas, contacted Breeze and complained about them not accepting the new credit card expiry date from Ms L. Breeze responded to this complaint by way of an explanatory letter of 20 January 2010. A copy of that letter has been provided.
- 14 Mr F contends that Breeze had been too rigid in its application of the Privacy Policy and that Ms L had not tried to alter the terms of his account, as Breeze suggested in its letter of 20 January 2010. He said in particular: (quoted verbatim)
- “[Ms L] was simply in my absence providing Breeze with information to ensure continuation of the automated payment service as requested in the Breeze letter to me dated 4 Jun 09 such trivial information in my view would have not created a security risk.*
- During the above periods and in other overseas trips by me [Ms L] has been able to perform her task with other organizations by simply providing my Credit Card account number and the Card expiry date, she has paid on my behalf by Phone my home, Electricity, Gas, Water, Council Rates, Phone and the odd Infringement without decent with the exception in this occasion by Breeze.”*
- 15 Following Mr F lodging a complaint with the Tolling Customer Ombudsman and my notification of Mr F’s complaint to EastLink, they responded as follows:

“[Given name of Mr F] has been contacted today at 13:11 regarding this complaint. We have explained to [Given name of Mr F] that our Privacy policy and relevant privacy legislation prevented EastLink from making the modifications requested by [Ms L] on [Given name of Mr F’s] behalf. [Given name of Mr F] has expressed his dissatisfaction regarding the rigidity of our policy, stating that in this instance our application of the relevant policies has caused him financial disadvantage. We have advised [Given name of Mr F] that we are not able to determine on a case-by-case basis whether or not the policies relating to privacy should be followed, but must abide by them in all instances. [Given name of Mr F] has explained that within the last week he has spoken again to [Ms L], who advised [Given name of Mr F] that she requested not only to modify the payment details on record, but also make a direct payment to the account. It is not our policy to refuse a simple and direct payment to an account, provided an account number and other relevant details are provided by the caller. No evidence can be located which suggests that such a request was made, and all staff members are aware of the policy in regards to this form of enquiry. [Given name of Mr F] has stated that he will be taking this matter further, and will refer his complaint back to the Tolling Ombudsman.

[Given name of Mr F] has been advised that he is able to add a secondary contact to his account, who would then be able to make any necessary payments or modifications on his behalf. [Given name of Mr F] has, however, declined to add any additional contacts at this point. [Given name of Mr F] is seeking a reimbursement of all fees which were generated as a result of invoiced travel made between 14/09/09 – 19/11/09 when his account was in a state of suspension. We have declined to provide a reimbursement of these fees due to the fact that [Given name of Mr F’s] Tolling Account was correctly suspended during these dates.”

- 16** This information was provided to Mr F. Mr F responded by letter of 5 June 2010, raising inconsistencies in the conduct of Breeze and further submitted: (quoted verbatim)

“EastLink is using the Privacy Act for their convenience suggesting [Ms L] was “modifying” the payment details on record.

Being a layman I have great difficulties understanding how can; Providing a requested information of a simple expiry date and or personally offering to pay the account as [Ms L] did, can be construed as contravening the Privacy Act thus causing for a period the suspension of an account when instead accepting the requested information and or payment would have rectify the issue and would have resulted in the smooth continuation without changes and interruption of the relevant account.

It’s abundant clear on my submission that if Breeze policy doesn’t product what it’s intended to produce and in this case it’s clear it did not, then it can only be construed as a wrong policy.”

17 I responded to this letter on 18 June 2010 as follows:

“EastLink (Breeze) has an established privacy policy and an arrangement for the nomination of a secondary contact who can pay accounts in the absence of the account holder. Such information is available to its account holders. There must be adherence to these processes otherwise EastLink (Breeze) will be in breach of its own policies.

However, addressing the issue of payment of your account, I note that I have been provided with an Account Suspended – Pre-Paid Tag Account statement of 14 September 2009 for \$25.46. This account provided a number of options for payment of the account. Accepting that [Ms L] was unsuccessful in making payment to Breeze by way of telephone, could you please explain why the other methods of payment were not adopted by [Ms L].

