



Report of the Appeals Panel

Complaint number	#60740
Cited WASPA members	PM Connect Africa (Pty) Ltd (1763)
Notifiable WASPA members	None.
Appeal lodged by	The Member
Type of appeal	Written appeal
Scope of appeal	<input checked="" type="checkbox"/> Review of the adjudicator's decision
Applicable version of the Code	17.9
Clauses considered by the panel	4.12, 5.14, 5.17, 7.5, 24.24
Related complaints considered	60652; 60722; 60735; 60061
Amended sanctions	R5 000.00 fine for breach of clause 7.5 of the Code; and R10 000.00 fine for breach of 5.17 of the Code. If there are any outstanding amounts to be refunded by the member, this must be made to the complainant within 7 days of receiving this Appeal Report, and proof of the refund must be provided to WASPA within said 7 days.
Appeal fee	50% of the appeal fee to be refunded.
Is this report notable?	Not notable.
Summary of notability	Not applicable.

Initial complaint

1. The complaint stemmed from the member's failure to respond to the customer's unsubscribe request, which led to the matter being escalated to WASPA, resulting in the submission of a formal complaint by WASPA on 17-09-2024.
2. The following reasons for the formal complaint was cited as follows by WASPA:
 - 2.1 The member failed to respond to the unsubscribe query;
 - 2.2 The customer refund has been unreasonably delayed; and
 - 2.3 The member failed to provide customer logs as requested and required.
3. Furthermore, the complaint stated that the customer had contacted MTN using their 135 contact number regarding an unauthorised subscription. On 26-07-2024, MTN confirmed that they could only cancel the subscription as of that date, and nothing could be done about the previous billing.
4. On 30-07-2024, MTN confirmed that the customer was still being billed for the subscription but could not explain why this was happening and referred the customer to the MTN fraud section. Later that day, MTN stated that the customer would receive a reference number via SMS, but nothing was received.
5. MTN also explained that this was not a fraud issue and clarified that the September bill was just a projection. Additionally, MTN confirmed that member was an MTN service provider and provided the customer with the WASPA contact number. The complaint further stated that MTN was unable to identify who authorised the subscription.

Adjudicator's findings

6. The Adjudicator determined that no evidence was presented by the complainant to support claims of fraudulent activity such as malware installed on mobile devices, leading to any loss to the customer. Therefore, the Adjudicator did not find the member in breach of clause 4.12 of the Code.
7. The Adjudicator found that the member did not acknowledge receipt of the unsubscribe complaints expeditiously and did not respond to the complaints until the complaints were escalated and made formal.
8. The Adjudicator stated that the WASPA Code of Conduct ("the Code") placed an obligation on members to ensure their systems and procedures were properly managed and up to date

in order to receive complaints and address such complaints expeditiously. Accordingly, the Adjudicator found that the member did not sufficiently respond to the complaints within a reasonable period of time, and the member was found in breach of clause 5.14 of the Code.

9. The Adjudicator determined that the member acknowledged the processing of a refund during their initial communication with WASPA. However, in subsequent communications, any reference to the same subject matter was omitted, and the customer was referred to MTN for the refund, unreasonably delaying the process. As a result, the member was found in breach of clause 5.17 of the Code.
10. The Adjudicator further found that the member failed to provide evidence of any steps taken to address the complaint after its escalation and submitted incomplete customer records, failing to comply with the prescribed procedural requirements. Additionally, the member did not provide complete customer records related to the service in question prior to the complaint's escalation. As a result, the member was found to be in breach of clause 7.5 of the Code.
11. The Adjudicator also stated that the member was required to provide clear copies of all relevant logs of its interactions with the customer, along with any associated marketing material. However, while the member eventually provided a log in response to the formal complaint, it was submitted too late and deemed insufficient. The log lacked a complete record of customer interactions and did not include all relevant marketing material. As a result, the member was found in breach of clause 24.24 of the Code.
12. Therefore, the Adjudicator found the member in breach of clauses 5.14, 5.17, 7.5, and 24.24 of the Code, and the complaint was partly upheld.
13. The member was fined R5 000.00 for each breach of clauses 5.14, 7.5, and 24.24, totalling R15 000.00, payable to WASPA within 7 days of receiving the adjudication.
14. The member was also fined R10 000.00 for breach of clause 5.17 of the Code.
15. The member was further sanctioned in terms of clause 24.43 (a) of the Code to refund the customer for the subscription within 7 days of receipt of the adjudication.
16. When determining sanctions, factors considered included the member's past complaints, the nature and severity of the breach, efforts to resolve the matter, and WASPA precedents. The absence of similar complaints in the past three years was considered a mitigating factor.

