

DECISION

Summary and outcome

- The complainant, Mr B, lived in Sydney. His complaint made on 21 May 2021 was about charges imposed by Linkt and the recovery of those charges by a debt collector working for Linkt. The dispute Mr B suggests is due to a lost/stolen e-tag. Mr B suggests that constant contact by the debt collection agency for the outstanding amounts and dealing with Linkt has been very stressful for him.
- Mr B is concerned that the debt collector had his details, which had been provided to the debt collector by Linkt, and that was not appropriate in the circumstances. Moreover, Mr B has suggested that the debt collector has been applying constant pressure by way of numerous letters requesting repayment by Mr B.
- Presently, Mr B owes an amount to Linkt of \$10,234.35 for trips before any settlement offer.
- Linkt's position was that its dealings with Mr B commenced in February 2020 and that there had been significant communications between Mr B and Linkt from this time until the date of lodging his complaint on 21 May 2021.
- The Linkt offer of settlement involved a reduction on the administration fee to a transfer fee, with a payment arrangement. Linkt acknowledges that over the course of the dispute with Mr B it has used debt collectors to seek to recover the debt Mr B owes to Linkt. However, Linkt has suggested that all of its dealings and instructions to the debt collector in relation to Mr B have been appropriate.

Background

- The complainant, Mr B, first made a complaint to the Tolling Customer Ombudsman (TCO) on 21 May 2021 but suggests the dispute is in respect to matters going back to 21 May 2016. The dispute raised by Mr B involves certain amounts outstanding for toll road use, his interactions with the debt

collector and the processes of Linkt and the debt collector in seeking to recover outstanding amounts from consumers.

- The view of Mr B is that Linkt should justify not only the charges that it imposes but also the amount of the administration fees it imposes in respect to toll charges. He also suggests that Linkt's systems are cumbersome, not user friendly and not effective and this is one of the reasons for the present dispute. In particular, Mr B considers that Linkt, in engaging a debt collection agency, has complicated the matter and made payment of the outstanding amount and ultimately settlement more difficult.
- In his application to the TCO Mr B stated that:

“I would like a full investigation in to this matter that concerns all parties involved. I would like all emails, phone, text and letters to be handed over for your review noting this has been going for 5 years now and with that being said where did the system let me down.

...

I would also be seeking pain and suffering stress, metal health related damages to be awarded along with breach of the privacy act and misleading the public by way of billing and debts.”
- Mr B then stated:

“For 5 years now I have been asking for my information and all files that [Name of debt collector] have on me to be handed over with the names of the people who worked on the file such as the callers people who sent emails and so on. I would also be seeking the same from Linkt as my legal right to know who and when my information was passed on to [Name of debt collector] and at what cost.
- Linkt, on 21 June 2021, set out a comprehensive summary of its interaction with Mr B from 28 February 2020 to 21 May 2021:

“I've fully investigated [Mr B's] concerns and have attached all email correspondence between [Mr B] and Linkt as requested. In summary, I confirm the following occurred in relation to this matter:

 - [Mr B] first reached out to us on 28 February 2020.
 - On 16 March 2020 (after some back and forth confirming number plates) the outstanding amounts were confirmed.
 - [Mr B] required more time to pay so the matter was put on hold until 31 May 2020 and he was advised to contact us before this date or the matter may escalate to debt collection.
 - [Mr B] next contacted us on 11 January 2021. I advised him that the outstanding amount had increased due to Linkt becoming the Toll Provider for the M5 South-West. I offered a reduction on the administration fee to a transfer fee only and a payment arrangement on this amount. I also passed along feedback regarding [Mr B's] experience with [Name of debt collector] as requested.

- On 14 January 2021, I emailed [Mr B] outlining the offer provided along with Toll Notice listings as requested.

- On 18 January 2021, a payment plan was put in place to be paid via [Name of debt collector] (B-Pay) however our credit team member [K] was arranged to be the main point of contact if [Mr B] had any concerns.

- On 21 January 2021, the payment details were emailed to [Mr B].

- On 3 March 2021, [Mr B] contacted us to advise that he was quite frustrated that payment was going via [Name of debt collector]. [Mr B] also advised that he'd received a credit default from [Name of debt collector] however we've confirmed this isn't the case. [Mr B] also sent through a follow up email relating to this discussion.

- On 26 April 2021, I spoke with [Mr B] regarding his further concerns and advised we'd look into this.

- On 28 April 2021, I emailed [Mr B] to advise a hold would be placed on the Toll Notices as [Mr B] had said he would be following up with [Name of debt collector] directly regarding his experience.

- On 29 April 2021, [Mr B] responded via email to advise he was requesting all correspondence between [Name of debt collector] and himself.

- On 14 May 2021, I sent an update to [Mr B] to advise he would need to request the information from [Name of debt collector] directly however I would confirm the best way to request this. I advised payment arrangements are managed through debt collection agencies on our behalf, however understood he didn't want to deal with [Name of debt collector]. I offered to set this arrangement up through an alternative agency with [K] as the main point of contact again.

