

DECISION

Summary and outcome

- The complainant, S Pty Ltd (“S”) is a company that operates in NSW and its operatives use the tollways in that state regularly. S’s complaint made to the Tolling Customer Ombudsman (TCO) on 24 June 2022 was about charges imposed by Linkt, the methods by which Linkt seek to recover those charges and particularly in relation to suspension of their Linkt account and the consequences to customers when its Linkt account is suspended. S suggests, in essence, the dispute arises because of the Linkt account issues which resulted in S receiving extra fees and charges. In addition, S considers that as all its vehicles has tags in them if those tags don’t for some reason work S do not see why they should be charged for tollway travel when and if the tags do not work. S also considers that Linkt should provide a similar discount to that provided by Eway to S in the past. S also suggests that constant contact by the Linkt debt collection operatives for the outstanding amounts and generally dealing with Linkt has not contributed at all to the parties coming to a settlement. S has been in continual contact with the TCO over the last few months by email in relation to these matters.
- One matter that needs further explanation is the holder of the Linkt account and the owner of the registered vehicles were different entities. This matter was clarified by S in an email to the Tolling Customer Ombudsman (TCO) dated 2 December 2022. In short, the email stated that whilst the Linkt account was in S’s name the vehicles which were incurring toll notice charges were registered in the name of another company being A Holdings (“A”). The S email states that S has entered into a lease agreement whereby S agreed to lease the vehicles from A.
- During December 2022 to March 2023, there were various emails between the parties about S being responsible for A’s toll notice debt. Linkt required an authorisation from A the registered owner of the vehicles so that Linkt could provide the toll debt information of A to S, a letter dated 23 January 2023 from a director of A, Mr K provided this authorisation. This information also enabled Linkt to make a global offer in relation to the two debts. The matter therefore involves both the outstanding tolling debt of A and the account debt of S.

- S is concerned that Linkt has incorrectly imposed tolls on them because if the tags in the vehicles do not work S should not be charged for the requisite use of the toll road. They suggest Linkt have not behaved properly on various occasions by suspending the S Linkt account. Moreover, S state that by virtue of having their account suspended there has been extra charges levied on them. S has also suggested that Linkt has been applying constant pressure by way of numerous letters/telephone calls from third party debt agencies requesting repayment by S to Linkt in respect to the outstanding debt.
- On 5 March 2023, S owes an amount to Linkt of \$206,934.20 for trips before any settlement offer. This amount is in relation to a total notice debt of \$190,531.89 and the retail account debt of \$16,402.31. Linkt's position was that they would accept an amount of \$87,606.01 as a total debt resolution encompassing all Linkt tolling debts as of 5 March 2023. It should be noted that Linkt's offer is in relation to the debt owing by S to Linkt up to 5 March 2023. At the time of the drafting of this determination the TCO understands that there is significant additional debts incurred by S for toll road use after 5 March 2023.
- Linkt's position was that its dealings with S had commenced a number of years ago and that there had been significant communications between S and Linkt from this time until the date of lodging of S's complaint with the TCO on 24 June 2022. Linkt also noted that during the course of its earlier discussions with S, it had waived a substantial number of toll charges and administrative charges. Linkt noted that by waiving a substantial number of toll charges and admin charges, had resulted in S being charged a substantial amount less for its toll road travel than it otherwise would have been. Linkt also suggests it has continued, after the complaint was lodged with the TCO, to engage appropriately with S to seek to resolve the dispute.
- The Linkt offer of settlement involved a substantial reduction on administration fees to certain travel fees and also the waiving of substantial trip fees on numerous trips on the tollways. Linkt has suggested that all of its dealings with S have been appropriate. Linkt considers that its settlement offer is fair and reasonable in the circumstances.

Background

- The complainant, S, first made a complaint to the TCO on 24 June 2022, but the dispute is in respect to matters going back a number of years. However, the focus of the dispute for S is the suspension of its account on various occasions by Linkt and in S's view this has led to increased tolling costs and much greater administration time spent on tolling matters. The overall dispute raised by S involves certain amounts outstanding for toll road use including tolling notice debt and account debt owed to Linkt. They are also concerned about their interactions with Linkt and the processes of Linkt in seeking to recover outstanding amounts from consumers. S have the view that Linkt have not sought to assist S in its difficulties in respect to its account and the management of that account. Linkt have not been clear as to the consequences

of S's account being suspended and see no reason why that should be the case.

