



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	19132
<b>WASPA member(s):</b>	Celerity Systems (Pty) Ltd (SP)
<b>Membership number(s):</b>	0003
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Administration fees
<b>Date complaint was lodged:</b>	2013-02-07
<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, an IP, alleged that the SP in this matter acts unfair in terms of its agreement between itself and the Complainant.

The Complainant takes the stance that a certain clause in the SP's agreement which restricts payments to the IP if monthly contributions are less than R 100-00, is illegal and unlawful and amounts to fraud.

The Complainant accepted that he is bound by the terms and conditions but in his further responses levied the concern that formal resolve of this matter could benefit the public / community / customers at large.

He is also of the concern that WASPA's Code of Conduct has shortcomings in terms of this particular complaint raised.

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### Service provider's response

The SP in its response provided a very detailed version of its account of events and even went so far as to compile a comparative analysis between its administration fees and those of other SPs.

Further to its response, the SP even went so far as to proposing that it would match any better offer of administration fees to the Complainant by any of the SPs competitors.

The SP in its supplementary response also provided its interpretation of the Consumer Protection Act of 2008 and is of the opinion that its own terms and conditions are not in breach of either the Act or WASPA's Code of Conduct, and that the WASPA Code of Conduct in addition, as it stands at the time of the SP's response, does not pose any legal shortcomings.

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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.

13.1.1. Any promotional material for charitable and/or fundraising promotions must make it clear that network operator fees and administration fees will be deducted from amounts paid.

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 its own account of events and clearly addressed the complaint by stating its interpretation of the Code and Consumer Protection Act.

From his perspective, the Complainant felt aggrieved by the fact that the non-profit organisation he chairs, could not utilise funds donated by the public, who are under the impression that their money would be utilised in a way anticipated by them, if the total monthly amount of the IP (the Complainant in this matter) raised against the short code, totalled less than R 100-00.

The consideration offered by the Adjudicator in this matter is therefore subjected to both an objective and subjective approach.

A subjective approach from the view of the contributing public at large (fearing whether their money will be utilised for the intended purpose or not), and to a certain extent also subjective from the Complainant's point of view as a non-profit IP, and objective from the SP's administrative burden and cost in facilitating the short code.

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.

As to the subjective approach seen from the Complainant as an IP, the Adjudicator had to analyse the terms and conditions against sections 4.1.1 and 4.1.2 of the Code.

Section 4.1.1 states that 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.

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

In the opinion of the Adjudicator, the SP in this matter did not contravene any of these sections.

As to the subjective approach seen from the public's perspective, the Adjudicator had to review the IP's / Complainant's conduct against these same sections.

If the Complainant is of the opinion that his customers or donators are misled, then surely it is the IP / Complainant in this matter that is failing to comply with both sections 4.1.1 & 4.1.2.

The Adjudicator, seen from a cost effective and objective take on things, is also of the opinion that the SP in this matter is free to raise any money deemed fair and competitive insofar as it relates to its own administrative burden.

The SP, justified this by referring to section 13.1.1, a section it feels the Complainant in this matter surely overlooked or neglected sharing with his own customer / donators.

The SP also provided a cost comparative analysis in support of its administration fee.

It could therefore be assumed, seen from these perspectives, that the Complainant in this matter might have actually failed his own cause, by not fulfilling the

responsibilities expected from an IP, insofar it relates to a subjective and objective approach as should have been considered by him, when operating as a non-profit organisation / IP.

The Complainant also acknowledged that he entered into an agreement with the SP in this matter and further acknowledged that he would therefore be bound by the relevant terms and conditions of the agreement.

The Adjudicator is not insensitive to the plight of the Complainant in this matter, but is of the opinion that the Complainant only became sensitive to his own situation after he realised that the R 100-00 target was not met.

It is further the opinion of the Adjudicator that this issue should have been addressed at an earlier stage, prior to his entering into the agreement with the SP.

The Adjudicator has also taken note of the fact that the SP in this matter did provide the Complainant an alternative whereby he could take the matter further with the network providers.

The Adjudicator also took note of the SP reference to section 64(2) but is not at liberty to rule on whether this practise by the SP is in accordance with the Consumer Protection Act of 2008. Such dispute could be taken up by the Consumer Protection Commissioner.

The Adjudicator however does not find a breach by the SP of section 3.1.2 and does not deem a referral to the Commissioner necessary.

The Complaint is therefore not upheld and subsequently dismissed.