



Report of the Adjudicator

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

Related complaints considered	#60725
Fines imposed	<p>The member breached clauses 5.14, 7.5 and 24.24</p> <p>There are mitigating factors that outweigh aggravating factors and, accordingly, the member is fined:</p> <ul style="list-style-type: none"> - R5000 for the breach of clause 5.14, payable to WASPA within 7 (seven) days of receipt of this adjudication report. - R5,000.00 for the breach of clause 7.5 of the Code, suspended for 6 months on condition that there is no further breach of the same clause within this period. - R5,000.00 for the breach of clause 24.24 of the Code, suspended for 6 months on condition that there is no further breach of the same clause within this period.
Other sanctions	<p>All subscribed customers must be immediately unsubscribed from the member’s service and refunded in full. Proof of the service unsubscription and full refund must be provided to WASPA within 7 days of receipt of this adjudication report.</p>
Is this report notable?	Not Notable
Summary of notability	N/A

1. Initial complaint

1.1 This complaint was initially logged by the WASPA Secretariat (“the complainant”) on 18 September 2024 in the form of the escalation of 19 unsubscribe queries where there was failure to respond from the member and/or failure to provide relevant logs and information as requested. The aggregator concerned was also notified on the same day. The member responded to the formal complaint on 4 October 2024 and the complainant elected not to add any additional information to the complaint, and the matter has now proceeded to adjudication.

- 1.2 As mentioned, the complaint came in the form of the escalation of 19 unsubscribe queries that have failed to be or inadequately responded to and/or the requested information provided to 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 19 escalated unsubscribe queries attached as part of the complaint indicate 19 customers requesting to be unsubscribed, requesting sms confirmation of the unsubscription, proof of unsubscription and the request to contact the customers regarding a refund. It appears the member never responded to these requests nor further contacted any of the customers despite further complaints regarding lack of refund and unsubscription despite them unsubscribing and never having subscribed in the first place.
 - 1.4 Based on the sited clauses alleged to have been breached in this matter, it can be assumed that, in the informal complaint process, the member had been asked for various information to be provided to WASPA that it did not, in fact provide, resulting in the escalation of this matter to the formal adjudication stage.
-

2. Member's response

- 2.1 Following receipt of the formal complaint from the complainant on 18 September 2024, the member responded to the complaint on 4 October 2024. The response is summarised as follows:
 - 2.1.1 Regarding the breach of clause 15.14, the member disputed that they don't have a procedure allowing customers to lodge complaints regarding the services provided. As evidence for this they annexed the HyveMobile - WASPA Support Process which outlines the customer complaints procedure that they have in place.
 - 2.1.2 The member then advised that the 19 affected customers had already been unsubscribed from their services as at the date of each WASPA Subscription Service Query ("SSQ") being handed over to the member. The member, thus, denies that they failed to unsubscribe the 19 affected customers, and attached various spreadsheets as proof of the customer unsubscriptions.
 - 2.1.3 The member then went on to explain various reasons for their non response to the complainant, not refunding customers and non provision of requested logs/information. These reasons included:

- 2.1.3.1 **Telkom Migration to a New SDP:** Telkom's migration to a new service delivery platform ('SDP') during August 2024 has resulted in more complex procedures for unsubscribing customers, requesting subscription logs, and issuing refunds. Prior to August 2024, the member advised that they had the ability to unsubscribe customers on the Telkom SDP and retrieve logs immediately. With the new SDP, they now need to request retrieval of the logs from the aggregator in this matter. This new process has significantly increased the time and effort required to process SSQ's on the WASPA Portal.
- 2.1.3.2 **Increased Workload:** There was an unexpected influx of complaints related to Telkom customers during September, which placed an excessive burden on their support team. They have since introduced an additional person to the support team to assist with handling SSQ's.
- 2.1.3.3 **WASPA Portal response times:** The member advised that the majority of the SSQ's were handed over to them on 9 September 2024, and escalated to formal on 17 September 2024 (6 business days later). During this time (on 13 September) the support team had requested the logs, and was waiting to receive the same before updating this information on the portal. Then, once an SSQ was escalated on 17 September, it no longer appeared on the 'Subscription Service Queries' page on the WASPA Portal and their support team could no longer provide the subscription logs on the portal.
- 2.1.4 The member, thus, asserts that they were given insufficient time to provide the logs. They then attach these logs now, as annexures to their response. They also advise that they have implemented measures to prevent similar occurrences in the future.
- 2.1.5 Regarding their breach of clauses 7.5 and 24.24, the member reiterated that for the same reasons above, they were physically unable to provide WASPA with the logs and customer records. They then provide these logs and customer records in the form of attachments to their response. They also advise that they are happy to upload the logs to the WASPA Portal if needed, and the necessary access is reinstated. They further claim that the provided logs (Annexure B) indicate that full refunds have been issued to the relevant customers.

