

DECISION

Background

- 1 The complainant, Mr NB, first made a complaint to the Tolling Customer Ombudsman (TCO) on 9 January 2017, as follows:¹

“I have had several emails exchanged with Eastlink over the past few months, the result of my belief that their online system did not correctly save my credit card details and therefore resulted in numerous charges.

The latest complaint was that i tried to pay before the date payable but their system was down for long period of time and their communication was not clear about the best method to pay, this resulted in over \$1000 of CCV fines being issued to me.

Please advise the best way to be able to progress this with you - is an email trail sufficient, or do i complete the form and start there?”

- 2 The same day Mr NB was advised that the TCO process required completion of the Complaint and Consent forms and instructions given on how to access these forms.
- 3 On 13 January 2017 Mr NB lodged the completed forms, outlining his complaint as follows:

“Complaint details:

2 items: 1) EastLink stated several months ago that it was my fault that a credit card kept failing auto topup payment. Customer reps told me they only take 1 payment and then stop. I was unable to update my credit card (the system appeared to not save the details), this led to fines. I believe if the system had correctly taken my card info, i would have not received fines. This after time has led to extra fines being created, which i have tried to plead with them to remove.

2) Eastlink did not make an effort to identify a different way to make a payment (via BPAY), and their site was down, which i notified about how to pay them via email, during this time, they had sent the fines to CCV which have now racked up to more than \$1000 of fines. Had it been clear that the payment was different, then i would have paid when the others were paid, and the extra fines would not have been issued.”

What happened following your complaint to the tolling business?

Eastlink kept insisting it was my fault, citing the same thing over and over again about my credit card not being able to take payment, and skirting the 2nd issue altogether, despite asking for it to be escalated. I am only asking them to revoke the extra fines, and i had paid the ones that their system allowed me to. It was upon trying to pay the others that system

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

issues occurred, and the false information about ways of payment that led them to passing onto CCV, despite my having an email case open with them at the time.

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

I would like the overly excessive CCV fines to be dropped, and to only have to pay what is owing. (Incidentally they are not responding to me with a payment date for the last installment of EastLink fines to be paid - their delay in this will most likely result in more excessive CCV fines.”

- 4 On 19 January 2017 EastLink responded to the TCO, which was provided to Mr NB for comment on 20 January 2017. EastLink said:

“We have investigated the customer’s complaint and would like to advise you of the outcome.

As per the attached email titled “Re: CRT [6**1] – [Mr NB]” – EastLink has provided unambiguous payment options to the customer on multiple occasions. We ask that you also take note of the dates in which [Mr NB] respond to our emails as this effects totals owing, payment attempts to Invoices past due dates and Invoices progressing to CCV.

Please view the below timeline of events, which is also reflected in the attached email:

25/07/16 – [Mr NB] sends two separate enquiries via email in regards to why Auto Payments have failed.

26/07/16 – EastLink advises that the customer should contact his financial institution to gather the reason why the payments failed. We also confirm that an email was issued to him advising him of the failed payment. We also advise the customer of the appropriate course of action to reactivate automatic payments and of his account being in debit. **We also advise the customer that he can phone our contact centre to reinstate automatic payments.**

17/10/16 – [Mr NB] Responds 3 months later advising that he is receiving invoices and he is unable to update credit card details. Customer states that he only wants to pay the original charges and that he will move to another toll operator once it has been paid.

18/10/16 – EastLink responds and advises the customer that he had the option of contacting EastLink via phone to update his payment details. We also advise the customer of the suspension warning and suspension notifications which were not actioned. We also provide a table of the Toll Invoices owing and advise that a lock has been placed until 28/11/16 – and that failure to make payment by this date will result in CCV notices. **Payment options are advised to the customer and a contact phone number is provided.**

18/10/16 – [Mr NB] mentions the automatic payment failure, CCV issues and that he does not accept the Toll charges presented previously.

30/11/16 – [Mr NB] enquires in regards to what is owing on Toll Invoices.

01/12/16 – EastLink provides [Mr NB] with duplicate Invoices and they are locked until 15/12/16 as a courtesy. We again advise that failure to make payment by this date will result in CCV notices. **Payment options are advised to the customer and a contact phone number is provided.**

19/12/16 – [Mr NB] responds after 15/12/16 to advise that he is having issues with making payment.

21/12/16 – EastLink advises that as per previous correspondence, only 3 payment options were valid – Over the phone, in person, and via BPAY. We advise that Toll Invoices have progressed to CCV and that a residual amount is owing. The customer is provided with CCV contact details.

06/01/17 – [Mr NB] advises of his issues with making payment and that his wife has received CCV notices.

09/01/17 – EastLink performs an investigation and provides a timeline of events and an explanation with why events have occurred.

09/01/17 – [Mr NB] advises that he tried to pay and that our site was down. Customer implies that fault lies with EastLink in regards to invoices progressing further. **(Please note that BPAY payments are made via the customer's banking website and NOT through the EastLink website. Our website can only accept payments via Credit Card if the Toll Invoice is still within its due date.)**

We confirm that there has not been any payment with EastLink in relation to the Toll Invoices that were issued (Invoice details attached), and as a result they progressed to Civic Compliance Victoria. If payment or other arrangements for the Toll Invoices were made within a reasonable amount of time, it would have prevented them from being referred to Civic Compliance Victoria. We note that clear instructions and our contact information are printed on all EastLink Toll Invoices and EastLink has been providing payment options and contact information via email to the customer.

Due to the above, we believe EastLink did not contribute to the Toll Invoices progressing further as we had attempted to seek payment for use on our road to prevent infringements - under Section 200 of the EastLink Project Act 2004. We did not prevent the customer from contacting EastLink via phone - if he was experiencing payment issues to organise settlement. As a result, EastLink cannot intervene with CCV on the customer's behalf.

When a Toll Invoice progresses to Civic Compliance Victoria, the enforced trips and VicRoads Lookup fees are extinguished from the Toll Invoices. However, the residual balance of the Toll Invoice remains payable. As a once off good will gesture, we have waived the **\$57.69** residual.

Once travel has been referred to an Enforcement Agency, the matter is out of our jurisdiction. To dispute an infringement notice, the person who has been issued with the infringement must submit a written application including the Obligation and Infringement Notice Number for internal review to:

**Civic Compliance Victoria
GPO Box 1916
Melbourne Vic 3001**

Unfortunately, we are unable to assist him any further with the Civic Compliance Victoria Infringement Notifications once they have been issued. Should he require any assistance with his Infringement Notice(s) he should contact Civic Compliance Victoria directly on 03 9200 8111 to discuss this matter further.”

- 5 The email titled “Re: CRT [6**1] – [Mr NB]” referred to in EastLink’s response quoted above is set out below:

From: [Mr NB] [email address]
Sent: Monday, 9 January 2017 4:31 PM
To: ** Customer Relations
Subject: Re: CRT [6**1] – [Mr NB]

You're missing the point I am afraid, as this is what you have always told me. I am trying to say that i had tried to pay, but because of unclear instructions, was unable to by the date shown - i even emailed you saying why was your site down. By this time it was too late and you had already passed more than \$1000 worth of fines over to CCV.

I will be passing this onto the Tolling Ombudsman as you clearly are not wishing to cooperate with me.

I guess you don't really care any more as it is not your debt that has to be paid.

Please kindly advise what date i need to pay the outstanding amount to Eastlink of \$57.69 by.

Regards,
[Mr NB]

On Mon, Jan 9, 2017 at 4:15 PM, ** Customer Relations
<CustomerRelations@connecteast.com.au> wrote:

Dear [Mr NB],

Your matter has now escalated to our Customer Relations Team; your reference number for this complaint is CRT [6**1].

EastLink Account Number: [10*60]**

EastLink Toll Invoices: [1*T] / VIC**

We have investigated this matter and wish to advise the following:

On 10 July 2016 we attempted to take an automatic top up payment of \$30. As this payment was unsuccessful, we made two more attempts on 11 July 2016 and 12 July 2016 which were also unsuccessful.

On 14 July 2016 a notification was issued by email to [email address] to alert you of the failed payment.

On 25 July 2016 we received an email from yourself asking why the automatic top up had stopped. EastLink replied to your email on 26 July 2016 (copy of email attached). We advised you your account was in a negative balance of \$24.35 and that a manual payment was required before the account could be reset to automatic top ups.

As a payment was not received to bring the account back into a credit balance, the account went into suspension on 22 July 2016. A notification was issued to alert you of this (copy attached).

