



## Adjudicator's Report

<b>Complaint reference</b>	25661
<b>WASPA member(s)</b>	ABSA Bank Ltd (0081)
<b>Complainant</b>	WASPA Secretariat
<b>Type of complaint</b>	Direct marketing messages
<b>Date complaint lodged</b>	2015-01-15
<b>Date of alleged offence</b>	Approximately 2015-01-01 and on 2015-02-14
<b>Relevant Code version</b>	13.1
<b>Clauses considered</b>	16.4, 16.8, 16.12, 16.13, 16.14
<b>Related cases considered</b>	None

### Complaint

The complainant is a WASPA employee who has received numerous messages from the SP (as many as 23 in a 2 week time period) calling on her to make a deposit into an account with the SP which the complainant reportedly closed over 4 years ago. The SP has persisted with its messages and the complainant lodged this complaint with WASPA alleging various breaches of the Code.

### Member's response

The SP initially responded with an undertaking to investigate the complaint further internally and to add the complainant to what the SP's representative referred to as its "Ultra Sensitive" list (a fairly odd designation as it suggests that the SP has other lists that allow for a degree of flexibility).

The SP reported back to WASPA within a day or two with feedback from its internal teams that there was an account that appeared to be in the complainant's name, albeit using what the SP's employee assumed is her maiden name. This doesn't seem to have been disputed and the complainant confirmed in her complaint particulars that she last maintained an account with the SP 4 years prior to this complaint arising.

The SP confirmed that the complainant was added to a list that would, presumably, preclude her from receiving marketing messages from the SP.

The complainant followed-up on 18 February that she had since received a further message from the SP on 14 February which stated as follows:

*Ons sien dat jou rekening onaktief is en uitstaande fooie het. Maak asseblief 'n deposito om sluiting te voorkom. Vir hulp besoek asseblief jou naaste tak.*

## Sections of the Code considered

This complaint is governed by version 13.1 of the Code which is a redraft of the Code. This complaint references the following sections of the Code:

### ***Right to restrict unwanted direct marketing***

*16.4. Any member authorising, directing or conducting any direct marketing must implement appropriate procedures to facilitate the receipt of a demand from a person who has been approached for the purposes of direct marketing to desist from initiating any further communication (an "opt-out request").*

...

### ***Prohibited times for direct marketing***

*16.8. Unless a consumer has expressly or implicitly requested or agreed otherwise, a member may not engage in any direct marketing directed to a consumer on:*

*(a) Sundays, public holidays contemplated in the Public Holidays Act, 1994;*

*(b) Saturdays before 09:00 and after 13:00; and*

*(c) all other days between the hours of 20:00 and 08:00 the following day.*

...

### ***Rights of consumers regarding direct marketing***

...

16.12. *Any communication for the purpose of direct marketing must contain the details of the identity of the sender or the person on whose behalf the communication has been sent and an address or other contact details to which the recipient may send a request that such communications cease.*

### ***Disclosure of source of contact details***

16.13. *Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.*

### ***Confirmation of opt out***

16.14. *Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the customer has been opted out, and the customer must not be charged for this message.*

## **Decision**

The clauses the complainant cited focus on "direct marketing" messages. The Code defines "direct marketing" in clause 16.2 as follows:

16.2. ***"Direct marketing"*** means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or (b) requesting the person to make a donation of any kind for any reason.

The messages the complainant reportedly received (which were presumably the same as the one received on 14 February) do not appear to be direct marketing messages. They relate to operational concerns flowing from the complainant's dormant account and charges which the SP contends are due in respect of that account.

The clauses which the complainant cited and which she contends were breached relate to direct marketing activities and, accordingly, are not relevant to the messages the SP has reportedly been sending to the

complainant.

Whether the messages are justified is outside the scope of this complaint (although 23 reminder messages in a 2 week time period appears to be excessive).

### *Conclusion*

The complainant has not established a breach of the clauses she cited.

### **Sanctions**

I therefore dismiss this complaint.