

## DECISION

### Background

- 1 The complainant, Mr TB, made a complaint to the TCO Tolling Customer Ombudsman (TCO) on 4 February 2017, as follows:<sup>1</sup>

“I have a dispute with CityLink.

The issue is that CityLink has started to charge me tolls for a vehicle that I have not owned for four years. It does not have an e-tag because the CityLink account adds a "no-etag" fee, as can be seen by scrolling to the message at the bottom of the e-mail trail. CityLink claims that because I once owned this vehicle, and did not notify them that I no longer own it, I am liable for the charges. My view is one of surprise that they have somehow linked me to registration [Z\*\*\*4], which is not in my name, through the fact that I once owned the vehicle.

According to CityLink the vehicle [Z\*\*\*4] made \$325.41 worth of trips. They have made an ex-gratia refund of \$200.00. I believe that they still owe me the rest.

Given that CityLink is a monopoly that can access vehicle and driver records, I do not understand why they do not seek the funds from the owner of [Z\*\*\*4].

Please let me know if the information found in the e-mails below (earliest e-mail is at the bottom of the list) is sufficient to lodge a complaint with the Tolling Ombudsman, or if you require any further information.”

- 2 On 6 February 2017 the TCO acknowledged receipt of the complaint and forwarded same to CityLink for investigation and response.
- 3 On 8 February 2017 CityLink responded to the TCO. This response, together with attachments, was forwarded to Mr TB for comment.
- 4 On 12 February 2017 Mr TB replied to the TCO as follows:

“Thank you for your e-mail of 8 February in which you forward CityLink’s reply from [Name] (reproduced below) on which you seek my comments.

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<sup>1</sup> All parties’ submissions used in this Decision are quoted verbatim

CityLink has provided you with information in relation to correspondence between CityLink and myself for tolls that they charged in relation to [R\*\*\*1]. When queried about these charges they promptly refunded them in full, and thus I have no dispute in relation to that vehicle. I would have expected, and indeed continue to expect, that they would have and should have followed the same procedure in relation to [Z\*\*\*4].

My major surprise in the response is the comment that:  
“CityLink is not able to recover any of these trips charge from the new owner as we are unable to obtain their details.”

According to the VicRoads web site at:

<https://www.vicroads.vic.gov.au/traffic-and-road-use/road-network-and-performance/types-of-roads/citylink>

“Amendments to the privacy provisions applicable to VicRoads under the Road Safety Act were also made to allow the disclosure of information from the VicRoads motor registration database and NEVDIS to the Company to enable the registered owners of vehicles using the Link without registering to pay the toll to be identified.”

Hence my surprise that when vehicle [Z\*\*\*4], with no eTag, is detected using a toll road I am the one that is being charged for a vehicle that I traded-in about four years ago. I would have expected that the procedure should be to contact the registered owner of [Z\*\*\*4] and seek payment from them. In fact I still continue to be puzzled that CityLink has even managed to link me to the vehicle because:

1. When I owned the vehicle and used it the registration was [T\*\*\*7].
2. I always used an eTag.

I would assume that in the intervening four years the vehicle [Z\*\*\*4] would have had more than one owner and thus am further puzzled how and why I have been the one chosen as the recipient of these unjustified and unwarranted charges.

Obviously I disagree with [Name] and do not “consider the amount credited to [Mr TB] to be fair and reasonable given the circumstances.”

I have also cc'd this reply to the office of my State member of Parliament.”

- 5** On 14 February 2017 the TCO acknowledged response and advised that the above has been forwarded to CityLink for response to the issues raised. That same day CityLink replied:

“Thank you for providing [Mr TB’s] response.

I note the statement [Mr TB] has referred to from the VicRoads website. The statement refers to the fact that Toll road operators can obtain information of the registered owner of a vehicle from VicRoads in the instance where no tolling arrangement has been made. This is for the purpose of issuing a toll invoice only. As vehicle [Z\*\*\*4] had a tolling arrangement (being linked to [Mr TB’s] active account) CityLink had no requirement to obtain the registered owner’s details from VicRoads.

I reiterate that when a vehicle is linked to a CityLink Account we are authorised to charge any travel made by that vehicle until a request is made to remove the

registration from the account. The owner of the vehicle is not taken into consideration.

I note, I have received a message from [Name] from the office of [Name], state member for [Name] and will be making contact with her tomorrow.”

6 On 15 February 2017 CityLink’s response was provided by TCO to Mr TB.

7 On 8 March 2017 Mr TB emailed the TCO as follows:

“Because you had written “for information” in the last paragraph of this e-mail, I have taken no action on it.

However I note that I have not yet had a determination from the Ombudsman.

Are you awaiting a response from me?”

8 On 9 February 2017 the TCO wrote to Mr TB:

“Please provide your response and, in particular, the reason your vehicle was not removed from your account upon sale.”

9 To which Mr TB replied:

“As explained below, I dispute the claim that:

“As vehicle [Z\*\*\*4] had a tolling arrangement (being linked to [Mr TB’s] active account) CityLink had no requirement to obtain the registered owner’s details from VicRoads. “

To answer your specific question.

I was not aware of the requirement to notify CityLink of the sale of the vehicle because I was aware that CityLink had access to VicRoads records and would be aware of the transfer of ownership. Even had I been aware, I wish to stress that I probably would not have notified them because even though the vehicle had changed, the number plate that I was using for CityLink remained the same – even though it was on a new vehicle. I would have assumed that CityLink bases its charging on the number plate and not on the make and model of the vehicle.

