

WASPA appeals panel
Complaint 7333/7334

REPORT OF THE APPEALS PANEL

Date: 12 July 2011

Appellant and Service Provider (SP): Smartphone t/a Smartcall

Complaint Number: 7333/7334

Applicable versions: 7.4

1. BACKGROUND TO THE APPEAL

1.1 This appeal concerns a complaint lodged on 23 July 2009, by an individual against Smartcall.

1.2 The SP is a South African company and an affiliate member of WASPA.

1.3 The complaint relates to customer support.

1.4 It was agreed that the two cases 7333 and 7334, relating to the same complaint, could be treated as a single appeal.

1.5 The complaint, the findings of the Adjudicator, the SP's response to and appeal against the complaint, are fully recorded in the case files provided to this appeals panel, and as these are, or will be, publicly available on the WASPA website, they will not be repeated in full in this appeal panel's report.

2. CLAUSES OF THE CODE CONSIDERED

2.1 The complaint relates to alleged breaches of the following sections of the Code, which reads:

2.1.1 **Section 4.1.6.** Members must have a complaints procedure allowing their customers 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.

2.1.2 **Section 4.1.7.** Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

- 2.1.3 **Section 4.1.8.** Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

2.2 In this appeal, the panel will be guided also, by the general provisions and purpose of the Code:

- 2.2.1 **Section 1.2.** The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services.

- 2.2.2 **Section 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.

3. FINDINGS AND DECISIONS OF THE ADJUDICATOR

3.1 Finding of the Adjudicator

The Adjudicator stated: “I have taken into account the complainant’s frustration at the amount of charge and lack of assistance in response to her queries about it to each of Vodacom and the SP. On the face of it, there has been a transgression of sections 4.1.6 to 4.1.8 of the Code, since the complainant was not able to report her complaint to her satisfaction or as required under the Code.”

3.2 Sanctions

In giving sanctions, the Adjudicator stated the following:

“The SP is directed to pay a fine in relation to the failure to comply with the provisions of sections 4.1.6 to 4.1.8 in the amount of R20,000 within 10 days of the date of notice of the finding of this adjudication.”

4. GROUNDS OF APPEAL

4.1 Grounds of appeal for complaints 7333/7334:

4.2 The Appellant stated in its opening the following:

- 4.2.1 “For clarity purposes Smartcall Technology Solutions and Smartphone trade independently of each other. They are registered as separate companies and have acquired independent contracts with the networks and WASPA. If both companies were of the same group then we would not be required to sign independent contracts. Both companies have independent services and call centers. Smartphone is predominantly a prepaid Service provider and offers services which enhance their prepaid offering.”

- 4.2.2 “Vodacom obviously issued the customer with the incorrect customer care information which caused the aggravation. Smartphone cannot be held liable for the instructions as this is out of their control. Smartphone has a no nonsense policy and ensure that all customer care queries are dealt with effectively. Their customer care hours are longer than that prescribed by the networks.”
- 4.3 In appealing the various findings, it defended its stance on the alleged breaches of the various sections of the code by stating the following:
- 4.4 “**Section 4.1.6.** The complaint was only brought to Smartphone attention through WASPA and was dealt with expediently.”
- 4.5 “**Section 4.1.7.** Customer support is available easily. The complainant is complaining about a Customer Care division that Smartphone once again has no control over. Smartphone has a call centre that operates over the hours that the networks stipulate. A call centre with a toll free number and an email option for complaints are accessible. All the required information is on our website and on all advertising.”
- 4.6 “**Section 4.1.8.** Complainant once again did not call our call centre however our call centre does function correctly and we offer subscribers a toll free number.”

5. FINDINGS OF APPEAL PANEL

5.1 Version of the Code

- 5.1.1 The complaint was made on 23 July 2009. Version 7.4 of the Code, in use from 17 June 2009 to 13 October 2009, applies.

5.2 Finding

- 5.2.1 This Panel has reviewed both the Adjudication and the Appeal thereto.
- 5.2.2 In reviewing these, the Panel has found that the number dialled by the Complainant was in fact a Smartcall Technology Solutions (hereinafter referred to as “STS”) telephone number and not a Smartphone t/a Smartcall number.
- 5.2.3 The Panel also concurs that these two entities are indeed operating separate from one another and are indeed registered as two independent members, offering different services, with different call centres.
- 5.2.4 In accessing the various contact numbers offered by the Appellant, the Panel concluded that **its** contact service was available without improper delay and did in fact yield an answer.
- 5.2.5 It would therefore be unfair to criticise and penalise the Appellant due to an error on behalf of the network.

5.2.6 **The ruling based on sections 4.1.6, 4.1.7 and 4.1.8 is overturned.**

5.2.7 However, it is advisable that the Appellant informs the various network operators of these mistakes of identity and also informs them of its call centre numbers to avoid similar cases of mistaken identity.

5.2.8 **Adjudications 7333 and 7334 are therefore overturned.**

5.2.9 The cost of appeal is refundable.