



REPORT OF THE ADJUDICATOR

Complaint reference number:	15620
WASPA member(s):	Cellfind
Membership number(s):	0019
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2011-11-18
Date of the alleged offence:	2008-02-22
Relevant versions of the Code:	5.7 in respect of the initial subscription 11.0 in respect of the delayed refund
Clauses considered:	5.7: 4.1.1, 11.1, 11.6 11.0: 4.3.3
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	8278, 9669, 13379, 14352

Complaint

1. This complaint has its genesis in an unsubscribe request lodged with WASPA in May 2011 which resulted in the complainant being unsubscribed from the Look4me subscription service and offered a full refund by the member. The refund was not, however, affected and the complainant, after efforts to resolve the matter directly with the member had failed, approached WASPA for assistance.
2. Correspondence provided by the complainant shows that:
 - 2.1. The member had offered a refund of R875.40 on two separate occasions in May and July 2011 respectively;
 - 2.2. Following an enquiry from the complainant on 12 October 2011, the member indicated the following:

“As explained, if you were not billed by Vodacom for the value added service and rather via an online billing service this credit amount cannot be raised on your Vodacom account. We therefore requested your banking details in order

for us to transfer the amount directly to your account. The position has not changed and with your cooperation it could be resolved immediately."

- 2.3. The complaint responded immediately, averring that it had been the member's representative that had offered to affect the refund through his Vodacom account and that his bank account details had not been requested before. Full account details were included.

3. The complainant thereafter lodged a complaint with WASPA in the following terms:

"Code_Breached: 4.1.1. I was charged (through Vodacom) without even being aware of the service.

4.3.3. Celfind agreed to refund all my charges - it has delayed this payment for a number of months without any explanation.

11.2. I was subscribed without any request or indication that I am interested in the service.

11.5. No notification message was sent.

11.6. No reminders were sent.

I have been charged R875.40 over a period of roughly 2 years (by Celfind, via Vodacom), without my knowledge or request to be subscribed to the Celfind service. Until recently I had never even heard of the service!

Celfind has since acknowledged that I have not subscribed to the service and thus incorrectly charged. It was some user fault on their side from one of their call-centre staff.

Nonetheless, they still refuse to refund me (without an explanation) as per an email from their Operations Manager (Wickus xxxxx).

And simply refunding only R875.40 is unacceptable, considering this unethical approach, the time and costs I have incurred to chase this up, not to mention the interest I lost in my bond not having these funds for two years.

I would also like to know which government/municipal body WASPA suggests I report this issue to? As far as I am concerned this is criminal and Celfind should be severely reprimanded for this inexcusable behaviour."

4. The payment of the refund on 4 November 2011 did not mollify the complainant:

"I was not aware of the refund, which was almost a month after I had given Celfind my bank details and almost 4 months after they informed me that they would credit my Vodacom Bill.

In the attachment you will see the charge under "Content Services", not specifying what the service is. And an amount of R11.70 easily goes unnoticed.

Notice that they further added Vodacom's Look 4 Help service (which is exactly the same service), also without me being aware of it or requesting the service. Vodacom have refunded me for that already. The only reason I picked up that Celfind was deducting funds from me is because I queried the "Look 4 Help" service on my bill.

Lorraine, please ask Wickus for proof that I subscribed to the Celfind service. You will find that he is not be able to offer you any, none-the-less he felt it appropriate to charge me for this service for almost 2 years!!

Please explain to me how that is not criminal!? And how is this not a serious breach to the WASPA guidelines that I've outlined!"

If I had not picked this up, who knows for how many years would they have been deducting funds from my account illegally! After all of this not even so much as an apology!

5. The complainant further requested that he be paid reasonable compensation for the trouble he had been put to by the member.

Service provider's response

6. The member initially responded to the complaint by indicating that billing had taken place through Vodacom Service Provider and requested that the complainant provide a copy of an invoice or statement showing the relevant charges. On request from the WASPA Secretariat, however, Vodacom confirmed that billing had been affected by the WASPA member.

7. On 28 November 2011 the member averred that:

"The first refund request was process May this year but no banking details was supplied by the subscriber. The subscriber insisted that his Vodacom SP account be credited. Although we have access to refund Vodacom accounts it is reserved for VSP VAS billing and it was therefore not an option.

After escalation last month I received an e-mail and following a request for the subscribers banking details the full amount was transferred to his ABSA bank account (EFT transaction attached)."

8. The member provided a proof of payment reflecting the refund to the complainant of R875.40 on 4 November 2011.
9. On 8 December 2011 the member provided further detail of its response:

"Just as a heads up we found that this gentlemen is a Vodacom subscriber and his billing took place in error. Since this is an exclusive Vodacom product all subscriptions are passed to Vodacom for this billing. Non VSP subscribers are sent to Autopage and Nashua Mobile for billing. Service providers will bill it's subscribers as a invoice line their monthly statements as a value added service and not as content as conventional WASP content.

