



Report of the Adjudicator

Complaint number	#60730
Cited WASPA members	Newstor Membership no: 1990
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	2024-09-18
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	
Fines imposed	<p>The member did not breach clause 5.14 but breached clauses 7.5 and 24.24</p> <p>There are mitigating factors and accordingly, the member is fined:</p> <ul style="list-style-type: none"> - 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	N/A
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 8 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 advised the complainant of some errors in the complaint and this was then addressed by the member as there were actually only 4 unsubscribe queries escalated. Following a meeting with the complainant to understand the matter better, the member was granted extension to respond and they then provided their formal response on 8 October 2024. 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 4 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 4 escalated unsubscribe queries attached as part of the complaint indicate 4 customers requesting to be unsubscribed, requesting sms confirmation of the unsubscription, proof of unsubscription and the request to contact the customers regarding a refund. Whilst it appears the member did indeed respond adequately to these requests and further engaged with customer complaints after further complaints regarding lack of refund and unsubscription, one of the responses was after a long duration of time (21 days) and the responses were never directly to the customers themselves.
 - 1.4 Based on the cited 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.
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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 8 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. They asserted that they did respond to the unsubscribe queries by stating that, "This number has been blocked in our system," meaning the number was already deactivated when it was escalated or brought to their attention. They also assert that they did send an sms confirming unsubscription and contacted the customer regarding a refund. Regarding the request to provide proof of subscription, the member asserts that they were not requested to provide subscription logs in the initial complaint, as it was optional and not mandated. However, as an annexure, they now share the "logs" as requested.
 - 2.1.2 Whilst not mentioned by the member, apart from one instance, it appears as if the member responded expeditiously via the mechanism available to them, when further customer complaints were raised. They also provided proof of the refunds issued (although this was after the lodging of the formal complaint).

2.1.3 Regarding their alleged breach of clauses 7.5 and 24.24, the member asserted that many of the complaints or escalations sent to them do not mandate sharing subscription logs which is why they were not shared initially. However, they advise that they do store all subscription logs and can produce them when required by WASPA or the operator. At this stage, they attach all of the “subscription logs” they believe have now been requested of them.

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 2024, 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 one issue that the member brought up; that being the fact that the member asserts that some of the issues 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 for the customer issues experienced. 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 Based on the 4 unsubscribe queries, it appears as if the member did adequately respond to the customer requests initially and that they genuinely believed the matter had been resolved. Following the later customer complaints which indicated that unsubscription or refunds had not occurred, I am also convinced that the member used their best endeavours to resolve these timeously on their end. Ultimately, any non response or refund was occasioned by Telkom and/or the aggregator and, as such, on a balance of probabilities, I feel that the member did respond to customer complaints expeditiously and within a reasonable period of time. They also do have a procedure allowing customers to respond to complaints but it is advised and to be noted that this procedure needs to be amended to not rely solely on third parties in order to be effective.

6.4 Accordingly, I do not find a breach of clause 5.14.

Clause 7.5 and 24.24

6.5 Based on the member’s response, they assert that, because they are of the opinion that all of the matters were resolved, unsubscriptions finalised and refunds issued, they were not required nor mandated to supply the complainant with all of the relevant customer records, logs and marketing material used on the customers. I am of the opinion that this is an inadequate argument and that the member was still

required to supply the relevant information as requested by the complainant, to be inline with the code. At the very least, the member could have proactively engaged with the complainant to advise of the resolution of the matter, which they failed to do. In their response to this formal escalation, they did provide the “logs” but this was still not all of the information required to be provided from clause 7.5 and 24.24.

6.6 Accordingly, I find a breach of clause 7.5 and 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 only had 1 previous formal adjudication against it upheld although it did not concern the clauses in question in this adjudication. This would, thus, have to be considered mitigatory in nature

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

7.3.1 The member advised that they have identified and addressed the issues, and that they have committed to implementing measures to prevent similar occurrences in the future.

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 issues occasioned by Telkom further made compliance with the breached clauses in question more difficult.

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

7.5 I find that the Member did not breach clause 5.14 but did breach clauses 7.5 and 24.24.

7.6 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.

7.7 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.

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.
