

## DECISION

### Background

- 1 The customer, Mr T, opened his account with EastLink on 19 August 2008. This complaint arises from a claim in relation to the payment of an outstanding toll account. Mr T has said that his tolling account had not been credited with an amount of \$646.95 said to have been paid in cash at an Australia Post Office.
- 2 EastLink maintains that this account was not paid and that the customer had only ever made two payments. These were the initial \$40 payment when he opened the account and one top-up payment of \$25 on 11 September 2008.
- 3 EastLink points out that this account had been the subject of collection for a considerable period. The customer rang EastLink Contact Centre on 24 December 2008 and advised that he would make payment in the first week of January 2009, with the balance being paid on 15 January 2009. The account was not paid and a courtesy call was made on 4 April 2009 advising that if the debt was not paid by 6 April 2009 the customer's account would be suspended.
- 4 A letter of demand was sent on 20 August 2009 to the customer and a telephone call followed on 23 August 2009, to which there was no response. A solicitor's letter was then sent to the customer on 28 August 2009.
- 5 The customer contacted EastLink on 31 August 2009, advising that he had paid the account when it was under his father's name and it was now in his name. EastLink noted the customer opened his account in his name by way of the internet on 31 August 2009. The customer advised EastLink he had paid the account on 1 May 2009. He was advised to put in a dispute letter but none was received prior to 14 December 2009, when a Collection Agency letter was sent to the customer. The customer rang EastLink and advised that he had paid the account and it had gone to his father's account. The customer then lodged a complaint with EastLink and the Tolling Customer Ombudsman (TCO) as EastLink was proceeding with the collection of the debt.

## The Complaint

- 6 Mr T contacted the TCO on 21 December 2009 in the following terms: (quoted verbatim)

*“To whom it may concern. My name is [Full name of Mr T]. I have a dispute with the Breeze Eastlink Tollway system.  
I received an overdue bill around March 2009 for the amount of \$646.95. The amount was paid in full at a post office in cash.  
Breeze claims they never received this amount and have stopped my account and forwarded the matter to a debt collection agency who are pressuring court action.  
I have spoken many times now to Breeze and D&B collection services about the matter. Yet they claim nothing can be done and I must pay the amount (again).  
After many phone calls a representative from Breeze advised the payment was found and debt collection would cease on the account.  
Although a few months later the overdue bills continue to be sent from both Breeze and D&B.  
I have had many problems with my account details already with Breeze. Being sent the wrong account information in the mail under wrong names with my registration number.  
If anything can please be done about this matter asap that would be great as I would not like to have to pay another weeks salary to use a freeway that was originally promised to be free. Thank you for your time.”*

- 7 The TCO referred the complaint to EastLink, which responded directly to Mr T requiring proof of payment of the outstanding account. The proof was not provided and EastLink proceeded with collection.

- 8 The complainant then again contacted the TCO on 7 June 2010 and said: (quoted verbatim)

*“To who is may concern. Hello my name is [Full name of Mr T]. This is a second email about the same matter which was being investigated about 6 months ago.  
Please see information below (attached). I am still receiving debt collection letters from numerous different agencies which eastlink has sold it to.  
This account was disputed and resolved a long time ago yet collection activity still remains. If this could please be resolved asap, I would be very grateful.  
Thank you for your time.”*

- 9 Following a further referral to EastLink in June 2010, EastLink responded:

*“We closed this complaint in January 2010 due to the customer unable to provide any proof of payment made to the Contact Centre, our Administration Team or CRT.*

*CRT's during our conversation with [Mr T] on 24/12/09, we stated unless he provides us with proof of payment to put a trace on the alleged missing payment, we are unable to assist him. We advised he has until 07/01/10 to provide evidence or we close the complaint. No proof was provided and we closed effective 07/01/10.*

*Due to the account being \$726.94 in debt and our collection agency making contact with him, he now wishes to resurrect the alleged missing payment he cannot provide proof he ever made.*

*As the customer has left this matter until 07/06/10 to raise it again, I would like the case registered as received in June if possible.*

