

DECISION

Background

- 1 The complainant, Mrs MM, first made a complaint to the TCO Tolling Customer Ombudsman (TCO) on 29 July 2016, as follows:¹

“Please give details of your complaint

I received a \$7300 bill from a collections agency for unpaid toll notices - due to an account mix up. I am more than happy to fix up the outstanding toll notices, but the administration fee makes up almost 80% of the actual bill. No contact has been made a text message or a phone call advising of the accumulation of notices I was incurring and I am severely distressed about the whole situation.

What happened following your complaint to the tolling business?

I have made contact with Roam on the 14th of July who said they will have someone call me about this issue but never received a call back. I called Roam again to follow up on the 19th of July and they mentioned they had no record of my call and that there was nothing they could do, that I would have to liase with the debt collection agency.

What do you want to happen for your complaint to be resolved?

I would like to settle my debt and even pay the \$1.10 administration fee placed on each infringement but for 80% of the bill to make up the outstanding amount is excessive and something our family cannot afford to pay.”

- 2 On 29 July 2016 the TCO acknowledged receipt of the complaint and referred same to Roam for investigation.
- 3 On 4 January 2017 Mrs MM lodged a further complaint with the TCO in the following terms:

“Please give details of your complaint

Prior to finalising agreed amount of \$2973.43 with ROAM, I commenced payment on the toll debt as the Collections Agency placed pressure to make payment. After discussing this with ROAM, I was advised that any prior payments would be included – this was a total of \$750.00. I have been advised that the payment of \$750.00 did not count towards the agreed amount of \$2,973.43. Any reasonable person would

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

have been under the impression that the agreement was in relation to the total debt. Given we are a one income family, I would NOT have discounted the \$750 payment I had already made towards the debt.

What happened following your complaint to the tolling business?

and simply write that off? It just doesn't make any sense. ROAM have suggested I refer this matter to the Tolling Ombudsman for review.

What do you want to happen for your complaint to be resolved?

I want ROAM to honour what was discussed which was a total debt of \$2973.43. This is more than double what the actual total tolls amounted to, is this not enough?

- 4 That same day the TCO referred the complaint to Roam and Roam responded as follows:

"I confirm [Mrs MM] originally logged a TCO complaint in July 2016 regarding her Toll Notice debt. We were advised by the agency that [Mrs MM] accepted an offer provided by the agency and started payments on the 29 July 2016.

After some delay in receiving responses from [Mrs MM], resolutions provided [Mrs MM] with an offer to reduce the administration fees on the 1 September 2016. [Mrs MM] accepted this offer on the 5 of September 2016. The remaining balance of the debt was reduced from \$5376.43 down to \$2973.43. [Mrs MM] sent an email on the 28 October 2016 confirming she budgeted to pay \$2973 for the Tolls.

[Mrs MM] was advised by Resolutions by phone and email that any payments made prior to her accepting the Resolutions offer would not have this discount applied. We can only apply our discounted offer to the current outstanding balance at the time of acceptance. Roam has already offered a significant reduction to [Mrs MM] and have also offered to extend her payment plan if required. The amount she budgeted for and has accepted to pay has not changed. Roam is unable to meet her request to apply the discount to the payments she made in July 2016 prior to her contact with us."

- 5 This response was forwarded to Mrs MM, to which she replied:

"Agree with the points outlined by ROAM except for the following:

* It was agreed that payments made prior to the 15th of Sep, 2016 would be deducted from the total debt originally demanded by ROAM. This is obviously a 'he said she said' scenario and I am happy to supply a statutory declaration together with my notes what was discussed and that payments made prior to the 15th September totalling \$750 would be deducted. If the call was recorded, happy for this to be used to further support my statement. As mentioned, a reasonable person would not simply disregard a \$750 payment already made. In addition, NO official documentation/letter outlining specifics was issued to myself - just an email which states an amount of \$2701.12.

* I would also like to further highlight that the email sent by ROAM stated the total debt figure was \$2,701.12, not the \$2973 stated in the below email. If ROAM can't get the amount right, what faith does anyone have on what the actual final agreed amount was?

My ideal resolution is that all payments made prior to the 15th of September 2016 (totalling \$750) is included in the total debt figure of \$2973.43 which was what was discussed and this matter finalised with this debt fully paid.

ROAM can keep the additional \$272.31 cash over the ACTUAL agreed amount as a sign of good will on my behalf.