Sections of the Code considered

17. The following sections of the Code are considered, and read as follows:

“Fraud prevention

4.12. If a member becomes aware that one or more customers have been billed and/or joined a service as a result of fraudulent activity (e.g. malware installed on mobile handsets), the member must remove all affected customers from the service and refund those customers any resulting charges.

Customer support

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.

Refunds

5.17. Any refunds provided by members to customers must be provided either in South African Rands, air-time or any other form acceptable to the customer. Refunds must not cause the customer to incur any bank charges, or alternatively must compensate the customer for any bank charges incurred. Refunds must not be unreasonably delayed.

Provision of information about services

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.

Complaints procedure

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”.

Appeal submissions

Fraud prevention: clause 4.12 of the Code

18. Clause 4.12 of the Code was not appealed by the member, and consequently the Appeal Panel will not deal with this breach.

Customer support: clause 5.14 of the Code

19. The member denied breaching clause 5.14 of the Code, asserting that they had a process in place for customers to lodge complaints, and that the complaint was submitted via WASPA.
20. The member claimed that they acknowledged the complaint on the same day it was received, as shown in the portal screenshot provided to the Appeal Panel.
21. The member stated that no follow-up requests were made by the complainant or WASPA, and the initial contact was responded to promptly on the same day. Additionally, the member asserted that WASPA did not define what constitutes a "reasonable period of time," and believed all responses were made within a reasonable and timely manner.
22. The member claimed that customers have a variety of routes to speak with Customer Service to lodge a complaint or query. For MTN ZA, in this case, customers can visit the customer portal <https://csteam.co.uk/service/nbalp-za/ZA>, they can call MTN directly from their handset on 135; and they can email service.sa@sclients.co and WhatsApp on +27800800026.
23. The member alleged that they followed the same procedure as usual when receiving a notification from the 'WASPA Unsubscribe System Daily Reminder,' which involved reviewing the subscriber's journey and determining the necessary actions to take.
24. In this specific case, the member updated the WASPA portal on the day notification was received, being 01-08-2024. The member also updated the WASPA portal to advise the customer was unsubscribed and the confirmation SMS had been triggered. The unsubscribe action had already occurred via the MTN platform on 27-07-2024.
25. The member subsequently provided a timeline as follows:
 - 25.1. A screen notification from WASPA was received on 01-08-2024, and a response was provided by the member via the WASPA portal on the same day.
 - 25.2. A further notification from WASPA or the customer was received on 21-08-2024, with the member responding on 22-08-2024.
 - 25.3. Another notification from WASPA was received on 04-09-2024, and the member responded on 05-09-2024.
 - 25.4. A subsequent notification from WASPA was received on 16-09-2024, with the member responding on 17-09-2024.
 - 25.5. The formal complaint was received on 18-09-2024.

- 25.6. The member's responses and updates were shared with WASPA on 18-09-2024, 25-09-2024, and 02-10-2024.
26. The member noted that no further correspondence was received from WASPA or the customer after their response on 02-10-2024, leading the member to assume that their response had resolved the complaint.