Further, there appears to have been travel by your vehicle after this Account Suspended notice was sent to you, despite the warning that further travel on toll roads would include toll invoices and administration fees. There was an additional warning that the account may be referred to a debt recovery agency and additional charges may be incurred. Could you please explain why additional travel took place in these circumstances.”

18 Mr F responded on 27 June 2010 as follows: (quoted verbatim)

“I confirm having received your letter of 18 June 2010 and wish to respond as follow:

Initially, I accept to be ignorant of EastLink established privacy policy.

However, it's clear that in this instance it worked against me for all the reasons given to you on previous and in this correspondence.

In the same paragraph you also refer to; "and an arrangement for the nomination of a secondary contact that can pay accounts in the absence of the account holder" I reiterate, Breeze representative made this offer for the first time over our phone conversation of 24 May 2010. Since, I had an opportunity to peruse Breeze Customer service agreement-booklet, which is provided by Breeze upon setting up an account and have to say I was not able to find the relevant passage. I would appreciate if I could be referred to it. Had I been made aware that Breeze has provisions for arrangements of a secondary person that can pay accounts in my absence and that Breeze is adherence to the processes, I would have, before going overseas nominated [Ms L] without hesitation.

In regard to the travel by my vehicle after the Suspended Account notice was sent, I will explain as follow;

To be noted is; that I use my Laptop Computer connected to a wireless Broadband Modem as the prime means of communication, via electronic mail or Skype Phones, etc... whether in Australia or when travelling overseas, using a Mobile phone mainly for incoming calls. In Australia I reside in two different residences, [address 1] and/or [address 2].

While in Italy sometime in June 2009 during a brief contact with [Ms L] I was informed of the Breeze letter to me dated 4 June 2009 which in previous correspondence has been attachment marked "A". I was dismayed when [Ms L] informed me that Breeze had refused her providing the new Credit Card expiry date unless accompanied by a pin Number, I recall then giving [Ms L] a four-digit pin number but stressed that I wasn't certain if it was the correct pin number. I had heard nothing more of this issue until well after my return to Australia for the following reasons;

In or about August 2009 a Lightning struck my residence at Capoliveri Island of Elba Italy and burned beyond reaper my laptop, thus drastically limiting my means of communicating. Only a week or so prior to my return I settled with the Insurer covering my apartment and as such purchased a new laptop. However, much to my disappointment on my return to Australia for several weeks I encounter problems in making Internet connection with my wireless Modem, so my means of communication continued to be limited until this problem was sorted out on or about 16 November 2009.

As a result of all the above and due to ill health, personal and other reasons I was unable to met and retrieve from [Ms L] the file containing all the correspondence received during my overseas trip, until I finely met with [Ms L] on or about 15 December 2009.

Therefore, answering to your question in regards to why my Vehicle travelled during the period the Account Suspended notice was received?

*Simply, I didn't know that it was suspended until on or about 17 December 2009 when I read Invoice Number: ***200 to which I then rang Breeze and immediately made payment of the full amount as well rectify the Credit Card expiry date and verbally disputed the Account suspension, I followed it up by also lodging my first letter of concern to Breeze over this issue.*

(Copy attached marked "F")

In regard to your question of why [Ms L] didn't chose other method of paying the 14 September 2009 Account? In view that it has been established that I was overseas during that period I have asked [Ms L] to answer the question, [Ms L] has agreed and will ASAP provide you with a written statement.

Without over shadowing [Ms L] forthcoming statement, needless to say [Ms L] would have been concerned choosing one of the other options for payment as provided on Account statement of 14 September 2009 when she had been previously told by a Breeze operator that she was not allowed to do so, which is consistent with Breeze adherence to this process unless been nominated as a secondary contact who can pay accounts in my absence.

Finely, I'm not certain what assistance all the above will have in determining this matter, I still maintain and submit, that the issue to be resolve is whether Breeze acted properly when they refused [Ms L] provide them with my Credit Card expiry date and refused to accept payment from her over the phone which would have rectified the situation or if Breeze acted improperly by refusing [Ms L] above actions to rectify a situation but instead interpret such action as modifying an Account."