We have no record of any further contact from yourself until 17 October 2016 when we received an email from [email address].

Below is a timeline of events from 10 July 2016 onwards for EastLink Account [10***60]. Each notification we issue has payment options available including online, by BPAY through your bank or financial institution, in person at 7-Eleven, United Petroleum and participating newsagencies or by mail.

Date	Item	Notes
10/07/2016 – 13/07/2016	Attempt to take top up payment	Top up attempted 3 times, payment unsuccessful
14/07/2016	Payment Failure Notification issued	
15/07/2016	Suspension Warning issued	Account balance as of 15/07/2016 - \$9.31 overdrawn
22/07/2016	Account Suspended. Notification issued	Account balance as of 22/07/2016 - \$24.35 overdrawn
25/07/2016	Email received from [email address] asking why auto top up was stopped	
26/07/2016	EastLink replied to email	Copy of email attached
06/08/2016	Toll Invoice [11***49] issued by email	
13/08/2016	Toll Invoice [11***69] issued by email	
20/08/2016	Toll Invoice [11***15] issued by email	
23/08/2016	Toll Invoice [80***78] issued by email	
25/08/2016	EastLink Quarterly Account Statement issued	Account balance as of 25/08/2016 - \$82.15 overdrawn
30/08/2016	Toll Invoice [80***88] issued by email	
06/09/2016	Toll Invoice [80***93] issued by email	
17/10/2016	Email received from [email address] advising unable to register new Credit Card	
17/10/2016	Manual Top Up payment of \$100 received via VISA online	Account reactivated
18/10/2016	EastLink replied to email received 17/10/2016	

We advise Toll Invoices issued from 6 September 2016 onwards were issued to the registered owner of the vehicle using the details we obtained from VicRoads. When a Toll Invoice is not paid in full by the due date, the travel may be referred to Civic Compliance Victoria (CCV) who issues an infringement of \$155.46 per day of travel.

When a Toll Invoice is not paid by the due date and progresses to CCV as a result, the enforced trips and VicRoads Lookup fees are removed from the EastLink Toll Invoices. The residual balance of the toll invoice remains payable to EastLink. We confirm that there is an amount of \$57.69 (including GST) outstanding to EastLink. This amount includes residual balances from EastLink Toll Invoices that have progressed to CCV.

Please note, when making payment by BPAY, the payment must be made prior to the due date. Once the due date has passed for a Toll Invoice, payment is unable to be made using the BPAY reference numbers printed on the invoice.

As payment or contact was not made to EastLink in relation to the Toll Invoices that were issued, they progressed to Civic Compliance Victoria. If the following occurred before referral to CCV, it would have prevented the Toll Invoices from progressing to infringement stage:

- Trip Passes purchased prior to travel (via our website or via phone)
- Contact made to make payment or other arrangement for the Toll Invoices (via our website or via phone)

In conclusion, we believe EastLink did not contribute to the Toll Invoices progressing to infringement as we had attempted to seek payment for use on our road to prevent infringements – under Section 200 of the EastLink Project Act 2004 and did not prevent you making contact to EastLink to organise settlement or purchase trip passes prior to travel.

Should you require any assistance with your Infringement Notices, please contact Civic Compliance Victoria directly on (03) 9200 8100.

If you feel the outcome we have provided today is not to your satisfaction, you are within your rights to refer your complaint to the Tolling Customer Ombudsman (TCO). The TCO is an independent person appointed to help customers of EastLink resolve complaints fairly, efficiently and free of charge.

Tolling Customer Ombudsman
PO Box 7095
Hawthorn North Vic 3122
Email: admin@tollingombudsman.com.au
Website: www.tollingombudsman.com.au

Kind regards,

[Name]

Customer Relations | EastLink

03 9955 1400 | F 03 9955 1401

PO Box 744 Ringwood VIC 3134 | www.eastlink.com.au

From: [Mr NB] [email address]
Sent: Friday, 6 January 2017 9:38 AM
To: Enquiry Breeze <Enquiry@breeze.com.au>
Subject: Re: [A***7]- [Mr NB] COMPLAINT

This is absolutely ridiculous.

I have been trying ways to pay and for one reason or another it has not worked, despite me asking for your help.