Refunds: clause 5.17 of the Code

27. The member believed there was no breach of clause 5.17 of the Code, as they provided refunds where it was deemed owing and where the technical facility existed. The member stated that they repeatedly advised that they lacked the technical capability to process a refund. Furthermore, following the escalation from WASPA, the member stated they were informed that a refund had been provided to the customer.
28. The member alleged that they had a clear refund policy in place that ensured reasonable consideration of customers' circumstances and facilitated payment in local currency. In this case, the member advised upon first notification of the complaint that refunds would need to be processed by MTN due to MTN managing the subscription and the member having no API in place to conduct this action. The member further stated that this position was reiterated upon receiving a follow-up from the customer on 21-08-2024 and again following a message from WASPA on 05-09-2024.
29. Furthermore, the member confirmed that MTN managed the subscription, billing, marketing, and any refunds, therefore they would have needed to be contacted to arrange the refund. In addition, the member stated that the delay could have been avoided if, following the member's initial response, the customer and/or WASPA had contacted MTN or instructed the member to do so.

Provision of information about services: clause 7.5 of the Code

30. The member believed there was no breach of clause 7.5 of the Code, arguing that the clause stated records should be provided "where available," and that the records were not directly available to them, as they did not own them. Any available records were obtained through OnePin. The member also claimed that WASPA did not request records following the initial contact on 12-07-2024, and proof of subscription was only requested upon receiving the formal complaint on 18-09-2024. Additionally, the member alleged they did not have direct access to MTN's subscription logs as marketing and subscriptions were managed by MTN and OnePin. This was communicated to WASPA on 18-09-2024, and the records were delayed until 02-10-2024, when they were shared with WASPA.

Complaints procedure: clause 24.24 of the Code

31. The member argued that there was no breach here of clause 24.24 of the Code, as any records that could be obtained by them were supplied to WASPA via OnePin within 2 weeks of request. The member also argued that there was nothing in clause 24.24 to say how long it should take to obtain these records.
 32. The member reiterated that they did not have direct access to the subscription logs for MTN as the marketing, and subscription is controlled by MTN and OnePin, and that the records were then shared with WASPA on 02-10-2024, as supplied by OnePin.
-

Deliberations and findings

Refunds: clause 5.17 of the Code

33. The member confirmed that MTN managed the subscription, billing, marketing, and any refunds, therefore they would have needed to be contacted to arrange the refund. In addition, the member stated that the delay could have been avoided if, following the member's initial response, the customer and/or WASPA had contacted MTN or instructed the member to do so. Clause 5.17 of the Code requires that refunds must not be unreasonably delayed. The obligation to avoid unreasonable delays in processing refunds rests on the member. If the member could not process the refund themselves, they should have taken reasonable steps to ensure that the customer was refunded without unreasonable delay by MTN. The Adjudicator determined that the member initially acknowledged the processing of a refund during their first communication with WASPA. In subsequent communications, however, the reference to the refund was omitted, and the customer was referred to MTN for the refund. By merely redirecting the customer to MTN, and not providing assistance or escalation on their part, the member delayed the refund process and did not comply with their obligations. Consequently, the member is found in breach of clause 5.17 of the Code in line with the Adjudicator's findings.

Customer support: clause 5.14 of the Code

34. The member alleged that they responded to the unsubscribe request from WASPA on the same day they received it as per the WASPA portal log. The member did acknowledge receipt of the complaint from WASPA timeously; however, the member did not respond to the customer's request to be unsubscribed from the service, hence the escalation from an unsubscribe request to a formal complaint by WASPA. That being said, clause 5.14 of the Code specifically refers to a complaint and not an unsubscribe request, which was made by WASPA. Therefore, the member complied with this part of the Code. Furthermore, the member responded to the WASPA via the WASPA Portal on the same day, which is deemed expeditious and reasonable. The member's response advised WASPA that the customer had been unsubscribed from their service and that a confirmation SMS had been triggered.

35. Furthermore, as illustrated by the member, the member had a procedure allowing customers to lodge complaints regarding the services provided. The member provided the following complaint channels: for MTN ZA, in this case, the customer could visit the customer portal <https://csteam.co.uk/service/nbalp-za/ZA>, they could call MTN directly from their handset on 135, and they could email service.sa@sclients.co and WhatsApp on +27800800026.
36. Therefore, the Adjudicator erred in their finding, and the member is not found in breach of clause 5.14 of the Code.