19 In the statement of Ms L she said: (quoted verbatim)

"I was concerned of repercussions against [Given name of Mr F], having informed Breeze that [Given name of Mr F] was overseas when I attempted in June 2009 to provide Breeze with [Given name of Mr F] Credit Card new expiry date and make payments on [Given name of Mr F] Account I was told by the Breeze operator; I was not allowed to do anything on [Given name of Mr F] behalf."

20 Further, following correspondence in relation to the nomination of a secondary contract to an account, I advised Mr F on 5 October 2010:

"Following my enquiries, I understand that you opened your account on-line on 18 August 2008. When opening an account on-line, an individual has the option to enter details for a "Second Contact" (an alternate person who has access rights to your account).

Account holders may also log into their account via www.breeze.com.au and add a "Secondary Contact".

I trust this clarifies your enquiries."

21 Mr F responded and there was further correspondence, which culminated in my letter of 26 November 2010, in which I said:

"EastLink has no evidence that confirms Contact Staff assisted you with your account opening. However, had they, you are still responsible for providing information as to a second contact person.

As advised in January 2010 when you raised your initial complaint, you did not notify EastLink that you would like to authorise another party to have access to your EastLink account. Under the Privacy Act, EastLink is unable to

disclose or alter an account without direct authorisation from the account owner.

There has been considerable correspondence between EastLink and yourself through me. I believe you understand the basis upon which EastLink charged its fees.

I have considered all your submission and evidence provided by you and cannot waive the fees that you incurred.”

22 Mr F responded on 2 December 2010 in the following terms: (quoted verbatim)

“I confirm having received your decision regarding the above matter, needless to say, with great disappointment

I'm not sure if it's proper to respond but I find it hard to resist

I stand by my previous advise to you, that to the best of my recollection as a result of having difficulties in opening my account with Breeze on line, I sought assistance from a Breeze operator. I'm uncertain whether the operator, assisting me was able to view my part filled application from her Computer or filled a new application on my behalf. I recall her asking several questions including vehicle registration and then advise me that it was all done and that I could travel on EastLink but would be a few days before my tag would arrive.

In deed, as you pointed out there has been considerable correspondence between EastLink and myself trough you, but you seem to have hanged your decision on the issue of a second contact person and disregarded other evidence including [Ms L] statement

I looked up Breeze online application in regard to opening a Pre-paid tag account and you are correct, there's provision for a second contact person, however, what I was not able to ascertain, the authority that such a person would have in regard to an account

Correct me if I'm wrong, judging from previous correspondence from Breeze and from you such a person would have access to my account, would be able to authorise changes to my account, another word act on my behalf for all purposes in regard to my account whether I'm absent or not It has been pointed out by Breeze that this is a security measure dictated by the Privacy Act that protects me as an account holder.

Well, no thanks, I don't need such protection, unless the second contact person is a Wife, Partner or an involved member of the family, this dictated part of the Privacy Act has all the potential to cause head ache to an account holder, never mind protecting. Imagine, as an example; returning from overseas and finding that the second contact person without my authority has

added all her family and or friends to my account and I'm faced with the bill! Breeze would then say and quite rightly so "Sorry [Mr F] but we took notice from your second nominated person.

On the other hand the role that [Ms L] has been playing and will continue to play has all the measures that the Privacy Act assert to do.

Prior to any departure I would ask [Ms L] to take care of my day to day needs such as the payments of any incoming Bills, collects and reads all my correspondences and where necessary takes steps to advise of my absence or act to rectify any urgent issues, keeps an eye on my property for vandalism or weather affected damages etc...etc...

Her appointment is in good faith, the verbal authority I empower her with are limited. e.g.; I provide her with sufficient Credit Card details to enable her to pay any incoming accounts by phone but would have no ways to alter any accounts, I do not provide her with my secret Bank Password.