- S 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 continuing for a number of years. In particular, S considers that Linkt as a result of its processes, has complicated the matter and made payment of the outstanding amount and ultimately settlement more difficult.

- In its application to the TCO on 24 June 2022, S stated that:

"I am having issues with my Linkt account. We are constantly receiving extra charges & fees which I have spoken to Linkt representatives to review for us on multiple occasion & is refused. We propose to solve this account directly with Linkt & never wanted to undergo this process

I had an account manager at Eway who always reviewed our extra fees & no tag in vehicle charges; not sure why Linkt is unable to do the same. All our vehicles have tags & when they are missed I dont see why we should be charged for the fees.

I have requested on multiple occasions the following: Breakdown of each month for payment excluding all fees & charges as Eway did on our account. I have proposed something so simple & easy to finalise payments & reactivate our account ..."

- Linkt, on 6 July 2022, suggested in a comprehensive response to S that:

"We acknowledge the complaint relates to the following matters:

- Dispute of Fees and Charges associated to Linkt Commercial Account
- Dispute of treatment of enquiry by Linkt

We have reviewed the matter and have made the below observations:

- Linkt Account under S transitioned to Linkt from the prior tolling operator e-WAY
- Representative from S, initially raised her concerns with our Linkt Commercial team where the enquiry was then escalated to the Customer Resolutions team. Enquiry was then at this point managed by the Customer Resolutions Lead.
- November 2021, Account was reactivated with an outstanding balance while the Customer Resolution team investigate the enquiry.
- On 10 November 2021, an email was sent to S with an included account reconciliation, and a listing of toll notices.
 - Linkt made a generous offer to reduce the outstanding balance from \$26,180.49 to \$10,938.20. A breakdown can be seen below:
 - Account Balance reduction from \$1,833.178 to \$1,768.85
 - Toll Notices reduction from \$24,347.32 to \$9,169.35
 - Included in this email were information on how S can avoid tolls and fees including the No Tag in Vehicle Fee, Late Payment Fee and Account Monthly Fee (including the option to open a pre-paid account).

- On 15 November 2021, an email sent to S with a reminder for a payment as the account re-entered account suspension. On the same day, S queried some trips where Linkt responded that some toll notices have not yet transferred across.
- On 16 November 2021, S requested Toll Notices to be transferred across in order to process payment. Please note that email reference 'correspondence A' listed toll noticed outstanding for periods in August to November. Toll notices were due to account entering suspension due to non-payment. On the same day, Linkt advised S that an immediate account payment is required in order to allow toll notices to transfer across. S then further queried that they have requested on multiple occasions for the details of the October Trips (please note that was already provided on email dated 10 November 2021 in addition to the monthly statements issued.
- Further to the above, Linkt again provided the October toll notice listing, in addition to a reminder of the outstanding balance highlighting the generous reduction Linkt has offered. S replied insisting the account to be reactivated – in which Linkt declined this arrangement without payment of the account arrears. Linkt offered at this point for S to refer their complaint to the Tolling Customer Ombudsman (TCO) should S feel dissatisfied with the outcome –
- On 19 November 2021 – Linkt received a partial payment of \$3,770.58 though with continued toll travel, the balance was \$14,054.88. On 06 December 2021 – an email was sent to S confirming payment receipt of and confirmation of fee waiver \$2,003.63
- On 7 December 2021 – S queried the outstanding balance, and Linkt responded on the same day explaining that a partial payment was received, and addition with continued toll travel – the outstanding balance has accrued to \$14,054.88.
- On 9 December 2021, Linkt provided a response in addition to a spreadsheet of all trips and charges.
- On 10 December 2021, 13 December 2021, 22 December 2021, 29 December 2021, 5 January 2022 - S requested listing of November statement with the exclusion of any other toll trips outside the November period. In all occasions, Linkt responded to all emails advising the actual total outstanding balance. It was during this period, S refuses to take responsibility of toll travel outside the November period.
- On 17 January 2022, S emailed Linkt to continue to request balance for November trips only and excluding fees. Linkt Responded on 25 January 2022, at this point and with continued toll travel, the account balance has now accrued to \$19,499.69. Linkt offered to escalate the matter to the Complaints Manager.
- S responded on 27 January 2022 requesting details of November only trips. Linkt responded on the same day explaining information that S requested has been provided in an earlier correspondence and provided information to escalate complaint to the Tolling Customer Ombudsman.
- Linkt Manager contacted S on 4 February 2022 with a follow up email on 7 February 2022. In this email, Linkt provided a full breakdown of total outstanding balance to date. As a final attempt to resolve the matter, Linkt made another settlement offer to reduce the balance to \$16,087.67 which represents a 20% reduction, subject to an upfront payment of \$16,087.67.
- On 09 February 2022, Linkt sought acceptance of offer from S. S responded on the same day, and now requesting balance for only December and January for tolls only. The email Linkt sent mentioned this offer will need to be accepted by 11 February 2022. This offer was not accepted by S.