*We will re-investigate and provide a full response."*

- 10** The circumstances of the complaint were then set out in a response from EastLink to the TCO of 28 September 2010 in the following terms:

*"On 21/12/09 [Mr T] rang our Contact Centre and advised he has paid the outstanding amount on his account a couple of months ago. However, the payment went on to his father's account. We confirmed no payment had been received. [Mr T] advised he sent a copy of his receipt to the debt collection agency a couple of times but he still continues to receive bills. [Mr T] advised he will post a copy of the receipt to EastLink asap, as the payment made was by cash at the post office.*

*On 21/12/09 [Mr T] lodged a complaint via email with EastLink and the Tolling Customer Ombudsman regarding the alleged missing payment. In [Mr T's] complaint he alleges to have paid \$646.95 in cash at a post office. No date is stated, but he refers to receiving "an overdue bill around March". [Mr T] also alleged "After many phone calls a representative from Breeze advised the payment was found and debt collection would cease on the account."*

*On 22/12/09 EastLink Customer Administration Team responded to [Mr T] complaint and requested a copy of the receipt to enable EastLink to trace the alleged missing payment made at a post office.*

*During several email communications, [Mr T] advises*

- "The receipt was sent in the mail to 'Breeze, PO Box 744, Ringwood Vic 3134' more than 4 months ago now."*
- "I was advised to send the original receipt by one of your representatives over the phone. Has this been lost too?"*
- "I was distinctively advised to send the original because a 'copy' would not be accepted. No copies were made. I asked if this receipt could be sent back to me and I was told it would."*
- Paid at the [location] Post Office - in [suburb]/[suburb]. Around the 1st of May - Friday, 2009. "Not sure if that's the exact date, not something I thought I would need to remember."*

On 23/12/09 [Mr T] complaint was escalated to Customer Relations Team to action.

On 23/12/09 The Tolling Customer Ombudsman referred [Mr T's] complaint lodged with their office on the 21/12/09 to EastLink to resolve directly.

**NOTE** – as EastLink had not had the opportunity to resolve [Mr T] complaint directly through our Complaint Handling & Escalation process, this was not deemed an Ombudsman complaint.

24/12/09 [Name] from Customer Relations Team contacted [Mr T]. During this conversation we confirmed we have no record of receiving the alleged payment or receipt as proof of payment. [Name] clarified conversations he had with our Contact Centre during which [Mr T] stated he was going to forward a copy of the receipt. [Mr T] advised there must have been a misunderstanding because he does not have a copy to send. Due to [Mr T] alleging his payment was cash via barcode and he did not keep a copy of the original receipt, we recommended he attend the post office where the payment was made. We suggested they may be able to provide him with the necessary information in order for us to trace the alleged missing payment. We advised [Mr T]; once proof is obtained he could 1) drop a copy off at our Ringwood office or 2) email a copy. [Name] advised unless we are provided with proof of payment, i.e. copy of receipt or document from APO to confirm payment received, his complaint will be closed and debt recovery would recommence. We advised he has a fortnight from today to provide the information.

On 11/01/10 Customer Relations closed the complaint and re-commenced debt recovery.

12/01/10, [Mr T] advised our Contact Centre he attended Australia Post to obtain a receipt. However, he was unable to do so as Australia Post does not keep records longer than three (3) months.

21/04/10 EastLink issued the Final Statement for [Mr T] account confirming; 2 x lost tag fees were applied to his account due not non-return of his tags, the account was closed and the final debt outstanding was now \$726.94dr

We confirm, we have no record of payment in the amount of \$646.95 received. We have fully investigated all amounts of \$640 - \$700 received from Australia Post and confirm there has been no misallocation of payment.

