

## Press Distribution Charter

### Stage 3 - Independent Arbitration Decision

**PDC Reference Number:**

PDC211333/19/02/2016

**Date First Issued:**

17/02/2016

**Name of Arbitrator:**

Neil Robinson

**Date complaint sent to Arbitrator:**

16/03/2016

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. B. Retailer, , and Smiths News, Oxford. This complaint concerns alleged failure by Smiths News (SN) to deliver product in a timely manner to Mr. Retailer in accordance with standard 2.1 of the Press Distribution Charter (PDC).

Mr. Retailer maintains that he had been experiencing problems with timeliness of delivery for a number of months, but that from 13/02/2016 the situation deteriorated. He has provided a diary of instances of lateness covering a period between 13/02/2016 and 07/03/2016. He made a complaint to his delivery driver on 16/02/2016, three complaints to the SN 'Care Line' and a PDC Stage 2 Complaint on 17/02/2016. He received a response to his PDC Stage 2 Complaint on 24/02/2016 which placed the responsibility for the lateness on late inbound deliveries from the publishers. Mr. Retailer believes that he has suffered a decline in his business because of the continued lateness amounting to between £2,000 and £2,500. He did enjoy a substantial amount of counter trade from local industry.

Unfortunately, Smiths News has failed to submit a response to Mr. Retailer's Stage 3 Complaint and, accordingly, I have to rely only on its response to Mr. Retailer's Stage 2 Complaint in adjudicating this case. SN acknowledged its poor service levels which it maintained were driven by late arrivals at its site by publishers which had a knock on effect of deliveries on Mr. Retailer's route. SN agreed that its service level to Mr. Retailer was totally unacceptable and fell well below its own expectations of service levels and recognised the disruption caused to Mr. Retailer's business. It informed Mr. Retailer that it was looking at different ways to combat the problem and instructed the contract holder to perform a pre-run to Mr. Retailer in order to help him make up supplements at weekends.

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

1. Smiths News is strongly reprimanded for its failure to submit a response to Mr. Retailer's complaint at this Stage 3 of the PDC Complaint process. This shows a disregard toward the PDC and its complaint process which cannot be tolerated. However I am mindful of the fact that the person responsible for administering the PDC complaints suffered a car crash which caused him to require a period of time off work.
2. By SN's own admission there have been serious and persistent failures to meet standard 2.1 of the PDC.

3. If SN considers that a publisher is responsible for the lateness because of its late inbound delivery, the retail complaint can be referred to the publisher. Publisher lateness for newspapers is defined as follows:

a) Cut-off minus 15 minutes.

Or

b) Where a publisher has given reasoned formal notification to a wholesaler that cut-off time cannot be met, the average arrival time for a title over a 10 week day specific period.

For magazines there is an agreed magazine specific criteria for lateness which provides that "Magazines will be delivered in time for day of sale".

4. By mail dated 18/03/2016 Mr. Retailer was asked to provide further and better particulars in support of his claim for restitution. By email dated 21/03/2016 Mr. Retailer informed me "It is impossible to go in detailed loss because of volume of paperwork".
5. By email dated 24/03/2016 I sought further and better particulars of Mr. Retailer's loss from Smiths News based on the specific dates supplied by Mr. Retailer.
6. By email dated 31/03/2016 Smiths News responded to my request. The total amount lost by Mr. Retailer comparing his actual days for the days in question against actual net sales data for the most recent comparative issues unaffected by lateness of delivery amounted to £59.40.
7. Mr. Retailer was given the opportunity to comment on the figures supplied by Smiths News, but failed to respond within the given time limit.
8. 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. In these circumstances I direct Smiths News to pay restitution to Mr. Retailer in the sum of £59.40.

*Neil Robinson*

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

Date: 12th April 2016

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

12/04/2016

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

12/04/2016