

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC208044/11-05-18

Date First Issued:

11/05/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

07/06/2018

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), Lingard Lane, Stockport, SK6 2QT. 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 Standard 2.1 of the Press Distribution Charter (PDC).

Mr Retailer complains of "Problems with delivery of papers before we open in the morning". He has owned the shop for 10 years and has an opening time of 07.00 weekdays and 07.30 weekends. He claims that his delivery has frequently been arriving late since January 2018 and he is losing early morning customers as a result of his inability to provide news products for them. He states that April was particularly bad, but May seemed better. He submitted a Stage 2 PDC Complaint on 21/05/2018 as on 20/05/2018 his delivery was four titles missing, namely Sunday Sun, Observer, Sunday Post and Sunday Glasgow Mail which all arrived at 13.00. He supplied no other specific details of lateness or advised of his RDT/SDT.

In his Stage 3 Statement of Case Mr Retailer elaborated on his Stage 2 Complaint by specifying specific dates relating to lateness as follows: 24th, 25th and 28th April, 1st, 2nd, 3rd, 4th, 5th & 20th May and 3rd June 2018

SN responded to Mr Retailer's Stage 2 Complaint by letter dated 21/05/2018 which focused on his delivery issues towards the end of April. It pointed out that, as far as it was concerned, the matter had been resolved. SN had raised Mr Retailer's complaint with the packers and drivers with an expectation that things would improve. It apologised for the inconvenience caused and offered Mr Retailer restitution of one week's Carriage Service Charge

In its Stage 3 Statement of Case SN claim that since the start of 2018 it had only missed Mr. P's RDT twice and stated that it was attaching an RDT report, but that was not received by me. It also suggested that Mr Retailer could always apply to have his RDT amended to an earlier time. It refers to Mr Retailer's complaint relating to shortages and states that six claims were made in April and May one of which resulted in a restitution payment of one week's Carriage Service Charge. SN also reported that Mr Retailer had just five queries/complaints in 2018. SN had spoken to Mr Retailer and offered him a further £62 restitution, but the customer declined seeking restitution for all his lost customers since the start of the year.

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

1. As Independent Arbitrator I have to make a judgement as to whether the issue under review was properly dealt with at Stage 2 of the Press Distribution Charter (PDC) complaints process.
2. On a PDC Stage 2 Complaint Form it is essential that full details are included sufficient for the wholesaler concerned to know exactly what is being complained of. It needs dates, times, titles and figures. Mr Retailer did not do this.

3. Mr Retailer's PDC Stage 2 Complaint Form provided insufficient detail for SN to do anything other than issue a very general response. The only date specifically referred to as a complaint was 20/05/2018 when four titles were not delivered.

4. Neither party to this dispute has informed me of Mr Retailer's RDT/SDT. Mr Retailer states "RDT/SDT before 7.00" or "RDT/SDT before 7.30" and SN does not refute this, but does state that it has only been late twice in 2018. In these circumstances I am unable to determine whether supply has been late or not.

5. Restitution is about restoring the injured party to what has been lost and any restitution ordered should be for proven losses resulting directly from the breach taken over the period covered specifically by the complaint. It does not cover loss of customers!

6. If SN delivers later than Mr Retailer's RDT/SDT he is entitled to restitution 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. Mr Retailer must submit full details of his restitution claim to SN, having proper regard to this adjudication as set out above. SN is directed to consider that claim, having proper regard to this adjudication. SN will make restitution payments accordingly and if there is any dispute between the parties, the matter is to be referred back to me. SN is to deduct from the calculated sum the amount it has already paid to Mr Retailer

8. If Mr Retailer fails to provide SN with evidence of proven loss on sales of newspapers and magazines within 30 days of the date of this adjudication no restitution need be considered by SN.

9. I suggest that Mr Retailer apply to SN for a change of his RDT to an early time. SN can then consider the same having proper regard to Mr Retailer's commercial needs and its own commercial needs, logistics and the current publisher arrival times at the wholesale house. Through such a process SN will be able to determine whether it is operationally feasible to match Mr Retailer's commercial need.

Neil Robinson

Signature of Arbitrator: _____

Date: 10th June 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

10/06/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

12/06/2018