In addition, we contacted Australia Post Contact Centre to advise of an alleged missing payment. The Contact Centre was able to access [location] transactions for the Friday 1<sup>st</sup> May 2009. Payments in the amounts of \$640 - \$700 were individually accessed to confirm who the payee was. No payment for ConnectEast / EastLink was located. Furthermore, as the payment was

*made via the unique barcode at Australia Post, it is extremely unlikely that the payment was misallocated.*

*As previously advised, unless [Mr T] can provide proof of payment, we are unable to assume the amount has been paid and the debt remains due and payable.”*

- 11 The TCO forwarded this information to Mr T. Mr T emailed the TCO on 29 September 2010 in the following terms: (quoted verbatim)

*“Thank you Michael for forwarding this information to me.  
I am very disappointed that this situation is still going on. I refuse to pay this amount again - more than a year and a half after it was paid.  
I have received collection letters from three separate companies (Fowler Carnegie Lawyers, D&B and MPOL) which Eastlink has sold my account to - and have had to contact and advise that this has already been resolved on my end - yet after action is ceased from each collection company - a new one gets involved.  
I have spoken many times to Eastlink/Breeze about this issue and am always advised that someone will contact me to sort this out - and always have to call back weeks later to say the same story. If this could please be fixed up asap - I would be very grateful.  
Thank you.”*

- 12 The TCO emailed Mr T on 5 October 2010 as follows:

*“I acknowledge receipt of your email of 29 September 2010.*

*I note that there have been extensive investigations into the payment of this account. The information obtained by EastLink from Australia Post does not evidence payment of the account nor do EastLink’s records.*

*I note that you have said that you sent the original receipt for payment of the account to EastLink or its debt collector but did not retain a copy. This raises a problem as neither EastLink nor its debt collector has any record of receiving the original receipt and from the information that you have conveyed you have no other way of establishing payment of the account.*

*Please advise if you have any further way of establishing you may have made the payment. Did you, for example, remove \$600-700 from your bank account or any other source on or about 1 May 2009?*

*Your response is sought.”*

- 13 There was no immediate response to this email. Mr T emailed “Enquiry Breeze” on 16 February 2011 as follows: (quoted verbatim)

*“Hello my name is [Full name of Mr T]. Breeze account no: \*\*\*.*

*I have been in contact with Eastlink, the Ombudsman and Collection Agencies over the past 2 years in regards to a "never received" payment of \$646.95 that I have already paid.*

*The amount in question was paid in cash at a post office around 1<sup>st</sup> May, 2009.*

*I have forwarded many complaints to different levels within the system and yet still my account is being sold to collection agencies, 4 in total now.*

*I have had so many different answers from different call centre operators in regards to this matter. The payment has been found twice - then somehow lost. It's getting very ridiculous.*

*I have contacted 'A Current Affair' who have had many other complaints about the tolling system on eastlink and have organized an interview with me this month.*

*I am hoping this can please be fixed up on your end and the collections ceased immediately.*

*Thank you."*

- 14** Mr T contacted the TCO again. The TCO emailed Mr T on 2 March 2011 as follows:

*"I acknowledge receipt of your email of 28 February 2011 and have re-opened your complaint.*

*In order for me to progress the matter I need the evidence I sought in my email of 5 October 2010."*

- 15** Mr T emailed TCO on 3 March 2011:

*"Thanks Michael.*

*I don't have any other form of paperwork from the payment of the invoice to Breeze.*

*I am a [occupation] so sometimes get paid in cash. The only thing I would have would be an invoice to a client around that time that would constitute where the money came from.*

*I would really like to have Breeze find the payment (as they had previously mentioned on the phone - which I'm hoping there is a recording of on their end) that they had found the payment. It has been going on for way too long and my account has now been sold to 5 different collection agencies - so they are obviously making money off this."*

- 16** The TCO emailed Mr T on 8 March 2011:

*"I acknowledge receipt of your email and note its contents.*

*I advise that EastLink has responded to advise that the payment you maintain you have made has not been located and that it only uses two collection agencies.*

*I believe it is appropriate that I make a reasoned decision in this matter and shall do so promptly.”*

- 17** Following this, the TCO emailed Mr T on 16 March 2011 in the following terms:

*“I refer to my email of 8 March 2011. I note in my examination of this file that EastLink, in its response to the TCO of 28 September 2010, indicated that you had told them that your “payment went on to his father’s account”.*