I have also attached my latest email to ROAM regarding this issue for reference.”

- 6 The TCO acknowledged receipt of the correspondence and sought further comment from Roam on the issues raised.
- 7 On 5 January 2017 Roam provided the following information, which was subsequently referred to Mrs MM for comment:

“I confirm [Mrs MM] is correct that the amount was updated to \$2701.12. The reason for this is because we originally offered [Mrs MM] the discount in early August 2016 which was the amount of \$2973.43. [Mrs MM] officially accepted our offer on the 5 September 2016, by this time she had been making payments to the Debt Collection Agency at the rate they provided her. The amount was adjusted as the remaining balance on the debt was now \$2701.12, less the payments she had already made.

It does not make sense that Resolutions would agree to include payments already made prior into our agreement because this is not possible. We can only start from the date of acceptance on the remaining balance.

I also include the email we sent [Mrs MM] to advise of this prior to her accepting our offer.

*From: Resolve
Sent: Monday, 5 September 2016 2:32 PM
To: '[Mrs MM]'
Subject: RE: Roam CCID [number]*

Dear [Mrs MM]

Thank you for your email.

I was unable to contact you today. I called to advise the amount of \$2973.43 that was provided in the previous email is now the amount of \$2701.12.

As we have not submitted the request to Debt Collection Agency, the amount you paid on 01/09/2016 and previous payments were made to the Debt collection agency at the reduced amount they have agreed with you.

Can you please confirm acceptance of the new above amount and confirm the date of the first payment.

*Should you have any further queries please contact me directly on [Number].
Thank you for the opportunity to respond to your concerns.*

[A]
Customer Resolutions Advisor”

8 Mrs MM replied:

“I think that the email just reinforces how the agreement was positioned to me. If you read the above email ROAM have admitted the amount was adjusted for payments made to the collection agency. Exactly what I have said all along!

In relation to the original agreement made ... that ROAM keep referring to...I was advised to make payments by Credit Solutions and that I should speak to ROAM about the excessive cost.

These payments should be considered 'without prejudice' as the agency insisted that I must agree within 48 hours and they knew I was speaking with ROAM to dispute the amount. At this point, [M] had already gone on leave.”

9 On 6 January 2017 the TCO emailed Roam, copied to Mrs MM, seeking comment on the above.

10 On 12 January 2017 Roam responded to the TCO as below, which was forwarded to Mrs MM on the same day:

“Thank you for your email.

I confirm the debt amount had to be adjusted because [Mrs MM] made payment to the agency prior to accepting our offer. Her original debt of \$2973.43 was adjusted down to \$2701.12, because that was the current amount outstanding at the time of her acceptance.

I cannot comment on [Mrs MM's] agreement with Credit Solutions as this was an agreement made between [Mrs MM] and the agency prior to her discussion with us.

I was on leave for a short period, in which [A] took over my duties and has followed up with [Mrs MM's] case without delay.”

11 On 3 February 2017 Mrs MM wrote to the TCO as follows:

“Thanks for your help on this although I feel like we are going around in circles with ROAM. The dispute is on the **total** amount of debt we negotiated.

Bottom line is:

I was misled as to the amount that we negotiated on. **I understood that the arrangement made was based on the total debt not just the 'balance at the time'**. I distinctly remember [M] from ROAM telling me that all prior payments will 'of course be deducted' from the arranged amount which was \$2,973.43. It is also not logical to think that a payment of \$750 already made will simply be ignored - that is an astronomical sum of money for a single income household with 2 children. [M] went on leave straight after the arrangement was made, I was naive to think it was a simple mistake from their end and could easily be resolved once she returned.

ROAM did not communicate this point (new agreement) **at all** when the agreement was made over the phone with [M]. Given there were no changes, none that was communicated anyway to how payments were to be made, no new reference number, no new anything. Everything remained the same as far as I was concerned except the payment amount was more aggressive/higher. There was no reason for me to think that this was a totally new debt agreement.

The documentation/trail of events from ROAM was confusing and unclear. There was no formal communication outlining the specifics and conditions of the outstanding debt. [M] even apologised on the 2nd of November, regarding the miscommunication on the outstanding debt.

The collections company knew I was taking this up with ROAM and pressured me into paying a threatening large debt. I believed that these payments made formed part of the negotiation with ROAM.

