



Report of the Adjudicator

Complaint number	#59698
Cited WASPA members	Hyvemobile (1518)
Notifiable WASPA members	Not applicable.
Source of the complaint	Public
Complaint short description	Unauthorised service charges
Date complaint lodged	2023-05-12
Date of alleged breach	2023-03-08
Applicable version of the Code	17.4
Clauses of the Code cited	4.2, 5.4, 5.10, 5.12, 5.13, 5.14, 15.3, 15.9, 15.10, 15.11, 15.12, 15.13, 15.14, 15.15, 15.16, 15.17, 15.18, 15.19, 15.19A, 15.20, 15.20A , 15.22, 15.23, 15.28, 15.29, 15.30, 15.31
Related complaints considered	59697 and 59699
Fines imposed	None.
Other sanctions	Not applicable.
Is this report notable?	Not notable.
Summary of	Not applicable.

Initial complaint

1. The Complainant provided a commissioned affidavit setting out his complaint.
 2. The Complainant alleged that on or about 2023-03-08 he had purchased R150.00 airtime from Cell C mobile network services ("Cell C") and had noticed that the amount had disappeared without him having used the airtime.
 3. The Complainant stated that he had been subscribed to 31 different services, some of which were duplicates, belonging to 6 different wireless application service providers.
 4. The Complainant alleged that he had no knowledge of these services he was subscribed to, nor did he use these subscription services at any time. Furthermore, it was complained that the Complainant never subscribed to the subscription services in question.
 5. One of the wireless application service providers was the Member, to whose subscription services the Complainant alleged he had not subscribed to ("the service").
 6. The Complainant disputed the proof submitted by the Member of his subscription to the service and alleged that the Member may be intentionally defrauding customers, either directly or by way of malware.
 7. The Complainant further submitted that he did not have to prove his position, as the onus of proof in civil matters lies with he who alleges.
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Member's response

8. The Member stated that the subscriptions which formed the basis of the complaint were authorised through a marketing channel called SAT Push which is a SIM-based messaging system managed by Cell C, and used to promote these services to the Cell C customer base.
9. The Member explained that the system operated through the embedded SIM toolkit, which sent push messages to customers with text advertisements, allowing them to accept or decline offers, and upon acceptance, presented a double opt-in confirmation message, with Cell C then generating an authorisation token transmitted via API to the Member's platform for subscription creation.
10. The Member confirmed that the double opt-in authorisation takes place outside of their systems and can be verified by Cell C. Additionally, the Member clarified that they did not control the SAT Push system used to authorise the subscriptions related to the complaint, as this system was managed entirely by Cell C.

11. The Member provided logs relating to the Member's responses to the Complainant's requests and emails and confirmed that they had provided the Complainant with a full refund after timeously unsubscribing him from the Member's service.
12. The Member confirmed that the Complainant was billed for the service by Cell C, with the subscription fee deducted from the Complainant's airtime. It was also clarified that both Cell C and the Member share in the revenue generated from the service.
14. The Member denied that their logs were fabricated and stated that the logs containing billing and subscription data related to the customer's MSISDN were directly downloaded from their dashboard system and were not fraudulently created in any manner or form and put the Complainant to proof thereof.
15. The Member acknowledged that they considered malware as a potential factor for the subscription, given the Complainant's dispute regarding subscription authorisation and the number of subscriptions on the Complainant's account. However, the Member clarified that they did not have any evidence to support this possibility.
16. The Member confirmed that they had taken reasonable steps to prevent their networks and systems from being used fraudulently, and these measures included compliance with WASPA's published best practices for fraud prevention.
17. The Member stated that customer consent to the terms and conditions was confirmed when the customer took action to subscribe to the service, either by clicking 'accept' on the SAT Push message or by entering the customer's MSISDN in the empty box on the subscription page. Furthermore, they alleged that the Terms and Conditions were provided throughout the service's subscription flow. They further cited the introduction of the Terms and Conditions which indicated that by accessing or subscribing to receive the content, the customer agreed to be bound by the Terms and Conditions outlined therein.
18. The Member illustrated that telephonic support was provided via a South African telephone number and operates effectively. The Member affirmed that the Complainant had the option of speaking to a call centre consultant or leaving a message for one is clearly presented to the caller and is accessible during business hours. The Member reiterated that there was an established procedure for customers to lodge complaints regarding the service.
19. The Member confirmed that they maintain records of the source of the service initiation request and all subsequent interactions with the customer for all subscription services. The Member further confirmed that these records were accessible to the customer upon request and are retained for a minimum of three years after the customer terminates the service.
20. The Member asserted that according to the SAT Push data contained in the logs, the data showed that the Complainant pushed the accept button on Screen 1 (the confirmation page) followed by the accept button on Screen 2 to subscribe to the service. The Member emphasised that the confirmation step was not automated or concealed from the customer in any way.

