

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC215221/07/08/2015

Date First Issued:

07/08/2015

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

07/09/2015 - Further and Better Particulars Required

In the matter of the Arbitration Act 1996 and in the matter of a dispute between (Miss Retailer), 119 and Smiths News, Unit 16 - 17 Cranford Way, Hornsey, London, N8 9DG. This complaint concerns alleged failure by Smiths News to give credit for returns submitted by the retailer.

Miss. Retailer maintains that she placed her returns in a locked secure box for collection by Smiths News on 13/07/2015 and 20/07/2015. She did not receive the appropriate credit for the returns from Smiths News.

In response, Smiths News claim that its driver was unable to locate any returns on the days in question and consequently marked the returns as "not available" on his scanning gun. Internal checks and processes did not reveal any unidentified returns on the delivery van or at the depot. In these circumstances no credit for returns was given.

Further and better particulars were sought from both parties and from News UK, another wholesale servicing Miss Retailer and using the secure box.

Having considered all of the evidence submitted, I adjudicate as follows:

1. This is a particularly difficult case to determine due to the fact that there is very little firm evidence to consider. Basically, there are two witness statements that come from the shop Manager/Owner and the driver of Smiths News's delivery vehicle.
2. Miss Retailer is a retailer of many years and has had an unblemished record with Smiths News. Indeed Smiths News describes her as a good retailer.
3. In considering Miss Retailer's returns over the period 01/07/2015 - 24/07/2015 she made returns every day with the exception of the days in question. The number of titles returned on these occasions was similar to the 'missing days' which showed 69 titles on 11/07/2015 and 82 on 19/07/2015. These figures were obtained from a copy of her Returns Notes.
4. The matter is complicated by the fact that Miss Retailer has two newspaper suppliers and therefore News UK has a key to the security box. A shared box is common practice within the industry.

5. On 11/07/2015 News UK delivered to Miss Retailer at 04.55 and Smiths News at 05.29. On 19/07/2015 news UK delivered at 03.35 and Smiths News at 05.13. On both occasions News UK has reported to me that they did not collect any returns from the security box either of its own titles or of any other description.

6. There are suggestions within the evidence submitted that the Smiths News driver does not always leave delivered titles in the security box as he believes the drop off point to be a safe location.

7. On the one hand Miss Retailer is responsible for the returns until such time as they are collected by the wholesaler. She is an experienced retailer who prepared her returns in the usual way, completed her Returns Notes and placed them in the locked security box outside her shop. On both occasions she lost credit for two days substantial returns.

8. On the other hand, Smiths News's driver could not locate the returns which were therefore unavailable to him. Accordingly, Smiths News could not collect and process the returns. Consequentially no credit could or was given.

9. The matter is complicated by the fact that there are two wholesalers servicing Miss Retailer and using the security box. On both occasions complained off, News UK accessed the box first.

10. As Independent Arbitrator it is for me to adjudicate on whether the wholesaler failed to meet a Press Distribution Charter Standard. In this case Standard 5.3 provides that:

"The wholesaler will be responsible for the security of returns parcels after collection from the retailer, provided the returns parcels are securely tied and clearly identified."

Standard 5.9 provides that:

"Wholesalers will process all returns collected from retailers for credit on the next available invoice, normally for the same week as collection."

11. With regard to the above mentioned standards, it is clear to me that, in this case, Smiths News, for whatever reason, did not collect the returns parcels on either date and therefore could not take responsibility for them or give credit for them.

12. I believe that I would be failing in my duty if I did not recognise the strengths of both arguments put forward and therefore I strongly recommend that Smiths News make an *ex gratia* payment to Miss Retailer in a sum that is equivalent to one half of the total amount involved in both returns claims.



Signature of Arbitrator: _____

Date: 22nd September 2015

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

22/09/2015

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

22/09/2015