I have to say that your instructions to pay 'via BPAY' are very misleading - if this was clear then i would have absolutely paid them when i said I would, hence my email saying 'the site was down' - which was just passed off.

If they all had to be paid via BPAY (as stated in your email), how is it that I was able to pay the first 2 the regular way?

Your return email (above) was just as confusing, stating i owe \$57.69, which includes balances i owe you and what i owe CCV.

I have now received 7 fines from CCV (in my wife's name, who owns the car) totalling \$1085 which is absolutely disgusting.

Please advise whether you have an internal review department, rather than just 'customer service' who keep answering my emails.

I believe on advice from the tolling ombudsman that you should act on this before I take this to their hands.

All i have ever wanted to do is pay the outstanding amounts, since you never honoured my initial complaint and just gave excuses, and denied what your customer services representatives said via email.

I would like a resolution to this whereby I pay the initial amounts owing, and NOT the \$1085 which is now owing to CCV.

I would appreciate your assistance with this.

Regards,

[Mr NB]

On Wed, Dec 21, 2016 at 2:25 PM, Enquiry Breeze <Enquiry@breeze.com.au> wrote:

Dear [Mr NB],

Thank you for your enquiry.

EastLink Reference Number: [30*63]**

As advised in our previous correspondence, due to each toll invoice being overdue the following payment options are available to you:

- Over the phone by calling 03 9955 1400
- In person at the EastLink Customer Service Centre at Ringwood.
- By BPAY using the following details:

Bill Code 727214

Reference Number [number]

We confirm we placed a hold on the outstanding amount until **15 December 2016** which we advised in our previous correspondence. As a payment was not made via the provided channels by this date, invoices have progressed to Civic Compliance Victoria (CCV).

We confirm that there is a current amount of **\$57.69** (including GST) outstanding under the above mentioned EastLink Reference Number. The amount owing includes residual balances from EastLink Toll Invoices that have progressed to Civic Compliance Victoria (CCV).

When a toll invoice is not paid by the due date and progresses to CCV as a result, the enforced trips and VicRoads Lookup fees are removed from the EastLink Toll Invoices. However, the residual balance of the toll invoice remains payable to EastLink.

Be advised that clearing the amount owing to EastLink will not clear any amounts owing with CCV. Should you require any assistance with your Infringement Notices please contact Civic Compliance Victoria directly on 03 9200 8111 to discuss further.

If you have any further enquiries, feel free to contact our Customer Service Centre on 03 9955 1400.

Kind Regards

[Name]

Customer Administration | EastLink

03 9955 1400 | F 03 9955 1401

PO Box 744 Ringwood VIC 3134 | www.eastlink.com.au

From: [Mr NB] [email address]
Sent: Monday, 19 December 2016 1:19 PM
To: Enquiry Breeze <Enquiry@breeze.com.au>

Subject: Re: [A***7] - [Mr NB] COMPLAINT

Hi again,

I have been trying to pay these invoices as per our last agreement - but since last week I have been receiving an error when trying to go to the 'pay toll invoice' page - the error is HTTP 404 Error - Page Not Found.

I have just tried again this morning and have no luck - please advise so I can get these paid immediately.

Kind regards,

[Mr NB]

On Thu, Dec 1, 2016 at 8:52 AM, Enquiry Breeze <Enquiry@breeze.com.au> wrote:

Dear [Mr NB],

Thank you for your enquiry.

EastLink Reference Number: [30*63]**

Please find attached your duplicate EastLink Toll Invoices as requested.

If the payment of a Toll Invoice is not received by the due date, we send an Overdue Notice invoice. The Overdue Notice includes an additional fee to the original Toll Invoice. Kindly refer to the attached Overdue Notices to verify the original Toll Invoice it relates to.

We confirm that there is a current amount of \$111.48 (including GST) outstanding under the above mentioned EastLink Reference Number.

As the invoices are past their due date please refer to the available payment methods listed below:

- Over the phone by calling 03 9955 1400
- In person at the EastLink Customer Service Centre at Ringwood.
- By BPAY using the following details:
- Biller Code 727214

Reference Number [30***63]

Kindly note we have placed a hold on the Toll Invoices for the EastLink Reference [30***63] until the 15 December 2016 to allow you extra time to pay.