22. The Member specified that the service was not initiated through a webpage but via SAT Push marketing messages sent by Cell C to its customers, thus rendering numerous clauses of the Code inapplicable as they pertain to different initiation methods. They emphasised that the interpretation of the Code led them to conclude that these clauses are not relevant to subscriptions initiated through SAT push.
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Complainant's response

24. The Complainant stated that despite numerous appeals and demands for a detailed billing of their prepaid account, Cell C consistently declined to provide that information.
 25. The Complainant highlighted that The Member uses the term 'SAT Push,' which is undefined and not found in the Code.
 26. The Complainant also expressed dissatisfaction with the Member's response, asserting that it failed to address the numerous issues raised in his submission, including how he became subscribed to the service, the nature of those service, and whether he used them.
 27. The Complainant noted the absence of evidence regarding the subscription or usage of the alleged service.
 28. Furthermore, the Complainant questioned why the Member refunded him, suggesting that the refund implies unauthorised billing.
 29. The Complainant also argued that the Member's response relies on hearsay rather than independent knowledge, leading to obfuscation of the subscription process and absolution of responsibility.
 30. Ultimately, the Complainant questioned the assumption that the subscription process controlled by Cell C was operated lawfully and challenged the validity of data generated by a computer system.
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Member's further response

31. The Member highlighted Cell C's double opt-in process for all subscription services, requiring confirmation twice before subscription creation. The Member alleged that evidence from the logs provided confirmed the Complainant's subscriptions via SAT Push.
 32. The Member also confirmed that they had sent the Complainant welcome and reminder SMS messages sent post-subscription and offered refunds upon customer dissatisfaction.
 33. The Member clarified authorisation for billing but emphasised willingness to refund in good faith.
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Sections of the Code considered

34. The following sections of the WASPA Code of Conduct (“the Code”) are considered, and read as follows:

“4.2 Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

4.11 Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, including:

(a) complying with WASPA's published best practices for fraud prevention; and

(b) ...

(c) reporting any fraudulent activity identified on their networks or systems to WASPA within a reasonable period of time.

5.4. Members must have honest and fair dealings with their customers.

5.10 Whenever a customer is asked to consent to the terms and conditions of a service, it must not be assumed that the customer consents by default; a customer must take a specific action to confirm consent. (Example: A consent tick-box must be empty when presented to the customer, and the customer must click on the tick-box to indicate consent.)

5.12 Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.

5.13 The option of speaking to a call centre consultant (or leaving a message for a call centre consultant) should be obvious to the caller and available during business hours.

5.14 Members must have a procedure allowing 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.

15.3 For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

15.9 The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

15.10 For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

(i) The customer's mobile carrier may implement the confirmation step.

(ii) The member can provide the customer with a “confirmation page”.

(iii) The member can send a “confirmation message” to the customer. The customer must not be charged for the confirmation message.

- 15.11 A confirmation page must contain the following information:
- (a) the name of the service,
 - (b) the pricing information,
 - (c) a customer support number,
 - (d) instructions for confirming the initiation of the subscription service, and
 - (e) a link to any applicable terms and conditions.
- Additional information about the service may also be included, provided it follows the above information.
- 15.12 For all subscription services initiated by the sending of an SMS, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:
- (i) The customer's mobile carrier may implement the confirmation step.
 - (ii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.
- 15.13 A confirmation message must contain only the following information, in this order:
- (a) the name of the service,
 - (b) the pricing information,
 - (c) a customer support number,
 - (d) instructions for confirming the initiation of the subscription service, and
 - (e) (optionally) additional information about the service.
- 15.14 For all subscription services initiated via USSD, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:
- (i) The customer's mobile carrier may implement the confirmation step.
 - (ii) The member can present the customer with a confirmation step via USSD.
- 15.15 The confirmation step must present the following information, in this order:
- (a) the name of the service,
 - (b) the pricing information,
 - (c) a customer support number, and
 - (d) instructions for confirming the initiation of the subscription service.
- 15.16 The option to unsubscribe must be listed in the top-level menu of any USSD-initiated subscription service, under the heading "unsubscribe".
- 15.17 Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. The message must be provided in one of two ways:
- (i) The customer's mobile carrier may send the message.
 - (ii) The member can send the "welcome message". The customer must not be charged for the welcome message.
- 15.18 The "welcome message" must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:
- (a) (optionally) the word "welcome" at the beginning,
 - (b) confirmation that the customer has subscribed to a service,

