



REPORT OF THE ADJUDICATOR

Complaint reference number:	17617
WASPA member(s):	Netsmart
Membership number(s):	0126
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2012-06-26
Date of the alleged offence:	N/A
Relevant version of the Code:	12
Clauses considered:	11.2.1, 11.2.5 & 14.3.14
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant in this matter alleged that he never subscribed to the service and also never received proof of his subscription, apart from apparently having replied "Yes", this being the reason for the complaint being escalated.

The Complainant later stated in response the SP's response that the terms and conditions are simply the SP's terms and that he requires proof of his contractual relationship.

Service provider's response

The SP provided a response whereby it furnished the Complainant with a detailed explanation as to how the subscription confirmation and double opt-in procedure work. This was further evidenced by API logs which illustrated the interaction with Vodacom's MESH platform.

The SP then in response to the Complainant's later complaint stated that:

"The complaint by the user was that they did not reply YES and therefore did not opt-in. This is taken from the user's initial complaint "I am telling you that I did NOT reply YES. They need to forward you that sms where I replied YES, then and only then do they have proof. "As shown in our response we provided the proof.

The user agreed to the terms and conditions that are present on all the landing pages by going through the double opt-in procedure. All terms & conditions are available on the landing pages."

Sections of the Code considered

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

The Complainant has failed to provide any sufficient content or any material for that matter to provide the Adjudicator with any sufficient information assisting him or her to make a decision in the Complainant's favour.

The Adjudicator therefore has no alternative but to concur with the SP's response in as far as it contended the actual subscription of the Complainant by way of API logs which illustrated the interaction with Vodacom's MESH platform.

It also seems clear that the Complainant in this matter altered his complaint once evidence was forthcoming regarding his opt-in.

On the basis of evidence submitted, there is however no proof to refute the SP's compliance with sections 11.2.1 and 11.2.5.

The Complaint is dismissed.