

DECISION

Background

- 1 The complainant, Ms AM, first made a complaint to the TCO Tolling Customer Ombudsman (TCO) on 14 December 2017, as follows:¹

Complaint Details
Please give details of your complaint:
<p>My partner, [REDACTED] owns the above vehicle registration number as and we had travelled on Eastlink together to get to a function on Sunday 26 November 2017 without purchasing a day pass, I decided to log online to the Eastlink website on 29 November 2017 to buy 2 day passes as it was the third day's grace in which you can purchase these passes. Upon entering in the above registration number a list containing 5 pending toll invoices appeared at the top of the screen which totalled \$84.92 and at the bottom of the screen there were listed the 2 pending trips for our journey on Eastlink on 26 November 2017. Wanting to only pay for the 2 pending trips, I selected those trips totalling \$12.25 and proceeded to the next screen where I entered in my debit details for my credit card. I then proceeded to the next screen which contained no list of what I was paying nor the total cost it came to and all I was presented with was a 'Pay Now' button which I hit and then received a receipt number for the \$97.17 which had been direct debited from my bank account.</p>
What happened following your complaint to the tolling business?:
<p>I rang Eastlink that day and told them that it was an unauthorised transaction and I wanted the \$84.92 refunded to my account. I spoke to a very rude, obnoxious "customer service" operator by the name of Jade who told me I had to "untick" the pending tolls I didn't want to pay and because I hadn't done that I was charged for them all. I disagreed and told her that when I went to hit the pay now button there was no information about what I was actually paying listed nor was the amount. She disagreed and told me that perhaps I should ask my partner to reimburse me for the money I'd paid for his outstanding tolls which I found not only quite rude but also inappropriate for one who's job it is to provide customer service.</p>
What do you want to happen for your complaint to be resolved?
<p>I would like my \$84.92 reimbursed to my bank account. I have 2 young children and with it being Christmas soon, I am quite angry about this whole incident with Eastlink. They emailed me generic shots of the screens they claimed I should have seen which I dispute and I also find it misleading and deceptive conduct to automatically tick boxes when one enters in a registration number as it's almost like Eastlink are trying to trick you into paying outstanding fines whether they belong to you or not. You should be required to tick the boxes of the pending invoices you want to pay rather than the other way around. I am not the legal owner of this vehicle nor am I responsible for the pending tolls that have now been paid by me. At the time I was undertaking a nice gesture for my partner by paying for 2 day passes for him which has backfired remarkably.</p>

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

2 On the same day the TCO acknowledged receipt of the complaint correspondence and referred same to EastLink for investigation and response. On 15 December 2017 EastLink confirmed lodgement of the complaint to Ms AM and the TCO via email.

3 On 18 January 2018 EastLink advised the TCO as follows:

“The customer’s complaint has been reviewed and as per our response sent to the customer via our Administration team on 30 November 2017 – our position remains unchanged.

As this is now a civil matter, we recommend that the customer recover the amount from her partner (owner of the vehicle).”

4 Quoted below is the contents of EastLink email to Ms AM dated 30 November 2017:

“Dear [A],

Your matter has now escalated to an official complaint; your reference number for this complaint is AS13076.

We advise when purchasing Trip Passes via the EastLink website, upon entering the vehicle Licence Plate Number, any outstanding debt for that vehicle is displayed. Should you not wish to pay for any particular Toll Invoices, these can be unselected.

Prior to entering your Credit Card details, the total amount payable is displayed, including any outstanding Toll Invoices. As per the below screenshot, the Payment details screen summarises the items that are payable prior to the payer entering their Credit Card details.

Whilst we acknowledge your circumstances, as you have accepted to pay the Toll Invoices, we advise a refund will not be processed on this occasion.

See examples of an online transaction below.

There are outstanding debts for unpaid EastLink travel by your vehicle/s. These debts must be paid before we can link the vehicle/s to your account. Contact us if any of these debts were incurred prior to you owning these vehicle/s.

There are pending toll invoices associated to the customer/vehicles:

Toll invoice number	LPN /State	Issue date	Outstanding amount	Accept
*****44756		14/10/2017	\$26.92	✓

CANCEL BACK NEXT >

Trip pass	LPN/State/Class	Total
2 Trip Pass/es		\$12.25
Toll Invoice *****44756		\$26.92
Total		\$39.17

Card Holder*

Card Number*

Month* Year* CVV*

MM YY

If you feel this 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 Breeze 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

If you have any further enquiries, feel free to contact us on 03 9955 1400. We are open Monday to Friday 7am to 6pm, excluding public holidays.”

5 On 24 January 2018 EastLink’s response was forwarded to Ms AM. Ms AM responded as follows:

“Thank you for forwarding on Eastlink's reply which when I originally objected directly to them that taking money from my bank account to pay outstanding fees without my consent was illegal, was similar in the reply I received from them.

