

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC213234/23/06/2017

Date First Issued:

30/06/2017

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

09/08/2017 - Further & Better Particulars Requested

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), 4 Acre Road, Reading, Berkshire, RG2 0SU. 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, supply allocations and poor communications.

Mr Retailer has operated his business for eight years. For the first five years he received his daily supply of newspaper products at 05.30. Approximately three years ago it became necessary to put back his opening time from 05.30 to 05.45 due to "constant late deliveries". Over the four to five weeks prior to this complaint being made delivery is alleged to have been between 06.15 and 06.55. Mr Retailer understood his RDT to be 05.30, but during the course of this complaint he has been advised by SN that his RDT is in fact 06.15. Mr Retailer also suffered cuts in his supply allocation and a general lack of response to his informal complaints by SN.

SN maintains that Mr Retailer's RDT is 06.15. It apologises for any shortfall in service for deliveries after the RDT. Furthermore, SN referred Mr Retailer's issue to its central planning department for rectification of the problem. A proposal was forthcoming to re-assign Mr Retailer to a different round as from 06/08/2017 which would mean that Mr Retailer would get an average delivery time of 05.43. Unfortunately, the change did not get enacted until 08/08/2017 when a delivery time of 05.19 was achieved. SN is confident that this earlier delivery time will be maintained in the future. SN is going to monitor Mr Retailer's delivery times for a period of four weeks. SN has not addressed Mr Retailer's allocation issues or its alleged poor communications.

Having considered the evidence presented to me and called for further and better particulars, I adjudicate as follows:

1. Mr Retailer's principle complaint is timeliness of delivery and, as in all such complaints, determination depends on the customers Retail Delivery Time (RDT) or Scheduled Delivery Time (SDT) and the wholesalers' ability to meet it.
2. The Press Distribution Charter (RDT) defines the Retail Delivery Time as the time agreed by the wholesaler and retailer as the latest time by which it is operationally feasible for the retailer to receive his newspaper delivery.
3. The SDT is given to a retailer where an RDT could not be agreed. The SDT is the time by which the wholesaler is able to deliver to the retailer, based on current arrival times to the wholesale house.
4. In short, the RDT is a time by which it is agreed that the retailer has a commercial need for the copies and which is considered by the wholesaler to be operationally feasible.

5. The retailer's commercial need is based on a number of factors including:

- Shop opening time
- Home News Delivery rounds
- Manual or computerised systems for marking up
- Casual sales patterns e.g. local shift changes
- Rounds preparation
- Weekend versus weekday patterns
- Delivery times

6. Once the commercial needs of the retailer are established it is for the wholesaler to look at its own logistics and the current publisher arrival times at the wholesale house. This will determine whether it is operationally feasible to match the retailer's commercial need.

7. The wholesaler should enter the agreed time on an 'RDT Agreement Form'. Both the retailer and the wholesaler sign this Agreement and the retailer should keep a copy. Each wholesaler is required to hold a copy of all RDT Agreements. In short, the retailer and wholesaler should have a copy of the original 'RDT Agreement Form' and such a document should have been passed over to Mr Retailer by the previous owner when the shop was acquired.

8. The RDT is binding until such time as either party experiences special circumstances which cause a need for review. This will include a retailer starting home delivery, the opening of a new housing estate near the shop, the changing of the wholesale depot supplying the shop concerned or changes to the publisher arrival times at the depot.

9. Once established, an RDT can only be amended with the prior agreement of the retailer.

10. If a wholesaler changes an SDT, he must notify the retailer at least 14 days in advance.

11. The RDT and SDT apply to the shop premise, not to an individual, and stay in force until such time as a review is required.

12. A retailer can contact his wholesaler and request his RDT or SDT in writing.

13. Unfortunately, neither Mr Retailer nor SN is able to supply me with an 'RDT Agreement Form' and consequently it is not possible for me to conclusively ascertain Mr Retailer's RDT.

14. Mr Retailer claims that his RDT is 05.30 and SN maintains that it is 06.15.

15. SN has submitted Mr Retailer's 'Customer RDTs and ADTs By Track Date' data from 2012 and it is quite clear to me from this that it has considered Mr Retailer's RDT to be 06.15. It also shows that in 2012 delivery time was between 05.30 and 0.600. Subsequently deliver times have got later.

16. It is my opinion that Mr Retailer might have been historically accustomed to a delivery time between 05.30 and 06.00 and assumed that his RDT was 05.30.

17. However, SN has failed to meet PDC standard 2.1 even by reference to its own assessment of Mr Retailer's RDT i.e. 06.15. By its own admission delivery was late 6 times in May 2017, 7 in June, 9 in July and 5 in the first two weeks of August.

18. Mr Retailer has not detailed losses incurred by the lateness detailed above and has made no claim for restitution. He would like delivery of product earlier

19. I am pleased to note that SN has re-assigned Mr Retailer to a new round which it estimates will give him an actual time of approximately 05.43 in normal circumstances. It is unfortunate that there was a delay in enacting the change.

20. Mr Retailer and SN need to have some certainty with regard to Mr Retailer's delivery time. Both parties should now undertake a review of the RDT based on the criteria detailed above. If they cannot agree an RDT, it will be for SN to set an SDT for Mr Retailer

21. Once the RDT or SDT has been determined, SN needs to deliver no later than that time. Mr Retailer should monitor delivery thereafter and, if SN fails to meet the RDT or SDT, he should use the PDC Complaints Process to seek a remedy and, if appropriate, restitution.

22. SN has failed to address Mr Retailer's complaint regarding supply allocation and is instructed to try and resolve the same with him as soon as possible.

23. I have insufficient information or evidence before me to make a determination on SN's communications with Mr Retailer

Neil Robinson

Signature of Arbitrator: _____

Date: 31st August 2017

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

Date Independent Arbitration Decision sent to Wholesaler & Retailer: