

## DECISION

### Summary and outcome

1. The complainant's husband owned a motorcycle which was recorded as making trips on the M5 motorway.
2. Interlink Roads (Interlink) asserted that over 300 toll notices were sent but were unanswered and that \$4,727.63 is now owing. This amount is being pursued by ICM Partners, a debt collection agency.
3. The complainant submits that she has always operated her account in accordance with the terms and conditions. Despite not receiving the notices, she states that she is willing to pay the actual tolls, but the administration fees will place her and her family into financial hardship.
4. Interlink have offered to waive the administration fees and accept payment of only the tolls – an amount of \$773.45.
5. The offer made by Interlink is appropriate in the circumstances.

### Background

6. The complainant, Ms LK, first made a complaint to the TCO Tolling Customer Ombudsman (TCO) on 2 May 2019 on behalf of her husband, Mr SK.
7. Interlink had recorded 165 trips on the M5 South-West Motorway made by Mr SK's motorcycle between 7 December 2017 and 28 September 2018. Toll Notices were sent for each of these trips and when each was not responded to, a Final Toll Notice was issued. A total of 330 notices were sent to the last known address held on file by Road and Maritime Services (RMS).
8. This situation was referred to ICM Partners for follow up of the debt. ICM Partners were successful in contacting the complainant.
9. Ms LK stated that she had three vehicles on her joint account with her husband. Despite some errors in the classification of those vehicles, each of the other vehicles had been used on toll roads and tolls charged appropriately to the account and promptly paid.

10. Until 7 December 2017, this appears to be the case. Based on account statements provided, the vehicle had incurred tolls on the M5 South-West Motorway daily between 28 November 2017 and 6 December 2017, but then the charges for this vehicle stop, while others continue on through the remaining 3 months of the statement. Unfortunately, the motorcycle had been listed on the account as a motor car in error and this is reflected in the statement.
11. Unfortunately, the motorcycle was written off following an accident involving Mr SK in September 2018.

## Current position of the parties

12. Interlink has offered to waive all administration fees and accept the payment of only the toll charges.
13. Ms LK remains dissatisfied on the basis that she desires the toll charges to be waived as a gesture of goodwill due to:
  - a. the lack of adequate explanation by Interlink for the vehicle ceasing to be charged
  - b. consideration of her otherwise good operation of the account; and
  - c. the treatment she has received from ICM Partners who have threatened legal proceedings.

## Discussion

14. When making a decision, I am required to examine all the available information and to reach an outcome which is fair to both parties and is based on the 'balance of probabilities'. This means that where the parties do not agree on an issue, I need to decide whether it is more likely than not that a particular event did, or did not, happen.
15. There is no clear explanation of the following issues:
  - a. Why the three vehicles were all mis-classified on the account (the two cars as motorcycles and the motorcycle as a car)
  - b. Why tolls incurred by the motorcycle stopped being debited from the account in the same manner as the other two vehicles
  - c. Why the complainant and her husband failed to identify that these charges were not being deducted from the account despite frequent use; and
  - d. Why the 330 notices were not received by the complainant.

16. I am not satisfied that much depends on the classification of the vehicles for the purposes of reaching a decision that is fair in all the circumstances on the issues in dispute.
17. I accept the following two pieces of information though:
  - a. While some errors occur, the service standards of Australia Post are such that the majority of the notices would have been delivered at the intended address
  - b. The address that those notices would have been sent to was the address registered with RMS.
18. No explanation has been provided of why it appears that RMS had the incorrect address for the complainant and her husband in relation to the motorcycle.
19. It is more likely than not that the complainants knew, or should reasonably have known, they were obliged to have up to date contact information with RMS. It follows then that, on the balance of probabilities, they did not do so.
20. The complainants also knew of the almost daily trips being taken on the M5. They knew it was a toll road and should have had an expectation of being charged for that use. They were provided with statements and should reasonably have been in a position to identify an issue much sooner than when they were contacted by a debt collection agency.
21. Balanced against this combination of apparent failures by the complainants, there remain issues raised by the complainant about the way she says she was treated by ICM Partners and the lack of explanation for why the account was initially working and then abruptly stopped for this particular vehicle.
22. While I am concerned about whether ICM Partners have acted in accordance with Interlink's debt collection and financial hardship policies (to the extent they are relevant to this situation), I do not have any direct authority over their actions as they are not a participant of the TCO Tolling Customer Ombudsman scheme. I have referred my concern to Interlink for its consideration however.
23. Interlink have offered to reduce the amount being sought by \$3,954.18, waiving all administration fees on the basis that administration fees are not charged on motorcycles, to resolve the complaint.
24. Given that had the vehicle classification been undertaken properly, or verified from cameras and licence registration information, Interlink would not have collected these fees in any case, this is appropriate.

## Determination

25. Had the account and tolling system worked as intended, the tolls would have been due and payable, without the administration fees, and \$773.45 would be owed for the use of the M5.
26. In the circumstances, I am satisfied that the offer made by Interlink is appropriate. This is supported by the complainant's initial statement that she would be willing to pay the tolls themselves.
27. I note that acceptance of this outcome will result in ICM Partners having no further contact with the complainants.
28. I remind the parties that under the TCO Tolling Customer Ombudsman process, my decision is not binding on Ms LK and that she can seek relief in any other forum.

**Nicolas Crowhurst**  
**Interim TCO Tolling Customer Ombudsman**

**Dated: 1 August 2019**