- On 10 February 2022, S made a partial payment of \$6,108.93. This amount was not quoted to S and the account remained outstanding.

Balance

S current account balance amounts to: \$14,477.47

Vehicles listed under S and the toll notices outstanding appears to be registered under a separate company name. Should S like information about the total amount outstanding for toll notices, Linkt would require the current company name that is registered against these vehicles and the vehicle ownership dates.

Linkt's Position:

- Based on the above, Linkt has, in good faith, made numerous offers that materially reduces the outstanding balance. Linkt has already, on a number occasions, provided S information on how to avoid fees. If S seeks a fee free product, Linkt product offering would be a pre-paid account.
- S would need to make payment of \$14,477.47 to avoid further escalation of this matter. The outstanding matter has been referred to Recoveries Corporation who is currently managing this.

S has made comments about the treatment of their complaint. Based on the above interaction, Linkt are comfortable with the management of this complaint.”

- The parties then had various correspondence through the TCO in respect to the issues raised in the emails above. As discussed earlier in the determination there were a number of emails to and fro from the parties in respect to S being legally responsible to pay the tolling debt of A from December 2022 to March 2023.
- Linkt in an email dated 13 December 2022 indicates that they were wanting further information about A but also wanting to make a settlement offer to S in relation to its existing debts. The email from Linkt states:

“As we have explored previously, the outstanding matter of S relates to the below:

Account:

- S has accrued a large volume of debt for their Linkt Account. Existing dispute where S queried the late payment fees, and tag related fees were raised and addressed.
- The current account balance is \$15,650.44 in debit. Monthly account fees and account related fees- \$2780.82
- We have reviewed the account and are in a position to remove all account related fees amounting to \$2780.82 which materially reduces the balance down to \$12,869.62.
- In support of S concerns, Linkt has made a generous offer on the account balance on previous occasions. The recent account related fee reduction was offered on 20 September 2022 when the account debit balance was \$14,941.21. Linkt offered to remove all account related fees amounting to \$2071.59 which would reduce the balance down to \$12,869.62.

- The last payment received from S was on 10 February 2022 for 6,108.93 that brought the account to \$13,340.76 in arrears. No payment since has received and left the account accruing.
- The Linkt account is currently suspended from 29 December 2021.
- Previous account suspension is as below:
 - 15th May 2021 till 3 June 2021
 - 29 June 2021 till 3 July 2021
 - 13 August 2021 till 9 November 2021
 - 15 November 2021 till 19 November 2021

Toll Notices:

- Where continued toll travel has been made without a valid arrangement to do so, toll notices would be issued.
- The toll notices are issued to the registered owner of the vehicle at the time and date of travel.
- Our records show that toll notices were issued to S being the registered owner at the time for the registration [C***T] NSW. The total outstanding is for \$244.17
- As the Linkt account remains suspended currently from 29 December 2021, any toll travel made after this date would go as a toll notice being issued to the current registered owner of the vehicle.

In order to seek an amicable resolution, Linkt is willing to offer a settlement of \$12,869.62 for the account and \$119.57 for the toll notices.

As for the outstanding toll notices for the vehicles registered under the company A, this is not S's debt. As they are not the registered owners of the vehicle, if S is seeking to take ownership of this debt, the current registered owner would need to nominate S as the driver of the vehicles in which the toll notices would therefore be reissued to them. Alternatively, if this is not preferred, the current registered owner can provide authority for Linkt to discuss their toll notice debt with S directly. This can be done by way of a letter of authority which can be obtained at the following link.