With all due respect I understood the Ombudsman's role was to make an impartial judgment on a customer's complaint based on the evidence before them, not just simply forward on a reply from Eastlink as being the resolution to my complaint. I know of no law in Australia whereby it is legal to take funds from a person's account to pay an outstanding debt that neither belongs to that person nor is in their name. Should I escalate this complaint to a Court of law and the process of discovery were to be Court ordered, I highly doubt Eastlink would be able to produce screen shots in evidence proving that I approved for these outstanding fees to be taken from my bank account because no such screen shots exist. I therefore stand by my original complaint and request you look into the matter further as what Eastlink has done is illegal.

Telling me to simply ask my partner to reimburse me is insulting and extremely poor customer service.

I await hearing from you.”

6 On 31 January 2018 the TCO replied to Ms AM:

“I have your email in response to EastLink's reply following my reference of your email account. It would appear to me that EastLink has not acted unlawfully. You are responsible for your account management. You processed the payment of your account which had a warning that there were outstanding monies. EastLink has accepted payment based on your process.

There is a capacity to unselect items if it is not intended that they not be paid. If the items are not unselected EastLink does not know that there is no intention for them to be paid.

EastLink has provided screenshots of the information provided before payment is made for your information.”

7 On 5 February 2018 Ms AM emailed the TCO as follows:

“Thank you for your reply.

Eastlink also provided me with screenshots of what you should see when paying a toll. They first sent me screenshots of what you would see from a desktop computer and when I pointed out for the second time that my transaction was actually made from a mobile phone and not a desktop computer they then sent me screenshots of what I should see from a mobile phone.

Again my issue here is that it is misleading and deceptive conduct to automatically "tick all the boxes" of outstanding tolls in an attempt to "trick" whomever is purchasing a day pass into paying all debts the vehicle owner has accumulated. The outstanding tolls are listed separately to the pending tolls so stupidly I ticked the pending tolls not realising that the outstanding tolls are automatically ticked and need to be unticked regardless of whether that person is the owner of those debts or not. You then proceed to the credit card screen and enter in your credit card details however this screen does not have the monetary amount you are paying listed there. Had I seen I was paying \$97.19 and not the \$12.25 I thought I was paying I would have cancelled the transaction immediately and not have entered in my credit card details and hit the pay button. How is this NOT misleading and deceptive conduct by automatically ticking boxes of outstanding debts and then not having a monetary amount listed that you are paying when you enter in your credit card details? Eastlink quite simply have their online system set up to mislead you into paying everything owed to them no matter who you are.

In any event, unless Eastlink can produce screen shots of the **actual transaction** that I made from my mobile phone on 29 November 2017 and not simply provide me with generic screenshots of what I should have seen when making this payment, how are they lawfully able to justify taking an additional \$84.92 from my account even after ringing them the day it happened to tell them that they'd taken the money illegally?

I await your reply.”

- 8 On 6 February 2018 the TCO forwarded Ms AM email to EastLink for further investigation and response.
- 9 EastLink’s response was forwarded to Ms AM on 7 February 2018:

“EastLink has provided me with the following response to the issues you raised in your email below:

“Further to our earlier reply, we can confirm the following with regards to the below issues raised:

*In any event, unless Eastlink can produce screen shots of the **actual transaction** that I made from my mobile phone on 29 November 2017 and not simply provide me with generic screenshots of what I should have seen when making this payment*

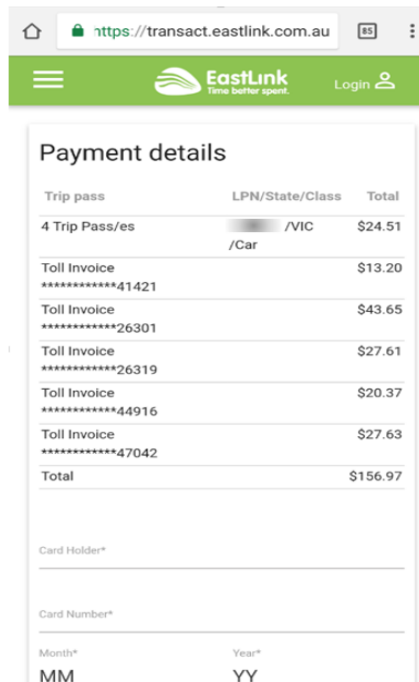
We advise we are unable to provide a copy of the ‘actual transaction’ as the particulars are not archived for viewing.

You then proceed to the credit card screen and enter in your credit card details however this screen does not have the monetary amount you are paying listed there. Had I seen I was paying \$97.19 and not the \$12.25 I thought I was paying I would have cancelled the transaction immediately and not have entered in my credit card details and hit the pay button.

