

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC241713/28/05/2014/2

Date First Issued:

28/05/2014

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

11/8/2014

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. Retailer, and Smiths News, 105, Whitby Road, Slough, Berkshire, SL1 3DR. This complaint concerns Smiths News's alleged failure to make proper restitution payments due to the retailer as a result of service failures in delivery timeliness and delivery quality.

Mr. Retailer complains that he suffered a considerable number of service failures in delivery between 7/6/2013 and 5/3/2014. As a result, he submitted restitution claims to Smiths News which were not successful. On pursuing a Press Distribution (PDC) Stage 2 Complaint, Smiths News paid restitution of £71.06 on Mr. Retailer's 2014 claims only. Mr. Retailer seeks the balance of his total claim in the sum of £187.79.

Smiths News has made no attempt to deny the service failures and has apologised for them. Restitution was made for those claims made in 2014 in the sum of £71.02 according to Smiths News although the figures submitted individually add up to £71.06. At Stage 2, Smiths News expressed regret that it was unable to process restitution claims in relation to 2013 and suggested that queries needed to be raised within a reasonable timeframe.

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

1. There seems to be no doubt that Mr. Retailer has suffered a number of delivery timeliness/quality problems over the past year. I accept that such failures are frustrating and I am particularly aware that delays in making full supply prove demanding on a retailer when he is trying to supply a dependable and reliable service to his customers.
2. Despite the best endeavours of the supply chain, errors and problems do occur and there is an industry process in place to deal with them. This process starts with an informal discussion with the wholesaler.
3. Smiths News has a defined process in place to recompense retailers for losses they experience when it is at fault and I attach a copy of the same to this adjudication.
4. Under the terms of the Smiths News restitution process, retailers can contact it by phone, email, fax and post to make a claim and are not required to complete a specific form. Retailers are required to provide various forms of evidence to substantiate the loss being claimed for. Restitution is credited at 40p per copy or profit margin/loss of profit and credit is given on the next available account.

5. From the evidence submitted to me it would appear that Mr. Retailer submitted claims for restitution in relation to each of his service failures, although I have no indication as to how the claims were transmitted to Smiths News.

6. It is abundantly clear to me that Mr. Retailer has made claims to Smiths News throughout the past year which seem to have been ignored rather than dealt with. Obviously, Mr. Retailer was entitled to the restitution claimed or some form of detailed advice that his claims were rejected. PDC Standard 9.5 sets out time frames in which wholesalers should respond to retailer's queries.

7. I find it disappointing that Mr. Retailer had to wait until he instigated a formal PDC Stage 2 to get a response to his claims and some settlement.

8. Within Smiths News's restitution process it is made clear that if a retailer is not satisfied with the outcome of his claim for restitution he can pursue the claim through the Press Distribution Charter. Surprisingly, Mr. Retailer did not do so during the course of 2013.

9. The PDC Complaints Resolution Process provides that if a dispute is not resolved "within 48 hours or more" it may be escalated to the company's Fast Track Resolution Process. Again, an expectation of timely escalation to Stage 2.

10. The Press Distribution Review Panel has considered the question of timeliness of PDC Stage 2 complaints and decided that Stage 2 of the Complaints Resolution Process can only be used up to three months after the events complained of. In these circumstances I am unable to consider complaints originating before 1/3/2014 of which there are 2 - 4/3/2014 and 6/3/2014.

11. In considering these two claims I am minded that Smiths News has paid £4.00 restitution in relation to each of them.

12. In each of the restitution claims Mr. Retailer presents "minimum fee - £5.50". This would seem to be a random figure imposed by him without reference to the actual loss occasioned whether that be a lower or higher figure.

13. When adjudicating at Stage 3 I need some detailed indications of the actual loss suffered e.g. staff time, petrol etc. and without such information I am unable to quantify restitution due. In the circumstances, I find that the £4.00 restitution awarded by Smiths News in this case is adequate and sufficient.

14. There seems to be a break down in communications between Mr. Retailer and Smiths News which has manifested itself in this dispute. Whilst I am unable to require Smiths News to consider Mr. Retailer's 2013 restitution claims, I wish to suggest that it makes a without prejudice goodwill payment to him of £50. I would hope that Mr. Retailer would accept such payment in the spirit in which it was offered and that both parties could then draw a line under this unfortunate matter.

Signature of Arbitrator: Neil Robinson (email)

Date: 13th August 2014

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

13/8/2014

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

18/08/2014