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 member 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 member, 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 member brought up as its main defence in its response; this being the fact that the the member asserts that the breaches were caused by the third party platform (Telkom), the Aggregator and/or the complainant's portal and that it was, thus, not their fault or responsibility/liability. While the member may be at least

partially correct in this regard (regarding the Aggregator), clause 3.6 of the Code means that the member still bears ultimate responsibility for ensuring compliance with the Code and clause 3.7 dictates that the member would be liable for the breaches occasioned by any third party non member (Telkom).

Clause 5.14

6.3 The member disputed that they don't have a procedure allowing customers to lodge complaints regarding the services provided and they annexed the HyveMobile - WASPA Support Process as evidence. They further stated that they had already unsubscribed the relevant customers and that their further non response was occasioned by matters outside of their control, as stated above. Whilst I am satisfied that the member has a procedure in place allowing customers to lodge complaints, the fact of the matter is they did not respond to these complaints expeditiously, within a reasonable period of time or, indeed, at all. While this may be, in their estimation, because they were waiting on information to be provided or they believe the time frames provided to have been "too short", the total lack of response from the outset indicates an insufficient process and, regardless, indicates a clear breach of this clause.

6.4 Accordingly, I find a breach of this clause.

Clause 7.5

6.5 Based on the member's response, they assert that they did not provide all of the required information in this clause, essentially, because the time frame was too short after the initial escalations and, given the lack of support staff and information provided by the aggregator, meant that they were unable to do so. Whilst the issues mentioned are certainly mitigatory in nature (except for the shortness of time to do so on the WASPA portal, as the time frame is in line with the Code at clause 24.17), I am not of the opinion that it was "impossible" for the member to provide the requested records or at least take proactive steps to engage with the complainant about the issues. The initial non-compliance, as well as the incomplete provision of customer records in their attachments provided to their response in this adjudication, did not adhere to the procedural requirements expected of them. This is the subject of the complaint.

6.6 Accordingly, I find a breach of this clause.

Clause 24.24

6.7 The complaint also involved interactions with consumers, and the member was required to provide clear copies of all relevant logs of these interactions, along with any associated marketing material. However, while the member did eventually provide a log in response to the formal complaint, it was both submitted too late and

deemed insufficient. The log lacked a complete record of customer interactions and did not include all relevant marketing material. While the issues experienced by the member, as already discussed, are certainly mitigatory in nature, this does not mean that the clear non-compliance was not a breach of the Code. Accordingly I find that the member has breached clause 24.24

7. Sanctions

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

7.2. The member has had 10 previous formal adjudications against them upheld although none concern the clauses in question in this adjudication. This, however, would need to be considered aggravating in nature.

7.3 When mitigating factors in this case, the following are present:

7.3.1 The member advised that they have identified and addressed the issues, and have implemented measures to prevent similar occurrences in the future. They also showed remorse apologised for any inconvenience or frustration the breaches may have caused

7.3.2 It is noteworthy that the aggregator, who acts as the gateway for the member, could not provide the member with the relevant information it needed to efficiently respond to the complaint after it had been escalated. Further, the short time frames provided on the portal and issues occasioned by Telkom migrating onto a new SDP further made compliance with the clauses in question more difficult.

7.4 On the whole, while the complaint is upheld in its entirety, I feel that there are strong mitigating factors, outweighing the aggravating factors, that need to be taken into account when issuing sanctions in this case.

7.5 I find that the Member breached clauses 5.14, 7.5 and 24.24

7.6 I would have fined the member R10000 for the breach of clause 5.14 but, given the mitigating factors present, I accordingly only fine the member R5000 for the breach of clause 5.14, payable within 7 (seven) days of receipt of this adjudication report.

7.7 Given the mitigating factors, I fine the member R5,000.00 for the breach of clause 7.5 of the Code, suspended for 6 months on condition that there is no further breach of the same clause within this period.

7.8 Given the mitigating factors, I fine the member R5,000.00 for the breach of clause 24.24 of the Code, suspended for 6 months on condition that there is no further breach of the same clause within this period.

7.9 Furthermore, all subscribed customers must be immediately unsubscribed from the member's service and refunded in full. Proof of the service unsubscription and full refund is to be provided to WASPA 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.