Although we are unable to provide the actual transaction in question, we can confirm the following screen shots are from a Trip Pass Payment request from a Mobile Phone.

The screenshot below does clearly advise the ‘Amounts to be paid in the Payment Details’, prior to the Credit Card details being requested. The option was then available to ‘cancel the transaction’ and not to proceed to accept the payment of \$97.19.

Please note the below screen shot is an example image only and should only be used to provide context.



A trip pass is not refundable or transferable. An unused trip pass expires 6 months after purchase.

Outstanding debts

We may list outstanding debts (shown as **Pending Debt**) relating to your vehicle for any past trips on EastLink that were not paid. If you were not the owner of the vehicle when a debt was incurred, un-tick the tick that is displayed next to the debt, and then proceed.

Continue to Buy trip pass

The customer's complaint has been reviewed and as per our previous response sent to the customer via our Administration team on 30 November 2017 – our position remains unchanged.

As this is now a civil matter, we recommend that the customer recover the amount from her partner (owner of the vehicle)."

I await any EastLink response on the issue of misrepresentation."

10 Ms AM responded the same day:

"Thank you for forwarding on Eastlink's reply for which I am very appreciative of.

I have gone through my photo gallery on my Samsung Galaxy s7 phone and have found a screenshot of part of the actual transaction I made that day which I **attach** to this email. I apologise for not sending it sooner as I had completely forgotten I had taken it at the time and the reason I had taken a screenshot was so that my partner could see what outstanding fines he had with Eastlink.

As you will see from the attached screenshot I cannot see any ticked boxes whatsoever so there's the first problem with Eastlink's mobile phone payment system as how can you untick an already ticked box when you cannot even see it? Apparently to be able to view their entire payment screen you need to engage the screen rotation on your phone and tip it sideways to be able to see all contents of the payment you are making. Can Eastlink provide me with details of where those instructions are located for the user when paying a day pass trip using their mobile phone as it seems ridiculous in this day and age to have to be searching for full payment information in order to pay a bill?

Secondly, my actual screenshot has the Pending Debts listed and then below that the Pending Trips associated with the vehicle which has taken up the whole screen and therefore the ticked boxes were hidden off the screen (as most mobile phone users in my opinion hold their phone upright and not in a landscape position). Invariably when I therefore proceeded to the next screen, it was the credit card payment screen on its own as all the pending trips and debts were listed on the previous page so it looked nothing like the generic screenshot provided by Eastlink above. As stated in my previous email no payment amount was listed that I could see but I gather that had I engaged the screen rotation on my phone and tipped it sideways I would have "discovered" that I was making a payment of \$97.19 rather than what I thought was a \$12.25 payment and would have cancelled the payment straight away.

In light of the above, without question it appears that Eastlink's phone payment system is in fact deceptive and misleading to users and one would suggest in desperate need

of being updated or adapted to enable a mobile phone user to see **full details** of the payment they are making on their mobile phone screen without having to modify their phone by converting it to a landscape position. In this day and age one would think that it would be mandatory for companies that are entrusted with taking funds from the public to ensure that their IT was up to scratch for users.

I would appreciate your response in due course.

📶 4G 99% 10:11

Pending debt

There are outstanding debts for unpaid EastLink travel by your vehicle/s. These debts must be paid before we can link the vehicle/s to your account. Contact us if any of these debts were incurred prior to you owning these vehicle/s.

There are pending toll invoices associated to the customer/vehicles:

Toll invoice number	LPN /State	Issue date	Outstand amount
*****42616	██████ /Victoria	27/02/2016 00:00	\$10.73
*****75353	██████ /Victoria	30/04/2017 00:00	\$16.94
*****13572	██████ /Victoria	25/05/2017 21:28	\$15.74
*****59331	██████ /Victoria	05/06/2017 01:22	\$15.74
*****57572	██████ /Victoria	01/07/2017 09:01	\$25.77

There are pending trips associated to the vehicles:

11 On 8 February 2018 the following exchange of correspondence took place:

TCO to Ms AM, copied to EastLink:

“I will seek further comment from EastLink on the contents of your email below.”

EastLink to the TCO and Ms AM:

“Further to our earlier reply, we can confirm the following with regards to the below issues raised:

We acknowledge the comments that have been made by [Ms AM] and appreciate the image she has provided when she was attempting to make payment for her Trip Passes.

We again confirm that we created a confirmation screen prior to entering in payment details, to allow the customer to see what amount they would be making payment for and to allow them to cancel making the payment if they did not want to proceed.

Please note the below screen shot is an example image only and should only be used to provide context.