<https://www.linkt.com.au/content/dam/linkt/common/pdf/Linkt-letter-of-authority.pdf>.

As the Debt Collection agency have attempted to contact the company A for the outstanding matter, we have placed the matter on hold for 60 days.

Once Linkt receives the above information, we will be looking into this further".

- The email demonstrates that Linkt were trying to settle the matter in relation to the existing S debts by discounting its charges and willing to assist and settle the A if it could be established that S were responsible to pay them.
- For example, S in an email to the TCO on 24 January 2023 stated in response to the Linkt email that:

"Thank you for your email and the revised offer.

I already discussed this with our management team and hopefully will get a response whether to accept the offer or not next week. Can you please let us know how long the offer is valid until and whether we are required to respond within a certain timeframe?

In the meantime, for A outstanding toll notices, if S is seeking to take ownership of this debt, please advise on what steps we need to take, and whether there will be admin fees and charges if we pay the outstanding debt on behalf of A.

Please let me know if you still need any further information from us”.

- After resolving the A issue and both parties acknowledging that S were responsible for the A’s debts S in an email dated 22 March 2023 stated:

“Our Linkt account was suspended on the 29 December 2021, which means all toll notices should be from this point only. We always maintain a toll account and its unclear to me why we have to cover for the period between May 2017 up until Mar 2023. Can we please request for a list of all toll notices charged and trips report for each vehicles so we can review from our end? In addition, all the vehicles were purchased and transferred to A at different date, we want to make sure that the toll notices are actually belonged to the period after the vehicles were transferred to A.

I’ve done a search of all of outstanding toll notices for all the vehicles attached on the list that Linkt provided, up until today date 22nd March 2023 and the number doesn’t match up with what Linkt provided. In fact it is much less than that. I attached my search report for your reference. Can you please pass it on to Linkt and in addition, I would like to request a call from Linkt representative so I can go through this charge of toll notices.

Ideally, we would like to settle S Account first to get our account going and we will transfer the toll notices from A to S.

To sum up, we require the following from Linkt:

1. A letter from Linkt to S confirm all outstanding debt under S will be settled at \$12,864.62
2. A detailed report of all trips and toll notices for A and Date of each trip. I attached again vehicle list and ownership date. As mentioned, our Linkt account was suspended from 29 Dec 2021 and toll notices should cover only from this point onward.
3. Linkt please review the report that I extract from toll notices search as it doesn’t match up with Linkt information”.

- On 24 March 2023 Linkt responded to the S email on the following basis:

“Thank you for providing copy of S’s recent correspondence.

We understand S has raised further questions regarding the debt position which we have provided responses below:

- S’s Linkt Account entered suspension on 7 occasions between 2018 and 2021 and remained suspended since 29 December 2021.
- We have attached a full listing of all toll notices issued against the vehicles registered with A. For completeness, the listing separates the recipient of the toll notices based on registered ownership details obtained by Transport for NSW. The password for the attachment is S

- By resolution of this complaint, Linkt is seeking a settlement of both S and A outstanding tolling and account debt. In the prior correspondence, S has claimed ownership for the outstanding tolling debts for both entities. We cannot accept the partial resolution of S's matter nor the option to transfer the outstanding A toll notices to the S account.

A break down of the debt position owed for S and A is outlined below:

- Total Notice debt: \$190,531.89
- Retail Account Debt: \$16,402.31
- **Total Debt Position: \$206,934.20**
- **Offer Debt Resolution: \$87,606.01**

As a gesture of finding a favourable outcome to the outstanding debt matter, Linkt made a without prejudice offer on previous communication to reduce the total debt position to **\$87,606.01** payable by way of a lump sum payment. The reduction encompasses all Linkt tolling debts as of 05 March 2023.

We have continued to engage with S and provided on a number of occasions generous offers that have materially reduced the S debt in good faith. We cannot continue to provide these reductions so therefore Linkt is also requesting that should S accept the reduction, as a requirement of the settlement, S would be required to operate a Linkt everyday pre-paid account to manage their toll travel.