I am not sure if you can make a call as ombudsman on this matter or escalate this matter with a more senior representative at ROAM.”

12 The TCO had correspondence with Roam on 15 February 2017 in which it was said:

“It appears there could have been confusion in this matter. I recommend that [Mrs MM] be given a credit of \$375 for the \$750 initially paid.”

13 On 16 February 2017 Roam replied to the TCO:

“Thank you for your email.

I appreciate your recommendation regarding the case for [Mrs MM].

I would like to our case before you, and if you still recommend we provide a credit to [Mrs MM] I will be happy to honour this decision.

[Mrs MM] took two months to respond to our emails and phone calls to assist her with the debt. During this time she accepted a reduction from the debt collection agency where she made one payment. When she eventually contacted us and we checked the details of the debt with the collection agency they advised us that [Mrs MM] already made a payment at the rate they provided her.

When we gave [Mrs MM] our reduced offer, [A] advised her over the phone that any payments she made prior to our agreement taking affect would not be included. I was not the one that made this offer to [Mrs MM] at the time as I was on leave. [A] then also followed up with the email to confirm that payments made prior to our agreement is not included. [Mrs MM] accepted and acknowledged this agreement knowing that the payment she made prior cannot be adjusted to the same rate we are offering. We have offered the reduction to [Mrs MM] as a gesture of goodwill, we cannot backdate our offer to include paid tolls. I understand [Mrs MM] is now at a disadvantage because she decided to pay the agency prior to contacting us.

It is fair if a customer pays full price for an item, then a week later that item is on sale, can the customer dispute this and demand to have a refund of the difference because the item can now be purchased at a lower price?

I look forward to your final decision.”

14 On 21 February 2017 the TCO enquired of Roam:

“I note your comments below. Do you require me to make a detailed written decision in this matter?”

To which Roam replied:

“Thank you for your email. I just need to confirm if you still recommend we refund [Mrs MM] the \$375.00 from her initial payment.”

15 On 27 February 2017 the TCO had further telephone discussions Roam.

16 On 9 March 2017 Mrs MM emailed the TCO seeking an update on her complaint.

17 On 10 March 2017 the TCO advised Mrs MM as follows:

“Following further discussions with Roam, I will prepare a written Decision in your matter.”

18 Mrs MM responded:

“Excellent! Thank you. Below, I have also attached a copy of the initial email which I’m not sure you have a copy of from [M] regarding the amounts for further reference.

From: [Mrs MM]
Sent: Sunday, 4 September 2016 9:06 PM
To: Resolve
Subject: Re: Roam CCID [number]

Hi [M],

I just made a payment on the 1st of Sep, next fortnight 15th Sep would be the next payment I could make. I will be able to pay this within 3 months.

Many Thanks,

[Mrs MM].

On 2 Sep 2016, at 4:35 PM, Resolve <Resolve@transurban.com.au> wrote:

Dear [Mrs MM],

Thank you for your time today.

You have confirmed that you would be willing to accept an offer of \$2973.43 if it is possible, and would be able to pay this over a 3 months payment plan.

I just need to confirm the date of the first payment.

Thank you again for your time and should you have any other concerns, please contact me on [number].

[M]
Customer Resolutions Officer”

19 On 20 March 2017 Roam advised the TCO as follows:

“I just wanted to give you an update on [Mrs MM]. When I last spoke to you I confirm that she should have paid off her debt as we arranged a 3 months payment plan for her starting in September 2016. I have since been advised that [Mrs MM] has not fulfilled the agreement we have arranged for her out of goodwill. She still has an amount of \$477.69 owing on the debt.”

Discussion

- 20** 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.
- 21** 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.
- 22** 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.
- 23** The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against other outside bodies, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal rights.
- 24** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation. I initially believed that there may have been a misunderstanding in this matter that may have entitled Mrs MM to a reduction of \$375 from her debt. I have considered the submissions put to me by Roam since that date.

- 25** From an examination of the correspondence subsequent to this, I am satisfied there was still a possibility of a misunderstanding but less than I previously thought.
- 26** However, I find that it would be fair if Roam provided a credit to Mrs MM of \$250 against her outstanding debt.

Determination

- 27** I determine that Roam provide Mrs MM with a credit of \$250.
- 28** I reaffirm that my decision is not binding on Mrs MM and that she can seek relief in any other forum.

Michael Arnold
Tolling Customer Ombudsman

Dated: 2 May 2017