Payment screen:

Trip pass	LPN/State/Class	Total
2 Trip Pass/es		\$12.25
Toll Invoice		\$9.93
*****89111		
Total		\$22.18

Card Holder*

Card Number*

Month* Year*

MM YY

CVV*

As a result EastLink has not misrepresented the debt to [Ms AM] based on the Vehicle in question.

[Ms AM's] continuance to pay the amount advised was her acceptance of the payment. There was no misrepresentation of the debt by EastLink to [Ms AM]. Which is acknowledged by [Ms AM] in the below email.

In saying this, based on [Ms AM's] feedback we will conduct a review of the process for payment of Trip passes via Android Phones etc. and make any necessary changes if required.

As our investigation is completed we have nothing further to add and recommend that [Ms AM] recover the costs from her partner and owner of the vehicle.”

Ms AM to the TCO:

“I am in receipt of the email below received from Eastlink this morning.

Again Eastlink even after quite clearly showing them that the generic screen they keep saying I should have seen, I didn't, continue with the same argument. They have no evidence to provide me with in support their claim of what screen I saw because the "particulars are not archived for viewing" so essentially it comes down to my word against theirs. I have further pointed out how their system for paying tolls via mobile phone is flawed and misleading and again they still refuse to acknowledge same.

I would appreciate your decision regarding this matter now that you have had both sides present their argument to you.

Should the decision be in favour of Eastlink, I shall be considering filing an application at VCAT in the Civil Claims List against Connecteast Pty Ltd pursuant to Section 34,

Schedule 2 of the *Competition and Consumer Act* 2010 for misleading conduct as to the nature of their services.

I very much appreciate your time and patience and thank you for your conduct in this matter.”

TCO to Ms AM:

“I acknowledge receipt of your email and copied it to Eastlink. I will make a decision as required.”

Discussion

- 12 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.
- 13 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.
- 14 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.
- 15 The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against other outside bodies, such as Government agencies like Fines Victoria. Decisions are binding on toll operators but not customers, who retain all their legal rights.
- 16 I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 17 This is a matter in which the customer, Ms AM, alleges that the toll operator either illegally took her money when paying tolls owing on her account or alternatively had a misleading system.
- 18 EastLink has not acted unlawfully in accepting payment of monies owing under Ms AM’s account. Ms AM was responsible for the management of her account. She processed the transaction for the payment of the account after following the instructions on its online payment screen. The toll operator did not intervene in the

transaction and there was a warning on the screen that there were outstanding monies owing under her account.

- 19** Ms AM allowed her partner to incur tolls that were charged to her account. This was a matter between Ms AM and her partner. EastLink accepted payment in good faith following her processing the payment as it was not aware that there were any issues between her partner and her at the time. Ms AM said that EastLink's process was misleading. EastLink does not have a screen shot of Ms AM's actual transaction as these are not retained.
- 20** EastLink has provided a number of generic screen shots which reflect the process that was to be followed by customers and it does have a record of her payment. There is nothing to suggest that the generic screen shots of the process would not be representative of the process that was available to Ms AM.
- 21** Ms AM says the system was misleading but concedes that she made the payment using EastLink's system. She, in fact, went through her photo gallery on her Samsung Galaxy s7 phone and found a screen shot of part of the actual transaction she made that day. She attached it to an email to the TCO.
- 22** Ms AM explained that she had taken it at the time so that her partner could see what outstanding fines he had with EastLink. Accordingly she was aware that there were tolls incurred on her account by her partner and she processed the payment owing under her account in that knowledge.
- 23** She has said no payment amount was listed that she could see, but she gathered that had she engaged the screen rotation on her phone and tipped it sideways she would have "discovered" that she was making a payment of \$97.19, rather than what she thought was a \$12.25 payment, and would have cancelled the payment straight away.
- 24** EastLink stated that her screen shots were clear and able to be followed. It contends that Ms AM's continuance to pay the amount advised on the screen shot was her acceptance of the payment. There was no misrepresentation of the debt by EastLink to Ms AM, which was acknowledged by Ms AM in an email.
- 25** I am satisfied that EastLink created a process that was not misleading and which included a confirmation screen for customers prior to entering in toll payment details. This was designed to allow the customer to see what amount they would be paying and to allow them to cancel making the payment if they did not want to proceed.
- 26** I am satisfied that Ms AM's continuing to pay the amount shown on the screen shot was her acceptance of the payment of the amounts due under her account. It is unfortunate that there are issues between her and her partner which have resulted in her partner not reimbursing her for the tolls he had incurred.

Determination

- 27** The complaint by Ms AM is not upheld. In making this finding I acknowledge that EastLink, based on Ms AM's feedback, will conduct a review of the process for payment of trip passes via Android phones and make any changes if required.
- 28** I reaffirm that my decision is not binding on Ms AM and that she can seek relief in any other forum.

Michael Arnold
TCO Tolling Customer Ombudsman

Dated: 23 February 2018