

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC238156/19/08/2013

Date First Issued:

13/11/2013

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

20/11/2013 (Further and Better Particulars Requested twice)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mrs Retailer and Smiths News, Hertsmere Industrial Park, Chester Road, Borehamwood, WD6 1WS. This complaint concerns alleged failure by Smiths News to refund bank charges incurred by Mrs Retailer as a result of Smiths News failure to credit for supply alterations in a timely manner.

Mrs Retailer claims that, due to Smiths News failure to give her credit in a timely manner in accordance with Press Distribution Charter standard 5.9 on two separate occasions, she exceeded her bank credit limit and went overdrawn thereby incurring bank charges. She alleges that one such bank charge of £59.68 was refunded by Smiths News, but that £35 remains outstanding in relation to the second incident of alleged lateness. She also claims that she was compelled to close her shop on 15/8/2013 and take a taxi to Smiths News at Stevenage. She makes a claim for restitution of £155.50 in respect of the taxi fare, the loss of profit due to the closure of the shop, phone & post charges and bank charges. Mrs Retailer further alleges that she was forced to settle an invoice early which caused her further financial difficulties.

Smiths News respond by advising that the returns were credited on the next available invoice which was not that expected by Mrs Retailer, 20/7/2013. It also points out that the bank charges incurred by Mrs Retailer resulted from her failure to settle her regular direct debit payments. It refutes that Mrs Retailer was ever asked to make early payment in advance of her regular direct debits. It also points out that no payment was made by Mrs Retailer at Stevenage on 16/8/2013. In fact, payment was actually banked at the National Accounting Centre on 16th August.

Before detailing my adjudication, I must point out that it has proved difficult to extract sufficient detail from both parties sufficient for me to reach my decision. Whilst I can accept that Mrs Retailer is unaccustomed to this sort of process, I feel that Smiths News has shown a certain lack of professionalism in its responses to the claim and subsequent requests for further and better particulars.

Having considered the evidence submitted to me, I adjudicate as follows:

1. Mrs Retailer appears to be having substantial problems financially managing her business. Whilst I sympathise with her predicament, she must appreciate that it is her responsibility to ensure that she has sufficient funds in her account to meet direct debit payments due to Smiths News and in doing this she should not anticipate any credit that is due.
2. The Press Distribution Charter Standard 7.4 provides that "Any disputes relating to invoice queries will be resolved by the wholesaler and corrected on the next possible invoice/credit note." Obviously any problems or disputes arising close to the invoice date are unlikely to be corrected

instantly and are likely to be carried over to the subsequent invoice.

3. I note that at the foot of her Weekly Summary Invoice dated 21/7/2014 the net figure to be debited was clearly identified, £134.29, with notification that her account would be debited on 31/7/2013. Mrs Retailer had an obligation to ensure that funds were in her account on 31/7/2013 to cover this payment. Similarly, with the Weekly Summary Invoice dated 28/7/2013 when the notification specified £211.39 becoming due on 7/8/2013.

4. Having regard to the above and the evidence submitted on her originating Statement of Case form, I am unable to award restitution to Mrs Retailer for bank charges incurred.

5. Mrs Retailer claims restitution for a taxi journey to Smiths News, Stevenage, on 15/8/2013 and £50 because she had to close her shop on the same day in order to "pay Smiths news bill". 6. Smiths News has no record of a cheque being received at Stevenage on 15/8/2013.

Furthermore, a cheque from Mrs Retailer was banked at Smiths News National Accounting Centre on 16/8/2013 and recorded as 'received by post'.

7. On the balance of probabilities I find that Mrs Retailer did not have to attend Smiths News at Stevenage to "pay Smiths News bill" and, accordingly no restitution is due to her in respect of the taxi fare, loss of profit whilst her shop was shut or telephone/postage.

Signature of Arbitrator: Neil Robinson (email)

Date: 15th January 2014

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

15/1/2014

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

15/01/2014