



## REPORT OF THE APPEALS PANEL

<b>Complaint reference number:</b>	25771
<b>WASPA member(s):</b>	MTN Internal WASP Service
<b>Membership number(s):</b>	0035
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Unsubscribe Request
<b>Date complaint was lodged:</b>	20 January 2015 (informal); 29 January 2015 (formal)
<b>Date of the alleged offence:</b>	22 January 2015 – 29 January 2015
<b>Relevant version of the Code:</b>	13.1
<b>Clauses considered:</b>	15.25, 24.17, 24.30

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### Introduction

Clause 15.25 of version 13.1 of the WASPA Code (the version of the Code in force at all material times related to this matter) requires that:

***The processing of any service termination request must not be unreasonably delayed and must be honored within two working days (48 hours).***

In the matter under appeal, sometime prior to 12 January 2015 a consumer requested to be unsubscribed from a service billed for through the member. On 12 January 2015, the consumer followed up to be advised on the outcome of her complaint.

On 20 January 2015 WASPA lodged an informal complaint against the member relating to the member's failure to unsubscribe the consumer.

On 29 January 2015, this was escalated to a formal complaint as no response had been provided to WASPA in relation to the informal complaint.

On 29 January 2015 the consumer was unsubscribed from the service.

### **Adjudicator's decision**

The adjudicator upheld a complaint of breach against the member for its failure to comply with section 15.25 of the Code.

The adjudicator imposed a fine of R10 000 for the above breach, plus a suspended fine of R100 000 if the member breached section 15.25 again within 12 months or if the member ignored a WASPA complaint again, whether formal or informal.

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### **Grounds of appeal**

In its appeal, the member does not dispute the adjudicator's finding that the consumer was not unsubscribed within 48 hours of making the initial unsubscribe request, but avers that the consumer was not billed for the service at any stage after 8 December 2014.

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### **Sections of the Code considered**

Section 15.25: *The processing of any service termination request must not be unreasonably delayed and must be honored within two working days (48 hours).*

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### **Findings of the Appeal Panel**

1. The Appeals Panel concurs with the finding of the adjudicator that section 15.25 was breached.
2. The Appeals Panel has noted that the grounds of the appeal lodged by the member are relevant to assessing the reasonableness of the sanction imposed by the Adjudicator.

3. With regards to sanction, the Appeals Panel notes that the adjudicator found the member's failure to deal with the informal complaint process to be serious. It appears that it was the member's "**lackadaisical**" attitude towards dealing with the complaint that resulted, at least partially, in the imposition of the R100 000 suspended sanction which would be triggered "**if the WASP is found to have ignored a complaint**".
4. Ignoring a complaint is a potential breach of section 24.17 which provides that: "**WASPA will forward the complaint to the member concerned. The member has five working days to effect an appropriate remedy and inform WASPA thereof**".
5. In the view of the Appeals Panel the adjudicator should have referred back his or her concerns regarding a potential breach of section 24.17 to WASPA in accordance with the provisions of clause 24.30 which provides that "**[i]f, during the investigation of the complaint, an adjudicator identifies potential breaches of clauses of the Code of Conduct which were not specified in the complaint, the adjudicator may not rule on those clause but must instead refer those potential breaches back to WASPA. WASPA may lodge a new complaint against the member covering those clauses**".
6. Insofar as the narrow breach of section 15.25 is concerned, the Appeals Panel finds no basis for interfering with the fine of R10 000 imposed against the member, including in light of the fact that the consumer does not appear to have been billed during the period of time between making her initial unsubscribe request and actually being unsubscribed.
7. The appeal against a finding of breach of section 15.25 cannot succeed, however, the suspended sanction of R100 000 is set aside and the Appeals Panel replaces the findings and sanctions of the adjudicator with the following findings and sanction:
  - 7.1 The member is held to have breached section 15.25 and is fined R10 000 for such breach.

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<sup>1</sup> Adjudication Report p3.

<sup>2</sup> Adjudication Report p3

- 7.2 The question of whether the member also breached section 24.17 is referred back to WASPA for further consideration including as to whether a further complaint should be instituted against the member.
8. As the appeal has been partially successful and partially unsuccessful, 50% of the appeals fee is to be refunded to the member.