



## Report of the Adjudicator

Complaint number	<b>#60720</b>
Cited WASPA members	<b>Hyvemobile (Respondent) Membership no:1518</b>
Notifiable WASPA members (notified of complaint but not respondents)	<b>Akinga Membership no: 1944</b>
Source of the complaint	<b>WASPA</b>
Complaint short description	<b>Unsubscribe Request</b> <ul style="list-style-type: none"> <li>- <b>Insufficient procedure and response to customer complaints.</b></li> <li>- <b>Insufficient or no provision of relevant customer records to WASPA related to a complaint.</b></li> <li>- <b>Insufficient provision and/or no provision of relevant customer logs and marketing material, when requested to do so.</b></li> </ul>
Date complaint lodged	<b>2024-09-17</b>
Date of alleged breach	<b>September 2024</b>
Applicable version of the Code	<b>17.9</b>
Clauses of the Code cited	<b>5.14, 7.5, 24.24</b>
Related complaints considered	<b>#60725</b>

Fines imposed	<b><u>Respondent</u></b>  Respondent is fined R10000 for the breach of clause 5.14, suspended for 6 months on condition that there is no further breach of the same clause within this period.
Other sanctions	The customer is required to be refunded in full by the Respondent. Proof of the full refund is to be provided to WASPA, by the Respondent, within 7 (seven) days of receipt of this adjudication report.
Is this report notable?	<b>Not Notable</b>
Summary of notability	<b>N/A</b>

---

## 1. Initial complaint

1.1 This complaint was initially logged by the WASPA Secretariat (“the complainant”) and sent to the Akinga (service provider of the member) on 18 September 2024 in the form of the escalation of an unsubscribe query where there was failure to respond from the member and/or failure to provide relevant logs and information as requested. Akinga responded on the same day advising that the member responsible for the service is Hyvemobile (“the respondent”), and requested that the complaint be handed over. This then occurred and the respondent was informed of this formal complaint on 30 September 2024 and hadn’t responded by 16 October 2024 so the matter was assigned to adjudication. The respondent advised that they had, in error, missed the file matter and requested an extension to respond which was granted by the complainant. The respondent then responded to the formal complaint on 18 October 2024 and the complainant didn’t respond further.

1.2 As mentioned, the complaint came in the form of the escalation of an unsubscribe request from a customer that the complainant believes the respondent failed to adequately respond to and they also didn’t supply the relevant information requested by the complainant. It appears as though this matter was initially handled through the informal complaints process but has now been escalated due to the informal complaints process not yielding results.

1.3 In summation, the escalation attached as part of the complaint indicated 1 customer requested to be unsubscribed and refunded for a subscription that they never subscribed to. It appears that, at the time of the escalation, the customer had

never been unsubscribed, refunded or further contacted despite further complaints regarding lack of refund and unsubscription.

---

## **2. Member's response**

2.1 Following receipt of the formal complaint from the complainant on 18 September 2024, Akinga responded by advising that the respondent should be made the respondent to the formal complaint as they were the member responsible. They intimated that the customer had already been unsubscribed and refunded but it appears that this was on behalf of a different member (Delta Investments).

2.2 Once the respondent was made the respondent in this formal complaint, their response can be summarised as follows:

2.2.1 Upon investigating the matter, they identified that the customer complaint pertains to two of their services ('Celebrity Live' and 'My Status') which are provided to TelkomPlus customers through their service provider, Akinga. In order to deliver these services, they have entered into a Mobile Content Provider Agreement with Akinga. Under this arrangement, they intimate that Akinga is responsible for the infrastructure and service delivery platform that enables these content services.

2.2.2 The respondent advised that all customer queries, including informal complaints, are first directed to Akinga as the primary service provider of the TelkomPlus platform. Only after Akinga receives and processes these queries are they escalated to the relevant content providers, including the respondent, if necessary.

2.2.3 In this particular case, the respondent advises that the informal complaint was not handed over to them by Akinga during the informal complaints procedure. They assert that this handover is critical, as it enables the respondent to respond to issues in a timely and appropriate manner. As a result of this failure, the respondent asserts that they did not receive any notifications regarding the service cancellation request, refund request, or subscription logs pertaining to the customer.

2.2.4 As such, the respondent responds to the alleged breaches of the WASPA Code of Conduct ("the code") as follows:

2.2.4.1 Regarding the alleged breach of clause 15.14, the respondent disputed that they do not have a robust customer support service mechanism. They assert that they were unable to provide a timely receipt and response to the customer's complaint in this case because the informal complaint was not handed over to them by Akinga on the WASPA Platform as required. They, thus, assert that the failure to

attend to the query cannot be attributed to them, as they were not given the opportunity to intervene.