Failure to pay the amount by this date may result in Civic Compliance Victoria issuing infringement notices. The cost of an infringement notice would be \$155.46 for each day of unregistered travel on EastLink.

If you have any further enquiries, feel free to contact our Customer Service Centre on 03 9955 1400.

Kind Regards

[Name]

Customer Administration | EastLink

03 9955 1400 | F 03 9955 1401

PO Box 744 Ringwood VIC 3134 | www.eastlink.com.au

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From: [Mr NB] [email address]

Sent: Wednesday, 30 November 2016 11:15 AM

To: Enquiry Breeze <Enquiry@breeze.com.au>

Subject: Re: [A***7] - [Mr NB] COMPLAINT

Please can you send me the correct toll invoices for me to pay - as all apart from the top 2 say they have \$0.00 owing or are incorrect.

[11***20] \$57.36

[11***45]

\$47.38

[11***35] / [80***22]

\$23.27

[11***01] / [80***31]

\$29.20

[11***10] / [80***76]

\$40.57

[11***36] / [80***46]

\$18.44

Kind regards,

[Mr NB]

On Tue, Oct 18, 2016 at 11:26 AM, Enquiry Breeze <Enquiry@breeze.com.au> wrote:

Dear [Mr NB],

Your matter has now been escalated to an official complaint; your reference number for this complaint is [A***7]

EastLink Account Number: [10*60]**

Licence Plate Number: [1*T] VIC**

We confirm your account was suspended from 22 July 2016 to 17 October 2016.

Any travel made during a suspension period will result in Toll Invoices being issued to the registered owner or the account holder with additional charges.

We did attempt to take a top up payment from credit card [number] on 10 July 2016. As this payment was unsuccessful 'do not honour' we attempted a second top up on the 11 July 2016 which unfortunately was also unsuccessful. We then attempted a third and final top up on the 12 July 2016 which was also unsuccessful.

As a result of the failed payment the payment method reverted back to Manual payments, this is done to avoid Dishonour fee's from the Bank and we do not attempt to take another

payment. Please contact your Financial Institution for more information on why the payment failed.

As you advised you experienced difficulty updating your details on line the following alternative methods are available:

- **In person at the EastLink Customer Service Centre located at 2 Hillcrest Avenue, Ringwood.**
- **Over the phone by calling (03) 9955 1400**

We have no record of any contact from yourself to alert us that you were unable to update your details on line.

We advise not only do we issue an email regarding the failed payment, you are also notified when the balance falls below \$13.63 as well as when the balance falls below \$0.00 and when the account has been suspended. Your tag will also beep more than once to indicate that you are running low on credit.

Under the Customer Service Agreement for your EastLink Account, you have committed to maintain a credit account balance at all times.

You were advised via email on 14 July 2016 your account was currently below threshold and a top up payment was required.

On the 16 July 2016 you were advised by email your account balance is currently \$24.35 debit. A manual Top Up will need to be made to the account before the Automatic payments can be reinstated.

Please refer to the attached Account Suspension Warning issued 15 July 2016 and Account Suspended notification issued via email on 22 July 2016.

We confirm a \$100.00 credit card payment was received via our web site and applied to your account on 17 October 2016 which has reactivated your account, however reactivating the account will not cover any Toll Invoices issued for the suspension period.

Your request to have all administration fees waived for EastLink Toll Invoices received during the suspension period has been declined as you failed to maintain your account as per the Customer Service Agreement which you agreed to at the time of account opening.

The following EastLink Toll Invoices remain outstanding and owing to EastLink for Licence Plate Number [1***T] VIC.

EastLink Toll Invoice Number:	Amount Outstanding
[11***20]	\$57.36
[11***45]	\$47.38
[11***35] / [80***22]	\$23.27
[11***01] / [80***31]	\$29.20
[11***10] / [80***76]	\$40.57
[11***36] / [80***46]	\$18.44
Total Amount Outstanding	\$216.22

A hold has been placed on the above Toll Invoices until 28 November 2016 allowing you time to make payment.

Failure to pay the amount required by the above date may result in Civic Compliance Victoria issuing an infringement notice to the vehicle's owner or driver. The cost of an infringement notice would be \$155.46 for each day of unregistered travel on EastLink.

