

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/18/05/2015/361

Date First Issued:

18/05/2015

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

06/07/2015

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. Retailer, and Smiths News, Hertsmere Industrial Park, Chester Road, Borehamwood, Hertfordshire, WD6 1WS. This complaint concerns alleged failure by Smiths News to fulfil Mr. Retailer's orders and honour amendments contrary to Standard 4.1 of the Press Distribution Charter. Furthermore, Mr. Retailer claims that Smiths News failed to acknowledge or act upon his request for a Stage 2 Complaint Form or respond to his completed Stage 2 Complaint.

Mr. Retailer alleges that between 03/03/2015 and 22/05/2015 Smith News failed to fulfil his orders which resulted in a total of 14 titles being short delivered and lost as sales. He requested a PDC Stage 2 Complaint Form on 28/04/2015, 11/05/2015 and 18/05/2015. He received the form on 20/05/2015 which was predated by Smiths News, 18/05/2015. Mr. Retailer forwarded his completed Stage 2 complaint to the PDRP Administrator on 27/05/2015 who forwarded it to Smiths News on 29/05/2015. Mr. Retailer did not receive an acknowledgement of receipt of his complaint or any other response. He instigated a Stage 3 Complaint on 29/06/2015 but dated 03/06/2015 as the submission date.

Smiths News recognises its failure to supply Mr. Retailer with Stage 2 Complaint Forms, acknowledge Mr. Retailer's completed Stage 2 Complaint Form and to respond to the Stage 2 complaint. It blames its failure on the company restructuring and staffing issues. In relation to the order and supply management issue Smiths News points out that the order files for Saturday and Sunday titles are required on a Wednesday, by the publisher's. They will be accepted on a Thursday, but supply in the same numbers will not be guaranteed. Smith's News maintains that Mr. Retailer insists on submitting his order file on a Thursday.

Having considered the evidence before me, I adjudicate as follows:

1. The PDC complaints process can only be used for serious or persistent failures to meet its standards. Having considered the sequence of instances where his orders were not met, I am of the opinion that those occurring between 05/04/2015 and 18/04/2015 fall within the industry definition of 'persistent' as do those between 01/05/2015 and 22/05/2015. However the instance on 03/03/2015 was neither serious nor persistent.

2. Clause 4.1 of the PDC requires wholesalers to fulfil retail orders, and honour amendments, where there is sufficient copy to do so. However there is no provision within the PDC standards that makes Clause 4.1 dependent on the wholesaler or publisher receiving the retail order on a given day. Indeed, Clause 4.7 provides that newspaper revisions received by the wholesaler by 3 pm will be actioned for the next available issue. This would infer that Mr. Retailer could submit a revision by 3 pm on a Saturday and expect his amended figure to be actioned on the next day.

3. Having regard to point (2) above and bearing in mind that I have not been presented with evidence from Smiths News that there was insufficient copy on the days under review, I am of the opinion that Smiths News failed to meet Standard 4.1 on 05/04/2015, 06/04/2015, 18/04/2015, 01/05/2015, 06/05/2015, 11/05/2015 and 22/05/2015 and instruct it to pay restitution amounting to the net profit on the lost sales.

4. Smiths News has admitted its failure to process Mr. Retailer's requests for a Stage 2 Complaint Form and has cited personnel change, persons leaving the company, holidays and sickness. Whilst I am prepared to reluctantly accept these mitigating circumstances on this occasion, I must remind Smiths News of its obligations under the PDC and urge them to make proper provision for efficient staff hand-over and trained cover for absent staff.

5. Mr. Retailer failed to follow the proper procedure for submitting his completed Stage 2 complaint form. He forwarded the same to the PDRP Administrator rather than the Smiths News PDC Administration Central Operations as directed clearly on the form.

6. Finally, Mr. Retailer has expressed concern at the date entered by Smiths News on the Stage 2 Complaint Form. Smiths News must understand that if it wishes to put a date on the form indicating when it was issued, then it must redesign the form to include such a date. There must also be a date on the form indicating when the completed form was received for that is when the complaint becomes 'live' as far as the PDC is concerned. This matter has been considered by the PDRP and Smiths News did agree to revise the form. Now that restructuring and personnel changes have been completed, I trust the amendment will be made as soon as possible.

7. In future Mr. Retailer should enter the correct date on his paperwork, unfortunately his Stage 3 Complaint Form is dated incorrectly.

Neil Robinson

Signature of Arbitrator: _____

Date: 9th July 2015

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

09/07/2015

Date Independent Arbitration Decision
sent to Wholesaler & Retailer:

12/07/2015