



REPORT OF THE ADJUDICATOR

WASPA Member	Vodacom Service Provider
Information Provider (IP) (if any)	Lucky Mobile
Service Type	Subscription / Distribution list
Source of Complaints	Public
Complaint Number	6562
Date lodged	25 May 2009
Code of Conduct version	7.0

Complaint

The complainant in this matter requested that her MSISDN be unsubscribed from a number of services offered by WASPA members. She acknowledged that her son had played with her phone but she could not understand how he could have subscribed to so many services. Despite cancelling these services telephonically she lost an amount of airtime and requested that the relevant members provide logs so that she could investigate further.

The WASPA Secretariat duly logged her request to be unsubscribed (and for this to be confirmed) as well as a request for the relevant members to contact her regarding a refund, on the WASPA unsubscribe system. Of the four WASPA members involved, two responded on the same day the request was logged while a third responded the next day.

No response was, however, received from the member who is the respondent in this complaint, notwithstanding the sending of reminders through the unsubscribe system.

The failure of the member to respond to the request – 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 matter to the formal resolution process.

SP Response

The SP did respond to the formal complaint notice in the form of an email to the IP requesting it to take the necessary action. The IP unsubscribed the complainant on the same day and provided logs – set out below – in support of the fact of subscription and unsubscription.



Subscription date	Club Status
2007-06-03 17:46:11	SUBSCRIBED
2009-05-28 15:16:38	UNSUBSCRIBED

The IP confirmed further that is had contacted the complainant and that she remained unsatisfied over their failure to offer a refund.

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

The Adjudicator is satisfied that the response of the IP indicates that the complainant's MSISDN was subscribed to its service and that, based on the admission of the complainant regarding her son using her phone, it is not possible to make a finding as to whether there were any breaches of the Code around such subscription.

The Adjudicator is, however, of the view that the failure of the member to respond to the unsubscribe request 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 as matters are then escalated into the formal resolution procedure.

There is precedent 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. There are a number of matters currently in the formal dispute resolution system purely as a result of the failure of this particular member to react to unsubscribe requests.

In this matter, however, the Adjudicator is of the view that there is a strong likelihood that the matter may have been escalated in any event as a result of the underlying dispute regarding the request for a refund.

In the circumstances neither the member nor the IP in this matter can be found to have breached the Code.

The member (and not the IP) is ordered to refund the complainant in respect of any billing effected between 12 May 2009 (the date on which the unsubscribe request was logged) and 28 May 2009 (the date on which the complainant's MSISDN was unsubscribed) on the basis that the member was solely responsible for the delay in this occurring.