The following payment methods are available:

- Online at www.eastlink.com.au (provided the due date has not passed)
- **Over the phone by calling (03) 99551400**
- In person at the EastLink Customer Service Centre in Ringwood
- BPAY using the following details:
 - o Biller Code 727214
 - o Reference Number [number]

As EastLink and CityLink are two different Companies we are unable to confirm if there are any outstanding amount owing for your vehicle with CityLink.

We recommend you contact CityLink on 13 2629 to confirm if there are any amounts outstanding for your vehicle.

We believe that the amount of characters provided should be sufficient to initiate an enquiry. Upon receiving this information if further information is required we may elect to contact you via Email/Phone.

We apologise for the inconvenience that our website has caused you, we appreciate your feedback and we will forward on the appropriate Department.

If you find your enquiry exceeds the allowed character limit you can always email us directly at enquiry@EastLink.com.au or submit an enquiry through the general enquiry section on our website.

Kind Regards

[Name]

Customer Administration | EastLink

03 9955 1400 | F 03 9955 1401

PO Box 744 Ringwood VIC 3134 | www.eastlink.com.au

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From: [email address] [mailto: [email address]]

Sent: Monday, 17 October 2016 8:26 PM

To: Enquiry Breeze <Enquiry@breeze.com.au>

Subject: RE: [A***7] - [Mr NB] COMPLAINT

Tolling Charges: Hi there, I am getting pretty annoyed with the excessive toll invoices I am getting with my account, due to your online system not being able to a) register a new credit card correctly or b) being able to try an auto top-up more than once.

----- Forwarded message -----

From: Enquiry Breeze <Enquiry@breeze.com.au>

To: "[email address]" <[email address]>

Cc:

Date: Tue, 26 Jul 2016 06:08:49 +0000

Subject: RE: Complaint from Account: [10***60]

Dear [Mr NB],

Thank you for your enquiry.

EastLink Account: [10*60]**

We can confirm that we had tried to take an Automatic payment on 13 July 2016, however this payment was not successful. An email regarding the failed payment was also sent to you on this date.

We confirm not only do we issue an email regarding the failed payment, you are also notified when the balance falls below \$13.63 as well as when the balance falls below \$0.00 and when the account has been suspended. Your tag will also beep more than once to indicate that you are running low on credit.

As a result of the failed payment the payment method reverted back to Manual payments, this is done to avoid Dishonour fee's from the Bank and we do not attempt to take another payment. Please contact your Financial Institution for more information on why the payment failed.

The account balance is currently **\$24.35 debit**. A manual Top Up will need to be made to the account before the Automatic payments can be reinstated. Once a manual payment has been made, you can reinstate the Automatic payments online under the "Payment Details" tab, alternatively please contact us on the below number or reply to this email and we can reinstate the Automatic payments for you.

If you have any further enquiries, feel free to contact our Customer Service Centre on 03 9955 1400.

Kind Regards

[Name]

Customer Administration | EastLink

PH 9955 1400 | F 03 9955 1401

PO Box 744 Ringwood VIC 3134 | www.eastlink.com.au

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From: [email address] [mailto:[email address]]
Sent: Monday, 25 July 2016 9:00 PM
To: Enquiry Breeze <Enquiry@breeze.com.au>
Subject: Complaint from Account: [10***60]

Payments: How am I to know if you stop taking auto payments? whats the point in the service if it does not work?

From: [email address] [mailto:[email address]]
Sent: Monday, 25 July 2016 8:58 PM
To: Enquiry Breeze <Enquiry@breeze.com.au>
Subject: Complaint from Account: [10***60]

Payments: Why does my auto-top up keep stopping, which is resulting in my tag getting suspended? This is not the first time that this has happened - last time i got an infringement notice which resulted in 2 x \$185 fines which I am still contesting!