- (c) the name of the service,
 - (d) the pricing information,
 - (e) a customer support number,
 - (f) instructions for terminating the service, and
 - (g) (optionally) a link to a WAP landing page or a web page describing the service.
- 15.19 A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and at least once per calendar month thereafter. The message must be provided in one of two ways:
- (i) The customer's mobile carrier may send the message.
 - (ii) The member can send the "reminder message". The customer must not be charged for any reminder message.
- 15.19A For subscription or notification services for which the successful billing in one calendar month reaches R500, an additional "reminder message" must be sent to the customer at the point the billing reaches this threshold. The customer must not be charged for this reminder message.
- 15.20 The "reminder message" must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must contain only the following additional information:
- (a) (optionally) the word "reminder" at the beginning,
 - (b) the name of the service,
 - (c) the pricing information,
 - (d) an indication that the customer has already reached the threshold (if this is an additional reminder message),
 - (e) a customer support number,
 - (f) instructions for terminating the service, and
 - (g) (optionally) a link to a WAP landing page or a web page describing the service.
- 15.20 A Members must not send reminder messages between 21:00 and 07:00.
- 15.22 Any instructions for terminating a subscription or notification service must be clear and easy to understand and should be readily available to customers.
- 15.23 Any instructions for terminating a subscription or notification service must not be phrased in such a manner as to result in the customer inadvertently terminating services offered by any other service provider.
- 15.28 If technically feasible, a recipient must be able to terminate a subscription or notification service by replying 'STOP' to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.
- 15.29 If a 'STOP' reply could pertain to multiple services, either all services must be terminated upon receipt of the termination request, or the customer must be given a clear choice of services to terminate.
- 15.30 If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the unsubscribe request as if the word 'STOP' had been used.

15.31 Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message”.

Decision

35. The onus of proof was on the Complainant, as he was the one alleging in the matter. However, the Complainant had failed to furnish adequate evidence to substantiate many of his claims.

36. The Complainant had stated that he did not knowingly subscribe to any of the Member's subscription services. However, the Member had provided logs with proof of the initial subscription request for each service which came from the Complainant's mobile number. No further evidence was presented to refute the accuracy of the subscription logs provided by the Member.

Clause 4.2 and 5.4

37. The Member immediately unsubscribed the Complainant from their service, provided proof of the Complainant's subscription, and refunded the Complainant in full. There is no evidence that the Member acted in an unprofessional or unfair manner, and in fact provided a full refund to the Complainant as an act of good faith. Therefore, the Member is not found in breach of clause 4.2 or clause 5.4 of the Code.

Clause 4.11

38. On a balance of probabilities, it is highly unlikely that the Complainant subscribed to 31 services, and the discrepancy between the Complainant's claimed lack of subscription and the existence of numerous subscriptions with numerous members suggests a potential issue with Cell C's subscription practices rather than the Member's. The subscriptions in question were made via the SAT Push channel managed by Cell C, and the Member only purchased the delivery from Cell C after the Complainant had subscribed. The double opt-in authorisation that created a subscription took place outside of the Member's systems and the Member was unable to activate and/or charge for the subscription without the token provided after the double opt-in from Cell C. Additionally, the Member did not have control over the system as it is managed entirely by Cell C. Therefore, there is the possibility that there may have been fraudulent activity, but this was prior to the Member's interaction with the Complainant. Furthermore, the Member was in a direct contractual relationship with Cell C but did not have direct control over customer subscriptions or the subscription flow. Therefore, the Member is not found in breach of clause 4.11 of the Code.

Clause 5.10

39. Cell C exclusively managed all aspects of the service's subscriptions flows and marketing materials in line with ICASA regulations. The Terms and Conditions for the service was available to the customer at each point of the subscription journey and ensured that their customers must consent to the Terms and Conditions by clicking on accept on the SAT push message. Furthermore, the customer was provided with a welcome message illustrating the Terms and Conditions of the service. Consequently, the Complainant would have had to take a specific action to accept the service and would have been made aware of the Terms and Conditions. Therefore, the Member is not found in breach of clause 5.10 of the Code.

Clause 5.12

40. There is no evidence that the Member failed to provide telephonic support or that the support number provided by the Member was not functioning correctly. The Member provided the Complainant with a South African customer care number and email address. Furthermore, the Complainant had the option of speaking to a call center during business hours. Therefore the Member is not found in breach of clause 5.12 of the Code.

