



REPORT OF THE ADJUDICATOR

WASPA Member	Vodacom Service Provider
Information Provider (IP) (if any)	n/a
Service Type	Subscription / Distribution List
Source of Complaints	Public / WASPA Secretariat
Complaint Numbers	6560, 6561, 6563, 6596, 6598
Dates lodged	25 & 27 May 2009
Code of Conduct version	7.0

Complaint

These complaints relate to a failure by the WASPA member to respond to an unsubscribe request made by a consumer and logged on the WASPA unsubscribe system by the WASPA Secretariat. Reminders were sent to the member through the unsubscribe system requesting that the consumer be unsubscribed and that a confirmation SMS be sent to the consumer confirming that this had been done.

The failure of the member to respond to the requests – in contrast to responses received from other members who were party to the same unsubscribe requests – left the WASPA Secretariat with little option but to escalate the matters to the formal resolution process.

Notices of formal adjudication and requests for a response thereto – sent to the specified mail contact addresses provided to WASPA - were not responded to by the member. Numerous reminders sent by the Secretariat were also ignored.

It should be noted that these complaints have been escalated by the WASPA Secretariat and that they relate only to the failure of the member to respond to an unsubscribe complaint, and not to any underlying consumer complaint regarding a service provided by the member.

SP Response

No response was received from the WASPA member to any of these matters.

Sections of the Code considered

The following sections of version 7.0 of the WASPA Code of Conduct were considered:

1.2. Objectives of the Code of Conduct

The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.10. Nominated representatives

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

3.10.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.

4.1.5. Members must have a complaints procedure allowing their 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.

13.3. Formal complaint procedure

13.3.1. In the case of a complaint for which it is not feasible for the member concerned to provide a prompt remedy, or a complaint that has been escalated from the informal complaint procedure, the following formal complaint procedure will be followed.

13.3.2. The member (or members) named in the complaint, or identified by the WASPA Secretariat on the basis of any identifying information included in the complaint, will be notified by the secretariat that a complaint has been lodged and that the formal complaint procedure is being followed.

13.3.3. The secretariat will provide the member with a copy of the complaint, and any additional information relevant to the complaint.

13.3.4. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint.

13.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond.

Decision

There is no obligation on a member to respond to a complaint under the formal complaint procedure. In such circumstances it is customary practise for adjudicators to accept the version advanced by the complainant to the extent that it is not controverted by other material before the adjudicator¹.

Nevertheless a failure to respond to unsubscribe requests as well as formal complaints notices is anathema to the proper enforcement of a code of conduct by a self-regulatory body. It further conflicts with the realisation of the objectives of the Code as set out in section 1.2 thereof and is an unnecessary drain on WASPA's resources.

There is precedent, as will be seen below, for a finding that a failure to engage with WASPA disciplinary procedures can amount to a breach of the duty to act professionally in their dealings with WASPA. This duty also extends to consumers.

It is further evident that there is a pattern of such behaviour on the part of the WASPA member. While the member has responded in respect of certain matters, the table below indicates a number of instances where no reply has been submitted or where delays in the provision of the response have led to the escalation of the matter to the formal resolution procedure.

Matter	Date Lodged	Breach and sanction
3017	20080114	No response received. Failure to respond taken into account in assessing an appropriate sanction but not regarded as an independent breach in its own right.
3018	20080129	No response received. Failure to respond taken into account in assessing an appropriate sanction but not regarded as an independent breach in its own right.
3020	20080114	No response received. Failure to respond taken into account in assessing an appropriate sanction but not regarded as an independent breach in its own right.

¹ Something which it is not possible to do in these matters as the Adjudicator has no insight into the underlying cause of the unsubscribe complaint.

4728	Not specified	No response received to formal complaint.
5225	Not specified	No response received. Failure to respond taken into account in assessing an appropriate sanction but not regarded as an independent breach in its own right.
4990	20081013	<p>“The Adjudicator is further not satisfied with the level of conduct displayed by the WASPA member in responding to this complaint with particular regard to the delays in the provision of logs. Notwithstanding that this matter could well have been escalated to the formal resolution process in any event given the breach of section 4.1.5 this approach to interacting with WASPA is not satisfactory and falls short of the levels required by section 3.1.1 of the Code. The member is found to have breached this section.”</p> <p>A R5 000 fine was imposed in respect of the breach of section 3.1.1 of the Code.</p>
4813	20090908	<p>“The Adjudicator is not, however, satisfied with the level of conduct displayed by the WASPA member in responding to this complaint. This matter should never have been escalated to the formal resolution process and would not have been but for the failure of the member to provide intelligible logs timeously. This conduct leads to a waste of money and resources which could be better allocated elsewhere.</p> <p>The Adjudicator finds that the conduct of the member in respect of its interaction with WASPA in responding to this complaint is below that set out in section 3.1.1 of the Code of Conduct and that there is a breach of this section.”</p> <p>A R10 000 fine was imposed in respect of the breach of section 3.1.1 of the Code.</p>

In the circumstances the member is found to have breached section 3.1.1 of the Code.

In arriving at an appropriate sanction the Adjudicator has had regard to:

- the fact that the member has not taken the opportunity in its response to address the complaint properly
- the relatively high number of adverse findings against the member over the last year;
- the difficulties presented to consumers by subscription services and the need for firm action from WASPA with regard to these services; and

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- the need to ensure that members respect the Code of Conduct and co-operate with WASPA in resolving consumer complaints.

The following sanction is imposed:

1. The member is required to verify in writing to the Secretariat within ten days of notification of this Adjudication:
 - a. The names and full contact details of the persons responsible for dealing with unsubscribe requests and formal complaints together with a statement confirming that they are aware of their responsibilities in respect of such requests and complaints; and
 - b. The name and contact details of a senior member of management of the member that is responsible for oversight in respect of dealing with complaints.
2. The member is fined the sum of R25 000 in respect of the breach of section 3.1.1 noted above. Payment of this fine is suspended for a period of six months from date of the Adjudication subject to the member complying timeously with item 1 above .
3. For the sake of clarity: the suspension of the fine will lapse on the 11th day after notification of this Adjudication to the member in the event of non-compliance with item 1. The fine will thereafter be regarded as non-appealable and will be payable to the WASPA Secretariat within fifteen days of date of notification of this Adjudication to the member. If the member does comply with item 1 timeously then payment will be suspended for six months subject to the member not being found to be in breach of section 3.1.1 for a failure to co-operate fully in the resolution of complaints during that time.