Invoices issued to:

[Name and address]

LPN: [1***T]/VIC

Invoice	Travel date	Issue date	Due Date	Paid	Overdue Notice	Issue Date	Due Date	Progressed to CCV
[11***01]	20.08.2016 09:56:40 21.08.2016 00:05:34 21.08.2016 10:47:56	06.09.2016	20.09.2016	No	[80***31]	23.09.2016	07.10.2016	Yes
[11***35]	27.08.2016 10:31:55 27.08.2016 21:03:28	13.09.2016	27.09.2016	No	[80***22]	30.09.2016	14.10.2016	Yes
[11***36]	03.09.2016 09:55:13	20.09.2016	04.10.2016	No	[80***46]	07.10.2016	21.10.2016	Yes
[11***10]	14.09.2016 10:30:47 14.09.2016 17:16:06 15.09.2016 17:07:06 17.09.2016 19:09:50	30.09.2016	14.10.2016	No	[80***76]	17.10.2016	31.10.2016	Yes

6 On 24 January 2017 Mr NB emailed the TCO with the following comments:

"Thanks for looking into this for me.

My comments are as follows:

1) I have accepted the toll fines, I am however debating the method in a) which they are delivered, b) their clarity in paying (details below) and c) the manner in which this complaint has been treated.

See the example below as to how they have confused me when making payments. I was successfully able to pay the top 2 (well before the date i was meant to – [11***20] and [11***45]). I paid these, then tried to pay the others but was getting an error. I emailed to ask why this was and got the responses about BPAY payments, which in my mind, when reading their emails, was not sufficiently clear to allow me to pay them. When they emailed back, they were all set to BPAY and again, as I did not understand the paying them via BPAY, i tried to pay again the normal way, but it did not work. I sent another email. In between these times, the fines had gone to CCV (which is why the bill is so large). I don't see it really fair that they sent them, despite me being in a conversation with them, and whats more, having lodged a formal complaint about the way in which my account was being handled. My unanswered question is still 'why could i pay the top 2 not any any others - if i was able to pay all of them like EastLink said i could, then this issue would not be happening now'...

The below quote from their email reply led me to believe that I owed the money directly to Eastlink, as per their instructions.....

=====

The following EastLink Toll Invoices remain outstanding and owing to EastLink for Licence Plate Number [1***T] VIC.

EastLink Toll Invoice Number:	Amount Outstanding
[11***20]	\$57.36
[11***45]	\$47.38
[11***35] / [80***22]	\$23.27
[11***01] / [80***31]	\$29.20
[11***10] / [80***76]	\$40.57
[11***36] / [80***46]	\$18.44
Total Amount Outstanding	\$216.22

A hold has been placed on the above Toll Invoices until 28 November 2016 allowing you time to make payment.

Failure to pay the amount required by the above date may result in Civic Compliance Victoria issuing an infringement notice to the vehicle's owner or driver. The cost of an infringement notice would be \$155.46 for each day of unregistered travel on EastLink.

The following payment methods are available:

- Online at www.eastlink.com.au (provided the due date has not passed)
- **Over the phone by calling (03) 99551400**
- In person at the EastLink Customer Service Centre in Ringwood
- BPAY using the following details:
 - o Biller Code 727214
 - o Reference Number [number]

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2) Although Eastlink were once helpful in sorting out the fines, they have never admitted a system error, or even a 'we are sorry you may have encountered this system error', and have always brushed it off as though it had never happened.

3) i have an outstanding issue with them, regarding the final payment which is owing to them, they have yet to date replied to me to advise when this needs to be paid, and therefore i fear another CCV fine being issued.

4) On their comments upon why i never phoned, i prefer to have everything in writing - this case being a perfect example - and i believe that is fair enough for my rights to be able to do this, if they make the option available.

5) I am still more than happy to pay the original fines, as they keep stating that they believe I am at fault for the payments not going through - i find it hard to believe that they will not even entertain the thought that there was a system error (which i have raised to them on 2 different occasions). I can see several accounts online where people have suffered similar issues.

I hope this helps, and I thank you again for your time, once again I am just trying to pay the original owing amount, not the \$000's that I now have to pay CCV."

7 Following review of the above, the TCO sought further comment from EastLink to the issues raised by Mr NB.

8 EastLink responded to the TCO on 25 January 2017 as follows:

"EastLink has reviewed the amended complaint filed today by the customer and we continue to stand by our actions. The facts, as opposed to allegations in the complaint, demonstrate that EastLink acted properly in the matters at issue. We have continuously worked hard to improve our processes and our procedures to ensure that we are doing all we can to prevent such incidents where Toll Invoices progress to enforcement.

If the Toll Invoices were paid within a reasonable amount of time, this situation would not have occurred. [Mr NB] knowingly and voluntarily assumed all risk in respect to not actioning

the Toll Invoices within our payment terms as presented on the Toll Invoices and through our correspondence.

