



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#36941
Cited WASPA members	DATA SMS SOUTH AFRICA (PTY) LTD (0151)
Notifiable WASPA members	N/A
Source of the complaint	WASPA
Complaint short description	Unsubscribe Request & Proof of Subscription not complied with
Date complaint lodged	10 November 2017
Date of alleged breach	Unknown
Applicable version of the Code	14.7
Clauses of the Code cited	4.2, 7.5, 15.3, 15.12, 15.13, 15.17, 15.18, 15.19, 24.17
Related complaints considered	#34555 #34556 #34558
Fines imposed	<p><i>R 47 000, 00 (forty seven thousand rand) fine broken up into the following:</i></p> <ol style="list-style-type: none"> 1. R 5 000, 00 for breach of clause 4.2 2. R 2 000,00 for breach of clause 7.5 3. R 2 000,00 for breach of clause 15.3

	4. R 5 000, 00 for breach of clause 15.12 5. R 5 000, 00 for breach of clause 15.13 6. R 8 000, 00 for breach of clause 15.17 7. R 10 000,00 for breach of clause 15.18 and 8. R 10 000,00 for breach of clause 15.19.
Other sanctions	None.
Is this report notable?	Not Notable
Summary of notability	N/A

Initial complaint

The complaint was lodged with WASPA via the WASPA website and the below complaint was sent to respondent on the 14 November 2017.

The complaint was not specific in relation to any particular mobile number and the complaint (lodged by WASPA) was in relation to the already partially upheld Adjudications under adjudication numbers, 34555, 34556 and 34558. WASPA lodged the complaint in accordance with the Directive of the Appeals Panel dated 10 November 2017. Suggestive breaches by the Appeals Panel, were noted as being clauses 4.2, 7.5, 15.3, 15.12, 15.13, 15.17, 15.18, 15.19, and 24.17 in relation to unsubscribe requests.

This complaint in particular therefore incorporated the suggestive breaches as actual breaches by the Respondent in particular those unsubscribe requests lodged under (#6903880, #6935542 and #6913630) and lodged a formal complaint.

Member's response

The respondent provided a response to the complaint on 16 November 2017.

With regards to the reports relating to 34555, 34556 and 34558 (the appeal panel) noted suggestive breaches of further clauses within the code of conduct in relation to subscription services and the manner in which the respondent attempted to resolve the complaints.

The respondent therefore addressed each of the alleged breaches (4.2, 7.5, 15.3, 15.12, 15.13, 15.17, 15.18, 15.19 and 24.17) individually and provided reasons for disagreement on the allegations of breach. The respondent submitted that Data SMS's behaviour was not in breach of the Code, at least not intentionally or knowingly.

I. Section 4.2 WASPA Code of Conduct: Did the Member conduct itself in a professional manner in the response to the customer's complaint?

Data SMS has acknowledged that information provided to complainants in complaints #34555, #34556 and #34558 was insufficient, and in case of complaint #34555 also belated, but it has already been fined for it. As a professional organization however, Data SMS has also: i) offered remedies to affected customers; ii) replaced inadequate staff; and iii) implemented measures to provide its Customer service with enough training and resources to avoid future similar cases. It is in any event for the adjudicator's opinion on customer service standards to decide whether Data SMS' conduct in dealing with complaints #34555, #34556 and #34558 constitute a breach of the Code. Data SMS will therefore simply explain here how it acted before each complaint and submit to his/her judgment.

I.A Unsubscription request #6903880, escalated to Complaint #34555

Unsubscription request #6903880 was lodged on WASPA system on 22-05-2017. On the next day (23-05-2017) notice of this request was sent by WASPA staff to Data SMS through e-mail, and that same day Data SMS Customer Service confirmed that the concerned MSISDIN had already been unsubscribed. Data SMS Customer Service did not however provide then the requested proof of subscription and reply to a refund, and did not attend the WASPA reminders sent on 31-05-2017 and 28-06-2017 to this aim. On the following day thus (29-06-2017), the request was escalated to formal Complaint #34555, which was notified to Data SMS on 04-07-2017. To this notice a Data SMS Customer representative replied informally to WASPA staff on the same date (04-07-2017), with what she understood were the logs of the subscription and an offer of refund to be submitted to complainant. The same offer was directly addressed to complainant on 26-09-2017, and finally accepted and processed.

I.B Unsubscription request #6935542, escalated to Complaint #34556

Unsubscription request #6935542 was lodged on WASPA system on 28-06-2017. On the following day (29-06-2017), and without previous notice through e-mail, while running a daily check on WASPA website, Data SMS Customer Service confirmed that the concerned MSISDIN had been unsubscribed. Data SMS Customer Service did not however provide then the requested proof of subscription and reply to a refund, and obviously taking into account the previous case, WASPA staff directly escalated the request to formal Complaint #34556 on the same date (29-06-2017), escalation that was notified to Data SMS on 04-07-2017. To this notice Data SMS Customer representative replied informally to WASPA on the same date (04-07-2017), with what she understood were the logs of the subscription and an offer of refund to be submitted to complainant. The same offer, jointly with the one made in Complaint #34555, was directly addressed to complainant on 26-09-2017, and finally accepted and processed.