My initial explanation would simply be that this gentlemen registration was rejected by VSP and yet indicated as a VSP contract subscriber and although his billing took place via OBS he did not receive monthly reminders as required for normal OBS billing.

Further. The activation took place preceding the implementation date of monthly reminders that could just have exacerbated the issue.

Needless to say we are still investigating the anomaly to determine the extent of the problem since this is the first issue we received to date.

The activation took place via a call centre 4 years ago and our relationship with this call centre has ended since. Based on the inability to obtain the relevant call recording as proof that subscription took place it was agreed with the subscriber that all charges would be refunded immediately of which was handled by myself.

The calculation if the refund was based on the total amount billed and I will submit these records to you shortly."

10. Billing logs were provided by the member on 12 December 2011.

11. The complainant did not accept this explanation noting that:

- 11.1. He had been informed by one of the member's staff that they had accessed a voice recording at the time that a salesperson had made a call to the complainant in 2008 and it was evident that the service had not been requested.
- 11.2. It was not enough that he be refunded for the value of his money over the period it was billed as also the expenses and inconvenience incurred.
- 11.3. The required reminder messages were not sent and it was unacceptable to blame this on a historic issue on their systems.
- 11.4. The service being provided was not clearly described in the invoices received, notwithstanding the WASPA requirements that these services "be clearly displayed and descriptive of the service".

12. The complainant thereafter elected for the matter to proceed to formal adjudication.

13. The member filed its response to this formal complaint on 11 January 2012:

"Referring to my response 8 December 2011:

Since the initial [complainant] is a Vodacom subscriber and his billing took place in error.

1. Since this is an exclusive Vodacom product all subscriptions are passed to Vodacom Service Provider and the Service Provider bill their customers for the value added service and would be reflected on their monthly invoice/statement as such. Cellfind process any related transaction charges via OBS against the subscribers' airtime. In the case where Cellfind don't bill for subscriptions, no subscription reminders are sent on behalf of the service provider. This will be confirmed by Vodacom.

2. Subscribers billed by Cellfind directly for subscriptions for this service are treated as conventional subscription services where monthly reminders are applied and automatically issued on a monthly basis to each subscriber. Transaction logs for subscription billing and subsequent monthly reminders will be made available to WASPA if required.

3. There is a complex process that determines the source of any activation and when/if billing will take place by the Service Provider. Since the complaint was received from Mr Janse van Rensburg we immediately identified that there were several issues involved that fell outside conventional protocol. There are conflicting information regarding the source of the activation that further obscure details of the succeeding activation by Cellfind although clearly identified by Vodacom Service Provider subscriber.

4. Since we are unable to explain the events around the activation we did concede that the activation most probably took place in error leading to the incorrect monthly subscription billing.

5. As soon as the incident came to my attention and full disclosure was made to the subscriber the total amount billed was refunded to Mr Janse van Rensburg.

6. We are aware that this incident resulted in the unintentional transgression of the provisions of the code of conduct and following the full refund we referred the subscriber directly to WASPA to ensure any additional comments and concerns may be addressed.

In conclusion, this product was launched commercially by Cellfind in 2004 servicing in excess of 1 million subscriber and I would invite WASPA, through its own records to confirm the impeccable track record held by Cellfind and its products.”

14. The complainant had the final word:

1. Cellfind seem to suggest that clients billed through Vodacom do not have to be informed? Or do they shift the responsibility to Vodacom, in which case my complaint sits with Vodacom? I would suggest that Cellfind has an “impeccable” record simply because clients are not aware that they are being charged.

2. The refund was done in real terms for monies charged 4 years ago. Cellfind could easily build a business model on collecting client funds, earning a return on it, and then refunding the original amount. Simply refunding me the money they charged 4 years ago means I lose out on returns over 4 years which they have kept for themselves! If I was incorrectly billed then surely Cellfind should not be profiting financially out of the error!

3. Cellfind's service requires a client to provide alternate phone numbers. These numbers would be contacted when you activate the emergency signal. If a client has not provided these numbers he/she is clearly not using the service (and most probably not aware of the service).

a. I would suggest that you request Cellfind to show you all the Vodacom accounts that they are billing and of those clients the ones who have not provided these numbers. Those clients clearly are not aware that they are being charged. It should not be the client's responsibility to find this error. I never provided these numbers, so Cellfind could easily have seen that I was not using the service (if they wanted to). Cellfind can be a lot more proactive in this, but it is in their interest not to notify these clients.

4. Cellfind did not direct me to WASPA, Vodacom did.

Point 2 and 3 are more pressing. I would be happy if we could resolve those two.”

