

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC237847/26-03-18

Date First Issued:

26/03/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

19/04/2018

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), Unit 1, Punchbowl Park, Green Lane, Hemel Hempstead, HP2 7EU. This complaint concerns alleged failure by Smiths News to process all returns collected from retailers for credit on the next available invoice, normally for the same week as collection contrary to Press Distribution Charter Standard (PDC) 5.9.

Mr Retailer complains that he made returns available for collection on 23/03/2018 which were not processed as of 26/03/2018 at 17.00 thereby not following SN's normal practice. He further complains that SN failed to respond to his request for a written response as to why his returns had not been credited in a timely manner. He seeks "compensation" of £200 for his wasted time and the cost of professional advice.

SN maintains that Mr Retailer's returns were manually checked prior to being processed which is a procedure outside of its normal process. Mr Retailer's returns were checked on the correct day, but not scanned until Monday 26th March 2018 with the credits appearing on Mr Retailer's paperwork on 27/03/2018. Mr Retailer had asked SN to defer his returns payment which was authorised.

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

1. Retailers can only use the Press Distribution Charter (PDC) Complaints process if the alleged service failure complained of is serious or persistent.

2. Seriousness can only be determined on the circumstances of each case and the Independent Arbitrator has the ultimate determination on this point. Persistent is defined as follows:

Newspapers – The same problem occurs three times in three weeks for Monday to Friday newspapers three times in six weeks for Saturday or Sunday newspapers.

Magazines – The same problem occurs three times in six issues of a weekly, fortnightly or monthly magazine.

3. Mr Retailer complains about events that are alleged to have occurred on 23rd March 2018 and makes fleeting reference to a similar occurrence on 03/02/2018. I do not consider this sufficient to satisfy the 'persistent' requirement.

4. Mr Retailer makes it clear in his Stage 2 Complaint that he asked for and was granted deferred payment on the value of the missing credits. In these circumstances, I do not believe that this service failure was 'serious'.

5. Having determined that this complaint fails, I will try and assist the parties.

6. Once I have satisfied myself that the service failure complained of was 'serious or persistent' the scope of my jurisdiction is limited to determining whether a wholesaler, distributor or publisher failed to meet one of the standards set out in the PDC. In this case Standard 5.9 which provides that:

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

In this case SN manually checked Mr Retailer's magazines prior to them being processed. SN maintains that this was by "mutual agreement" although Mr Retailer insists that he has never agreed to it.

7. The fact remains that there was a procedure taking place outside of the normal process and this could/would prolong the time frame necessary to clear Mr Retailer's magazine returns. Unfortunately, in this case, Mr Retailer's magazines were checked on the correct day but were not scanned until Monday 26/03/2018 thereby causing the delay in crediting them.

8. Standard 5.9 is not absolute and there is room for flexibility in it. The "next available invoice" will of course refer to the first invoice that occurs after the wholesaler has followed due process and additional checks and "normally for the same week as collection" allows for any delay.

9. Having regard to the points above, I do not consider that SN did fail to meet Standard 5.9.

10. Mr Retailer also complains that SN did not reply to his request for a detailed response to his email seeking an explanation as to why his magazine credits were delayed.

11. PDC Standard 9.5 provides that:

"Email correspondence to wholesalers will be acknowledged within a maximum of two working days of receipt. Postal correspondence will be acknowledged within a maximum of five working days of receipt."

12. Mr Retailer's first email was sent on 23/03/2018 and was acknowledged on 24/03/2018 with a detailed response dated 28/03/2018. I do not consider that SN failed to meet Standard 5.9.

13. Mr Retailer is reminded that "restitution" is about restoring the injured party to what has been lost and any restitution ordered should be for proven losses resulting directly from the breach taken over the period covered specifically by the complaint. He did not suffer any loss in this case.

Neil Robinson

Signature of Arbitrator: _____

Date: 1st May 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

01/05/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

01/05/2018