I.C Unsubscription request #6913630, escalated to Complaint #34558

Unsubscription request #6913630 was lodged on WASPA system on 02-06-2017. On that same date, and without previous notice through e-mail, while running a daily check on WASPA website, Data SMS Customer Service confirmed that the MSISDIN had been unsubscribed. On 06-06-2017 however the request was extended by WASPA to include a proof of subscription and reply for a refund. Data SMS Customer Service did not provide them then –no specific notice through e-mail was received-, and obviously taking into account the previous cases, WASPA staff escalated the request to formal Complaint #34558 on 29-06-2017, escalation that was notified to Data SMS on 04-07-2017. To this notice Data SMS Customer representative replied informally to

WASPA on the same date (04-07-2017), with what she understood were the logs of the subscription and an offer of refund to be submitted to complainant. The same offer was directly addressed to complainant on 26-09-2017, and finally accepted and processed.

II. Section 7.5 WASPA Code of Conduct: Did the Member provide WASPA with adequate customer records on request by WASPA?

In all three cases, Data SMS Customer service provided WASPA with customer records the very same date it was notified of the escalation to formal complaints (04-09-2017). Those records were not adequate, but Data SMS has already been fined for their inadequacy. In Data SMS' opinion, while section 7.5, section 15.3 and section 24.24 of the Code refer to different addressees (WASPA staff in the first case, customers in the second and complainants and WASPA in the third), they all refer to the same materials and have the same rationale, so only one section should be considered depending on the stage of the procedure (WASPA internal inspection, customer request or formal complaint). As in this case section 24.24 applies, considering also a breach of section 7.5 and 15.3 would imply sanctioning the same conduct thrice.

III. Section 15.3 WASPA Code of Conduct: Did the Member make the records available to the customer on request of the customer?

Disregarded the already acknowledged inadequacy of the records provided, Data SMS Customer service did provide affected customers with records, although with a delay of roughly one month in the first and arguably also in the third. In all three cases, Data SMS provided WASPA, to be forwarded to customer, with customer records the very same date it was notified of the escalation to formal complaints (04-09-2017). Further records were later sent directly to both customers through e-mail on 26-09-2017.

IV. Section 15.12 WASPA Code of Conduct: Did the Member's service meet the requirements of the two-step confirmation for subscription services?

The services in question were WAP based, and to activate them users needed visit the relevant service mobile website, perform there a service request action (click on the relevant button) and after being automatically derived to carrier's mobile payments application, confirm there their will to activate the service.

V. Section 15.13 WASPA Code of Conduct: Was a confirmation message in accordance with section 15.13 provided to the customer?

As the services in question are WAP based, not SMS based, the applicable section of the Code would be 15.10, which allows for the confirmation step to be implemented by the customer's mobile carrier. It is using the carrier's mobile payments application that the users confirmed their will to activate the service.

VI and VII. Section 15.17 and 15.18 WASPA Code of Conduct: Was a welcome message provided to the customer, and if provided, in accordance with section 15.18 of the Code?

A welcome message was sent in all three cases, but not in accordance with section 15.18 of the Code, as the text displayed simply "*Proceso completado con éxito*" (Spanish for "Process successfully completed"). This was indeed a programming error (the system delivered the message for the IT team, and not the message intended for Vodacom subscribers: "*Welcome to Hot square Service. Cost of service R7/day. Customer Care phone: 011 5680951. Unsubscription? Send STOP to 30002.*"), which was soon identified and corrected.

VIII. Section 15.19 WASPA Code of Conduct: Was a reminder message in accordance with section 15.19 sent to the customer?

In case of MSISDIN 764874791 (request #6903880, escalated to Complaint #34555) and MSISDIN 714628525 (request #6935542, escalated to Complaint #34556), no reminder message was sent as none of the services remained active for more than 30 days. In case of MSISDIN 829516199 (request #6913630, escalated to Complaint #34558), a reminder SMS was sent at 10:19:04 on 21-05-2017 with the text: "*REMINDER Hot square Service. Cost of service R7/day. Customer Care phone: 011 5680951. Unsubscription? Send STOP to 30002.*"

IX. Section 24.17 WASPA Code of Conduct: In relation to the Member's response to the complaint, did the Member effect an appropriate remedy and duly inform WASPA within five (5) working days?

