

Press Distribution Charter

Step 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/239319/211123

Date First Issued:

21/11/2023

Name of Arbitrator:

Neil Robinson B.A. (Law), M.C.I.Arb.

Date complaint sent to Arbitrator:

18/01/2024

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. A. and Smiths News (SN), Unit 45 Elmdon Trading Estate, Bickenhill Lane, Birmingham, West Midlands, B37 7HE. This complaint concerns alleged failure by SN to deliver all titles and their appropriate sections in a secure area contrary to Press Distribution Charter 3rd Edition (PDC), Standard 3.13.

By on-line complaint dated 21/11/2023 Mr. A. maintains that for 40 years his returns have been collected from an outside locked washroom. He alleges that SN has now advised him that the driver will no longer collect from the washroom because the floor is wet and he does not consider the provision to be hygienic. In support SN pointed out that it has a duty of care to the driver. Some dialogue had taken place with the driver and SN that mooted picking up from the entrance alleyway, covering product when the weather was bad and SN taking responsibility for the product left outside

By letter dated 22/11/2023 SN acknowledged the Step 1 Complaint.

By letter dated 13/12/2023 SN wrote "After investigation we have been liaising with the depot, the driver has refused to collect returns from the washroom as it is unhygienic. They have advised that the previous driver was happy to collect from there, but the new driver is not happy to do this. Therefore, it would be your responsibility to provide a safe and appropriate place for us to deliver and collect products from. We will not accept any liability of the products if they are not left in a secure place."

After careful consideration I adjudicate as follows:

1. The PDC provides at Clause 3.13 that "supplies will be placed in a security box or secure area where available and the box or area re-secured after delivery provided hazards to delivery staff are avoided" and Clause 3.15 provides that "where it is not possible for a retailer to provide secure delivery facilities, either for pre-runs or the main delivery, the wholesaler and retailer will work together to agree a mutually acceptable solution."

2. Clearly, under the terms of the PDC, it is not Mr. A.'s sole responsibility to make provision for secure delivery facilities where it is not practically possible. It is for Mr. A. and SN to work together to agree a mutually acceptable solution, not for SN to dictate.

3. However, under SN's 'Delivery Point Terms and Conditions' it provides that:

"a) The Customer shall be wholly responsible for providing a safe and/or secure delivery point for the delivery of supplies, such location enjoying adequate lighting and protection from the weather and from risk of loss or theft.

b) The Company reserves the right to deliver to a different delivery point at the Premises where in its view the existing delivery point is inappropriate, insecure, unsafe and/or which poses a threat

to the Company's employees, agents, or contractors (including sub-contractors); and

c) The security and risk of the supplied Titles after they have been delivered at the delivery point is the sole responsibility of the Customer who shall remain wholly liable for full payment of any supplies of Titles regardless of whether the Titles have been lost, stolen, misplaced or damaged."

4. Obviously there is a divergence of authority here, but Clause 1.3 of the PDC provides that:

"The standards of the Press Distribution Charter will be incorporated by each wholesaler into its Terms and Conditions of Business."

This, coupled with my remit to determine whether PDC Standards have been met, lead me to adjudicate based upon the PDC Standards. I am therefore required to determine whether SN has failed to deliver to a "security box" or "secure area" which, in this case is a toilet/wash room.

5. The PDC does not define "secure area" but I consider it to be a restricted or protected space designed to prevent unauthorised access to safeguard valuable assets.

6. Obviously a toilet/wash room does not properly constitute an area designed to prevent access and protect assets. It is the result of a practical arrangement that, whilst being secure, is not ideal due to hygiene issues. It is however one that has endured for a considerable period of time and has only now been brought into question.

7. I do not consider leaving product in the side alleyway constitutes delivery to a "secure area."

8. Therefore this unfortunate dispute seems to focus on two key areas. On one hand the storing of goods in a restroom can obviously lead to hygiene issues, compromise cleanliness, and pose a risk to the quality of the products. Additionally, it may violate health and safety regulations, making it an impractical and potentially unsanitary storage solution. On the other hand custom and practice has established a routine, behaviour or tradition that has developed over time and has influenced how things have been done for a number of years.

9. Mr. A. has to accept that the current driver and SN no longer find it acceptable for the washroom to be deemed a "secure area" based on hygiene concerns and I am inclined to accept this. Pictures forwarded to me by Mr. A. seem to indicate a flattened piece of cardboard in front of the toilet basin which indicates that the toilet/wash room is not a sanitary storage area.

10. It must now be for Mr. A. and SN to work out a "mutually acceptable solution" if they cannot, the default position must be delivery to the entrance of the premises. This obviously involves potential disputes regarding when the product is deemed to have been delivered and where responsibility rests for product lost or damaged.

11. Perhaps Mr. A. could make inquiries of the relevant authorities regarding his side passageway and any requirements concerned with safe evacuation from his premises etc as in the event of danger, it must be possible for persons to leave the premises as quickly and safely as possible. Provided there are no health and safety issues a secure structure could be erected as a "security box" or "secure area". Dependent upon volume of product delivered it might even be possible to utilise a new waste bin/s for the same purpose.

Neil Robinson

Signature of Arbitrator: _____

Date: 21st January 2024

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

21/01/2024

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

23/01/2024