



REPORT OF THE APPEALS PANEL

Complaint reference number:	25839
WASPA member(s):	MTN Internal WASP Service
Membership number(s):	0035
Complainant:	Consumer
Type of complaint:	Unsubscribe Request
Date complaint was lodged:	12 January 2015
Date of the alleged offence:	3 December 2014 – 7 March 2015
Relevant version of the Code:	13.1
Clauses considered:	15.14

Introduction

This complaint concerned alleged unsolicited messages being sent to the complainant's SIM which was used in alarm system during the period December 2014 until March 2015. The complainant placed the alarm system's SIM card into a mobile phone to identify the source of the messages. All of the messages appeared to come from a number 34471. That short code appeared to be controlled by the member. The complainant alleged sending STOP commands to the short code to no avail. The complainant also alleged that various other attempts to address the matter with the member had been unsuccessful. The complainant questioned where the member could have received his alarm system SIM number from.

The complainant alleged that his alarm system sends out a message when there are "**alarms, mains failures and when unauthorised numbers try to access the unit**". It appears that, for each unsolicited message received by the complainant's alarm system, one further SMS would be sent by the complainant's alarm system saying "**the following number tried to gain access to your unit**". The complainant provided a lengthy message log showing up to ten such messages being sent each day between the 3rd of December 2014 and the 4th of March 2015. It appears that, for each such message, the complainant was billed.

In his complaint communication of 12 January 2015 the complainant stated that **“Every day 5 spam messages are sent to this number. This results in 10 SMS’s being sent – which I have to pay for”**.

It appears to have been common cause from the undisputed submissions of the parties that:

- the complainant received a number of unsolicited SMS’s;
- the complainant experiencing difficulties unsubscribing from the messages;
- the sending messaging system was incorrectly configured resulting in unsolicited direct marketing messages being sent to the complainant; and
- the sender was having a problem with the operation of its unsubscribe mechanism.

Adjudicator’s decision

The Adjudicator upheld a complaint of breach against the member and found the member had breached section 5.14 of the Code which requires members to have a procedure for receiving and responding to complaints within a reasonable period of time.

The Adjudicator referred back potential breaches of other sections to the WASPA Secretariat regarding where the complainant’s SIM number had been obtained and why the “STOP” command had failed to work. Those questions are accordingly not before the Appeals Panel.

Grounds of appeal

The member appealed to WASPA by claiming (at paragraphs 2.1 to 2.4 of its appeal) that the “MTN Play” service is not a service of the member’s itself (in other words it is alleged by the member that MTN Play is not a service of MTN Internal WASP Service – the member in question - but is rather a service of MTN, the Network Operator).

The member appealed further that the short code 34771 has been incorrectly linked with the member and that it should in fact be linked with MTN Play.

Without conceding any responsibility for the facts that gave rise to the complaint, the member alleged (at paragraph 2.5 of appeal) that **“the MTN Play system was incorrectly configured, resulting in an auto-response of another direct marketing message to the subscriber. This has since been rectified and MTN Play has not experienced further problems with the opt-out option.”**

It appears from the facts that the member was able to successfully investigate and resolve the matter with MTN Play.

At paragraph 3.6 of its appeal, the member stated as follows:

In respect of the delay in the handling of the Complaint, IWS acknowledges further that there has been a general delay in responding to complaints in accordance with the procedural requirements of the Code.

The member cited several reasons for these delays including staff turnover and restructuring.

Sections of the Code considered

5.14 Members must have a procedure allowing complainants to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

Findings of the Appeal Panel

The Adjudicator noted that the complaint was lodged on 12 January 2015 and that the unsubscribe request was only actioned on 10 March 2015.

It appears to the Appeals Panel from the evidence in the complaint that the complainant lodged his complaint with WASPA on 12 January 2015 and that an informal complaint notification was subsequently sent by WASPA to the member on 29 January 2015. The member failed to provide any response to WASPA, resulting in a formal notice being sent by WASPA to the member on 11 February 2015. On 6 March 2015 the matter was assigned to the Adjudicator and the complainant was notified accordingly by WASPA. It appears from the message logs produced by the complainant that the last unsolicited message was sent on or around 7 March 2015.

It should be noted that the Adjudicator did not make any decision regarding the alleged unsolicited sending of messages by the member, but upheld a narrow complaint of breach of section 5.14 of the Code which provides that:

Members must have a procedure allowing complainants to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

Irrespective of whether the short code 34771 was incorrectly linked to the member, it is beyond debate that repeated complaint notifications were sent by WASPA to the member over a period of several weeks before the member actively responded to them. In the opinion of the Appeals Panel, this time period to respond was unreasonable. As such, we find no basis to interfere with the Adjudicator's narrow finding of breach of 5.14.

Section 24.59 of version 13.1 of the Code (which is replicated by section 24.63 of the latest version 14.1 of the Code) provides that ***"On the basis of the evidence presented, the panel will decide whether there has, in fact, been a breach of the Code. If the panel determines that there has, in fact, been a breach of the Code, then the panel must review the sanctions recommended by the adjudicator. The panel may maintain the same sanctions recommended by the adjudicator, or may determine such other sanctions, as it deems appropriate given the nature of the breach and the evidence presented"***. [Own emphasis added].

Having reviewed the facts and determined that there has, in fact, been a breach of the Code, the Appeals Panel has also reviewed the sanctions imposed by the Adjudicator. The Appeals Panel feels that the sanctions are generally appropriate but finds further that the member's failure to respond to the complaint within a reasonable period of time resulted in the complainant incurring additional and unnecessary message costs after 29 January 2015 and until 7 March 2015. Had the member responded sooner and address this matter, it would have been able to identify the source of the unsolicited messages and this would have enabled the matter to have been resolved more expeditiously.

As such, the Appeals Panel upholds both the findings and sanctions imposed by the Adjudicator but supplements the sanctions by imposing an additional sanction that the member reimburse the complainant the sum of the messaging charges incurred by the complainant from 29 January 2015 until 7 March 2015 as a result of the continued messaging from 34471 to the complainant's alarm SIM.

The appeals fee is forfeited.