Sections of the Code considered

The adjudicator has applied version 5.7 of the WASPA Code in respect of elements of the complaint relating to the affecting of the subscription as this is the version in force at the time that the subscription was initiated. The following sections of version 5.7 of the WASPA Code were considered:

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;

- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

The adjudicator has applied version 11.0 of the WASPA Code in respect of elements of the complaint relating to the affecting of the subscription as this is the version in force at the time that the refund was due to be paid. The following sections of version 11.0 of the WASPA Code were considered:

4.3.3. Refunds must not be unreasonably delayed.

Decision

15. The member acknowledges that it cannot find proof of subscription. Although the versions of the complainant and the member conflict in this regard, the adjudicator accepts the version of the complainant that there was in fact a recording proving he had not subscribed.
 16. There does not appear to be a specific sub-section of section 11.2 which is of application to a situation where no request was made to subscribe (as opposed to where a request for another non-subscription service led to a subscription). In this regard there is a disjuncture between version 11.0 of the Code which the complainant consulted in formulating the complaint, and version 5.7 of the Code which applied at the time that the subscription was affected.
 17. The member remains responsible for the acts of those it appoints to market the service on its behalf.
 18. The adjudicator finds that the member breached section 4.1.1 of version 5.7 of the WASPA Code in that it did not comply with the standards of conduct set out in that clause when subscribing the complainant to the subscription service.
 19. The adjudicator accepts that the manner in which the subscription was affected was irregular in terms of the member's procedures and that billing should have taken place through Vodacom. The failure to describe the service with sufficient clarity and failure to send reminder messages flows from this irregularity. The apparent lack of complaints lodged with WASPA regarding the service does provide an indication that there is not a more general problem.
 20. Nevertheless the member was as a matter of fact undertaking billing of the complainant and was required to comply with the attendant obligations. The irregularity has resulted in a consumer being out-of-pocket and inconvenienced.
 21. The member is found to have breached sections 11.1.3 and 11.1.8 of version 5.7 of the WASPA Code of Conduct.
 22. The notes to version 11.0 of the Code indicate with regard to clause 4.3.3 that a delay of 1 month would be unacceptable. Clearly the refund in this matter has been delayed for significantly longer than that. Even after the apparent confusion regarding the mechanism for the refund had been clarified the member took almost a month to make the payment.
 23. In complaint 9669 a WAPA member was found not have breached section 4.3.3 due, *inter alia*, that it had communicated to the complainant that there would be a delay. There is no evidence in the instant complaint of any attempt by the member to itself follow up on affecting the refund it had offered.
 24. The member is found to have breached section 4.3.3 of version 11.0 of the Code.
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Sanctions

25. With regard to the breaches of version 5.7 of the Code flowing from the subscription of the complainant in 2008, the following precedents and considerations were taken into account:

- 25.1. That the breaches appear on the basis of the facts presented to have flowed from an irregularity in the sign-up process undertaken through a call centre.
- 25.2. That there does not appear to be a pattern of complaints relating to subscription to the service. That is to say that – while there are clearly other complaints regarding the call centre subscription process published on the Internet – there have been no adjudications against the member in this regard under the WASPA process.
- 25.3. The length of time which has passed since the subscription was initiated.
- 25.4. The long line of precedent indicating the seriousness of a breach of this nature, which undermines public confidence in the WASP industry.

26. With regard to the breach of section 4.3.3 of version 11.0 of the Code, the following precedents and considerations were taken into account:

- 26.1. In complaint 8278 a WASPA member was found to have breached section 4.3.3 but a global sanction was imposed in respect of a number of breaches and it is not clear what sanction would have been imposed in respect of the delayed refund only.
- 26.2. In complaint 14532 a WASPA member was found to have breached section 4.3.3 but no specific sanction was imposed in respect of such breach.
- 26.3. In complaint 13379 a fine of R50 000 was imposed where a member had delayed a refund which an adjudicator had made. There were significant aggravating circumstances in this matter.
- 26.4. The length of the delay and the failure of the member to follow up on affecting the refund.
- 26.5. The general reputational damage done to the WASP industry through conduct of this nature.

27. In general the record of the member in respect of adverse adjudications shows that there has not been a formal complaint raised against it since 2008.

28. The following sanction is imposed:

- 28.1. In respect of the breaches of version 5.7 of the Code:
 - 28.1.1. The member is issued with a formal reprimand.
 - 28.1.2. The member is ordered to refund the complainant interest at the prescribed rate of 15.5%, calculated from the date on which each discrete deduction was made from the complainant's Vodacom account between the date of subscription and 4 November 2011 (date of refund). This should be paid in accordance with section 4.3.3 of the Code and the member is to bear the reasonable cost of determining the amount payable in interest to the satisfaction of the complainant.

To this end payment shall be accompanied by a schedule reflecting the relevant calculations.

- 28.2. In respect of the breach of version 11.0 of the Code the member is issued with a fine of R5 000 payable to the WASPA Secretariat.
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