



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	18101
<b>WASPA member(s):</b>	PayPROFIT (Pty) Ltd (SP)
<b>Membership number(s):</b>	0009
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Service related
<b>Date complaint was lodged:</b>	2013-01-29
<b>Date of the alleged offence:</b>	N/A
<b>Relevant version of the Code:</b>	12.1
<b>Clauses considered:</b>	3.1.2; 4.1.1; 4.1.2; 14.3.14 & 14.4.1
<b>Relevant version of the Ad. Rules:</b>	N/A
<b>Clauses considered:</b>	N/A
<b>Related cases considered:</b>	N/A

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### Complaint

The Complainant in this matter alleged that the SP in this matter never provided the services as pertaining to the use of a SMS Short Code

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### Service provider's response

The SP in return furnished a response whereby it alleged that the Complainant never entered into an agreement with them due to their failure of signing the agreement.

The SP then went further and alleged that the Complainant did not act in accordance with the agreement.

Subsequent proof of documentation, including receipts, business cards, terms and conditions and subsequent communication were provided and attested to.

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## Sections of the Code considered

3.1.2. Members are committed to lawful conduct at all times.

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

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

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.

14.4.1. An adjudicator finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2.

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## 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 SP has gone through great lengths in providing a detailed analysis of events that lead to the cancellation of the service between itself and the Complainant.

The Complainant in this matter alleged that her SMS short code number purchased from the SP was discontinued ("switched off") by the SP without her knowledge.

She further also stated that she was not happy about the allegations levied against her to which the SP responded that she must reveal which allegations she is not happy with.

No response was forthcoming from the Complainant.

Section 14.3.14 of the Code makes it quite clear that the Adjudicator will decide whether there has been a breach of the Code, on the basis of the evidence presented.

The Adjudicator analysed the relevant information received from the SP and could not find any breach of the relevant sections, based on the evidence received.

However, the Adjudicator is not at liberty to rule on whether the withholding of the total payment made by the Complainant in this matter, in terms of the agreement

(one that was never signed), is necessarily in accordance with the Consumer Protection Act of 2008 insofar as it relates to refunds.

Section 14.4.1 states that an adjudicator, finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2.

Although it is not implied by the Adjudicator that the practise (withholding of full payment without having a signed agreement) by the SP is a breach of section 3.1.2, the Adjudicator does form the opinion that the Complainant should be informed of her right to address the validity or non-validity of the SP's practise with the relevant regulatory authority – the Consumer Commissioner in this instance.

Based however on the evidence submitted, or lack thereof by the Complainant, the Adjudicator cannot rule in favour of the Complainant.

The Complaint is therefore not upheld and subsequently dismissed.