2.2.4.2 Regarding the alleged breach of clause 7.5, the respondent clarifies that the complaint was not successfully handed over to them via the WASPA Portal. As a result, they were not made aware of the complaint via the usual procedure nor provided with the opportunity to upload the required customer records at the appropriate time. However, they then annex what they assert to be the relevant customer records.

2.2.4.3 Regarding the alleged breach of clause 24.24, the respondent again asserts that the failure to process the refund or termination request was due to Akinga's failure to forward the informal complaint to them as they were, thus, not in a position to act on the customer's request and/or attend to the query on the WASPA portal. They also note that, based on the customer records, the customer was unsubscribed from both services 19 June 2024 and they confirm that their customer support team has offered the customer a full refund.

---

### 3. Complainant's response

N/A

---

### 4. Member's further response

N/A

---

### 5. Sections of the Code considered

5.1 As the complaint was lodged on 18 September, version 17.9 of the WASPA Code of Conduct ("the Code") applies to this complaint.

5.2 It is alleged that the respondent has infringed clauses **5.14**, **7.5** and **24.24** of the Code of Conduct. The clauses read as follows:

**5.14.** *Members must have a procedure allowing customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.*

**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*

**24.24.** *Where a complaint involves any interaction with a consumer, when requested to do so, a respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material.*

---

## **6. Decision**

6.1 Having reviewed the complaint and responses from the complainant and respondent, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

6.2 Before dealing with the relevant “breach” clauses, in order, I wish to initially opine on an issue that the respondent brought up as its main defence in its response; this being the fact that the the respondent asserts that the breaches were caused by Akinga and that it was, thus, not their fault or responsibility/liability. In considering clause 3.7, my reading of this is such that I would be in agreement with the respondent, if the fault was not theirs, as it can be deduced from clause 3.7 that if breaches are occasioned by other services providers who **are** members of WASPA, then those members could be held liable if they cause the breach(es).

### Clause 5.14

6.3 The respondent disputed that they do not have a robust customer support service mechanism. They assert that they were unable to provide a timely receipt and response to the customer’s complaint in this case because the informal complaint was not handed over to them by Akinga on the WASPA Platform as required. I note that Akinga is a member of WASPA and, thus, can be held liable if the breach was their fault. Based on the facts, I agree that the fault and breach of this clause could, partly, be attributed to Akinga but I also feel that the respondent needs to bear responsibility as their “robust customer support service mechanism” was not evidenced in their response and the fact that this mechanism relies heavily on on a third party to be effective, indicates that it is not as “robust” as it intimates.

6.4 Accordingly, I find that the respondent has breached this clause.

### Clause 7.5

6.5 As the complaint was not successfully handed over to the respondent by Akinga, I am in agreement that the respondent did not have the opportunity to adhere to clause 7.5 at the appropriate time.

6.6 Accordingly, I find that this clause has not been breached by the respondent.

#### Clause 24.24

6.7 Similarly to what has been adjudicated on in clause 6.5 and 6.6 above, I am of the view that the respondent's provision of the relevant logs and marketing material was not possible due to Akinga's failure to forward on the informal complaint to them.

6.8 Accordingly I find that the respondent has not breached clause 24.24

---

## **7. Sanctions**

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct of the respondent in the form of any prior contraventions of the code and any mitigating or aggravating circumstances.

7.2 The respondent has had 9 previous formal adjudications against them upheld, although none concern any of the clauses in question in this adjudication. This would still need to be considered somewhat aggravating in nature.

7.3 When considering other mitigating factors for the respondent in this case, the following are present:

7.3.1 The respondent did provide the relevant customer records in the adjudication stage although these were not complete based on clause 7.5 of the code.

7.3.2 The respondent asserts that they will take steps to ensure improved communication with Akinga and other service providers to prevent such issues in the future.

7.3.3 They confirm that their customer support team has now offered the customer a full refund.

7.4 I find that the respondent breached clause 5.14 but did not breach clauses 7.5 and 24.24

7.5 I would have fined the respondent R15000 for the breach of clause 5.14 but, given the mitigating factors present, I accordingly only fine the respondent R10000 for the breach of clause 5.14, suspended for 6 months on condition that there is no further breach of the same clause within this period.

7.6 Furthermore, the customer is required to be refunded in full by the respondent. Proof of the full refund is to be provided to WASPA, by the respondent, within 7 (seven) days of receipt of this adjudication report.

---

## **8. Matters referred back to WASPA**

The matter is referred back to WASPA for further investigation into the aggregator's role in the complaint, and for WASPA to exercise its discretion to file a separate complaint against the aggregator.