

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC216073/22/03/2017

Date First Issued:

03/03/2017

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

16/05/2017

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mrs Retailer and Smiths News (SN), Lingard Lane, Bredbury, 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 issue.

Mrs Retailer raises a complaint regarding instances of late delivery in 2016. These occurred on 11/02/2016, 21/06/2016, 25/08/2016, 06/09/2016, 07/10/2016 and 22/10/2016. A complaint was made to SN concerning the first four dates on 15/09/2016. The complaint was made on an NFRN style complaint form rather than the prescribed SN form. The forms were initially rejected by SN, however subsequently accepted. The incidents of lateness in October 2016 were eventually included. By letter dated 28/11/2016 SN paid restitution for the incidences on 21/06/2016 and 12/10/2016, but rejected the remaining claims because they were outside of its 28 day limit for making a claim or publisher inbound delivery had impacted on its ability to achieve Mrs. S's RDT.

Mrs Retailer further complains that her full supply was late on 26/01/2017, 28/01/2017, 04/03/2017, 08/03/2017, 13/3/2017, 18/03/2017 and 24/03/2017.

Mrs Retailer also requested that her RDT be changed from 06.30 to 05.30, but SN was unable to accommodate this.

SN maintains that the complaints made regarding 11/02/2016 and 06/09/2016 were outside of its 28 day limit for submitting complaints. Complaints made regarding 25/08/2016 and 22/10/2016 were not its responsibility as inbound publisher delivery impacted on its ability to achieve Mrs Retailer's RDT. It paid restitution for the problems on 21/06/2016 and 07/10/2016.

SN accepts the complaints concerning lateness for all the 2017 dates and paid restitution on 13/05/2017.

SN did consider Mrs Retailers request for a change to her RDT but concluded that it was not operationally feasible for it. Mrs Retailer was offered an SDT of 06.00 Monday to Friday and 06.30 on Saturday and Sunday.

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

1. The Press Distribution Charter's complaints process is a quasi-judicial process that conforms to the Arbitration Act 1996. As such it is governed by a strict process.

2. The complaints process is detailed in the publication entitled 'Guidance Notes for Retailers'.
3. The said process makes it very clear that complaints at Stage 2 and 3 cannot be considered if the incident complained of occurred more than three months previously. SN seems to be under the impression that this time limit is 28 days, which is totally erroneous.
4. Mrs Retailer was best advised to have made her 2016 complaints as and when they arose, but within the three month limit referred to above.
5. She should have initially made her complaint under Stage 1 of the PDC process.
6. If her complaint remained unanswered or unresolved to her satisfaction within 48 hours she should have requested a PDC Stage 2 Complaint Form from SN, the PDC website or the PDRP Administrator. The breaches complained of must have been 'serious or persistent.'
7. SN was entitled to reject a complaint made other than on its own form as these forms are compliant with both the PDC process and the Arbitration Act 1996. However, good practice demanded that SN should have automatically advised Mrs Retailer accordingly and provided her with the correct PDC Stage 2 Complaint Form.
8. The correct Stage 2 Complaint Form should have been completed by Mrs Retailer and returned to SN within the prescribed timescales i.e. seven days.
9. SN was then obliged to accept, acknowledge and respond to the complaint.
10. If SN considered that the complaint was out of time i.e. 3 months, it should have formally responded accordingly.
11. SN cannot refuse to accept a complaint because, in its opinion, it is not 'serious or persistent'. It must formerly accept and acknowledge the complaint and then issue a formal response detailing that reason for rejecting the complaint. If the retailer does not accept that decision he/she is free to refer the matter to Stage 3 of the PDC complaints process.
12. If SN considered that its lateness was caused by publisher inbound delivery it should have passed the completed Stage 2 Complaint Form onto the relevant account manager of the publisher concerned. It was then for that publisher to properly address the complaint.
13. Publisher late arrival at a wholesale depot is determined by an industry agreed formula 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.
14. SN had a maximum of 28 days to deal with the case.
15. If SN had not dealt with the complaint within 28 days the retailer could have escalated it to Stage 3 of the complaints process.

16. Mrs Retailer has failed to understand the concept of PDC restitution. In circumstances where the wholesaler was at fault for non-delivery of product or under-allocation of product the wholesaler will reimburse the customer for lost margin on sale of that product. 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. In circumstances where the publisher/distributor was at fault for late delivery of products and that lateness necessitates the redelivery of HND copy the publisher/distributor will reimburse the customer 55p per copy delivered with a minimum award of £5.50. There is a limit on newspaper/publisher claims of £60 per shop and a total £6,000 for any one instance.

17. Applying the above to the 2016 complaints detailed by Mrs Retailer;

11/02/2016 - out of three month time limit therefore rejected.

25/08/2016 - publisher inbound delivery was not sufficiently late therefore find for Mrs Retailer, SN to pay restitution by reference to (16) above noting that Mrs Retailer made no attempt to re-deliver, therefore not obliged to pay restitution of 55p per copy.

06/11/2016 - not out of time, but covered by force majeure as puncture was outside of reasonable control of SN. Complaint rejected.

22/10/2016 - publisher inbound delivery could be considered late and therefore complaint form should have been passed to publisher. SN to pay restitution by reference to (16) above taking note of Mrs Retailer's incorrect addition in the claim.

18. Having regard to the refusal by SN to amend Mrs. Retailer's RDT, I find for SN. 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. In this case SN was entitled to reject the request as it considered that it was not operationally feasible. I note that Mrs Retailer was offered an SDT of 06.00 for deliveries Monday - Friday.

19. With regard to the instances of lateness that occurred in 2017, I understand that responsibility has been accepted by SN and restitution was due to be paid on 13/05/2017. I trust that it did!

Neil Robinson

Signature of Arbitrator: _____

Date: 24th May 2017

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

24/05/2017

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

24/05/2017