

## Press Distribution Charter

### Stage 3 - Independent Arbitration Decision

**PDC Reference Number:**

-PDC200935/25/09/2017

**Date First Issued:**

17/09/2017

**Name of Arbitrator:**

Neil Robinson

**Date complaint sent to Arbitrator:**

06/10/2017

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), Unit 45 Elmdon Trading Estate, Bickenhill Lane, Marston Green, Solihull, Birmingham, B37 7HB. This complaint concerns alleged failure by Smiths News to deliver all titles and their appropriate sections no later than the Retailer Delivery Time or Scheduled Delivery Time for the day of sale, contrary to Press Distribution Charter (PDC) standards 2.1 and 4.1.

In his Press Distribution Charter (PDC) Stage 2 Complaint Mr Retailer cites three specific instances of alleged failure of service standards. They relate to missing titles and one wholesale re-run. The incidents happened, as far as I can make out, on 12th, 17th and 21st of September 2017. In his Stage 3 Retailer Statement of Case Mr Retailer refers to further problems throughout August and September.

In its response to Mr Retailer's Stage 2 Complaint SN made no attempt to refute the instances of standard failure. It did undertake to "double check so this does not happen again" and to "track any claim for news and have the delivery driver phone in when delivery is made to your store." In its Stage 3 Wholesaler Statement of Case SN acknowledged that it had failed to offer Mr Retailer restitution and undertook to rectify this and to offer one day Delivery Service Charge representing a total of £10.24.

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

1. As Independent Arbitrator I am required to make adjudication as to the decision reached by the wholesaler, SN, on the Stage 2 Complaint. In this case, that means the specific complaints referred to in Mr Retailer's Stage 2 Complaint Form i.e. 12th, 17th and 21st of September 2017.
2. I cannot consider instances of alleged service failure that occurred subsequent to the date of the Stage 2 Complaint i.e. 17/09/2017. In these circumstances, I must disregard much of the allegations made in Mr Retailer's Stage 3 Retailer Statement of Case.
3. The Press Distribution Charter complaints process is designed to resolve serious or persistent breaches of the standards. For the purposes of the Charter 'persistence' is defined as the same problem occurring three times in three weeks for Monday to Friday newspapers or three times in six weeks for Saturday or Sunday newspapers.
4. I am satisfied that the breaches of standard complained of are persistent.
5. I note that Mr Retailer has now been credited for the loss of margin on the missing titles, based on Mr Retailer's individual claims.

6. For the avoidance of doubt and for the information of both parties I take this opportunity to set out the restitution payable in cases of late supply and missing copy as follows:

- a) In circumstances where the wholesaler is at fault for the non-delivery of products or under-allocation of product the wholesaler will reimburse the customer for lost margin on the sale of that product.
- b) In circumstances where the wholesaler was at fault for late delivery of products and the lateness necessitated the redelivery of HND copy the wholesaler will reimburse the customer 55p per copy redelivered, with a minimum award of £5.50.

7. Unfortunately insufficient detail has been provided by either party concerning the service failure on 12/09/2017 when 'The Times', 'The Guardian' and 'The Telegraph' were not received. I therefore instruct both parties to revisit the restitution paid for this service failure and ensure that the restitution paid was in accordance with point (6) above.

8. It is clear to me that Mr Retailer is suffering service failures, but due to his inability to present his case in the proper manner his complaints fail. I recommend that Mr Retailer seeks guidance on preparing his PDC complaints and that SN takes a careful look at the level of service that it is providing to Mr Retailer

*Neil Robinson*

Signature of Arbitrator: \_\_\_\_\_

Date: 15th October 2017

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

16/10/2017

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

17/10/2017