In all of Complaints #34555, #34556 and #34558 the procedure used was the Formal one governed by sections 24.20 to 24.42 of the Code. Among those, the provision analogous to 24.17 for the informal procedure would be section 24.23, which allows respondent ten working days to respond to the complaint. In all three cases in any event Data SMS Customer service replied on the very same day it received notice of the complaints, with an offer of full refund.

As a conclusion, in the cases in question Data SMS acknowledges not having offered the affected customers the complete reply they deserved as soon as they deserved it, and having additionally experienced a technical error. For all that it has apologized to complainants, been fined by WASPA and implemented measures to avoid future similar cases and in general improve its working procedures.

It is undeniable however that Data SMS has always prioritized customer unsubscription requests, processing them in less than 48 hours, with or without having received direct notice of them. The fact that complaints #34555, #34556 and #34558 -simultaneous and closely related- are the first ever to have been upheld against Data SMS since joining WASPA in 2012, should be an indication that customer care is one of its primary concerns.

For the reasons set forth above, Data SMS firmly believes that its conduct in dealing with the relevant complaints, while not exemplar, was not in dire breach of the Code, so respectfully hopes that the adjudicator will dismiss the charges against it.

Complainant's response

The complainant provided no further response.

Member's further response

The member provided no further response and / or information.

Sections of the Code considered

The following sections of the WASPA Code of Conduct, version 14.7, were considered:

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

7.5. Members must provide WASPA with any customer records relating to any service which is the subject of a complaint, including, but not limited to:

- (a) Where that information is available, a record of the marketing link that the customer followed prior to joining a service;
- (b) all communications sent by or to a customer in the process of joining a service;
- (c) all required reminder messages sent to a customer;
- (d) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (e) any record of successful or unsuccessful service termination requests.

15.3. For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

15.12. For all subscription services initiated by the sending of an SMS, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

15.13. A confirmation message must contain only the following information, in this order:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for confirming the initiation of the subscription service, and
- (e) (optionally) additional information about the service.

15.17. Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. This message is referred to as the "welcome message". The customer must not be charged for the welcome message.

15.18. The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word "welcome" and then contain only the following additional information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,

- (d) instructions for terminating the service, and
- (e) (optionally) a link to a WAP landing page or a web page describing the service.

15.19. A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and once per calendar month thereafter. This message is referred to as the “reminder message”. The customer must not be charged for any reminder message

24.17. WASPA will forward the complaint to the member concerned. The member has five (5) working days to effect an appropriate remedy and inform WASPA thereof.

Decision

I have read the adjudication reports of all three cases mentioned above, being, 34555, 34556 and 34558 and submit that there has been a finding and I intend not to deal with the already adjudicated breach of clause 24.24.

In accordance with the suggestive breaches by the Appeal Panel, I have focused my energy on those clauses projected and in fact followed up on and complained of by WASPA as enabled to in terms of the Code of Conduct. The submissions provided by the Respondent in my view warranted close inspection along with the unsubscribing requests logged by the Secretariat after receipt of complaint(s) under #6903880, #6935542 and #6913630.

My submissions will not be fragmented but holistic in view of the Respondents conduct, which I find to be intentional and unlawful thereby warranting an explanation on the breach;

With regards to clause 4.2, The respondent by his own admission advises on the time frames as well as the delay in the provision of the requisite information, further, he makes an admission of the inadequate records therefore indicating that the manner in which he dealt with the public, customers and WASPA was unprofessional. There was in fact wilful default in the manner in which he approached / approaches subscriptions, as proof of subscription, records and reminders are imperative in a subscription service.

With regards to clause 7.5 and 15.3, the respondent in his submission indicates that “Those records were not adequate, but Data SMS has already been fined for their inadequacy. In Data SMS’ opinion, while section 7.5, section 15.3 and section 24.24 of the Code refer to different addressees (WASPA staff in the first case, customers in the second and complainants and WASPA in the third), they all refer to the same materials and have the same rationale, so only one section should be considered depending on the stage of the procedure (WASPA internal inspection, customer request or formal complaint). As in this case section 24.24 applies, considering also a breach of section 7.5 and 15.3 would imply sanctioning the same conduct thrice”.

**underlined parts shown are done by Adjudicator in order to indicate brevity.*

My submission is that the code under clause 7.5, 15.3 and 24.24 is not repetition and neither are they intended to ensure that the sanction(s) potentially applicable would be triplicated. The Respondent misunderstands the intention behind the clauses and further has failed to ensure compliance with such clauses in that;

Clause 7.5, is definitive and structural in nature, this clause is projected in relation to all services and advises how much information must be received and / or stored by a WASP in relation to the dealing he has with customers. Such detail is how a “log” should be kept.

Clause 15.3 is specific in relation to those subscription and notification services wherein along with the information needed in clause 7.5, the source of the initiation request, and all interactions with customer must be kept and provided to the customer on request. The clause is further directive in that it WASP’s are directed to keep records for 3 years.