- On 17 May 2021, [Mr B] emailed to request information and documentation from [Name of debt collector].

- On 19 May 2021, [Mr B] emailed to follow up on his previous request.

- On 21 May 2021, I responded to [Mr B] and advised how he could request the information from [Name of debt collector] and let him know that we had advised them of the pending contact. I advised of the outstanding Toll Notice details as well as our privacy policy specifically relating to debt collection agencies. I also asked if any further information was required and referred [Mr B] to contact the Tolling Customer Ombudsman as he wasn't happy with the outcome

- [Mr B] hasn't contacted us again in relation to this matter."

- Linkt then suggested in summary that:

"In summary, we have provided [Mr B's] feedback to [Name of debt collector] directly. We also understand he doesn't wish to deal with them which is why we have offered to set up the arrangement through an alternative agency. We've also offered a significant reduction on [Mr B's] debt, as well as a payment arrangement, in recognition of his circumstances. The offer of a

reduction on the administration fee to a transfer fee with a payment arrangement does still stand. If [Mr B] would like to accept this offer we request that he confirm this by 30 June 2021.

Please note, Toll invoices and Notices of Demand request payment of the toll and an administration fee. Linkt's administration fees recover our costs incurred when dealing with customers with unpaid tolls.”

- After discussions with the TCO, Mr B wanted to put into evidence the material that set out his earlier discussions with Linkt in seeking to settle the dispute. Set out below are two instances of the Linkt customer resolution team seeking to resolve this matter in 2020 and 2021.

- On 16 March 2020, Linkt sent an email to Mr B:

“Hi [Given name of Mr B],

Thank you for confirming those details. I've investigated and confirm there are outstanding Toll Notices for [B***M] and [C***W]. There are no outstanding Toll Notices for the ownership period specified for the vehicle [C***E]. The following amounts are outstanding:

Toll Notices issued for travel between 21 May 2016 - 25 April 2018 for the vehicle [B***M] total \$332.48. If payment is made by 30 April 2020 then as a goodwill gesture I can reduce the administration fee (\$10-\$20 per notice) to a transfer fee only (\$1.10-\$2.90 per notice). This will reduce the total outstanding to \$101.08. This a total reduction of \$231.40.

Toll Notices issued for travel between 12 August 2018 - 26 August 2019 for the vehicle [C***W] total \$2005.90. If payment is made by 30 April 2020 then as a goodwill gesture I can also reduce the administration fee on these Toll Notices to a transfer fee. This will reduce the total outstanding to \$575.40. This a total reduction of \$1430.50.

Please let me know if you would like to accept the above debt reduction by 25 March 2020.”

- In this correspondence it is important to note also that an email from the Linkt customer resolutions team on 21 January 2021 states:

“Thanks for your patience while I looked into this matter for you.

I've investigated and confirm the following amounts are outstanding:

Toll Notices issued for travel with [B***M] - total outstanding including administration fees: \$603.07

Toll Notices issued for travel with [C***W] - total outstanding including administration fees: \$5690.08

The reason the amounts have increased is because as of August 2020 Linkt became the toll operator for the M5 South West. This meant any outstanding Toll Notices that were with the M5 were transferred to Linkt.

I'm happy to offer the same reduction as last time which will reduce the administration fees of \$10.00-\$20.00 per notice to a transfer fee of \$1.10-\$2.90 per notice. This will reduce the outstanding amounts as follows:

Toll Notices issued for travel with [B***M] - total outstanding including transfer fees: \$175.87

Toll Notices issued for travel with [C***W] - total outstanding including transfer fees: \$1607.38

I've attached a list of the Toll Notices for you to review. Please note this file is password protected and I'll issue this in a separate email.

As discussed, I'll arrange for our credit team to email you with payment details so you can commence a payment plan of \$50.00 per fortnight on the reduced amount.

Please note, if payments are not made as per the arrangement you may receive contact from a debt collection agency in order to follow up.

I've also passed along your feedback regarding your experience with the debt collection agency previously.

Please feel free to call me with any questions.”

- In an email to the Ombudsman on 26 August 2021, Mr B indicated he considered in his view there were a number of factors that the TCO should take into account in making his determination:

“The length of time.

Multiple cars involved.

The inability to get a etag causing a debt to arise.

Time taken on the phone and computer to reach out and send correspondence/ evidence to other parties involved. Cost involved.

The harassment I received from [Name of debt collector] as a result from Linkt passing on my personal details such as phone number and address. This leading me to a dark time in my life thinking people where coming to repossess my belongings. Along with a welfare phone calls from Linkt because I was in such a bad state. Phone calls day and night letters of demand.

The back and forth with Linkt and still being forced over to [Name of debt collector].