My I repeat that the number plate that was registered with CityLink for the Toyota Camry was [T\*\*\*7].

When I traded-in the vehicle I kept the licence plate [T\*\*\*7] and put it on my new vehicle that I continue to use to this day.

The person getting the Toyota Camry received it with a new number plate, which I now know to be [Z\*\*\*4]. My ownership of that number plate lasted less than half an hour – namely the time to drive from VicRoads registry in Oakleigh to the car dealership in Burwood where it was traded in.

I did not notify CityLink that the number plate of the vehicle had changed. This is why I dispute the claim in the first paragraph. Vehicle [T\*\*\*7] had a tolling arrangement. Vehicle [Z\*\*\*4] did not have such an arrangement.

It continues to mystify me that CityLink has managed to identify me through a number plate that I never used and certainly did not register with CityLink on a car that does not have an e-tag. I remain mystified and hope that you can appreciate

why I consider that I am not liable for the charges that CityLink claims that I am liable for.”

**10** On 15 March 2017 the TCO advised Mr TB:

“I acknowledge receipt of your email, note its contents and confirm I will seek further comment from CityLink on the issues you raise.”

**11** On 17 March 2017 CityLink responded as below to the TCO, which was forwarded to Mr TB the same day:

“Thank you for forwarding [Mr TB’s] response to CityLink.

I reiterate that CityLink cannot extend the use of information obtained from VicRoads for the purpose of issuing a toll invoice to recover travel charged to an account for a vehicle that has been sold. The information provided to CityLink by VicRoads does not include transfer of ownership details, and is not used to update CityLink account information – this has always been the responsibility of the account holder.

As [Mr TB] has indicated, he assumed that CityLink would be aware of the sale of the vehicle and as such did not request to remove the vehicle.

While I acknowledge [Mr TB] has stated he was only in possession of registration plates [Z\*\*\*4] for approximately half an hour, he notified CityLink that this registration needed to be added to his account.

A request was made via our call centre. As such, this registration did have a tolling arrangement.”

**12** On 18 March 2017 Mr TB replied:

“I have no recollection of notifying:

“CityLink that this registration needed to be added to his account.

A request was made via our call centre. As such, this registration did have a tolling arrangement.”

It defies logic that I would make such a call for a vehicle that I had disposed of.

I suspect that it was the new owner that made that call and not me.

If Citylink can prove that I made such a call then I will reconsider my position.”

**13** On 20 March 2017 the TCO sought further comment from CityLink, and CityLink advised:

“At the time of [Mr TB’s] original enquiry with CityLink I submitted a request to obtain the call recording. Unfortunately, as the recording was more than 12 months old, it was no longer available.

I note, the new owner would not have been able to access [Mr TB’s] account to make any changes. A 3 point identification check is required to be passed by the caller before an agent can gain access to an account.”

14 On 29 March 2017 the above was provided to Mr TB.

15 On 30 March 2017 Mr TB emailed the TCO as follows:

“You will have to make a determination.

CityLink’s version of events does not make sense and I am losing confidence in their veracity.”

## Discussion

16 The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO, 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. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.

17 This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the Customer Service Agreement, on a toll road operator’s website or in other material that is available to customers, whilst the applicable legislation can be accessed through Government websites.

18 The TCO is not a judicial body and does not have punitive powers. The TCO, when making a decision, does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. It must act within the limits of its jurisdiction in doing this.

19 The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against (Civic Compliance Victoria (CCV) or) other outside bodies, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal rights.

20 I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.

21 CityLink has provided detailed responses to Mr TB about this matter. This includes the limit on the access it has to VicRoads for privacy purpose. It has said:

“I reiterate that CityLink cannot extend the use of information obtained from VicRoads for the purpose of issuing a toll invoice to recover travel charged to an account for a vehicle that has been sold. The information provided to CityLink by VicRoads does not include transfer of ownership details, and is not used to update CityLink account information – this has always been the responsibility of the account holder.”

22 Mr TB has stated that he did not make contact with CityLink regarding the transfer of the registration of a vehicle. Mr TB had an account with an identification

requirement. A new owner would not have been able to access Mr TB's account to make any changes. As explained by CityLink, a three-point identification check is required to be passed by a caller before one of its agents can gain access to an account.

- 23** The arrangement between CityLink and a customer when a vehicle is linked to a CityLink Account is that CityLink is authorised to charge any travel made by that vehicle until a request is made to remove the registration from the account. The owner of the vehicle at the time of the travel is not a relevant consideration in the Account terms.
- 24** The fact of the matter is that CityLink cannot recover any of these trips charged from the new owner as it is unable to obtain their details whilst there is an Account in place with a nominated owner. According to CityLink, the vehicle [Z\*\*\*4] made \$325.41 worth of trips. Mr TB had the opportunity to notify CityLink of the tolls for four years but did not do so. CityLink has made an ex-gratia refund of \$200 to Mr TB. I believe that this refund was reasonable in the circumstances.

#### **Determination**

- 25** The complaint is not upheld.
- 26** I reaffirm that my decision is not binding on Mr TB and that he can seek relief in any other forum.

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

**Dated: 4 April 2017**