She is requested to perform this task for a short period, commencing from my departure and automatically terminating on my return. I would regard her vital voluntary assistance as truly protecting my interest and me.

I believe you should encourage Breeze to be a bit flexible and make provision for a [Ms L] in their policy.

I know we have discussed this previously but I can't help reiterate that [Ms L] was not attempting to alter my account when in good faith she was providing Breeze with my Credit Card Expiry date (which was in her position) as asked by Breeze on their letter to me of 4 June 2009, which partly read "contact us urgently to "rectify" your credit card" and that is exactly what [Ms L] was attempting to do, not as Breeze has been alleging that she was attempting to make "changes" to my Breeze account

I put to you that they are two different actions, "rectify" dose not and cannot be interpreted as meaning to "change" an account

And I further put to you that the vital role of [Ms L] is not and cannot be put parallel to the role of a second contact person

Breeze from the day I opened the account has had in their possession my mobile number, my email address and my postal address. If Breeze had acted properly and you seem to believe that they have, why I was never contacted and informed that a person by the name of [Ms L] purporting to be acting on my behalf had attempted to "alter" my account?

Putting a side for a moment the above controversial action of [Ms L], unless you believe [Ms L] in her statement is not telling the truth in which I have all the reasons to believe she is telling the truth because that is exactly what her

task was, you have erred in my view to assert, that her offering to pay my Breeze account and informing Breeze that I was overseas can be construed as her seeking from Breeze to disclose or alter my account

The society is in need of important peoples like [Ms L] their vital role should be encourage not made redundant as Breeze have and you seems to agree.

Imagine as an example; my neighbour ringing EMERGENCY, "there's a fire on the property next door I know the owner is away overseas" "what is the address madam?" "[address]" "and your name madam?" "[Ms L] " "one minute please..... I'm sorry [Ms L] but you haven't been nominated as the second contact person for that property therefore I can't accept your call". Ridiculous to say the least, don't you think?

I'm not concerned that you can't waive the fees that I incurred, but more importantly is whether Justice was done and remind you of the phrase "Justice is done when it's seen to be done".

I'm sorry Mr Arnold but in this matter JUSTICE IS NOT SEEN TO BE DONE.

Could you please provide me with reasons for your decision as I'm contemplating whether to seek legal advise on this matter."

Decision

- 23** I have considered all of the correspondence from Mr F and the statement of Ms L, in addition to the parts set out in this Decision, together with the responses of Breeze.
- 24** I am satisfied that ConnectEast, as represented in particular by Breeze, has acted appropriately in this matter in order to protect the security of its pre-paid tolling arrangements with Mr F and to maintain the requirements of its Privacy Policy.
- 25** Mr F had the obligation, under his Customer Service Agreement, to keep his account in order to ensure that his account had a positive balance. Mr F would be reasonably expected to have known that his credit card would expire whilst he was overseas and to have a process in place to ensure his account was kept in positive balance. This could have been done by having a secondary contact nominated on his account.
- 26** I am satisfied that Breeze acted in accordance with the Customer Service Agreement in respect of pre-paid accounts and its Privacy Policy in relation to its handling of Ms L's offer to pay Mr F's account by way of credit card and advise it of the card's new expiry date. Mr F had the opportunity of nominating Ms L as a secondary contact, on or after the opening of his account, and this would have ensured that Breeze could have accepted Ms L's information.

- 27** I am further satisfied that there were other options open to Ms L, acting on Mr F's behalf, to pay the amounts due to Breeze pending the resolution of the issue with his credit card expiry. Mr F was sent an Account Suspended – Pre-paid Tag Account statement of 14 September 2009 for \$25.46. This account provided a number of options for payment of the account other than by telephone. Ms L, following her unsuccessful attempts to pay by telephone, could have adopted other options available to her and paid the account. Such payment would have resulted in Mr F not incurring the further fees that he did.
- 28** I am satisfied that it was reasonable for Breeze to charge the fees that were incurred as a consequence of the use of the EastLink toll road whilst Mr F's account was in suspension.

Michael Arnold
Tolling Customer Ombudsman

Dated: 11 February 2011