I tried to resolve this issue but only to find out I was paying a debt collection agency being [Name of debt collector] which I never agreed to.

Last but not least my first contact was in 2018 but was referred to [Name of debt collector] and I have that on a document. Which can be shown.”

- The TCO again, in early December 2021, requested that Linkt restate its offer to Mr B:

“I confirm the offer to [Mr B] was as follows:

- Vehicle [B***M] has a total outstanding amount of \$371.92, with an offered reduction to the transfer cost of \$104.92
- Vehicle [C***W] has a total outstanding amount of \$9,862.43, with an offered reduction to the transfer cost of \$2,943.63

The total outstanding for both vehicles is \$10,234.35. With a reduction to the transfer cost, the amount payable is \$3,048.55. This is a reduction of \$7,185.79.

I understand [Mr B] was previously offered a payment plan to settle the toll notices. If [Mr B] would like to go ahead with a payment plan to settle the reduced offer amount of \$3,048.55, I will raise this matter to our Credit team and they will contact [Mr B] to make arrangement.”

- The TCO then, once again, asked on 2 December 2021 whether Mr B would entertain the offer of Linkt. Mr B confirmed by email the next day that he had not changed his position and would not accept the offer.

Current position of the parties

- Mr B stated that he does not want to pay the outstanding amount of \$3,048, albeit that Linkt has agreed to not impose any administration charges in addition to the initial toll charges for two vehicles.
- Linkt states, whilst it understands Mr B is frustrated that this matter has taken some time to resolve, it considers all of the charges imposed have been imposed on Mr B legitimately. These charges to Mr B are correct in view of his travel on the relevant toll roads for which Linkt is the toll operator. It considers the email setting out its interactions with Mr B during 2020-2021 indicates its desire to seek to assist Mr B and ultimately settle the dispute. After seeking to unsuccessfully recover the outstanding amounts from Mr B, Linkt suggests that it was legitimate that it sought to recover the debt through a debt collection agency.
- The offer of Linkt to Mr B was as follows:

“Vehicle [B***M] has a total outstanding amount of \$371.92, with an offered reduction to the transfer cost of \$104.92

Vehicle [C***W] has a total outstanding amount of \$9,862.43, with an offered reduction to the transfer cost of \$2,943.63

The total outstanding for both vehicles is \$10,234.35. With a reduction to the transfer cost, the amount payable is \$3,048.55. This is a reduction of \$7,185.79.”

- Linkt considers its offer of Mr B paying the outstanding amount of \$3,048.55 without imposing administration charges and reducing the debt is reasonable in the circumstances.

Discussion

- 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.
- From examining all the information and based on a review of what is fair in the circumstances, I am satisfied that the following is what most likely occurred.
- As a general observation, the matters relating to this decision were complicated by the fact that Mr B was trying to deal with all of the issues that arose in 2018 and the similar issues that arose in 2020 and 2021.
- In my view, the crucial evidence in this case is that Linkt has established the outstanding amount owed by Mr B arose in relation to toll trips taken by Mr B. In my objective view, Mr B has not adduced any evidence that shows in any way that the Linkt system is not working properly and the system was the cause of the outstanding amounts. Mr B has not adduced evidence that by engaging the debt collection agency that Linkt had acted inappropriately.
- Linkt has offered to waive any administration charges on the outstanding tolls and has reduced the amount payable by approximately \$7,000. Further, Linkt has offered a payment instalment plan.

Determination

- I am satisfied that, in the circumstances, Mr B has not established grounds for his complaint against Linkt in respect to this matter.
- In my view, the dispute largely involves a particular view from Mr B as to the circumstances where Linkt can impose its tolling charges on consumers, but also the circumstances under which Linkt can seek to engage a debt collection agency to recover the debt from consumers. It has not been established by Mr B in the present circumstances that the Linkt system is not working and was the cause of the outstanding payments, and that by engaging the debt collection agency this complicated the payment of the outstanding amount.
- I remind the parties that under the TCO process, my decision is not binding on Mr B and that he can seek relief in any other forum.

- In making this Determination, subject to the comments above, I note that the manner in which Linkt's resolution team has engaged with Mr B in respect to the issues in dispute and this complaint more broadly, has been clear, transparent and conciliatory. This is shown by the fact that Linkt has waived administration charges and has continually been in contact with Mr B during 2020 and 2021.
- When responding to consumers, complaints management staff have a responsibility to properly investigate the matters being raised and provide clear responses, supported by relevant evidence. In my view, the Linkt resolution team has reasonably discharged this responsibility in the present circumstances.
- I note that Mr B has acted in good faith in relation to this matter and acknowledge that he had an honest belief he had satisfied his obligations appropriately to the toll operator but that the toll operator and debt collection agency had not appropriately discharged its obligations to him. He has been clear, thorough and constant in his communications with the TCO and Linkt during this process.

Phillip Davies
Tolling Customer Ombudsman

Dated: 21 December 2021