As previously stated:

- We have waived the residual debt owing as a goodwill gesture.
- EastLink cannot intervene with CCV as the customer failed to make the required payments by the due dates mentioned in our original Toll Invoices and the extended due dates mentioned in multiple emails.

We confirm that there is currently nothing outstanding for LPN: [1***T]/VIC and that the customer's options now lay with Civic Compliance Victoria."

9 On 28 January 2017 the TCO forwarded EastLink's response to Mr NB for his information. To which Mr NB replied:

"Thank you Michael.

Does this mean the case is now closed and I am stuck with these fines, or does the Ombudsman make recommendations now?"

10 The TCO advised Mr NB:

"I will make a written decision if you require."

11 On 2 February 2017 Mr NB wrote to the TCO in the following terms:

"Please advise when you may make your decision?"

12 On 3 February 2017 the TCO responded:

"I note you have now indicated that you require a written decision. I will attend to this promptly."

Discussion

13 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.

14 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.

- 15** 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.
- 16** 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.
- 17** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 18** This is a matter in which the customer did not pay his tolls in a timely manner. The unpaid tolls, as a consequence, were referred to CCV for enforcement. If the tolls had been paid this escalation would not have occurred.
- 19** The customer complains that the failure to pay the tolls was due to EastLink's system error and its failure to advise him of alternative methods of payment.
- 20** The evidence indicates that EastLink advised the customer on a number of occasions the alternative methods of payment. It also notified him of his credit card payment failure and advised him to contact his financial institution to establish the reason.
- 21** The customer says that EastLink had a system error in that he could not update his credit card details online to facilitate his payments. EastLink does not admit this. It points to the fact that it advised the customer of how to reactivate his account and that he could telephone its contact centre to reinstate automatic payments.
- 22** There is a trail of email correspondence between EastLink and the customer indicating the payment options available to the customer. It also advised him of the payments that were successful and unsuccessful. EastLink points out that a customer's BPAY payments are made via the customer's bank website and not through the EastLink website. The EastLink website can only accept payments via a customer's credit card if a toll invoice is within a due date.
- 23** I am satisfied that EastLink fully cooperated with the customer in this matter in respect to the facilitation of the payment of tolls over a considerable period of time before the collection of the tolls were escalated to CCV for collection. This is evidenced in the email stream as set out above.
- 24** The evidence indicates, as EastLink asserts, that if the Toll Invoices had been paid within a reasonable amount of time the tolls would not have been escalated to CCV and the situation he is now in would not have occurred.
- 25** The primary obligation of a person who uses toll roads is to pay the tolls in a timely manner in accordance with a toll road operator's requirements. If this occurs there is not an issue in relation to unpaid tolls being referred to CCV. It was not EastLink's

fault that the customer's credit provider did not meet the automatic payment of tolls under account arrangements .EastLink notified the customer once it had happened and provided options for payment. As it advised the customer:

"We can confirm that we had tried to take an Automatic payment on 13 July 2016, however this payment was not successful. An email regarding the failed payment was also sent to you on this date.

We confirm not only do we issue an email regarding the failed payment, you are also notified when the balance falls below \$13.63 as well as when the balance falls below \$0.00 and when the account has been suspended. Your tag will also beep more than once to indicate that you are running low on credit.

As a result of the failed payment the payment method reverted back to Manual payments, this is done to avoid Dishonour fee's from the Bank and we do not attempt to take another payment. Please contact your Financial Institution for more information on why the payment failed."

- 26** The customer, of his own volition, assumed the risk of the escalation of the collection to CCV by not paying the Toll Invoices within EastLink's payment terms, as set out in the Toll Invoices, and subsequently by the methods outlined in the correspondence from EastLink, as set out above.
- 27** EastLink has acted fairly by giving the customer relief in respect to the payment of the remaining outstanding tolls but there is no basis for it to take responsibility for the fines imposed by CCV. This is a matter that the customer must take up with CCV.

Determination

- 28** The customer's complaint is not upheld
- 29** I reaffirm that my decision is not binding on the customer, Mr NB, and that he can seek relief in any other forum.

Michael Arnold
Tolling Customer Ombudsman

Dated: 21 February 2017