*In view of this, could you check with your father and obtain details of his account and his authority for EastLink to examine his account in the context of this dispute, as it may assist to resolve the matter.”*

- 18** Mr T did not directly respond to this request but responded: (quoted verbatim)

*“My fathers account is a whole other issue. He was being billed for detail – and we called up at least 3 times to have them fix it – which never happened. He put down my name to have authority to call up about his account – but when I did, they said I needed his permission (again). Anywho. I remember speaking to another call centre representative at Eastlink – who claimed they had found the elusive ‘missing payment’ – and it was all sorted! Then the next thing I know I kept getting sent collection letters, I called back and they said the payment was never made. If this could please be sorted out asap, it’s getting very ridiculous and I’m over it.”*

- 19** I am concerned as this complaint centres on the issue of proof of payment and that Mr T could have clarified this by proof of a credit to his father’s account if he believed that this was the case. The bill had been outstanding for almost six months and had been subject to repeated requests for payment. One would have thought he would have taken care that his account was credited with the payment. He also had this opportunity since a letter of demand was sent to him on 24 August 2009, some three months after he stated that he paid the account at a nominated Post Office on 1 May 2009.

- 20** I have considered all the evidence in this matter and there is no documentary evidence that Mr T has paid this account. He has stated that he paid the bill of \$649.95 in cash to the Post office on or about 1 May 2009 but the Post Office has no record of the transaction on that day. He stated that he sent the original Post Office receipt to EastLink but EastLink has no record of receiving the receipt and Mr T does not have a copy. He, at one point, stated he sent copies of the receipt to different collection agencies but there is no record of them being received. EastLink contends that if payment had been made at an Australia Post Office using the unique barcode that payment should have been received by it.

- 21** I, in addition, sought evidence from Mr T of the source of the funds used to pay the account as a secondary way of proving payment. This could have been evidenced by a bank account withdrawal, an invoice or invoices that had been paid in cash on or before 1 May 2009 or money provided from another source. Such evidence was not provided.
- 22** Mr T also states that an EastLink Call Centre Operator stated EastLink received the receipt, however, EastLink again has no record of such a conversation despite a thorough investigation of its records.

## **Decision**

- 23** Mr T may well believe that he paid his EastLink (Breeze) account but to accept his point of view I would have to accept that:
- (a) after his bill had been outstanding for almost six months he paid the bill in cash through an Australia Post Office by using the unique barcode on his account but it may have been recorded to his father's account;
  - (b) the payment of the bill has not been recorded by Breeze against either his father's or his account according to its records despite the reliability of the Australia Post payment system;
  - (c) a search of Australia Post records for 1 May 2009, the date nominated by Mr T as the date of payment, was made but did not show any record of payment. Mr T previously stated that enquiries of Australia Post revealed that it could not provide records after three months. However, Australia Post provided information to Breeze upon request;
  - (d) the original receipt for payment of the account was sent to EastLink (Breeze), with Mr T not retaining a copy and was lost by Breeze;
  - (e) he advised EastLink Call Centre on 21 December 2009 that he had sent copies of the receipt to its debt collection agency but no copies have been located;
  - (f) he said he was advised by an EastLink Call Centre Operator that the receipt evidencing payment of the bill had been found but EastLink (Breeze) has no record of such a conversation;
  - (g) he is unable to confirm payment of the account in his father's name despite alleging it was so made;
  - (h) he could not provide any secondary evidence of the source of the funds used to pay the account; and
  - (i) he could not provide any direct evidence to me of payment of the account over the period the complaint has been before me.
- 24** In these circumstances I cannot uphold the complaint.

- 25** I recommend that Mr T attends the EastLink Customer Service Centre<sup>1</sup>, returns his e-TAGs and pays the outstanding fees of \$726.94. Upon delivery of the e-TAGs in working order, he should be refunded the sum of \$40 per e-TAG.

**Michael Arnold**  
**Tolling Customer Ombudsman**

**Dated: 12 May 2011**

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<sup>1</sup> 2 Hillcrest Avenue, Ringwood Vic 3134  
Monday – Friday 8am – 7pm  
Saturday 9am – 1pm