Provision of information about services: clause 7.5 of the Code

37. Clause 7.5 of the Code reads as follows: “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”.
38. The member argued that there was no breach of clause 7.5 of the Code, stating that the clause identified customer records should be provided "where available," and that the records were not available to them as they did not own them. The member also alleged that customer records were obtained through OnePin or MTN.
39. Only clause 7(a) of the Code must be provided “when available”, being “a record of the marketing link that the customer followed prior to joining a service”. If "where that information is available" were meant to apply to the entire subsection list of clause 7 of the Code, it would have been placed before the colon that introduces the list or repeated in each subsection. As per the grammar and the use of the semicolons between subsections, the remainder of the subsections of clause 7 of the Code must be provided to WASPA, without exception.
40. WASPA requested the member’s subscription logs, which differ from the marketing material link referenced in clause 7(a) of the Code. Subscription logs are detailed records that document the customer’s subscription process, typically including timestamps of when the customer joined or left the service, messages exchanged during the subscription process, and records of any charges applied by the member. In contrast, marketing links refer to URLs or digital pathways accessed by a customer prior to subscribing to a service, originating from advertisements, promotional emails, or other marketing channels. Tracking the marketing link assists in identifying the source that directed the customer to the service. Therefore,

subscription logs and marketing links serve distinct purposes and provide different insights into the subscription process.

41. While the marketing link provides insight into how the customer discovered the service, the subscription logs contain crucial evidence of the customer's engagement with the service itself, including the process of subscribing, communications exchanged, and any associated charges. Therefore, the member's obligation to provide the subscription logs was separate from any requirement to provide the marketing link.
42. It is further noted that the marketing link was not in the member's direct possession and had to be obtained from MTN and OnePin. As such, any delay in providing the marketing link may be attributable to the need to source the information from third parties. However, this does not extend to the subscription logs, which the member ought to have maintained and been able to access directly.
43. The delay in producing the subscription logs to WASPA, records that should have been readily accessible to the member, constitutes a failure to promptly comply with the entirety of clause 7 of the Code. Given that subscription logs are part of the member's routine record-keeping and essential for monitoring customer activity and billing, it is unreasonable that such records were not immediately available upon request.
44. Therefore, the member is found in breach of clause 7.5 of the Code.

Complaints procedure: clause 24.24 of the Code

45. Clause 24.24 of the Code requires that where a complaint involves any interaction with a consumer, the respondent must provide clear copies of all relevant logs of that interaction and all relevant marketing material when requested to do so.
 46. In this case, while the member did experience a delay in providing the subscription logs and marketing material, the member did provide them once available, despite the delay.
 47. The logs were ultimately submitted, demonstrating an effort to comply with the requirements of clause 24.24 of the Code. While the time taken was not ideal, the member did respond to WASPA's request for all relevant logs of the interaction and marketing material once the necessary information was obtained.
 48. Therefore, the member is not found in breach of clause 24.24 of the Code.
 49. In conclusion, the member is found in breach of clauses 5.14 and 7.5 of the Code and the appeal is partially upheld.
-

Amendment of sanctions

50. The fine of R5 000.00 for breach of clause 7.5 of the Code, and the R10 000.00 fine for breach of clause 5.17 of the Code and are not amended and remain payable to WASPA within 7 days of receiving the Appeal Report.
 51. The respective fines of R5 000.00 each for clauses 5.14 and 24.24 of the Code are dismissed.
 52. In addition, if there are any outstanding amounts to be refunded by the member, this must be made to the complainant within 7 days of receiving this Appeal Report, and proof of the refund must be provided to WASPA within said 7 days.
-

Appeal fee

53. 50 percent of the appeal fee must be refunded to the appellant.
-

Matters referred back to WASPA

54. The member's poorly formulated submissions in this matter are detrimental to both the complainant and the member, while also creating unnecessary challenges for the Appeal Panel. This should be duly noted and, in the case of the member, formally condemned, as such conduct may constitute unprofessional behaviour. Furthermore, there is a growing concern regarding the increasing trend of WASPA members submitting poorly prepared responses.
 55. We respectfully suggest that WASPA consider imposing minor fines to address the substandard quality of these submissions or explore other appropriate measures to ensure members adhere to the required standards of professionalism and diligence.
-