We are now seeking a determination based on your observation of the recommendation from the Tolling Ombudsman prior to Linkt considering further possible avenues without excluding the option of a wind-up application".

- In an email from S to the TCO dated 4 April 2023 S indicated that they wanted the TCO to draft a determination on the matter. On the same day the TCO communicated the S position to Linkt who acknowledged that they had received the communication. The TCO communicated with the parties that given the amounts involved in the dispute, the complexities of the matter and the plethora of emails between the parties both before and after 22 June 2022, the drafting of the determination would take some time to prepare and finalise.

Current position of the parties

- S stated that they do not want to pay the outstanding amount under the Linkt offer for the period up to 5 March 2023 of \$87,606.01, albeit that Linkt has agreed to significantly reduce the toll way charges from and have sought not to impose administration charges in addition to the initial toll charges. They consider that Linkt by virtue of suspending their account on various occasions has contributed to the substantial S debt including that of A.
- Linkt states, whilst it understands S is frustrated that this matter has taken some time to resolve, it considers all of the charges imposed have been imposed on S and A fairly and in accordance with the rules in respect to travel by consumers on toll roads. These charges to S are correct in view of their travel including the registered vehicles of A on the relevant toll roads for which Linkt is the toll operator. It considers its the email setting out its interactions with S during 2021-2022 indicates its desire to seek to assist S and ultimately settle the dispute. Linkt categorically denies that the suspending of the S account was

done for any other reason other than for sound business practices in view of S not adhering to the terms of the toll road use by consumers in NSW. Linkt have continually told S during 2021 - 2022 what the consequences would be if its account was suspended and also what S would need to do for S to have the account suspension lifted.

- The offer of Linkt to S was as follows:

“As a gesture of finding a favourable outcome to the outstanding debt matter, Linkt made a without prejudice offer on previous communication to reduce the total debt position to **\$87,606.01** payable by way of a lump sum payment. The reduction encompasses all Linkt tolling debts as of 05 March 2023”.

- It should be noted that Linkt made clear to S its offer is in relation to the debt owing by S to Linkt was debt owing up to 5 March 2023. At the time of the drafting of this determination the TCO understands that there is significant additional debts incurred by S for toll road use after 5 March 2023.
- Linkt considers its offer of S paying a significantly reduced amount without imposing administration charges as well as reducing the overall 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 S was trying to deal with all of the issues that arose in 2021 and 2022 in respect to its own toll road use and that of A.
- In my view, the crucial evidence in this case is that Linkt has established the outstanding amount owed by S including the travel of A arose in relation to the toll trips actually taken by S and A. In my objective view, S have not adduced any evidence that shows in any way that the Linkt has suspended the account of S otherwise than in accordance with their usual business practices system where consumers do not satisfy their obligations in respect to toll road use. The evidence suggests also that Linkt have continually told S during 2021 and 2022 what the consequences would be if its account was suspended and also what S would need to do for S to have the account suspension lifted.
- Linkt has offered to waive administration charges on the outstanding tolls, waived certain toll fees and has reduced the amount payable by S by a considerable and significant amount.

Determination

- I am satisfied that, in the circumstances, S have not established grounds for this complaint against Linkt in respect to this matter.
- In my view, the dispute largely involves a particular view from S as to the consequences of having their account suspended by Linkt. In addition, S seem to be of the view that because Eway necessarily discounted their travel on the toll roads that Linkt should do so on a similar basis. Having said that there is indeed evidence that Linkt have provided substantial discounts to S over the course of their interactions with S and for its toll road use. It has not been established by S in the present situation that the Linkt system is not working and was not applied appropriately and correctly by Linkt.
- I remind the parties that under the TCO process, my decision is not binding on S and that they can seek relief in any other forum.
- In making this Determination, I note that the manner in which Linkt's resolution team has engaged with S 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 various toll charges for S for toll road use over a number of years and has continually been in contact with S during 2021 and particularly 2022 to seek to settle dispute.
- 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 S had an honest belief they had satisfied their obligations appropriately to the toll operator in respect to travelling on toll roads and all of their trips taken on the toll roads. They have been in constant communications with the TCO and Linkt during this process.

Phillip Davies
Tolling Customer Ombudsman

Dated: 29 June 2023