

## Press Distribution Charter

### Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/217902/270112

Date First Issued:

27<sup>th</sup> January 2012

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

5<sup>th</sup> March 2012

#### Independent Arbitration Decision

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Retailer A, and Smiths News, Newport, NP10 8BE. This complaint concerns Smiths News's alleged refusal to allow credit for newspaper un-solds thereby failing to meet Standard 6.11 of the Press Distribution Charter.

On 18<sup>th</sup> January 2012 Retailer A reported to Smiths News that part of his daily supply of newspapers was missing, believed stolen, and requested that the missing titles be supplied as a claim. As a result, Smiths News sent a second delivery to Retailer A comprising: 7 Daily Express, 15 Daily Mirror, 3 Daily Star, 2 Daily Telegraph, 3 I Daily, 1 Independent, 1 Racing Post, 1 Racing Post Weekender, 1 SW Post Neath Port, 26 Sun, 3 Times Compact and 2 Western Mails. On making the delivery, the driver noticed that Retailer A had titles on his newspaper display that he had claimed to be missing and reported this fact to Management upon his return to the depot.

Retailer A completed a Recall Note on 19<sup>th</sup> January 2012 claiming credit for 5 Daily Express, 1 Daily Mail, 12 Daily Mirror, 1 Daily Star, 1 Daily Telegraph, 3 I Daily, 1 Independent, 33 Sun, 5 Times Compact, 6 S. Wales Echo and 1 Western Mail. The un-solds were scanned in the normal way and, unfortunately, the number of returns scanned exceeded a single supply on a number of titles as follows: 8 Daily Express, 4 'I' Daily, 2 Independent, 33 Sun and 5 Times Compact. As a result, the un-solds were manually checked and the discrepancies confirmed. Consequently, Smiths News charged back the net value of the original claim. Retailer A subsequently challenged the charge and, during the course of the discussions, allegedly declared that he had in fact originally received the Sun and Times Compact and had inadvertently failed to declare this fact when making his claim for replacement stock.

Smiths News refused to process any further credit in relation to the matter and Retailer A claims that the additional copies that were returned over and above the quantities he declared on his Recall Note resulted from a scanning error.

Having considered the evidence presented to me by both parties, I find that:

- a) In the Press Distribution Charter it is made very clear in the preamble to the actual standards that the complaints resolution process exists for "more serious or persistent" problems. As I understand it, the net value of Retailer A's claim (second) delivery after taking out the Sun and Times Compact, which I understand (from Smiths News's evidence) he now accepts he received, amounts to approximately £12.03. I do not consider this serious enough to make a formal complaint under the Charter's Complaints Resolution Process.
- b) Within Retailer A's Retail Statement of Case he makes it clear that he has escalated his complaint on principle, not on the amount of money involved. He believes that, by refusing his un-solds claim, Smiths News is accusing him of lying. Whilst I understand Retailer A's hurt feelings, I cannot see any evidence to suggest that Smiths News has at any point accused him of being a liar. The inference is that "you may be mistaken in your calculations". I am minded to agree with this statement in view of the fact that Retailer A allegedly failed to identify the Sun and Times Compact on the occasion of their first supply. For the record, I do not believe that Retailer A has deliberately lied about the quantity of titles in his first delivery or tried to make financial gain out of the situation. I do however consider that Retailer A's procedures for receiving supply and recording the same may need reviewing.
- c) Standard 3.13 of the Press Distribution Charter provides that "Supplies will be placed in a security box or secure area where available and the box or area re-secured after delivery provided that hazards to delivery staff are avoided." It is clear to me that this standard was not met by Smiths News on 18<sup>th</sup> (cont.)

January 2012. However, there seems to be a suggestion that Retailer A did, at some point, request that his supply should be left outside the shop front door. Whilst I accept that Retailer A and Smiths News can work together to agree a mutually acceptable solution to the issue of placement of stock, there becomes an issue of responsibility for the stock. If Smiths News failed to place the supply in the security box, it must take responsibility for the titles delivered and any loss thereof. If Retailer A requested that the supply should be left outside the shop front door, then he has the responsibility for the titles supplied. With this in mind wholesalers and retailers should keep a written record of any such instructions. From the Wholesale Statement of Case it appears that Smiths News accepts it made errors regarding the original delivery point.

- d) I do not propose to go into the detail of the claimed titles other to say that, on the balance of probabilities, I consider Retailer A may have made a genuine mistake when determining the titles and quantities delivered in the original supply.
- e) Having regard to the circumstances of this case and the fact that Retailer A and Smiths News have enjoyed a good trading relationship in the past, I am of the opinion that Retailer A should accept the offer made by Smiths News in its Statement of Case, namely that, as a gesture of goodwill, he be credited with 50% of the remaining monies in dispute in full and final settlement of this unfortunate matter.

**Signature of Arbitrator:** Neil Robinson (email)

**Date:** 12<sup>th</sup> March 2012

**Seat of Arbitration: London, England.**

**Date form returned to PDC Administrator:**

**Date Independent Arbitration Decision sent to Wholesaler & Retailer:**