Clause 5.13 and 5.14

41. All customer queries which relate to the service on Cell C Digital are directed to Cell C customer care. Cell C forwards all the queries, cancellation, and refund requests related to the Member's service to the Member's allocated business email. The Member then investigates the matter and provides feedback to Cell C where applicable. Cell C customer care then resolves the query and provides feedback to the customer where appropriate. Furthermore, the option of speaking to a call center consultant (or leaving a message for a call center consultant) was available to the Complainant and was available during business hours. There was also a procedure allowing the Complainant to lodge complaints regarding the service. Therefore, the Member is not found in breach of clause 5.13 and clause 5.14 of the Code.

Clause 15.3

42. There was no evidence that the Member did not keep records of all subscription and notification services and all subsequent interactions with the customer, nor that these records were not made available to the Complainant by the Member in question, on request. The Complainant requested records from Cell C, but not from the Member, and therefore the Member did not fail to provide the Complainant with such. Furthermore, the Member provided the Complainant with their subscription log files. Consequently, the Member is not found in breach of clause 15.3 of the Code.

Clause 15.9

43. According to the SAT Push data contained in the logs provided by the Member, it was indicated that the Complainant pushed the accept button on Screen 1 (the confirmation page), followed by the accept button on Screen 2 to subscribe to the service. The confirmation step was not automated or done in such a way that the process was hidden from the Complainant. No further evidence was provided to the contrary. Therefore, the Member is not found in breach of clause 15.9 of the Code.

Clauses 15.13, 15.14, 15.15, 15.16

44. SAT Push is an entirely different subscription method to USSD as it is not a USSD bearer, it is initiated by the MNO, and is a pop-up notification on the user's handset. Therefore, the Member is not found in breach of these clauses as they are not applicable to the subscription method which subscription flow was controlled entirely by Cell C. I therefore cannot make a finding in respect of the alleged breach of these clauses of the Code and the complaint in relation to these clauses is dismissed.

Clauses 15.17 and 15.18

45. Cell C sends the customer a confirmation message, confirming their successful subscription to the Member's service and subsequently sends the customer a welcome message. The welcome message includes essential details such as subscription confirmation, service name, pricing information, customer support contact, and instructions for unsubscribing. There was no proof that the Complainant did not receive the confirmation and welcome message as per usual. Consequently, the Member is not found in breach of clauses 15.17 and 15.18 of the Code.

Clauses 15.10, 15.11, 15.12, 15.22, 15.23, 15.28, 15.29, and 15.30

46. It is noteworthy that the Member sent the Complainant a confirmation message once he had subscribed to the service, as well as subsequent reminder messages. In addition, Cell C and the Member provided easily accessible and clear unsubscribe mechanisms for their customers to follow to unsubscribe from the service, and the welcome and reminder messages also included an unsubscribe link.
47. Nonetheless, there was no evidence provided regarding the Member's breaches of these clauses of the Code which deviate from the Member's standard business practices. Furthermore, the service was not initiated by USSD. SAT Push is a pop-up notification that is not a SMS or RCS message and did not fall within the scope of these clauses of the Code. I therefore cannot make a finding in respect of the alleged breach of these clauses of the Code and the complaint in relation to these clauses is dismissed.

Clauses 15.19, 15.19A, 15.20 and 15.20A

48. These clauses are not applicable as the subscriptions were under the allotted amount of R500.00 and the Complainant had already been refunded before this formal complaint was sent for adjudication. Furthermore, reminder messages were sent to the Complainant by the Member as further illustrated by the citing of clause 15.20A of the Code. There was no proof provided that the Member sent reminder messages to the Complainant between 21:00 and 07:00 in breach of clause 15.20A of the Code. Furthermore, there was no proof provided by the Complainant that the reminder messages sent by the Member were not compliant with the Code, as they have the necessary information sent to the customer in the usual course of business. Therefore, the Member is not found in breach of clause 15.19, 15.19A, 15.20 and 15.20A of the Code.

Clauses 15.31

49. The Member sent a message to the Complainant confirming that the service had been terminated, and the Complainant was not charged for this message. Therefore, the Member is not found in breach of clause 15.31 of the Code.
50. In conclusion, the complaint is dismissed.

Sanctions

51. No sanctions are imposed.

Matters referred back to WASPA

52. The complaint is referred to WASPA to deal with:
- 52.1 the concerns raised in relation to Cell C's, and/or any other applicable mobile network operators' control over the services subscription flows and its compliance with the Code;
and
- 52.2 the Code's amendment to better regulate SAT Push pop-up notifications.