Clause 24.24 is indicative of the manner in which the logs as structured under clause 7.5 must be provided, indicating that they must be clear, and incorporate the marketing material used.

In other words, that logs must have specific information, kept by the WASP for a period of 3 years and must incorporate the marketing material utilised for that campaign.

The respondent is therefore in breach of clause 7.5, and that of clause 15.3 as the specific information required was not provided in a clear log along with the campaign material.

With regards to clause 15.12 ad 15.13, The respondent provides this response for the aforementioned clause ... *“ The services in question were WAP based, and to activate them users needed visit the relevant service mobile website, perform there a service request action (click on the relevant button) and after being automatically derived to carrier’s mobile payments application, confirm there their will to activate the service”*, however ,the respondent provided no proof of marketing material neither did he indicate the actual implementation. There was no indication from the Respondent as to whether any confirmation message was sent to the customers. The confirmation message is imperative in that it is sequential and provides the customer with the knowledge that he/she had subscribed to a service.

Further, the complaint logged under # 6903880, has alleged that the SIM card in question was in fact a data sim placed in a Wi-Fi router and not utilised for general browsing. The respondent makes no distinction here. Further, the complaint logged under # 6913630 alleges that there was in fact two separate instances wherein the subscription was done.

The respondent has therefore breached clause 15.12. And clause 15.13.

In terms of clause 15.17, 15.18 and 15.19 , by far the largest breach by the Respondent, the inaccurate and unintelligible message sent cannot be seen as a welcome message, the

Respondent claims technical error, the intended message was to read as “*Welcome to Hot square Service. Cost of service R7/day. Customer Care phone: 011 5680951. Unsubscription? Send STOP to 30002.*”)” Instead it read “*Proceso completado con exito*” (Spanish for “*Process successfully completed*”).

While the intended message may read to be compliant with clause 15.18, the actual message was not – the message at the time of the harm was non-compliant and for that the Respondent must be sanctioned for negligence.

The strategy used by the Respondent was to submit that there was no requirement for him to meet the criteria stipulated above as the services were not active for more than 30 days at a time, this is a cop out and a manner of making money by the Respondent. Under #6903880 and #6935542, it was alleged that the services ran for more than a month and in #6913630 there were in fact two services unknowingly subscribed to on the same number but on different dates, as far back as 21 April 2015 as well as 30 July 2015. This information was provided by her network and therefore indicative that under that complaint the reminder messages were required and not implemented.

I find that the Respondent has breached clause 15.19 and has failed to indicate as to the reason why a service running for more than two years would not have pushed out reminder messages as prescribed.

With regards to clause 24.17, the Respondent submits “.... *in all of Complaints #34555, #34556 and #34558 the procedure used was the Formal one governed by sections 24.20 to 24.42 of the Code. Among those, the provision analogous to 24.17 for the informal procedure would be section 24.23, which allows respondent ten working days to respond to the complaint. In all three cases in any event Data SMS Customer service replied on the very same day it received notice of the complaints, with an offer of full refund ...*”

Such explanation and provision of time frames within the reading of the code and that of the complaint, allows me to accept the Respondents submission and accordingly find no breach herein.

In conclusion and final submission the Respondent focused his energies on an already adjudicated breach of clause 24.24 and failed to provide accurate detail and submit proof to substantiate his responses to each section of the Code considered. He provided mitigating circumstances which I have taken into consideration, in accordance with the stipulated provision, clause 24.34.

Sanctions

The Respondents breach in my submission was substantial and negligent and should therefore be sanctioned, the mitigating factors that have been taken into account are the following:

1. There was remedial action on the part of the Respondent (*albeit not immediate*);
2. Refunds were offered, accepted and processed (*albeit no proof of such provided, I give the Respondent the benefit of the doubt*) and
3. A statement and / or affirmation to ensure staff training.

I therefore determine that there was in fact a breach of the code and call for the following fines to be imposed on the Respondent, such fines are therefore payable within 7(seven) days of receipt of the adjudication report.

All fines and further sanctions are directly imposed on DATA SMS South Africa (PTY) LTD (0151)

R 47 000, 00 (forty seven thousand rand) fine broken up into the following:

1. R 5 000, 00 for breach of clause 4.2
2. R 2 000, 00 for breach of clause 7.5
3. R 2 000, 00 for breach of clause 15.3
4. R 5 000, 00 for breach of clause 15.12
5. R 5 000, 00 for breach of clause 15.13
6. R 8 000, 00 for breach of clause 15.17
7. R 10 000, 00 for breach of clause 15.18 and
8. R 10 000, 00 for breach of clause 15.19.

Further sanctions:

None.

Matters referred back to WASPA

NONE.
